

**Representative Logan Wilde** proposes the following substitute bill:

**CRITICAL INFRASTRUCTURE MATERIALS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Logan Wilde**

Senate Sponsor: David P. Hinkins

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**LONG TITLE**

**General Description:**

This bill addresses critical infrastructure materials.

**Highlighted Provisions:**

This bill:

- ▶ enacts provisions related to vested critical infrastructure materials operations;
- ▶ amends a definition provision;
- ▶ addresses advisory boards;
- ▶ provides for the creation of critical infrastructure materials protection areas;
- ▶ addresses adding land to or removing land from a critical infrastructure materials protection area;
- ▶ requires review of a critical infrastructure materials protection area;
- ▶ limits local regulation of a critical infrastructure materials protection area;
- ▶ addresses nuisances;
- ▶ requires certain recordings with the county recorder;
- ▶ addresses actions of state agencies related to critical infrastructure materials protection areas;
- ▶ restricts eminent domain; and
- ▶ makes technical and conforming changes.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

- 32 **17-41-101**, as last amended by Laws of Utah 2015, Chapter 352
- 33 **17-41-201**, as last amended by Laws of Utah 2007, Chapter 179
- 34 **17-41-301**, as last amended by Laws of Utah 2011, Chapter 297
- 35 **17-41-302**, as last amended by Laws of Utah 2009, Chapter 388
- 36 **17-41-303**, as last amended by Laws of Utah 2006, Chapter 194
- 37 **17-41-304**, as last amended by Laws of Utah 2010, Chapter 90
- 38 **17-41-305**, as last amended by Laws of Utah 2006, Chapter 194
- 39 **17-41-306**, as last amended by Laws of Utah 2009, Chapter 376
- 40 **17-41-307**, as last amended by Laws of Utah 2017, Chapter 92
- 41 **17-41-402**, as last amended by Laws of Utah 2009, Chapter 376
- 42 **17-41-403**, as last amended by Laws of Utah 2009, Chapter 376
- 43 **17-41-404**, as last amended by Laws of Utah 2006, Chapter 194
- 44 **17-41-405**, as last amended by Laws of Utah 2010, Chapter 90
- 45 **17-41-406**, as last amended by Laws of Utah 2008, Chapter 168
- 46 **76-10-803**, as last amended by Laws of Utah 2009, Chapter 21
- 47 **78B-6-1101**, as last amended by Laws of Utah 2010, Chapter 193

48 ENACTS:

- 49 **10-9a-901**, Utah Code Annotated 1953
- 50 **10-9a-902**, Utah Code Annotated 1953
- 51 **10-9a-903**, Utah Code Annotated 1953
- 52 **10-9a-904**, Utah Code Annotated 1953
- 53 **10-9a-905**, Utah Code Annotated 1953
- 54 **17-27a-1001**, Utah Code Annotated 1953
- 55 **17-27a-1002**, Utah Code Annotated 1953
- 56 **17-27a-1003**, Utah Code Annotated 1953

57 [17-27a-1004](#), Utah Code Annotated 1953  
58 [17-27a-1005](#), Utah Code Annotated 1953  
59 [78B-6-1115](#), Utah Code Annotated 1953

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61 *Be it enacted by the Legislature of the state of Utah:*

62 Section 1. Section **10-9a-901** is enacted to read:

63 **Part 9. Vested Critical Infrastructure Materials Operations**

64 **10-9a-901. Definitions.**

65 As used in this part:

66 (1) "Critical infrastructure materials" means sand, gravel, or rock aggregate.

67 (2) "Critical infrastructure materials operations" means the extraction, excavation,  
68 processing, or reprocessing of critical infrastructure materials.

69 (3) "Critical infrastructure materials operator" means a natural person, corporation,  
70 association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or  
71 other organization or representative, either public or private, including a successor, assign,  
72 affiliate, subsidiary, and related parent company, that:

73 (a) owns, controls, or manages a critical infrastructure materials operations; and

74 (b) has produced commercial quantities of critical infrastructure materials from the  
75 critical infrastructure materials operations.

76 (4) "Vested critical infrastructure materials operations" means critical infrastructure  
77 materials operations operating in accordance with a legal nonconforming use or a permit issued  
78 by the municipality that existed or was conducted or otherwise engaged in before  $\hat{S}\rightarrow$  :

78a (a)  $\leftarrow\hat{S}$  a political  
79 subdivision prohibits, restricts, or otherwise limits the critical infrastructure materials  
80 operations  $\hat{S}\rightarrow$  [;] ; and

80a (b) **January 1, 2019.**  $\leftarrow\hat{S}$

81 Section 2. Section **10-9a-902** is enacted to read:

82 **10-9a-902. Vested critical infrastructure materials operations -- Conclusive**  
83 **presumption.**

84 (1) (a) Critical infrastructure materials operations operating in accordance with a legal  
85 nonconforming use or a permit issued by the municipality are conclusively presumed to be  
86 vested critical infrastructure materials operations if the critical infrastructure materials  
87 operations  $\hat{S}\rightarrow$  **permitted by the municipality,**  $\leftarrow\hat{S}$  existed or was conducted or otherwise engaged  
87a in before  $\hat{S}\rightarrow$  **January 1, 2019 and before when**  $\leftarrow\hat{S}$  a political subdivision

88 prohibits, restricts, or otherwise limits the critical infrastructure materials operations.

89 (b) A person claiming that a vested critical infrastructure materials operations has been  
90 established has the burden of proof to show by the preponderance of the evidence that the  
91 vested critical infrastructure materials operations has been established.

92 (2) A vested critical infrastructure materials operations:

93 (a) runs with the land; and

94 (b) may be changed to another critical infrastructure materials operations conducted  
95 within the scope of a legal nonconforming use or the permit for the vested critical infrastructure  
96 materials operations without losing its status as a vested critical infrastructure materials  
97 operations.

98 Section 3. Section 10-9a-903 is enacted to read:

99 **10-9a-903. Rights of a critical infrastructure materials operator with a vested**  
100 **critical infrastructure materials operations** ~~§~~ → [=~~Expanding vested critical infrastructure~~  
101 ~~materials operations.~~

102 ~~——(1) ←§~~ Notwithstanding a political subdivision's prohibition, restriction, or other limitation  
103 on a critical infrastructure materials operations adopted after the establishment of the critical  
104 infrastructure materials operations, the rights of a critical infrastructure materials operator with  
105 vested critical infrastructure materials operations include the right to:

106 ~~§~~ → [(a)] (1) ←~~§~~ use, operate, construct, reconstruct, restore, maintain, repair, alter,  
106a substitute,

107 modernize, upgrade, and replace equipment, processes, facilities, and buildings ~~§~~ → [~~on any surface~~  
108 ~~or subsurface land that the critical infrastructure materials operator owns or controls]~~ ←~~§~~ ; and

109 ~~§~~ → [(b)] (2) ←~~§~~ discontinue, suspend, terminate, deactivate, or continue and reactivate,  
109a temporarily  
110 or permanently, all or any part of the critical infrastructure materials operations.

111 ~~§~~ → [(2) ~~A vested critical infrastructure materials operator may expand a vested critical~~  
112 ~~infrastructure materials operation only if:~~

113 ~~——(a) the land to which the vested critical infrastructure materials operator expands is~~  
114 ~~contiguous with land that the vested critical infrastructure materials operator owns or controls;~~

115 ~~——(b) the vested critical infrastructure materials operator owns or leases the land to which~~  
116 ~~the vested critical infrastructure materials operator expands as of February 1, 2019;~~

117 ~~——(c) the land is zoned for vested critical infrastructure materials operations; and~~

118 ~~——(d) the expansion is in accordance with a legal nonconforming use or a permit issued~~ ⊕

119 ~~by the municipality:] ←§~~

120 Section 4. Section **10-9a-904** is enacted to read:

121 **10-9a-904. Notice.**

122 For any new subdivision development located in whole or in part within 1,000 feet of  
123 the boundary of a vested critical infrastructure materials operations, the owner of the  
124 development shall provide notice on any plat filed with the county recorder the following  
125 notice:

126 "Vested Critical Infrastructure Materials Operations

127 This property is located in the vicinity of an established vested critical infrastructure  
128 materials operations in which critical infrastructure materials operations have been afforded the  
129 highest priority use status. It can be anticipated that such operations may now or in the future  
130 be conducted on property included in the critical infrastructure materials protection area. The  
131 use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or  
132 inconvenience that may result from such normal critical infrastructure materials operations."

133 Section 5. Section **10-9a-905** is enacted to read:

134 **10-9a-905. Abandonment of a vested critical infrastructure materials operations.**

135 (1) A critical infrastructure materials operator may abandon some or all of a vested  
136 critical infrastructure materials operations use only as provided in this section.

137 (2) To abandon some or all of a vested critical infrastructure materials operations, a  
138 critical infrastructure materials operator shall record a written declaration of abandonment with  
139 the recorder of the county in which the vested critical infrastructure materials operations being  
140 abandoned is located.

141 (3) The written declaration of abandonment under Subsection (2) shall specify the  
142 vested critical infrastructure materials operations or the portion of the vested critical  
143 infrastructure materials operations being abandoned.

144 Section 6. Section **17-27a-1001** is enacted to read:

145 **Part 10. Vested Critical Infrastructure Materials Operations**

146 **17-27a-1001. Definitions.**

147 As used in this part:

148 (1) "Critical infrastructure materials" means sand, gravel, or rock aggregate.

149 (2) "Critical infrastructure materials operations" means the extraction, excavation,

150 processing, or reprocessing of critical infrastructure materials.

151 (3) "Critical infrastructure materials operator" means a natural person, corporation,  
 152 association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or  
 153 other organization or representative, either public or private, including a successor, assign,  
 154 affiliate, subsidiary, and related parent company, that:

155 (a) owns, controls, or manages a critical infrastructure materials operations; and

156 (b) has produced commercial quantities of critical infrastructure materials from the  
 157 critical infrastructure materials operations.

158 (4) "Vested critical infrastructure materials operations" means critical infrastructure  
 159 materials operations operating in accordance with a legal nonconforming use or a permit issued  
 160 by the county that existed or was conducted or otherwise engaged in before ~~§~~ :

160a (a) ~~§~~ a political

161 subdivision prohibits, restricts, or otherwise limits the critical infrastructure materials

162 operations ~~§~~ [ ] ; and

162a (b) **January 1, 2019.** ~~§~~

163 Section 7. Section **17-27a-1002** is enacted to read:

164 **17-27a-1002. Vested critical infrastructure materials operations -- Conclusive**  
 165 **presumption.**

166 (1) (a) Critical infrastructure materials operations operating in accordance with a legal  
 167 nonconforming use or a permit issued by the county are conclusively presumed to be vested  
 168 critical infrastructure materials operations if the critical infrastructure materials operations ~~§~~  
 168a **permitted by the county, ~~§~~**

169 existed or was conducted or otherwise engaged in before ~~§~~ **January 1, 2019 and before**

169a **when ~~§~~ a political subdivision prohibits,**

170 restricts, or otherwise limits the critical infrastructure materials operations.

171 (b) A person claiming that a vested critical infrastructure materials operations has been  
 172 established has the burden of proof to show by the preponderance of the evidence that the  
 173 vested critical infrastructure materials operations has been established.

174 (2) A vested critical infrastructure materials operations:

175 (a) runs with the land; and

176 (b) may be changed to another critical infrastructure materials operations conducted  
 177 within the scope of a legal nonconforming use or the permit for the vested critical infrastructure  
 178 materials operations without losing its status as a vested critical infrastructure materials  
 179 operations.

180 Section 8. Section **17-27a-1003** is enacted to read:

181 17-27a-1003. Rights of a critical infrastructure materials operator with a vested  
182 critical infrastructure materials operations ~~§~~ → [=~~Expanding vested critical infrastructure~~  
183 ~~materials operations:~~

184 ~~———(1) ←§~~ Notwithstanding a political subdivision's prohibition, restriction, or other limitation  
185 on a critical infrastructure materials operations adopted after the establishment of the critical  
186 infrastructure materials operations, the rights of a critical infrastructure materials operator with  
187 vested critical infrastructure materials operations include the right to:

188 ~~§~~ → [(~~a~~)] (1) ←§ use, operate, construct, reconstruct, restore, maintain, repair, alter,  
188a substitute,  
189 modernize, upgrade, and replace equipment, processes, facilities, and buildings ~~§~~ → [~~on any surface~~  
190 ~~or subsurface land that the critical infrastructure materials operator owns or controls]~~ ←§ ; and

191 ~~§~~ → [(~~b~~)] (2) ←§ discontinue, suspend, terminate, deactivate, or continue and reactivate,  
191a temporarily  
192 or permanently, all or any part of the critical infrastructure materials operations.

193 ~~§~~ → [(2) ~~A vested critical infrastructure materials operator may expand a vested critical~~  
194 ~~infrastructure materials operator only if:~~

- 195 ~~———(a) the land to which the vested critical infrastructure materials operator expands is~~  
196 ~~contiguous with land that the vested critical infrastructure materials operator owns or controls;~~
- 197 ~~———(b) the vested critical infrastructure materials operator owns or leases the land to which~~  
198 ~~the vested critical infrastructure materials operator expands as of February 1, 2019;~~
- 199 ~~———(c) the land is zoned for vested critical infrastructure materials operations; and~~
- 200 ~~———(d) the expansion is in accordance with a legal nonconforming use or a permit issued~~  
201 ~~by the county.] ←§~~

202 Section 9. Section 17-27a-1004 is enacted to read:

203 17-27a-1004. Notice.

204 For any new subdivision development located in whole or in part within 1,000 feet of  
205 the boundary of a vested critical infrastructure materials operations, the owner of the  
206 development shall provide notice on any plat filed with the county recorder the following  
207 notice:

208 "Vested Critical Infrastructure Materials Operations

209 This property is located in the vicinity of an established vested critical infrastructure  
210 materials operations in which critical infrastructure materials operations have been afforded the  
211 highest priority use status. It can be anticipated that such operations may now or in the future

212 be conducted on property included in the critical infrastructure materials operations. The use  
213 and enjoyment of this property is expressly conditioned on acceptance of any annoyance or  
214 inconvenience that may result from such normal critical infrastructure materials operations."

215 Section 10. Section **17-27a-1005** is enacted to read:

216 **17-27a-1005. Abandonment of a vested critical infrastructure materials**  
217 **operations.**

218 (1) A critical infrastructure materials operator may abandon some or all of a vested  
219 critical infrastructure materials operations use only as provided in this section.

220 (2) To abandon some or all of a vested critical infrastructure materials operations, a  
221 critical infrastructure materials operator shall record a written declaration of abandonment with  
222 the recorder of the county in which the vested critical infrastructure materials operations being  
223 abandoned is located.

224 (3) The written declaration of abandonment under Subsection (2) shall specify the  
225 vested critical infrastructure materials operations or the portion of the vested critical  
226 infrastructure materials operations being abandoned.

227 Section 11. Section **17-41-101** is amended to read:

228 **CHAPTER 41. AGRICULTURE, INDUSTRIAL, OR CRITICAL**  
229 **INFRASTRUCTURE MATERIALS PROTECTION AREAS**

230 **17-41-101. Definitions.**

231 As used in this chapter:

232 (1) "Advisory board" means:

233 (a) for an agriculture protection area, the agriculture protection area advisory board  
234 created as provided in Section [17-41-201](#); ~~and~~

235 (b) for an industrial protection area, the industrial protection area advisory board  
236 created as provided in Section [17-41-201](#)~~[-]~~; and

237 (c) for a critical infrastructure materials protection area, the critical infrastructure  
238 materials protection area advisory board created as provided in Section [17-41-201](#).

239 (2) (a) "Agriculture production" means production for commercial purposes of crops,  
240 livestock, and livestock products.

241 (b) "Agriculture production" includes the processing or retail marketing of any crops,  
242 livestock, and livestock products when more than 50% of the processed or merchandised



243 products are produced by the farm operator.

244 (3) "Agriculture protection area" means a geographic area created under the authority  
245 of this chapter that is granted the specific legal protections contained in this chapter.

246 (4) "Applicable legislative body" means:

247 (a) with respect to a proposed agriculture protection area [~~or~~], industrial protection  
248 area, or critical infrastructure materials protection area:

249 (i) the legislative body of the county in which the land proposed to be included in [~~an~~  
250 ~~agriculture protection area or industrial~~] the relevant protection area is located, if the land is  
251 within the unincorporated part of the county; or

252 (ii) the legislative body of the city or town in which the land proposed to be included in  
253 [~~an agriculture protection area or industrial~~] the relevant protection area is located; and

254 (b) with respect to an existing agriculture protection area [~~or~~], industrial protection  
255 area, or critical infrastructure materials protection area:

256 (i) the legislative body of the county in which the [~~agriculture protection area or~~  
257 ~~industrial~~] relevant protection area is located, if the [~~agriculture protection area or industrial~~]  
258 relevant protection area is within the unincorporated part of the county; or

259 (ii) the legislative body of the city or town in which the [~~agriculture protection area or~~  
260 ~~industrial~~] relevant protection area is located.

261 (5) "Board" means the Board of Oil, Gas, and Mining created in Section 40-6-4.

262 (6) "Critical infrastructure materials" means sand, gravel, or rock aggregate.

263 (7) "Critical infrastructure materials operations" means the extraction, excavation,  
264 processing, or reprocessing of critical infrastructure materials.

265 (8) "Critical infrastructure materials operator" means a natural person, corporation,  
266 association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or  
267 other organization or representative, either public or private, including a successor, assign,  
268 affiliate, subsidiary, and related parent company, that:

269 (a) owns, controls, or manages a critical infrastructure materials operation; and

270 (b) has produced commercial quantities of critical infrastructure materials from the  
271 critical infrastructure materials operations.

272 (9) "Critical infrastructure materials protection area" means a geographic area created  
273 under the authority of this chapter on or after May 14, 2019, that is granted the specific legal

274 protections contained in this chapter.

275 [~~6~~] (10) "Crops, livestock, and livestock products" includes:

276 (a) land devoted to the raising of useful plants and animals with a reasonable  
277 expectation of profit, including:

278 (i) forages and sod crops;

279 (ii) grains and feed crops;

280 (iii) livestock as defined in Section 59-2-102;

281 (iv) trees and fruits; or

282 (v) vegetables, nursery, floral, and ornamental stock; or

283 (b) land devoted to and meeting the requirements and qualifications for payments or  
284 other compensation under a crop-land retirement program with an agency of the state or federal  
285 government.

286 [~~7~~] (11) "Division" means the Division of Oil, Gas, and Mining created in Section  
287 40-6-15.

288 [~~8~~] (12) "Industrial protection area" means a geographic area created under the  
289 authority of this chapter that is granted the specific legal protections contained in this chapter.

290 [~~9~~] (13) "Mine operator" means a natural person, corporation, association,  
291 partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other  
292 organization or representative, either public or private, including a successor, assign, affiliate,  
293 subsidiary, and related parent company, that, as of January 1, 2009:

294 (a) owns, controls, or manages a mining use under a large mine permit issued by the  
295 division or the board; and

296 (b) has produced commercial quantities of a mineral deposit from the mining use.

297 [~~10~~] (14) "Mineral deposit" has the same meaning as defined in Section 40-8-4, but  
298 excludes:

299 (a) building stone, decorative rock, and landscaping rock; and

300 (b) consolidated rock that:

301 (i) is not associated with another deposit of minerals;

302 (ii) is or may be extracted from land; and

303 (iii) is put to uses similar to the uses of sand, gravel, and other aggregates.

304 [~~H~~] (15) "Mining protection area" means land where a vested mining use occurs,

305 including each surface or subsurface land or mineral estate that a mine operator with a vested  
306 mining use owns or controls.

307 ~~[(12)]~~ (16) "Mining use":

308 (a) means:

309 (i) the full range of activities, from prospecting and exploration to reclamation and  
310 closure, associated with the exploitation of a mineral deposit; and

311 (ii) the use of the surface and subsurface and groundwater and surface water of an area  
312 in connection with the activities described in Subsection ~~[(12)]~~ (16)(a)(i) that have been, are  
313 being, or will be conducted; and

314 (b) includes, whether conducted on-site or off-site:

315 (i) any sampling, staking, surveying, exploration, or development activity;

316 (ii) any drilling, blasting, excavating, or tunneling;

317 (iii) the removal, transport, treatment, deposition, and reclamation of overburden,  
318 development rock, tailings, and other waste material;

319 (iv) any removal, transportation, extraction, beneficiation, or processing of ore;

320 (v) any smelting, refining, autoclaving, or other primary or secondary processing  
321 operation;

322 (vi) the recovery of any mineral left in residue from a previous extraction or processing  
323 operation;

324 (vii) a mining activity that is identified in a work plan or permitting document;

325 (viii) the use, operation, maintenance, repair, replacement, or alteration of a building,  
326 structure, facility, equipment, machine, tool, or other material or property that results from or is  
327 used in a surface or subsurface mining operation or activity;

328 (ix) any accessory, incidental, or ancillary activity or use, both active and passive,  
329 including a utility, private way or road, pipeline, land excavation, working, embankment, pond,  
330 gravel excavation, mining waste, conveyor, power line, trackage, storage, reserve, passive use  
331 area, buffer zone, and power production facility;

332 (x) the construction of a storage, factory, processing, or maintenance facility; and

333 (xi) any activity described in Subsection 40-8-4(14)(a).

334 ~~[(13)]~~ (17) (a) "Municipal" means of or relating to a city or town.

335 (b) "Municipality" means a city or town.

336            [~~(14)~~] (18) "New land" means surface or subsurface land or mineral estate that a mine  
337 operator gains ownership or control of, whether [~~or not~~] that land or mineral estate is included  
338 in the mine operator's large mine permit.

339            [~~(15)~~] (19) "Off-site" has the same meaning as provided in Section 40-8-4.

340            [~~(16)~~] (20) "On-site" has the same meaning as provided in Section 40-8-4.

341            [~~(17)~~] (21) "Planning commission" means:

342            (a) a countywide planning commission if the land proposed to be included in the  
343 agriculture protection area [~~or~~], industrial protection area, or critical infrastructure materials  
344 protection area is within the unincorporated part of the county and not within a planning  
345 advisory area;

346            (b) a planning advisory area planning commission if the land proposed to be included  
347 in the agriculture protection area [~~or~~], industrial protection area, or critical infrastructure  
348 materials protection area is within a planning advisory area; or

349            (c) a planning commission of a city or town if the land proposed to be included in the  
350 agriculture protection area [~~or~~], industrial protection area, or critical infrastructure materials  
351 protection area is within a city or town.

352            [~~(18)~~] (22) "Political subdivision" means a county, city, town, school district, local  
353 district, or special service district.

354            [~~(19)~~] (23) "Proposal sponsors" means the owners of land in agricultural production  
355 [~~or~~], industrial use, or critical infrastructure materials operations who are sponsoring the  
356 proposal for creating an agriculture protection area [~~or~~], industrial protection area[  
357 respectively], or critical infrastructure materials protection area.

358            [~~(20)~~] (24) "State agency" means each department, commission, board, council,  
359 agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory,  
360 library, unit, bureau, panel, or other administrative unit of the state.

361            [~~(21)~~] (25) "Unincorporated" means not within a city or town.

362            [~~(22)~~] (26) "Vested mining use" means a mining use:

363            (a) by a mine operator; and

364            (b) that existed or was conducted or otherwise engaged in before a political subdivision  
365 prohibits, restricts, or otherwise limits a mining use.

366            Section 12. Section 17-41-201 is amended to read:

367 **17-41-201. Protection area advisory board.**

368 (1) (a) (i) ~~[Each]~~ A county legislative body shall appoint no more than five members  
369 from the county's conservation district board of supervisors to serve as the ~~[Agriculture~~  
370 ~~Protection Area Advisory Board]~~ agriculture protection area advisory board.

371 (ii) ~~[Each]~~ A county legislative body shall appoint an industrial protection area  
372 advisory board.

373 (iii) Subject to Subsection (1)(b), a county legislative body shall form a critical  
374 infrastructure materials protection area advisory board that consists of:

375 (A) the executive director of the Department of Transportation, or the executive  
376 director's designee;

377 (B) a local government elected official appointed by the county legislative body;

378 (C) a representative of a local highway authority appointed by the county legislative  
379 body;

380 (D) a representative of the critical infrastructure materials industry appointed by the  
381 county legislative body; and

382 (E) a representative of the construction industry appointed by the county legislative  
383 body.

384 (b) A county legislative body may appoint ~~[the]~~ an advisory board before or after a  
385 proposal to create an agriculture protection area or industrial protection area is filed. A county  
386 legislative body shall appoint a critical infrastructure materials protection area advisory board  
387 only after a proposal to create a critical infrastructure materials protection area is filed.

388 (2) ~~[Each]~~ A member of an advisory board shall serve without salary, but a county  
389 legislative body may reimburse members for expenses incurred in the performance of their  
390 duties.

391 (3) ~~[Each]~~ An advisory board shall:

392 (a) evaluate proposals for the establishment of ~~[agriculture protection areas or~~  
393 ~~industrial]~~ the relevant protection areas and make recommendations to the applicable  
394 legislative body about whether ~~[or not]~~ the proposal should be accepted;

395 (b) provide expert advice to the planning commission and to the applicable legislative  
396 body about:

397 (i) the desirability of the proposal;

398 (ii) the nature of agricultural production [~~or~~], industrial use, or critical infrastructure  
 399 materials operations, as the case may be, within the proposed area;

400 (iii) the relation of agricultural production [~~or~~], industrial use, or critical infrastructure  
 401 materials operations, as the case may be, in the area to the county as a whole; and

402 (iv) which agriculture production [~~or~~], industrial use, or critical infrastructure materials  
 403 operations, should be allowed within the [~~agriculture~~] relevant protection area [~~or industrial~~  
 404 ~~protection area, respectively~~]; and

405 (c) perform [~~all~~] the other duties required by this chapter.

406 Section 13. Section 17-41-301 is amended to read:

407 **17-41-301. Proposal for creation of a protection area.**

408 (1) (a) A proposal to create an agriculture protection area [~~or~~], an industrial protection  
 409 area, or critical infrastructure materials protection area may be filed with:

410 (i) the legislative body of the county in which the area is located, if the area is within  
 411 the unincorporated part of a county; or

412 (ii) the legislative body of the city or town in which the area is located, if the area is  
 413 within a city or town.

414 (b) A proposal to create a critical infrastructure protection area can only be initiated by  
 415 the legislative body of the municipality or county. Creation of a critical infrastructure materials  
 416 protection area is ~~S~~→ ~~[an administrative]~~ a legislative ←~~S~~ act.

417 [~~(b)~~] (c) (i) To be accepted for processing by the applicable legislative body, a proposal  
 418 under Subsection (1)(a) shall be signed by a majority in number of all owners of real property  
 419 and the owners of a majority of the land area in agricultural production [~~or~~], industrial use, or  
 420 critical infrastructure materials operations within the proposed [~~agriculture protection area or~~  
 421 ~~industrial~~] relevant protection area[, ~~respectively~~].

422 (ii) For purposes of Subsection (1)[~~(b)~~](c)(i), the owners of real property shall be  
 423 determined by the records of the county recorder.

424 (2) The proposal shall identify:

425 (a) the boundaries of the land proposed to become part of [~~an agriculture protection~~  
 426 ~~area or industrial~~] the relevant protection area;

427 (b) any limits on the types of agriculture production [~~or~~], industrial use, or critical  
 428 infrastructure materials operations to be allowed within the [~~agriculture protection area or~~

429 ~~industrial~~] relevant protection area~~[-, respectively]~~; and

430 (c) for each parcel of land:

431 (i) the names of the owners of record of the land proposed to be included within the

432 [~~agriculture protection area or industrial~~] relevant protection area;

433 (ii) the tax parcel number or account number identifying each parcel; and

434 (iii) the number of acres of each parcel.

435 (3) An agriculture protection area [~~or~~], industrial protection area, or critical

436 infrastructure materials protection area may include within its boundaries land used for a

437 roadway, dwelling site, park, or other nonagricultural [~~or~~] use, in the case of an industrial

438 protection area, nonindustrial use, or in the case of a critical infrastructure materials protection

439 area, use unrelated to critical infrastructure materials operations, if that land constitutes a

440 minority of the total acreage within the [~~agriculture protection area or industrial~~] the relevant

441 protection area~~[-, respectively]~~.

442 (4) A county or municipal legislative body may establish:

443 (a) the manner and form for submission of proposals; and

444 (b) reasonable fees for accepting and processing the proposal.

445 (5) [~~Each~~] A county and municipal legislative body shall establish the minimum

446 number of continuous acres that shall be included in an agriculture protection area [~~or~~],

447 industrial protection area, or critical infrastructure materials protection area.

448 Section 14. Section **17-41-302** is amended to read:

449 **17-41-302. Notice of proposal for creation of protection area -- Responses.**

450 (1) [~~Each~~] An applicable legislative body shall provide notice of the proposal by:

451 (a) (i) publishing notice~~[:(A)]~~ in a newspaper having general circulation within:

452 [~~(F)~~] (A) the same county as the land proposed for inclusion within an agriculture

453 protection area [~~or~~], industrial protection area, or critical infrastructure materials protection

454 area, as the case may be, if the land is within the unincorporated part of the county; or

455 [~~(H)~~] (B) the same city or town as the land proposed for inclusion within an agriculture

456 protection area [~~or~~], industrial protection area, or critical infrastructure materials protection

457 area, as the case may be, if the land is within a city or town; and

458 (ii) as required in Section [45-1-101](#);

459 (b) posting notice at five public places, designated by the county or municipal

460 legislative body, within or near the proposed agriculture protection area [or], industrial  
461 protection area, or critical infrastructure materials protection area; and

462 (c) mailing written notice to each owner of land within 1,000 feet of the land proposed  
463 for inclusion within an agriculture protection area [or], industrial protection area, or critical  
464 infrastructure materials protection area.

465 (2) The notice shall contain:

466 (a) a statement that a proposal for the creation of an agriculture protection area [or],  
467 industrial protection area, or critical infrastructure materials protection area has been filed with  
468 the applicable legislative body;

469 (b) a statement that the proposal will be open to public inspection in the office of the  
470 applicable legislative body;

471 (c) a statement that any person [~~or entity~~] affected by the establishment of the area  
472 may, within 15 days of the date of the notice, file with the applicable legislative body:

473 (i) written objections to the proposal; or

474 (ii) a written request to modify the proposal to exclude land from or add land to the  
475 proposed [~~agriculture protection area or industrial~~] protection area[~~, as the case may be~~];

476 (d) a statement that the applicable legislative body will submit the proposal to the  
477 advisory committee and to the planning commission for review and recommendations;

478 (e) a statement that the applicable legislative body will hold a public hearing to discuss  
479 and hear public comment on:

480 (i) the proposal to create the agriculture protection area [or], industrial protection area,  
481 or critical infrastructure materials protection area;

482 (ii) the recommendations of the advisory committee and planning commission; and

483 (iii) any requests for modification of the proposal and any objections to the proposal;

484 and

485 (f) a statement indicating the date, time, and place of the public hearing.

486 (3) (a) [~~Any~~] A person wishing to modify the proposal for the creation of the  
487 agriculture protection area [or], industrial protection area, or critical infrastructure materials  
488 protection area shall, within 15 days after the date of the notice, file a written request for  
489 modification of the proposal, which identifies specifically the land that should be added to or  
490 removed from the proposal.



491 (b) ~~[Any]~~ A person wishing to object to the proposal for the creation of the agriculture  
492 protection area ~~[or]~~, industrial protection area, or critical infrastructure materials protection  
493 area shall, within 15 days after the date of the notice, file a written objection to the creation of  
494 the ~~[agriculture protection area or industrial]~~ relevant protection area.

495 Section 15. Section **17-41-303** is amended to read:

496 **17-41-303. Review of proposal for creation of protection area.**

497 (1) After 15 days from the date of the notice, the applicable legislative body shall refer  
498 the proposal and any objections and proposed modifications to the proposal to the advisory  
499 committee and planning commission for their review, comments, and recommendations.

500 (2) (a) Within 45 days after receipt of the proposal, the planning commission shall  
501 submit a written report to the applicable legislative body that:

502 (i) analyzes and evaluates the effect of the creation of the proposed area on the  
503 planning policies and objectives of the county or municipality, as the case may be;

504 (ii) analyzes and evaluates the proposal by applying the criteria contained in Section  
505 [17-41-305](#);

506 (iii) recommends any modifications to the land to be included in the proposed  
507 agriculture protection area ~~[or]~~, industrial protection area, or critical infrastructure materials  
508 protection area;

509 (iv) analyzes and evaluates any objections to the proposal; and

510 (v) includes a recommendation to the applicable legislative body either to accept,  
511 accept and modify, or reject the proposal.

512 (b) Within 45 days after receipt of the proposal, the advisory board shall submit a  
513 written report to the applicable legislative body that:

514 (i) recommends any modifications to the land to be included in the proposed  
515 agriculture protection area ~~[or]~~, industrial protection area, or critical infrastructure materials  
516 protection area;

517 (ii) analyzes and evaluates the proposal by applying the criteria contained in Section  
518 [17-41-305](#);

519 (iii) analyzes and evaluates any objections to the proposal; and

520 (iv) includes a recommendation to the applicable legislative body either to accept,  
521 accept and modify, or reject the proposal.

522 (c) The applicable legislative body shall consider a failure of the planning commission  
523 or advisory committee to submit a written report within the 45 days under Subsection (2)(a) or  
524 (b) as a recommendation of that committee to approve the proposal as submitted.

525 Section 16. Section **17-41-304** is amended to read:

526 **17-41-304. Public hearing -- Review and action on proposal.**

527 (1) After receipt of the written reports from the advisory committee and planning  
528 commission, or after the 45 days have expired, whichever is earlier, the county or municipal  
529 legislative body shall:

530 (a) schedule a public hearing;

531 (b) provide notice of the public hearing by:

532 (i) publishing notice:

533 (A) in a newspaper having general circulation within:

534 (I) the same county as the land proposed for inclusion within the agriculture protection  
535 area [or], industrial protection area, or critical infrastructure materials protection area, if the  
536 land is within the unincorporated part of the county; or

537 (II) the same city or town as the land proposed for inclusion within an agriculture  
538 protection area [or], industrial protection area, or critical infrastructure materials protection  
539 area, if the land is within a city or town; and

540 (B) on the Utah Public Notice Website created in Section [63F-1-701](#);

541 (ii) posting notice at five public places, designated by the applicable legislative body,  
542 within or near the proposed agriculture protection area [or], industrial protection area, or  
543 critical infrastructure materials protection area; and

544 (iii) mailing written notice to each owner of land within 1,000 feet of the land proposed  
545 for inclusion within an agriculture protection area [or], industrial protection area, or critical  
546 infrastructure materials protection area; and

547 (c) ensure that the notice includes:

548 (i) the time, date, and place of the public hearing on the proposal;

549 (ii) a description of the proposed agriculture protection area [or], industrial protection  
550 area, or critical infrastructure materials protection area;

551 (iii) any proposed modifications to the proposed agriculture protection area [or],  
552 industrial protection area, or critical infrastructure materials protection area;

553 (iv) a summary of the recommendations of the advisory committee and planning  
554 commission; and

555 (v) a statement that interested persons may appear at the public hearing and speak in  
556 favor of or against the proposal, any proposed modifications to the proposal, or the  
557 recommendations of the advisory committee and planning commission.

558 (2) The applicable legislative body shall:

559 (a) convene the public hearing at the time, date, and place specified in the notice; and

560 (b) take [~~verbal~~] oral or written testimony from interested persons.

561 (3) (a) Within 120 days of the submission of the proposal, the applicable legislative  
562 body shall approve, modify and approve, or reject the proposal.

563 (b) The creation of an agriculture protection area [~~or~~], industrial protection area, or  
564 critical infrastructure materials protection area is effective at the earlier of:

565 (i) the applicable legislative body's approval of a proposal or modified proposal; or

566 (ii) 120 days after submission of a proposal complying with Subsection 17-41-301(2) if  
567 the applicable legislative body has failed to approve or reject the proposal within that time.

568 (c) Notwithstanding Subsection (3)(b), a critical infrastructure materials protection area  
569 is effective only if the applicable legislative body, at its discretion, approves a proposal or  
570 modified proposal.

571 (4) (a) [~~In order to~~] To give constructive notice of the existence of the agriculture  
572 protection area [~~or~~], industrial protection area, or critical infrastructure materials protection  
573 area to all persons who have, may acquire, or may seek to acquire an interest in land in or  
574 adjacent to the [~~agriculture protection area or industrial~~] relevant protection area[~~;~~  
575 ~~respectively,~~] within 10 days of the creation of [~~an agriculture protection area or industrial~~] the  
576 relevant protection area, the applicable legislative body shall file an executed document  
577 containing a legal description of the [~~agriculture protection area or industrial~~] relevant  
578 protection area[~~, as the case may be,~~] with:

579 (i) the county recorder of deeds; and

580 (ii) the affected planning commission.

581 (b) If the legal description of the property to be included in the [~~agriculture protection~~  
582 ~~area or industrial~~] relevant protection area is available through the county recorder's office, the  
583 applicable legislative body shall use that legal description in its executed document required in

584 Subsection (4)(a).

585 (5) Within 10 days of the recording of the agriculture protection area, the applicable  
586 legislative body shall:

587 (a) send written notification to the commissioner of agriculture and food that the  
588 agriculture protection area has been created; and

589 (b) include in the notification:

590 (i) the number of landowners owning land within the agriculture protection area;

591 (ii) the total acreage of the area;

592 (iii) the date of approval of the area; and

593 (iv) the date of recording.

594 (6) The applicable legislative body's failure to record the notice required under  
595 Subsection (4) or to send the written notification under Subsection (5) does not invalidate the  
596 creation of an agriculture protection area.

597 (7) The applicable legislative body may consider the cost of recording notice under  
598 Subsection (4) and the cost of sending notification under Subsection (5) in establishing a fee  
599 under Subsection 17-41-301(4)(b).

600 Section 17. Section 17-41-305 is amended to read:

601 **17-41-305. Criteria to be applied in evaluating a proposal for the creation of a**  
602 **protection area.**

603 In evaluating a proposal and in determining whether or not to create or recommend the  
604 creation of an agriculture protection area ~~[or]~~, industrial protection area, or critical  
605 infrastructure materials protection area, the advisory committee, planning commission, and  
606 applicable legislative body shall apply the following criteria:

607 (1) whether or not the land is currently being used for agriculture production ~~[or for~~  
608 ~~an]~~, industrial use, or critical infrastructure materials operations, as the case may be;

609 (2) whether or not the land is zoned for agriculture use ~~[or]~~, industrial use, or critical  
610 infrastructure materials operations, as the case may be;

611 (3) whether or not the land is viable for agriculture production ~~[or]~~, industrial use, or  
612 critical infrastructure materials operations, as the case may be;

613 (4) the extent and nature of existing or proposed farm improvements ~~[or]~~, the extent  
614 and nature of existing or proposed improvements to or expansion of the industrial use, or the

615 extent and nature of existing or proposed improvements to or expansion of critical  
 616 infrastructure materials operations, as the case may be; and

617 (5) (a) in the case of an agriculture protection area, anticipated trends in agricultural  
 618 and technological conditions; ~~[or]~~

619 (b) in the case of an industrial protection area, anticipated trends in technological  
 620 conditions applicable to the industrial use of the land in question~~[-]; or~~

621 (c) in the case of a critical infrastructure materials protection area, anticipated trends in  
 622 technological conditions applicable to the critical infrastructure materials operations of the land  
 623 in question.

624 Section 18. Section ~~17-41-306~~ is amended to read:

625 **17-41-306. Adding land to or removing land from a protection area -- Removing**  
 626 **land from a mining protection area.**

627 (1) (a) Any owner may add land to an existing agriculture protection area ~~[or]~~,  
 628 industrial protection area, critical infrastructure materials protection area, as the case may be,  
 629 by:

630 (i) filing a proposal with:

631 (A) the county legislative body, if the ~~[agriculture protection area or industrial]~~ relevant  
 632 protection area and the land to be added are within the unincorporated part of the county; or

633 (B) the municipal legislative body, if the ~~[agriculture protection area or industrial]~~  
 634 relevant protection area and the land to be added are within a city or town; and

635 (ii) obtaining the approval of the applicable legislative body for the addition of the land  
 636 to the relevant protection area.

637 (b) The applicable legislative body shall:

638 (i) comply with the provisions for creating an agriculture protection area ~~[or]~~, industrial  
 639 protection area, critical infrastructure materials protection area, as the case may be, in  
 640 determining whether ~~[or not]~~ to accept the proposal~~[-]; and~~

641 (ii) for purposes of a critical infrastructure materials protection area, request a copy of  
 642 the applicable Division of Air Quality approval order.

643 (c) The applicable legislative body may deny the expansion if it is contrary to the  
 644 Division of Air Quality's approval order.

645 (2) (a) ~~[Any]~~ An owner of land within an agriculture protection area ~~[or]~~, industrial

646 protection area, or critical infrastructure materials protection area may remove any or all of the  
647 land from the [~~agriculture protection area or industrial~~] relevant protection area, [~~respectively,~~]  
648 by filing a petition for removal with the applicable legislative body.

649 (b) (i) The applicable legislative body:

650 (A) shall:

651 (I) grant the petition for removal of land from [~~an agriculture protection area or~~  
652 ~~industrial~~] the relevant protection area, [~~as the case may be,~~] even if removal of the land would  
653 result in an agriculture protection area [~~or~~], industrial protection area, or critical infrastructure  
654 materials protection area of less than the number of acres established by the applicable  
655 legislative body as the minimum under Section 17-41-301; and

656 (II) [~~in order~~] to give constructive notice of the removal to all persons who have, may  
657 acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection  
658 area [~~or~~], industrial protection area, or critical infrastructure materials protection area and the  
659 land removed from the [~~agriculture protection area or industrial~~] relevant protection area, file a  
660 legal description of the revised boundaries of the [~~agriculture protection area or industrial~~]  
661 relevant protection area with the county recorder of deeds and the affected planning  
662 commission; and

663 (B) may not charge a fee in connection with a petition to remove land from an  
664 agriculture protection area [~~or~~], an industrial protection area, or critical infrastructure materials  
665 protection area.

666 (ii) The remaining land in the agriculture protection area [~~or~~], industrial protection  
667 area, or critical infrastructure materials protection area is still an agriculture protection area  
668 [~~or~~], industrial protection area [~~respectively~~], or critical infrastructure materials protection  
669 area.

670 (iii) (A) A critical infrastructure materials operator may abandon some or all of its  
671 critical infrastructure materials operations use only as provided in this Subsection (2)(b)(iii).

672 (B) To abandon some or all of a critical infrastructure materials operations, a critical  
673 infrastructure materials operator shall record a written declaration of abandonment with the  
674 recorder of the county in which the critical infrastructure materials operations being abandoned  
675 is located.

676 (C) The written declaration of abandonment under this Subsection (2)(b)(iii) shall

677 specify the critical infrastructure materials operations or the portion of the critical infrastructure  
 678 materials operations being abandoned.

679 (3) (a) If a municipality annexes any land that is part of an agriculture protection area  
 680 [~~or~~], industrial protection area, or critical infrastructure materials protection area located in the  
 681 unincorporated part of the county, the county legislative body shall, within 30 days after the  
 682 land is annexed, review the feasibility of that land remaining in the [~~agriculture protection area~~  
 683 ~~or industrial~~] relevant protection area according to the procedures and requirements of Section  
 684 17-41-307.

685 (b) The county legislative body shall remove the annexed land from the [~~agriculture~~  
 686 ~~protection area or industrial~~] relevant protection area[, as the case may be,] if:

687 (i) the county legislative body concludes, after the review under Section 17-41-307,  
 688 that removal is appropriate; and

689 (ii) the owners of all the annexed land that is within the [~~agriculture protection area or~~  
 690 ~~industrial~~] relevant protection area consent in writing to the removal.

691 (c) Removal of land from an agriculture protection area [~~or~~], industrial protection area,  
 692 or critical infrastructure materials protection area under this Subsection (3) does not affect  
 693 whether that land may be:

694 (i) included in a proposal under Section 17-41-301 to create an agriculture protection  
 695 area [~~or~~], industrial protection area, or critical infrastructure materials protection area within  
 696 the municipality; or

697 (ii) added to an existing agriculture protection area [~~or~~], industrial protection area, or  
 698 critical infrastructure materials protection area within the municipality under Subsection (1).

699 (4) A mine operator that owns or controls land within a mining protection area may  
 700 remove any or all of the land from the mining protection area by filing a notice of removal with  
 701 the legislative body of the county in which the land is located.

702 Section 19. Section 17-41-307 is amended to read:

703 **17-41-307. Review of protection areas.**

704 (1) In the 20th calendar year after its creation under this part, [~~each~~] an agriculture  
 705 protection area [~~or~~], industrial protection area, or critical infrastructure materials protection  
 706 area, as the case may be, shall be reviewed, under the provisions of this section, by:

707 (a) the county legislative body, if the [~~agriculture protection area or industrial~~] relevant

708 protection area is within the unincorporated part of the county; or

709 (b) the municipal legislative body, if the [~~agriculture protection area or industrial~~  
710 relevant protection area is within the municipality.

711 (2) (a) In the 20th year, the applicable legislative body may:

712 (i) request the planning commission and advisory board to submit recommendations  
713 about whether the agriculture protection area [~~or~~], industrial protection area, or critical  
714 infrastructure materials protection area, as the case may be, should be continued, modified, or  
715 terminated;

716 (ii) at least 120 days before the end of the calendar year, hold a public hearing to  
717 discuss whether the [~~agriculture protection area or industrial~~] relevant protection area, [~~as the~~  
718 ~~case may be,~~] should be continued, modified, or terminated;

719 (iii) give notice of the hearing using the same procedures required by Section  
720 [17-41-302](#); and

721 (iv) after the public hearing, continue, modify, or terminate the [~~agriculture protection~~  
722 ~~area or industrial~~] relevant protection area.

723 (b) If the applicable legislative body modifies or terminates the agriculture protection  
724 area [~~or~~], industrial protection area, or critical infrastructure materials protection area, [~~if~~] the  
725 applicable legislative body shall file an executed document containing the legal description of  
726 the [~~agriculture protection area or industrial~~] relevant protection area, [~~respectively,~~] with the  
727 county recorder of deeds.

728 (3) If the applicable legislative body fails affirmatively to continue, modify, or  
729 terminate the agriculture protection area [~~or~~], industrial protection area, or critical infrastructure  
730 materials protection area, as the case may be, in the 20th calendar year, the [~~agriculture~~  
731 ~~protection area or industrial~~] relevant protection area is considered to be reauthorized for  
732 another 20 years.

733 Section 20. Section **17-41-402** is amended to read:

734 **17-41-402. Limitations on local regulations.**

735 (1) A political subdivision within which an agriculture protection area [~~or~~], industrial  
736 protection area, or critical infrastructure materials protection area is created or with a mining  
737 protection area within its boundary shall encourage the continuity, development, and viability  
738 of agriculture use, industrial use, critical infrastructure materials operations, or mining use,



739 [~~respectively,~~] within the relevant protection area by not enacting a local law, ordinance, or  
740 regulation that, unless the law, ordinance, or regulation bears a direct relationship to public  
741 health or safety, would unreasonably restrict:

742 (a) in the case of an agriculture protection area, a farm structure or farm practice [~~or,~~];

743 (b) in the case of an industrial protection area, an industrial use of the land within the  
744 area [~~or,~~];

745 (c) in the case of a critical infrastructure materials protection area, critical infrastructure  
746 materials operations; or

747 (d) in the case of a mining protection area, a mining use within the protection area  
748 [~~unless the law, ordinance, or regulation bears a direct relationship to public health or safety~~].

749 (2) A political subdivision may not change the zoning designation of or a zoning  
750 regulation affecting land within an agriculture protection area unless the political subdivision  
751 receives written approval for the change from all the landowners within the agriculture  
752 protection area affected by the change.

753 (3) Except as provided by Section [19-4-113](#), a political subdivision may not change the  
754 zoning designation of or a zoning regulation affecting land within an industrial protection area  
755 unless the political subdivision receives written approval for the change from all the  
756 landowners within the industrial protection area affected by the change.

757 (4) A political subdivision may not change the zoning designation of or a zoning  
758 regulation affecting land within a critical infrastructure materials protection area unless the  
759 political subdivision receives written approval for the change from each critical infrastructure  
760 materials operator within the relevant area.

761 [~~(4)~~] (5) A political subdivision may not change the zoning designation of or a zoning  
762 regulation affecting land within a mining protection area unless the political subdivision  
763 receives written approval for the change from each mine operator within the area.

764 (6) A county, city, or town may not:

765 (a) adopt, enact, or amend an existing land use regulation, ordinance, or regulation that  
766 would prohibit, restrict, regulate, or otherwise limit critical infrastructure materials operations,  
767 including vested critical infrastructure materials operations as defined in Section [10-9a-901](#) or  
768 [17-27a-1001](#); or

769 (b) initiate proceedings to amend the county's, city's, or town's land use ordinances as

770 described in Subsection [10-9a-509\(1\)\(a\)\(ii\)](#) or [17-27a-508\(1\)\(a\)\(ii\)](#).

771 Section 21. Section **17-41-403** is amended to read:

772 **17-41-403. Nuisances.**

773 (1) ~~[Each]~~ A political subdivision shall ensure that any of ~~[its]~~ the political  
774 subdivision's laws or ordinances that define or prohibit a public nuisance exclude from the  
775 definition or prohibition:

776 (a) for an agriculture protection area, any agricultural activity or operation within an  
777 agriculture protection area conducted using sound agricultural practices unless that activity or  
778 operation bears a direct relationship to public health or safety; ~~[or]~~

779 (b) for an industrial protection area, any industrial use of the land within the industrial  
780 protection area that is consistent with sound practices applicable to the industrial use, unless  
781 that use bears a direct relationship to public health or safety~~[-]; or~~

782 (c) for a critical infrastructure materials protection area, any critical infrastructure  
783 materials operations on the land within the critical infrastructure materials protection area that  
784 is consistent with sound practices applicable to the critical infrastructure materials operations,  
785 unless that use bears a direct relationship to public health or safety.

786 (2) In a civil action for nuisance or a criminal action for public nuisance under Section  
787 [76-10-803](#), it is a complete defense if the action involves agricultural activities and those  
788 agricultural activities were:

789 (a) conducted within an agriculture protection area; and

790 (b) not in violation of any federal, state, or local law or regulation relating to the  
791 alleged nuisance or were conducted according to sound agricultural practices.

792 (3) (a) A vested mining use undertaken in conformity with applicable federal and state  
793 law and regulations is presumed to be operating within sound mining practices.

794 (b) A vested mining use that is consistent with sound mining practices:

795 (i) is presumed to be reasonable; and

796 (ii) may not constitute a private or public nuisance under Section [76-10-803](#).

797 (c) A vested mining use in operation for more than three years may not be considered  
798 to have become a private or public nuisance because of a subsequent change in the condition of  
799 land within the vicinity of the vested mining use.

800 (4) (a) For any new subdivision development located in whole or in part within 300

801 feet of the boundary of an agriculture protection area, the owner of the development shall  
802 provide notice on any plat filed with the county recorder the following notice:

803 "Agriculture Protection Area

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

811 (b) For any new subdivision development located in whole or in part within 1,000 feet  
812 of the boundary of an industrial protection area, the owner of the development shall provide  
813 notice on any plat filed with the county recorder the following notice:

814 "Industrial Protection Area

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

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

825 "Critical Infrastructure Materials Protection Area

826 This property is located in the vicinity of an established critical infrastructure materials  
827 protection area in which critical infrastructure materials operations have been afforded  
828 the highest priority use status. It can be anticipated that such operations may now or in  
829 the future be conducted on property included in the critical infrastructure materials  
830 protection area. The use and enjoyment of this property is expressly conditioned on  
831 acceptance of any annoyance or inconvenience which may result from such normal

832 critical infrastructure materials operations."

833 [~~☞~~] (d) For any new subdivision development located in whole or in part within 1,000  
834 feet of the boundary of a mining protection area, the owner of the development shall provide  
835 notice on any plat filed with the county recorder the following notice:

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

842 Section 22. Section **17-41-404** is amended to read:

843 **17-41-404. Policy of state agencies.**

844 [~~Each~~] A state agency shall encourage the continuity, development, and viability of  
845 agriculture within agriculture protection areas [~~and~~], industrial uses with industrial protection  
846 areas, and critical infrastructure materials operations within critical infrastructure protection  
847 areas by:

848 (1) not enacting rules that would impose unreasonable restrictions on farm structures or  
849 farm practices within the agriculture protection area [~~or~~], on industrial uses and practices  
850 within the industrial protection area, or on critical infrastructure materials operations with a  
851 critical infrastructure materials protection area, unless those laws, ordinances, or regulations  
852 bear a direct relationship to public health or safety or are required by federal law; and

853 (2) modifying existing rules that would impose unreasonable restrictions on farm  
854 structures or farm practices within the agriculture protection area [~~or~~], on industrial uses and  
855 activities within the industrial protection area, or on critical infrastructure materials operations  
856 within a critical infrastructure materials protection area, unless those laws, ordinances, or  
857 regulations bear a direct relationship to public health or safety or are required by federal law.

858 Section 23. Section **17-41-405** is amended to read:

859 **17-41-405. Eminent domain restrictions.**

860 (1) A political subdivision having or exercising eminent domain powers may not  
861 condemn for any purpose any land within an agriculture protection area that is being used for  
862 agricultural production [~~or any~~], land within an industrial protection area that is being put to an

863 industrial use, or land within a critical infrastructure materials protection area, unless ~~it has~~  
864 ~~obtained~~ the political subdivision obtains approval, according to the procedures and  
865 requirements of this section, from the applicable legislative body and the advisory board.

866 (2) Any condemnor wishing to condemn property within an agriculture protection area  
867 ~~or~~, industrial protection area, or critical infrastructure materials protection area shall file a  
868 notice of condemnation with the applicable legislative body and the ~~agriculture protection area~~  
869 ~~or industrial~~ relevant protection area's advisory board at least 30 days before filing an eminent  
870 domain complaint.

871 (3) The applicable legislative body and the advisory board shall:

872 (a) hold a joint public hearing on the proposed condemnation at a location within the  
873 county in which the ~~agriculture protection area or industrial~~ relevant protection area is  
874 located;

875 (b) publish notice of the time, date, place, and purpose of the public hearing:

876 (i) in a newspaper of general circulation within the ~~agriculture protection area or~~  
877 ~~industrial~~ relevant protection area~~[-as the case may be]~~; and

878 (ii) on the Utah Public Notice Website created in Section [63F-1-701](#); and

879 (c) post notice of the time, date, place, and purpose of the public hearing in five  
880 conspicuous public places, designated by the applicable legislative body, within or near the  
881 ~~agriculture protection area or industrial~~ relevant protection area~~[-as the case may be]~~.

882 (4) (a) If the condemnation is for highway purposes or for the disposal of solid or  
883 liquid waste materials, the applicable legislative body and the advisory board may approve the  
884 condemnation only if there is no reasonable and prudent alternative to the use of the land  
885 within the agriculture protection area ~~or~~, industrial protection area, or critical infrastructure  
886 materials protection area for the project.

887 (b) If the condemnation is for any other purpose, the applicable legislative body and the  
888 advisory board may approve the condemnation only if:

889 (i) the proposed condemnation would not have an unreasonably adverse effect upon the  
890 preservation and enhancement of:

891 (A) agriculture within the agriculture protection area ~~or of~~;

892 (B) the industrial use within the industrial protection area; or

893 (C) critical infrastructure materials operations within the critical infrastructure

894 materials protection area; or

895 (ii) there is no reasonable and prudent alternative to the use of the land within the  
896 [~~agriculture protection area or industrial~~] the relevant protection area for the project.

897 (5) (a) Within 60 days after receipt of the notice of condemnation, the applicable  
898 legislative body and the advisory board shall approve or reject the proposed condemnation.

899 (b) If the applicable legislative body and the advisory board fail to act within the 60  
900 days or such further time as the applicable legislative body establishes, the condemnation shall  
901 be considered rejected.

902 (6) The applicable legislative body or the advisory board may request the county or  
903 municipal attorney to bring an action to enjoin any condemnor from violating any provisions of  
904 this section.

905 Section 24. Section ~~17-41-406~~ is amended to read:

906 **17-41-406. Restrictions on state development projects.**

907 (1) [~~Each~~] A state agency that plans any development project that might affect land  
908 within an agriculture protection area [~~or~~], industrial protection area, or critical infrastructure  
909 materials protection area, shall submit [~~its~~] the state agency's development plan to:

910 (a) the advisory board of the [~~agriculture protection area or industrial~~] relevant  
911 protection area[~~, respectively~~]; and

912 (b) in the case of an agriculture protection area, the commissioner of agriculture and  
913 food.

914 (2) The commissioner of agriculture and food, in the case of an agriculture protection  
915 area, and the advisory board shall:

916 (a) review the state agency's proposed development plan; and

917 (b) recommend any modifications to the development project that would protect the  
918 integrity of the agriculture protection area [~~or~~], industrial protection area, or critical  
919 infrastructure materials protection area, as the case may be, or that would protect the  
920 agriculture protection area from nonfarm encroachment [~~or~~], the industrial protection area from  
921 nonindustrial encroachment, or the critical infrastructure materials protection area from  
922 encroachment of uses unrelated to critical infrastructure materials operations.

923 (3) [~~Each~~] A state agency and political subdivision of the state that designates or  
924 proposes to designate a transportation corridor shall:

- 925 (a) consider:
- 926 (i) whether the transportation corridor would:
- 927 (A) be located on land that is included within an agriculture protection area; or
- 928 (B) interfere with agriculture production activities on land within an agriculture
- 929 protection area; and
- 930 (ii) each other reasonably comparable alternative to the placement of the corridor on
- 931 land within an agriculture protection area; and
- 932 (b) make reasonable efforts to minimize or eliminate any detrimental impact on
- 933 agriculture that may result from the designation of a transportation corridor.

934 Section 25. Section **76-10-803** is amended to read:

935 **76-10-803. "Public nuisance" defined -- Agricultural operations -- Critical**

936 **infrastructure materials operations.**

937 (1) A public nuisance is a crime against the order and economy of the state and consists

938 in unlawfully doing any act or omitting to perform any duty, which act or omission:

939 (a) annoys, injures, or endangers the comfort, repose, health, or safety of three or more

940 persons;

941 (b) offends public decency;

942 (c) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for

943 passage, any lake, stream, canal, or basin, or any public park, square, street, or highway;

944 (d) is a nuisance as [~~defined~~] described in Section [78B-6-1107](#); or

945 (e) in any way renders three or more persons insecure in life or the use of property.

946 (2) An act which affects three or more persons in any of the ways specified in this

947 section is still a nuisance regardless of the extent to which the annoyance or damage inflicted

948 on individuals is unequal.

949 (3) (a) Activities conducted in the normal and ordinary course of agricultural

950 operations, as defined in Subsection [78B-6-1101\(7\)](#), and conducted in accordance with sound

951 agricultural practices are presumed to be reasonable and not constitute a public nuisance under

952 Subsection (1).

953 (b) Agricultural operations undertaken in conformity with federal, state, and local laws

954 and regulations, including zoning ordinances, are presumed to be operating within sound

955 agricultural practices.

956 (4) (a) Activities conducted in the normal and ordinary course of critical infrastructure  
957 materials operations, as defined in Subsection 78B-6-1101(8), and conducted in accordance  
958 with sound critical infrastructure materials practices are presumed to be reasonable and not  
959 constitute a public nuisance under Subsection (1).

960 (b) Critical infrastructure materials operations undertaken in conformity with federal,  
961 state, and local laws and regulations, including zoning ordinances, are presumed to be  
962 operating within sound critical infrastructure materials operations.

963 Section 26. Section 78B-6-1101 is amended to read:

964 **78B-6-1101. Definitions -- Nuisance -- Right of action.**

965 (1) A nuisance is anything which is injurious to health, indecent, offensive to the  
966 senses, or an obstruction to the free use of property, so as to interfere with the comfortable  
967 enjoyment of life or property. A nuisance may be the subject of an action.

968 (2) A nuisance may include the following:

969 (a) drug houses and drug dealing as provided in Section 78B-6-1107;

970 (b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;

971 (c) criminal activity committed in concert with two or more persons as provided in  
972 Section 76-3-203.1;

973 (d) criminal activity committed for the benefit of, at the direction of, or in association  
974 with any criminal street gang as defined in Section 76-9-802;

975 (e) criminal activity committed to gain recognition, acceptance, membership, or  
976 increased status with a criminal street gang as defined in Section 76-9-802;

977 (f) party houses which frequently create conditions defined in Subsection (1); and

978 (g) prostitution as provided in Title 76, Chapter 10, Part 13, Prostitution.

979 (3) A nuisance under this part includes tobacco smoke that drifts into any residential  
980 unit a person rents, leases, or owns, from another residential or commercial unit and the smoke:

981 (a) drifts in more than once in each of two or more consecutive seven-day periods; and

982 (b) creates any of the conditions under Subsection (1).

983 (4) Subsection (3) does not apply to:

984 (a) residential rental units available for temporary rental, such as for vacations, or  
985 available for only 30 or fewer days at a time; or

986 (b) hotel or motel rooms.



987 (5) Subsection (3) does not apply to any unit that is part of a timeshare development, as  
988 defined in Section 57-19-2, or subject to a timeshare interest as defined in Section 57-19-2.

989 (6) An action may be brought by any person whose property is injuriously affected, or  
990 whose personal enjoyment is lessened by the nuisance.

991 (7) "Agricultural operation" means any activity engaged in the commercial production  
992 of crops, orchards, aquaculture, livestock, poultry, livestock products, poultry products, and the  
993 facilities, equipment, and property used to facilitate the activity.

994 (8) "Critical infrastructure materials operations" means the same as that term is defined  
995 in Section 10-9a-901.

996 [~~(8)~~] (9) "Manufacturing facility" means any factory, plant, or other facility including  
997 its appurtenances, where the form of raw materials, processed materials, commodities, or other  
998 physical objects is converted or otherwise changed into other materials, commodities, or  
999 physical objects or where such materials, commodities, or physical objects are combined to  
1000 form a new material, commodity, or physical object.

1001 Section 27. Section 78B-6-1115 is enacted to read:

1002 **78B-6-1115. Critical infrastructure materials operations -- Nuisance liability.**

1003 (1) Activities conducted in the normal and ordinary course of critical infrastructure  
1004 materials operations or conducted in accordance with sound practices are presumed to be  
1005 reasonable and not constitute a nuisance.

1006 (2) Critical infrastructure materials operations undertaken in conformity with federal,  
1007 state, and local laws and regulations, including zoning ordinances, are presumed to be  
1008 operating within sound critical infrastructure materials practices.