

1 **CRITICAL INFRASTRUCTURE MATERIALS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Logan Wilde**

5 Senate Sponsor: David P. Hinkins

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses critical infrastructure materials.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ enacts provisions related to vested critical infrastructure materials operations;
- 13 ▶ amends a definition provision;
- 14 ▶ addresses advisory boards;
- 15 ▶ provides for the creation of critical infrastructure materials protection areas;
- 16 ▶ addresses adding land to or removing land from a critical infrastructure materials
- 17 protection area;
- 18 ▶ requires review of a critical infrastructure materials protection area;
- 19 ▶ limits local regulation of a critical infrastructure materials protection area;
- 20 ▶ addresses nuisances;
- 21 ▶ requires certain recordings with the county recorder;
- 22 ▶ addresses actions of state agencies related to critical infrastructure materials
- 23 protection areas;
- 24 ▶ restricts eminent domain; and
- 25 ▶ 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

60

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:

79 (a) a political subdivision prohibits, restricts, or otherwise limits the critical
80 infrastructure materials operations; and

81 (b) January 1, 2019.

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

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

85 (1) (a) Critical infrastructure materials operations operating in accordance with a legal

86 nonconforming use or a permit issued by the municipality are conclusively presumed to be
87 vested critical infrastructure materials operations if the critical infrastructure materials
88 operations permitted by the municipality, existed or was conducted or otherwise engaged in
89 before January 1, 2019 and before when a political subdivision prohibits, restricts, or otherwise
90 limits the critical infrastructure materials operations.

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

94 (2) A vested critical infrastructure materials operations:

95 (a) runs with the land; and

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

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

101 **10-9a-903. Rights of a critical infrastructure materials operator with a vested**
102 **critical infrastructure materials operations.**

103 Notwithstanding a political subdivision's prohibition, restriction, or other limitation on
104 a critical infrastructure materials operations adopted after the establishment of the critical
105 infrastructure materials operations, the rights of a critical infrastructure materials operator with
106 vested critical infrastructure materials operations include the right to:

107 (1) use, operate, construct, reconstruct, restore, maintain, repair, alter, substitute,
108 modernize, upgrade, and replace equipment, processes, facilities, and buildings; and

109 (2) discontinue, suspend, terminate, deactivate, or continue and reactivate, temporarily
110 or permanently, all or any part of the critical infrastructure materials operations.

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

112 **10-9a-904. Notice.**

113 For any new subdivision development located in whole or in part within 1,000 feet of

114 the boundary of a vested critical infrastructure materials operations, the owner of the
115 development shall provide notice on any plat filed with the county recorder the following
116 notice:

117 "Vested Critical Infrastructure Materials Operations

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

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

125 **10-9a-905. Abandonment of a vested critical infrastructure materials operations.**

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

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

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

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

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

137 **17-27a-1001. Definitions.**

138 As used in this part:

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

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

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

- 146 (a) owns, controls, or manages a critical infrastructure materials operations; and
- 147 (b) has produced commercial quantities of critical infrastructure materials from the
148 critical infrastructure materials operations.

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

- 152 (a) a political subdivision prohibits, restricts, or otherwise limits the critical
153 infrastructure materials operations; and
- 154 (b) January 1, 2019.

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

156 **17-27a-1002. Vested critical infrastructure materials operations -- Conclusive**
157 **presumption.**

158 (1) (a) Critical infrastructure materials operations operating in accordance with a legal
159 nonconforming use or a permit issued by the county are conclusively presumed to be vested
160 critical infrastructure materials operations if the critical infrastructure materials operations
161 permitted by the county, existed or was conducted or otherwise engaged in before January 1,
162 2019 and before when a political subdivision prohibits, restricts, or otherwise limits the critical
163 infrastructure materials operations.

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

167 (2) A vested critical infrastructure materials operations:

- 168 (a) runs with the land; and
- 169 (b) may be changed to another critical infrastructure materials operations conducted

170 within the scope of a legal nonconforming use or the permit for the vested critical infrastructure
171 materials operations without losing its status as a vested critical infrastructure materials
172 operations.

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

174 **17-27a-1003. Rights of a critical infrastructure materials operator with a vested**
175 **critical infrastructure materials operations.**

176 Notwithstanding a political subdivision's prohibition, restriction, or other limitation on
177 a critical infrastructure materials operations adopted after the establishment of the critical
178 infrastructure materials operations, the rights of a critical infrastructure materials operator with
179 vested critical infrastructure materials operations include the right to:

180 (1) use, operate, construct, reconstruct, restore, maintain, repair, alter, substitute,
181 modernize, upgrade, and replace equipment, processes, facilities, and buildings; and

182 (2) discontinue, suspend, terminate, deactivate, or continue and reactivate, temporarily
183 or permanently, all or any part of the critical infrastructure materials operations.

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

185 **17-27a-1004. Notice.**

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

190 "Vested Critical Infrastructure Materials Operations

191 This property is located in the vicinity of an established vested critical infrastructure
192 materials operations in which critical infrastructure materials operations have been afforded the
193 highest priority use status. It can be anticipated that such operations may now or in the future
194 be conducted on property included in the critical infrastructure materials operations. The use
195 and enjoyment of this property is expressly conditioned on acceptance of any annoyance or
196 inconvenience that may result from such normal critical infrastructure materials operations."

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

198 **17-27a-1005. Abandonment of a vested critical infrastructure materials**
199 **operations.**

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

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

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

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

210 **CHAPTER 41. AGRICULTURE, INDUSTRIAL, OR CRITICAL**
211 **INFRASTRUCTURE MATERIALS PROTECTION AREAS**

212 **17-41-101. Definitions.**

213 As used in this chapter:

214 (1) "Advisory board" means:

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

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

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

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

223 (b) "Agriculture production" includes the processing or retail marketing of any crops,
224 livestock, and livestock products when more than 50% of the processed or merchandised
225 products are produced by the farm operator.

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

228 (4) "Applicable legislative body" means:

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

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

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

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

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

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

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

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

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

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

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

252 (b) has produced commercial quantities of critical infrastructure materials from the
253 critical infrastructure materials operations.

254 (9) "Critical infrastructure materials protection area" means a geographic area created
255 under the authority of this chapter on or after May 14, 2019, that is granted the specific legal
256 protections contained in this chapter.

257 ~~[(6)]~~ (10) "Crops, livestock, and livestock products" includes:

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

260 (i) forages and sod crops;

261 (ii) grains and feed crops;

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

263 (iv) trees and fruits; or

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

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

268 ~~[(7)]~~ (11) "Division" means the Division of Oil, Gas, and Mining created in Section
269 40-6-15.

270 ~~[(8)]~~ (12) "Industrial protection area" means a geographic area created under the
271 authority of this chapter that is granted the specific legal protections contained in this chapter.

272 ~~[(9)]~~ (13) "Mine operator" means a natural person, corporation, association,
273 partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other
274 organization or representative, either public or private, including a successor, assign, affiliate,
275 subsidiary, and related parent company, that, as of January 1, 2009:

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

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

279 ~~[(10)]~~ (14) "Mineral deposit" has the same meaning as defined in Section 40-8-4, but
280 excludes:

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

282 (b) consolidated rock that:

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

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

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

286 [~~(11)~~] (15) "Mining protection area" means land where a vested mining use occurs,
287 including each surface or subsurface land or mineral estate that a mine operator with a vested
288 mining use owns or controls.

289 [~~(12)~~] (16) "Mining use":

290 (a) means:

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

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

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

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

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

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

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

302 (v) any smelting, refining, autoclaving, or other primary or secondary processing
303 operation;

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

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

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

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

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

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

316 [(13)] (17) (a) "Municipal" means of or relating to a city or town.

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

318 [(14)] (18) "New land" means surface or subsurface land or mineral estate that a mine
319 operator gains ownership or control of, whether ~~or not~~ that land or mineral estate is included
320 in the mine operator's large mine permit.

321 [(15)] (19) "Off-site" has the same meaning as provided in Section 40-8-4.

322 [(16)] (20) "On-site" has the same meaning as provided in Section 40-8-4.

323 [(17)] (21) "Planning commission" means:

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

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

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

334 [(18)] (22) "Political subdivision" means a county, city, town, school district, local
335 district, or special service district.

336 [(19)] (23) "Proposal sponsors" means the owners of land in agricultural production
337 ~~[or]~~, industrial use, or critical infrastructure materials operations who are sponsoring the

338 proposal for creating an agriculture protection area [~~or~~], industrial protection area[;
 339 respectively], or critical infrastructure materials protection area.

340 [~~(20)~~] (24) "State agency" means each department, commission, board, council,
 341 agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory,
 342 library, unit, bureau, panel, or other administrative unit of the state.

343 [~~(21)~~] (25) "Unincorporated" means not within a city or town.

344 [~~(22)~~] (26) "Vested mining use" means a mining use:

345 (a) by a mine operator; and

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

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

349 **17-41-201. Protection area advisory board.**

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

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

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

357 (A) the executive director of the Department of Transportation, or the executive
 358 director's designee;

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

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

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

364 (E) a representative of the construction industry appointed by the county legislative
 365 body.

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

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

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

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

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

379 (i) the desirability of the proposal;

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

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

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

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

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

389 **17-41-301. Proposal for creation of a protection area.**

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

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

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

396 (b) A proposal to create a critical infrastructure protection area can only be initiated by
397 the legislative body of the municipality or county. Creation of a critical infrastructure materials
398 protection area is a legislative act.

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

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

406 (2) The proposal shall identify:

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

409 (b) any limits on the types of agriculture production ~~[or]~~, industrial use, or critical
410 infrastructure materials operations to be allowed within the ~~[agriculture protection area or~~
411 ~~industrial]~~ relevant protection area~~[-, respectively]~~; and

412 (c) for each parcel of land:

413 (i) the names of the owners of record of the land proposed to be included within the
414 ~~[agriculture protection area or industrial]~~ relevant protection area;

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

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

417 (3) An agriculture protection area ~~[or]~~, industrial protection area, or critical
418 infrastructure materials protection area may include within its boundaries land used for a
419 roadway, dwelling site, park, or other nonagricultural ~~[or]~~ use, in the case of an industrial
420 protection area, nonindustrial use, or in the case of a critical infrastructure materials protection
421 area, use unrelated to critical infrastructure materials operations, if that land constitutes a

422 minority of the total acreage within the [~~agriculture protection area or industrial~~] the relevant
423 protection area~~], respectively~~].

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

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

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

427 (5) [~~Each~~] A county and municipal legislative body shall establish the minimum
428 number of continuous acres that shall be included in an agriculture protection area [~~or~~],
429 industrial protection area, or critical infrastructure materials protection area.

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

431 **17-41-302. Notice of proposal for creation of protection area -- Responses.**

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

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

434 [~~(H)~~] (A) the same county as the land proposed for inclusion within an agriculture
435 protection area [~~or~~], industrial protection area, or critical infrastructure materials protection
436 area, as the case may be, if the land is within the unincorporated part of the county; or

437 [~~(H)~~] (B) the same city or town as the land proposed for inclusion within an agriculture
438 protection area [~~or~~], industrial protection area, or critical infrastructure materials protection
439 area, as the case may be, if the land is within a city or town; and

440 (ii) as required in Section 45-1-101;

441 (b) posting notice at five public places, designated by the county or municipal
442 legislative body, within or near the proposed agriculture protection area [~~or~~], industrial
443 protection area, or critical infrastructure materials protection area; and

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

447 (2) The notice shall contain:

448 (a) a statement that a proposal for the creation of an agriculture protection area [~~or~~],
449 industrial protection area, or critical infrastructure materials protection area has been filed with

450 the applicable legislative body;

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

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

455 (i) written objections to the proposal; or

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

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

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

462 (i) the proposal to create the agriculture protection area [~~or~~], industrial protection area,
463 or critical infrastructure materials protection area;

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

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

466 and

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

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

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

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

478 **17-41-303. Review of proposal for creation of protection area.**

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

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

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

486 (ii) analyzes and evaluates the proposal by applying the criteria contained in Section
487 [17-41-305](#);

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

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

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

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

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

499 (ii) analyzes and evaluates the proposal by applying the criteria contained in Section
500 [17-41-305](#);

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

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

504 (c) The applicable legislative body shall consider a failure of the planning commission
505 or advisory committee to submit a written report within the 45 days under Subsection (2)(a) or

506 (b) as a recommendation of that committee to approve the proposal as submitted.

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

508 **17-41-304. Public hearing -- Review and action on proposal.**

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

512 (a) schedule a public hearing;

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

514 (i) publishing notice:

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

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

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

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

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

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

529 (c) ensure that the notice includes:

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

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

533 (iii) any proposed modifications to the proposed agriculture protection area [or],

534 industrial protection area, or critical infrastructure materials protection area;

535 (iv) a summary of the recommendations of the advisory committee and planning
536 commission; and

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

540 (2) The applicable legislative body shall:

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

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

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

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

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

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

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

553 (4) (a) [~~In order to~~] To give constructive notice of the existence of the agriculture
554 protection area [~~or~~], industrial protection area, or critical infrastructure materials protection
555 area to all persons who have, may acquire, or may seek to acquire an interest in land in or
556 adjacent to the [~~agriculture protection area or industrial~~] relevant protection area[~~;~~
557 ~~respectively;~~] within 10 days of the creation of [~~an agriculture protection area or industrial~~] the
558 relevant protection area, the applicable legislative body shall file an executed document
559 containing a legal description of the [~~agriculture protection area or industrial~~] relevant
560 protection area[~~, as the case may be,~~] with:

561 (i) the county recorder of deeds; and

562 (ii) the affected planning commission.

563 (b) If the legal description of the property to be included in the [~~agriculture protection~~
564 ~~area or industrial~~] relevant protection area is available through the county recorder's office, the
565 applicable legislative body shall use that legal description in its executed document required in
566 Subsection (4)(a).

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

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

571 (b) include in the notification:

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

573 (ii) the total acreage of the area;

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

575 (iv) the date of recording.

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

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

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

583 **17-41-305. Criteria to be applied in evaluating a proposal for the creation of a**
584 **protection area.**

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

589 (1) whether or not the land is currently being used for agriculture production [~~or for~~

590 an], industrial use, or critical infrastructure materials operations, as the case may be;

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

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

595 (4) the extent and nature of existing or proposed farm improvements [or], the extent
596 and nature of existing or proposed improvements to or expansion of the industrial use, or the
597 extent and nature of existing or proposed improvements to or expansion of critical
598 infrastructure materials operations, as the case may be; and

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

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

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

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

607 **17-41-306. Adding land to or removing land from a protection area -- Removing**
608 **land from a mining protection area.**

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

612 (i) filing a proposal with:

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

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

617 (ii) obtaining the approval of the applicable legislative body for the addition of the land

618 to the relevant protection area.

619 (b) The applicable legislative body shall:

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

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

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

627 (2) (a) [~~Any~~] An owner of land within an agriculture protection area [or], industrial
628 protection area, or critical infrastructure materials protection area may remove any or all of the
629 land from the [~~agriculture protection area or industrial~~] relevant protection area, [~~respectively,~~]
630 by filing a petition for removal with the applicable legislative body.

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

632 (A) shall:

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

638 (II) [~~in order~~] to give constructive notice of the removal to all persons who have, may
639 acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection
640 area [or], industrial protection area, or critical infrastructure materials protection area and the
641 land removed from the [~~agriculture protection area or industrial~~] relevant protection area, file a
642 legal description of the revised boundaries of the [~~agriculture protection area or industrial~~]
643 relevant protection area with the county recorder of deeds and the affected planning
644 commission; and

645 (B) may not charge a fee in connection with a petition to remove land from an

646 agriculture protection area [~~or~~], an industrial protection area, or critical infrastructure materials
647 protection area.

648 (ii) The remaining land in the agriculture protection area [~~or~~], industrial protection
649 area, or critical infrastructure materials protection area is still an agriculture protection area
650 [~~or~~], industrial protection area~~[-, respectively],~~ or critical infrastructure materials protection
651 area.

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

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

658 (C) The written declaration of abandonment under this Subsection (2)(b)(iii) shall
659 specify the critical infrastructure materials operations or the portion of the critical infrastructure
660 materials operations being abandoned.

661 (3) (a) If a municipality annexes any land that is part of an agriculture protection area
662 [~~or~~], industrial protection area, or critical infrastructure materials protection area located in the
663 unincorporated part of the county, the county legislative body shall, within 30 days after the
664 land is annexed, review the feasibility of that land remaining in the [~~agriculture protection area~~
665 ~~or industrial~~] relevant protection area according to the procedures and requirements of Section
666 17-41-307.

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

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

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

673 (c) Removal of land from an agriculture protection area [~~or~~], industrial protection area,

674 or critical infrastructure materials protection area under this Subsection (3) does not affect
 675 whether that land may be:

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

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

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

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

685 **17-41-307. Review of protection areas.**

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

689 (a) the county legislative body, if the [~~agriculture protection area or industrial~~] relevant
 690 protection area is within the unincorporated part of the county; or

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

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

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

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

701 (iii) give notice of the hearing using the same procedures required by Section

702 17-41-302; and

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

705 (b) If the applicable legislative body modifies or terminates the agriculture protection
706 area [~~or~~], industrial protection area, or critical infrastructure materials protection area, [it] the
707 applicable legislative body shall file an executed document containing the legal description of
708 the [~~agriculture protection area or industrial~~] relevant protection area, [~~respectively,~~] with the
709 county recorder of deeds.

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

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

716 **17-41-402. Limitations on local regulations.**

717 (1) A political subdivision within which an agriculture protection area [~~or~~], industrial
718 protection area, or critical infrastructure materials protection area is created or with a mining
719 protection area within its boundary shall encourage the continuity, development, and viability
720 of agriculture use, industrial use, critical infrastructure materials operations, or mining use,
721 [~~respectively,~~] within the relevant protection area by not enacting a local law, ordinance, or
722 regulation that, unless the law, ordinance, or regulation bears a direct relationship to public
723 health or safety, would unreasonably restrict:

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

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

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

729 (d) in the case of a mining protection area, a mining use within the protection area

730 [~~unless the law, ordinance, or regulation bears a direct relationship to public health or safety~~].

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

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

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

743 [~~(4)~~] (5) A political subdivision may not change the zoning designation of or a zoning
744 regulation affecting land within a mining protection area unless the political subdivision
745 receives written approval for the change from each mine operator within the area.

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

747 (a) adopt, enact, or amend an existing land use regulation, ordinance, or regulation that
748 would prohibit, restrict, regulate, or otherwise limit critical infrastructure materials operations,
749 including vested critical infrastructure materials operations as defined in Section [10-9a-901](#) or
750 [17-27a-1001](#); or

751 (b) initiate proceedings to amend the county's, city's, or town's land use ordinances as
752 described in Subsection [10-9a-509\(1\)\(a\)\(ii\)](#) or [17-27a-508\(1\)\(a\)\(ii\)](#).

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

754 **17-41-403. Nuisances.**

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

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

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

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

768 (2) In a civil action for nuisance or a criminal action for public nuisance under Section
769 76-10-803, it is a complete defense if the action involves agricultural activities and those
770 agricultural activities were:

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

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

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

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

777 (i) is presumed to be reasonable; and

778 (ii) may not constitute a private or public nuisance under Section 76-10-803.

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

782 (4) (a) For any new subdivision development located in whole or in part within 300
783 feet of the boundary of an agriculture protection area, the owner of the development shall
784 provide notice on any plat filed with the county recorder the following notice:

785 "Agriculture Protection Area

814 critical infrastructure materials operations."

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

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

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

825 **17-41-404. Policy of state agencies.**

826 ~~[Each]~~ A state agency shall encourage the continuity, development, and viability of
827 agriculture within agriculture protection areas ~~[and]~~, industrial uses within industrial protection
828 areas, and critical infrastructure materials operations within critical infrastructure protection
829 areas by:

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

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

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

841 **17-41-405. Eminent domain restrictions.**

842 (1) A political subdivision having or exercising eminent domain powers may not
843 condemn for any purpose any land within an agriculture protection area that is being used for
844 agricultural production ~~[or any]~~, land within an industrial protection area that is being put to an
845 industrial use, or land within a critical infrastructure materials protection area, unless ~~[it has~~
846 ~~obtained]~~ the political subdivision obtains approval, according to the procedures and
847 requirements of this section, from the applicable legislative body and the advisory board.

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

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

854 (a) hold a joint public hearing on the proposed condemnation at a location within the
855 county in which the ~~[agriculture protection area or industrial]~~ relevant protection area is
856 located;

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

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

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

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

864 (4) (a) If the condemnation is for highway purposes or for the disposal of solid or
865 liquid waste materials, the applicable legislative body and the advisory board may approve the
866 condemnation only if there is no reasonable and prudent alternative to the use of the land
867 within the agriculture protection area ~~[or]~~, industrial protection area, or critical infrastructure
868 materials protection area for the project.

869 (b) If the condemnation is for any other purpose, the applicable legislative body and the

870 advisory board may approve the condemnation only if:

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

873 (A) agriculture within the agriculture protection area [~~or of~~];

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

875 (C) critical infrastructure materials operations within the critical infrastructure
876 materials protection area; or

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

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

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

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

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

888 **17-41-406. Restrictions on state development projects.**

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

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

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

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

898 (a) review the state agency's proposed development plan; and
899 (b) recommend any modifications to the development project that would protect the
900 integrity of the agriculture protection area [or], industrial protection area, or critical
901 infrastructure materials protection area, as the case may be, or that would protect the
902 agriculture protection area from nonfarm encroachment [or], the industrial protection area from
903 nonindustrial encroachment, or the critical infrastructure materials protection area from
904 encroachment of uses unrelated to critical infrastructure materials operations.

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

907 (a) consider:

908 (i) whether the transportation corridor would:

909 (A) be located on land that is included within an agriculture protection area; or

910 (B) interfere with agriculture production activities on land within an agriculture
911 protection area; and

912 (ii) each other reasonably comparable alternative to the placement of the corridor on
913 land within an agriculture protection area; and

914 (b) make reasonable efforts to minimize or eliminate any detrimental impact on
915 agriculture that may result from the designation of a transportation corridor.

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

917 **76-10-803. "Public nuisance" defined -- Agricultural operations -- Critical**
918 **infrastructure materials operations.**

919 (1) A public nuisance is a crime against the order and economy of the state and consists
920 in unlawfully doing any act or omitting to perform any duty, which act or omission:

921 (a) annoys, injures, or endangers the comfort, repose, health, or safety of three or more
922 persons;

923 (b) offends public decency;

924 (c) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for
925 passage, any lake, stream, canal, or basin, or any public park, square, street, or highway;

926 (d) is a nuisance as ~~[defined]~~ described in Section 78B-6-1107; or
927 (e) in any way renders three or more persons insecure in life or the use of property.

928 (2) An act which affects three or more persons in any of the ways specified in this
929 section is still a nuisance regardless of the extent to which the annoyance or damage inflicted
930 on individuals is unequal.

931 (3) (a) Activities conducted in the normal and ordinary course of agricultural
932 operations, as defined in Subsection 78B-6-1101(7), and conducted in accordance with sound
933 agricultural practices are presumed to be reasonable and not constitute a public nuisance under
934 Subsection (1).

935 (b) Agricultural operations undertaken in conformity with federal, state, and local laws
936 and regulations, including zoning ordinances, are presumed to be operating within sound
937 agricultural practices.

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

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

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

946 **78B-6-1101. Definitions -- Nuisance -- Right of action.**

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

950 (2) A nuisance may include the following:

- 951 (a) drug houses and drug dealing as provided in Section 78B-6-1107;
- 952 (b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;
- 953 (c) criminal activity committed in concert with two or more persons as provided in

954 Section [76-3-203.1](#);

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

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

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

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

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

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

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

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

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

968 (b) hotel or motel rooms.

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

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

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

976 (8) "Critical infrastructure materials operations" means the same as that term is defined
977 in Section [10-9a-901](#).

978 [~~(8)~~] (9) "Manufacturing facility" means any factory, plant, or other facility including
979 its appurtenances, where the form of raw materials, processed materials, commodities, or other
980 physical objects is converted or otherwise changed into other materials, commodities, or
981 physical objects or where such materials, commodities, or physical objects are combined to

982 form a new material, commodity, or physical object.

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

984 **78B-6-1115. Critical infrastructure materials operations -- Nuisance liability.**

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

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