


NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth requirements for restoring land use capability after completion of surface mining activities, and specific criteria for approval of postmining land uses which differ from the premining land use.

Section 1. General. (1) Prior to the final release of performance bond, affected areas shall be restored in a timely manner:
   (a) To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or
   (b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet under Section 4 of this administrative regulation.

   (2) The following land uses shall apply under this administrative regulation:
   (a) Cropland;
   (b) Pastureland;
   (c) Forest land;
   (d) Residential;
   (e) Industrial/commercial;
   (f) Recreation;
   (g) Fish and wildlife;
   (h) Developed water resources;
   (i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area; however, more than one (1) land use can exist within a proposed permit boundary.

   (2) The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR Chapter 1 or 3 or Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining; except if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

   (3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.

   (4)(a) The land use category of "undeveloped land or no current use or land management" shall not be used to designate a postmining land use.

   (b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of this section and Section 3 of this administrative regulation:

   1. If trees are dominant on the area prior to mining, the area may be designated as forestland for
the postmining land use without compliance with the procedures and criteria for an alternative post-
mining land use.

2. For all other cases, the area may be designated as fish and wildlife for the postmining land use
without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. These limitations shall apply to permits is-
sued after the effective date of this amendment. Portions of the permit area with slopes greater than
twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland,
including hay production.

(6) Steep slope operations with variances from approximate original contour shall comply with the
requirements of 405 KAR 20:060, Section 3(2), and mountaintop removal operations shall comply
with 405 KAR 8:050, Section 4(3).

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years
of the date of application for a permit to conduct surface coal mining and reclamation operations, the
historical use of the land as well as the land use immediately preceding the date of application shall
be considered in establishing the premining capability of the land to support a variety of feasible us-
es.

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses
may be approved by the cabinet if the following criteria are met:

(1) There is a reasonable likelihood that the land use will be achieved;
(2) The use will not be impractical or unreasonable;
(3) The landowner or the land management agency having jurisdiction over the lands has been
consulted, and the proposed alternative postmining land use is consistent with applicable land use
policies and plans;
(4) The proposed use will not present an actual or probable hazard to public health or safety or
threat of water pollution or diminution of water availability;
(5) The proposed use will not involve unreasonable delays in implementation; and
(6) The proposed use will not cause or contribute to violation of federal, state, or local law. (8
Ky.R. 1553; eff. 1-6-1983; 18 Ky.R. 431; 1875; 2243; eff. 11-26-1991; Crt eff. 7-3-2018.)