WEST VIRGINIA CODE: §22-3-22

§22-3-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.

(a) The director shall establish a planning process to enable objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of this state are unsuitable for all or certain types of surface-mining operations pursuant to the standards set forth in subdivisions (1) and (2) of this subsection: Provided, That such designation shall not prevent prospecting pursuant to section seven of this article on any area so designated.

(1) Upon petition pursuant to subsection (b) of this section, the director shall designate an area as unsuitable for all or certain types of surface-mining operations, if it determines that reclamation pursuant to the requirements of this article is not technologically and economically feasible.

(2) Upon petition pursuant to subsection (b) of this section, a surface area may be designated unsuitable for certain types of surface-mining operations, if the operations: (A) Conflict with existing state or local land use plans or programs; (B) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific and aesthetic values and natural systems; (C) affect renewable resource lands, including significant aquifers and aquifer recharge areas, in which the operations could result in a substantial loss or reduction of long-range productivity of water supply, food or fiber products; or (D) affect natural hazard lands in which the operations could substantially endanger life and property. Such lands shall include lands subject to frequent flooding and areas of unstable geology.

(3) The director shall develop a process which includes: (A) The review of surface-mining lands; (B) a database and an inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface-mining operations; (C) a method for implementing land use planning decisions concerning surface-mining operations; and (D) proper notice and opportunities for public participation, including a public hearing prior to making any designation or redesignation pursuant to this section.

(4) Determinations of the unsuitability of land for surface mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at federal, state and local levels.

(5) The requirements of this section do not apply to lands on which surface-mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to this article, or where substantial legal and financial commitments in the operations were in

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existence prior to January 4, 1977.

(b) Any person having an interest which is or may be adversely affected has the right to petition the director to have an area designated as unsuitable for surface-mining operations or to have such a designation terminated. The petition shall contain allegations of fact with supporting evidence which would tend to establish the allegations. After receipt of the petition, the director shall immediately begin an administrative study of the area specified in the petition. Within ten months after receipt of the petition, the director shall hold a public hearing in the locality of the affected area after appropriate notice and publication of the date, time and location of the hearing. After the director or any person having an interest which is or may be adversely affected has filed a petition and before the hearing required by this subsection, any person may intervene by filing allegations of fact with supporting evidence which would tend to establish the allegations. Within sixty days after the hearing, the director shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

(c) Prior to designating any land areas as unsuitable for surface-mining operations, the director shall prepare a detailed statement on: (1) The potential coal resources of the area; (2) the demand for the coal resources; and (3) the impact of the designation on the environment, the economy and the supply of coal.

(d) After August 3, 1977, and subject to valid existing rights, no surface-mining operations, except those which existed on that date, shall be permitted:

(1) On any lands in this state within the boundaries of units of the national park system, the national wildlife refuge systems, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section five-a of the Wild and Scenic Rivers Act, and national recreation areas designated by act of Congress;

(2) Which will adversely affect any publicly owned park or places included in the national register of historic sites, or national register of natural landmarks unless approved jointly by the director and the federal, state or local agency with jurisdiction over the park, the historic site or natural landmark;

(3) Within one hundred feet of the outside right-of-way line on any public road, except where mine access roads or haulage roads join such right-of-way line, and except that the director may permit the roads to be relocated or the area affected to lie within one hundred feet of the road if, after public notice and an opportunity for a public hearing in the locality, the director makes a written finding that the interests of the public and the landowners affected thereby will be protected;

(4) Within three hundred feet from any occupied dwelling, unless waived by the owner

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thereof, or within three hundred feet of any public building, school, church, community or institutional building, public park, or within one hundred feet of a cemetery; or

(5) On any federal lands within the boundaries of any national forest: Provided, That surface coal mining operations may be permitted on the lands if the secretary of the interior finds that there are no significant recreational, timber, economic or other values which may be incompatible with the surface-mining operations: Provided, however, That the surface operations and impacts are incident to an underground coal mine.

(e) Notwithstanding any other provision of this code, the coal underlying any lands designated unsuitable for surface-mining operations under any provisions of this article or underlying any land upon which mining is prohibited by any provisions of this article shall be assessed for taxation purposes according to their value and the Legislature hereby finds that the coal has no value for the duration of the designation or prohibition unless suitable for underground mining not in violation of this article: Provided, That the owner of the coal shall forthwith notify the proper assessing authorities if the designation or prohibition is removed so that the coal may be reassessed.

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