

BEFORE THE FLATHEAD CONSERVATION DISTRICT

PUBLIC HEARING:)
DECLARATORY RULING ON FLATHEAD) SCHEDULING ORDER
CONSERVATION DISTRICT JURISDICTION)
McDONALD CREEK – AMBLER PETITIONER)

In accordance Mont. Code Ann. § 75-7-125 of the Natural Streambed and Land Preservation Act (310 or 310 law) and implementing rules, the Flathead Conservation District (FCD) determines the applicability, interpretation, or implementation of statutory provisions of the 310 law, which includes determinations of jurisdiction. Directly affected persons who disagree with a determination may petition FCD supervisors for a declaratory ruling.

At issue is the construction of a home on the bank of McDonald Creek. The site, owned by John and Stacy Ambler, is located on a private inholding within the boundaries of Glacier National Park in Section 23, Township 32, Range 19, Flathead County, Montana. At its March 13, 2023 meeting, the FCD determined the project was within its jurisdiction and had been constructed without written consent of the supervisors, and therefore was a violation of the 310 law. As such, FCD determined the structure must be removed and the bank restored by November 1, 2023. A 310 permit application (notice of proposed project) is required for the work.

Trent Baker with Datsopoulos, McDonald & Lind, PC, on behalf of John and Stacy Ambler (Petitioners) filed a petition, dated April 3, 2023, requesting a declaratory ruling pertaining to FCD's determination of jurisdiction over the Petitioner's property and the structure located on McDonald Creek. The petition is filed pursuant to Mont. Code Ann. § 75-7-125 and the FCD implementing rules. On May 22, 2023, FCD set a public hearing date of August 25, 2023.

The Petitioners seek a declaratory ruling on FCD's determination:

- 1) that the Petitioner's property is jurisdictional and therefore a violation occurred;
- 2) that the structure be removed and that the Petitioner's obtain a permit to do so; and
- 3) that Petitioners were denied adequate time to gather, analyze and present relevant information and scientific data.

This issue directly affects the Petitioners. FCD accepted jurisdiction over the petition as to the applicability, interpretation, or implementation of the 310 law and the implementing rules. The above-entitled matter constitutes significant public interest as determined by the FCD at its April 10, 2023 meeting. The FCD signed an order at its May 3, 2023 meeting appointing Laurie Zeller as the hearings officer.

Public process and hearing to gather information for declaratory ruling:

Because FCD determined this matter to be of significant public interest, interested persons and the Petitioner have the opportunity to submit data, information, or arguments, orally or in written form, prior to FCD's declaratory ruling. All information received by FCD outside the public hearing will be made available for public review prior to the hearing according to the process and schedule below.

Data, information, arguments oral or written:

This is a public participation process to gather information and data. This is not a contested case proceeding and is not subject to the Montana Administrative Procedures Act.

This hearing and public process will address only the question of jurisdiction, item 1 above. The declaratory ruling process is appropriate to answer questions of jurisdiction, but items 2 and 3 above are legal issues more

appropriately handled under other statutes, including but not limited to Mont. Code Ann. § 75-7-122 and 75-7-123.

Although any pertinent information is welcome, FCD is particularly interested in facts pertaining to how the Petitioner's structure may or may not meet jurisdictional definitions. This may include, but is not limited to, written and oral statements, photos, maps, streamflow data, on-site evaluations, landowner and resident interviews, measurements, documentation of past and current conditions, reports, and historical information.

FCD rules can be obtained online at <https://flatheadcd.org/310-stream-permits/declaratory-ruling-mcdonald-creek-violation/> and the 310 law (Mont. Code Ann. § 75-7-101 through 75-7-125) in its entirety can be obtained online at https://leg.mt.gov/bills/mca/title_0750/chapter_0070/part_0010/sections_index.html.

Process and schedule:

NOTE: The Petitioner raised the issue of whether the state ceded its jurisdiction to the federal government when Glacier National Park was formed. This legal analysis is pending. This legal analysis may postpone or delay the schedule outlined below.

June 6, 2023, FCD will make all pertinent records available for public review.

June 20, 2023, Written comments due at FCD office. The Petitioners and the public may submit written comments, information, and data pertinent to the FCD's jurisdiction. Pertinent information is outlined above.

July 6, 2023, FCD will make written comments available for review.

July 20, 2023, Written rebuttal comments due at FCD office.

August 3, 2023, FCD will make any rebuttal comments available for public review.

August 25, 2023, Public Hearing, 9:00 a.m. at the Hilton Garden Inn, 1840 Highway 93 South, Kalispell, Montana, 59901. Petitioners and any interested person may present oral and/or verified written comments. If written comments are submitted at the hearing, an original and three copies of verified information or comments must be submitted. Oral statements must be under oath or affirmation.

How to submit and review information:

An original and three copies of written comments must be received by the dates listed above at the FCD office at 133 Interstate Lane, Kalispell, Montana, 59901.

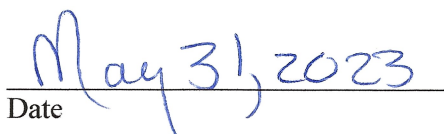
All written comments must be verified. A verification form can be obtained at <https://flatheadcd.org/310-stream-permits/declaratory-ruling-mcdonald-creek-violation/>.

Please do not duplicate information already in the record. Existing records can be referenced by the document's index number.

All records and comments can be reviewed by the dates listed above at the ImagineIF Library, 247 1st Avenue East, Kalispell, Montana, 59901 and online at <https://flatheadcd.org/310-stream-permits/declaratory-ruling-mcdonald-creek-violation/>.



Laurie Zeller, Hearings Officer



Date