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**MONTANA THIRD JUDICIAL DISTRICT COURT,  
FLATHEAD COUNTY**

JOHN AMBLER AND STACY  
AMBLER

Plaintiffs,

v.

FLATHEAD CONSERVATION  
DISTRICT

Defendant.

Cause No.: DV-15-2023-0000444-RP

Judge: Robert B. Allison

**AMENDED COMPLAINT**

COME NOW, Plaintiffs John Ambler and Stacy Ambler, by and through their undersigned counsel of record, Trent Baker of Datsopoulos, MacDonald & Lind, P.C., and for its Amended Complaint against the above-named Defendant, assert as follows:

## PARTIES

1. John and Stacy Ambler (hereinafter the “Amblers”) are individuals, both of whom are residents of California and domiciled in in California, with a mailing address of 1375 Loring St., San Diego, CA 92109.
2. The Flathead Conservation District (hereinafter the “District”) is a political subdivision of the State of Montana, with a mailing address of 133 Interstate Lane, Kalispell, MT 59901.
3. The real property (hereinafter the “Property”) at issue in this action is private property, also known as an “inholding,” owned by the Amblers and is situated within Glacier National Park and is more particularly described as:  
  
**S23, T32 N, R19 W, 17376-10, PARCEL N/A, TR 2EBCA IN L3,  
FLATHEAD COUNTY, MONTANA.**
4. Plaintiffs were the record owners of the Property at all times relevant hereto.
5. The District is charged with administration of The Montana Natural Streambed and Land Preservation Act (the “NSLPA”) under Mont. Code Ann. § 75-7-101 et seq.

## JURISDICTION AND VENUE

6. This Honorable Court has original subject matter jurisdiction pursuant to § 3-5-302(1)(b), M.C.A. (i.e., “all civil and probate matters”).

7. Venue is proper pursuant to § 25-2-123(1), M.C.A., because the Property at issue in this case is situated in Flathead County, Montana, and actions giving rise to this cause of action took place in this County.

8. This Honorable Court has personal jurisdiction over Defendants pursuant to Rule 4(b)(1), M.R.Civ.P., because they are “found within the state of Montana.

9. The NSLPA, at Mont. Code Ann. § 75-7-121, provides for judicial review of final decisions of the District by the district court of the county where a project is located.

### **FACTS COMMON TO ALL COUNTS**

10. Plaintiffs re-allege the foregoing paragraphs as though fully set forth herein.

11. The Amblers purchased the Property in 2019, which was, at that time, a vacant, private inholding within Glacier National Park.

12. Also in 2019, the Amblers contacted Flathead County to inquire about permits that might be required to construct a residence on the Property.

13. On May 13, 2019, Flathead County informed the Amblers in writing that, because the Property is an un-zoned Property within Flathead County, the County does not regulate the use of the land and that the Amblers could do “whatever [they] want with the land without restriction.”

14. The County further specified that “there are no setback or height requirements” and that “no permits would be needed.”

15. Glacier National Park also did not require any permits from the Amblers and authorized them to connect their residence to the Apgar Village water and sewer system.
16. The Amblers began construction of a residence on the Property.
17. The construction continued until early 2023, when the District received a number of complaints about the construction and conducted an onsite inspection of the Property on February 27, 2023.
18. The Amblers, through counsel, requested that the District table any decision regarding the complaints to allow for analysis of the District's jurisdiction and the determinations required by the NSLPA.
19. The District declined that request and, at its March 13, 2023 meeting, decided that the Amblers violated the NSLPA because (1) the Ambler's residence was on the immediate bank of McDonald Creek and (2) the streambank was excavated to create a pad for construction.
20. The District determined that the Amblers must remove their residence by November 1, 2023, and must obtain a 310 permit in order to do so.
21. The District notified the Amblers of its decision by certified letter dated March 16, 2023, which the Amblers received on March 21, 2023.
22. The District made its decisions without addressing any of the factors required to be considered under § 75-7-112 (9), M.C.A.

23. The Amblers, through counsel, requested that the District specify its deadlines for submission of a request for declaratory ruling or application for judicial review or arbitration of its decision.

24. The District addressed this request at its meeting on March 27, 2023. At the meeting, the Amblers' counsel requested the deadlines for declaratory ruling or submission of a 310 permit provide adequate time for the Amblers to obtain information relating to the District's jurisdiction and the determinations required by the NSLPA. The District decided that a 310 permit or a request for declaratory ruling must be submitted by April 3, 2023.

25. The District's deadline did not allow the Amblers adequate time to obtain information relating to the District's jurisdiction and the determinations required by the NSLPA. Such information would include surveying of the stream bed and banks of McDonald Creek, modeling of stream flows, and determination of the elevation of the ordinary high-water mark and floodplain, among other considerations.

26. The Amblers were directly affected and substantially prejudiced by the District's decisions described above regarding the application, interpretation and implementation of the NSLPA, including the District's decisions that the Amblers violated the NSLPA, that they must remove their structure and obtain a 310 permit

to do so, and that they should not be allowed adequate time to gather and analyze relevant information and data.

27. On April 3, 2023, the Amblers requested a declaratory ruling on the District's jurisdiction and the decisions referenced above.

28. On April 10, 2023, the District ordered the Amblers to cease and desist activity on their property.

29. During the declaratory ruling proceedings, the Amblers provided information showing that the District did not have jurisdiction over the Property, but if the District had jurisdiction, they would be entitled to a 310 permit.

30. On November 13, 2023, the hearing officer for the declaratory ruling proceedings provided recommended findings of fact, conclusions of law and declaratory ruling.

31. On November 13, 2023, the District adopted those findings and conclusions and determined that it had jurisdiction, that the Amblers' project violated the NSLPA, and that they must remove their residence by April 1, 2024, and must submit a 310 permit application for removal by January 1, 2024.

32. On November 13, 2023, the District also summarily voted to deny the Amblers a 310 permit based on the information they submitted during the declaratory ruling proceedings.

33. As a result of the conduct of the District, the Ambler's have incurred substantial damages in an amount to be proved at trial, including damages for the loss of use of their property.

**COUNT I—DECLARATORY RELIEF - VIOLATION OF MONTANA  
CONSTITUTION**

34. Plaintiffs re-allege the foregoing paragraphs as though fully set forth herein.

35. The rights included within the Montana State Constitution's "Declaration of Rights" are fundamental rights that are significant components of liberty, any infringement of which will trigger the highest level of scrutiny, and thus, the highest level of protection by the courts.

36. The Ambler's rights to the protection of their Property are inalienable under Mont. Const. art. II, § 3.

37. Pursuant to Mont. Const. art. II, § 4, the Amblers are entitled to equal protection under the law.

38. Pursuant to Mont. Const. art. II, § 17, the Amblers cannot be deprived of their property rights without due process of law.

39. Pursuant to Mont. Const. art. II, § 29, the Amblers' Property may not be taken or damaged for public use without just compensation.

40. By depriving the Ambler's of adequate time to obtain information relating to the District's jurisdiction and the determinations required by the NSLPA, the District treated the Ambler's differently than it has treated other property owners

and their projects and violated the Equal Protection Clauses of the Montana State Constitution.

41. As applied, the District's decisions regarding the application, interpretation and implementation of the NSLPA, including the District's decisions that the Amblers violated the NSLPA, that they must remove their structure and obtain a 310 permit to do so, violates the Montana Constitution because the decisions deprive the Amblers of their rights in their Property with due process of law and constitute a taking of their Property without just compensation.

**COUNT II — DECLARATORY RELIEF – VIOLATION OF NSLPA**

42. Plaintiffs re-allege the foregoing paragraphs as though fully set forth herein.

43. Even if the District has jurisdiction over the project under the NSLPA, the District failed to properly consider factors required by § 75-7-112(9), M.C.A., which specify:

The team, in making its recommendation, and the supervisors, in denying, approving, or modifying a project, shall determine:

- (a) the purpose of the project; and
- (b) whether the proposed project is a reasonable means of accomplishing the purpose of the proposed project. To determine if the project is reasonable, the following must be considered:
  - (i) the effects on soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives;
  - (ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the



stream and its environment and better accomplish the purpose of the proposed project;

(iii) whether the proposed project will create harmful flooding or erosion problems upstream or downstream;

(iv) the effects on stream channel alteration;

(v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal of ground cover; and

(vi) the effect on fish and aquatic habitat.

44. The District acted arbitrarily and capriciously in making its determinations by not considering these factors and by not allowing the Amblers adequate time to obtain information relating to the determinations required by the NSLPA.

45. The District's decisions, as set forth above are:

(a) in violation of a constitutional or statutory provision;

(b) in excess of the statutory authority of the supervisors;

(c) affected by error of law; and

(d) arbitrary or capricious, characterized by abuse of discretion or a clearly unwarranted exercise of discretion.

### **PRAYER FOR RELIEF**

Accordingly, the Plaintiffs respectfully request:

(1) that the Court find and declare that the District's decisions violate the provisions of equal protection and protection of private property rights under both the Montana Constitution and the United States Constitution;

(2) that the Court find and declare that the District's decisions are: (a) in violation of a constitutional or statutory provision; (b) affected by error of law; and (c) arbitrary or capricious, characterized by abuse of discretion, or a clearly unwarranted exercise of discretion;

(3) that they be awarded compensatory damages, including damages for the loss of use of their Property;

(4) that they be awarded their costs, disbursements and attorney fees; and

(4) such other and further relief at this Honorable Court deems just.

DATED this 12<sup>th</sup> day of December, 2023.

Datsopoulos, MacDonald & Lind, PC

By: /s/ Trent N. Baker

Trent N. Baker