

### **300 KAR 6:020. Administration of Kentucky Rock Fence Preservation Program.**

RELATES TO: KRS Chapter 45A, 61.805 -61.850, 61.870 -61.884, 171.391, 171.392, 171.393, Chapter 424, 36 C.F.R. 68(3)(c), (d)

STATUTORY AUTHORITY: KRS 171.381(3)(f), 171.393

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.393 establishes the Rock Fence Preservation Program and authorizes the Kentucky Heritage Council to promulgate administrative regulations in consultation with the Dry Stone Conservancy relating to the establishment of a grant program. This administrative regulation establishes criteria for participation in that grant program.

#### Section 1. Definitions.

- (1) "Applicant" means a person who applies for grant assistance from the Kentucky Rock Fence Preservation Program.
- (2) "Application" means the form Kentucky Rock Fence Preservation Grant Application.
- (3) "Available grant funds" means money deposited in the rock fence preservation fund disbursed by the State Treasury under the Rock Fence Preservation Program established in KRS 171.393 and administered by the Kentucky Heritage Council for reconstruction and restoration of the Commonwealth's historic drylaid rock fences and historic mortared rock fences.
- (4) "Council" is defined by KRS 171.391(1).
- (5) "Director" means the Executive Director of the Kentucky Heritage Council.
- (6) "Eligible owner" means an owner that is eligible under Section 2 of this administrative regulation to apply for grant assistance.
- (7) "Eligible plan" means a reconstruction or restoration plan that meets the standards for reconstruction or restoration and has been approved by the director pursuant to Section 6 of this administrative regulation.
- (8) "File" or "filed" means received at the office of the council or post-marked on or before the announced deadline.
- (9) "Grant assistance" means grant funds awarded by the council from the Kentucky Rock Fence Preservation Program Grant Fund.
- (10) "Historic drylaid rock fence" is defined by KRS 171.391(2).
- (11) "Historic mortared rock fence" is defined by KRS 171.391(3).
- (12) "Owner" means:
  - (a) The person, partnership, corporation, public agency, or other entity holding a fee simple interest in property located in Kentucky; or
  - (b) A lessee of property, if the remaining term of the lease is not less than twenty-seven and one-half (27 1/2) years for residential property and thirty-nine (39) years for all other property.
- (13) "Performance and maintenance agreement" means the form Kentucky Rock Fence Preservation Performance and Maintenance Agreement, a written agreement between an eligible owner and the council in which the eligible owner agrees to implement an eligible plan for which the grant assistance is being awarded and to maintain the historic drylaid rock fences or historic mortared rock fences in their restored condition for a period of time established in Section 9(3)(b) of this administrative regulation from the date of the agreement.
- (14) "Program year" means the period from July 1 to June 30.
- (15) "Property" means real property located in Kentucky upon which historic drylaid rock fences or historic mortared rock fences are situated.
- (16) "Reconstruction" means the act or process of depicting, by means of new construction, the form, features, and detailing of a nonsurviving site, landscape, building,

structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

(17) "Reconstruction plan" means a plan describing the methods and materials, including location and condition of existing fences, to be utilized by persons engaged in the reconstruction of historic drylaid rock fences or historic mortared rock fences located in Kentucky.

(18) "Request for reimbursement" means the form Kentucky Rock Fence Preservation Grant Request for Reimbursement.

(19) "Restoration" means the process of accurately depicting the form, features, and character of historic drylaid rock fences or historic mortared rock fences as they appeared at a particular period of time by means of reconstruction of missing features for the restoration period and the removal of features from other periods in its history, if contemporary alterations and additions are not planned, and if substantial physical and documentary evidence exists for the work.

(20) "Restoration plan" means a plan describing the methods and materials, including location and condition of existing fences, to be utilized by persons engaged in the restoration of historic drylaid rock fences or historic mortared rock fences located in Kentucky.

(21) "Standards for reconstruction" means:

- (a) The Secretary of the Interior's Standards for Reconstruction, 36 C.F.R. 68.3(d), as established by the U. S. Department of Interior; and
- (b) The standards established in Section 3(3) of this administrative regulation.

(22) "Standards for restoration" means:

- (a) The Secretary of the Interior's Standards for Restoration, 36 C.F.R. 68.3(c), as established by the U. S. Department of Interior; and
- (b) The standards established in Section 3(3) of this administrative regulation.

Section 2. Eligible Owners. An owner of real property in Kentucky upon which historic drylaid rock fences or historic mortared rock fences are situated shall be eligible if the owner meets the following criteria:

- (1) The historic drylaid rock fences or historic mortared rock fences are in need of reconstruction or restoration, through no deliberate act by the owner, and still possess enough historic integrity to enable a determination of location, style, and dimensions;
- (2) A reconstruction or restoration plan has been prepared that conforms to the standards for reconstruction or restoration; and
- (3) The owner agrees to enter into a performance and maintenance agreement with the council.

Section 3. Standards for Reconstruction and Restoration.

(1) An eligible plan for reconstruction shall comply with the Secretary of the Interior's Standards for Reconstruction, 36 C.F.R. 68.3(d), as established by the U.S. Department of Interior.

(2) An eligible plan for restoration shall comply with the Secretary of the Interior's Standards for Restoration, 36 C.F.R. 68.3(c), as established by the U.S. Department of Interior.

(3) In addition to the standards required in subsections (1) and (2) of this section, an eligible plan for reconstruction or restoration shall comply with the following standards:

- (a) Historic drylaid rock fence shall be restored or reconstructed if feasible following the plan specifications set forth in the Special Note for Drylaid Rock Fences, KHC Form RFPP-4;
- (b) If the level of damage or deterioration precludes repair, replacement shall be with stones that match the surviving portions of the fence in form, size, and color, utilizing the same styles and construction techniques;

(c) The quality of materials, craftsmanship, and related new construction in reconstruction or restoration shall match the quality of materials, craftsmanship, and design of the historic fence in question.

1. An application shall be denied if an owner uses improperly applied treatments or materials containing physical properties that cause or accelerate physical deterioration of historic fences.

2. Prior to application, the owner shall consult with the council for a determination of what measures are appropriate for the owner's fence.

3. Inappropriate measures shall include:

a. Improper masonry repointing materials and techniques;

b. Improper exterior masonry cleaning methods;

c. Inappropriate patching, splicing, or other reinforcing methods or materials;

d. Utilization of materials or design which are incompatible with surviving portions of the fence; and

e. Utilization of stones that have been removed, harvested, or taken from other historic stone structures without prior approval of the council; and

(d) If prior inappropriate repairs or other circumstances make it necessary to completely dismantle and rebuild portions of a historic drylaid rock fence or historic mortared rock fence to stabilize and repair weakened structural members, the council shall consider this intervention as part of the reconstruction or restoration plan if:

1. The necessity for dismantling is supported by documentation;

2. The plan shall involve the least degree of intervention necessary to accomplish the reconstruction or restoration; and

3. Adequate surviving stones shall be retained to maintain the architectural and historic integrity of the fence overall.

#### Section 4. Solicitation of Applications.

(1) Within ninety (90) days from the date grant funds are made available in each program year, the council shall establish a deadline for filing of applications for grant assistance.

(2) An eligible owner shall be permitted to file only one (1) application per program year.

(3) The council shall provide an opportunity for eligible owners to file applications in time for the next program year by:

(a) Announcing available grant funds to appropriate news media, including local newspapers;

(b) Providing notices to local historic preservation programs and groups; and

(c) Publishing notices on the council's Web site and nonprofit Web sites.

#### Section 5. Contents and Completion of Applications.

(1) Contents of application. An eligible owner shall file with the council the Kentucky Rock Fence Preservation Grant Application, KHC Form RFPP-1, in order to apply for grant assistance. The owner shall provide the following information:

(a) Name and mailing address of owner;

(b) Address of property;

(c) Photographic documentation of the fences showing areas to be recreated or restored and areas that do not need reconstruction or restoration, but supply sufficient information as to the styles and techniques used in construction of the fences and features unique to the fences;

(d) A brief written description of appearance including method of construction, materials, size, alterations, distinctive features and spaces, and dates of construction;

(e) A brief statement of significance summarizing how the fences reflect the value that gives the property its distinctive historical and visual character and explaining any significance attached to the property itself;

- (f) A copy of a map, plat, or a PVA aerial map, indicating where the subject property is located and denoting where the fences are located on the property;
  - (g) A reconstruction or restoration plan that conforms to the standards for reconstruction or for restoration;
  - (h) Estimates for total cost of the reconstruction or restoration along with qualifications of contractors solicited to perform the reconstruction or restoration;
  - (i) Indication of willingness to enter into a performance and maintenance agreement with the council; and
  - (j) Signature of the owner.
- (2) Completion of an application.
- (a) An eligible owner who does not have a reconstruction or restoration plan may request technical assistance from the council.
  - (b) If the reconstruction or restoration plan has been submitted, the application shall be reviewed in accordance with the eligibility and prioritization criteria established by this administrative regulation.

#### Section 6. Review of Applications.

- (1) The director shall review all applications that have been submitted to the council by the established deadline.
- (2) The director shall invite comments on the applications from other entities such as the Dry Stone Conservancy, Certified Local Governments, and the Kentucky Department of Transportation.
- (3) The director shall determine whether:
  - (a) The applicant is an eligible owner;
  - (b) The reconstruction or restoration plan is an eligible plan; and
  - (c) The application has been completed in accordance with the requirements of this administrative regulation.
- (4) The director shall make a list of all applications that have been determined to be eligible, and shall submit the list to the council.

#### Section 7. Prioritization of Applications. The council shall prioritize applications determined to be eligible by the director based on the following criteria:

- (1) Correct completion and submission of all parts of the application;
- (2) Applicant is determined to be an eligible owner;
- (3) Application contains a reconstruction or restoration plan for historic drylaid rock fences or historic mortared rock fences that meets the standards for reconstruction or restoration as set forth in Section 3 of this administrative regulation;
- (4) Application establishes a project consistent with the mission of long-term preservation and maintenance of historic drylaid rock fences and historic mortared rock fences in Kentucky;
- (5) Applicant agrees to comply with the regulations in the administration of the reconstruction or restoration project as set forth in Section 3 of this administrative regulation;
- (6) Clear identification and documentation of need;
- (7) Clearly stated project objectives that can be achieved within the project term and are feasible in light of projected resources available without impacting other historic stone structures;
- (8) Sound project planning as evidenced by:
  - (a) The narrative descriptions; and
  - (b) The proposed budget that:
    - 1. Supports the activities of the project;
    - 2. Is reasonable and adequate to achieve the objectives;
    - 3. Is cost-effective; and

4. Substantiates availability of matching funds;
- (9) A clear description of the scope of work, methodology, time frame, anticipated product, and qualifications of proposed contractors;
- (10) Performance on past state or federal grant projects funded by the Kentucky Heritage Council, the African American Heritage Commission, or the Native American Heritage Commission, as measured by adherence to all contractual requirements, both fiscal and programmatic;
- (11) Potential for duplication of efforts by other organizations or individuals;
- (12) Location of the fences in relation to the public viewshed or rarity of the location of the fences, such as a pasture field; and
- (13) Degree of urgency to protect fences in imminent danger of being damaged or destroyed, including dangers posed by proximate position to roads.

#### Section 8. Allocation of Grant Assistance.

- (1) Available grant funds shall be allocated to eligible owners by the council based on the recommendation of the eligible plans approved by the director and in accordance with the prioritization system established in Section 7 of this administrative regulation.
- (2) The council shall vote upon final awards of grant assistance at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 to 61.850, and Open Records Law, KRS 61.870 to 61.884.
- (3) The council shall announce the award of grant assistance to applicants in writing within thirty (30) days after determining final awards.

#### Section 9. Execution of Performance and Maintenance Agreements.

- (1) After an application has been awarded grant assistance, the applicant and the council shall execute a performance and maintenance agreement.
- (2) Funds shall not be made available to an eligible owner until a performance and maintenance agreement has been executed by all parties.
- (3) Requirements of performance and maintenance agreements.
  - (a) The applicant shall meet the following requirements in the performance and maintenance agreement:
    1. The applicant shall agree to perform the reconstruction or restoration work in accordance with the standards for reconstruction or restoration as set forth in Section 3 of this administrative regulation.
    2. Work shall commence after the execution of the performance and maintenance agreement and shall be completed within twelve (12) months from the date of execution of the performance and maintenance agreement.
    3. Written requests for extensions of time or for amendments to the performance and maintenance agreements shall be approved by the director only if there is a showing of substantial justification;
  - (b) The applicant shall agree to maintain the approved project beginning with the date the performance and maintenance agreement was executed and thereafter for a term of:
    1. Five (5) years if the grant is \$10,000 or less;
    2. Ten (10) years if the grant is greater than \$10,000 but less than \$20,000; or
    3. Twenty (20) years if the grant is \$20,000 or more;
  - (c) In addition to a maintenance agreement, an applicant receiving a grant of \$20,000 or more shall have executed a covenant between the owner and the council and recorded with the land records as an encumbrance running with the subject property for a period of twenty (20) years;
  - (d) Upon completion of the approved project, the applicant shall notify the council that the historic drylaid rock fences or historic mortared rock fences have been restored and shall provide to the council adequate documentation, including photographs, of the completed project;

(e)

1. The applicant shall agree that if there is a transfer of ownership of the property within the term established in Section 9(3)(b) of this administrative regulation from date of execution of the performance and maintenance agreement, the applicant shall execute a contract with the transferee requiring continuation of the performance and maintenance agreement until the expiration of the term.

2. If the transferee does not agree in writing to properly maintain the historic drylaid rock fences or historic mortared rock fences for the remainder of the term, the applicant shall refund a pro-rated amount of the grant assistance based upon any whole years of time remaining on the term of the performance and maintenance agreement;

(f) The applicant shall agree that if the applicant fails to comply with the terms of the performance and maintenance agreement, the council shall, upon reasonable notice to the recipient:

1. Withhold further payment;

2. Suspend the grant;

3. Terminate the grant for cause; or

4. Take other legally available remedies that shall be appropriate under the circumstances to recover the funds disbursed; and

(g)

1. Depending upon the source of available grant funds, an applicant may be required to comply with appropriate state or federal laws relevant to the source;

2. All procurements shall follow KRS Chapter 45A or 424;

3. All procurements shall follow local procurement guidelines; and

4. An applicant shall obtain any required local permits.

(4) Effect of performance and maintenance agreement. Requirements for performance and maintenance applied to the historic drylaid rock fences or historic mortared rock fences using grant assistance shall be established in the performance and maintenance agreement.

(5) To receive funds the recipient shall provide the following:

(a) A Kentucky Rock Fence Preservation Grant Request for Reimbursement form accompanied by adequate supporting documentation including cancelled checks, proof of payment, invoices, and receipts; and

(b) Photographic documentation and written verification from the owner that the project has been completed in accordance with the performance and management agreement.

(6) The council shall have the right to conduct on site monitoring of the project at any time during the term of the performance and maintenance agreement.

(7) Refund of funds disbursed. The council shall require a refund of grant assistance if an approved eligible plan has not been performed or the restored historic drylaid rock fences or historic mortared rock fences have not been maintained in compliance with approved standards of reconstruction or restoration as agreed in the performance and maintenance agreement.

(8)

(a) Limitations on awards. Grant assistance awarded to an individual or for-profit entity shall be limited to fifty (50) percent of the actual cost, not to exceed an amount approved by the council, with the assisted applicant providing fifty (50) percent or more of the cost, which may include federal, local, or in-kind support.

(b) Grant assistance awarded to a nonprofit entity shall be limited to sixty (60) percent of the actual cost, not to exceed an amount approved by the council, with the assisted applicant providing forty (40) percent or more of the cost, which may include federal, local, or in-kind support.

(9) Grant assistance shall not be awarded to projects in progress prior to execution of the performance and maintenance agreement.

#### Section 10. Appeals.

(1) Procedure for filing appeal. An applicant aggrieved by a decision of the council to deny an application or limit the amount of grant assistance assurance may file written objections with the director within thirty (30) days of the decision establishing the basis for the appeal.

(a) The director shall notify the applicant within twenty (20) day, in accordance with KRS 13B.050, that the applicant may appear and present testimony or written documentation on the issues presented by the appeal.

(b) The director shall have thirty (30) days in which to make a decision and to notify the applicant.

(2) Review of final decision. The applicant may appeal the decisions of the director to the Franklin Circuit Court.

#### Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Rock Fence Preservation Grant Application", (KHC Form RFPP-1, Rev. 2008), Kentucky Heritage Council;

(b) "Kentucky Rock Fence Preservation Grant Request for Reimbursement", (KHC Form RFPP-2, Rev. 2008), Kentucky Heritage Council;

(c) "Kentucky Rock Fence Preservation Performance and Maintenance Agreement", (KHC Form RFPP-3, Rev. 2008), Kentucky Heritage Council;

(d) "Special Note for Drylaid Rock Fences", (KHC Form RFPP-4, Rev. 2008).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Heritage Council, 300 Washington Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(35 Ky.R. 204; Am. 544; eff. 10-3-08; Crt eff. 2-12-2020.)