



# The National Agricultural Law Center

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States' Right-To-Farm Statutes:

*Utah*



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# A National Agricultural Law Center Research Publication

## States' Right-To-Farm Statutes: Utah

[Utah Code Ann. §§ 17-41-401 to 17-41-406](#)

Current through the 2021 Second Special Session of the 64th Legislature.

### **§ 17-41-401. Farmland Assessment Act benefits not affected**

- (1) Creation of an agriculture protection area may not impair the ability of land within the area to obtain the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment Act.
- (2) The eligibility of land for the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment Act, shall be determined exclusively by the provisions of that act, notwithstanding the land's location within an agriculture protection area.

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

- (1) A political subdivision within which an agriculture protection area, industrial protection area, or critical infrastructure materials protection area is created or with a mining protection area within its boundary shall encourage the continuity, development, and viability of agriculture use, industrial use, critical infrastructure materials operations, or mining use, 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:
  - (a) in the case of an agriculture protection area, a farm structure or farm practice;
  - (b) in the case of an industrial protection area, an industrial use of the land within the area;
  - (c) in the case of a critical infrastructure materials protection area, critical infrastructure materials operations; or
  - (d) in the case of a mining protection area, a mining use within the protection area.
- (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 unless the political subdivision receives written approval for the change from each critical infrastructure materials operator within the relevant area.

(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.

(6) 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 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).

#### **§ 17-41-402.5. Limits on political subdivisions with respect to a vested mining use – Exception**

(1) A political subdivision may not:

(a) terminate a vested mining use, whether by amortization, the exercise of police power, or otherwise;

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

(c) require, for a vested mining use:



- (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 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 19-4-113(4)(a) and (b).

#### **§ 17-41-403. Nuisances**

(1) A political subdivision shall ensure that any of 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 operation bears a direct relationship to public health or safety;

(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:

(a) those agricultural activities were:

(i) conducted within an agriculture protection area; and

(ii) 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; or

(b) a defense under Section 4-44-201 applies.

(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) 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, 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 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.”

(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.”

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

A state agency shall encourage the continuity, development, and viability of agriculture within agriculture protection areas, 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, 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, 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.

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

- (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, land within an industrial protection area that is being put to an industrial use, or land within a critical infrastructure materials protection area, unless 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, industrial protection area, or critical infrastructure materials protection area shall file a notice of condemnation with the



applicable legislative body and the 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 relevant protection area is located;

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

(i) on the Utah Public Notice Website created in Section 63A-16-601; and

(ii) five conspicuous public places, designated by the applicable legislative body, within or near the relevant protection area.

(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, 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:

(A) agriculture within the agriculture protection area;

(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 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.

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

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

(a) the advisory board of the relevant protection area; 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, 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, the industrial protection area from nonindustrial encroachment, or the critical infrastructure materials protection area from encroachment of uses unrelated to critical infrastructure materials operations.

(3) 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.

