

A-Engrossed Senate Bill 644

Ordered by the Senate June 29
Including Senate Amendments dated June 29

Sponsored by Senator GIROD

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Makes various changes to laws relating to mining and mineral resources. Exempts certain small mining operations from exclusion certificate requirement. Exempts surface mining operations or exploration activities on federal lands from state bonding requirements if in compliance with federal financial guarantee requirements. Modifies certain permitting fees related to mining operations.]

[Prohibits motorized in-stream placer mining in indigenous anadromous salmonid habitat and waters essential to recovery and conservation of Pacific lamprey, with certain exceptions.]

Exempts county permit application for mining operation on significant mineral resource site in certain counties from requirements for uses in exclusive farm use zones and statewide land use planning goals and rules relating to land use. Provides exceptions.

Allows State Department of Geology and Mineral Industries to issue provisional operating permit for mining operation of significant mineral resource site if permit contains certain conditions.

Requires department to provide notice of application for operating permit of significant mineral resource site to each permitting agency and cooperating agency and to provide opportunity to respond, identifying expected adverse effects of proposed operation. Allows department to include in operating permit conditions addressing adverse effect under certain circumstances.

Provides that operator of surface mining operation of significant mineral resource site is not negligent or engaging in ultrahazardous activity for purpose of cause of action for nuisance or trespass if operating in compliance with operating permit and all other permits for and limitations imposed on operation by federal, state and local agencies.

A BILL FOR AN ACT

Relating to mineral resources; creating new provisions; and amending ORS 215.298, 517.750, 517.753, 517.755, 517.790, 517.820, 517.830, 517.834, 517.910, 517.952, 517.965 and 517.982.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 215.298 is amended to read:

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

(a) "Impact area" means an area extending 1,500 feet in any direction from the area of a proposed mining site or the farthest point from the proposed mining site where the Department of Land Conservation and Development determines that a significant conflict exists, whichever is greater, excluding from the area of the proposed mining site any undisturbed buffer areas or areas on a parcel where mining is not authorized.

(b)(A) "Mining" includes all or any part of the process of mining by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits except those constructed for use as access roads.

(B) "Mining" does not include excavations of sand, gravel, clay, rock or similar materials

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 conducted by a landowner or tenant on the landowner or tenant's property for the primary
2 purpose of reconstruction or maintenance of access roads and excavation or grading oper-
3 ations conducted in the process of farming or cemetery operations, on-site road construction
4 or other on-site construction or nonsurface impacts of underground mines.

5 (c) "Significant mineral resource site" means a proposed mining site, other than a site
6 for the mining of aggregate, that is located at least one mile outside the border of the
7 nearest incorporated city and that either:

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

12 (B) Will create 100 or more full-time mining-associated jobs, including but not limited to
13 site construction, mining, operations management, processing, hauling and reclamation.

14 [(1)] (2)(a) Except as provided in subsection (3) of this section, for purposes of ORS 215.213
15 (2) and 215.283 (2), a land use permit is required for mining more than 1,000 cubic yards of material
16 or excavation preparatory to mining of a surface area of more than one acre. A county may set
17 standards for a lower volume or smaller surface area than that set forth in this subsection.

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

20 [(3) For purposes of ORS 215.213 (2) and 215.283 (2) and this section, "mining" includes all or any
21 part of the process of mining by the removal of overburden and the extraction of natural mineral de-
22 posits thereby exposed by any method including open-pit mining operations, auger mining operations,
23 processing, surface impacts of underground mining, production of surface mining refuse and the con-
24 struction of adjacent or off-site borrow pits except those constructed for use as access roads. "Mining"
25 does not include excavations of sand, gravel, clay, rock or other similar materials conducted by a
26 landowner or tenant on the landowner or tenant's property for the primary purpose of reconstruction
27 or maintenance of access roads and excavation or grading operations conducted in the process of
28 farming or cemetery operations, on-site road construction or other on-site construction or nonsurface
29 impacts of underground mines.]

30 (3) Notwithstanding any contrary provision of ORS 215.283 (2), county approval of an ap-
31 plication for a land use permit under ORS 215.283 (2)(b) for mining or excavation preparatory
32 to mining of a significant mineral resource site on land zoned for exclusive farm use that is
33 located in Baker County, Grant County, Harney County, Lake County, Malheur County, Un-
34 ion County or Wallowa County is not subject to:

35 (a) The provisions of ORS 215.296; or

36 (b) Except as provided in subsection (4) of this section, any statewide land use planning
37 goal or any administrative rule relating to land use.

38 (4) A county shall deny an application for a land use permit described in subsection (3)
39 of this section if the county determines that the use will conflict with an administrative rule
40 adopted for the purpose of implementing the Oregon Sage-Grouse Action Plan and Executive
41 Order 15-18.

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

44 (a) The county determines, based on clear and objective standards, that the proposed use
45 will create:

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

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

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

6 **(b) The county determines that the conflict identified in paragraph (a) of this subsection**
7 **cannot be minimized through the imposition of reasonable and practicable mitigation meas-**
8 **ures as conditions of approval.**

9 **(6) For purposes of the county determination described in subsection (4) of this section,**
10 **a significant mineral resource site:**

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

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

14 **SECTION 2.** ORS 517.750 is amended to read:

15 517.750. As used in ORS 517.702 to 517.989, unless the context requires otherwise:

16 (1) “Board” means the governing board of the State Department of Geology and Mineral Indus-
17 tries.

18 (2) “Completion” means termination of surface mining activities including reclamation of the
19 surface-mined land in accordance with the approved reclamation plan and operating permit.

20 (3) **“Cooperating agency” means the State Department of Agriculture, the State Depart-**
21 **ment of Fish and Wildlife or any agency that has statutory responsibility related to a mining**
22 **operation but that does not issue a permit for the mining operation.**

23 [(3)] (4) “Department” means the State Department of Geology and Mineral Industries.

24 [(4)] (5) “Exploration” means all activities conducted on or beneath the surface of the earth for
25 the purpose of determining presence, location, extent, grade or economic viability of a deposit.
26 “Exploration” does not include prospecting or chemical processing of minerals.

27 [(5)] (6) “Explorer” means, notwithstanding the provisions of ORS 517.810 (2), any individual,
28 public or private corporation, political subdivision, agency, board or department of this state, any
29 municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever that
30 is engaged in exploration.

31 [(6)] (7) “Landowner” means:

32 (a) The person possessing fee title to the natural mineral deposit being surface mined or ex-
33 plored; and

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

35 [(7)] (8) “Minerals” includes soil, coal, clay, stone, sand, gravel, metallic ore and any other solid
36 material or substance excavated for commercial, industrial or construction use from natural deposits
37 situated within or upon lands in this state.

38 [(8)] (9) “Operator” means any individual, public or private corporation, political subdivision,
39 agency, board or department of this state, any municipality, partnership, association, firm, trust,
40 estate or any other legal entity whatsoever that is engaged in surface mining operations.

41 [(9)] (10) “Overburden” means the soil, rock and similar materials that lie above natural deposits
42 of minerals.

43 [(10)] (11) “Person” means any person, any federal agency or any public body, as defined in ORS
44 174.109.

45 [(11)] (12) “Processing” includes, but is not limited to, crushing, washing, milling and screening

1 as well as the batching and blending of mineral aggregate into asphalt and portland cement concrete
2 located within the operating permit area.

3 [(12)] (13) "Reclamation" means the employment in a surface mining operation or exploration
4 of procedures reasonably designed to:

5 (a) Minimize, as much as practicable, the adverse effects of the surface mining operation or ex-
6 ploration on land, air and water resources; and

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

11 [(13)] (14) "Reclamation plan" means a written proposal, submitted to the department as re-
12 quired by ORS 517.702 to 517.989 and subsequently approved by the department as provided in ORS
13 517.702 to 517.989, for the reclamation of the land area adversely affected by a surface mining op-
14 eration or exploration and including, but not limited to the following information:

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

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

19 (c) The procedures to be applied in the surface mining operation or exploration to control the
20 discharge of contaminants and the disposal of surface mining refuse.

21 (d) The procedures to be applied in the surface mining operation or exploration in the rehabili-
22 tation of affected stream channels and stream banks to a condition minimizing erosion,
23 sedimentation and other factors of pollution.

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

26 (f) A proposed time schedule for the completion of reclamation operations.

27 (g) Requirements of the exploration permit.

28 [(14)] (15) "Surface impacts of underground mining" means all waste materials produced by
29 underground mining and placed upon the surface including, but not limited to, waste dumps, mill
30 tailings, washing plant fines and all surface subsidence related to underground mining.

31 [(15)(a)] (16)(a) "Surface mining" includes:

32 (A) All or any part of the process of mining minerals by the removal of overburden and the
33 extraction of natural mineral deposits thereby exposed by any method by which more than 5,000
34 cubic yards of minerals are extracted or by which at least one acre of land is affected within a pe-
35 riod of 12 consecutive calendar months, including open-pit mining operations, auger mining oper-
36 ations, processing, surface impacts of underground mining, production of surface mining refuse and
37 the construction of adjacent or off-site borrow pits (except those constructed for use as access
38 roads).

39 (B) Removal or filling, or both, within the beds or banks of any waters of this state that is the
40 subject of a memorandum of agreement between the Department of State Lands and the State De-
41 partment of Geology and Mineral Industries in which the State Department of Geology and Mineral
42 Industries is assigned sole responsibility for permitting as described in ORS 517.797.

43 (b) "Surface mining" does not include:

44 (A) Excavations of sand, gravel, clay, rock or other similar materials conducted by the land-
45 owner or tenant for the primary purpose of construction, reconstruction or maintenance of access

1 roads on the same parcel or on an adjacent parcel that is under the same ownership as the parcel
2 that is being excavated;

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

4 (C) Nonsurface effects of underground mining;

5 (D) Removal of rock, gravel, sand, silt or other similar substances removed from the beds or
6 banks of any waters of this state pursuant to a permit issued under ORS 196.800 to 196.900; or

7 (E) Excavations or reprocessing of aggregate material, or grading operations, within the high-
8 way right of way reasonably necessary for the construction, reconstruction or maintenance of a
9 highway as defined in ORS 801.305.

10 [(16)] (17) "Surface mining refuse" means all waste materials, soil, rock, mineral, liquid, vege-
11 tation and other materials resulting from or displaced by surface mining operations within the op-
12 erating permit area, including all waste materials deposited in or upon lands within the operating
13 permit area.

14 [(17)] (18) "Underground mining" means all human-made excavations below the surface of the
15 ground through shafts or adits for the purpose of exploring for, developing or producing valuable
16 minerals.

17 **SECTION 3.** ORS 517.790 is amended to read:

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

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

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

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

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

29 (e) The size and legal description of the lands that will be affected by the operation, and, if more
30 than 10 acres of land will be affected by the operation and if the department determines that the
31 conditions warrant it, a map of the lands to be surface mined that includes the boundaries of the
32 affected lands, topographic details of the lands, the location and names of all streams, roads, rail-
33 roads, utility facilities, wells, irrigation ditches, ponds, stockpiles, buffers, setbacks and excavation
34 boundaries within or adjacent to the lands, the location of all proposed access roads to be protected
35 or constructed in conducting the operation and the names and addresses of the owners of all surface
36 and mineral interests of the lands included within the surface mining area.

37 (f) If practicable, a plan for visual screening by vegetation or otherwise that will be established
38 and maintained on the lands within the operation for the purpose of screening the operation from
39 the view of persons using adjacent public highways, public parks and residential areas.

40 (g) The type of monitoring well abandonment procedures.

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

42 (i) Any other information that the department considers pertinent in its review of the applica-
43 tion.

44 (2) The department may waive the requirement for preparation and approval of a reclamation
45 plan if:

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

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

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

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

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

10 (b) Maintains a legal interest in the lands that is sufficient to ensure that the operator has the
11 authority to operate and reclaim the lands as provided in the operating permit and reclamation plan.

12 (4) The department may refuse to issue an operating permit to a person who has not, in the
13 determination of the department, substantially complied with the conditions of an operating permit
14 or reclamation plan, the provisions of this chapter or the rules adopted by the department to carry
15 out the purposes of this chapter.

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

19 **(a) Does not become effective until the applicant obtains all required permits and ap-**
20 **provals; and**

21 **(b) Contains conditions:**

22 **(A) Requiring the applicant to obtain an amendment to the provisional operating permit**
23 **if necessary to conform with a subsequently obtained federal, state or local permit or ap-**
24 **proval; and**

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

27 **SECTION 4.** ORS 517.820 is amended to read:

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

36 (2) [*The department,*] Prior to approving a proposed reclamation plan, **the department** shall
37 consult with all other [*interested state*] **cooperating** agencies and appropriate local planning au-
38 thorities.

39 **SECTION 5.** ORS 517.830 is amended to read:

40 517.830. (1) Upon receipt of an application for an operating permit, the State Department of
41 Geology and Mineral Industries shall:

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

43 (b) Provide notice to the local jurisdiction and an opportunity for the local jurisdiction to,
44 within 30 days after the date of the notice, request that the department delay a decision on an op-
45 erating permit and reclamation plan as provided in subsection (4) of this section[.]; **and**

1 **(c) If the application is not subject to the consolidated application process under ORS**
2 **517.952 to 517.989, provide notice to each federal and state permitting agency, as defined in**
3 **ORS 517.952, and each cooperating agency and provide an opportunity for the agencies to,**
4 **within 30 days after the date of the notice, respond in writing to the department identifying**
5 **reasonably expected adverse effects of the proposed mining operation on land, air, water or**
6 **wildlife resources.**

7 (2) Within 90 days after the date that the application and the required permit fee are received,
8 the department shall issue the operating permit applied for or, if it considers the application in-
9 complete, return the application to the applicant for correction of the deficiencies indicated by the
10 department. **An operating permit that is not subject to ORS 517.952 to 517.989 may contain**
11 **conditions addressing an adverse effect identified by an agency pursuant to subsection (1)(c)**
12 **of this section, provided:**

13 **(a) The department determines that the condition is necessary for the mining operation**
14 **to comply with applicable review standards and criteria imposed or enforced by the depart-**
15 **ment;**

16 **(b) The land use decision issued by the local government approving the mining operation**
17 **does not include provisions to mitigate the adverse effect; and**

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

20 (3) Failure by the department to act upon the reclamation plan submitted with an application
21 for an operating permit within the 90-day period referred to in subsection (2) of this section is not
22 a denial by the department of the operating permit applied for. The department, pending final ap-
23 proval of a reclamation plan, may issue a provisional permit subject to reasonable limitations that
24 may be prescribed by the department and conditioned upon the applicant's compliance with the bond
25 and security requirements established by ORS 517.810.

26 (4)(a) Notwithstanding subsections (2) and (3) of this section, if an application involves an ag-
27 gregate site that requires a permit issued pursuant to ORS 215.427 or 227.178, and if the local ju-
28 risdiction requests that the application not be decided until the local jurisdiction has taken final
29 action, the department shall make a final decision on the operating permit and reclamation plan no
30 later than 165 days after the date a complete land use application is submitted to the local juris-
31 diction, unless the applicant agrees to allow additional time under ORS 215.427, 215.429, 227.178 or
32 227.179. If a plan amendment is required as part of issuance of a permit, the provisions of paragraph
33 (b) of this subsection apply. The department may not approve an operating permit and reclamation
34 plan if the land use application is denied.

35 (b) Notwithstanding subsections (2) and (3) of this section, if an application involves an aggre-
36 gate site that requires amendment to a comprehensive plan, as defined in ORS 197.015, and if the
37 local jurisdiction requests that the application not be decided until the local jurisdiction has taken
38 final action on the plan amendment, the department may not make a final decision on the operating
39 permit and reclamation plan until the local jurisdiction has taken final action on the plan amend-
40 ment. The department shall make its final decision within 45 days of the date that the local juris-
41 diction has taken final action on the plan amendment. The department may not approve an operating
42 permit and reclamation plan if the plan amendment is denied.

43 (5) Conditions and requirements imposed on an operating permit and reclamation plan, and
44 modifications thereto, issued subsequent to issuance of a local jurisdiction permit shall be compat-
45 ible with the requirements and conditions of the local government permit, unless more stringent

1 requirements are necessary to comply with the provisions of ORS 517.750 to 517.901.

2 (6)(a) If a local jurisdiction does not request that the department delay a decision on an oper-
3 ating permit and reclamation plan as provided in subsections (1)(b) and (4) of this section, the de-
4 partment shall, prior to issuing the operating permit, give the local jurisdiction notice and an
5 opportunity to provide comments and the following information about the proposed operating permit
6 and reclamation plan:

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

8 (B) Whether the site described in the proposed operating permit and reclamation plan is in-
9 cluded on a local government inventory required by any open spaces, scenic and historic areas and
10 natural resources land use planning goal;

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

12 (D) Any other information that the local jurisdiction considers pertinent in its review of the
13 application.

14 (b) A local jurisdiction shall respond to a notice provided under paragraph (a) of this subsection
15 within 35 days after the date of the notice.

16 (7) If the department refuses to approve a submitted reclamation plan, it shall notify the appli-
17 cant, in writing, of its reasons for the refusal to approve the reclamation plan, including additional
18 requirements as may be prescribed by the department for inclusion in the reclamation plan. Within
19 60 days after the receipt of the notice, the applicant shall comply with the additional requirements
20 prescribed by the department for the reclamation plan or file with the department a notice of appeal
21 from the decision of the department with respect to the reclamation plan. If a notice of appeal is
22 filed with the department by the applicant, the department may issue a provisional permit to the
23 applicant.

24 (8) If an application is submitted as part of the consolidated application process under ORS
25 517.952 to 517.989, review of the application and approval or denial of the application shall be in
26 accordance with ORS 517.952 to 517.989. However, the review and approval or denial shall take into
27 consideration all policy considerations for issuing a permit under ORS 517.702 to 517.989.

28 **SECTION 6.** ORS 517.910 is amended to read:

29 517.910. For the purposes of ORS 517.910 to 517.989:

30 *[(1) Notwithstanding ORS 517.750 (12), "reclamation" means the employment in a surface mining*
31 *operation of procedures reasonably designed to minimize as much as practicable the disruption from*
32 *the surface mining operation or surface mining processing operation and to provide for the rehabili-*
33 *tation of any such surface resources through the use of plant cover, soil stability techniques, measures*
34 *to protect the surface and subsurface water resources, including but not limited to domestic water use*
35 *and agricultural water use, and other measures appropriate to the subsequent beneficial use of any land*
36 *or water resource affected by a surface mining or processing operation.]*

37 (1) **"Impact area" has the meaning given that term in ORS 215.298 (1).**

38 (2) **"Nonaggregate minerals"** means coal and metal-bearing ores, including but not limited to
39 ores that contain nickel, cobalt, lead, zinc, gold, molybdenum, uranium, silver, aluminum, chrome,
40 copper or mercury.

41 (3) **"Reclamation" means, notwithstanding ORS 517.750 (13), the employment in a surface**
42 **mining operation of procedures reasonably designed to minimize, as much as practicable, the**
43 **disruption from the surface mining operation or surface mining processing operation and to**
44 **provide for the rehabilitation of any such surface resources through the use of plant cover,**
45 **soil stability techniques, measures to protect the surface and subsurface water resources,**

1 including but not limited to domestic water use and agricultural water use, and other
2 measures appropriate to the subsequent beneficial use of any land or water resource affected
3 by a surface mining or processing operation.

4 (4) “Significant mineral resource site” has the meaning given that term in ORS 215.298
5 (1).

6 **SECTION 7.** ORS 517.952 is amended to read:

7 517.952. As used in ORS 517.952 to 517.989:

8 (1) “Affected agency” includes permitting agencies, cooperating agencies and commenting agen-
9 cies.

10 (2) “Baseline data” means information gathered to characterize the natural and cultural envi-
11 ronments of a mining operation site before a mining operation begins.

12 (3) “Commenting agency” means any agency that makes recommendations to the State Depart-
13 ment of Geology and Mineral Industries or to a permitting agency regarding permit conditions or
14 whether to approve or deny a permit under the consolidated application process established under
15 ORS 517.952 to 517.989.

16 (4) “Consolidated application” means the single application required under ORS 517.971.

17 [(5) “Cooperating agency” means an agency that has statutory responsibility related to a mining
18 operation but that does not issue a permit for the mining operation.]

19 [(6)] (5) “Environmental evaluation” means an analysis prepared under ORS 517.979 to address
20 specific impacts of the mining operation to allow affected agencies to develop permit conditions.

21 [(7)] (6) “Gravity separation” means the separation of mineral particles, with the aid of water
22 or air, according to the differences in the specific gravities of the particles.

23 [(8)] (7) “Mining operation” means a surface or underground mine that processes, produces or
24 reclaims metal ore using a method other than, or in addition to, gravity separation to process the
25 ore.

26 [(9)] (8) “Mitigation” means the reduction of adverse effects of a proposed mining operation by
27 considering, in the following order:

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

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

30 (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

31 (d) Reducing or eliminating the impact over time by preservation and maintenance operations
32 during the life of the action by monitoring and taking appropriate corrective measures; or

33 (e) Compensating for the impact by replacing or providing comparable substitute resources or
34 environments.

35 [(10)] (9) “Permitting agency” means an agency that has a separate permitting authority for a
36 mining operation.

37 [(11)] (10) “Project coordinating committee” means the interagency governmental committee es-
38 tablished in accordance with ORS 517.965.

39 [(12)] (11) “Technical review team” means the interagency group established in accordance with
40 ORS 517.967.

41 **SECTION 8.** ORS 517.965 is amended to read:

42 517.965. (1)(a) A project coordinating committee shall be composed of representatives from the
43 State Department of Geology and Mineral Industries, all permitting and cooperating agencies, local
44 government agencies and affected federal agencies. Each permitting and cooperating agency shall
45 designate an appropriate staff member to serve on the committee. The project coordinating com-

1 mittee shall share information and coordinate county, state and federal permitting requirements in
2 order to avoid contradictory requirements, facilitate the exchange of ideas, optimize communication
3 and avoid duplicative effort.

4 (b) If a mining operation is proposed on federal land, the project coordinating committee shall
5 work with the affected federal agency in accordance with a memorandum of agreement established
6 by the department and the federal agency to facilitate the state and federal application process and
7 to coordinate the two processes to the fullest extent possible.

8 (2)(a) **For a proposed mining operation that is a significant mineral resource site, if the**
9 **owner of private property within the impact area of the proposed mining operation identifies**
10 **a conflict between the proposed mining operation and the agricultural activities conducted**
11 **on the private property within the impact area, the project coordinating committee shall**
12 **analyze and address the identified conflict. In analyzing and addressing the identified conflict,**
13 **the project coordinating committee:**

14 (A) **Shall consider compliance with federal, state or local standards for air quality, noise,**
15 **water quality or other environmental considerations that are applicable to the identified**
16 **conflict to be sufficient to resolve the conflict; and**

17 (B) **If there are not applicable federal, state or local standards as provided for in sub-**
18 **paragraph (A) of this paragraph, may suggest to the department permit conditions for**
19 **avoiding or reducing the identified conflict.**

20 (b) **The department may, in order to minimize the conflicts identified by the project co-**
21 **ordinating committee under this subsection:**

22 (A) **Require the imposition of permit conditions suggested by the project coordinating**
23 **committee;**

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

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

29 (3) In carrying out its responsibilities, the project coordinating committee shall include oppor-
30 tunities for public participation.

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

32 517.982. (1) Based on information received at the consolidated public hearing, from persons
33 submitting written comments, commenting agencies and the review of the affected agencies, each
34 permitting agency shall, within 45 days after the consolidated public hearing under ORS 517.981 or
35 within the time period required by any applicable federal law, whichever is sooner, approve, deny
36 or modify the agency's permit with conditions necessary to ensure that the mining operation allowed
37 under a permit complies with the standards and requirements applicable to the permit.

38 (2) Each cooperating agency shall:

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

42 (b) **Submit the permit conditions to the State Department of Geology and Mineral Industries to**
43 **be included as conditions on the department's permit.**

44 (3) The department [*shall*] **may** not issue a permit until each cooperating agency has submitted
45 a written concurrence with the terms and conditions of the permit [*as such pertain*] **pertaining** to

1 the statutory responsibility of each cooperating agency **or 45 days after the consolidated public**
2 **hearing, whichever is earlier.**

3 [(3)] (4) Upon completion of the permits, the department shall issue a notice in accordance with
4 ORS 517.959 to notify interested persons that the final permits are issued.

5 **SECTION 10. Section 11 of this 2017 Act is added to and made a part of ORS 517.910 to**
6 **517.951.**

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

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

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

15 (1) **The mining of significant mineral resources is critical to economic development in**
16 **this state.**

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

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

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

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

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

34 (2) **In a cause of action for nuisance or trespass against an operator of a surface mining**
35 **operation described in subsection (1) of this section, the prevailing party is entitled to re-**
36 **cover reasonable attorney fees and costs incurred at trial and on appeal.**

37 **SECTION 15. ORS 517.753 is amended to read:**

38 517.753. (1) **Notwithstanding the yard and acre limitations of ORS 517.750 [(15)] (16), a person**
39 **must obtain an exclusion certificate from the State Department of Geology and Mineral Industries**
40 **to engage in surface mining that results in the extraction of 5,000 cubic yards or less of minerals**
41 **or affects less than one acre of land within a period of 12 consecutive calendar months. Except as**
42 **provided in ORS 517.755, a mining operation subject to a valid exclusion certificate is not subject**
43 **to the operating permit or reclamation requirements set forth in ORS 517.702 to 517.989.**

44 (2) **A person shall submit an exclusion certificate application on a form provided by the de-**
45 **partment, accompanied by a fee not to exceed \$400. If the department does not approve or disap-**

1 prove the application within 90 days after the date the application is filed with the department, the
2 application shall be deemed approved.

3 (3) Each holder of an exclusion certificate shall annually pay to the department a renewal fee
4 of \$150, accompanied by a description of:

5 (a) The amount of minerals extracted pursuant to the certificate during the previous 12 months;

6 (b) The total acreage of surface disturbance by the mining operation as of the date that the re-
7 newal is submitted; and

8 (c) Any additional information required by the department to determine that the mining opera-
9 tion continues to qualify for an exclusion certificate.

10 **SECTION 16.** ORS 517.755 is amended to read:

11 517.755. Notwithstanding the yard and acre limitations of ORS 517.750 [(15)] (16), as soon as any
12 mining operation begun after July 1, 1975, affects more than five acres of land the provisions of ORS
13 517.702 to 517.989 apply to the mining operation.

14 **SECTION 17.** ORS 517.834 is amended to read:

15 517.834. (1) Notwithstanding ORS 517.810 and 517.830, the State Department of Geology and
16 Mineral Industries may issue a temporary operating permit to a person if:

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

19 (b) All [interested state] **cooperating** agencies approve of the permit issuance; and

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

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

23 (3) Within 30 days after issuing the temporary operating permit, the operator shall:

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

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

26 (c) Submit a reclamation plan to the department.

27 (4) The governing board of the department shall adopt rules governing the issuance of temporary
28 operating permits. The rules shall include provisions:

29 (a) Ensuring opportunities for notice and comment by federal agencies;

30 (b) Specifying the terms of a temporary operating permit; and

31 (c) Establishing procedures for converting a temporary operating permit to a standard operating
32 permit.

33 **SECTION 18.** (1) Except as provided in subsection (2) of this section, section 14 of this
34 2017 Act applies to all causes of action arising on or after the effective date of this 2017 Act.

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

37 **SECTION 19.** The State Department of Geology and Mineral Industries shall make ac-
38 cessible online all data and research on the mineral resource potential of eastern and
39 southern Oregon counties that is available to the department, including all relevant pub-
40 lished data and research and mineral inventories and studies completed by the department.
41 Where applicable, mineral resource data available to the department must be presented on-
42 line in a geospatial database format.