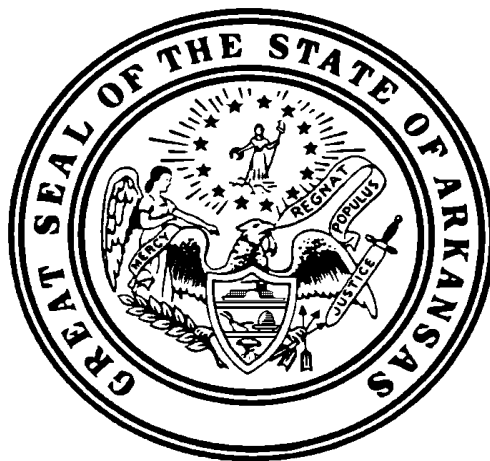


**Proposed Changes
to
Regulation Number 20**

The Arkansas Surface Coal Mining
and Reclamation Code



DRAFT

Presented to the Arkansas Pollution Control and Ecology Commission

February 22, 2002

SECTION 761.5

DEFINITIONS

For the purposes of this Part

~~Valid existing rights means:~~

~~(a) Except for haul roads=~~

~~(1) Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the applicant to produce coal by a surface coal mining operation; and~~

~~(2) The person proposing to conduct surface coal mining operations on such lands either-~~

~~(i) Has been validly issued, on or before August 3, 1977, all State and Federal permits necessary to conduct such operations on those lands; or~~

~~(ii) Can demonstrate to the Commission that the coal is both needed for, and immediately adjacent to, an on-going surface coal mining operation for which all permits were obtained prior to August 3, 1977;~~

~~[Ed. Note: In Section 761.5, Paragraph (a)(2) of the definition of "valid existing rights" is suspended insofar as the "all permits test" in defining the "valid existing rights" does not allow an operator to establish good faith efforts to obtain all permits prior to August 31, 1977 and thereby qualify for a valid prior existing right.]~~

~~(b) For haul roads, valid existing rights means:~~

~~(1) A recorded right-of-way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977, or~~

~~(2) Any other road in existence as of August 3, 1977;~~

~~(c) Interpretation of the terms of the document relied upon to establish existing rights shall be based upon the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right;~~

~~(d) "Valid existing rights" does not mean mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Example of rights which alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a~~

State or Federal permit.

Valid existing rights means a set of circumstances under which a person may, subject to the Director's approval, conduct surface coal mining operations on lands where Section 761.11 would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of Section 761.11. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Act and the state program.

(a) Property rights demonstration. Except as provided in paragraph (c) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operation intended. This right must exist at the time the land came under the protection of Section 761.11. Applicable State statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no applicable State law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation

(b) Except as provided in paragraph (c) of this definition, a person claiming valid existing rights also must demonstrate compliance with one of the following standards:

(1) Good faith/all permits standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of Section 761.11. At a minimum, an application must have been submitted for any permit required under Subchapter G of this chapter.

(2) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of Section 761.11. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Section 761.11. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits and authorizations had been made before August 3, 1977, this standard does not apply to lands already under the protection of Section 761.11 when the Director approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the Director may consider factors such as:

(i) The extent to which coal supply contracts or other legal and business commitments that predate the time the land came under the protection of

Section 761.11 depend upon use of that land for surface coal mining operations.

(ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of Section 761.11 rely upon use of that land for surface coal mining operations.

(iii) The extent to which investments in the operation before the land came under the protection of Section 761.11 rely upon use of that land for surface coal mining operations.

(iv) Whether the land lies within the area identified on the life-of-mine map submitted under Section 779.24(c) of this chapter before the land came under the protection of Section 761.11.

(c) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by Section 761.11 must demonstrate that one or more of the following circumstances exist if the road is included in the definition of “surface coal mining operations” in Section 700.5 of this chapter:

(1) The road existed when the land upon which it is located came under the protection of Section 761.11, and the person has a legal right to use the road for surface coal mining operations.

(2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of Section 761.11, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

(3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Section 761.11

(4) Valid existing rights exist under paragraphs (a) and (b) of this definition.

* * * * *

Public Building means any structure that is owned or leased by a public agency or used principally for public business, meetings or other group gathering.

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Publicly owned park means a public park that is owned by a Federal, State, or local governmental entity.

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~~Surface coal mining operations which exist on the date of enactment means all surface coal mining operations which were being conducted on August 3, 1977.~~

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SECTION 761.11 ~~**AREAS WHERE MINING IS PROHIBITED OR LIMITED**~~

~~Subject to valid existing rights, no surface coal mining operations except those which existed on August 3, 1977, shall be permitted~~

- ~~(a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), and National Recreation Areas designated by Act of Congress;~~
- ~~(b) On any Federal lands within the boundaries of any national forest, provided, however, that surface coal mining operations may be permitted on such lands, if the Secretary of the Interior finds that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining operations; and surface operations and impacts are incident to an underground coal mine;~~
- ~~(c) On any lands which will adversely affect any publicly owned park or any places included on the National Register of Historic Places, unless approved by the Commission after consultation with the Department of Arkansas Natural and Cultural Heritage;~~
- ~~(d) Within 100 feet measured horizontally of the outside right-of-way line of any public road, except —~~
 - ~~(1) Where mine access roads or haulage roads join such right-of-way line; or~~
 - ~~(2) Where the Commission allows the public road to be relocated or the area affected to be within 100 feet of such road, after~~
 - ~~(i) Public notice and opportunity for a public hearing in accordance with Section 761.12(d); and,~~
 - ~~(ii) Making a written finding that the interests of the affected public and landowners will be protected;~~
- ~~(e) Within 300 feet measured horizontally from any occupied dwelling, unless the owner thereof~~

~~has provided a written waiver consenting to surface coal mining operations closer than 300 feet;~~

- ~~(f) Within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park;~~
- ~~(g) Within 100 feet measured horizontally of a cemetery;~~
- ~~(h) In State parks, recreation areas, and memorials unless approved by the Director after consulting with the Arkansas Department of Parks and Tourism; or~~
- ~~(i) In State Game and Fish Commission Wildlife Management Areas unless approved by the Director after consulting with the Game and Fish Commission.~~

SECTION 761.11 AREAS WHERE SURFACE COAL MINING OPERATIONS ARE PROHIBITED OR LIMITED

An applicant may not conduct surface coal mining operations on the following lands unless he either have valid existing rights, as determined under Section 761.16, or qualifies for the exception for existing operations under Section 761.12:

(a) Any lands within the boundaries of:

(1) The National Park System;

(2) The National Wildlife Refuge System;

(3) The National System of Trails;

(4) The National Wilderness Preservation System;

(5) The Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1276(a), or study rivers or study river corridors established in any guidelines issued under that Act; or

(6) National Recreation Areas designated by Act of Congress.

(b) Any Federal lands within a national forest. This prohibition does not apply if—

(1) the Secretary finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations, and,

(2) Any surface operations and impacts will be incident to an underground coal mine.

- ~~(c) Any lands where the operation would adversely affect any publicly owned park or any place in the National Register of Historic Places. This prohibition does not apply if, as provided in Section 761.17(d), the Director and the Federal, State, or local agency with jurisdiction over the park or place jointly approve the operation.~~
- ~~(d) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road. This prohibition does not apply:~~
- ~~(1) Where a mine access or haul road joins a public road, or~~
- ~~(2) When, as provided in Section 761.14, the Director (or the appropriate public road authority designated by the Director) allows the public road to be relocated or closed, or the area within the protected zone to be affected by the surface coal mining operation, after:~~
- ~~(i) Providing public notice and opportunity for a public hearing; and~~
- ~~(ii) Finding in writing that the interests of the affected public and landowners will be protected.~~
- ~~(e) Within 300 feet, measured horizontally, of any occupied dwelling. This prohibition does not apply when:~~
- ~~(1) The owner of the dwelling has provided a written waiver consenting to surface coal mining operations within the protected zone, as provided in Section 761.15; or~~
- ~~(2) The part of the operation to be located closer than 300 feet to the dwelling is an access or haul road that connects with an existing public road on the side of the public road opposite the dwelling.~~
- ~~(f) Within 300 feet, measured horizontally, of any public building, school, church, community or institutional building, or public park.~~
- ~~(g) Within 100 feet, measured horizontally, of a cemetery. This prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and regulations.~~

SECTION 761.12

PROCEDURES

- ~~(a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the Director shall review the application to determine whether surface coal mining operations are limited or prohibited under Section 761.11 on the~~

~~lands which would be disturbed by the proposed operation.~~

- ~~(b)~~
- ~~(1)~~ Where the proposed operation would be located on any lands listed in Section 761.11(a), (f) or (g), the Director shall reject the application if the applicant had no valid existing rights for the area on August 3, 1977, or if the operation did not exist on that date.
- ~~(2)~~ If the Director is unable to determine whether the proposed operation is located within the boundaries of any of the lands in Section 761.11 (a) or closer than the limits provided in Section 761.11 (f) and (g), the Director shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within thirty (30) days of receipt of the request. The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have thirty (30) days from receipt of the notification in which to respond. The Department, upon request by the appropriate agency, shall grant an extension to the 30-day period of an additional thirty (30) days. If no response is received within the extended 30-day period or with the period granted. The Department may make the necessary determination based on the information it has available.
- ~~(c)~~ Where the proposed operation would include Federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under Section 761.11(b) of this Part, the applicant shall submit a permit application to the OSM Regional Director for processing under 30 CFR Subchapter D.
- ~~(d)~~ Where the proposed mining operation is to be conducted within 100 feet measured horizontally of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way line) or where the applicant proposes to relocate any public road, the Director shall =
- ~~(1)~~ Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;
- ~~(2)~~ Provide notice in a newspaper of general circulation in the affected locale of a public hearing at least two (2) weeks before the hearing;

- ~~(3) Provide an opportunity for a public hearing at which any member of the public may participate in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected; and~~
- ~~(4) Make a written finding based upon information received at the public hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.~~
- ~~(e)~~
 - ~~(1) Where the proposed surface coal mining operations would be conducted within 300 feet measured horizontally of any occupied dwelling, the applicant must submit with the application a written waiver from the owner of the dwelling, consenting to such operations within a closer distance of the dwelling as specified in the waiver. The waiver must be knowingly made and separated from a lease or deed unless the lease or deed contains an explicit waiver. The waiver should clarify that the owner and signator had the legal right to deny mining and knowingly waived the right.~~
 - ~~(2) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within 300 feet of such dwelling, a new waiver shall not be required.~~
 - ~~(3)~~
 - ~~(i) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.~~
 - ~~(ii) A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if the mining has proceeded to within the 300-foot-limit prior to the date of purchase.~~
- ~~(f)~~
 - ~~(1) Where the proposed surface coal mining operation may adversely affect any public park or any places included on the National Register of Historic Places, the Director shall transmit to the Federal, State or local agencies with jurisdiction over a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing the following:~~

- ~~(i) A request for that agency's approval or disapproval of the operations;~~
- ~~(ii) A notice to the appropriate agency that it must respond within thirty (30) days from receipt of the request.~~
- ~~(2) A permit for the operation shall not be issued unless all affected agencies which have filed objections have been consulted.~~
- ~~(g) If the Director determines that the proposed surface coal mining operation is not prohibited under Section 522(e) of Public Law 95-87 (30 U.S.C. 1272(e)) and this Part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to Sections 762 or 764.~~
- ~~(h) A determination by the Director that a person holds or does not hold a valid existing right or that surface coal mining operations did or did not exist on August 3, 1977, shall be subject to administrative and judicial review under Sections 787.11 and 787.12 of this Chapter.~~

SECTION 761.12

EXCEPTION FOR EXISTING OPERATIONS

The prohibitions and limitations of Section 761.11 do not apply to surface coal mining operations for which a valid permit, issued under Subchapter G of this chapter, exists when the land comes under the protection of Section 761.11. This exception applies only to lands within the permit area as it exists when the land comes under the protection of Section 761.11.

SECTION 761.13

PROCEDURES FOR COMPATIBILITY FINDINGS FOR SURFACE COAL MINING OPERATIONS ON FEDERAL LANDS IN NATIONAL FORESTS

- ~~(a) An applicant who intends to rely upon the exception provided in Section 761.11(b) to conduct surface coal mining operations on Federal lands within a national forest, must request that OSM obtain the Secretarial findings required by Section 761.11(b).~~
- ~~(b) An applicant may submit a request to OSM before preparing and submitting an application for a permit or boundary revision. The applicant must explain how the proposed operation would not damage the values listed in the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" in Section 761.5. The request must include a map and sufficient information about the nature of the proposed operation for the Secretary to make adequately documented findings. OSM may request that any additional information that it determines is needed to make the required findings be provided.~~

- (c) When a proposed surface coal mining operation or proposed boundary revision for an existing surface coal mining operation includes Federal lands within a national forest, the Director may not issue the permit or approve the boundary revision before the Secretary makes the findings required by Section 761.11(b).

SECTION 761.14 PROCEDURES FOR RELOCATING OR CLOSING A PUBLIC ROAD OR WAIVING THE PROHIBITION ON SURFACE COAL MINING OPERATIONS WITHIN THE BUFFER ZONE OF A PUBLIC ROAD

- (a) This section does not apply to:

- (1) Lands for which a person has valid existing rights, as determined under Section 761.16.
- (2) Lands within the scope of the exception for existing operations in Section 761.12.
- (3) Access or haul roads that join a public road, as described in Section 761.11(d)(1).

- (b) The applicant must obtain any necessary approvals from the authority with jurisdiction over the road if he proposes to:

- (1) Relocate a public road;
- (2) Close a public road; or
- (3) Conduct surface coal mining operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.

- (c) Before approving an action proposed under paragraph (b) of this section, the Director, or a public road authority that he designates, must determine that the interests of the public and affected landowners will be protected. Before making this determination, the Director must:

- (1) Provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation;
- (2) If a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality; and
- (3) Based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If a hearing was held, the Director must make this finding within 30 days after the

hearing. If no hearing was held, the Director must make this finding within 30 days after the end of the public comment period.

SECTION 761.15 PUBLIC BUILDINGS

Public Buildings means any structure that is owned or leased by a public agency or used principally for public business, meetings or other group gathering.

SECTION 761.15 PROCEDURES FOR WAIVING THE PROHIBITION ON SURFACE COAL MINING OPERATIONS WITHIN THE BUFFER ZONE OF AN OCCUPIED DWELLING

(a) This section does not apply to:

(1) Lands for which a person has valid existing rights, as determined under Section 761.16.

(2) Lands within the scope of the exception for existing operations in Section 761.12.

(3) Access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in Section 761.11(e)(2).

(b) If the applicant proposes to conduct surface coal mining operations within 300 feet, measured horizontally, of any occupied dwelling, the permit application must include a written waiver by lease, deed, or other conveyance from the owner of the dwelling. The waiver must clarify that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver will act as consent to surface coal mining operations within a closer distance of the dwelling as specified.

(c) If the applicant obtained a valid waiver before August 3, 1977, from the owner of an occupied dwelling to conduct operations within 300 feet of the dwelling, he need not submit a new waiver.

(d) If the applicant obtains a valid waiver from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if surface coal mining operations have entered the 300-foot zone before the date of purchase.

SECTION 761.16 SUBMISSION AND PROCESSING OF REQUESTS FOR VALID

EXISTING RIGHTS DETERMINATIONS

(a) Basic framework for valid existing rights determinations.

(1) The agency responsible for making a valid existing rights determination shall be:

(i) OSM, for requests which pertain to Federal lands within the areas listed under Section 761.11(a) and (b); or,

(ii) The Department, for requests which pertain to

(A) All non-Federal lands; or,

(B) Any lands listed under Section 761.11(c) - (g).

(2) The applicable definition of valid existing rights shall be:

(i) The Federal definition at 30CFR Section 761.5, for requests for all lands within areas listed under Section 761.11(a) and (b); or,

(ii) The State program definition at Section 761.5, for requests for all lands within areas listed under Section 761.11(c) - (g).

(b) Requirements of a request for a valid existing rights determination. The applicant must submit a request for a valid existing rights determination to the appropriate agency under paragraph (a) of this section if he intends to conduct surface coal mining operations on the basis of valid existing rights under Section 761.11 or wishes to confirm the right to do so. This request may be submitted before preparing and submitting an application for a permit or boundary revision for the land, unless the applicable regulatory program provides otherwise.

(1) Requirements for property rights demonstration. The applicant must provide a property rights demonstration under paragraph (a) of the definition of valid existing rights in Section 761.5 if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in paragraph (b) of the definition of valid existing rights in Section 761.5. This demonstration must include the following items:

(i) A legal description of the land to which the request pertains.

(ii) Complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which the request pertains.

- (iii) A complete chain of title for the surface and mineral estates of the land to which the request pertains.
- (iv) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities.
- (v) A description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with State property law.
- (vi) Complete documentation of the nature and ownership, as of the date that the land came under the protection of Section 761.11, of all property rights for the surface and mineral estates of the land to which the request pertains.
- (vii) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.
- (viii) If the coal interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of the applicant's property rights claims.
- (ix) Any comments that the applicant receives in response to the notification provided under paragraph (b)(1)(viii) of this section.
- (2) Requirements for good faith/all permits standard. If the applicant's request relies upon the good faith/all permits standard in paragraph (b)(1) of the definition of valid existing rights in Section 761.5, he must submit the information required under paragraph (b)(1) of this section. The applicant also must submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land to which the request pertains:

 - (i) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant or a predecessor in interest obtained before the land came under the protection of Section 761.11.
 - (ii) Application dates and identification numbers for any permits, licenses, and authorizations for which the applicant or a predecessor in interest submitted an application before the land came under the protection of Section 761.11.
 - (iii) An explanation of any other good faith effort that the applicant or a

predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of Section 761.11.

- (3) Requirements for needed for and adjacent standard. If the applicant's request relies upon the needed for and adjacent standard in paragraph (b)(2) of the definition of valid existing rights in Section 761.5, the applicant must submit the information required under paragraph (b)(1) of this section. In addition, the applicant must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Section 761.11.
- (4) Requirements for standards for mine roads. If the request relies upon one of the standards for roads in paragraphs (c)(1) through (c)(3) of the definition of valid existing rights in Section 761.5, the applicant must submit satisfactory documentation that:
 - (i) The road existed when the land upon which it is located came under the protection of Section 761.11, and the applicant has a legal right to use the road for surface coal mining operations;
 - (ii) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of Section 761.11, and, under the document creating the right of way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or
 - (iii) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Section 761.11.
- (c) Initial review of request.
 - (1) The agency must conduct an initial review to determine whether the applicant's request includes all applicable components of the submission requirements of paragraph (b) of this section. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.
 - (2) If the request does not include all applicable components of the submission requirements of paragraph (b) of this section, the agency must notify the applicant and establish a reasonable time for submission of the missing information.

- (3) When the request includes all applicable components of the submission requirements of paragraph (b) of this section, the agency must implement the notice and comment requirements of paragraph (d) of this section.
- (4) If the applicant does not provide information that the agency requests under paragraph (c)(2) of this section within the time specified or as subsequently extended, the agency must issue a determination that the applicant has not demonstrated valid existing rights, as provided in paragraph (e)(4) of this section.
- (d) Notice and comment requirements and procedures.
- (1) When the applicant's request satisfies the completeness requirements of paragraph (c) of this section, the agency must publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. Alternatively, the agency may require that the applicant publish this notice and provide the agency with a copy of the published notice. OSM will publish a similar notice in the Federal Register if the applicant's request involves Federal lands within an area listed in Section 761.11(a) or (b). Each notice must include:
- (i) The location of the land to which the request pertains.
- (ii) A description of the type of surface coal mining operations planned.
- (iii) A reference to and brief description of the applicable standard(s) under the definition of valid existing rights in Section 761.5.
- (A) If the request relies upon the good faith/all permits standard or the needed for and adjacent standard in paragraph (b) of the definition of valid existing rights in Section 761.5, the notice also must include a description of the property rights that the applicant claims and the basis for the claim.
- (B) If the request relies upon the standard in paragraph (c)(1) of the definition of valid existing rights in Section 761.5, the notice also must include a description of the basis for the applicant's claim that the road existed when the land came under the protection of Section 761.11. In addition, the notice must include a description of the basis for the applicant's claim that he has a legal right to use that road for surface coal mining operations.
- (C) If the request relies upon the standard in paragraph (c)(2) of the definition of valid existing rights in Section 761.5, the notice also must include a description of the basis for the applicant's claim that a properly recorded right of way or easement for a road in that

location existed when the land came under the protection of Section 761.11. In addition, the notice must include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.

(iv) If the request relies upon one or more of the standards in paragraphs (b), (c)(1), and (c)(2) of the definition of valid existing rights in Section 761.5, a statement that the agency will not make a decision on the merits of the applicant's request if, by the close of the comment period under this notice or the notice required by paragraph (d)(3) of this section, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim.

(v) A description of the procedures that the agency will follow in processing the request.

(vi) The closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice.

(vii) A statement that interested persons may obtain a 30-day extension of the comment period upon request.

(viii) The name and address of the agency office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

(2) The agency must promptly provide a copy of the notice required under paragraph (d)(1) of this section to:

(i) All reasonably locatable owners of surface and mineral estates in the land included in the applicant's request.

(ii) The owner of the feature causing the land to come under the protection of Section 761.11, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of Section 761.11.

(3) The letter transmitting the notice required under paragraph (d)(2) of this section must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the agency responsible for the determination of valid existing rights may grant additional time for good cause upon request. The agency need not necessarily consider comments

received after the closing date of the comment period.

(e) Decision making procedure.

(1) The agency responsible for making the determination of valid existing rights must review the materials submitted under paragraph (b) of this section, comments received under paragraph (d) of this section, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the agency must notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the agency deems necessary to remedy the inadequacy.

(2) Once the record is complete and adequate, the responsible agency must determine whether the applicant has demonstrated valid existing rights. The decision document must explain how the applicant has or has not satisfied all applicable elements of the definition of valid existing rights in Section 761.5. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

(3) Impact of property rights disagreements. This paragraph applies only when the applicant's request relies upon one or more of the standards in paragraphs (b), (c)(1), and (c)(2) of the definition of valid existing rights in Section 761.5.

(i) The agency must issue a determination that the applicant has not demonstrated valid existing rights if the property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The agency will make this determination without prejudice, meaning that the applicant may refile the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under paragraph (d)(1) or (d)(3) of this section.

(ii) If the record indicates disagreement as to the accuracy of the applicant's property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the agency must evaluate the merits of the information in the record and determine whether the applicant has demonstrated that the requisite property rights exist under paragraph (a), (c)(1), or (c)(2) of the definition of valid existing rights in Section 761.5, as appropriate. The agency must then proceed with the decision process under paragraph (e)(2) of this section.

(4) The agency must issue a determination that the applicant has not demonstrated valid existing rights if he does not submit information that the agency requests under paragraph (c)(2) or (e)(1) of this section within the time specified or as subsequently

extended. The agency will make this determination without prejudice, meaning that the applicant may refile a revised request at any time.

(5) After making a determination, the agency must:

(i) Provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of Section 761.11, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Section 761.11.

(ii) Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. Alternatively, the agency may require that the applicant publish this notice and provide a copy of the published notice to the agency. OSM will publish the determination, together with an explanation of appeal rights and procedures, in the Federal Register if the request includes Federal lands within an area listed in Section 761.11(a) or (b).

(f) Administrative and judicial review. A determination that the applicant has or does not have valid existing rights is subject to administrative and judicial review under Sections 787.11 and 787.12 of this chapter.

(g) Availability of records. The agency responsible for processing a request subject to notice and comment under paragraph (d) of this section must make a copy of that request available to the public in the same manner as the agency, when acting as the regulatory authority, must make permit applications available to the public under Section 786.15) of this chapter. In addition, the agency must make records associated with that request, and any subsequent determination under paragraph (e) of this section, available to the public in accordance with the requirements and procedures of Section. 842.16 of this chapter.

SECTION 761.17 AREAS DESIGNATED BY ACT OF CONGRESS

(a) Upon receipt of an administratively complete application for a permit for a surface coal mining operation, or an administratively complete application for revision of the boundaries of a surface coal mining operation permit, the Director must review the application to determine whether the proposed surface coal mining operation would be located on any lands protected under Section 761.11.

(b) The Director must reject any portion of the application that would locate surface coal mining operations on land protected under Section 761.11 unless:

- (1) The site qualifies for the exception for existing operations under Section 761.12;
 - (2) A person has valid existing rights for the land, as determined under Section 761.16;
 - (3) The applicant obtains a waiver or exception from the prohibitions of Section 761.11 in accordance with Sections 761.13 through 761.15; or
 - (4) For lands protected by Section 761.11(c), both the Director and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with paragraph (d) of this section.
- (c) Location verification. If the Director has difficulty determining whether an application includes land within an area specified in Section 761.11(a) or within the specified distance from a structure or feature listed in Section 761.11(f) or (g), the Director must request that the Federal, State, or local governmental agency with jurisdiction over the protected land, structure, or feature verify the location.
- (1) The request for location verification must:
 - (i) Include relevant portions of the permit application.
 - (ii) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.
 - (iii) Specify that the Director will not necessarily consider a response received after the comment period provided under paragraph (c)(1)(ii) of this section.
 - (2) If the agency does not respond in a timely manner, the Director may make the necessary determination based on available information.
- (d) Procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places.
- (1) If the Director determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the Director must request that the Federal, State, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The request must:
 - (i) Include a copy of applicable parts of the permit application.
 - (ii) Provide the agency with 30 days after receipt to respond, with a notice that another 30 days is available upon request.

(iii) State that failure to interpose an objection within the time specified under paragraph (d)(1)(ii) of this section will constitute approval of the proposed operation.

(2) The Director may not issue a permit for a proposed operation subject to paragraph (d)(1) of this section unless all affected agencies jointly approve.

(3) Paragraphs (d)(1) and (d)(2) of this section do not apply to:

(i) Lands for which a person has valid existing rights, as determined under Section 761.16.

(ii) Lands within the scope of the exception for existing operations in Section 761.12.

SECTION 761.200 INTERPRETIVE RULE RELATED TO SUBSIDENCE DUE TO UNDERGROUND COAL MINING IN AREAS DESIGNATED BY ACT OF CONGRESS

The Department has adopted the following interpretation of rules promulgated in Part 761.

(a) Interpretation of Section 761.11 – AREAS WHERE MINING IS PROHIBITED OR LIMITED. Subsidence due to underground coal mining is not included in the definition of surface coal mining operations under Section 15-58-104(16) of the Act and Section 700.5 of this chapter and therefore is not prohibited in areas protected under Section 15-58-501(a)(1) of the Act.

SECTION 762.14 APPLICABILITY TO LANDS DESIGNATED AS UNSUITABLE BY CONGRESS

Pursuant to appropriate petitions, lands listed in Section 761.11 of this chapter are subject to designation as unsuitable for all or certain types of surface coal mining operations under this part and Part 764 of this chapter.

SECTION 762.14

SECTION 762.15 EXPLORATION ON LAND DESIGNATED AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to Section 26 of the Act and regulations of this SubChapter does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, this Chapter, the State

program, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the Director under Section 776, to insure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

**SECTION 764.15 PROCEDURES: INITIAL PROCESSING,
RECORDKEEPING, AND NOTIFICATION
REQUIREMENTS**

- (a) * * * * *
- (7) Any petitions received after the close of the public comment period on a permit application relating to the same permit area shall not prevent the Commission from issuing a decision on that permit application. The Commission may return any petition received thereafter to the petitioner with a statement why the Commission cannot consider the petition. For the purposes of this Section, close of the public comment period shall mean at the close of any informal conference legislative public hearing held under Section 786, or, if no conference is requested, at the close of the period for filing written comments and objections under Section 786.12-13.

**SECTION 776.12 ~~GENERAL REQUIREMENTS: EXPLORATION
OPERATIONS OF MORE THAN 250 TONS~~**

~~Any person who intends to conduct coal exploration operations in which more than 250 tons of coal are removed in the area to be explored or which will take place on lands designated as unsuitable for surface mining under Subchapter F of this Chapter, shall, prior to conducting the operation, obtain the written approval of the Department in accordance with the following:~~

- ~~(a) Contents of application for approval. Each application for approval shall contain, at a minimum, the following information~~
- ~~(1) The name, address, and telephone number of the applicant;~~
- ~~(2) The name, address, and telephone number of the representative of the applicant who will be present at and will be responsible for conducting the operations;~~
- ~~(3) An exploration and reclamation operations plan including~~
- ~~(i) A narrative description of the proposed exploration area, cross-referenced to the map required under Paragraph (a)(5) of this Section, including surface topography; geological, surface water, and other physical features; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed~~

pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); districts, sites, buildings, structures or objects listed on or eligible for listing on the National Register of Historic Places; and known archeological resources located within the proposed exploration area; and any additional information the Director may require regarding known or unknown historic or archeological resources:

- ~~(ii) A narrative description of the methods to be used to conduct the surface coal mining and reclamation operations, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;~~
 - ~~(iii) An estimated timetable for conducting and completing each phase of the exploration and reclamation;~~
 - ~~(iv) The estimated amounts of coal to be removed and a description of those methods to be used to determine such amounts;~~
 - ~~(v) A description of the measures to be used to comply with the applicable requirements of Part 815;~~
 - ~~(vi) A statement of why extraction of more than 250 tons of coal is necessary for exploration;~~
 - ~~(4) The name and address of the owner of record of the surface land and of the subsurface estate of the area to be explored;~~
 - ~~(5) A map at a scale of 1:24,000 or larger showing the areas of land to be substantially disturbed by the proposed exploration and reclamation operations. The map shall specifically show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, topographic, cultural and drainage features; and habitats of any endangered or threatened species listed under Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and~~
 - ~~(6) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting mining and reclamation operations;~~
- (b) Public notice and opportunity to comment. Public notice of the application and opportunity to comment shall be provided as follows

- ~~(1) Within five (5) days, public notice of the filing of the application with the Department shall be posted by the applicant in a newspaper of general circulation in the county of the proposed exploration area; two copies of such notice shall be forwarded to the Department to be posted at the central office and at the field office nearest the proposed exploration area;~~
 - ~~(2) The public notice shall state the name and business address of the person seeking approval, the date of filing of the application, the address of the Department, the closing date of the comment period, and a description of the general area of exploration;~~
 - ~~(3) Any person with an interest which is or may be adversely affected shall have the right to file written comments on the applications within fifteen (15) days.~~
- ~~(c) Terms of Approval. Each approval issued by the Director shall contain conditions necessary to ensure that the exploration operations will be conducted in compliance with the Act, the provisions of Part 815, this Part and the State program.~~

SECTION 776.12 PERMIT REQUIREMENTS FOR EXPLORATION THAT WILL REMOVE MORE THAN 250 TONS OF COAL OR THAT WILL OCCUR ON LANDS DESIGNATED AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

- ~~(a) Exploration permit. Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under Subchapter F of this chapter, shall, before conducting the exploration, submit an application and obtain written approval from the Director in an exploration permit. Such exploration shall be subject to the requirements prescribed under Sections 776.15 and 815.17.~~
- ~~(b) Application information. Each application for an exploration permit shall contain, at a minimum, the following information:
 - ~~(1) The name, address, and telephone number of the applicant.~~
 - ~~(2) The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities.~~
 - ~~(3) A narrative describing the proposed exploration area.~~
 - ~~(4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.~~~~

- (5) An estimated timetable for conducting and completing each phase of the exploration and reclamation.
- (6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount.
- (7) A statement of why extraction of more than 250 tons of coal is necessary for exploration.
- (8) A description of—
 - (i) Cultural or historical resources listed on the National Register of Historic Places;
 - (ii) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places; and
 - (iii) Known archeological resources located within the proposed exploration area.
 - (iv) Any other information which the Director may require regarding known or unknown historic or archeological resources.
- (9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) identified within the proposed exploration area.
- (10) A description of the measures to be used to comply with the applicable requirements of part 815 of this chapter.
- (11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.
- (12) A map or maps at a scale of 1:24,000, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth- or waste- material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
- (13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

- (14) For any lands listed in Section 761.11 of this chapter, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of Section 761.11 of this chapter, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Section 761.11 of this chapter.
- (c) Public notice and opportunity to comment. Public notice of the application and opportunity to comment shall be provided as follows:
- (1) Within such time as the Director may designate, the applicant shall provide public notice of the filing of an administratively complete application with the Department in a newspaper of general circulation in the county of the proposed exploration area.
- (2) The public notice shall state the name and address of the person seeking approval, the filing date of the application, the address of the Department where written comments on the application may be submitted, the closing date of the comment period, and a description of the area of exploration.
- (3) Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within reasonable time limits.
- (d) Decisions on applications for exploration.
- (1) The Director shall act upon an administratively complete application for a coal exploration permit and any written comments within a reasonable period of time. The approval of a coal exploration permit may be based only on a complete and accurate application.
- (2) The Director shall approve a complete and accurate application for a coal exploration permit filed in accordance with this part if he finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will—
- (i) Be conducted in accordance with this part, part 815 of this chapter, and the applicable provisions of the State program;
- (ii) Not jeopardize the continued existence of an endangered or threatened species listed pursuant to section 4 of the Endangered Species Act of 1973, 16 U.S.C. 1533, or result in the destruction or adverse modification of critical habitat of those species;

(iii) Not adversely affect any cultural or historical resources listed on the National Register of Historic Places pursuant to the National Historic Preservation Act, 16 U.S.C. 470 et seq., unless the proposed exploration has been approved by both the Director and the agency with jurisdiction over the resources to be affected; and

(iv) With respect to exploration activities on any lands protected under Section 761.11 of this chapter, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the Director must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of Section 761.11 of this chapter, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Section 761.11 of this chapter, to comment on whether the finding is appropriate.

(3) Terms of approval issued by the Director shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this part, part 815 of this chapter, and the State program.

(e) Notice and hearing.

(1) The Director shall notify the applicant, the appropriate local government officials, and other commentors on the application, in writing, of his decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the Director at a public office in the vicinity of the proposed exploration operations.

(2) Any person having an interest which is or may be adversely affected by a decision of the Director pursuant to paragraph (e)(1) of this section shall have the opportunity for administrative and judicial review as set forth in part 787 of this chapter.

SECTION 778.16

RELATIONSHIP TO AREAS DESIGNATED UNSUITABLE FOR MINING

* * * * *

(c) If an applicant proposes to conduct ~~surface coal mining and reclamation operations~~ surface coal mining operations within 100 feet of a public road or 300 feet of an occupied dwelling, the application ~~shall include a copy of the written consent of the owner of the dwelling for conducting such operations:~~ must meet the requirements of Section 761.14 or Section 761.15

of this chapter, respectively.

SECTION 780.31 PROTECTION OF ~~PUBLIC~~ PARKS PUBLICLY OWNED PARKS AND HISTORIC PLACES

(a) * * * * *

- (2) If valid existing rights exists, as determined under Section 761.16 of this chapter, or joint agency approval is to be obtained under ~~Section 761.12(f)~~ Section 761.17(d) of this Chapter, to minimize adverse impacts.

* * * * *

SECTION 780.33 RELOCATION OR USE OF PUBLIC ROADS

Each plan shall describe, with appropriate maps and cross section drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under ~~Section 761.12(d)~~ Section 761.14, the applicant seeks to have the Department's approval of:

* * * * *

SECTION 780.37 ~~TRANSPORTATION FACILITIES~~

~~Each application shall contain a detailed description of each road, conveyor or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross sections and the following:~~

- ~~(a) — Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.~~
- ~~(b) — A report of appropriate geotechnical analysis where approval of the Department is required for alternative specifications, or for steep cut slopes under Sections 816.150(d), 816.152(c), 816.160(d), or 816.162(c).~~
- ~~(c) — A description of measures to be taken to obtain approval of the Director for alteration or relocation of a natural drainage way under Sections 816.153(d), 816.163(d), or 816.173(c).~~
- ~~(d) — A description of measures, other than the use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the Director under Sections 816.153(c)(2)(vi) and 816.163(c)(2)(vi).~~
- ~~(e) — Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.~~

- ~~(f) Drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the Director in accordance with Section 816.151(b)(2) of this Chapter.~~
- ~~(g) A description of the plans for removal and reclamation of each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.~~
- ~~(h) A certification by a qualified registered professional engineer with experience in the design and construction of roads that the design and construction or reconstruction of primary roads meets the requirements of this part, current, prudent engineering practices, and any design criteria established by the Department.~~

SECTION 780.37

ROAD SYSTEMS

- ~~(a) Plans and drawings. Each applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road, as defined in Section 701.5 of this chapter, to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall—~~
 - ~~(1) Include a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures;~~
 - ~~(2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream, as necessary for approval of the road by the Director in accordance with Section 816.150(d)(1) of this chapter;~~
 - ~~(3) Contain the drawings and specifications for each proposed ford of perennial or intermittent streams that is used as a temporary route, as necessary for approval of the ford by the Director in accordance with Section 816.151(b)(2) of this chapter;~~
 - ~~(4) Contain a description of measures to be taken to obtain approval of the Director for alteration or relocation of a natural stream channel under Section 816.151(c)(5) of this chapter;~~
 - ~~(5) Contain the drawings and specifications for each low-water crossing of perennial or intermittent stream channels so that the Director can maximize the protection of the stream in accordance with Section 816.151(c)(6) of this chapter; and~~
 - ~~(6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.~~

(b) Primary road certification. The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer with experience in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the Director.

SECTION 786.11 PUBLIC NOTICES OF FILING OF PERMIT APPLICATIONS

(a) * * * * *

(4) The name and address of the person to whom written comments, objections, or requests for ~~informal conferences~~ legislative public hearings on the application may be submitted under Sections 786.12-786.14.

(5) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with Section 761.14 of this Chapter, a concise statement describing the public road, the particular part to be relocated, ~~where the relocation is to occur, and the duration of the relocation;~~ or closed, and the approximate timing and duration of the relocation or closing.

SECTION 786.14 LEGISLATIVE PUBLIC HEARING

* * * * *

(c) Legislative Public Hearings held in accordance with this Section may be used by the Director as the public hearing required under ~~Section 761.12(d) on proposed uses or relocation of public roads; Section 761.14(c) where the applicant proposes to relocate or close a public road or conduct surface coal mining operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.~~

SECTION 786.19 CRITERIA FOR PERMIT APPROVAL OR DENIAL

* * * * *

(d) * * * * *

(1) Not included within an area designated unsuitable for surface coal mining operations under ~~Parts 764, 765, or 769; or, Parts 762 and 764 of this Chapter or within an area subject to the prohibitions of Section 761.11 of this Chapter; or,~~

* * * * *

~~(4) Not included within an area designated unsuitable for surface coal mining operations~~

~~under Parts 764, 765, or 769; or,~~

~~(5) Not included within an area designated unsuitable for surface coal mining operations under Parts 764, 765, or 769; or,~~

~~(6)(4) Not on any State Parks, recreation areas or memorials except as provided for in Section 761.11; or,~~

~~(7)(5) Not on any State Game and Fish Commission Wildlife Management Area except as provided in Section 761.11.~~

~~(8)(6) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of Section 816.111(d).~~