

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Cause: DA 25-0164.

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SAPPHIRE COALITION,  
Plaintiffs and Appellants

v.

RAVALLI COUNTY, through its COUNTY COMMISSION, PLANNING  
DEPARTMENT, AND COUNTY ATTORNEY’S OFFICE,

Defendant/Appellee.

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**APPELLANT’S OPENING BRIEF**

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On Appeal from the Montana Twenty-First Judicial District Court  
Ravalli County  
District Court Cause No. DV 2024-210  
Honorable Jennifer B. Lint, Presiding

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APPEARANCES:

Graham J. Coppes  
Emily F. Wilmott  
FERGUSON AND COPPES, PLLC  
A Natural Resource Law Firm  
PO Box 8359  
Missoula, MT 59807  
Phone: (406) 532-2664  
Email:  
graham@montanawaterlaw.com

Bill Fulbright  
Christine Lindley  
RAVALLI COUNTY ATTORNEY  
Ravalli County Courthouse  
205 Bedford Street, Suite C  
Hamilton, MT 59804  
(406) 375-6750  
rcaoservices@rc.mt.gov

*Attorney for Defendant/Appellees*

Robert Farris-Olsen  
David K. W. Wilson, Jr.  
MORRISON SHERWOOD WILSON  
DEOLA, PLLP  
401 N. Last Chance Gulch  
P.O. Box 557  
Helena MT 59624  
Phone: (406) 442-3261  
Email: rfolsen@mswdlaw.com  
kwilson@mswdlaw.com  
*Attorneys for Plaintiff/Appellant*

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## STATEMENT OF THE ISSUES

1. Whether the District Court erred when it held that the public is not entitled to any notice, or opportunity to participate, in the division of 80 acres of land via a family transfer when its own regulations require public comment, the land has previously been subject to family transfers, and the family transfer is clearly an attempt to evade subdivision review.
2. Whether the District Court erred when it dismissed Sapphire Coalitions claims for violation of their constitutional right to know and participate simply because they failed to notify the attorney general, when Rule 5.1 M. R. Civ. P., unequivocally does not apply to claims of constitutional *violations* but only to challenges to the constitutionality of statutes.
3. Whether the District Court concluded that the § 76-3-207(6), MCA, is the exclusive remedy for a family transfer that is meant to evade subdivision review, when nothing in the statute indicates it's an exclusive remedy and decades of case-law contradict the Court's analysis.
4. Whether the District Court misapplied the rules of joinder under Rule 19, M. R. Civ. P., and the Uniform Declaratory Judgments Act, when it dismissed the claims for failing to join landowners whose property was at issue.

## STATEMENT OF THE CASE

This case is an example of the Ravalli County Commissioners turning a blind eye to and permitting unlawful development. Plaintiffs filed this case on May 24, 2024, to challenge development of the Rolling Rock Ranch Estates subdivision, which had been created through a series of family transfers obviously meant to evade subdivision review. (Dkt. 1.) The County initially moved to dismiss the complaint. (Dkt. 6.) In response, Plaintiffs filed an amended complaint July 3, 2024, and named Ravalli County as the sole defendant. (Dkt. 8). This prompted another motion to dismiss, which was fully briefed and submitted to the Court by August 23, 2024. (Dkts. 13-17.) The District Court granted the motion to dismiss on January 1, 2025 (Appendix (App) 1), and the Plaintiffs appealed the matter on February 26, 2025. (Dkt. 19.))

## STATEMENT OF FACTS<sup>1</sup>

### **A. Ravalli County Subdivision Regulations guide the division of land in Ravalli County.**

Ravalli County, like other counties in Montana, has established a set of subdivision regulations which bind its processes and decision making. Ravalli County regulations “presume[ ]” an improper purpose to evade the Act if the

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<sup>1</sup> The facts are taken from the *Amended Complaint* (Dkt. 8) and must be taken as true for the purposes of a motion to dismiss. *Meagher v. Butte-Silver Bow City-Cnty.*, 2007 MT 129, ¶ 13, 337 Mont. 339, 160 P.3d 552; *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 8, 390 Mont. 12, 407 P.3d 692.

proposal involves “significant impacts” under the review criteria likely to “lead to imposition of significant conditions of approval, or denial, of an equivalent” non-exempt application, and require consideration of “[a]ny pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.” Ravalli County Subdivision Regulations (“RCSR”) 11-4(C)(2); RCPD Subdiv. Evasion Criteria (rev. Mar. 8, 2024) (Dkt. 14, Exhibit D). These provisions are intended that legitimate family transfers may be approved but not from actual developments only masquerading as such are not. Importantly, if a family transfer exemption is granted but use of the exemption is *later* revealed to be for an improper purpose to evade review, the MSPA directs that the County Attorney’s Office “shall” commence action to enjoin sale of those tracts. Section 76-3-301(3), MCA.

**B. The Albert Family Transfer was meant to evade subdivision review.**

Gary Chilcott is a developer in Ravalli County. (Dkt. 8, ¶ 65.) In the past, Mr. Chilcott has used the family transfer to divide land and deed it to his wife and children, who then conveyed their tracts back to Mr. Chilcott, and all the lots were sold to different individuals. *Id.*, ¶¶ 88-92. Moreover, when Gary Chilcott was involved in the development of the neighboring Foley properties, concerns regarding water quality/quantity, wildlife habitat, and public health, safety, and services led the County to impose significant conditions of approval. *Id.*, ¶¶ 72-86.

That project was subsequently abandoned. *Id.*, ¶ 87. During a 2023 meeting on that project, Mr. Chilcott openly discussed with a neighbor how much easier it had been to use the family transfer exemption than attempt to go through the review process of the MSPA. *Id.*, ¶ 65.

Gary Chilcott first acquired the subject 80-acre Property in 2010. *Id.*, ¶ 51. He conveyed it to his son, Lance Albert—who lives in Alaska—in 2019. *Id.*, ¶ 53. Mr. Albert promptly applied for and received a Family Transfer Exemption with Ravalli County, divided the Property into eight, ten-acre parcels, and conveyed them as follows: back to his father, Gary Chilcott; to his wife; and to their five minor children, retaining the remainder for himself. *Id.*, ¶¶ 54-55, 60. Mr. Albert’s application materials did not include the recommended written response to the subdivision evasion criteria listed in Ravalli County regulations.

In August of 2021, Gary Chilcott applied for a permit for construction of a platted road over the property. *Id.*, ¶ 61. In 2022, Gary Chilcott and Lance Albert established a 60-foot-wide private access and utility easement to benefit both the Property at issue and the neighboring Foley property subdivision. *Id.*, ¶ 63. In early 2024, earthmoving equipment and work constructing the platted road was seen on the Property. *Id.*, ¶ 103. By May 2022, seven of the eight tracts on the Property were listed to be sold as part of “Rolling Rock Ranch Estates,” including power and protective covenants. *Id.*, ¶ 105. Because there are more than five properties,

the subdivision would have been considered a major subdivision, subject to the full rigor of subdivision review, but for the family transfer.

Sapphire member Alan Maki first learned about the Albert Family Transfers by happenstance, while looking at the neighboring Foley property on Cadastral, and through subsequent conversation with Mr. Chilcott. *Id.*, ¶¶ 64-65. He promptly met with Ravalli County staff to discuss the matter. *Id.*, ¶ 93. Public documents relating to the exemption received from the County in November of 2023 confirmed that there had been no public notice or comment relating to the family transfer application. *Id.*, ¶¶ 97-99. Sapphire membership has brought concerns regarding the legality of the Albert Family Transfers and the lack of public notice or opportunity to comment to County staff, including the County Attorney, and Commissioners, to no avail. *Id.*, ¶¶ 93, 100, 101, 104. Plaintiff demanded that the County Attorney enjoin the sale, but to no avail.

Sapphire filed the present suit alleging that the Chilcott/Albert family transfers were clearly intended to evade subdivision review and that the County's failure to provide notice and a reasonable opportunity for public input violated state and local law.

## STANDARD OF REVIEW

An order dismissing a case under Rule 12(b)(6) is reviewed....Under those standards, a motion to dismiss is “viewed with disfavor and rarely granted. *Steele v. McGregor*, 1998 MT 85, ¶ 9, 288 Mont. 238, 956 P.2d 1364. Dismissal is only justified “when the allegations of the complaint clearly demonstrates that the plaintiff does not have a claim.” *Fennessy v. Dorrington*, 2001 MT 204, ¶ 9, 306 Mont. 307, 309, 32 P.3d 1250, 1252. Courts are required to “construed the complaint in the light most favorable to the plaintiff and may not dismiss it unless it appears that the plaintiff is not entitled to relief under any set of facts that could be proved in support of his claims.” *Id.* In considering a motion to dismiss under Rule 12(b)(6), “the complaint is construed in the light most favorable to the plaintiff, and all allegations of fact contained therein are taken as true,” “drawing all reasonable inferences in favor of the claim.” *Meagher*, ¶ 13; *Anderson*, ¶ 8

## SUMMARY OF THE ARGUMENT

The District Court made multiple, overlapping errors in Dismissing Count Two and Three of Plaintiff’s Complaint.<sup>2</sup>

Count Two of Plaintiff’s First Amended Complaint alleges that Ravalli County violated its own subdivision regulations which require that the public be given notice and opportunity to be heard/comment on subdivision applications

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<sup>2</sup> Sapphire Coalition does not appeal the dismissal of Count One.

which propose that they be exempt from any and all subdivision review under the authority of the “Family Transfer Exemption.” Plaintiff further alleges that these regulations were promulgated to implement citizens’ constitutional right to know and participate in government. What Plaintiff’s did not do is challenge the validity of any statute. Nevertheless, the District Court dismissed Count Two because “plaintiff failed to file a Constitutional Notice as required by M. R. C. P. 5.1.” (App. 1, p. 4) This basis for denial constitutes legal error for the simple reason that it contradicts the plain language of Rule 5.1.

However, the District Court did not stop its analysis there. The District Court committed further reversible error when it conflated the alleged failure to allow for “public comment” with an unpled failure to “hold a meeting.” Simply put, there is no legal or factual basis for the District Court’s rationale, which can be summarized as follows: because the Ravalli County Subdivision Regulations don’t require a public meeting, they do not also require public comment. The plain language of the regulations contradicts the District Court’s opinion and thus, it should be reversed.

In relation to Count Three, the District Court committed additional reversible error when it denied adjudication of a discrete and ripe question of law brought under the Uniform Declaratory Judgment Act because it believed the remedy of vacatur was not appropriate. The District Court erred because vacatur is

an equitable and presumptive remedy government action found to be improper. Unless a statute specifies otherwise, vacatur is available. However, independent of its request for vacatur, Plaintiff requested a declaration that the property transfers detailed in the complaint constitute an evasion of the Subdivision Act, as defined by Ravalli County's own regulations. Thus, even if the court found that remedy not appropriate, the District incorrectly avoided adjudication of the merits of this well-plead issue, because it could have crafted a different remedy for legal violation, including the financial penalty it cited as exclusive.

The District Court committed further reversible error when it incorrectly dismissed Count Three for failing to join a necessary party. Pursuant to well-established precepts of Montana law and the plain language of Rule 19 Mont. R. Civ. P., if the District Court believed the subdivision developer was a necessary party to the case, it was required to join that person. Instead, the District Court impermissibly and erroneously denied Plaintiff access to the court system.

## **ARGUMENT**

### **A. The Montana Subdivision and Platting Act and Ravalli County Subdivision Regulations guide the division of land in Ravalli County.**

The Montana Subdivision and Platting Act ("MSPA") was enacted in 1974 to allow communities to manage development to conserve environmental and community resources. *See* § 76-3-102, MCA; *State ex rel. Dreher v. Fuller*, 257 Mont. 445, 448, 849 P.2d 1045, 1047 (1993). Its purpose is in part to "promote the

public health, safety and general welfare”. Section 76-3-102 (1)(a), MCA. Those purposes are carried forward in several stringent requirements to ensure that a proposed subdivision meets these purposes. First, subdivision applicant must provide the governing body with an environmental assessment (“EA”), § 76-3-603, MCA, assessing impacts to the environment from the subdivision. Second, the governing body must evaluate a subdivision for specific, documentable and clearly defined impacts on, among other things, agriculture, local services, the natural environment, wildlife and public health and safety, § 76-3-608, MCA. Because the Act is intended to promote public health, safety and welfare, it is to be liberally construed, “with a view towards the accomplishment of its highly beneficent objectives. *State ex Rel. Florence-Carlton School Dist. v. Board of County Comm’rs*, 180 Mont. 285, 291, 590 P.2d 602 (1978). And “[n]o rule of statutory construction is more readily applied by the courts than that public statutes dealing with the welfare of the whole people are to have a liberal construction.” *Id.* (citations and quotations omitted).

Generally, then, the division of a tract of land into parcels of less than 160 acres requires a searching review process under the MSPA. To avoid subjecting this detailed review process to those individuals seeking to merely pass-on property to their family members, the MSPA contains what is known as the “family transfer exemption.” Section 76-3-207(1)(b), MCA. Of course, like many

such statutory exemptions, there are strong incentives for a developer to exploit the exemption to circumvent the detailed subdivision regulation. The MSPA therefore prohibits use of the exemption “for the purpose of evading” the MSPA, § 76-3-207(1), MCA, and governing bodies “have the power **and duty** to evaluate and determine from all the circumstances” whether the proposal has a “purpose to evade subdivision requirements.” *Dreher*, 257 Mont. at 451, 849 P.2d at 1048.

(Emphasis added)

**B. The District Court erred when it dismissed Sapphire Coalition’s public participation claims without any analysis and in contravention of Montana’s constitution.**

Count II of the amended complaint sought to hold Ravalli County accountable for failing to provide requisite and meaningful notice or opportunity to comment on this blatant abuse of the “Family Transfer Exemption” by a known real estate developer, directly adjacent to and connected with a proposed Major Subdivision. In defending its failure to provide notice or comment, the County relied solely on its subdivision regulations for family transfers. (Dkts. 14, 16.)

In 2006, the County Regulations required the Planning department to “hold a public meeting” where the public could “comment on the proposal and rebut any presumption.” (Dkt. 14, p. 8.). In 2012, the County stripped the language pertaining to a public meeting requirement, but it expressly retained the requirement that comment opportunities be provided prior to making a decision. *Id.*

More specifically, as plead in ¶ 22 of the First Amended Complaint, “during review of an exemption application an ‘applicant and the public shall be permitted to comment on the proposal and rebut any presumptions that the use of the exemption evades the MSPA or these regulations.’” RCSR 11-5(B). In other words, while there is no longer an explicit requirement for a public meeting, there is an express requirement that the County provide an opportunity for public comment. Thus, the failure to provide this comment opportunity, not a meeting, was directly before the District Court.

**1. The District Court erred in ignoring the plain language of the regulations.**

The District Court ignored the plain language of the County Regulations and the way they implement the constitutional right to know.

Instead, the District Court declared the County’s review process for exemptions does not feature “a meeting as defined by statute”. (App. 1, pp. 3-4 *citing Hampton v. Lewis and Clark County*, 2001 MT 81, ¶ 49, 305 Mont. 103, 23 P.3d 908.) However, Plaintiff’s Complaint does not allege that “a meeting” was required to take place during the review process, it alleges that the County was allowed to provide for comment.

Montana’s Constitution guarantees to every citizen the right of participation. Mont. Const. Art. II, § 8. This right ensures citizens have a “reasonable opportunity” to participate in governmental decision-making. *Id.* Similarly, Article II, § 9,

guarantees the public the right “to observe the deliberations” of public bodies. These rights are fundamental, complementary, and coextensive. *Bryan v. Yellowstone County Elem. Sch. Dist. No 2*, 2002 MT 24, ¶ 44, 312 Mont. 257, 60 P.3d 381; *State v. Tapson*, 2001 MT 292, ¶ 15, 307 Mont. 428, 41 P.3d 305 (Article II rights are fundamental). This right was meant to ensure that the public bureaucracy remained responsive to the people. As described by Delegate Foster at the Constitutional Convention:

Delegate Foster: . . . I think that we should be very well aware of what this committee is attempting to do. The continuing growth of bureaus has brought a new dimension to our representative form of government. We have drawn clearer lines of election for legislative officials. We have devised a more responsive system of selection and election for judicial officials. We have retained an extensive elective process for our executive officials. But what of the bureaus, the long arm of government with which the average citizen most often comes in contact; the long arm of government which is not responsive to elective officials; the long arms of government with which many, if not most, of our Montana citizens have met frustrating resistance and/or indifference? Elections do not materially affect the bureaus. Political pressures are not sufficient to juvenate [sic] response to public need. Public awareness and access seem to be the only tools to remind the great mass of public servants that their job is to serve the needs of the public and no other; they are paid by tax dollars to benefit the public above all else.

*Bryan*, ¶ 40, citing Montana Constitutional Convention, Vol. V at 1655, 1657.

With this backdrop in mind, and to effectuate the right to participate, the legislature enacted the Montana Public Participation Act. Thereunder, executive agencies and boards are responsible for developing procedures to encourage the

public to participate. Section 2-3-103(1)(a), MCA. Part of that obligation is to ensure that “interested persons” have a “reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision.” Section 2-3-111(1), MCA. To facilitate public participation, and comply with the Montana Constitution, agencies must also provide sufficient notice to allow for meaningful participation. Section 2-3-103, MCA; *see, e.g., Schoof v. Nesbit*, 2014 MT 6, ¶ 17, 373 Mont. 831, 316 P.3d 831 (“[O]bviously an opportunity to participate cannot occur unless adequate notice is provided pursuant to the right to know.”)

These provisions not only apply to state government agencies, but also to any “board, bureau, department, authority or officer” of a county. Section 2-3-102(1), MCA; *see e.g. Jones v. Cty. of Missoula*, 2006 MT 2, ¶ 59, 330 Mont. 205, 127 P.3d 406.

These provisions must also be construed liberally to ensure that the citizens of this state are not “abdicat[ing] their sovereignty to the agencies that serve them.” *Schoof*, ¶ 18. They are also interpreted based on their plain meaning. *Bullock v. Fox*, 2019 MT 50, ¶ 52, 395 Mont. 35, 54, 435 P.3d 1187. And in doing so, the Court may not insert what has been omitted or omit what has been inserted. Section 1-2-101, MCA. It must also attempt to harmonize all parts of the statutes to give effect to each provision, where possible. *Id.*

The District Court ignored this long history and the expressed regulatory and statutory language requiring public participation. Ultimately, the District Court erred by completely ignoring the plain language of RCSR 11-5(B) .to find that nothing in Ravalli County regulations or § 76-3-207, MCA, required public participation. (App. 1, pp. 3-4.) That conclusion, though, ignores the most basic rules of statutory construction. First, “[w]hen a statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe.” *Supola v. Mont. DOJ, Drivers License Bureau*, 278 Mont. 421, 424, 925 P.2d 480 (1996) (citations omitted). Only if there exists ambiguity in such wording should the court resort to the rules of statutory construction.” *Sink v. Sch. Dist.*, 199 Mont. 352, 360, 649 P.2d 1263 (1982). Furthermore, all parts must be read in harmony to give effect to all. Section 1-2-101, MCA.

Here, because the plain language of Ravalli County Subdivision Regulation 11-5(b) is unambiguous and its plain language requires the opportunity for comment, the District Court committed reversible error by ignoring it. Similarly, by directly conflating the requirement for comment which is provided in the law, with the requirement for a meeting, which is not, the District Court erroneously dismissed Plaintiff’s claim.

Additionally, because § 76-3-207, MCA, does not prohibit public participation, the two statutes - § 76-3-207 and § 2-3-103, MCA – can easily be

harmonized: If an exemption from the subdivision requirements under § 76-3-207, MCA, is “of significant interest to the public,” then the public must be given adequate notice and an opportunity to participate “before a final agency action is taken.” Section 2-3-103, MCA; *Jones*, ¶ 14. This does not necessarily require a public meeting, but only the “reasonable opportunity to submit data, views or argument, orally or in written form, prior to making a final decision that is of significant interest to the public.”<sup>3</sup> Section 2-3-111, MCA.

Here, the decision to allow for the statutory exemptions is of “significant interest to the public.” The term “significant public interest” means any “non-ministerial decision of action of a[n agency] which has meaning to or affects a portion of the community.” *Jones*, ¶ 16. Upon meeting that definition, “notice to the public and the opportunity for the public to participate” are required. *Id.* Any doubts about whether an issue is of significant interest to the public should be resolved “in favor of increased public participation.” *Id.*, ¶ 17.

Applying those standards, here, public notice and participation were required when the County approved the exemption. First, the act of approving an exemption is non-ministerial. A ministerial act is “one performed pursuant to legal authority,

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<sup>3</sup> The District Court also misunderstood the challenge. It held that the Plaintiff’s did not allege a meeting took place during the review process. (App. 1, p. 4.) But that’s not the point; rather, the County needed to provide public comment *before* issuing its decision, regardless of whether a meeting took place.

and requiring no exercise of judgment.” *Jones*, ¶ 16. And second, it “has meaning to or affects a portion of the community.” *Id.*

**2. Ravalli County’s decision to approve the use of the family transfer exemption was in error.**

The review process under RCSR 11-5(B). begins with an applicant submitting a complete subdivision application, which is then reviewed “against the general evasion criteria” *See*, RCSR 11-5(B)(1). For family transfer exemptions, as is the case here, the County must determine whether the exemption is proposed to gift a tract from a previously created family transfer back to the original grantor, and whether the use of the exemption would cause significant impacts to the surrounding community and environment. *See* RCSR 11-4(C)(2). After reviewing the application and “public comment” the planning department may either approve or deny the exemption. *See* RCSR 11-5(B)(2). And, if an exemption is denied, then the applicant can appeal the decision.<sup>4</sup> *See* RCSR 11-5(D). These regulations demonstrate that the approval of a family transfer exemption requires an exercise of judgment. *See also*, § 76-3-207(6), MCA (penalties for family transfers meant to evade subdivision review); *Withers v. Cty. of Beaverhead*, 218 Mont. 447, 450-51, 710 P.2d 1339, 1341-42 (1985) (determination of a family transfer is a discretionary function); 1983 Mont. AG LEXIS 14, \*5-6 (“The question of

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<sup>4</sup> This also renders the decision a “final agency action.”

whether a particular exemption is claimed “for the purpose of evading’ the Act is manifestly one of fact which is addressed to the discretion of the local government.”)

**1. The Albert Family transfer exemption affects a large portion of Ravalli County and the natural environment.**

An exemption approval is thus of significant public interest if it “has meaning to or affects a portion of the community,” *Jones*, ¶ 16, or directly affects more than one person, *Moe v. Butte-Silver Bow Cty.*, 2016 MT 103, ¶ 28, 383 Mont. 297, 371 P.3d 415. Here, the exemption not only affects each of the neighboring properties, but also the surrounding natural environment as discussed in the First Amended Complaint.

The County’s own regulations reflect that they were intended to address just such impacts by requiring the planning department to evaluate the impacts on adjacent agricultural operations, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat and public health and safety. *See* RCSR 11-4(C)(2)(b). And, in fact, the County imposed significant conditions on the family transfer approval, including the supervision of water and wastewater standards by the Montana DEQ. (Dkt. 14, Ex. E.)

To that end, the County was also aware of the potential impacts to the neighboring property owners, the community and the natural environment. The area surrounding the Property is a historically agricultural community whose

farming roots go back as early as the 1860s. (Dkt. 8, ¶ 40.) This agricultural community's naturally and dedicated open space provides a critical wildlife corridor throughout the valley to the Calf Creek Wildlife Management Area. *Id.*, ¶ 41. Wildlife that is known to exist and/or travel within this Property and surrounding environment include but not limited to elk, black bear, mountain lion, gray wolf, ruffed grouse, wild turkey, mule deer and white-tailed deer. *Id.*, ¶ 42. Neighbors have witnessed large herds of up to 200 elk travelling through the property and surrounding area during certain times of the year. *Id.*, ¶ 43. The entirety of the Bitterroot Valley is a Big Game Habitat Priority Area classified as Anaconda Range to Big Hole, Bitterroot and Upper Clark Fork Watersheds. *Id.*, ¶ 44.

Beyond wildlife, the Property will directly impact neighbors. The Property is situated directly northeast and southeast from the intersection of Charley's Gulch Road going eastbound on Hamilton heights Road in Corvallis, Montana. *Id.*, ¶ 45. Hamilton Heights Road is a narrow shoulder-less country road that is hilly with multiple blind spots. *Id.*, ¶ 46. The paved portions of Hamilton Heights Road are in disrepair with the remaining section after Charley's Gulch being only gravel. *Id.* This is the sole road accessing the Property. *Id.* Notably, the nearby intersection of Hamilton Heights Road and Eastside Highway suffers from congestion and poor visibility. *Id.*, ¶ 47. This intersection is prone to severe accidents as it lacks a traffic

signal and separate lanes for turning. *Id.* Public access to Calf Creek Management area further exacerbates this as there is a large amount of traffic from horse trailers, cyclists, and pedestrians during spring and summer months. *Id.*

The impacts also extend to surface and groundwater in the area. The Property is in a closed basin aquifer and its proximity to the Sapphire Foothills makes for limited groundwater resources. *Id.*, ¶ 48. Over the years, neighboring domestic wells have experienced diminishing production. *Id.* Many wells in the area are currently pumping less than 2 gallons per minute and have required the installation of cisterns to meet household demands. *Id.* It has been well documented that the Sapphires' granite bedrock causes naturally occurring arsenic to leach into the underlying aquifer. *Id.*, ¶ 49. Montana Bureau of Mines and Geology's sampling in the Willow Creek drainage found elevated arsenic concentrations in the area's groundwater. *Id.* Recent water samples from individuals' wells also found elevated arsenic, lead and other metal concentrations in the drinking water. *Id.* The presence of this granitic bedrock also delineates the underlying aquifer as "bedrock aquifer." *Id.*, ¶ 50. The hydraulic character of this type of aquifer notably differs from other aquifers in the Bitterroot Valley, particularly the limited groundwater storage. *Id.* Increasing bedrock aquifer development, i.e. drilling new wells, can be problematic as the relatively low

storage available makes the aquifer more susceptible to impacts by groundwater withdrawals and decreased recharge during dry climate periods. *Id.*

In summary, the County's current regulations *require* public comment. RSCR 11-5(B)(1) states that "the public **shall** be permitted to comment on the proposal." (Emphasis added) While this 2012 regulation no longer requires specific notice or a meeting, public comment is meaningless without any notice or the opportunity to review the documents. *See, e.g., Common Cause v. Statutory Comm. to Nominate Candidates for Comm'r of Political Practices*, 263 Mont. 324, 331, 868 P.2d 604, 609 (1994); *Schoof v. Nesbit*, 17. In order to effectuate the "shall," there must be some level of notice and opportunity to participate. In order to avoid superfluity, then, the regulations necessarily require public notice and comment period.

The County's decision to approve the exemption has significant effects on the community and environment. As such, public participation was required pursuant to Article II, §§ 8, 9, of the Montana Constitution and the Public Participation Act.

**C. The District Court misapprehended the requirements of Rule 5.1, M. R. Civ. P., and improperly concluded that Sapphire Coalition was required to provide notice to the Attorney General.**

In its amended complaint, Sapphire Coalition alleged that the County violated their Constitutional Right to Participate and their Right to Know under

Article II, §§ 8, 9, of the Montana Constitution. (Dkt. 8, ¶¶ 112-122). Based on the allegations Sapphire Coalition sought a declaration that “Ravalli County, acting through its Commission, and/or Planning Department, violated Plaintiffs’ Right to Know and Participation under the Public Participation in Government Act and Montana’s Constitution.” (Dkt. 8, p. 25). At no point did Sapphire Coalition argue that any *statute* was unconstitutional. To the Contrary, they argued that the RCSRs and Public Participation in Government Act implemented the Right to Know and Participate. Nevertheless, the District Court dismissed their claims for violations of the Right to Know and Participate because Sapphire Coalition did not provide notice to the Attorney General pursuant to Rule 5.1. (App. 1, p. 4 (“the Plaintiff has not filed a constitutional question as required by M.R.Civ.P. 5.1; therefore, a valid constitutional challenge has not been presented.”))

The District Court’s *sua sponte*<sup>5</sup> ruling relying on Rule 5.1 is contrary to the plain language of Rule 5.1, which provides, “A party that files a pleading, written motion, or other paper *challenging the constitutionality of a state statute* must promptly file a notice of constitutional question stating the question and identifying the paper that raises it, and serve the notice and paper on the state attorney general either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.” (Emphasis added.) Thus, by

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<sup>5</sup> Ravalli County never raised this issue in its briefing.

its own terms, only cases that “challenge the constitutionality” of a state statute require notice to the attorney general. Because this case is not challenging the constitutionality of a statute, Rule 5.1 does not apply, and the Court’s dismissal was improper.

But, even if Sapphire Coalition had challenged the constitutionality of a statute here, “A party’s failure to file and serve the notice . . . does not forfeit the constitutional claim. . . that is otherwise timely asserted.” M. R. Civ. P. 5.1(c). So the dismissal would have still been improper.

**D. Sapphire Coalition’s request for declaratory and injunctive relief was improperly dismissed because the District Court misunderstood the claims and the law.**

Sapphire Coalition’s third claim for relief sought a declaration under the UDJA that the family transfer was a knowing effort to evade subdivision review under the MSPA. (Dkt. 8, ¶ 131.) Upon such a declaration, Sapphire Coalition required that the Court “vacate Ravalli County’s approval of the Albert Family Transfer and remand to the department for public process and reconsideration in light of the statutory and regulatory mandates.” (Dkt. 8, p. 25(c). Without considering any real facts the District Court dismissed these claims because it wrongly concluded that § 76-3-207(6), MCA, provides the exclusive remedy for family transfers that violate the act. The District Court also wrongly dismissed the

claims based on its incorrect conclusions that the Albert family members were necessary parties.

**1. The civil penalties authorized under § 76-3-207(6), MCA, are not the exclusive remedies, and the family transfer approval can be vacated via the UDJA or through other equitable relief.**

The UDJA permits any person to obtain a declaratory judgment to, in this case, determine whether a County's approval or disapproval of a family transfer exemption from the MSPA was properly determined. Section 27-8-202, MCA; *See, e.g., Withers v. County of Beaverhead*, 218 Mont. 447, 710 P.2d 1339 (1985). To obtain a declaratory judgment a party must bring a claim in court, which is then vested with the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Section 27-8-201, MCA. Upon obtaining a declaratory judgment, a successful party may obtain "[f]urther relief . . . whenever necessary or proper. The application therefore shall be filed by petition to a court having jurisdiction to grant the relief." Section 27-8-313, MCA.

The remedial purpose of the UDJA "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations," is to be liberally construed. Section 27-8-102, MCA. Yet, the District Court improperly denied resolution of this uncertainty not because of issues with justiciability, but because it did not agree with the remedy requested by Plaintiff. ("First, the Plaintiff cites no authority under the MSPA that grants the remedy of

vacation of a family transfer.” (App. 1, pg. 7.). The District Court’s remedy analyses, as the basis for dismissal, was reversible error.

As a threshold matter, an administrative process or enforcement means is not the equivalent of a judicial remedy. *See* § 27-1-101, MCA (defining judicial remedies as those “administered by the courts of justice or by judicial officers empowered for the purpose by the constitution and statutes of this state”). Moreover, the Legislature's failure to expressly specify a private remedy for enforcing a statutory duty or requirement does not necessarily preclude the availability of a private remedy, even in the presence of the express provision of an agency or other government remedy. *Larson v. State By and Through Stapleton*, 2019 MT 28, ¶ 27, 394 Mont. 167, 434 P.3d 241 *citing* *Wombold v. Assocs. Fin. Servs. Co. of Mont., Inc.*, 2004 MT 397, ¶¶ 33-47, 325 Mont. 290, 104 P.3d 1080.

When a statutory scheme neither expressly provides nor precludes an asserted private right of action, the availability of an implied statutory remedy generally depends on whether: (1) the asserted private remedy is consistent with the express language of the subject statute and any encompassing statutory scheme viewed as a larger whole; (2) the available legislative history manifests any legislative intent either contemplating or precluding a private enforcement remedy; (3) a statutory construction implying a proposed private remedy is reasonable and will avoid absurd results; and (4) an agency charged with the administration of a

statute has previously construed it in a manner consistent or inconsistent with the asserted private remedy. *Id.* at ¶ 29.<sup>6</sup>

As manifest in this case, the remedy of declaratory judgment and derivative vacatur and injunctive relief provides a complete remedy to ensure compliance with the requirements of the Ravalli County Subdivision Regulations. The District Court ignored this clear language and instead focused only on the remedies available under § 76-3-207(6), MCA. This was error. The District Court “seemingly confused the existence of a statutory remedy with an exclusive remedy.” *Stensvad v. Newman Ayers Ranch, Inc.*, 2024 MT 246, ¶ 33, 418 Mont. 378, 557 P.3d 1240. So, while § 76-3-207(6), MCA, contains a remedy provision, nothing in that provision indicates that the remedy is the “exclusive remedy.” Absent such language, a statute does not “negate, either expressly or by necessary implication, (a) pre-existing” remedies. *Drinkwalter v. Shipton Supply Co.*, 225 Mont. 380, 384, 732 P.2d 1335, 1338 (1987) citing *Brown v. Tanscon Lines*, 588

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<sup>6</sup> For example, “In the Ninth Circuit, vacatur is the presumptive remedy for agency action that [for which the] Court has found a violation under the [APA].” 350 *Montana v. Haaland*, 2023 WL 1927307, \*2 (D. Mont. 2023), motion for clarification denied, 2023 WL 2273090 (D. Mont. 2023) (vacating environmental assessment on proposed expansion of underground coal mine); *Montana Wildlife Fed'n v. Bernhardt*, 2022 WL 742477, \*4–5 (D. Mont. 2022).

P.2d 1087, 1093 (Or. 1978);<sup>7</sup> *see also*, Thus, a district court can provide a remedy outside of § 76-3-207(6), MCA

Accordingly, Sapphire Coalition can pursue supplemental relief under the UDJA or injunctive relief. *Davis v. Westphal*, 2017 MT 276, ¶ 23, 389 Mont. 251, 405 P.3d 73.

**2. The District Court misapprehended the role and rules of necessary parties.**

In its order dismissing Sapphire Coalition’s claims against the County, the Court found that because the property owners of the land at issue are necessary parties, so the Court could not grant relief in their absence. (App. 1, p. 7.) In reaching this conclusion, the District Court relies solely on *Tai Tam, LLC v. Missoula Cnty. By & Through Bd of Cnty Commissioners*, 220 MT 229, 410 Mont. 464, 520 P.3d 312. This reliance was misplaced.

*Tai Tam* is not about family transfers. Rather, it concerns Missoula County’s denial of a subdivision application. There, Missoula County denied a subdivision, and the plaintiff filed suit seeking damages under § 76-3-625, MCA, and 42 U.S.C. § 1983. The district court dismissed the claim under § 76-3-625, MCA, because it

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<sup>7</sup> *Drinkwalter* concerned whether the Human Rights Act was the exclusive remedy for sexual discrimination in the workplace. At the time, the Human Rights Act did not contain an exclusivity provision. Subsequently, the Montana Legislature amended the Human Rights Act to make it the exclusive remedy for sexual discrimination. *Harrison v. Chance*, 244 Mont. 215, 219-20, 797 P.2d 200, 203 (1990)

was time barred, and dismissed the § 1983 claims because the plaintiff had no protected property interest in the subdivision application. On appeal, this Court reversed the District Court on both grounds. Partly relevant here, this Court found that the plaintiff had a constitutionally protected property interest in the real property. But that determination was only a prerequisite for whether the plaintiff could raise a claim under § 1983. It had nothing to do with whether a family transfer was void or whether landowners were necessary parties in a case challenging a family transfer.

Secondly, the landowners are not necessary parties. Simply having a constitutional interest in owning land does not turn a person into a necessary party. As described in Rule 19, M. R. Civ. P., a necessary party exists when complete relief cannot be accorded, or the person claims an interest and is situated so that disposing of the action may impair or impede their ability to protect the interest or leave that party subject to a substantial risk of incurring multiple or inconsistent obligations. As an initial note, the District Court did not make any of these findings, it only found that the disposition of the case *would affect* the landowners. But that's not sufficient under Rule 19. The District Court's ruling should be reversed for that reason alone.

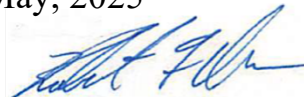
**3. The District Court erred in dismissing the case instead of ordering joinder.**

And more importantly, even if the District Court (or this Court) thought the landowners are required parties, then the proper remedy is to join them, not dismiss the case. Rule 19(a)(2), M. R. Civ. P., is explicit: “if a person had not been joined as required, the court *must order* that the person be made a party.” Only if the person “cannot be joined” can the court dismiss the matter. M. R. Civ. P. 19(b). *See, generally, Blaze Constr. v. Glacier Elec. Coop.*, 280 Mont. 7, 928 P.2d 224 (1996). The UDJA, like Rule 19, counsels in favor of requiring joinder, rather than dismissing a complaint outright. *Williams v. Bd. of Cty. Comm'rs*, 2013 MT 243, ¶¶ 33, 371 Mont. 356, 308 P.3d 88. Thus, under either the UDJA or Rule 19, the analysis is the same, and an indispensable party that can be joined must be joined before dismissal is warranted. *See, e.g., Behlmer v. Crum Real Props., LLC*, 2024 MT 237, ¶¶ 7-13, 418 Mont. 346, 557 P.3d 930.

## CONCLUSION

This Court should reverse the District Court’s errors and correct the significant prejudicial affect not just on Plaintiff, but further to the citizens of Ravalli County who are entitled to have their local government adhere to the law.

DATED this 12th day of May, 2025

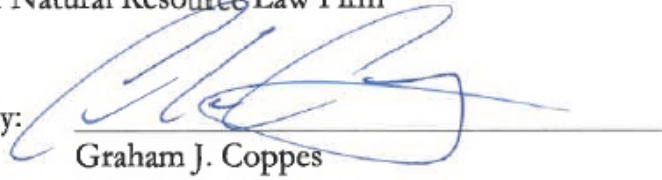


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Robert Farris-Olsen  
Morrison Sherwood Wilson Deola, PLLP  
*Attorneys for Plaintiff / Appellant*

Ferguson & Coppes, PLLC  
A Natural Resource Law Firm

By:



Graham J. Coppes

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Garamond text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word for Mac 2016 is 6615 not averaging more than 280 words per page, excluding caption, certificate of compliance, and certificate of service.

By: /s/ROBERT FARRIS-OLSEN  
Robert Farris-Olsen

## CERTIFICATE OF SERVICE

I, David Kim Wilson, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 05-12-2025:

William E. Fulbright (Govt Attorney)  
205 Bedford St #C  
Hamilton MT 59840  
Representing: Ravalli County  
Service Method: eService

Robert M. Farris-Olsen (Attorney)  
401 N. Last Chance Gulch  
Helena MT 59601  
Representing: Sapphire Coalition  
Service Method: eService

Emily Wilmott (Attorney)  
425 E Spruce  
Missoula MT 59802  
Representing: Sapphire Coalition  
Service Method: eService

Anders K. Newbury (Attorney)  
P.O. Box 8359  
Missoula MT 59807  
Representing: Sapphire Coalition  
Service Method: eService

Graham J. Coppes (Attorney)  
425 East Spruce Street  
PO Box 8359  
Missoula MT 59807  
Representing: Sapphire Coalition  
Service Method: eService

Electronically signed by Chris Gaub on behalf of David Kim Wilson  
Dated: 05-12-2025