

Representative Steven J. Lund proposes the following substitute bill:

MINING OPERATIONS AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steven J. Lund

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill excludes boulders from certain mining definitions.

Highlighted Provisions:

This bill:

- ▶ modifies definitions to exclude boulders or the extraction of boulders; and
- ▶ makes technical 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 2021, Chapter 39

40-8-4, as last amended by Laws of Utah 2021, Chapter 39

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

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

17-41-101. Definitions.



26 As used in this chapter:

27 (1) "Advisory board" means:

28 (a) for an agriculture protection area, the agriculture protection area advisory board
29 created as provided in Section 17-41-201;

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

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

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

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

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

41 (4) "Applicable legislative body" means:

42 (a) with respect to a proposed agriculture protection area, industrial protection area, or
43 critical infrastructure materials protection area:

44 (i) the legislative body of the county in which the land proposed to be included in the
45 relevant protection area is located, if the land is within the unincorporated part of the county; or

46 (ii) the legislative body of the city or town in which the land proposed to be included in
47 the relevant protection area is located; and

48 (b) with respect to an existing agriculture protection area, industrial protection area, or
49 critical infrastructure materials protection area:

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

52 (ii) the legislative body of the city or town in which the relevant protection area is
53 located.

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

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

56 (7) "Critical infrastructure materials operations" means the extraction, excavation,

57 processing, or reprocessing of critical infrastructure materials.

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

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

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

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

68 (10) "Crops, livestock, and livestock products" includes:

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

71 (i) forages and sod crops;

72 (ii) grains and feed crops;

73 (iii) livestock as defined in Section [59-2-102](#);

74 (iv) trees and fruits; or

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

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

79 (11) "Division" means the Division of Oil, Gas, and Mining created in Section
80 [40-6-15](#).

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

83 (13) "Mine operator" means a natural person, corporation, association, partnership,
84 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or
85 representative, either public or private, including a successor, assign, affiliate, subsidiary, and
86 related parent company, that, as of January 1, 2019:

87 (a) owns, controls, or manages a mining use under a large mine permit issued by the

88 division or the board; and

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

90 (14) "Mineral deposit" means the same as that term is defined in Section 40-8-4.

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

94 (16) "Mining use":

95 (a) means:

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

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

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

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

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

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

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

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

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

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

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

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

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

120 (xi) ~~any~~ an activity described in Subsection ~~40-8-4(16)~~(17)(a).

121 (17) (a) "Municipal" means of or relating to a city or town.

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

123 (18) "New land" means surface or subsurface land or mineral estate that a mine
124 operator gains ownership or control of, whether that land or mineral estate is included in the
125 mine operator's large mine permit.

126 (19) "Off-site" means the same as that term is defined in Section 40-8-4.

127 (20) "On-site" means the same as that term is defined in Section 40-8-4.

128 (21) "Planning commission" means:

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

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

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

139 (22) "Political subdivision" means a county, city, town, school district, local district, or
140 special service district.

141 (23) "Proposal sponsors" means the owners of land in agricultural production,
142 industrial use, or critical infrastructure materials operations who are sponsoring the proposal
143 for creating an agriculture protection area, industrial protection area, or critical infrastructure
144 materials protection area.

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

148 (25) "Unincorporated" means not within a city or town.

149 (26) "Vested mining use" means a mining use:

150 (a) by a mine operator; and
151 (b) that existed or was conducted or otherwise engaged in before a political subdivision
152 prohibits, restricts, or otherwise limits a mining use.

153 Section 2. Section **40-8-4** is amended to read:

154 **40-8-4. Definitions.**

155 As used in this chapter:

156 (1) "Adjudicative proceeding" means:

157 (a) a division or board action or proceeding determining the legal rights, duties,
158 privileges, immunities, or other legal interests of one or more identifiable persons, including
159 actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right,
160 permit, or license; or

161 (b) judicial review of a division or board action or proceeding specified in Subsection
162 (1)(a).

163 (2) "Applicant" means a person who has filed a notice of intent to commence mining
164 operations, or who has applied to the board for a review of a notice or order.

165 (3) (a) "Approved notice of intention" means a formally filed notice of intention to
166 commence mining operations, including revisions to the notice of intention that is approved
167 under Section [40-8-13](#).

168 (b) An approved notice of intention is not required for small mining operations.

169 (4) (a) "Basalt" means fine-grained mafic igneous rock formed in the tertiary or
170 quaternary periods.

171 (b) A Utah Geological Survey published map or a United States Geological Survey
172 published map that classifies material as "basalt" is prima facie evidence that the material
173 meets the requirements of Subsection (4)(a). An unmapped area may be classified by a Utah
174 Geological Survey geologist or a professional geologist licensed in the state.

175 (5) "Board" means the Board of Oil, Gas, and Mining.

176 (6) "Boulder" means a naturally occurring consolidated rock fragment greater than 75
177 millimeters in size that is associated with unconsolidated material and detached from bedrock.

178 [~~6~~] (7) "Conference" means an informal adjudicative proceeding conducted by the
179 division or board.

180 [~~7~~] (8) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in

181 the form of consolidated rock, unconsolidated material, solutions, or occurring on the surface,
182 beneath the surface, or in the waters of the land from which any product useful to man may be
183 produced, extracted, or obtained or which is extracted by underground mining methods for
184 underground storage.

185 (b) "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, basalt,
186 boulders, water, geothermal steam, and oil and gas as defined in Chapter 6, Board and Division
187 of Oil, Gas, and Mining, but includes oil shale and bituminous sands extracted by mining
188 operations.

189 [~~(8)~~] (9) "Development" means the work performed in relation to a deposit following
190 the deposit's discovery but before and in contemplation of production mining operations, aimed
191 at preparing the site for mining operations, defining further the ore deposit by drilling or other
192 means, conducting pilot plant operations, constructing roads or ancillary facilities, and other
193 related activities.

194 [~~(9)~~] (10) "Division" means the Division of Oil, Gas, and Mining.

195 [~~(10)~~] (11) "Emergency order" means an order issued by the board in accordance with
196 Title 63G, Chapter 4, Administrative Procedures Act.

197 [~~(11)~~] (12) (a) "Exploration" means surface-disturbing activities conducted for the
198 purpose of:

199 (i) discovering a deposit or mineral deposit;
200 (ii) delineating the boundaries of a deposit or mineral deposit; and
201 (iii) identifying regions or specific areas in which deposits or mineral deposits are most
202 likely to exist.

203 (b) "Exploration" includes:

204 (i) sinking shafts;
205 (ii) tunneling;
206 (iii) drilling holes and digging pits or cuts;
207 (iv) building of roads, and other access ways; and
208 (v) constructing and operating other facilities related to the activities described in this
209 Subsection [~~(11)~~] (12)(b).

210 [~~(12)~~] (13) "Gravel" means a naturally occurring unconsolidated to moderately
211 consolidated accumulation of rock and mineral particles, the dominant size range being

212 between 4 millimeters and 75 millimeters, that has been deposited by sedimentary processes.

213 ~~[(13)]~~ (14) "Hearing" means a formal adjudicative proceeding conducted by the board
214 under the board's procedural rules.

215 ~~[(14)]~~ (15) (a) "Imminent danger to the health and safety of the public" means the
216 existence of a condition or practice, or a violation of a permit requirement or other requirement
217 of this chapter in a mining operation, which condition, practice, or violation could reasonably
218 be expected to cause substantial physical harm to persons outside the permit area before the
219 condition, practice, or violation can be abated.

220 (b) A reasonable expectation of death or serious injury before abatement exists if a
221 rational person, subjected to the same conditions or practices giving rise to the peril, would not
222 expose the rational person to the danger during the time necessary for abatement.

223 ~~[(15)]~~ (16) (a) "Land affected" means the surface and subsurface of an area within the
224 state where mining operations are being or will be conducted, including:

- 225 (i) on-site private ways, roads, and railroads;
- 226 (ii) land excavations;
- 227 (iii) exploration sites;
- 228 (iv) drill sites or workings;
- 229 (v) refuse banks or spoil piles;
- 230 (vi) evaporation or settling ponds;
- 231 (vii) stockpiles;
- 232 (viii) leaching dumps;
- 233 (ix) placer areas;
- 234 (x) tailings ponds or dumps; and
- 235 (xi) work, parking, storage, or waste discharge areas, structures, and facilities.

236 (b) Lands are excluded from Subsection ~~[(15)]~~ (16)(a) that would:

237 (i) be includable as land affected, but which have been reclaimed in accordance with an
238 approved plan, as may be approved by the board; and

239 (ii) include lands in which mining operations have ceased before July 1, 1977.

240 ~~[(16)]~~ (17) (a) "Mining operation" means activities conducted on the surface of the
241 land for the exploration for, development of, or extraction of a mineral deposit, including
242 surface mining and the surface effects of underground and in situ mining, on-site

243 transportation, concentrating, milling, evaporation, and other primary processing.

244 (b) "Mining operation" does not include:

245 (i) the extraction of sand, gravel, [~~and~~] rock aggregate, and boulders;

246 (ii) the extraction of basalt for an area not to exceed 50 acres under active surface

247 mining;

248 (iii) the extraction of oil and gas as defined in Chapter 6, Board and Division of Oil,

249 Gas, and Mining;

250 (iv) the extraction of geothermal steam;

251 (v) smelting or refining operations;

252 (vi) off-site operations and transportation;

253 (vii) reconnaissance activities; or

254 (viii) activities that will not cause significant surface resource disturbance or involve

255 the use of mechanized earth-moving equipment, such as bulldozers or backhoes.

256 [~~(17)~~] (18) "Notice" means:

257 (a) notice of intention, as defined in this chapter; or

258 (b) written information given to an operator by the division describing compliance

259 conditions at a mining operation.

260 [~~(18)~~] (19) "Notice of intention" means a notice to commence mining operations,

261 including revisions to the notice.

262 [~~(19)~~] (20) "Off-site" means the land areas that are outside of or beyond the on-site

263 land.

264 [~~(20)~~] (21) (a) "On-site" means the surface lands on or under which surface or

265 underground mining operations are conducted.

266 (b) A series of related properties under the control of a single operator, but separated

267 by small parcels of land controlled by others, are considered to be a single site unless an

268 exception is made by the division.

269 [~~(21)~~] (22) "Operator" means a natural person, corporation, association, partnership,

270 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or

271 representative, either public or private, owning, controlling, or managing a mining operation or

272 proposed mining operation.

273 [~~(22)~~] (23) "Order" means written information provided by the division or board to an

274 operator or other parties, describing the compliance status of a permit or mining operation.

275 ~~[(23)]~~ (24) "Owner" means a natural person, corporation, association, partnership,
276 receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or
277 representative, either public or private, owning, controlling, or managing a mineral deposit or
278 the surface of lands employed in mining operations.

279 ~~[(24)]~~ (25) "Permit area" means the area of land indicated on the approved map
280 submitted by the operator with the application or notice to conduct mining operations.

281 ~~[(25)]~~ (26) "Permit" means a permit or notice to conduct mining operations issued by
282 the division.

283 ~~[(26)]~~ (27) "Permittee" means a person holding, or who is required by Utah law to
284 hold, a valid permit or notice to conduct mining operations.

285 ~~[(27)]~~ (28) "Person" means an individual, partnership, association, society, joint stock
286 company, firm, company, corporation, or other governmental or business organization.

287 ~~[(28)]~~ (29) "Reclamation" means actions performed during or after mining operations
288 to shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable
289 ecological condition and use that is consistent with local environmental conditions.

290 ~~[(29)]~~ (30) (a) "Rock aggregate" means those consolidated rock materials associated
291 with a sand deposit, a gravel deposit, or a sand and gravel deposit that were created by alluvial
292 sedimentary processes.

293 (b) "Rock aggregate" excludes any solid rock in the form of bedrock, other than basalt,
294 that is exposed at the surface of the earth or overlain by unconsolidated material.

295 ~~[(30)]~~ (31) "Sand" means a naturally occurring unconsolidated to moderately
296 consolidated accumulation of rock and mineral particles, the dominant size range being
297 between .004 millimeters to 4 millimeters, that has been deposited by sedimentary processes.

298 ~~[(31)]~~ (32) "Small mining operations" means mining operations that disturb or will
299 disturb 20 or less surface acres at any given time in an unincorporated area of a county or 10 or
300 less surface acres at any given time in an incorporated area of a county.

301 ~~[(32)]~~ (33) "Unwarranted failure to comply" means the failure of a permittee to prevent
302 the occurrence of a violation of the permit or a requirement of this chapter due to indifference,
303 lack of diligence, or lack of reasonable care, or the failure to abate a violation of the permit or
304 this chapter due to indifference, lack of diligence, or lack of reasonable care.