

SB 644-6
(LC 1147)
6/22/17
(MAM/EMM/ps)

Requested by Senator COURTNEY

**PROPOSED AMENDMENTS TO
SENATE BILL 644**

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest
2 of the line and lines 3 and 4 and insert “and amending ORS 215.298, 517.750,
3 517.753, 517.755, 517.790, 517.820, 517.830, 517.834, 517.910, 517.952, 517.965 and
4 517.982.”.

5 Delete lines 6 through 29 and delete pages 2 through 23 and insert:

6 **“SECTION 1.** ORS 215.298 is amended to read:

7 **“215.298. (1) As used in this section and ORS 215.213 (2) and 215.283**
8 **(2):**

9 **“(a) ‘Impact area’ means an area extending 1,500 feet in any direc-**
10 **tion from the area of a proposed mining site or the farthest point from**
11 **the proposed mining site where the Department of Land Conservation**
12 **and Development determines that a significant conflict exists, which-**
13 **ever is greater, excluding from the area of the proposed mining site**
14 **any undisturbed buffer areas or areas on a parcel where mining is not**
15 **authorized.**

16 **“(b)(A) ‘Mining’ includes all or any part of the process of mining**
17 **by the removal of overburden and the extraction of natural mineral**
18 **deposits thereby exposed by any method including open-pit mining**
19 **operations, auger mining operations, processing, surface impacts of**
20 **underground mining, production of surface mining refuse and the**
21 **construction of adjacent or off-site borrow pits except those con-**

1 **structured for use as access roads.**

2 **“(B) ‘Mining’ does not include excavations of sand, gravel, clay,**
3 **rock or similar materials conducted by a landowner or tenant on the**
4 **landowner or tenant’s property for the primary purpose of recon-**
5 **struction or maintenance of access roads and excavation or grading**
6 **operations conducted in the process of farming or cemetery oper-**
7 **ations, on-site road construction or other on-site construction or**
8 **nonsurface impacts of underground mines.**

9 **“(c) ‘Significant mineral resource site’ means a proposed mining**
10 **site, other than a site for the mining of aggregate, that is located at**
11 **least one mile outside the border of the nearest incorporated city and**
12 **that either:**

13 **“(A) Has an estimated quantity of gold, silver or other precious**
14 **minerals proposed for mining of 500,000 ounces or more and will create**
15 **75 or more full-time mining-associated jobs, including but not limited**
16 **to site construction, mining, operations management, processing,**
17 **hauling and reclamation; or**

18 **“(B) Will create 100 or more full-time mining-associated jobs, in-**
19 **cluding but not limited to site construction, mining, operations man-**
20 **agement, processing, hauling and reclamation.**

21 **“[(1)] (2)(a) Except as provided in subsection (3) of this section, for**
22 **purposes of ORS 215.213 (2) and 215.283 (2), a land use permit is required for**
23 **mining more than 1,000 cubic yards of material or excavation preparatory to**
24 **mining of a surface area of more than one acre. A county may set standards**
25 **for a lower volume or smaller surface area than that set forth in this sub-**
26 **section.**

27 **“[(2)] (b) A permit for mining of aggregate shall be issued only for a site**
28 **included on an inventory in an acknowledged comprehensive plan.**

29 **“[(3) For purposes of ORS 215.213 (2) and 215.283 (2) and this section,**
30 **‘mining’ includes all or any part of the process of mining by the removal of**

1 *overburden and the extraction of natural mineral deposits thereby exposed by*
2 *any method including open-pit mining operations, auger mining operations,*
3 *processing, surface impacts of underground mining, production of surface*
4 *mining refuse and the construction of adjacent or off-site borrow pits except*
5 *those constructed for use as access roads. ‘Mining’ does not include exca-*
6 *vations of sand, gravel, clay, rock or other similar materials conducted by a*
7 *landowner or tenant on the landowner or tenant’s property for the primary*
8 *purpose of reconstruction or maintenance of access roads and excavation or*
9 *grading operations conducted in the process of farming or cemetery operations,*
10 *on-site road construction or other on-site construction or nonsurface impacts*
11 *of underground mines.]*

12 **“(3) Notwithstanding any contrary provision of ORS 215.283 (2),**
13 **county approval of an application for a land use permit under ORS**
14 **215.283 (2)(b) for mining or excavation preparatory to mining of a sig-**
15 **nificant mineral resource site on land zoned for exclusive farm use**
16 **that is located in Baker County, Grant County, Harney County, Lake**
17 **County, Malheur County, Union County or Wallowa County is not**
18 **subject to:**

19 **“(a) The provisions of ORS 215.296; or**

20 **“(b) Except as provided in subsection (4) of this section, any state-**
21 **wide land use planning goal or any administrative rule relating to land**
22 **use.**

23 **“(4) A county shall deny an application for a land use permit de-**
24 **scribed in subsection (3) of this section if the county determines that**
25 **the use will conflict with an administrative rule adopted for the pur-**
26 **pose of implementing the Oregon Sage-Grouse Action Plan and Exec-**
27 **utive Order 15-18.**

28 **“(5) A county has discretion to deny an application for a land use**
29 **permit described in subsection (3) of this section only if:**

30 **“(a) The county determines, based on clear and objective standards,**

1 **that the proposed use will create:**

2 **“(A) A significant conflict with local road capacity, sight distances,**
3 **horizontal or vertical alignment and cross section elements;**

4 **“(B) A significant safety conflict with existing public airports due**
5 **to bird attractants; or**

6 **“(C) A significant health or safety conflict with existing residential**
7 **uses within the boundaries of the impact area of the proposed use; and**

8 **“(b) The county determines that the conflict identified in paragraph**
9 **(a) of this subsection cannot be minimized through the imposition of**
10 **reasonable and practicable mitigation measures as conditions of ap-**
11 **proval.**

12 **“(6) For purposes of the county determination described in sub-**
13 **section (4) of this section, a significant mineral resource site:**

14 **“(a) Is dependent on a unique geographic or other physical feature**
15 **that cannot be found on other lands; and**

16 **“(b) Provides important economic opportunity for local citizens and**
17 **the entire region.**

18 **“SECTION 2.** ORS 517.750 is amended to read:

19 **“517.750. As used in ORS 517.702 to 517.989, unless the context requires**
20 **otherwise:**

21 **“(1) ‘Board’ means the governing board of the State Department of**
22 **Geology and Mineral Industries.**

23 **“(2) ‘Completion’ means termination of surface mining activities including**
24 **reclamation of the surface-mined land in accordance with the approved rec-**
25 **lamation plan and operating permit.**

26 **“(3) ‘Cooperating agency’ means the State Department of Agricul-**
27 **ture, the State Department of Fish and Wildlife or any agency that**
28 **has statutory responsibility related to a mining operation but that**
29 **does not issue a permit for the mining operation.**

30 **“[(3)] (4) ‘Department’ means the State Department of Geology and Min-**

1 eral Industries.

2 “[4] (5) ‘Exploration’ means all activities conducted on or beneath the
3 surface of the earth for the purpose of determining presence, location, extent,
4 grade or economic viability of a deposit. ‘Exploration’ does not include
5 prospecting or chemical processing of minerals.

6 “[5] (6) ‘Explorer’ means, notwithstanding the provisions of ORS 517.810
7 (2), any individual, public or private corporation, political subdivision,
8 agency, board or department of this state, any municipality, partnership, as-
9 sociation, firm, trust, estate or any other legal entity whatsoever that is
10 engaged in exploration.

11 “[6] (7) ‘Landowner’ means:

12 “(a) The person possessing fee title to the natural mineral deposit being
13 surface mined or explored; and

14 “(b) The owner of an equitable interest in land that is subject to a deed
15 of trust.

16 “[7] (8) ‘Minerals’ includes soil, coal, clay, stone, sand, gravel, metallic
17 ore and any other solid material or substance excavated for commercial, in-
18 dustrial or construction use from natural deposits situated within or upon
19 lands in this state.

20 “[8] (9) ‘Operator’ means any individual, public or private corporation,
21 political subdivision, agency, board or department of this state, any munici-
22 pality, partnership, association, firm, trust, estate or any other legal entity
23 whatsoever that is engaged in surface mining operations.

24 “[9] (10) ‘Overburden’ means the soil, rock and similar materials that lie
25 above natural deposits of minerals.

26 “[10] (11) ‘Person’ means any person, any federal agency or any public
27 body, as defined in ORS 174.109.

28 “[11] (12) ‘Processing’ includes, but is not limited to, crushing, washing,
29 milling and screening as well as the batching and blending of mineral ag-
30 gregate into asphalt and portland cement concrete located within the oper-

1 ating permit area.

2 “[~~(12)~~] **(13)** ‘Reclamation’ means the employment in a surface mining op-
3 eration or exploration of procedures reasonably designed to:

4 “(a) Minimize, as much as practicable, the adverse effects of the surface
5 mining operation or exploration on land, air and water resources; and

6 “(b) Provide for the rehabilitation of surface resources adversely affected
7 by the surface mining operations or exploration through the rehabilitation
8 of plant cover, soil stability and water resources and through other measures
9 that contribute to the subsequent beneficial use of the explored, mined or
10 reclaimed lands.

11 “[~~(13)~~] **(14)** ‘Reclamation plan’ means a written proposal, submitted to the
12 department as required by ORS 517.702 to 517.989 and subsequently approved
13 by the department as provided in ORS 517.702 to 517.989, for the reclamation
14 of the land area adversely affected by a surface mining operation or explo-
15 ration and including, but not limited to the following information:

16 “(a) Proposed measures to be undertaken by the operator in protecting the
17 natural resources of adjacent lands.

18 “(b) Proposed measures for the rehabilitation of the explored or surface-
19 mined lands and the procedures to be applied.

20 “(c) The procedures to be applied in the surface mining operation or ex-
21 ploration to control the discharge of contaminants and the disposal of sur-
22 face mining refuse.

23 “(d) The procedures to be applied in the surface mining operation or ex-
24 ploration in the rehabilitation of affected stream channels and stream banks
25 to a condition minimizing erosion, sedimentation and other factors of pol-
26 lution.

27 “(e) The map required by ORS 517.790 (1)(e) and such other maps and
28 supporting documents as may be requested by the department.

29 “(f) A proposed time schedule for the completion of reclamation oper-
30 ations.

1 “(g) Requirements of the exploration permit.

2 “[~~(14)~~] **(15)** ‘Surface impacts of underground mining’ means all waste ma-
3 terials produced by underground mining and placed upon the surface in-
4 cluding, but not limited to, waste dumps, mill tailings, washing plant fines
5 and all surface subsidence related to underground mining.

6 “[~~(15)(a)~~] **(16)(a)** ‘Surface mining’ includes:

7 “(A) All or any part of the process of mining minerals by the removal of
8 overburden and the extraction of natural mineral deposits thereby exposed
9 by any method by which more than 5,000 cubic yards of minerals are ex-
10 tracted or by which at least one acre of land is affected within a period of
11 12 consecutive calendar months, including open-pit mining operations, auger
12 mining operations, processing, surface impacts of underground mining, pro-
13 duction of surface mining refuse and the construction of adjacent or off-site
14 borrow pits (except those constructed for use as access roads).

15 “(B) Removal or filling, or both, within the beds or banks of any waters
16 of this state that is the subject of a memorandum of agreement between the
17 Department of State Lands and the State Department of Geology and Mineral
18 Industries in which the State Department of Geology and Mineral Industries
19 is assigned sole responsibility for permitting as described in ORS 517.797.

20 “(b) ‘Surface mining’ does not include:

21 “(A) Excavations of sand, gravel, clay, rock or other similar materials
22 conducted by the landowner or tenant for the primary purpose of con-
23 struction, reconstruction or maintenance of access roads on the same parcel
24 or on an adjacent parcel that is under the same ownership as the parcel that
25 is being excavated;

26 “(B) Excavation or grading operations, reasonably necessary for farming;

27 “(C) Nonsurface effects of underground mining;

28 “(D) Removal of rock, gravel, sand, silt or other similar substances re-
29 moved from the beds or banks of any waters of this state pursuant to a
30 permit issued under ORS 196.800 to 196.900; or

1 “(E) Excavations or reprocessing of aggregate material, or grading oper-
2 ations, within the highway right of way reasonably necessary for the con-
3 struction, reconstruction or maintenance of a highway as defined in ORS
4 801.305.

5 “[~~(16)~~] (17) ‘Surface mining refuse’ means all waste materials, soil, rock,
6 mineral, liquid, vegetation and other materials resulting from or displaced
7 by surface mining operations within the operating permit area, including all
8 waste materials deposited in or upon lands within the operating permit area.

9 “[~~(17)~~] (18) ‘Underground mining’ means all human-made excavations be-
10 low the surface of the ground through shafts or adits for the purpose of ex-
11 ploring for, developing or producing valuable minerals.

12 **“SECTION 3.** ORS 517.790 is amended to read:

13 “517.790. (1) A landowner or operator may not allow or engage in surface
14 mining on land not surface mined on July 1, 1972, without holding a valid
15 operating permit from the State Department of Geology and Mineral Indus-
16 tries for the surface mining operation. A separate permit is required for each
17 separate surface mining operation. A person seeking an operating permit
18 from the department shall submit an application on a form provided by the
19 department that contains the following information:

20 “(a) The name and address of the landowner and the operator and the
21 names and addresses of any persons designated by them as their agents for
22 the service of process.

23 “(b) The materials for which the operation is to be conducted.

24 “(c) The type of surface mining to be employed in the operation.

25 “(d) The proposed date for the initiation of the operation.

26 “(e) The size and legal description of the lands that will be affected by
27 the operation, and, if more than 10 acres of land will be affected by the op-
28 eration and if the department determines that the conditions warrant it, a
29 map of the lands to be surface mined that includes the boundaries of the
30 affected lands, topographic details of the lands, the location and names of

1 all streams, roads, railroads, utility facilities, wells, irrigation ditches, ponds,
2 stockpiles, buffers, setbacks and excavation boundaries within or adjacent
3 to the lands, the location of all proposed access roads to be protected or
4 constructed in conducting the operation and the names and addresses of the
5 owners of all surface and mineral interests of the lands included within the
6 surface mining area.

7 “(f) If practicable, a plan for visual screening by vegetation or otherwise
8 that will be established and maintained on the lands within the operation for
9 the purpose of screening the operation from the view of persons using adja-
10 cent public highways, public parks and residential areas.

11 “(g) The type of monitoring well abandonment procedures.

12 “(h) A proposed reclamation plan that is acceptable to and approved by
13 the department.

14 “(i) Any other information that the department considers pertinent in its
15 review of the application.

16 “(2) The department may waive the requirement for preparation and ap-
17 proval of a reclamation plan if:

18 “(a) The operation is conducted as part of the on-site construction of a
19 building, public works project or other physical improvement of the subject
20 property;

21 “(b) The operation is reasonably necessary for such construction; and

22 “(c) The proposed improvements are authorized by the local jurisdiction
23 with land use authority.

24 “(3) The department may not issue an operating permit to an operator
25 other than the owner or owners of the surface and mineral interests of the
26 lands included within the surface mining area unless the operator:

27 “(a) Has written approval from the owner or owners of all surface and
28 mineral interests of the lands included within the surface mining area; and

29 “(b) Maintains a legal interest in the lands that is sufficient to ensure
30 that the operator has the authority to operate and reclaim the lands as

1 provided in the operating permit and reclamation plan.

2 “(4) The department may refuse to issue an operating permit to a person
3 who has not, in the determination of the department, substantially complied
4 with the conditions of an operating permit or reclamation plan, the pro-
5 visions of this chapter or the rules adopted by the department to carry out
6 the purposes of this chapter.

7 **“(5) The department may issue a provisional operating permit to an
8 applicant that has not obtained all required federal, state and local
9 permits and approvals for the proposed mining operation, provided the
10 permit:**

11 **“(a) Does not become effective until the applicant obtains all re-
12 quired permits and approvals; and**

13 **“(b) Contains conditions:**

14 **“(A) Requiring the applicant to obtain an amendment to the provi-
15 sional operating permit if necessary to conform with a subsequently
16 obtained federal, state or local permit or approval; and**

17 **“(B) Prohibiting the applicant from allowing or engaging in any
18 surface mining operations on the land prior to the effective date of the
19 provisional operating permit.**

20 **“SECTION 4.** ORS 517.820 is amended to read:

21 “517.820. (1) Upon good cause shown, the State Department of Geology
22 and Mineral Industries may grant reasonable extensions of time for the
23 completion by the landowner or operator and the submission to the depart-
24 ment of a proposed reclamation plan required by ORS 517.790. Each recla-
25 mation plan submitted to the department must provide that all reclamation
26 activities shall be completed within three years after the termination of
27 mineral extraction from the surface mining operation conducted within each
28 separate area for which an operating permit is requested. Each such recla-
29 mation plan shall be approved by the department if it adequately provides
30 for the reclamation of surface-mined lands.

1 “(2) [*The department,*] Prior to approving a proposed reclamation plan,
2 **the department** shall consult with all other [*interested state*] **cooperating**
3 agencies and appropriate local planning authorities.

4 **“SECTION 5.** ORS 517.830 is amended to read:

5 “517.830. (1) Upon receipt of an application for an operating permit, the
6 State Department of Geology and Mineral Industries shall:

7 “(a) Inspect the operating site described in the application; [*and*]

8 “(b) Provide notice to the local jurisdiction and an opportunity for the
9 local jurisdiction to, within 30 days after the date of the notice, request that
10 the department delay a decision on an operating permit and reclamation plan
11 as provided in subsection (4) of this section[.]; **and**

12 **“(c) If the application is not subject to the consolidated application**
13 **process under ORS 517.952 to 517.989, provide notice to each federal and**
14 **state permitting agency, as defined in ORS 517.952, and each cooper-**
15 **ating agency and provide an opportunity for the agencies to, within**
16 **30 days after the date of the notice, respond in writing to the depart-**
17 **ment identifying reasonably expected adverse effects of the proposed**
18 **mining operation on land, air, water or wildlife resources.**

19 “(2) Within 90 days after the date that the application and the required
20 permit fee are received, the department shall issue the operating permit ap-
21 plied for or, if it considers the application incomplete, return the application
22 to the applicant for correction of the deficiencies indicated by the depart-
23 ment. **An operating permit that is not subject to ORS 517.952 to 517.989**
24 **may contain conditions addressing an adverse effect identified by an**
25 **agency pursuant to subsection (1)(c) of this section, provided:**

26 **“(a) The department determines that the condition is necessary for**
27 **the mining operation to comply with applicable review standards and**
28 **criteria imposed or enforced by the department;**

29 **“(b) The land use decision issued by the local government approving**
30 **the mining operation does not include provisions to mitigate the ad-**

1 **verse effect; and**

2 **“(c) The conditions are reasonable, practicable and designed to**
3 **minimize the adverse effect and minimize the impact of the condition**
4 **on the proposed mining operation.**

5 “(3) Failure by the department to act upon the reclamation plan submitted
6 with an application for an operating permit within the 90-day period referred
7 to in subsection (2) of this section is not a denial by the department of the
8 operating permit applied for. The department, pending final approval of a
9 reclamation plan, may issue a provisional permit subject to reasonable limi-
10 tations that may be prescribed by the department and conditioned upon the
11 applicant’s compliance with the bond and security requirements established
12 by ORS 517.810.

13 “(4)(a) Notwithstanding subsections (2) and (3) of this section, if an ap-
14 plication involves an aggregate site that requires a permit issued pursuant
15 to ORS 215.427 or 227.178, and if the local jurisdiction requests that the ap-
16 plication not be decided until the local jurisdiction has taken final action,
17 the department shall make a final decision on the operating permit and rec-
18 lamation plan no later than 165 days after the date a complete land use ap-
19 plication is submitted to the local jurisdiction, unless the applicant agrees
20 to allow additional time under ORS 215.427, 215.429, 227.178 or 227.179. If a
21 plan amendment is required as part of issuance of a permit, the provisions
22 of paragraph (b) of this subsection apply. The department may not approve
23 an operating permit and reclamation plan if the land use application is de-
24 nied.

25 “(b) Notwithstanding subsections (2) and (3) of this section, if an appli-
26 cation involves an aggregate site that requires amendment to a comprehen-
27 sive plan, as defined in ORS 197.015, and if the local jurisdiction requests
28 that the application not be decided until the local jurisdiction has taken
29 final action on the plan amendment, the department may not make a final
30 decision on the operating permit and reclamation plan until the local juris-

1 diction has taken final action on the plan amendment. The department shall
2 make its final decision within 45 days of the date that the local jurisdiction
3 has taken final action on the plan amendment. The department may not ap-
4 prove an operating permit and reclamation plan if the plan amendment is
5 denied.

6 “(5) Conditions and requirements imposed on an operating permit and
7 reclamation plan, and modifications thereto, issued subsequent to issuance
8 of a local jurisdiction permit shall be compatible with the requirements and
9 conditions of the local government permit, unless more stringent require-
10 ments are necessary to comply with the provisions of ORS 517.750 to 517.901.

11 “(6)(a) If a local jurisdiction does not request that the department delay
12 a decision on an operating permit and reclamation plan as provided in sub-
13 sections (1)(b) and (4) of this section, the department shall, prior to issuing
14 the operating permit, give the local jurisdiction notice and an opportunity
15 to provide comments and the following information about the proposed op-
16 erating permit and reclamation plan:

17 “(A) Information about any applicable local land use regulations;

18 “(B) Whether the site described in the proposed operating permit and
19 reclamation plan is included on a local government inventory required by
20 any open spaces, scenic and historic areas and natural resources land use
21 planning goal;

22 “(C) A statement that an application has or has not been filed for local
23 approval; and

24 “(D) Any other information that the local jurisdiction considers pertinent
25 in its review of the application.

26 “(b) A local jurisdiction shall respond to a notice provided under para-
27 graph (a) of this subsection within 35 days after the date of the notice.

28 “(7) If the department refuses to approve a submitted reclamation plan,
29 it shall notify the applicant, in writing, of its reasons for the refusal to ap-
30 prove the reclamation plan, including additional requirements as may be

1 prescribed by the department for inclusion in the reclamation plan. Within
2 60 days after the receipt of the notice, the applicant shall comply with the
3 additional requirements prescribed by the department for the reclamation
4 plan or file with the department a notice of appeal from the decision of the
5 department with respect to the reclamation plan. If a notice of appeal is filed
6 with the department by the applicant, the department may issue a provi-
7 sional permit to the applicant.

8 “(8) If an application is submitted as part of the consolidated application
9 process under ORS 517.952 to 517.989, review of the application and approval
10 or denial of the application shall be in accordance with ORS 517.952 to
11 517.989. However, the review and approval or denial shall take into consid-
12 eration all policy considerations for issuing a permit under ORS 517.702 to
13 517.989.

14 **“SECTION 6.** ORS 517.910 is amended to read:

15 “517.910. For the purposes of ORS 517.910 to 517.989:

16 “[*(1) Notwithstanding ORS 517.750 (12), ‘reclamation’ means the employ-*
17 *ment in a surface mining operation of procedures reasonably designed to min-*
18 *imize as much as practicable the disruption from the surface mining operation*
19 *or surface mining processing operation and to provide for the rehabilitation*
20 *of any such surface resources through the use of plant cover, soil stability*
21 *techniques, measures to protect the surface and subsurface water resources,*
22 *including but not limited to domestic water use and agricultural water use,*
23 *and other measures appropriate to the subsequent beneficial use of any land*
24 *or water resource affected by a surface mining or processing operation.]*

25 **“(1) ‘Impact area’ has the meaning given that term in ORS 215.298**
26 **(1).**

27 **“(2) ‘Nonaggregate minerals’ means coal and metal-bearing ores, including**
28 **but not limited to ores that contain nickel, cobalt, lead, zinc, gold,**
29 **molybdenum, uranium, silver, aluminum, chrome, copper or mercury.**

30 **“(3) ‘Reclamation’ means, notwithstanding ORS 517.750 (13), the**

1 **employment in a surface mining operation of procedures reasonably**
2 **designed to minimize, as much as practicable, the disruption from the**
3 **surface mining operation or surface mining processing operation and**
4 **to provide for the rehabilitation of any such surface resources through**
5 **the use of plant cover, soil stability techniques, measures to protect**
6 **the surface and subsurface water resources, including but not limited**
7 **to domestic water use and agricultural water use, and other measures**
8 **appropriate to the subsequent beneficial use of any land or water re-**
9 **source affected by a surface mining or processing operation.**

10 **“(4) ‘Significant mineral resource site’ has the meaning given that**
11 **term in ORS 215.298 (1).**

12 **“SECTION 7.** ORS 517.952 is amended to read:

13 **“517.952. As used in ORS 517.952 to 517.989:**

14 **“(1) ‘Affected agency’ includes permitting agencies, cooperating agencies**
15 **and commenting agencies.**

16 **“(2) ‘Baseline data’ means information gathered to characterize the na-**
17 **tural and cultural environments of a mining operation site before a mining**
18 **operation begins.**

19 **“(3) ‘Commenting agency’ means any agency that makes recommendations**
20 **to the State Department of Geology and Mineral Industries or to a permit-**
21 **ting agency regarding permit conditions or whether to approve or deny a**
22 **permit under the consolidated application process established under ORS**
23 **517.952 to 517.989.**

24 **“(4) ‘Consolidated application’ means the single application required un-**
25 **der ORS 517.971.**

26 ***“(5) ‘Cooperating agency’ means an agency that has statutory responsibility***
27 ***related to a mining operation but that does not issue a permit for the mining***
28 ***operation.***]

29 **“[(6)] (5) ‘Environmental evaluation’ means an analysis prepared under**
30 **ORS 517.979 to address specific impacts of the mining operation to allow af-**

1 fected agencies to develop permit conditions.

2 “[7] (6) ‘Gravity separation’ means the separation of mineral particles,
3 with the aid of water or air, according to the differences in the specific
4 gravities of the particles.

5 “[8] (7) ‘Mining operation’ means a surface or underground mine that
6 processes, produces or reclaims metal ore using a method other than, or in
7 addition to, gravity separation to process the ore.

8 “[9] (8) ‘Mitigation’ means the reduction of adverse effects of a proposed
9 mining operation by considering, in the following order:

10 “(a) Avoiding the impact altogether by not taking a certain action or
11 parts of an action;

12 “(b) Minimizing impacts by limiting the degree or magnitude of the action
13 and its implementation;

14 “(c) Rectifying the impact by repairing, rehabilitating or restoring the
15 affected environment;

16 “(d) Reducing or eliminating the impact over time by preservation and
17 maintenance operations during the life of the action by monitoring and tak-
18 ing appropriate corrective measures; or

19 “(e) Compensating for the impact by replacing or providing comparable
20 substitute resources or environments.

21 “[10] (9) ‘Permitting agency’ means an agency that has a separate per-
22 mitting authority for a mining operation.

23 “[11] (10) ‘Project coordinating committee’ means the interagency gov-
24 ernmental committee established in accordance with ORS 517.965.

25 “[12] (11) ‘Technical review team’ means the interagency group estab-
26 lished in accordance with ORS 517.967.

27 **“SECTION 8.** ORS 517.965 is amended to read:

28 “517.965. (1)(a) A project coordinating committee shall be composed of
29 representatives from the State Department of Geology and Mineral Indus-
30 tries, all permitting and cooperating agencies, local government agencies and

1 affected federal agencies. Each permitting and cooperating agency shall des-
2 ignate an appropriate staff member to serve on the committee. The project
3 coordinating committee shall share information and coordinate county, state
4 and federal permitting requirements in order to avoid contradictory require-
5 ments, facilitate the exchange of ideas, optimize communication and avoid
6 duplicative effort.

7 “(b) If a mining operation is proposed on federal land, the project coor-
8 dinating committee shall work with the affected federal agency in accordance
9 with a memorandum of agreement established by the department and the
10 federal agency to facilitate the state and federal application process and to
11 coordinate the two processes to the fullest extent possible.

12 “(2)(a) For a proposed mining operation that is a significant mineral
13 resource site, if the owner of private property within the impact area
14 of the proposed mining operation identifies a conflict between the
15 proposed mining operation and the agricultural activities conducted
16 on the private property within the impact area, the project coordinat-
17 ing committee shall analyze and address the identified conflict. In
18 analyzing and addressing the identified conflict, the project coordi-
19 nating committee:

20 “(A) Shall consider compliance with federal, state or local standards
21 for air quality, noise, water quality or other environmental consider-
22 ations that are applicable to the identified conflict to be sufficient to
23 resolve the conflict; and

24 “(B) If there are not applicable federal, state or local standards as
25 provided for in subparagraph (A) of this paragraph, may suggest to the
26 department permit conditions for avoiding or reducing the identified
27 conflict.

28 “(b) The department may, in order to minimize the conflicts iden-
29 tified by the project coordinating committee under this subsection:

30 “(A) Require the imposition of permit conditions suggested by the

1 **project coordinating committee;**

2 **“(B) Require, as conditions of approval of a permit, reasonable and**
3 **practicable measures to minimize the conflicts; or**

4 **“(C) Allow the operator to minimize the conflicts by compensating**
5 **a private property owner within the impact area for loss of crops or**
6 **reduced agricultural production or use of the land.**

7 **“(3) In carrying out its responsibilities, the project coordinating commit-**
8 **tee shall include opportunities for public participation.**

9 **“SECTION 9. ORS 517.982 is amended to read:**

10 **“517.982. (1) Based on information received at the consolidated public**
11 **hearing, from persons submitting written comments, commenting agencies**
12 **and the review of the affected agencies, each permitting agency shall, within**
13 **45 days after the consolidated public hearing under ORS 517.981 or within**
14 **the time period required by any applicable federal law, whichever is sooner,**
15 **approve, deny or modify the agency’s permit with conditions necessary to**
16 **ensure that the mining operation allowed under a permit complies with the**
17 **standards and requirements applicable to the permit.**

18 **“(2) Each cooperating agency shall:**

19 **“(a) Develop permit conditions within the expertise and authority of the**
20 **cooperating agency that are reasonable, practicable and designed to**
21 **minimize the adverse effect and minimize the impact of the condition**
22 **on the proposed mining operation; and**

23 **“(b) Submit the permit conditions to the State Department of Geology and**
24 **Mineral Industries to be included as conditions on the department’s permit.**

25 **“(3) The department [*shall*] may not issue a permit until each cooperating**
26 **agency has submitted a written concurrence with the terms and conditions**
27 **of the permit [*as such pertain*] pertaining to the statutory responsibility of**
28 **each cooperating agency or 45 days after the consolidated public hearing,**
29 **whichever is earlier.**

30 **“[(3)] (4) Upon completion of the permits, the department shall issue a**

1 notice in accordance with ORS 517.959 to notify interested persons that the
2 final permits are issued.

3 **“SECTION 10. Section 11 of this 2017 Act is added to and made a
4 part of ORS 517.910 to 517.951.**

5 **“SECTION 11. Upon receipt of an application for an operating per-
6 mit subject to ORS 517.915 to mine a significant mineral resource site,
7 the State Department of Geology and Mineral Industries shall activate
8 a project coordinating committee as defined in ORS 517.952. The
9 project coordinating committee shall be composed as provided in, and
10 shall carry out the responsibilities as set forth in, ORS 517.965.**

11 **“SECTION 12. Sections 13 and 14 of this 2017 Act are added to and
12 made a part of ORS 517.702 to 517.989.**

13 **“SECTION 13. The Legislative Assembly finds and declares that:**

14 **“(1) The mining of significant mineral resources is critical to eco-
15 nomic development in this state.**

16 **“(2) Certain private rights of action to declare the permitted mining
17 of significant mineral resources on land zoned for exclusive farm use
18 that is located in certain areas of this state to be nuisances or trespass
19 are inconsistent with the state interest in economic development and
20 land use policies, and have adverse effects on the continuation of such
21 mining operations and the full use of the resource base of this state.**

22 **“(3) In the interest of the continued welfare of this state, the per-
23 mitted mining of significant mineral resources on land zoned for ex-
24 clusive farm use that is located in certain areas of this state must be
25 protected from legal actions that may be intended to limit, or have the
26 effect of limiting, such mining operations.**

27 **“SECTION 14. (1) For purposes of a cause of action for nuisance or
28 trespass against an operator of a surface mining operation described
29 in ORS 215.298 (3), the operator is not negligent and is not engaged in
30 an ultrahazardous activity if the surface mining operation is being**

1 **conducted in compliance with:**

2 **“(a) An operating permit for the surface mining operation issued**
3 **by the State Department of Geology and Mineral Industries under ORS**
4 **517.702 to 517.989; and**

5 **“(b) All permits required for or limitations imposed on the surface**
6 **mining operation by federal agencies, other state agencies and local**
7 **governments.**

8 **“(2) In a cause of action for nuisance or trespass against an opera-**
9 **tor of a surface mining operation described in subsection (1) of this**
10 **section, the prevailing party is entitled to recover reasonable attorney**
11 **fees and costs incurred at trial and on appeal.**

12 **“SECTION 15.** ORS 517.753 is amended to read:

13 **“517.753. (1) Notwithstanding the yard and acre limitations of ORS 517.750**
14 **[(15)] (16), a person must obtain an exclusion certificate from the State De-**
15 **partment of Geology and Mineral Industries to engage in surface mining that**
16 **results in the extraction of 5,000 cubic yards or less of minerals or affects**
17 **less than one acre of land within a period of 12 consecutive calendar months.**
18 **Except as provided in ORS 517.755, a mining operation subject to a valid**
19 **exclusion certificate is not subject to the operating permit or reclamation**
20 **requirements set forth in ORS 517.702 to 517.989.**

21 **“(2) A person shall submit an exclusion certificate application on a form**
22 **provided by the department, accompanied by a fee not to exceed \$400. If the**
23 **department does not approve or disapprove the application within 90 days**
24 **after the date the application is filed with the department, the application**
25 **shall be deemed approved.**

26 **“(3) Each holder of an exclusion certificate shall annually pay to the de-**
27 **partment a renewal fee of \$150, accompanied by a description of:**

28 **“(a) The amount of minerals extracted pursuant to the certificate during**
29 **the previous 12 months;**

30 **“(b) The total acreage of surface disturbance by the mining operation as**

1 of the date that the renewal is submitted; and

2 “(c) Any additional information required by the department to determine
3 that the mining operation continues to qualify for an exclusion certificate.

4 “**SECTION 16.** ORS 517.755 is amended to read:

5 “517.755. Notwithstanding the yard and acre limitations of ORS 517.750
6 [(15)] (16), as soon as any mining operation begun after July 1, 1975, affects
7 more than five acres of land the provisions of ORS 517.702 to 517.989 apply
8 to the mining operation.

9 “**SECTION 17.** ORS 517.834 is amended to read:

10 “517.834. (1) Notwithstanding ORS 517.810 and 517.830, the State Depart-
11 ment of Geology and Mineral Industries may issue a temporary operating
12 permit to a person if:

13 “(a) After consultation, the local jurisdiction with land use authority over
14 the permitted site does not raise substantive objections to the issuance of the
15 permit;

16 “(b) All [*interested state*] **cooperating** agencies approve of the permit is-
17 suance; and

18 “(c) There is no objection from persons owning property adjacent to the
19 permitted site.

20 “(2) A temporary operating permit issued under this section is subject to
21 reasonable limitations that may be prescribed by the department.

22 “(3) Within 30 days after issuing the temporary operating permit, the op-
23 erator shall:

24 “(a) Comply with the bond and security requirements established by ORS
25 517.810;

26 “(b) Pay any applicable fee pursuant to ORS 517.800; and

27 “(c) Submit a reclamation plan to the department.

28 “(4) The governing board of the department shall adopt rules governing
29 the issuance of temporary operating permits. The rules shall include pro-
30 visions:

1 “(a) Ensuring opportunities for notice and comment by federal agencies;
2 “(b) Specifying the terms of a temporary operating permit; and
3 “(c) Establishing procedures for converting a temporary operating permit
4 to a standard operating permit.

5 **“SECTION 18. (1) Except as provided in subsection (2) of this sec-**
6 **tion, section 14 of this 2017 Act applies to all causes of action arising**
7 **on or after the effective date of this 2017 Act.**

8 **“(2) Section 14 of this 2017 Act does not apply to any cause of action**
9 **or claim for relief for which a judgment has been entered before the**
10 **effective date of this 2017 Act.**

11 **“SECTION 19. The State Department of Geology and Mineral In-**
12 **dustries shall make accessible online all data and research on the**
13 **mineral resource potential of eastern and southern Oregon counties**
14 **that is available to the department, including all relevant published**
15 **data and research and mineral inventories and studies completed by**
16 **the department. Where applicable, mineral resource data available to**
17 **the department must be presented online in a geospatial database**
18 **format.”.**

19
