

Part 4

Protection of Land in a Protection Area

17-41-401 Farmland Assessment Act benefits not affected.

- (1) Creation of an agriculture protection area may not impair the ability of land within the area to obtain the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment Act.
- (2) The eligibility of land for the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment Act, shall be determined exclusively by the provisions of that act, notwithstanding the land's location within an agriculture protection area.

Amended by Chapter 297, 2011 General Session

17-41-402 Limitations on local regulations.

- (1) A political subdivision within which an agriculture protection area or industrial protection area is created or with a mining protection area within its boundary shall encourage the continuity, development, and viability of agriculture, industrial, or mining use, respectively, within the area by not enacting a local law, ordinance, or regulation that would unreasonably restrict a farm structure or farm practice or, in the case of an industrial protection area, an industrial use of the land within the area or, in the case of a mining protection area, a mining use within the protection area unless the law, ordinance, or regulation bears a direct relationship to public health or safety.
- (2) A political subdivision may not change the zoning designation of or a zoning regulation affecting land within an agriculture protection area unless the political subdivision receives written approval for the change from all the landowners within the agriculture protection area affected by the change.
- (3) Except as provided by Section 19-4-113, a political subdivision may not change the zoning designation of or a zoning regulation affecting land within an industrial protection area unless the political subdivision receives written approval for the change from all the landowners within the industrial protection area affected by the change.
- (4) A political subdivision may not change the zoning designation of or a zoning regulation affecting land within a mining protection area unless the political subdivision receives written approval for the change from each mine operator within the area.

Amended by Chapter 376, 2009 General Session

17-41-402.5 Limits on political subdivisions with respect to a vested mining use -- Exception.

- (1) A political subdivision may not:
 - (a) terminate a vested mining use, whether by amortization, the exercise of police power, or otherwise;
 - (b) prohibit, restrict, or otherwise limit a mine operator with a vested mining use from exercising the rights permitted under this chapter;
 - (c) require, for a vested mining use:
 - (i) a variance;
 - (ii) a conditional use permit;
 - (iii) a special exception;
 - (iv) the establishment or determination of a nonconforming use right; or

- (v) any other type of zoning or land use permit; or
 - (d) prohibit, restrict, limit, or otherwise regulate a vested mining use under a variance, conditional use permit, special exception, or other zoning or land use permit issued before May 12, 2009.
- (2) Subsection (1) does not prohibit a political subdivision from requiring a vested mining use to comply with the generally applicable, reasonable health and safety regulations and building code adopted by the political subdivision including a drinking water protection zone as defined and limited to Subsection 19-4-113(4)(a) and (b).

Enacted by Chapter 376, 2009 General Session

17-41-403 Nuisances.

- (1) Each political subdivision shall ensure that any of its laws or ordinances that define or prohibit a public nuisance exclude from the definition or prohibition:
- (a) for an agriculture protection area, any agricultural activity or operation within an agriculture protection area conducted using sound agricultural practices unless that activity or operation bears a direct relationship to public health or safety; or
 - (b) for an industrial protection area, any industrial use of the land within the industrial protection area that is consistent with sound practices applicable to the industrial use, unless that use bears a direct relationship to public health or safety.
- (2) In a civil action for nuisance or a criminal action for public nuisance under Section 76-10-803, it is a complete defense if the action involves agricultural activities and those agricultural activities were:
- (a) conducted within an agriculture protection area; and
 - (b) not in violation of any federal, state, or local law or regulation relating to the alleged nuisance or were conducted according to sound agricultural practices.
- (3)
- (a) A vested mining use undertaken in conformity with applicable federal and state law and regulations is presumed to be operating within sound mining practices.
 - (b) A vested mining use that is consistent with sound mining practices:
 - (i) is presumed to be reasonable; and
 - (ii) may not constitute a private or public nuisance under Section 76-10-803.
 - (c) A vested mining use in operation for more than three years may not be considered to have become a private or public nuisance because of a subsequent change in the condition of land within the vicinity of the vested mining use.
- (4)
- (a) For any new subdivision development located in whole or in part within 300 feet of the boundary of an agriculture protection area, the owner of the development shall provide notice on any plat filed with the county recorder the following notice:

"Agriculture Protection Area

This property is located in the vicinity of an established agriculture protection area in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future be conducted on property included in the agriculture protection area. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."
 - (b) For any new subdivision development located in whole or in part within 1,000 feet of the boundary of an industrial protection area, the owner of the development shall provide notice on any plat filed with the county recorder the following notice:

"Industrial Protection Area

This property is located in the vicinity of an established industrial protection area in which normal industrial uses and activities have been afforded the highest priority use status. It can be anticipated that such industrial uses and activities may now or in the future be conducted on property included in the industrial protection area. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal industrial uses and activities."

- (c) For any new subdivision development located in whole or in part within 1,000 feet of the boundary of a mining protection area, the owner of the development shall provide notice on any plat filed with the county recorder the following notice:

"This property is located within the vicinity of an established mining protection area in which normal mining uses and activities have been afforded the highest priority use status. It can be anticipated that the mining uses and activities may now or in the future be conducted on property included in the mining protection area. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience that may result from the normal mining uses and activities."

Amended by Chapter 376, 2009 General Session

17-41-404 Policy of state agencies.

Each state agency shall encourage the continuity, development, and viability of agriculture within agriculture protection areas and industrial uses with industrial protection areas by:

- (1) not enacting rules that would impose unreasonable restrictions on farm structures or farm practices within the agriculture protection area or on industrial uses and practices within the industrial protection area unless those laws, ordinances, or regulations bear a direct relationship to public health or safety or are required by federal law; and
- (2) modifying existing rules that would impose unreasonable restrictions on farm structures or farm practices within the agriculture protection area or on industrial uses and activities within the industrial protection area unless those laws, ordinances, or regulations bear a direct relationship to public health or safety or are required by federal law.

Amended by Chapter 194, 2006 General Session

17-41-405 Eminent domain restrictions.

- (1) A political subdivision having or exercising eminent domain powers may not condemn for any purpose any land within an agriculture protection area that is being used for agricultural production or any land within an industrial protection area that is being put to an industrial use unless it has obtained approval, according to the procedures and requirements of this section, from the applicable legislative body and the advisory board.
- (2) Any condemnor wishing to condemn property within an agriculture protection area or industrial protection area shall file a notice of condemnation with the applicable legislative body and the agriculture protection area or industrial protection area's advisory board at least 30 days before filing an eminent domain complaint.
- (3) The applicable legislative body and the advisory board shall:
 - (a) hold a joint public hearing on the proposed condemnation at a location within the county in which the agriculture protection area or industrial protection area is located;
 - (b) publish notice of the time, date, place, and purpose of the public hearing:

- (i) in a newspaper of general circulation within the agriculture protection area or industrial protection area, as the case may be; and
 - (ii) on the Utah Public Notice Website created in Section 63F-1-701; and
 - (c) post notice of the time, date, place, and purpose of the public hearing in five conspicuous public places, designated by the applicable legislative body, within or near the agriculture protection area or industrial protection area, as the case may be.
- (4)
- (a) If the condemnation is for highway purposes or for the disposal of solid or liquid waste materials, the applicable legislative body and the advisory board may approve the condemnation only if there is no reasonable and prudent alternative to the use of the land within the agriculture protection area or industrial protection area for the project.
 - (b) If the condemnation is for any other purpose, the applicable legislative body and the advisory board may approve the condemnation only if:
 - (i) the proposed condemnation would not have an unreasonably adverse effect upon the preservation and enhancement of agriculture within the agriculture protection area or of the industrial use within the industrial protection area; or
 - (ii) there is no reasonable and prudent alternative to the use of the land within the agriculture protection area or industrial protection area for the project.
- (5)
- (a) Within 60 days after receipt of the notice of condemnation, the applicable legislative body and the advisory board shall approve or reject the proposed condemnation.
 - (b) If the applicable legislative body and the advisory board fail to act within the 60 days or such further time as the applicable legislative body establishes, the condemnation shall be considered rejected.
- (6) The applicable legislative body or the advisory board may request the county or municipal attorney to bring an action to enjoin any condemnor from violating any provisions of this section.

Amended by Chapter 90, 2010 General Session

17-41-406 Restrictions on state development projects.

- (1) Each state agency that plans any development project that might affect land within an agriculture protection area or industrial protection area shall submit its development plan to:
 - (a) the advisory board of the agriculture protection area or industrial protection area, respectively; and
 - (b) in the case of an agriculture protection area, the commissioner of agriculture and food.
- (2) The commissioner of agriculture and food, in the case of an agriculture protection area, and the advisory board shall:
 - (a) review the state agency's proposed development plan; and
 - (b) recommend any modifications to the development project that would protect the integrity of the agriculture protection area or industrial protection area, as the case may be, or that would protect the agriculture protection area from nonfarm encroachment or the industrial protection area from nonindustrial encroachment.
- (3) Each state agency and political subdivision of the state that designates or proposes to designate a transportation corridor shall:
 - (a) consider:
 - (i) whether the transportation corridor would:
 - (A) be located on land that is included within an agriculture protection area; or

- (B) interfere with agriculture production activities on land within an agriculture protection area;
and
- (ii) each other reasonably comparable alternative to the placement of the corridor on land within an agriculture protection area; and
- (b) make reasonable efforts to minimize or eliminate any detrimental impact on agriculture that may result from the designation of a transportation corridor.

Amended by Chapter 168, 2008 General Session