

Proposal for a Beartooth Front zoning district

Landowners along the Beartooth Front in southern Stillwater County seek to form the Beartooth Front Special Zoning District to enact reasonable regulation on oil and gas drilling in the area. In proposing this zone, we do not seek to stop oil and gas drilling and production, but to make certain that it is done in a way that protects the unique geography, economy, and way of life of the area. We seek to regulate no other land use through this special district.

The purpose of the proposed district is to (1) preserve public health, (2) protect private property, (3) protect and improve public infrastructure and public services, (4) protect surface and ground water, (5) protect air quality, (6) protect soil quality, and (7) maintain the quality of life by preserving the rural residential and agricultural character of the area while recognizing its importance for outdoor recreation. It is consistent with the Stillwater County Growth Plan originally adopted in 2007 and updated this year.

This proposal has the substantial support of landowners in the proposed district, as evidenced by a petition signed by over 575 landowners (over 60% of the landowners in the proposed district) and verified by the Stillwater County Clerk and Recorder in 2017.

We urge that the Planning Commission recommend the formation of this district to the Stillwater County Commissioners as a Part 2 Zone, authorized under MCA § 76-2-201.

Background

Landowners began working on this proposal in October 2013, when the Billings Gazette published an article stating that a Denver oil and gas operator had opened an office in Billings with the intention of "bringing a little bit of the Bakken" to the Beartooth Front. At the same time a drill pad appeared off Highway 419 near Dean.

Landowners were alarmed that this kind of development could occur without any advance notice and without planning for the mitigation of potential impacts to natural resources and the financial interests of private landowners.

Landowners in the area have a long history of working and coexisting successfully with the mineral extraction industry. For over 20 years, the Good Neighbor Agreement, a binding legal document, has been in place between landowners and the Stillwater Mining Company, which is an economic foundation to Stillwater County. This agreement requires the Mine to work with local residents on issues affecting their lives and livelihoods. In part because of this agreement, the Mine is flourishing, the Stillwater River's water quality is better than baseline requirements of the State of Montana, facility related safety issues are actively addressed and land outside the major mine-mouth impact area is largely unaffected.

After the newspaper announcement, landowners began to meet among themselves, and fleshed out several concerns:

- Protecting private land. Benefits to oil and gas development accrue to the owners of underground minerals, and not to surface landowners, who are paid only rents for surface use. Many Stillwater County landowners do not own their underground mineral rights. Montana provides little protection to surface owners – oil operators put up a bond of only \$10,000 per well and \$50,000 for multiple wells, much less than in other oil and gas producing states. Damages to land and associated public infrastructure from operations can be much greater than either amount. In addition, research on areas where there is extensive oil and gas development shows that surface property values can decline by as much as 22%.
- Protecting surface and groundwater quality. Spills and leaking facility plumbing are part of the process of oil and gas extraction. According to data published by the Montana Board of Oil and Gas Conservation, there were 90 “incidents” (spills and fires) in the state in 2016. Energy Corporation of America, the company that promised to bring the Bakken to the Beartooths, had 55 such incidents recorded by the state in its Pennsylvania operations. Such incidents threaten water quality.
- Protecting air quality. Oil and gas operations emit methane and volatile organic compounds (VOCs) as a part of the extraction process and through flaring – burning off excess gas that cannot be processed or sold. If not minimized, these VOCs can affect human and animal health.
- Protecting soil quality. Soil quality is central to the area's economy. Without proper regulation, petroleum hydrocarbons can affect soil health, and at low concentrations. Further, hydrocarbons can be taken up by plants and pose a risk to grazing livestock. Even though Montana law establishes liability for property damage, we believe that regulation governing wellhead placement will be more effective in stopping soil damage.
- Maintaining Public infrastructure and public services. Oil and gas activity is heavy industry, which would be superimposed on the extensive agricultural and ranching economy in our area. An individual well can require as many as 400 truck runs for construction, water hauling, waste hauling, oil hauling, and maintenance and operation. Development will impact existing roads and bridges, most heavily rural roads and bridges from the Stillwater River area to the West Rosebud road and its less robust feeder roads and bridges. Further, the importation of oil and gas workers would burden local services, including schools, police and fire, education, prison and the justice system, and health care, without guarantee of public or private reimbursement. Unless protections are put in place, these costs are shifted to the County and private landowners.

- Preserving public health. Recent peer-reviewed studies show that proximity to oil and gas operations causes an increase in health issues, most notably asthma and breathing problems, and pregnancy issues, including low birth weight and premature births.

The landowners concluded, with substantial documented evidence, that a zoning ordinance is required to protect us from the costs associated with future development.

Proposed district boundaries

To determine the appropriate boundaries for this zone, landowners consulted the federal Bureau of Land Management (BLM) and the US Geological Survey (USGS). Both agencies have developed information concerning the potential for oil and gas development in Stillwater County. We reviewed published information and discovered that our area of the county has extensive potential for future oil and gas operations.

We are located within the Nye Bowler Lineament, which extends from the Forest Service Boundary in south Stillwater County approximately five to ten miles north, and east-west across the entire Beartooth Front and southern quarter of Stillwater County.

The Nye-Bowler Lineament contains a series of geological structures that have the potential to produce oil and gas, and in fact, already has producing wells in the upper East Rosebud area straddling the Carbon/Stillwater County line.

It is important to note that the Nye-Bowler Lineament is distinctly different from the other primary oil producing area in the County, the Lake Basin Fault Zone, located over 40 miles to the north along the north and northeast boundary of the county. According to the BLM, it is distinct enough in geological character to be developed using entirely different extraction methods.

This distinction is critical to our reasoning in separating the south county as a special district. The Lake Basin Fault Zone is currently under development by conventional drilling methods using vertical drilling. This drilling has decidedly lower impacts on surrounding areas.

By contrast, the Nye Bowler Lineament requires unconventional drilling methods for extraction. The two key technologies involved, based on current technology, are hydraulic fracturing and horizontal drilling. The marriage of these two technologies has been critical to the resurgence of the American oil and gas industry beginning 15 years ago in places like the Bakken and the Powder River Basin. The fracturing of the underlying shale rock and the long horizontal shafts enable operators to reach areas previously unavailable to extraction. However, they also impose risks for the surrounding land and water that do not exist in conventional drilling, as mentioned above.

For these reasons we made the Nye-Bowler lineament structure the basis for our proposed zone boundaries. A copy of the BLM mineral-potential map is attached to this document.

We identified all private properties that are either entirely within the Nye Bowler Lineament boundaries, or that intersect the Lineament. We finalized the proposed zoning district by drawing a zone boundary that encompasses the outside boundaries of all ownerships of lands within the oil and gas structure. This produced a land mass of almost 80,000 acres of privately owned land (land in government ownership was not included in the proposed zoning district).

Finally, we created a detailed map of the boundary described above which we submitted to the Stillwater County Clerk and Recorder. As part of her review process, the Clerk and Recorder verified these boundaries and prepared a county-certified map of the proposed zoning district, which is available for public inspection at the Clerk and Recorder's office.

Other oil and gas zoning models in Montana

Other counties in Montana have zoned oil and gas activities, and we have studied their efforts and spoken to county employees as the basis for our recommendations. The districts that match most closely what we are seeking are located in Gallatin County, and have been adopted by that county as Part 2 zones.

Summary

Our proposed zoning district is based on the unique geology, economy, and way of life in southern Stillwater County, and is consistent with other districts previously adopted in Montana.

We have based this proposed district on known geological structures that have been studied for more than 50 years, that have already generated producing wells, and that are certain to be developed using a form of hydraulic fracturing or other newer technologies in the future.

The map of the proposed zone contains all surface private property that intersects or is entirely within the Nye Bowler Lineament, which has a unique geology that will cause issues associated with oil and gas extraction that are unique for Stillwater County.

We have extensive support among the landowners within this area. Over 575 of them have signed petitions supporting our efforts. At public meetings held by the Stillwater County Commissioners, many of them have spoken in support of our efforts.

The district will benefit not only the affected landowners, but all Stillwater County residents and local government, shifting the costs associated with drilling itself from the County and landowners to the operators. As other segments of Stillwater County life and economy besides farming and ranching—like

recreational use, scenic appreciation, and the attraction of the arts at Tippet Rise—are added to the southern tier of Stillwater County, zoning assures that oil and gas activity that could detract from those uses is done in a way that minimizes impacts.

We ask that the Planning Commission recommend that the Stillwater County Commissioners approve this zone with an appropriate zoning ordinance.