

## CHAPTER 74:29:10

### SPECIAL, EXCEPTIONAL, CRITICAL, OR UNIQUE LANDS

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**74:29:10:01. Applicability.** This chapter applies only to mining and milling operations as defined in SDCL chapter 45-6B. This chapter does not apply to mining operations regulated under SDCL chapter 45-6 or to mineral exploration or uranium exploration regulated under SDCL chapters 45-6C and SDCL 45-6D, respectively. Lands within the permit boundaries of a mining operation under permit by the effective date of this chapter are exempt from the provisions of this chapter until final reclamation has been completed and the reclamation surety has been released.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33, 45-6B-33.3, 45-6B-33.4, 45-6B-33.8.

**74:29:10:02. Operator required to request a determination.** Any prospective operator contemplating the establishment of a mining operation must request the department to determine whether or not the lands included in the proposed mining operation constitute special, exceptional, critical, or unique lands by submitting a notice of intent to operate to the department.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.6.

**74:29:10:03. Notice of intent to operate -- Contents.** A notice of intent to operate shall include the following:

- (1) The name, address, and telephone number of the operator;
- (2) The legal description of the area of the proposed mining operation;
- (3) A map showing sufficient information to locate the area of the proposed mining operation, including access routes and the approximate size and location of areas where surface resources will be disturbed;
- (4) A list of surface and mineral owners of the area of the proposed mining operation and a list of surface owners of the area within 500 feet of the proposed mining operation. Such ownership information need include only that which is normally kept by the county register of deeds;
- (5) A general description of the type of mining operation proposed and how it would be conducted; and
- (6) A detailed assessment of whether the lands included in the proposed mining operation meet the criteria of SDCL 45-6B-33.3 including all information and data necessary to support the assessment and its conclusions.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.6.

**74:29:10:04. Submission of notice of intent to operate.** The following procedures apply to the submission of a notice of intent to operate:

- (1) A notice of intent to operate must be submitted to the department and public notice complying with the requirements of § 74:29:10:05 must be provided at least 60 days before the submission of a mining permit application;
- (2) Copies of a notice of intent to operate must be provided to the following state agencies at the same time it is submitted to the department:

- (a) The Department of Game, Fish, and Parks;
- (b) The Department of Agriculture;
- (c) The Department of Tourism;
- (d) The Office of History; and
- (e) The State Archaeologist; and

(3) Upon submission of the notice to the department, a copy of the notice of intent to operate must be filed with the register of deeds of the county in which the proposed mining operation is located. Proof of filing must be submitted to the department.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.6.

**74:29:10:05. Publication of notice of intent to operate.** A prospective operator that submits a notice of intent to operate to the department must publish in a newspaper of general circulation within the county of the proposed mining operation a public notice containing the following information:

- (1) The name, address, and phone number of the operator;
- (2) The legal description of the area of the proposed mining operation;
- (3) A general description of the type of mining operation proposed;
- (4) A statement indicating that the operator has submitted a notice of intent to operate to the department for purposes of determining whether the lands potentially affected by the proposed mining operation are eligible for inclusion on the preliminary list of special, exceptional, critical, or unique lands; and
- (5) A statement indicating that any citizen, organization, or agency may nominate lands described in the notice of intent to operate for inclusion on the preliminary list of special, exceptional, critical, or unique lands by submitting a nominating petition to the department complying with the requirements of § 74:29:10:16 within 60 days after the publication date of the notice.

A copy of the public notice and proof of publication must be submitted to the department.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.6.

**74:29:10:06. Notice of intent to operate to be sent to others.** A copy of a notice of intent to operate submitted to the department pursuant to subdivision 74:29:10:04(1)

shall be mailed by the department, within 10 days after receipt, to the county commission of the county in which the proposed mining operation is located and to persons on the interested persons mailing list established under § 74:29:01:05.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.6.

**74:29:10:07. Agency review and recommendation.** The agencies identified in subdivision 74:29:10:04(2) have 60 days from the date of receipt of a notice of intent to operate to submit to the department recommendations for nominating lands described in the notice for inclusion on the preliminary list of special, exceptional, critical, or unique lands. Such recommendations must be in writing and must comply with the requirements of § 74:29:10:16. Failure of an agency to respond within the 60 days constitutes that agency's clearance of the lands described in the notice for special, exceptional, critical, or unique characteristics.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.6.

**74:29:10:08. Department determination on notice of intent to operate -- Procedure.** Within 60 days after the date of publication of the public notice required under § 74:29:10:05, the department shall determine whether the lands described in the notice of intent to operate are eligible for inclusion on the preliminary list of special, exceptional, critical, or unique lands by doing the following:

- (1) Conducting an on-site inspection coordinated, if possible, with the agencies identified in subdivision 74:29:10:04(2);
- (2) Examining the preliminary list established pursuant to § 74:29:10:18 to determine whether lands described in the notice of intent to operate are designated;
- (3) Consulting with any agency that submits a recommendation to the department pursuant to § 74:29:10:07; and
- (4) Evaluating the information provided with the notice of intent to operate.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4, 45-6B-33.6.

**74:29:10:09. Department determination on notice of intent to operate.** The department must determine that lands described in a notice of intent to operate are eligible for inclusion on the preliminary list of special, exceptional, critical, or unique lands if:

(1) A complete recommendation that meets the requirements of § 74:29:10:07 is filed;

(2) The lands described in the notice of intent to operate are already included on the preliminary list; or

(3) The assessment required by subdivision 74:29:10:03(6) clearly indicates that the lands described in the notice of intent to operate constitute special, exceptional, critical, or unique lands.

The department may determine that lands described in a notice of intent to operate are eligible for inclusion on the preliminary list of special, exceptional, critical, or unique lands by preparing a nominating petition complying with the requirements of § 74:29:10:16.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4, 45-6B-33.6.

**74:29:10:10. Notice of determination to operator and others.** Upon determining whether or not lands included in a notice of intent to operate are eligible for inclusion on the preliminary list of special, exceptional, critical, or unique lands, the department shall notify the operator of the determination in writing. The notice shall include the reason for the determination and copies of nominating petitions or other information supporting the determination.

Copies of the written notice shall be mailed by the department to the following:

- (1) Any agency that submitted a recommendation pursuant to § 74:29:10:07;
- (2) Individuals on the interested persons mailing list;
- (3) Any person who submitted a nominating petition for lands described in the notice of intent to operate;
- (4) The county commission of the county in which the proposed mining operation is located; and
- (5) The surface and mineral owners of the lands described in the notice of intent to operate.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4, 45-6B-33.6.

**74:29:10:11. Department determination -- Operator appeal.** The operator may appeal the department's determination by complying with the appeal provisions of SDCL 45-6B-33.7. If the operator does not appeal, the lands described in the notice of intent to operate, as applicable, shall be included on the preliminary list of special, exceptional,

critical, or unique lands. If the operator does appeal, the board shall set a time and place for a hearing on the appeal that is not more than 45 days following the filing of the appeal, unless extended by mutual agreement of the parties. The hearing, public notice, and intervention must comply with the requirements of SDCL 45-6B-33.7. Upon receipt of an appeal, the department shall give notice of the appeal to any citizen, organization, or agency that submitted an applicable nominating petition.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.7.

**74:29:10:12. Nomination by others of lands described in notice of intent to operate.** Any citizen, organization, or agency may nominate lands described in a notice of intent to operate for inclusion on the preliminary list of special, exceptional, critical, or unique lands by submitting a nominating petition to the department and to the operator within 60 days following the date of publication of the public notice required under § 74:29:10:05. Nominating petitions must comply with the requirements of § 74:29:10:16.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.6.

**74:29:10:13. Nominating petition -- Public hearing.** If any nominating petitions pertaining to a notice of intent to operate are received within the 60-day time period allowed under § 74:29:10:12, the board shall set a time and place for a hearing on the petitions. The hearing must be held on a date not more than 45 days following the final date allowed for submission of nominating petitions, unless extended by mutual agreement of the parties. The hearing, public notice, and intervention must comply with the applicable requirements of SDCL 45-6B-33.7. The board may hold a consolidated hearing on nominating petitions and on the appeal of the department's determination.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4, 45-6B-33.6.

**74:29:10:14. Nominating petition -- Burden of proof.** Any citizen, organization, or agency that submits a nominating petition pursuant to § 74:29:10:12 carries the burden of proving, during a hearing on the nominating petition, that the lands the nominating petition applies to are eligible for inclusion on the preliminary list of special, exceptional, critical, or unique lands. Failure to appear at or carry the burden of proof during the hearing constitute grounds for dismissal of the nominating petition by the board.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4.

**74:29:10:15. Clearance.** The lands described in a notice of intent to operate shall be considered cleared for special, exceptional, critical, or unique land characteristics if the department determines that the lands do not constitute special, exceptional, critical, or unique land and no nominating petitions pertaining to lands described in the notice are filed. The clearance shall remain in effect for seven years. If a mine permit application is not submitted within the seven-year period, the board may declare the clearance void and the lands may be reevaluated for special, exceptional, critical, or unique land characteristics.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4, 45-6B-33.6.

**74:29:10:16. Nominating petition for lands described in a notice of intent to operate -- Contents.** A petition to nominate lands for inclusion on the preliminary list of special, exceptional, critical, or unique lands must contain the following information:

- (1) The name, address, and telephone number of the person submitting the nominating petition;
- (2) The legal description of the lands being nominated;
- (3) A map of sufficient scale to clearly identify the boundaries of the lands being proposed for nomination;
- (4) A description of the nominator's interest in the lands being nominated for inclusion on the preliminary list;
- (5) A written statement giving reasons for establishing the proposed boundaries;
- (6) A list and description of the characteristics of SDCL 45-6B-33.3 that apply to the lands being proposed for nomination and evidence that supports that the lands possess those characteristics; and
- (7) The signature of the person submitting the nominating petition witnessed by a notary public and the date of signature.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4.

**74:29:10:17. Establishment of initial preliminary list -- Board procedure.** The board shall establish an initial preliminary list of special, exceptional, critical, or unique lands in accordance with the following:

- (1) Recommendations for nominating lands to the preliminary list shall be solicited from the agencies listed in subdivision 74:29:10:04(2) within 14 days after the effective date of this chapter;
- (2) Within 14 days after the effective date of this chapter, the board shall publish in five newspapers of general circulation a notice of intent to establish a preliminary list of special, exceptional, critical, or unique lands. The notice shall solicit nominating petitions

from the general public and shall describe nominating petition content requirements. The notice shall indicate that nominating petitions must be submitted to the department within 90 days after the date of publication of the notice. Within 10 days after receipt, the department shall mail a copy of a nominating petition to the surface and mineral owners of the lands being nominated;

(3) A copy of the notice of intent to establish a preliminary list shall be mailed by the department to individuals on the interested persons mailing list; and

(4) A least 90 days and not more than 120 days following the publication of the notice of intent to establish a preliminary list, the board shall set a time and date for hearing any nominating petitions received. At least 20 days before the hearing, the board shall notify any person or agency that submitted a nominating petition, individuals on the interested persons mailing list, the county commission of any county containing lands being nominated, and surface and mineral owners of lands being nominated of the time, date, and location of the hearing. Additionally, the board shall publish a notice of the time, date, and location of the hearing in a newspaper of general circulation within the county of any lands being nominated to the preliminary list. The notice shall be published once a week for two consecutive weeks immediately prior to the hearing.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4.

**74:29:10:18. Establishment of initial preliminary list -- Hearing procedures.**

The following procedures apply to the hearing for establishing the initial preliminary list of special, exceptional, critical, or unique lands and to any subsequent hearings held for the purpose of updating the preliminary list:

(1) The board shall hear nominating petitions in the order that they were received by the department;

(2) If more than one nominating petition is filed for a given land area, the board may consider such nominating petitions jointly;

(3) The board shall afford all interested persons opportunity to submit data, opinions, or arguments either orally or in writing, or both, on a given nomination proceeding;

(4) The person or agency that submits a nominating petition must be present during the proceeding on the petition and must be prepared to present evidence to the board supporting the nominating petition. Failure to be present or failure to present evidence if requested may be considered by the board as cause for rejecting the nominating petition; and

(5) After considering a nominating petition and any evidence presented in support of or adverse to the petition, the board shall either find that the lands nominated or a portion of them constitute special, exceptional, critical, or unique lands and place them on the preliminary list or find that the lands do not constitute special, exceptional, critical, or unique lands.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4.

**74:29:10:19. Board update of preliminary list.** Following the establishment of the initial preliminary list, the board shall annually hold a hearing to consider any nominating petitions received during the preceding year. The notification and publication requirements of subdivision 74:29:10:17(4) shall be followed prior to the hearing.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4.

**74:29:10:20. Contents of nominating petition for preliminary list.** In addition to the information required for a petition to nominate lands described in a notice of intent to operate listed in § 74:29:10:16, a petition for nominating lands to the preliminary list must include a list of the surface and mineral owners of the area being nominated and of the lands within 500 feet of the boundaries of the nominated area. The ownership information need only include that which is normally kept by the county register of deeds.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4.

**74:29:10:21. Preliminary list to be maintained by department.** The preliminary list of special, exceptional, critical, or unique lands and all nominating petitions or other evidence used to support the nomination of those lands included on the list shall be maintained by the department. The list and supporting information shall be made accessible to any interested person on request.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4.

**74:29:10:22. Petition to remove lands from preliminary list.** Any person may petition the board to remove lands from the preliminary list by submitting a petition including the following information:

(1) The name, address, and telephone number of the person submitting the petition;

- (2) The legal description of the lands to be removed from the preliminary list;
- (3) A map of sufficient scale to clearly identify the boundaries of the lands to be removed from the preliminary list;
- (4) Evidence and data demonstrating that the lands proposed to be removed from the preliminary list do not have any of the characteristics described in SDCL 45-6B-33.3 that resulted in their inclusion on the preliminary list;
- (5) A description of the petitioner's interest in the lands proposed to be removed from the preliminary list and the effect to those interests that may result from having the lands on the preliminary list;
- (6) A list of all surface and mineral owners of the lands proposed to be removed from the preliminary list; and
- (7) The signature of the person submitting the petition witnessed by a notary public and the date of signature.

A copy of the petition must be filed with the register of deeds of the county in which lands proposed for removal from the preliminary list are located at the same time it is submitted to the department. Proof of filing must be submitted to the department.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4.

**74:29:10:23. Copies of petition to remove lands from preliminary list to be sent to others.** Within 10 days after receipt of a petition to remove lands from the preliminary list, the department shall mail copies of the petition to the following:

- (1) Any person or agency that submitted a nominating petition that resulted in inclusion of the lands being proposed for removal on the preliminary list;
- (2) Individuals on the interested persons mailing list; and
- (3) The county commission of the county in which the lands being proposed for removal from the preliminary list are located.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4.

**74:29:10:24. Hearing on petition to remove lands from preliminary list.** The board shall schedule a hearing on a petition to remove lands from the preliminary list for a date within 60 days after receipt of the petition, unless waived by the petitioner. The notification and publication requirements of subdivision 74:29:10:17(4) shall be followed

prior to the hearing. The petitioner shall present the petition and supporting evidence to the board during the hearing on a petition to remove lands from the preliminary list. Failure to appear during the hearing may constitute grounds for dismissal of the petition by the board. After considering all evidence presented, the board shall, during the hearing, either remove the lands from the preliminary list or determine that the lands are special, exceptional, critical, or unique.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4.

**74:29:10:25. Final designation of lands on preliminary list.** During a hearing on a mining permit application that includes lands on the preliminary list, the board shall determine whether the lands are finally designated as special, exceptional, critical, or unique. The operator may petition the board to hold a hearing to make the final determination on designation at any time after a mine permit application is filed.

**Source:** 17 SDR 86, effective December 25, 1990.

**General Authority:** SDCL 45-6B-81.

**Law Implemented:** SDCL 45-6B-33.4.