

From South Dakota Codified Law CHAPTER 45-6B
MINED LAND RECLAMATION
(September 2020)

45-6B-33.3. Special, exceptional, critical, or unique land defined.

For the purposes of § 45-6B-33, land is special, exceptional, critical, or unique if it possesses one or more of the following characteristics:

- (1) The land is so ecologically fragile that, once it is adversely affected, it could not return to its former ecological role in the reasonably foreseeable future;
- (2) The land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide ecological reaction of unpredictable scope or dimension; or
- (3) The land has scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance.

Source: SL 1989, ch 381, § 2.

45-6B-33.4. Preliminary list of special, exceptional, critical, or unique lands--Application for classification.

The board, after consultation with other concerned state agencies, shall establish a preliminary list of special, exceptional, critical, or unique lands in accordance with the provisions of §§ 45-6B-33 and 45-6B-33.3. In addition, any citizen, organization, or agency may make written application to the board for such classification of a specific area. Any final determination as to such designations may not be made until an application for a permit to mine is filed which application includes land on the preliminary list.

Source: SL 1989, ch 381, § 3.

45-6B-33.5. Alternative restrictions and limitations by board on special, exceptional, critical, or unique land.

If land proposed to be affected by a mining operation includes land that is special, exceptional, critical, or unique and any adverse effects on such lands from the proposed mining operations cannot be satisfactorily mitigated, the board may find such land unsuitable for mining or may do one or more of the following:

- (1) Restrict the extent of the land to be affected at any one time to that which would not compromise those attributes of the area that qualify it as special, exceptional, critical, or unique;
- (2) Impose limitations on the type of activity allowed and the amount of time the land may be affected; or
- (3) Impose limitations that minimize visual impacts and reduce conflicts with scenic and recreational uses.

Source: SL 1989, ch 381, § 5.

45-6B-33.6. Determination of classification--Notice and grounds.

Upon notification by any person contemplating the establishment of a mining operation, the department shall examine the lands to be affected by the proposed mining operation and determine whether such lands constitute special, exceptional, critical, or unique lands as defined in § 45-6B-33.3. If the department determines that the lands meet one or more of the characteristics in § 45-6B-33.3 it shall notify the applicant in writing of the determination and the grounds for the determination.

Source: SL 1989, ch 381, § 6.

45-6B-33.7. Appeal of determination--Hearing--Notice.

The applicant may appeal a determination under § 45-6B-33.6 to the board by filing a petition for a contested case hearing pursuant to board rules promulgated pursuant to chapter 1-26 within seven days of receipt of the determination. The hearing on the appeal shall be confined to the determination of the land as special, exceptional, critical, or unique and whether an environmental impact statement and socioeconomic impact study will be required. Issues concerning the reclamation requirements to be imposed upon such lands may not be heard at the hearing. Notice of an appeal and the hearing date shall be published pursuant to the publication requirements of § 45-6B-30, and interested persons may intervene by filing a petition to intervene pursuant to the provisions of the board rules at least three days before the hearing date.

Source: SL 1989, ch 381, § 7; SL 1993, ch 256, § 40.

45-6B-33.8. Underground mining allowed beneath special, exceptional, critical, or unique land.

Underground mining and associated nondegrading surface disturbances may be allowed within and beneath land determined to be special, exceptional, critical, or unique provided the design and operating plans include provisions that eliminate any major surface disturbance that would severely affect the area or endanger recreational use.

Source: SL 1989, ch 381, § 8.