

# Beartooth Front Zoning District

Draft date: July 28, 2019

## Section 1: General Provisions

- A. Intent.** The intent of this section is to establish a permit system and review process to identify the potentially adverse land use and environment impacts associated with oil and gas exploration and production, and to avoid, minimize, and/or mitigate these impacts to residential and agricultural interests throughout the district. Furthermore, it is the intent of this district, through the Oil & Gas Conditional Use Permit (OGCUP), to:
1. Protect the predominantly rural character and qualities of the Beartooth Front.
  2. Protect the quality of the air, surface and ground water, and soil throughout the district.
  3. Ensure that impacts on county infrastructure and services are mitigated through the equitable financial participation of oil and gas developers.
  4. Protect the use and enjoyment of private property and the continuation of working farms and ranches.
- B. Scope and Implied Powers.** These regulations are limited in their scope and authority to oil and gas facilities and activities, and only within the boundaries of the Beartooth Front Zoning District, a map of which is adopted as Exhibit A. No other type of land use is regulated under these regulations, and no regulatory powers beyond what is specifically provided for herein may be assumed or implied.
- C. Authority.** The Beartooth Front Zoning District is established pursuant to Sec. 76-2-201, MCA, which empowers Montana county governments to enact zoning in the interests of promoting the public health, safety, and general welfare.
- D. Most Restrictive Standards Apply.** When existing or future county regulations, or state or federal law, impose additional standards on land use or development governed by these regulations, the most restrictive standard (i.e. greater setbacks and/or separation requirements) shall apply.
- E. Interpretation.** All provisions of these regulations shall be interpreted as the minimum requirements necessary to protect the public health, safety, and general welfare. Actual interpretation of these regulations is the responsibility of the Administrator.
- F. Burden of Proof.** In all proceedings and hearings and in all application and submittal materials, the burden of proof shall rest with the applicant, *permittee*, or *appellant*, as applicable.
- G. Severability.** Should any provision of these regulations be held invalid by any court, the remaining provisions shall continue in full force and effect.

**H. Liability.** No individual, including members of the Board of County Commissioners, members of the Stillwater County Planning Board or of the Planning Board, the Administrator, or any other Stillwater County employee or contractor, who acts in good faith and without malice in the performance of duties assigned to them by these regulations, shall be held personally liable for errors or omissions in the lawful performance of those assigned duties.

## **Section 2: Oil & Gas Conditional Use Permit (OGCUP)**

**A. Applicability.** It shall be unlawful for any oil and/or gas well, operation, or facility to begin testing of any kind, construction, grading, clearing, or staging of vehicles and equipment upon any subject property within the Beartooth Front Zoning District without first having obtained an OGCUP from Stillwater County, regardless of any permits that may have been previously obtained, or may be applied for at a later time from the Montana Board of Oil and Gas Conservation (MBOGC), Montana Department of Environmental Quality (DEQ), or any other state or federal department or agency.

### **B. Pre-submittal Conference and Preliminary Application**

1. Any prospective applicant for an OGCUP shall contact the Stillwater County Planning Office and arrange for a pre-submittal conference.
2. At least ten (10) calendar days prior to the scheduled pre-submittal conference, the applicant shall submit a preliminary OGCUP application to the Planning Office. This preliminary application shall, as a minimum, consist of the following:
  - a. Completed preliminary application form provided by the County.
  - b. Cover letter explaining the proposed project and submittal materials.
  - c. Filing fee as set by Stillwater County.
  - d. List of all property owners within three (3) miles of the property boundary where the proposed facility or activity is to be located.
  - e. Electronic files of any permits or orders already received from MBOGC, DEQ, or any other regulatory agency, for the proposed facilities.
  - f. Map(s) depicting the boundary of the applicable lease hold or drilling unit subject to the OGCUP.
  - g. Mapped location of all well pads and/or exploration sites as appropriate, and setbacks from lease/unit boundary and all adjacent public roads.
  - h. Linear distance from each proposed well pad to any *occupiable residence* within 1,000 feet.
  - i. Linear distance from any well pad to any water body, including any pond, lake, wetland, and intermittent or perennial stream within 1,000 feet.
  - j. Linear distance from any well pad to any *domestic or agricultural well* within 1,000 feet.
  - k. Anticipated number of wells per pad.
  - l. Proposed means of access by vehicles and equipment, including existing public and private roads and streets and any new access roads to be constructed.

- m. Preliminary estimate of vehicle trips per day during construction by vehicle type (passenger car/pickup, tandem dumps, tractor trailer rigs, etc.)
  - n. Projected time frame of all construction activities.
  - o. Projected employment levels once the proposed facilities are operational, by shift if applicable.
  - p. Preliminary estimate of daily vehicle trips once all facilities become operational, including service vehicles.
  - q. General sampling and testing plans for establishing baseline air, water (surface and ground), and soil data.
  - r. General plans for monitoring air, water, and soil environmental conditions once the proposed facilities become operational.
  - s. General description of environmental safeguards (equipment, procedures, etc.) that will be employed at the proposed facilities.
  - t. Any additional or supplementary information requested by the Planning Office.
3. The actual pre-submittal conference may be held privately with Planning Office staff if the applicant so requests. Planning staff shall provide the applicant with a general assessment of the preliminary application materials submitted, and shall review the entire OGCUP process with the applicant. The Planning Office shall review the final application submittal requirements with the applicant, and shall, as may be applicable, apprise the applicant of any special environmental, development, or other planning related matters that should be addressed in the final application. The Planning Office shall provide the applicant with a written summary of the pre-submittal meeting within ten (10) calendar days of the meeting date.

C. **Base Standards.** Base standards for setbacks, noise levels, and compliance with other state and local codes are hereby established in order for oil and gas facilities to be more compatible with the rural character of the district. These standards must be met in order for the proposed OGCUP to be considered approvable according to the criteria set forth in paragraph H. 5. below:

**1. Required Setbacks.** All proposed well pads shall maintain a setback of 500 feet from any adjacent public road, street, or highway, and 1,000 feet from the following:

- a. An occupied or *occupiable residence*, excluding non-habitable residential accessory structures such as storage sheds and detached garages.
- b. A public or private school; other public buildings such as government buildings, libraries, and meeting/community halls; hospital, clinic or other healthcare facility; religious institutions.
- c. Barns and stables.
- d. Commercial and industrial structures.
- e. Public park, playground, athletic field or facility.
- f. *Domestic wells*.
- g. Any surface water body, including wetlands, lakes, ponds (including agricultural ponds), and perennial and intermittent streams.

**2. Noise Levels.** Noise suppression equipment shall be employed as needed to ensure measured average sound pressure levels do not exceed 85 dB at any outer boundary of a lease or drilling unit, or 70 dB at any residence that is existing at the time an OGCUP is approved.

**3.** All structures shall be in conformance with applicable state and local fire, safety, and occupancy codes, and all applicable permits shall be obtained.

**D. Community Informational Meeting.** The purpose of the community informational meeting is to provide an informal forum for the applicant to present the proposed project and disseminate information to area property owners as well as the public at large. Members of the public attending this meeting will be afforded the opportunity to ask questions of the applicant and to present information and/or data about community and environmental issues pertinent to the proposed oil and gas facilities.

- 1.** Within 14 calendar days of the pre-submittal meeting, the Planning Office shall contact via first class mail each land owner within the lease area as well as property owners whose land lies within three (3) miles of the outer boundary of said lease area or unit.
- 2.** This written notification shall describe the purpose of the community informational meeting and set a time and place for the meeting to be held. A notice shall be published in a newspaper of general circulation in the county at least ten (10) days prior to the meeting date, and the notice shall also be posted on the County's web site. All notifications shall also note that the deadline for submitting written comments is the date of the meeting.
- 3.** The community informational meeting shall be facilitated by the Planning Office, and the applicant and members of the community shall have approximately equal time to present information, make comments, and pose questions.
- 4.** An audio recording and written record of the community informational meeting shall be kept by the Planning Office. The written record shall be placed on the County's web site within seven (7) calendar days of the meeting. In addition, the Planning Office shall keep originals or copies of all information, maps, graphs, and other displays presented at the meeting, and those materials shall be made available to the public for viewing.
- 5.** At any time following the community informational meeting, the applicant may submit a final application for OGCUP review.

**E. Community Advisory Committee.** In order to promote greater community participation and communication among the community, the County, and the applicant, the Stillwater County Board of Commissioners shall solicit applications for and appoint a five-member Community Advisory Committee (CAC) to be comprised of residents and/or property owners of the Beartooth Front Zoning District. The CAC shall be authorized to meet periodically as needed and to advise the Planning Board and Board of Commissioners on planning, development, environmental, and public health problems and issues within the district. Specific to the OGCUP, the CAC may, at its option, attend the Community

Informational Meeting and all other open meetings and hearings associated with OGCUP review, and provide written and oral comment and testimony to the Planning Board and Commissioners.

**F. Final OGCUP Application.** At any time following the community informational meeting described in subsection D. above, the applicant may file a final application with the Planning Office. There is no time limit following the community informational meeting by which the final application must be filed.

1. At a minimum, the final OGCUP application shall consist of the following. At the discretion of the Planning Office, any submittal materials required with the final application which were previously supplied with the preliminary application need not be resubmitted provided that all information remains current and has not been superseded:
  - a. Completed final application form; form to be provided by the County.
  - b. Filing fee as set by Stillwater County.
  - c. Copies of mineral leases for the subject property. Financial terms may be redacted.
  - d. Complete description of the proposed project, including but not limited to:
    1. Expected production targets of the project.
    2. Expectation of drilling deviated wells and expected direction/location.
    3. Plans or expectations for stimulating the well(s) through hydraulic fracturing, acidizing, or other chemical treatment.
    4. A listing of prospective employment positions that will be filled once the project is in full operation, and an estimate of the number and type of those positions that can reasonably be filled by persons already residing in Stillwater County.
    5. Description of environmental safeguards (equipment, procedures, etc.) that will be employed at the proposed facilities.
    6. Description of all safety equipment to be employed on site to prevent and/or suppress emergency incidents such as fire, explosion, or leakage.
  - e. Electronic copies of any permits already received for the proposed facilities from the MBOGC, DEQ, or any other department or agency.
  - f. Map(s) depicting the boundary of the applicable lease hold subject to the OGCUP.
  - g. Mapped location of all well pads and/or exploration sites as appropriate, and setbacks from lease/unit boundary and all adjacent public roads.
  - h. Linear distance from each proposed well pad to any *habitable structure* within 2,640 feet.
  - i. Linear distance from any well pad to any water body, including any pond, lake, wetland, and intermittent or perennial stream within 2,640 feet.
  - j. Linear distance from any well pad to any domestic or agricultural well within 2,640 feet.

- k. A detailed comprehensive development plan for each proposed well pad at a suitable scale (1" = 50', 1" = 30', etc.) which at a minimum shall include:
    - 1. Anticipated number of wells per pad and their location on each pad.
    - 2. Location of waste pits, details of waste pit lining, and a description of how the waste pits will be serviced.
    - 3. Proposed means of access by vehicles and equipment, including existing public and private roads and streets and any new access roads to be constructed.
    - 4. All site improvements including buildings, structures, storage areas, vehicle parking and staging areas as applicable, and all tanks and pipelines above and below ground.
    - 5. A stormwater management plan.
  - l. Traffic impact study (TIS) prepared by a professional traffic engineer to include an analysis of vehicle trips per day during construction by vehicle type (passenger car/pickup, tandem dumps, tractor trailer rigs, etc.), plus analyses of traffic impacts once all facilities become operational.
  - m. Proposed schedule of all construction activities including a projected date of when construction is expected to be complete and when production will begin. This schedule may take the form of a phasing plan if applicable.
  - n. Specific sampling and testing plans for establishing baseline water (surface and ground), air, and soil data.
  - o. Specific plans and procedures for monitoring air, water, and soil environmental conditions once the proposed facilities become operational.
  - p. Wildlife impact assessment including potentially impacted species using the area (with special attention to endangered or threatened species), how the area is used by wildlife, and what mitigation measures will be employed to eliminate or reduce adverse impacts to wildlife.
  - q. Assessment of the potential visual impacts of the project to county roads, settlement areas, and residences. Specify measures to mitigate visual impacts such as alternative location for facilities and/or activities or landscape screening and buffering.
  - r. Plan for signage including sign types (directional, entrance, free-standing, wall sign, etc.), sign face area in square feet, and location on site.
  - s. Plan for restoring and revegetating the site following construction, including site stabilization to control of run-off, erosion, and sedimentation.
  - t. Weed control plan subject to the approval of the County Weed Supervisor.
  - u. Written summary of issues raised and comments made at the pre-application conference and community informational meeting and how those issues and comments are addressed in the final application.
  - v. Any additional or supplementary information requested by the Planning Office.
2. Once the final application has been submitted, the Planning Office shall review all information for sufficiency and completeness. The Planning Office shall notify the applicant within ten (10) calendar days if the information submitted is sufficient to

proceed with OGCUP review, or, if additional information is required. This notification shall be posted on the County's web site immediately following transmittal to the applicant. The applicant is under no deadline to produce any additional information requested pursuant to the sufficiency review, but no further action will be undertaken by Stillwater County until all requested information is received and deemed sufficient by the Planning Office. A finding and notice of sufficiency does not preclude the Planning Office, Planning Board, or Board of Commissioners cannot request additional information during the course of OGCUP review.

3. Upon a finding and notice of sufficiency, the Planning Office shall produce a packet of information and distribute copies to each county, city, state, or federal agency, office, department, division, or bureau that may be affected by the proposed oil and gas facilities. Packet recipients are requested to comment on potential impacts to services that they provide (public safety, education, recreation), infrastructure they maintain (roads, bridges, parks), or resources they manage and/or protect (air, water, agricultural resources, forests, wildlife). Each department or agency receiving an informational packet shall respond to the Planning Office with comments, or, a response of "no comment" within 15 business days. If no response is received within 15 business days, the Planning Office shall regard this as a "no comment".
4. As comments from departments and agencies are received by the Planning Office, they shall be immediately forwarded to the applicant. The Planning Office shall note any comments that may require the attention of the applicant and/or require performance on the applicant's part. In such cases, the applicant may be advised to meet directly with the commenting department or agency to discuss and resolve comments and concerns. The department or agency involved shall then issue a revised comment to the Planning Office.
5. The applicant shall be given ample opportunity to resolve comments, concerns, and requirements of the commenting agencies prior to the Planning Office scheduling a public hearing.

**G. Submittal Review Deposit.** Once the Planning Office has made a finding of sufficiency with respect to the final application as set forth in F. 2. and 3., the County, at its option, may establish a fund in order to finance independent third-party reviews of submittal reports, data, analyses, and conclusions. At the County's discretion, the applicant may be required to finance this fund up to 100%. The initial fund may be in any amount that the County deems appropriate to pay for reviews of highly technical submittals by independent experts. This fund shall be used and administered as follows:

1. An initial deposit, in an amount set by the County, shall be made by the applicant. This deposit is separate and apart from any submittal fees required of the applicant. At its discretion, the County may commit resources to the fund if it is found that the matters being studied and analyzed will have benefit to the County beyond any concerns associated with the proposed OGCUP.

2. The initial deposit by the applicant shall be in the form of cash, letter of credit, bond, or other financial surety approved by the County.
3. When the County determines that an independent review of a final application, or any part thereof, is imperative to the integrity of the OGCUP review, the county shall notify the applicant of the contractor(s) selected and the estimated direct cost of the review(s).
4. Once all of the independent reviews deemed necessary by the County have been completed, any funds remaining from the initial deposit by the applicant shall be refunded.
5. In the event that the fund becomes depleted prior to all independent reviews having been deemed necessary are complete, the County may require the applicant to deposit additional funds.
6. Should the applicant decline to provide the initial or any subsequent deposit of funds, the County may opt to not proceed with OGCUP review until funds are made available.

**H. Planning Board Public Hearing.** Once the public hearing is scheduled as per paragraph E. 5. above, the following procedures apply:

1. Owners of land within three (3) miles of the subject property, unit, or lease area as appropriate, shall be notified of the date, time, and place of the public hearing via first class mail at least 21 calendar days in advance of the hearing date. This notice shall also state the type of oil and gas facility or activity for which a permit is being considered, include a brief description of the facilities and/or activities being proposed, provide information on how to contact the County for further information on the proposal, and state how to provide a comment other than attending the public hearing.
2. A notice shall be published in a newspaper of general circulation at least 15 days prior to the scheduled public hearing. This notice shall contain all of the information set forth in paragraph 1. above, and shall also be posted on the County web site.
3. The Planning Board shall conduct the public hearing according to Montana law and its adopted by-laws and/or rules of procedure.
4. Following the public hearing, the Planning Board may adopt a recommendation for approval, approval with conditions, or denial, and forward that recommendation to the Board of Commissioners for final action on the OGCUP.
5. In making a recommendation for approval or approval with conditions, the Planning Board must make a finding that the following criteria and standards are substantially met as they may apply to the permit being requested:
  - a. The proposed OGCUP is in conformance with the Stillwater County Growth Policy.
  - b. The base standards set forth in subsection C. are met.
  - c. The site is suitable for the proposed facilities and/or activities in terms of size, location, access, and environmental constraints such as flood plains or steep slopes.



- d. Potentially adverse impacts such as noise, *glare*, vibration, dust, smoke, and odors to the surrounding residences and any agricultural operations are avoided or effectively mitigated.
  - e. The proposed surface and ground water sampling and monitoring system(s) and procedures will be effective in mitigating the pollution of surface and ground water in the project area.
  - f. Measures to prevent harmful air pollutants, and monitoring of emissions, will be sufficiently effective to protect the area's air quality to standards set by the State of Montana.
  - g. The proposed facility and/or activities are located in such a manner as to not impact scenic views and vistas from settlement areas and main county roads, and that direct visual impact to any adjacent residences has been avoided or effectively mitigated.
  - h. All necessary public services and facilities are adequate for the proposed facility and/or activities and that the proposed project, when operable, will not place an inordinate demand on local services and facilities. Local services include, but are not necessarily limited to schools, parks and recreation, fire protection, law enforcement, EMS, and local medical services.
  - i. Traffic impacts, in terms of number of vehicle trips, speed, and weight and types of vehicles, will be minimized and/or effectively mitigated. If roadway improvements such as reconstruction, resurfacing, improving the capacity and/or functioning of intersections, or reinforcement or replacement of bridges are necessary for the operation of the proposed facility and/or activities, all such upgrades are the responsibility of the applicant, and financial assurances are in place to the satisfaction of Stillwater County.
6. In adopting a recommendation for denial of the OGCUP, the Planning Board must make a finding that the criteria set forth in section H.5 have not been met as they apply to the permit being requested.
  7. The Planning Board may recommend reasonable conditions designed to avoid or mitigate any adverse impacts associated with the proposed development, and to ensure that the standards and criteria set forth herein are substantially met.
  8. The applicant shall be notified in writing of the of the Planning Board's recommendation within five (5) business days of the decision.

- I. Final Action by Board of Commissioners.** Giving due consideration to the recommendation of the Planning Board, the Board of Commissioners shall have final authority in the disposition of any OGCUP application.
1. Following transmittal from the Planning Board, an OGCUP may be placed on the next available meeting of the Board of Commissioners as a regular agenda item, or, the Board of Commissioners may opt to conduct a public hearing following all procedures and requirements set forth in subsection H. above.
  2. The Board of Commissioners shall adopt findings and base its decision on the criteria set forth in paragraph H.5. above.

**J. Baseline Sampling and Monitoring.** In order to assure that oil and gas facilities can coexist with a clean and healthy environment within the district, sampling and monitoring of surface and ground water, air, and soil are required for all OGCUP facilities approved pursuant to these regulations. All baseline sampling shall be conducted prior to any construction related to the approved facility, and reports on the sampling results shall be submitted to the County. All sampling reports shall be accessible to the public and shall be posted on the County's web site without undue delay.

**1. Surface and ground water.**

a. Baseline sampling shall be taken of all domestic and agricultural wells and all surface waters within three 1.5 miles of any approved wellbore and at least two (2) points within the district along the surface projection of any deviated well.

b. Once the permitted oil and gas facilities and activities are in operation, all sites where baseline samples were taken shall be monitored quarterly and the results reported to the County. Reporting shall note the presence and concentrations of any chemical and organic constituents not present in the baseline samples with particular attention to the water quality components listed in Appendix B to these regulations.

**2. Air.**

a. Baseline sampling shall be taken at a minimum of six (6) points within two (2) miles of any approved wellbore and at least two (2) points along the surface projection of any deviated well.

b. Once the permitted oil and gas facilities are in operation, all sites where baseline samples were taken shall be monitored semi-annually, once in mid-summer and once in mid-winter. Reporting shall note any increases above baseline samples in SO<sub>2</sub> and any other pollutants that can be introduced into the air through combustion or leakage of hydrocarbons. Increases in particulates shall also be noted, and the standards set forth in Appendix B shall be followed.

**3. Soils.**

a. Baseline sampling shall be taken at a minimum of six (6) points within one mile of any approved wellbore and at least two (2) points along the surface projection of any deviated well.

b. Once the permitted oil and gas facilities are in operation, all sites where baseline samples were taken shall be monitored annually. Testing and reporting shall include analyses of all possible constituents that could impact human or agricultural use of the soil. Components to be tested include but are not necessarily limited to those listed in Appendix B to these regulations.

**4. Continued monitoring.** Following the closure, capping, plugging, and/or abandonment of the facility, comprehensive testing and monitoring for drilling waste and injected materials shall continue annually for a period of 5 years.

**5. Reporting of monitoring.** Monitoring reports shall be delivered to the County at the required monitoring intervals.

**6. Qualifications of persons undertaking sampling and monitoring.** Only Montana-licensed and bonded environmental engineers shall undertake the baseline sampling and monitoring required by these regulations. Individuals or firms selected to perform

monitoring duties are subject to approval of capability and qualifications by the County.

7. Procedures and protocols. All procedures and protocols for sampling and monitoring shall be the latest industry standards and shall represent the best available technology for collecting, handling, transporting, and analyzing water, air, and soil samples.
8. Monitoring expenses and surety. All expenses of required sampling and monitoring are the responsibility of the permittee. In addition, the permittee shall provide the County with an acceptable financial surety for the reasonably estimated expenses of all sampling and monitoring from the time the facility becomes operational until 5 years after the capping, plugging, or abandonment of the facility. The County shall have express authority to draw on the surety in the event the permittee fails to satisfy monitoring requirements. This surety shall be in addition to any required reclamation bond or other performance bond required by any other local, state, or federal agency.

**K. Contact Information, Notification and Incident Reporting.** In order to better protect public health and safety from the potential dangers posed by incidents of fire, explosion, and spillage at oil and gas facilities, prompt emergency communication among the facility operator, local emergency response personnel, and the general public, is essential.

1. Contact information. The operator of any oil and gas facility shall provide reliable, 24-hour contact information of a responsible party to the County. In addition, this contact information shall be posted at the entrance to a facility from a public roadway and at the facility itself.
2. Incident reporting. In the event that an oil and gas facility experiences any of the “undesirable incidents” cited in 36.22.1103, ARM, the facility operator shall notify Stillwater County Emergency Dispatch immediately.

### **Section 3. Administration, Enforcement, and Appeals**

**A. Administrator.** The Stillwater County Board of Commissioners shall appoint an Administrator for these regulations. Duties and powers of the Administrator are as follows:

1. Enforce any and all provisions of these regulations, including compliance with conditions of record that may be imposed on an approved OGCUP.
2. Keep complete and accurate records.
3. Accept applications and appeals and ensure their completeness.
4. Interpret these regulations as they apply to specific properties and permit applications.
5. Receive and investigate reports, complaints, and other allegations of non-compliance or violation of these regulations, and take appropriate abatement action. This includes reports or complaints that may lead to permit revocation pursuant to subsection **3. H.**
6. Issue staff reports and analyses and render recommendations to the Planning Board and Board of Commissioners on OGCUP applications.
7. Make specific recommendations on requests to vary the standards and

requirements of these regulations.  
The Administrator has no authority, granted or implied, to vary the requirements and standards of these regulations

- B. Amendments to Approved OGCUPs.** Minor amendments to an approved OGCUP may be made by the Administrator without further review by the Planning Board or Board of Commissioners. Minor amendments may include, but are not necessarily limited to slight relocations of facilities (provided the base standards are still being met) or minor realignment of access roads, as a result of final engineering. Any amendment that increases the levels of activity and production at any facility and/or results in greater adverse impact to nearby properties is not considered a minor amendment, and a revised OGCUP application must be submitted and reviewed as described in these regulations.
- C. Administration and Enforcement.** Enforcement of standards and conditions is the responsibility of the Administrator or designee, and shall be according to enforcement protocol set by the County, or, the procedures set forth in section **3. H. 1.** of these regulations as applicable. An appeal of any interpretation of or ruling regarding these regulations should be made as a part of the final application and ruled upon by the Planning Board and Board of Commissioners.
- D. Appeals and Variances.** Request for appeals of any administrative interpretation of these regulation or request for variances from the provisions of these regulations shall be made through the OGCUP applications process. These requests will be evaluated and decisions made by the Planning Board and Board of Commissioners separately but concurrently with decisions on the OGCUP application. The County may require an additional filing fee for each appeal or variance requested. Variances to the base standards may be granted for good cause shown through the OGCUP review process. The applicant may provide special information in the final application submittal to request, explain, and justify a variance. Any relief from the code granted must be the minimum that will allow the applicant to meet the development objectives for the property, and a variance may only be granted if a finding can be made that all of the following criteria are met:
1. Exceptional and extraordinary circumstances or conditions exist on the subject property that do not exist on similarly situated properties in the same area, such that relief from the code is warranted.
  2. The applicant has no “reasonable use” of the subject property without relief from the code. For purposes of these regulations, oil and gas development is considered a reasonable use.
  3. Through a variance, the applicant is attempting to gain a right or privilege already enjoyed by those developing similarly situated properties in a similar manner. No variance shall be granted that bestows a special right or privilege upon the applicant not enjoyed by those with similarly situated properties.
  4. Circumstances or situations that would merit relief from the code cannot be of the applicant’s own making.
  5. All adverse impacts resulting from any relief from the code must be avoided or effectively mitigated.

- E. Reporting.** Once an approved oil and gas facility and/or activity becomes operational, the operator shall submit a comprehensive report to the Planning Office describing current operations at the site and document the ways (methods, practices, equipment, training, etc.) in which the operation is meeting any conditions of record. This report is in addition to the environmental monitoring reports required in subsection **2. J.** of these regulations. Reports shall be filed with the County quarterly, shall be made available for public inspection, and shall be posted on the County's web site.
- F. Effect and Scope of Approval.** Approval of an OGCUP is limited to the specific development described therein, and does not convey any broad powers of development to the applicant beyond the purpose for which the OGCUP was requested and issued. Approved OGCUPs run with the land, are site specific, and are not transferrable to other land or property.
- G. OGCUPs Valid for Two Years.** An OGCUP is valid for two (2) years from the date of issuance by the Board of Commissioners, and is vested in perpetuity once authorized site development has begun. Any OGCUP for which the authorized work, use, construction, or development has not commenced within two (2) years of its approval date shall be deemed to have expired and shall have no further force and effect with no further action required by the County.
- H. OGCUP Revocation.** An OGCUP may be revoked for good cause shown. Procedures to revoke OGCUPs may only be initiated by the County, and only the Board of Commissioners is authorized to revoke a OGCUP.
- 1.** Prior to initiating any revocation procedure, the County shall have taken, at a minimum, the following steps:
    - a. Conducted an inspection of the subject property or facility.
    - b. Thoroughly investigated any complaint regarding the permitted facility that the County may have received.
    - c. Contacted the landowner, operator, or permittee (as applicable) in writing notifying the responsible individual of the nature of any complaints, issues, and/or potential violations.
    - d. Provided the responsible party every reasonable opportunity to address and correct conditions, violations, or deficiencies.
  - 2.** An OGCUP may be revoked based upon one or more of the following findings:
    - a. That the initial application and/or representations made by the applicant in connection with the application were fraudulent or otherwise inaccurate or misleading to the extent that the decision to grant the OGCUP was based upon or influenced by said application or representations.
    - b. That the operation of the permitted facility and/or appurtenances thereto have become a public nuisance and/or imminent threat to the public health, safety, and general welfare.
    - c. That the responsible party has not adhered to any or all of the conditions attached to the OGCUP at the time of approval.

3. The Board of Commissioners may revoke an OGCUP upon approval by simple majority vote where finding and cause for revocation are set forth in the motion to revoke.
4. The responsible party shall be notified of the revocation through a cease and desist order.

**I. Appeals of OGCUP Decisions.** Appeals of any decision rendered by the Board of Commissioners on any OGCUP application shall be to district court.

**J. Amendments.** Amendments to these regulations shall only be made by ordinance or resolution, and as set forth in Sec. 76-2-205, MCA.

DRAFT

DRAFT

**Appendix A**  
Map of District

See <https://davidjkatz.files.wordpress.com/2015/11/beartooth-zone-map2.jpg>

DRAFT



## Appendix B

### Components to be Tested in Baseline Sampling and Monitoring

Soil Quality Components. Testing of Soil Quality Components shall include analysis of all possible constituents that could adversely impact human or agricultural use of the soil. Components to be tested include, but are not limited to, the following:

In mg/kg and RL

Chloride	Magnesium
Sulfide	Manganese
Sulfate	Selenium
Mercury	Silver
Arsenic	Strontium
Barium	Radium-not to exceed 5 pCi/g of radium-226 or 228
Boron	Percent moisture (%)
Cadmium	Total dissolved solids
Chromium	PH
Lead	

Air Quality Components. Testing of Air Quality Components shall include analysis of all possible constituents that could adversely impact humans, animals, or agricultural uses, and the results of the testing must comply with standards of the federal Clean Air Act of 1970 (the primary and secondary National Ambient Air Quality Standards) and the Montana Ambient Air Quality Standards.

Water Quality Components. Testing of Water Quality Components shall include analysis of (1) water quantity and (2) all possible constituents that could adversely impact human or agricultural use of the water. The results of the testing must comply with standards of the federal Safe Drinking Water Act. Components to be tested include, but are not limited to, the following:

Water Quality Components. Testing of Water Quality Components shall include analysis of (1) water quantity and (2) all possible constituents that could adversely impact human or agricultural use of the water. The results of the testing must comply with standards of the federal Safe Drinking Water Act. Components to be tested include, but are not limited to, the following:

Arsenic	Ethyl benzene	Selenium
Barium	Fluoride	Sodium
Benzene	Iron	Specific Conductance
Calcium Carbonate	Magnesium	Strontium
Diesel Range Organics	Gasoline Range Organics	Sulfate
Ethane	Manganese	Toluene
Ethene	Methane	Total Dissolved Solids
Total Petroleum Hydrocarbons	Xylene	

- Field parameters: Temperature, pH, Specific Conductance, Dissolved Oxygen, Redox Potential, Turbidity, Combustibility
- Dissolved gases: Propane, methane, and ethane
- Metals: Calcium, Potassium, Boron, Lead, Strontium, Uranium
- General Chemistry: Bicarbonate Alkalinity, Carbonate Alkalinity, Chloride, Nitrate + Nitrite, Bromide, Total Suspended Solids, Surfactants, pH
- Samples shall be tested for atmospheric and hydrocarbon compositional gases (C1-C6) and methane stable isotopes ( $\delta^{13}\text{C}$ ,  $\delta^{12}\text{C}$ ,  $\delta^2\text{H}$ , and  $\delta^1\text{H}$ ) if the dissolved methane concentration exceeds 1 mg/L.

## Appendix C Definitions

The following terms are hereby defined for purposes of these regulations. In the text of the regulation, defined terms appear in *Italics*.

1. **Agricultural well.** A well that draws ground water for watering livestock as well as irrigation of hay or other crops.
2. **Appellant.** For purposes of these regulations, an appellant is one who appeals a ruling or interpretation of these regulations made by the Administrator.
3. **Domestic well.** A well that draws ground water for human consumption, whether for a residence or for commercial or industrial operations.
4. **Glare.** For purposes of these regulations, glare is light that is visible directly from the source (bulb, filament, etc.), unencumbered by any deflection or shielding, from beyond the bounds of the property on which the light is generated.
5. **Habitable structure.** A structure which is occupied; a structure which is not occupied, but can be made suitable for occupancy with interior finishing or refurbishing of a non-structural nature.
6. **Occupiable residence.** A residential structure which is occupied; a residential structure which is not occupied, but can be made suitable for occupancy with interior finishing or refurbishing of a non-structural nature.
7. **Permittee.** For purposes of these regulations, a permittee is one who holds and/or has been granted an Oil and Gas Conditional Use Permit (OGCUP).