

TAKINGS CHECKLIST

	CRITERIA	YES	NO
1.	Does the action affect private property? (If no, no further inquiry is necessary.)		
2.	Is the action mandated by State or federal law? (If yes, go to question 3. If no, go to question 4.)		
3.	Does the proposed action advance a statutory purpose?		
4.	Does the action result in permanent occupation of private property?		
5.	Does the action require the property owner to dedicate property or grant an easement?		
6.	Does the regulatory action interfere with the owner's investment-backed expectations?		
7.	Does the character of the government action balance the public interest and private burdens?		
8.	Does the action deprive the owner of all economically viable uses of the property?		
9.	Does the action have a significant impact on the landowner's economic interest?		
10.	Does the action deny the owner a fundamental attribute of ownership?		
11.	Does the action serve the same purpose that would be served by directly prohibiting use of the land?		
12.	Could the problem which has necessitated the action be addressed in a less restrictive manner?		

If these questions are answered yes, legal counsel should be consulted, for it is possible the proposed action will be a taking.

LAND QUALITY

Housekeeping II – Coal Chapters 1, 2, 6, 12 and 16

TAKINGS ANALYSIS

1. Private Property Affected? – YES

The proposed regulations are intended to regulate coal mining operations which may take place on private property.

2. Mandated by State/Federal law? – YES

The proposed rule package was initiated in response to concerns raised by the Office of Surface Mining Reclamation and Enforcement (OSM). The OSM reviews the LQD's rules in order to determine whether they are at least as stringent as the Federal regulations and as effective as the Surface Mining Control and Reclamation Act (SMCRA). The proposed rules are intended to address the areas that the OSM has determined to be effective than or less stringent than the Federal statutes and rules.

3. Advance Statutory Purpose? – YES

The proposed rules are intended to regulate surface coal mining operations which allows the State to protect the environment while allowing private property owners to develop the resources of the State .

4. Permanent Occupation of Private Property? – NO

The proposed rules do not result in a permanent occupation of private property. The proposed rules define how the surface coal mining operations are to conduct the mining and reclamation operations.

5. Dedication of property or grant an easement? – NO

The rules as proposed do not require the property owner to grant any dedications of property or grant an easement to the property.

6. Action interfere with investment-backed expectations? – NO

The proposed rules regulate an already heavily regulated field and do not impose additional substantial burdens to property owners.

7. Does character of government action balance public interest and private burdens? – YES

The proposed rules regulate surface coal mining operations (private) while protecting the environment (public). The rules are intended to insure that surface coal mining operations are conducted in a manner that minimizes the impacts from mining and ensures reclamation of the land for other uses.

8. Action deprive owner of all economically viable uses of the property? – NO

The proposed rules allow for a specific type of economic use of private property and regulate that industry. The proposed rules do not affect any other land uses. The proposed rules do not preclude a private property owner from using the property in other economically viable uses of the land.

9. Does the action have a significant impact on the landowner's economic interest? – NO

The proposed rules do not significantly impact the landowner's economic interest. The proposed rules are intended to clarify procedural aspects of the permitting process for surface coal mining operations and will likely not have any significant impact to the landowner's economic interest and will not require much in the way of additional expense.

10. Does the action deny the owner a fundamental attribute of ownership? – NO

The proposed rules do not deny the owner a fundamental attribute of ownership. First, the landowner would have to voluntarily subject themselves to the regulations by engaging in mining. The proposed rules do not require any easements or for the landowner to give up any fundamental rights associated with the property.

11. Action serve same purpose that would be served by prohibition on use of land? – NO

The proposed rules are intended to allow for the development of mineral resources on the property while protecting the environment. Prohibition would not allow the development of the mineral resources.

12. Could be addressed in less restrictive manner? – NO

The proposed rules are intended to bring the LQD's rules and regulations into compliance with the Federal standards. The OSM has provided detailed analysis of what the LQD must change to meet those Federal standards.