

## HB0288S01 compared with HB0288

~~{deleted text}~~ shows text that was in HB0288 but was deleted in HB0288S01.

Inserted text shows text that was not in HB0288 but was inserted into HB0288S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Logan Wilde proposes the following substitute bill:

### CRITICAL INFRASTRUCTURE MATERIALS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Logan Wilde**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill addresses critical infrastructure materials.

##### Highlighted Provisions:

This bill:

- ▶ enacts provisions related to vested critical infrastructure materials operations;
- ▶ amends a definition provision;
- ▶ addresses advisory boards;
- ▶ provides for the creation of critical infrastructure materials protection areas;
- ▶ addresses adding land to or removing land from a critical infrastructure materials protection area;
- ▶ requires review of a critical infrastructure materials protection area;
- ▶ limits local regulation of a critical infrastructure materials protection area;

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- ~~{~~ → ~~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:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

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

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

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

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

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

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

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

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

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

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

~~{~~ → ~~17-41-402.5, as enacted by Laws of Utah 2009, Chapter 376~~

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

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

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

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

#### ENACTS:

~~{~~ ~~17-41-601~~ 10-9a-901, Utah Code Annotated 1953

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~~{17-41-602}~~10-9a-902, Utah Code Annotated 1953

~~{17-41-603}~~10-9a-903, Utah Code Annotated 1953

10-9a-904, Utah Code Annotated 1953

10-9a-905, Utah Code Annotated 1953

17-27a-1001, Utah Code Annotated 1953

17-27a-1002, Utah Code Annotated 1953

17-27a-1003, Utah Code Annotated 1953

17-27a-1004, Utah Code Annotated 1953

17-27a-1005, Utah Code Annotated 1953

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

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

### Part 9. Vested Critical Infrastructure Materials Operations

#### 10-9a-901. Definitions.

As used in this part:

(1) "Critical infrastructure materials" means the same as that term is defined in Section 17-41-101.

(2) "Critical infrastructure materials operations" means the same as that term is defined in Section 17-41-101.

(3) "Critical infrastructure materials operator" means the same as that term is defined in Section 17-41-101.

(4) "Vested critical infrastructure materials operations" means critical infrastructure materials operations that existed or was conducted or otherwise engaged in before a political subdivision prohibits, restricts, or otherwise limits the critical infrastructure materials operations.

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

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

#### 10-9a-902. Vested critical infrastructure materials operations -- Conclusive

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### presumption.

(1) (a) Critical infrastructure materials operations are conclusively presumed to be vested critical infrastructure materials operations if the critical infrastructure materials operations existed or was conducted or otherwise engaged in before a political subdivision prohibits, restricts, or otherwise limits the critical infrastructure materials operations.

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

(2) A vested critical infrastructure materials operations:

(a) runs with the land; and

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

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

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

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

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

(4) A vested critical infrastructure materials operations protected area has the protections found in Title 17, Chapter 41, Agriculture, Industrial, or Critical Infrastructure Materials Protection Areas, for a critical infrastructure materials protection area, except that if there is a conflict between Title 17, Chapter 41, Agriculture, Industrial, or Critical Infrastructure Materials Protection Areas, and this part, this part governs.

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

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

(1) Notwithstanding a political subdivision's prohibition, restriction, or other limitation on a critical infrastructure materials operations adopted after the establishment of the critical infrastructure materials operations, the rights of a critical infrastructure materials operator with

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vested critical infrastructure materials operations include the right to:

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

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

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

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

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

(2) Notwithstanding the other provisions of this section from May 14, 2019, to July 1, 2020, a vested critical infrastructure materials operator may expand a vested critical infrastructure materials operator only if:

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

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

(c) the land is zoned for vested critical infrastructure materials operations.

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

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

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

"Vested Critical Infrastructure Materials Protection Area

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

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

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

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

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

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

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

### Part 10. Vested Critical Infrastructure Materials Operations

#### 17-27a-1001. Definitions.

As used in this part:

(1) "Critical infrastructure materials" means the same as that term is defined in Section 17-41-101.

(2) "Critical infrastructure materials operations" means the same as that term is defined in Section 17-41-101.

(3) "Critical infrastructure materials operator" means the same as that term is defined in Section 17-41-101.

(4) "Vested critical infrastructure materials operations" means critical infrastructure materials operations that existed or was conducted or otherwise engaged in before a political subdivision prohibits, restricts, or otherwise limits the critical infrastructure materials operations.

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

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

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

(1) (a) Critical infrastructure materials operations are conclusively presumed to be vested critical infrastructure materials operations if the critical infrastructure materials operations existed or was conducted or otherwise engaged in before a political subdivision prohibits, restricts, or otherwise limits the critical infrastructure materials operations.

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

(2) A vested critical infrastructure materials operations:

(a) runs with the land; and

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

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

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

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

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

(4) A vested critical infrastructure materials operations protected area has the protections found in Title 17, Chapter 41, Agriculture, Industrial, or Critical Infrastructure Materials Protection Areas, for a critical infrastructure materials protection area, except that if there is a conflict between Title 17, Chapter 41, Agriculture, Industrial, or Critical Infrastructure Materials Protection Areas, and this part, this part governs.

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

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### 17-27a-1003. Rights of a critical infrastructure materials operator with a vested critical infrastructure materials operations -- Expanding vested critical infrastructure materials operations -- Notice.

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

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

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

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

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

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

(2) Notwithstanding the other provisions of this section from May 14, 2019, to July 1, 2020, a vested critical infrastructure materials operator may expand a vested critical infrastructure materials operator only if:

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

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

(c) the land is zoned for vested critical infrastructure materials operations.

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



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### 17-27a-1004. Notice.

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

#### "Vested Critical Infrastructure Materials Protection Area

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

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

### 17-27a-1005. Abandonment of a vested critical infrastructure materials operations.

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

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

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

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

## CHAPTER 41. AGRICULTURE, INDUSTRIAL, OR CRITICAL INFRASTRUCTURE MATERIALS PROTECTION AREAS

### **17-41-101. Definitions.**

As used in this chapter:

- (1) "Advisory board" means:
  - (a) for an agriculture protection area, the agriculture protection area advisory board

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

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

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

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

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

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

(4) "Applicable legislative body" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

~~{~~ ~~——~~ ~~(b) "Critical infrastructure materials protection area" does not include a vested critical infrastructure materials protection area.~~

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

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

(i) forages and sod crops;

(ii) grains and feed crops;

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

(iv) trees and fruits; or

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

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

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

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

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

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

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

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

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

(b) consolidated rock that:

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

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

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

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

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

(a) means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(14)]~~ (18) "New land" means ~~the~~

~~\_\_\_\_\_ (a) for vested critical infrastructure materials operations, surface or subsurface land that a critical infrastructure materials operator gains ownership or control of, or~~

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

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

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

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

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

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

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

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

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district, or special service district.

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

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

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

~~{~~ ~~(26) "Vested critical infrastructure materials operations" means critical infrastructure materials operations:~~

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

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

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

~~†~~ ~~[(22)]~~ ~~(~~28~~26)~~ "Vested mining use" means a mining use:

(a) by a mine operator; and

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

Section ~~(2)~~12. Section 17-41-201 is amended to read:

### 17-41-201. Protection area advisory board.

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

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

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

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infrastructure materials protection area advisory board that consists of:

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

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

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

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

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

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

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

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

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

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

(i) the desirability of the proposal;

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

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

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

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

Section ~~3~~13. Section 17-41-301 is amended to read:

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

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

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

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

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

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

(2) The proposal shall identify:

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

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

(c) for each parcel of land:

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

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

(iii) the number of acres of each parcel.

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



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

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

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

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

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

Section ~~(4)~~ 14. Section **17-41-302** is amended to read:

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

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

(a) (i) publishing notice~~;~~

~~—~~ (A) in a newspaper having general circulation within:

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

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

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

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

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

(2) The notice shall contain:

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

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

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

(i) written objections to the proposal; or

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

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

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

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

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

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

and

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

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

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

Section ~~5~~15. Section **17-41-303** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~6~~16. Section 17-41-304 is amended to read:

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

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

(a) schedule a public hearing;

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(b) provide notice of the public hearing by:

(i) publishing notice:

(A) in a newspaper having general circulation within:

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

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

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

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

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

(c) ensure that the notice includes:

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

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

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

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

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

(2) The applicable legislative body shall:

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

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

(3) (a) Within 120 days of the submission of the proposal, the applicable legislative

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

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

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

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

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

- (i) the county recorder of deeds; and
- (ii) the affected planning commission.

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

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

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

(b) include in the notification:

- (i) the number of landowners owning land within the agriculture protection area;
- (ii) the total acreage of the area;
- (iii) the date of approval of the area; and

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(iv) the date of recording.

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

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

Section ~~{7}~~17. Section **17-41-305** is amended to read:

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

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

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

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

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

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

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

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

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

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Section ~~{8}~~18. Section 17-41-306 is amended to read:

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

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

(i) filing a proposal with:

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

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

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

(b) The applicable legislative body shall:

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

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

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

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

(b) (i) The applicable legislative body:

(A) shall:

(I) grant the petition for removal of land from [~~an agriculture protection area or industrial~~] the relevant protection area, [~~as the case may be,~~] even if removal of the land would result in an agriculture protection area [or], industrial protection area, ~~{or}~~critical infrastructure

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materials protection area of less than the number of acres established by the applicable legislative body as the minimum under Section 17-41-301; and

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

‡ Section ~~{9}~~19. Section **17-41-307** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

Section ~~{10}~~20. Section 17-41-402 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

~~— 17-41-402.5. Limits on political subdivisions with respect to a vested mining use or~~ (6) From May 14, 2019, to July 1, 2020, a county, city, or town may not:

(a) adopt, enact, or amend an existing land use regulation, ordinance, or regulation that would prohibit, restrict, regulate, or otherwise limit critical infrastructure materials operations, including vested critical infrastructure materials operations ~~{-- Exception:~~

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~~— (1) A political subdivision may not:~~

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

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

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

~~— (i) a variance;~~

~~— (ii) a conditional use permit;~~

~~— (iii) a special exception;~~

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

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

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

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

~~— Section 12 as defined in Section 10-9a-901 or 17-27a-1001; or~~

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

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

### **17-41-403. Nuisances.**

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

(a) for an agriculture protection area, any agricultural activity or operation within an agriculture protection area conducted using sound agricultural practices unless that activity or

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operation bears a direct relationship to public health or safety; [or]

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

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

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

(a) conducted within an agriculture protection area; and

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

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

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

(i) is presumed to be reasonable; and

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

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

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

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

~~— (i) is presumed to be reasonable; and~~

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

~~— (c) A vested critical infrastructure materials operation that is in operation for more than three years may not be considered to have become a private or public nuisance because of a~~

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subsequent change in the condition of land within the vicinity of the vested critical infrastructure materials operations:

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

### "Agriculture Protection Area

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

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

### "Industrial Protection Area

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

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

### "Critical Infrastructure Materials Protection Area

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

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

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

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

Section ~~{13}~~22. Section 17-41-404 is amended to read:

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

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

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

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

Section ~~{14}~~23. Section 17-41-405 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

Section ~~{15}~~24. Section 17-41-406 is amended to read:

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

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

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

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

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

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

(b) recommend any modifications to the development project that would protect the integrity of the agriculture protection area [~~or~~], industrial protection area, or critical infrastructure materials protection area, as the case may be, or that would protect the agriculture protection area from nonfarm encroachment [~~or~~], the industrial protection area from nonindustrial encroachment, or the critical infrastructure materials protection area from

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encroachment of uses unrelated to critical infrastructure materials operations.

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

(a) consider:

(i) whether the transportation corridor would:

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

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

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

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

~~{~~ ~~Section 16. Section 17-41-601 is enacted to read:~~

### **~~Part 6. Vested Critical Infrastructure Materials Operations~~**

~~17-41-601. Vested critical infrastructure materials operations -- Conclusive presumption.~~

~~(1) (a) Critical infrastructure materials operations are conclusively presumed to be a vested critical infrastructure materials operations if the critical infrastructure materials operations existed or was conducted or otherwise engaged in before a political subdivision prohibits, restricts, or otherwise limits the critical infrastructure materials operations:~~

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

~~(2) A vested critical infrastructure materials operations:~~

~~(a) runs with the land; and~~

~~(b) may be changed to another critical infrastructure materials operations without losing its status as a vested critical infrastructure materials operations:~~

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

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

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~~\_\_\_\_\_ (i) contain a legal description of the land included within the vested critical infrastructure materials operations; and~~

~~\_\_\_\_\_ (ii) provide notice of the vested critical infrastructure materials operations.~~

~~\_\_\_\_\_ Section 17. Section 17-41-602 is enacted to read:~~

~~\_\_\_\_\_ **17-41-602. Rights of a critical infrastructure materials operator with a vested critical infrastructure materials operations -- Expanding vested critical infrastructure materials operations:**~~

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

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

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

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

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

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

~~\_\_\_\_\_ (2) (a) As used in this Subsection (2), "applicable legislative body" means the legislative body of each:~~

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

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

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

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

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

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

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

~~(B) to each applicable legislative body.~~

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

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

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

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

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

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

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

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

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

~~and~~

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

~~—— Section 18. Section 17-41-603 is enacted to read:~~

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

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

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

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

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