

1 **MINERAL AND ROCK AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Walt Brooks**

5 Senate Sponsor: Don L. Ipson

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7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to minerals and rock.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies definitions; and
- 13 ▶ makes technical changes.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **17-41-101**, as last amended by Laws of Utah 2020, Chapter 110

21 **40-8-4**, as last amended by Laws of Utah 2020, Chapters 110 and 369

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

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

25 **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, [2009] 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[~~but~~  
91 ~~excludes:~~].

92 [~~(a) building stone, decorative rock, and landscaping rock; and]~~

93 [~~(b) consolidated rock that:~~

94 [~~(i) is not associated with another deposit of minerals;]~~

95 [~~(ii) is or may be extracted from land; and]~~

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

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

100 (16) "Mining use":

101 (a) means:

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

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

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

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

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

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

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

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

- 114 operation;
- 115 (vi) the recovery of any mineral left in residue from a previous extraction or processing
- 116 operation;
- 117 (vii) a mining activity that is identified in a work plan or permitting document;
- 118 (viii) the use, operation, maintenance, repair, replacement, or alteration of a building,
- 119 structure, facility, equipment, machine, tool, or other material or property that results from or is
- 120 used in a surface or subsurface mining operation or activity;
- 121 (ix) any accessory, incidental, or ancillary activity or use, both active and passive,
- 122 including a utility, private way or road, pipeline, land excavation, working, embankment, pond,
- 123 gravel excavation, mining waste, conveyor, power line, trackage, storage, reserve, passive use
- 124 area, buffer zone, and power production facility;
- 125 (x) the construction of a storage, factory, processing, or maintenance facility; and
- 126 (xi) any activity described in Subsection 40-8-4(16)(a).
- 127 (17) (a) "Municipal" means of or relating to a city or town.
- 128 (b) "Municipality" means a city or town.
- 129 (18) "New land" means surface or subsurface land or mineral estate that a mine
- 130 operator gains ownership or control of, whether that land or mineral estate is included in the
- 131 mine operator's large mine permit.
- 132 (19) "Off-site" means the same as that term is defined in Section 40-8-4.
- 133 (20) "On-site" means the same as that term is defined in Section 40-8-4.
- 134 (21) "Planning commission" means:
- 135 (a) a countywide planning commission if the land proposed to be included in the
- 136 agriculture protection area, industrial protection area, or critical infrastructure materials
- 137 protection area is within the unincorporated part of the county and not within a planning
- 138 advisory area;
- 139 (b) a planning advisory area planning commission if the land proposed to be included
- 140 in the agriculture protection area, industrial protection area, or critical infrastructure materials
- 141 protection area is within a planning advisory area; or

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

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

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

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

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

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

156 (a) by a mine operator; and

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

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

160 **40-8-4. Definitions.**

161 As used in this chapter:

162 (1) "Adjudicative proceeding" means:

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

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

169 (2) "Applicant" means a person who has filed a notice of intent to commence mining

170 operations, or who has applied to the board for a review of a notice or order.

171 (3) (a) "Approved notice of intention" means a formally filed notice of intention to  
172 commence mining operations, including revisions to the notice of intention that is approved  
173 under Section ~~40-8-13~~.

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

175 (4) (a) "Basalt" means ~~fine-grained[, dark-colored igneous rock associated with a lava~~  
176 ~~flow or igneous intrusion composed primarily of plagioclase and pyroxene]~~ mafic igneous rock  
177 formed in the tertiary or quaternary periods.

178 (b) A Utah Geological Survey published map or [the] a United States Geological  
179 Survey published [maps that classify] map that classifies material as "basalt" is prima facie  
180 evidence that the material meets the requirements of Subsection (4)(a). An unmapped area  
181 ~~[can]~~ may be classified by a Utah Geological Survey ~~[Geologist]~~ geologist or a ~~[licensed]~~  
182 professional geologist licensed in the state.

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

184 (6) "Conference" means an informal adjudicative proceeding conducted by the division  
185 or board.

186 (7) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in the  
187 form of consolidated rock, unconsolidated material, solutions, or occurring on the surface,  
188 beneath the surface, or in the waters of the land from which any product useful to man may be  
189 produced, extracted, or obtained or which is extracted by underground mining methods for  
190 underground storage.

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

194 (8) "Development" means the work performed in relation to a deposit following the  
195 deposit's discovery but before and in contemplation of production mining operations, aimed at[;  
196 ~~but not limited to,~~] preparing the site for mining operations, defining further the ore deposit by  
197 drilling or other means, conducting pilot plant operations, constructing roads or ancillary

198 facilities, and other related activities.

199 (9) "Division" means the Division of Oil, Gas, and Mining.

200 (10) "Emergency order" means an order issued by the board in accordance with Title  
201 63G, Chapter 4, Administrative Procedures Act.

202 (11) (a) "Exploration" means surface-disturbing activities conducted for the purpose of:

203 (i) discovering a deposit or mineral deposit;

204 (ii) delineating the boundaries of a deposit or mineral deposit; and

205 (iii) identifying regions or specific areas in which deposits or mineral deposits are most  
206 likely to exist.

207 (b) "Exploration" includes:

208 (i) sinking shafts;

209 (ii) tunneling;

210 (iii) drilling holes and digging pits or cuts;

211 (iv) building of roads, and other access ways; and

212 (v) constructing and operating other facilities related to the activities described in this  
213 Subsection (11)(b).

214 (12) "Gravel" means a naturally occurring unconsolidated to moderately consolidated  
215 accumulation of rock and mineral particles, the dominant size range being between 4  
216 millimeters and 75 millimeters, that has been deposited by sedimentary processes.

217 (13) "Hearing" means a formal adjudicative proceeding conducted by the board under  
218 the board's procedural rules.

219 (14) (a) "Imminent danger to the health and safety of the public" means the existence  
220 of a condition or practice, or a violation of a permit requirement or other requirement of this  
221 chapter in a mining operation, which condition, practice, or violation could reasonably be  
222 expected to cause substantial physical harm to persons outside the permit area before the  
223 condition, practice, or violation can be abated.

224 (b) A reasonable expectation of death or serious injury before abatement exists if a  
225 rational person, subjected to the same conditions or practices giving rise to the peril, would not



226 expose the rational person to the danger during the time necessary for abatement.

227 (15) (a) "Land affected" means the surface and subsurface of an area within the state  
228 where mining operations are being or will be conducted, including:

229 (i) on-site private ways, roads, and railroads;

230 (ii) land excavations;

231 (iii) exploration sites;

232 (iv) drill sites or workings;

233 (v) refuse banks or spoil piles;

234 (vi) evaporation or settling ponds;

235 (vii) stockpiles;

236 (viii) leaching dumps;

237 (ix) placer areas;

238 (x) tailings ponds or dumps; and

239 (xi) work, parking, storage, or waste discharge areas, structures, and facilities.

240 (b) Lands are excluded from Subsection (15)(a) that would:

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

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

244 (16) (a) "Mining operation" means activities conducted on the surface of the land for  
245 the exploration for, development of, or extraction of a mineral deposit, including surface  
246 mining and the surface effects of underground and in situ mining, on-site transportation,  
247 concentrating, milling, evaporation, and other primary processing.

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

249 (i) the extraction of sand, gravel, and rock aggregate;

250 (ii) the extraction of basalt for an area not to exceed 50 acres under active surface  
251 mining;

252 (iii) the extraction of oil and gas as defined in Chapter 6, Board and Division of Oil,  
253 Gas, and Mining;

254 (iv) the extraction of geothermal steam;  
255 (v) smelting or refining operations;  
256 (vi) off-site operations and transportation;  
257 (vii) reconnaissance activities; or  
258 (viii) activities that will not cause significant surface resource disturbance or involve  
259 the use of mechanized earth-moving equipment, such as bulldozers or backhoes.

260 (17) "Notice" means:

261 (a) notice of intention, as defined in this chapter; or  
262 (b) written information given to an operator by the division describing compliance  
263 conditions at a mining operation.

264 (18) "Notice of intention" means a notice to commence mining operations, including  
265 revisions to the notice.

266 (19) "Off-site" means the land areas that are outside of or beyond the on-site land.

267 (20) (a) "On-site" means the surface lands on or under which surface or underground  
268 mining operations are conducted.

269 (b) A series of related properties under the control of a single operator, but separated  
270 by small parcels of land controlled by others, are considered to be a single site unless an  
271 exception is made by the division.

272 (21) "Operator" means a natural person, corporation, association, partnership, receiver,  
273 trustee, executor, administrator, guardian, fiduciary, agent, or other organization or  
274 representative, either public or private, owning, controlling, or managing a mining operation or  
275 proposed mining operation.

276 (22) "Order" means written information provided by the division or board to an  
277 operator or other parties, describing the compliance status of a permit or mining operation.

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

282           (24) "Permit area" means the area of land indicated on the approved map submitted by  
283 the operator with the application or notice to conduct mining operations.

284           (25) "Permit" means a permit or notice to conduct mining operations issued by the  
285 division.

286           (26) "Permittee" means a person holding, or who is required by Utah law to hold, a  
287 valid permit or notice to conduct mining operations.

288           (27) "Person" means an individual, partnership, association, society, joint stock  
289 company, firm, company, corporation, or other governmental or business organization.

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

293           (29) (a) "Rock aggregate" means those consolidated rock materials associated with a  
294 sand deposit, a gravel deposit, or a sand and gravel deposit that were created by alluvial  
295 sedimentary processes.

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

298           (30) "Sand" means a naturally occurring unconsolidated to moderately consolidated  
299 accumulation of rock and mineral particles, the dominant size range being between .004  
300 millimeters to 4 millimeters, that has been deposited by sedimentary processes.

301           (31) "Small mining operations" means mining operations that disturb or will disturb 20  
302 or less surface acres at any given time in an unincorporated area of a county or 10 or less  
303 surface acres at any given time in an incorporated area of a county.

304           (32) "Unwarranted failure to comply" means the failure of a permittee to prevent the  
305 occurrence of a violation of the permit or a requirement of this chapter due to indifference, lack  
306 of diligence, or lack of reasonable care, or the failure to abate a violation of the permit or this  
307 chapter due to indifference, lack of diligence, or lack of reasonable care.