

Surface Mining Reclamation and Enforcement, Interior

§ 761.16

§ 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 § 761.16.
 - (2) Lands within the scope of the exception for existing operations in § 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 § 761.11(e)(2).
- (b) If you propose 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 signator 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 you obtained a valid waiver before August 3, 1977, from the owner of

an occupied dwelling to conduct operations within 300 feet of the dwelling, you need not submit a new waiver.

(d) If you obtain 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.

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§ 761.16 Submission and processing of requests for valid existing rights determinations.

(a) *Basic framework for valid existing rights determinations.* The following table identifies the agency responsible for making a valid existing rights determination and the definition that it must use, based upon which paragraph of § 761.11 applies and whether the request includes Federal lands.

Paragraph of § 761.11 that provides protection	Protected feature	Type of land to which request pertains	Agency responsible for determination	Applicable definition of valid existing rights
(a)	National parks, wildlife refuges, etc..	Federal	OSM	Federal ¹
(a)	National parks, wildlife refuges, etc..	Non-Federal	Regulatory authority	Federal ¹
(b)	Federal lands in national forests ³ .	Federal	OSM	Federal ¹
(c)	Public parks and historic places.	Does not matter	Regulatory authority	Regulatory program ²
(d)	Public roads	Does not matter	Regulatory authority	Regulatory program ²
(e)	Occupied dwellings	Does not matter	Regulatory authority	Regulatory program ²
(f)	Schools, churches, parks, etc..	Does not matter	Regulatory authority	Regulatory program ²
(g)	Cemeteries	Does not matter	Regulatory authority	Regulatory program ²

¹ Definition in 30 CFR 761.5.
² Definition in applicable State or Federal regulatory program under 30 CFR Chapter VII, Subchapter T.
³ Neither 30 U.S.C. 1272(e) nor 30 CFR 761.11 provides special protection for non-Federal lands within national forests. Therefore, this table does not include a category for those lands.

(b) *What you must submit as part of a request for a valid existing rights determination.* You must submit a request for a valid existing rights determination to the appropriate agency under paragraph (a) of this section if you intend to conduct surface coal mining operations on the basis of valid existing rights under § 761.11 or wish to confirm the right to do so. You may submit this request before preparing and submit-

ting an application for a permit or boundary revision for the land, unless the applicable regulatory program provides otherwise.

(1) *Requirements for property rights demonstration.* You must provide a property rights demonstration under paragraph (a) of the definition of valid existing rights in § 761.5 if your request relies upon the good faith/all permits standard or the needed for and adjacent