

CRITICAL INFRASTRUCTURE MATERIALS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Logan Wilde

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses critical infrastructure materials.

Highlighted Provisions:

This bill:

- ▶ 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;
- ▶ limits local regulation of vested critical infrastructure materials operations;
- ▶ addresses nuisances;
- ▶ requires certain recordings with the county recorder;
- ▶ addresses actions of state agencies related to critical infrastructure materials protection areas;
- ▶ restricts eminent domain;
- ▶ enacts provisions related to vested critical infrastructure materials operations; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 17-41-101, as last amended by Laws of Utah 2015, Chapter 352

34 17-41-201, as last amended by Laws of Utah 2007, Chapter 179

35 17-41-301, as last amended by Laws of Utah 2011, Chapter 297

36 17-41-302, as last amended by Laws of Utah 2009, Chapter 388

37 17-41-303, as last amended by Laws of Utah 2006, Chapter 194

38 17-41-304, as last amended by Laws of Utah 2010, Chapter 90

39 17-41-305, as last amended by Laws of Utah 2006, Chapter 194

40 17-41-306, as last amended by Laws of Utah 2009, Chapter 376

41 17-41-307, as last amended by Laws of Utah 2017, Chapter 92

42 17-41-402, as last amended by Laws of Utah 2009, Chapter 376

43 17-41-402.5, as enacted by Laws of Utah 2009, Chapter 376

44 17-41-403, as last amended by Laws of Utah 2009, Chapter 376

45 17-41-404, as last amended by Laws of Utah 2006, Chapter 194

46 17-41-405, as last amended by Laws of Utah 2010, Chapter 90

47 17-41-406, as last amended by Laws of Utah 2008, Chapter 168

48 ENACTS:

49 17-41-601, Utah Code Annotated 1953

50 17-41-602, Utah Code Annotated 1953

51 17-41-603, Utah Code Annotated 1953



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

54 Section 1. Section 17-41-101 is amended to read:

55 **17-41-101. Definitions.**

56 As used in this chapter:

57 (1) "Advisory board" means:

58 (a) for an agriculture protection area, the agriculture protection area advisory board

59 created as provided in Section 17-41-201; ~~and~~

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

62 (c) for a critical infrastructure materials protection area, the critical infrastructure
63 materials protection area advisory board created as provided in Section 17-41-201.

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

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

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

71 (4) "Applicable legislative body" means:

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

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

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

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

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

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

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

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

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

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

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

95 (b) has produced commercial quantities of critical infrastructure materials from the
96 critical infrastructure materials operations.

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

100 (b) "Critical infrastructure materials protection area" does not include a vested critical
101 infrastructure materials protection area.

102 ~~[(6)]~~ (10) "Crops, livestock, and livestock products" includes:

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

105 (i) forages and sod crops;

106 (ii) grains and feed crops;

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

108 (iv) trees and fruits; or

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

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

113 ~~[(7)]~~ (11) "Division" means the Division of Oil, Gas, and Mining created in Section
114 40-6-15.

115 ~~[(8)]~~ (12) "Industrial protection area" means a geographic area created under the
116 authority of this chapter that is granted the specific legal protections contained in this chapter.

117 ~~[(9)]~~ (13) "Mine operator" means a natural person, corporation, association,
118 partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other
119 organization or representative, either public or private, including a successor, assign, affiliate,
120 subsidiary, and related parent company, that, as of January 1, 2009:

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

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

124 [~~(10)~~] (14) "Mineral deposit" has the same meaning as defined in Section 40-8-4, but
125 excludes:

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

127 (b) consolidated rock that:

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

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

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

131 [~~(11)~~] (15) "Mining protection area" means land where a vested mining use occurs,
132 including each surface or subsurface land or mineral estate that a mine operator with a vested
133 mining use owns or controls.

134 [~~(12)~~] (16) "Mining use":

135 (a) means:

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

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

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

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

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

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

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

147 (v) any smelting, refining, autoclaving, or other primary or secondary processing
148 operation;

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

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

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

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

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

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

161 ~~[(13)]~~ (17) (a) "Municipal" means of or relating to a city or town.

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

163 ~~[(14)]~~ (18) "New land" means:

164 (a) for vested critical infrastructure materials operations, surface or subsurface land that
165 a critical infrastructure materials operator gains ownership or control of; or

166 (b) for vested mining use, surface or subsurface land or mineral estate that a mine
167 operator gains ownership or control of, whether ~~or not~~ that land or mineral estate is included
168 in the mine operator's large mine permit.

169 ~~[(15)]~~ (19) "Off-site" has the same meaning as provided in Section 40-8-4.

170 ~~[(16)]~~ (20) "On-site" has the same meaning as provided in Section 40-8-4.

171 ~~[(17)]~~ (21) "Planning commission" means:

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

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

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

182 ~~[(18)]~~ (22) "Political subdivision" means a county, city, town, school district, local

183 district, or special service district.

184 [(19)] (23) "Proposal sponsors" means the owners of land in agricultural production
 185 [or], industrial use, or critical infrastructure materials operations who are sponsoring the
 186 proposal for creating an agriculture protection area [or], industrial protection area[;
 187 respectively], or critical infrastructure materials protection area.

188 [(20)] (24) "State agency" means each department, commission, board, council,
 189 agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory,
 190 library, unit, bureau, panel, or other administrative unit of the state.

191 [(21)] (25) "Unincorporated" means not within a city or town.

192 (26) "Vested critical infrastructure materials operations" means critical infrastructure
 193 materials operations:

194 (a) initiated by a critical infrastructure materials operator on or before January 1, 2016;
 195 and

196 (b) that existed or was conducted or otherwise engaged in before a political subdivision
 197 prohibits, restricts, or otherwise limits the critical infrastructure materials operations.

198 (27) "Vested critical infrastructure materials protection area" means a geographic area
 199 where vested critical infrastructure materials operations occurs, including each surface or
 200 subsurface land that a critical infrastructure materials operator with a vested critical
 201 infrastructure materials operations owns or controls.

202 [(22)] (28) "Vested mining use" means a mining use:

203 (a) by a mine operator; and

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

206 Section 2. Section **17-41-201** is amended to read:

207 **17-41-201. Protection area advisory board.**

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

211 (ii) [Each] A county legislative body shall appoint an industrial protection area
 212 advisory board.

213 (iii) Subject to Subsection (1)(b), a county legislative body shall form a critical

214 infrastructure materials protection area advisory board that consists of:

215 (A) the executive director of the Department of Transportation, or the executive
216 director's designee;

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

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

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

222 (E) a representative of the construction industry appointed by the county legislative
223 body.

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

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

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

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

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

237 (i) the desirability of the proposal;

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

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

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

245 (c) perform ~~all~~ the other duties required by this chapter.

246 Section 3. Section **17-41-301** is amended to read:

247 **17-41-301. Proposal for creation of a protection area.**

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

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

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

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

259 (ii) For purposes of Subsection (1)(b)(i), the owners of real property shall be
260 determined by the records of the county recorder.

261 (2) The proposal shall identify:

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

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

267 (c) for each parcel of land:

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

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

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

272 (3) An agriculture protection area ~~[or]~~, industrial protection area, or critical
273 infrastructure materials protection area may include within its boundaries land used for a
274 roadway, dwelling site, park, or other nonagricultural ~~[or]~~ use, in the case of an industrial
275 protection area, nonindustrial use, or in the case of a critical infrastructure materials protection

276 area, use unrelated to critical infrastructure materials operations, if that land constitutes a
277 minority of the total acreage within the [~~agriculture protection area or industrial~~] the relevant
278 protection area[~~, respectively~~].

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

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

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

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

285 Section 4. Section **17-41-302** is amended to read:

286 **17-41-302. Notice of proposal for creation of protection area -- Responses.**

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

288 (a) (i) publishing notice:

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

290 (I) the same county as the land proposed for inclusion within an agriculture protection
291 area [~~or~~], industrial protection area, or critical infrastructure materials protection area, as the
292 case may be, if the land is within the unincorporated part of the county; or

293 (II) the same city or town as the land proposed for inclusion within an agriculture
294 protection area [~~or~~], industrial protection area, or critical infrastructure materials protection
295 area, as the case may be, if the land is within a city or town; and

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

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

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

303 (2) The notice shall contain:

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

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

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

311 (i) written objections to the proposal; or

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

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

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

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

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

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

322 and

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

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

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

333 Section 5. Section **17-41-303** is amended to read:

334 **17-41-303. Review of proposal for creation of protection area.**

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

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

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

342 (ii) analyzes and evaluates the proposal by applying the criteria contained in Section
343 17-41-305;

344 (iii) recommends any modifications to the land to be included in the proposed
345 agriculture protection area [or], industrial protection area, or critical infrastructure materials
346 protection area;

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

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

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

352 (i) recommends any modifications to the land to be included in the proposed
353 agriculture protection area [or], industrial protection area, or critical infrastructure materials
354 protection area;

355 (ii) analyzes and evaluates the proposal by applying the criteria contained in Section
356 17-41-305;

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

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

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

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

363 Section 6. Section 17-41-304 is amended to read:

364 **17-41-304. Public hearing -- Review and action on proposal.**

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

368 (a) schedule a public hearing;

- 369 (b) provide notice of the public hearing by:
- 370 (i) publishing notice:
- 371 (A) in a newspaper having general circulation within:
- 372 (I) the same county as the land proposed for inclusion within the agriculture protection
- 373 area [or], industrial protection area, or critical infrastructure materials protection area, if the
- 374 land is within the unincorporated part of the county; or
- 375 (II) the same city or town as the land proposed for inclusion within an agriculture
- 376 protection area [or], industrial protection area, or critical infrastructure materials protection
- 377 area, if the land is within a city or town; and
- 378 (B) on the Utah Public Notice Website created in Section [63F-1-701](#);
- 379 (ii) posting notice at five public places, designated by the applicable legislative body,
- 380 within or near the proposed agriculture protection area [or], industrial protection area, or
- 381 critical infrastructure materials protection area; and
- 382 (iii) mailing written notice to each owner of land within 1,000 feet of the land proposed
- 383 for inclusion within an agriculture protection area [or], industrial protection area, or critical
- 384 infrastructure materials protection area; and
- 385 (c) ensure that the notice includes:
- 386 (i) the time, date, and place of the public hearing on the proposal;
- 387 (ii) a description of the proposed agriculture protection area [or], industrial protection
- 388 area, or critical infrastructure materials protection area;
- 389 (iii) any proposed modifications to the proposed agriculture protection area [or],
- 390 industrial protection area, or critical infrastructure materials protection area;
- 391 (iv) a summary of the recommendations of the advisory committee and planning
- 392 commission; and
- 393 (v) a statement that interested persons may appear at the public hearing and speak in
- 394 favor of or against the proposal, any proposed modifications to the proposal, or the
- 395 recommendations of the advisory committee and planning commission.
- 396 (2) The applicable legislative body shall:
- 397 (a) convene the public hearing at the time, date, and place specified in the notice; and
- 398 (b) take [~~verbal~~] oral or written testimony from interested persons.
- 399 (3) (a) Within 120 days of the submission of the proposal, the applicable legislative

400 body shall approve, modify and approve, or reject the proposal.

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

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

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

406 (4) (a) [~~In order to~~] To give constructive notice of the existence of the agriculture
407 protection area [~~or~~], industrial protection area, or critical infrastructure materials protection
408 area to all persons who have, may acquire, or may seek to acquire an interest in land in or
409 adjacent to the [~~agriculture protection area or industrial~~] relevant protection area[~~;~~
410 ~~respectively,~~] within 10 days of the creation of [~~an agriculture protection area or industrial~~] the
411 relevant protection area, the applicable legislative body shall file an executed document
412 containing a legal description of the [~~agriculture protection area or industrial~~] relevant
413 protection area[~~; as the case may be,~~] with:

414 (i) the county recorder of deeds; and

415 (ii) the affected planning commission.

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

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

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

424 (b) include in the notification:

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

426 (ii) the total acreage of the area;

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

428 (iv) the date of recording.

429 (6) The applicable legislative body's failure to record the notice required under
430 Subsection (4) or to send the written notification under Subsection (5) does not invalidate the

431 creation of an agriculture protection area.

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

435 Section 7. Section **17-41-305** is amended to read:

436 **17-41-305. Criteria to be applied in evaluating a proposal for the creation of a**
437 **protection area.**

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

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

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

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

448 (4) the extent and nature of existing or proposed farm improvements [~~or~~], the extent
449 and nature of existing or proposed improvements to or expansion of the industrial use, or the
450 extent and nature of existing or proposed improvements to or expansion of critical
451 infrastructure materials operations, as the case may be; and

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

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

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

459 Section 8. Section **17-41-306** is amended to read:

460 **17-41-306. Adding land to or removing land from a protection area -- Removing**
461 **land from a mining protection area or vested critical infrastructure materials protection**

462 **area.**

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

466 (i) filing a proposal with:

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

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

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

473 (b) The applicable legislative body shall:

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

477 (ii) request a copy of the applicable Division of Air Quality approval order.

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

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

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

485 (A) shall:

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

491 (II) [~~in order~~] to give constructive notice of the removal to all persons who have, may
492 acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection

493 area ~~[or]~~, industrial protection area, or critical infrastructure materials protection area and the
494 land removed from the ~~[agriculture protection area or industrial]~~ relevant protection area, file a
495 legal description of the revised boundaries of the ~~[agriculture protection area or industrial]~~
496 relevant protection area with the county recorder of deeds and the affected planning
497 commission; and

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

501 (ii) The remaining land in the agriculture protection area ~~[or]~~, industrial protection
502 area, or critical infrastructure materials protection area is still an agriculture protection area
503 ~~[or]~~, industrial protection area~~[-, respectively]~~, or critical infrastructure materials protection
504 area.

505 (3) (a) If a municipality annexes any land that is part of an agriculture protection area
506 ~~[or]~~, industrial protection area, or critical infrastructure materials protection area located in the
507 unincorporated part of the county, the county legislative body shall, within 30 days after the
508 land is annexed, review the feasibility of that land remaining in the ~~[agriculture protection area~~
509 ~~or industrial]~~ relevant protection area according to the procedures and requirements of Section
510 [17-41-307](#).

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

513 (i) the county legislative body concludes, after the review under Section [17-41-307](#),
514 that removal is appropriate; and

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

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

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

523 (ii) added to an existing agriculture protection area ~~[or]~~, industrial protection area, or

524 critical infrastructure materials protection area within the municipality under Subsection (1).

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

528 (5) A critical infrastructure materials operator that owns or controls land within a
529 vested critical infrastructure materials protection area may remove any or all of the land from
530 the vested critical infrastructure materials protection area by filing a notice of removal with the
531 applicable legislative body in which the land is located.

532 Section 9. Section **17-41-307** is amended to read:

533 **17-41-307. Review of protection areas.**

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

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

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

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

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

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

549 (iii) give notice of the hearing using the same procedures required by Section
550 **17-41-302**; and

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

553 (b) If the applicable legislative body modifies or terminates the agriculture protection
554 area ~~[or]~~, industrial protection area, or critical infrastructure materials protection area, ~~[it]~~ the

555 applicable legislative body shall file an executed document containing the legal description of
556 the [~~agriculture protection area or industrial~~] relevant protection area, [~~respectively,~~] with the
557 county recorder of deeds.

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

563 Section 10. Section ~~17-41-402~~ is amended to read:

564 **17-41-402. Limitations on local regulations.**

565 (1) A political subdivision within which an agriculture protection area [~~or~~], industrial
566 protection area, or critical infrastructure materials protection area is created or with a mining
567 protection area or vested critical infrastructure materials protection area within its boundary
568 shall encourage the continuity, development, and viability of agriculture use, industrial use,
569 critical infrastructure materials operations, or mining use, [~~respectively,~~] within the relevant
570 protection area by not enacting a local law, ordinance, or regulation that, unless the law,
571 ordinance, or regulation bears a direct relationship to public health or safety, would
572 unreasonably restrict:

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

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

576 (c) in the case of a critical infrastructure materials protection area, critical infrastructure
577 materials operations;

578 (d) in the case of a vested critical infrastructure materials protection area, vested
579 critical infrastructure materials operations; or

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

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

586 (3) Except as provided by Section 19-4-113, a political subdivision may not change the
587 zoning designation of or a zoning regulation affecting land within an industrial protection area
588 unless the political subdivision receives written approval for the change from all the
589 landowners within the industrial protection area affected by the change.

590 (4) A political subdivision may not change the zoning designation of or a zoning
591 regulation affecting land within a critical infrastructure materials protection area or vested
592 critical infrastructure materials protection area unless the political subdivision receives written
593 approval for the change from each critical infrastructure materials operator within the relevant
594 area.

595 [~~4~~] (5) A political subdivision may not change the zoning designation of or a zoning
596 regulation affecting land within a mining protection area unless the political subdivision
597 receives written approval for the change from each mine operator within the area.

598 Section 11. Section 17-41-402.5 is amended to read:

599 **17-41-402.5. Limits on political subdivisions with respect to a vested mining use**
600 **or vested critical infrastructure materials operations -- Exception.**

601 (1) A political subdivision may not:

602 (a) terminate a vested mining use or vested critical infrastructure materials operations,
603 whether by amortization, the exercise of police power, or otherwise;

604 (b) prohibit, restrict, or otherwise limit a mine operator with a vested mining use or a
605 critical infrastructure materials operator with vested critical infrastructure materials operations
606 from exercising the rights permitted under this chapter;

607 (c) require, for a vested mining use or vested critical infrastructure materials
608 operations:

609 (i) a variance;

610 (ii) a conditional use permit;

611 (iii) a special exception;

612 (iv) the establishment or determination of a nonconforming use right; or

613 (v) any other type of zoning or land use permit; or

614 (d) prohibit, restrict, limit, or otherwise regulate a vested mining use under a variance,
615 conditional use permit, special exception, or other zoning or land use permit issued before May
616 12, 2009.

617 (2) Subsection (1) does not prohibit a political subdivision from requiring a vested
618 mining use or vested critical infrastructure materials operations to comply with the generally
619 applicable, reasonable health and safety regulations and building code adopted by the political
620 subdivision including a drinking water protection zone as defined and limited to [~~Subsection~~]
621 Subsections 19-4-113(4)(a) and (b).

622 Section 12. Section ~~17-41-403~~ is amended to read:

623 **17-41-403. Nuisances.**

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

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

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

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

637 (2) In a civil action for nuisance or a criminal action for public nuisance under Section
638 ~~76-10-803~~, it is a complete defense if the action involves agricultural activities and those
639 agricultural activities were:

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

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

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

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

646 (i) is presumed to be reasonable; and

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

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

651 (4) (a) A vested critical infrastructure materials operation undertaken in conformity
652 with applicable federal and state law and regulations is presumed to be operating within sound
653 practices.

654 (b) A vested critical infrastructure materials operation that is consistent with sound
655 practices:

656 (i) is presumed to be reasonable; and

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

658 (c) A vested critical infrastructure materials operation that is in operation for more than
659 three years may not be considered to have become a private or public nuisance because of a
660 subsequent change in the condition of land within the vicinity of the vested critical
661 infrastructure materials operations.

662 [~~4~~] (5) (a) For any new subdivision development located in whole or in part within
663 300 feet of the boundary of an agriculture protection area, the owner of the development shall
664 provide notice on any plat filed with the county recorder the following notice:

"Agriculture Protection Area

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

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

"Industrial Protection Area

677 This property is located in the vicinity of an established industrial protection area in
678 which normal industrial uses and activities have been afforded the highest priority use

679 status. It can be anticipated that such industrial uses and activities may now or in the future be
 680 conducted on property included in the industrial protection area. The use and enjoyment of this
 681 property is expressly conditioned on acceptance of any annoyance or inconvenience which may
 682 result from such normal industrial uses and activities."

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

687 "Critical Infrastructure Materials Protection Area

688 This property is located in the vicinity of an established critical infrastructure materials
 689 protection area in which critical infrastructure materials operations have been afforded
 690 the highest priority use status. It can be anticipated that such operations may now or in
 691 the future be conducted on property included in the critical infrastructure materials
 692 protection area. The use and enjoyment of this property is expressly conditioned on
 693 acceptance of any annoyance or inconvenience which may result from such normal
 694 critical infrastructure materials operations."

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

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

704 Section 13. Section **17-41-404** is amended to read:

705 **17-41-404. Policy of state agencies.**

706 [~~Each~~] A state agency shall encourage the continuity, development, and viability of
 707 agriculture within agriculture protection areas [~~and~~], industrial uses with industrial protection
 708 areas, and critical infrastructure materials operations within critical infrastructure protection
 709 areas by:

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

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

720 Section 14. Section **17-41-405** is amended to read:

721 **17-41-405. Eminent domain restrictions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

755 (C) critical infrastructure materials operations within the critical infrastructure
756 materials protection area; or

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

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

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

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

767 Section 15. Section ~~17-41-406~~ is amended to read:

768 **17-41-406. Restrictions on state development projects.**

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

772 (a) the advisory board of the [~~agriculture protection area or industrial~~] relevant
773 protection area~~[-respectively]~~; and

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

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

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

779 (b) recommend any modifications to the development project that would protect the
780 integrity of the agriculture protection area [~~or~~], industrial protection area, or critical
781 infrastructure materials protection area, as the case may be, or that would protect the
782 agriculture protection area from nonfarm encroachment [~~or~~], the industrial protection area from
783 nonindustrial encroachment, or the critical infrastructure materials protection area from
784 encroachment of uses unrelated to critical infrastructure materials operations.

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

787 (a) consider:

788 (i) whether the transportation corridor would:

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

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

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

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

796 Section 16. Section **17-41-601** is enacted to read:

797 **Part 6. Vested Critical Infrastructure Materials Operations**

798 **17-41-601. Vested critical infrastructure materials operations -- Conclusive**
799 **presumption.**

800 (1) (a) Critical infrastructure materials operations are conclusively presumed to be a
801 vested critical infrastructure materials operations if the critical infrastructure materials
802 operations existed or was conducted or otherwise engaged in before a political subdivision

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

804 (b) A person claiming that a vested critical infrastructure materials operations has not
805 been established has the burden of proof to show by clear and convincing evidence that the
806 vested critical infrastructure materials operations has not been established.

807 (2) A vested critical infrastructure materials operations:

808 (a) runs with the land; and

809 (b) may be changed to another critical infrastructure materials operations without
810 losing its status as a vested critical infrastructure materials operations.

811 (3) (a) A critical infrastructure materials operator with vested critical infrastructure
812 materials operations shall file a declaration for recording in the office of the recorder of the
813 county in which the vested critical infrastructure materials operations is located.

814 (b) A declaration under Subsection (3)(a) shall:

815 (i) contain a legal description of the land included within the vested critical
816 infrastructure materials operations; and

817 (ii) provide notice of the vested critical infrastructure materials operations.

818 Section 17. Section **17-41-602** is enacted to read:

819 **17-41-602. Rights of a critical infrastructure materials operator with a vested**
820 **critical infrastructure materials operations -- Expanding vested critical infrastructure**
821 **materials operations.**

822 (1) Notwithstanding a political subdivision's prohibition, restriction, or other limitation
823 on a critical infrastructure materials operations adopted after the establishment of the critical
824 infrastructure materials operations, the rights of a critical infrastructure materials operator with
825 vested critical infrastructure materials operations include the right to:

826 (a) progress, extend, enlarge, grow, or expand the vested critical infrastructure
827 materials operations to land that the critical infrastructure materials operator owns or controls;

828 (b) expand the vested critical infrastructure materials operations to any new land that is
829 contiguous and related in critical infrastructure materials to surface or subsurface land that the
830 critical infrastructure materials operator already owns or controls;

831 (c) use, operate, construct, reconstruct, restore, extend, expand, maintain, repair, alter,
832 substitute, modernize, upgrade, and replace equipment, processes, facilities, and buildings on
833 any surface or subsurface land that the critical infrastructure materials operator owns or

834 controls;

835 (d) increase production or volume, alter the method of excavating or extracting, and
836 process a different or additional critical infrastructure material than previously owned on any
837 surface or subsurface land that the critical infrastructure operator owns or controls; and

838 (e) discontinue, suspend, terminate, deactivate, or continue and reactivate, temporarily
839 or permanently, all or any part of the critical infrastructure operations.

840 (2) (a) As used in this Subsection (2), "applicable legislative body" means the
841 legislative body of each:

842 (i) county in whose unincorporated area the new land to be included in the vested
843 critical infrastructure materials operations is located; and

844 (ii) municipality in which the new land to be included in the vested critical
845 infrastructure materials operations is located.

846 (b) A critical infrastructure materials operator with a vested critical infrastructure
847 materials operations is presumed to have a right to expand the vested critical infrastructure
848 materials operations to new land.

849 (c) Before expanding a vested critical infrastructure materials operations to new land:

850 (i) the applicable legislative body shall request a copy of the applicable Division of Air
851 Quality approval order; and

852 (ii) a critical infrastructure materials operator shall provide written notice:

853 (A) of the critical infrastructure materials operator's intent to expand the vested critical
854 infrastructure materials operations; and

855 (B) to each applicable legislative body.

856 (d) (i) An applicable legislative body shall:

857 (A) hold a public meeting or hearing at its next available meeting that is more than 10
858 days after receiving the notice under Subsection (2)(c); and

859 (B) provide to each owner of the surface estate of the new land reasonable, advance,
860 written notice of the intended expansion of the vested mining use and the public meeting or
861 hearing.

862 (ii) A public meeting or hearing under Subsection (2)(d)(i) serves to provide sufficient
863 public notice of the critical infrastructure materials operator's intent to expand the vested
864 critical infrastructure materials operations to the new land.

865 (e) After the public meeting or hearing under Subsection (2)(d)(ii), a critical
866 infrastructure materials operator may expand a vested critical infrastructure materials operation
867 to new land without any action by an applicable legislative body, unless:

868 (i) there is clear and convincing evidence in the record that the expansion to new land
869 will imminently endanger the public health, safety, and welfare; or

870 (ii) the expansion is contrary to the Division of Air Quality approval order.

871 (3) If a critical infrastructure materials operator expands a vested critical infrastructure
872 materials operations to new land, as authorized under this section:

873 (a) the critical infrastructure materials operator's rights under the vested critical
874 infrastructure materials operations with respect to land on which the vested critical
875 infrastructure materials use occurs apply with equal force after the expansion to the new land;
876 and

877 (b) the critical infrastructure materials protection area that includes land on which the
878 vested critical infrastructure materials operations occurs is expanded to include the new land.

879 Section 18. Section **17-41-603** is enacted to read:

880 **17-41-603. Abandonment of a vested critical infrastructure materials operations.**

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

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

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