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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT
GALLATIN COUNTY

MONTANANS AGAINST IRRESPONSIBLE DENSIFICATION, LLC, Plaintiff, v. STATE OF MONTANA, Defendant. and SHELTER WF, Inc., Defendant-Intervenor and DAVID KUHNLE, Defendant-Intervenor and CLARENCE KENCK, Proposed Intervenor.	Cause No. DV-16-2023-1248-MS Hon. Mike Salvagni **PROPOSED INTERVENOR CLARENCE KENCK'S MOTION TO INTERVENE AND INCORPORATED MEMORANDUM OF LAW**

I. Introduction

Clarence Kenck moves to intervene as a defendant in support of the laws challenged by Montanans Against Irresponsible Densification, LLC ("MAID"), in its Amended Complaint, which was filed on December 19, 2023. Kenck moves to intervene as a matter of right pursuant to Montana Rule of Civil Procedure 24(a)(2), but alternatively moves for permission to intervene consistent with Rule 24(b)(1)(B).

Plaintiff MAID, a collection of Montanans who own property within the state, challenges the State of Montana's suite of new laws passed last session; laws designed to increase the production of housing in the state to lower the prices of housing in the state, which is—according to all observers—so high as to be a crisis that shuts many out of the housing market altogether. *See, e.g.*, First Amended Complaint ("FAC"), ¶ 8 ("Many municipalities in the State of Montana have a shortage of what is known as 'affordable housing'. What that means is that some segments of the population of Montana's cities do not have sufficient means with which to purchase a house."); Executive Order Creating the Housing Advisory Council, No. 5-2022 (July 14, 2022) ("driven by shortage of housing supply, Montana faces a crisis of affordable, attainable housing that poses substantial challenges to hardworking Montanans, employers, communities, and the state's economic health"). By increasing supply, the first law of economics says that prices of any good will go down, and that is as true for housing as anything else. *See* Lida R. Weinstock, Congressional Research Service Report, *U.S. Housing Supply: Recent Trends and Policy Considerations* 1 (July 7, 2023).[1]

MAID objects to the new laws, contending at bottom that the "nest egg" value of their homes will decrease if the production of new homes is increased. *See* FAC ¶ 34. They assert they

[1] https://crsreports.congress.gov/product/pdf/R/R47617.

have a due process and equal protection right to interfere with other property owners within the state, *id.* at ¶ 33; property owners like Kuhnle, who would seek to rely upon the suite of new housing laws to expand the number of houses available for purchase or rent within the state by building upon their own property. *See* Declaration of David Kuhnle ("Kuhnle Decl.") ¶ 5.

MAID asked this Court to enjoin two of the new housing laws last session, and this Court granted that ask. Decision and Order (Doc. 17), at 17. On September 3, 2024, the Montana Supreme Court reversed the order and remanded to this Court for further proceedings. *Montanans Against Irresponsible Densification, LLC v. Montana*, 2024 MT 20, ¶ 23 (2024). This Court lifted the stay on proceedings on September 24, 2024. Order Vacating Order re: Defendant's Motion to Stay District Court Proceedings (Doc. 59).

On September 24, 2024, this Court granted David Kuhnle and Shelter WF's motions to intervene on a permissive basis, though it denied intervention as of right to both parties. Decision and Order re: Shelter WF's Motion to Intervene and David Kuhnle's Motion to Intervene ("Order on Intervention") (Doc. 60), at 25. This instant motion to intervene follows just three days after the Court ruling that was favorable to intervenors Shelter WF and David Kuhnle, and it follows the lifting of the stay in the case that happened that same day.

Kenck seeks to intervene to defend one of the two laws the Court enjoined: SB 323, now codified as §§ 76-2-304(3), (5), and 76-2-309, MCA, which would require all cities with at least 5,000 residents to allow duplex housing (defined in the statute as "a parcel or lot with two dwelling units that are designed for residential occupancy by not more than two family units living independently from each other") on lots located in all areas now zoned for single-family residences. He has an interest in this law because he intended to build a duplex on his property that this new law would allow; he intended to use the duplex to allow his two aging brothers (both

disabled Vietnam veterans) to live close enough to lean on the support of family while remaining independent. *See* attached Kenck Decl. ¶ 3–6. Both of his brothers are fiercely independent, but their disabilities and advancing age make living alone without support increasingly difficult. Kenck Decl. ¶ 5–6. His hope is that a duplex will allow the three of them to "mutually support one another without having to give up our independence or resort to expensive and unpleasant assisted living facilities." Kenck Decl. at ¶ 5–6. Thus, he has an interest and would be affected by this case since this case will either lead to the law being permanently enjoined or put in force. Apart from Mr. Kuhnle, no one involved in the case now is a property owner, thus nobody in the case can adequately represent his interests (Mr. Kuhnle's interests, while similar, are distinct, as Mr. Kuhnle wishes to intervene to defend SB 528 applying to "accessory dwelling units" and Mr. Kenck wishes to intervene to defend SB 323 applying to duplexes). Therefore, he is entitled to intervene as a matter of right. Mont. R. Civ. P. 24(a).[2] Alternatively, Kenck moves for permissive intervention. Mont. R. Civ. P. 24(b).

In support of this motion, Kenck has filed his proposed answer in intervention and has served the instant motion and accompanying exhibits on the existing parties as required by Montana Rule of Civil Procedure 5.

II. Facts

Clarence Kenck is an adult male and lives in Missoula, Montana. Kenck Decl. ¶ 1. A 73-year-old retired small business owner, Kenck was born and raised in Missoula, and he has lived and worked in this community his entire life. Kenck Decl. ¶ 2. Last year, following Montana's

[2] Kenck recognizes that Kuhnle was already denied intervention as of right by this Court, and that Kenck both holds a substantially similar interest and makes substantially similar arguments to Kuhnle. Kenck respectfully repeats such arguments here not with the intention of relitigating issues that have already been settled, but to preserve them for potential appeal.

liberalization of its zoning laws to require cities above 5,000 residents to allow duplexes to be built on any lot zoned for single-family residential housing, Kenck purchased two adjacent vacant residential lots in Missoula with the intention of constructing a duplex on the property. Kenck Decl. ¶ 3. Kenck intended to build the duplex and invite his two older brothers to live there with him. Kenck Decl. ¶ 3. Both of Kenck's brothers are disabled veterans of the Vietnam War, and while they remain fiercely independent, require increasing levels of care and support as they age. Kenck Decl. ¶¶ 5, 6. The ability to construct separate households in such close proximity would allow the brothers to support one another while remaining independent in a way that was not possible prior to the enactment of SB 323. Kenck Decl. ¶ 6.

SB 323, now codified as §§ 76-2-304(3), (5), and 76-2-309, MCA, requires municipalities of at least 5,000 in population to allow duplexes in areas now zoned for single-family residences. It was passed alongside SB 528, now codified as § 76-2-345, MCA, which requires all cities to allow ADUs of up to 1,000 square feet on lots located in all areas now zoned for single-family residences.

As noted above, Kenck was relying upon SB 323 to build the duplex he planned for his property. Kenck Decl. ¶ 3. Duplexes are not otherwise permitted within most areas zoned for single-family residences in Missoula, *see* Missoula Municipal Code § 20.05.030, and Kenck would be prohibited from constructing one were SB 323 to be permanently enjoined.

III. Argument

A. Kenck Should Be Allowed to Intervene as a Matter of Right.

Montana Rule of Civil Procedure 24 sets out what Kenck must show for this Court to grant his request to intervene in this case as a matter of right, and the facts set out by Kenck above more

than sufficiently make the necessary showing to justify the granting of his motion. The Rule provides in relevant part:

> On timely motion, the court must permit anyone to intervene who:
>
> ***
> (2) claims an interest relating to the property or transaction which is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless the existing parties adequately represent that interest.

The test for mandatory intervention thus requires that: (i) Kenck's motion be timely; (ii) Kenck have an interest in the laws that are the subject of the action; (iii) disposal of the case will as a practical matter impair or impede Kenck's ability to protect his interest in the case; and (iv) the existing parties can't adequately represent his interest. *See Estate of Schwenke, By and Through Hudson v. Becktold* (1992), 252 Mont. 127, 131, 827 P.2d 808, 811 (setting out the four factors that must be met to allow intervention as of right). Kenck notes that in considering whether to grant intervention the Montana Supreme Court has applied federal case law since Montana Rule of Civil Procedure 24 "is almost identical to Federal Rule 24(a)," *id.* at 811.

In applying this four-part standard, courts "normally follow 'practical and equitable considerations' and construe the Rule 'broadly in favor of proposed intervenors.'" *Wilderness Soc'y v. U.S. Forest Service*, 630 F.3d 1173, 1179 (9th Cir. 2011) (en banc) (internal quotation omitted). This is because "'[a] liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.'" *Id.* (quotation omitted). Simply put, a "prospective intervenor 'has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation.'" *Id.* (quoting *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006)). As will be shown below, Kenck meets all four parts of the test.

1. Kenck's Motion Is Timely.

First, Kenck's motion is timely. This case is still in its early stages, and no party would be unduly prejudiced by Kenck's involvement at this time. Montana courts look to four factors to determine the timelines of a motion to intervene: "(1) the length of time the intervenor knew or should have known of its interest in the case before moving to intervene; (2) the prejudice to the original parties, if intervention is granted, resulting from the intervenor's delay in making its application to intervene; (3) the prejudice to the intervenor if the motion is denied; and (4) any unusual circumstances mitigating for or against a determination that the application is timely." *In re Adoption of C.C.L.B.*, 2001 MT 66, ¶ 24, 305 Mont. 22, 22 P.3d 646.

a. The Brief Length of Time Between When Suit Was Filed and Kenck Moves to Intervene Supports Allowing Kenck to Intervene.

Here, Kenck knew of the case and how it impacted his plans for his property for only a matter of months before filing this motion to intervene, most of which time this case was stayed pending appeal of this Court's Order dated April 3, 2024. Kenck did not move to intervene while the case was stayed but proceeded to file this Motion within three weeks of the appeal being resolved, the case being remanded to this Court, and only a few days after this Court lifted its stay of the trial court proceedings pending the Supreme Court's ruling. Courts regularly find timely motions to intervene filed much later than Kenck's, including motions filed years after the initiation of litigation. *See, e.g.*, *Western Watersheds Project v. Haaland*, 22 F.4th 828, 836 (9th Cir. 2022) ("more than two years"); *Smith v. Los Angeles Unified School District*, 830 F.3d 843, 848–53 (9th Cir. 2016) (twenty years); *United States v. Oregon*, 745 F.2d 550, 551–52 (9th Cir. 1984) (fifteen years).

b. Granting Kenck's Intervention Will Not Prejudice the Parties.

Second, neither MAID nor the state will be prejudiced by Kenck intervening in this case. As far as MAID goes, their interest in the case is less significant from a constitutional perspective than Kenck's interest. MAID complains that Montana allowing ADUs and duplexes on other people's properties—especially their neighbors' properties—will injure their property interests. But Kenck's interest in this case, unlike MAID's, is direct—it is his own property that he would build a duplex on but for MAID's legal arguments that this Court found preliminarily persuasive. He has a real stake in the case and that stake more than legally justifies his intervention. *See Forest Conservation Council v. United States Forest Serv.*, 66 F.3d 1489, 1494 (9th Cir. 1995), *abrogated on other grounds*, *Wilderness Soc'y*, 630 F.3d 1173:

> [W]hen, as here, the injunctive relief sought by plaintiffs will have direct, immediate, and harmful effects upon a third party's legally protectable interests, that party satisfies the "interest" test of Fed. R. Civ. P. 24(a)(2); [it] has a significantly protectable interest that relates to the property or transaction that is the subject of the action.

MAID is only prejudiced in the sense that a property owner impacted by MAID's attempt to prevent the owner from using his property consistently with how the Legislature and Governor of the State intend will argue that MAID's position is legally untenable. That is not the kind of prejudice that justifies denying Kenck's motion to intervene.

Likewise, the State would not be prejudiced by his intervention—to the contrary, the State is defending the laws that Kenck also seeks to defend—and the State does not oppose Kenck's intervention.

Furthermore, no discovery has occurred, no dispositive motions have been filed, and Kenck is willing and able to comply with any briefing schedules this Court may establish going forward. Kenck's intervention, at this preliminary stage of litigation, would not result in any undue delay

prejudicing either existing party. *See Kalbers v. U.S. Dep't of Justice*, 22 F.4th 816, 825–26 (9th Cir. 2021) (reversing district court's denial of intervention as of right where applicant "offered to comply with the existing summary judgment briefing schedule"). Even motions to intervene filed *after judgment* are not necessarily untimely, as long as the aspiring intervenor is not attempting to relitigate settled issues. *See In re Marriage of Glass*, 215 Mont. 248, 253 (1985). Here, granting Kenck's intervention would not force any party to relitigate any issue, reopen closed discovery, or expend substantial effort in addition to what would otherwise not be required to prosecute this case.

c. Conversely, Kenck Will be Prejudiced if the Court Denies the Motion to Intervene.

In fact, Kenck and his fellow intervenor Kuhnle are the only parties or proposed parties to this lawsuit that *would* be directly prejudiced by a delay of litigation, considering Kenck's planned construction of a duplex on his property will be indefinitely delayed until this case's conclusion, which if anything provides Kenck a greater incentive to avoid unnecessary delays than either existing party. As set out above, Kenck had plans to build a duplex that he was forced to stand down on because of this Court's injunction. But for this litigation, and the shadow of potential illegality hanging over the project, he'd be moving forward. Moreover, if this Court permanently enjoins the duplex law and that decision is upheld, then he will be forced to scupper his plans to move his brothers into the property. Kenck Decl. ¶ 7. Without a convenient and affordable way of providing mutual assistance, it is unclear whether Kenck's brothers will be able to retain their independence or seek other, less desirable living arrangements. Kenck Decl. ¶ 6. The injury Kenck will suffer if this case is decided against property owners like him is real, and for that reason he should be allowed to intervene to defend that substantial dollars and cents interest.

d. There Is Nothing Unusual About the Case That Would Support Denying Motion to Intervene.

Finally, the last prong as to timeliness—unusual circumstances—really has no bearing here. Kenck's effort to intervene in a case that affects his property interests is the opposite of unusual. What would be unusual is denying his motion as untimely when his property rights are at stake, and where he sought to intervene within a month of the case becoming publicly known and within a month and a half of the case being originally filed.

Ultimately, denial of intervention based on a lack of timeliness is only proper where intervention would result in undue delay, circuity, or multiplicity of suits. *Schwenke*, 252 Mont. at 131, 827 P.2d at 811 (citing *Grenfell v. Duffy* (1982), 198 Mont. 90, 95, 643 P.2d 1184, 1187). Granting this motion will not lead to undue delay, circuity, or a multiplicity of suits. This element of the test for intervention is met.

2. Kenck Has an Interest in the Laws That Are the Subject of This Action.

To intervene as of right, a party must claim an "interest relating to the property or transaction which is the subject of the action. . . ." Mont. R. Civ. P. 24(a)(2). As noted previously, the Montana Supreme Court interprets this rule consistent with Federal Rule 24, since it reads virtually identically. The federal courts explain that this "interest relating to . . . [what is] . . . the subject of the action" test is not a bright-line rule but is instead met if the proposed intervenors will "suffer a practical impairment of [their] interests as a result of the pending litigation." *California ex rel. Lockyer*, 450 F.3d at 441. Consistent with this approach, a court should make a "practical, threshold inquiry," *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993), and "'involv[e] as many apparently concerned persons as is compatible with efficiency and due process.'" *Cnty. of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). The types of interests protected are interpreted "'broadly, in

favor of the applicants for intervention.'" *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993) (quotation omitted).

As described above, Kenck owns property in Missoula that he plans to build a duplex upon. Kenck Decl. ¶ 3. Based on the law at issue here, he planned to build a duplex for he and his aging brothers to live in—but those plans are now on hold pending the outcome of this case. Kenck Decl. ¶¶ 3, 7. If the duplex law is forever enjoined, then Kenck will be prohibited by local ordinances from constructing his planned duplex, defeating the purpose for purchasing the property in the first place. Kenck Decl. ¶ 3. This interest is more than enough for this Court to conclude that this prong of the four-prong test for mandatory intervention is met. *See Forest Conservation Council*, 66 F.3d at 1494 ("[W]hen, as here, the injunctive relief sought by plaintiffs will have direct, immediate, and harmful effects upon a third party's legally protectable interests, that party satisfies the 'interest' test of Fed. R. Civ. P. 24(a)(2); [it] has a significantly protectable interest that relates to the property or transaction that is the subject of the action.").

Kenck's interest in constructing his planned duplex is not "merely economical." Order on Intervention (Doc. 60). Indeed, Kenck has no mere investment interest or interest in expected future income, but a familial one. Kenck intended to construct a duplex as a residence for himself and his two older brothers to share as a family unit. Kenck Decl. ¶ 6. Far from merely economic, this right to establish one's home is "long recognized at common law as essential to the orderly pursuit of happiness by free men," *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *see also Payton v. New York*, 445 U.S. 573, 601 (1980) ("[O]verriding respect for the sanctity of the home . . . has been embedded in our traditions since the origins of the Republic.").

3. Denying Intervention Will Impair or Impede His Ability to Protect His Interest in the Case.

To satisfy this prong of the inquiry, Kenck "must show only that impairment of [his] substantial legal interest is possible if intervention is denied." *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997). The burden is "minimal." *Id*.

Kenck notes that the pressures of resolving the case on the State could impact Kenck's interests, and if he is not allowed to intervene his interests "might be practically disadvantaged by the disposition of the action." MAID has challenged four laws here, but it is only one of them—the duplex law—that concerns Kenck. The State could choose to settle with MAID and agree to the injunction as to the duplex law if MAID agreed to allow some combination of the other laws to be reinstated and effective. While that outcome may serve the State, it would not serve Kenck's interests at all; his interests would be impaired, and he would have been prevented from stopping it. With that being the case, there can be no serious argument that the State cannot represent his interests, and in saying so it does not impugn the Government's motivations at all. Its motives are simply different from Kenck's, and that presents a unique and more than sufficient reason to find this prong of the mandatory intervention test met.

4. The Existing Parties Cannot Adequately Represent His Interest.

To be sure, the State of Montana, Shelter WF, and Kuhnle will proffer excellent defenses of why the laws at issue do not violate the Constitution. But Kenck's interest in this case is not just a matter of intellectual principle, and his interest is not the same as those other parties—it is *his* property rights that this lawsuit will impact, and his family's interests. The courts have recognized in property rights disputes that involve the government, an intervenor aligned with the government has a distinct interest apart from the government's interest that requires the conclusion that the government cannot adequately represent the property owner's interest. Any number of examples

exist of this occurring in the past, and those examples also are similar enough to the instant case facts to justify the conclusion that the state's interests here do not adequately represent Kenck's interest, either.

In *North Hempstead v. North Hills*, 80 F.R.D. 714 (E.D.N.Y. 1978), the proposed intervenors owned property within a village that had been rezoned to permit certain construction. *Id.* at 715. The underlying litigation addressed whether the downzoning by a village of various parcels of land located within the village violated federal environmental laws; the defendants were the decisionmakers for the village, and the plaintiffs that sued were a neighboring town, an HOA, and several homeowners within the village who wanted to block the downzoning; the defendants were the village as well as various village official leaders (Mayor, Trustees, and Zoning Board members). *Id.* The court held that the interest of proposed intervenors under Rule 24(a)(2) was not adequately represented by the existing parties, all of whom were in one form or another the government, because—while they may want to preserve their authority to act—they did not share the economic interests of the proposed intervenors in the outcome of the litigation, and there was a likelihood that the property owner intervenors would make a more vigorous presentation of the economic side of the argument than would the governmental defendants. *Id.* at 716.

That the owners of the property affected by a zoning change have a different interest, one focused on the economic impact of the change, from the government in defending the zoning change, is exactly what makes Kenck's interests here different from the State of Montana's interests. In *North Hempstead*, the court concluded that the proposed intervenors had satisfied this prong of the mandatory intervention test and granted the motion. *Id.* So should the Court allow Kenck to intervene, because his economic interests are real and are different in kind from the State's interest in upholding the statutes that MAID challenges.

Another case that makes for a good comparison to the instant case involved federal milk marketing rules applicable to reconstituted milk products that a consumer organization and consumers challenged as invalid. In that case, *Community Nutrition Institute v. Bergland*, No. Civ.A. 80–3077, 1981 WL 380679, at *1 (D.D.C. Feb. 19, 1981). The proposed intervenors who wanted to intervene to defend these proposed rules were the National Milk Producers Federation, which is a national farm commodity organization, the Associated Milk Producers, Inc., a dairy farmer's cooperative association, and Central Milk Producers Cooperative, a federation of fourteen dairy cooperatives. *Id.* at *2. The court recognized the different interest between the government and the private entities with their economic interests at stake. *Id.* The court compared the two interests, noting that the government's ultimate objective was "to maintain orderly marketing conditions for agricultural commodities in interstate commerce," and "protecting the interest of consumers." *Id.* On the other hand, the proposed intervenors wanted to protect and advance their own private economic interest. *Id.* Accordingly, the court granted the motion to intervene.

Like the zoning case from New York, this milk rules case again illustrates that the interests of a government defendant, like the State of Montana here, do not adequately represent the interests of those who, like Kenck, have their own personal economic stake in the underlying legal dispute. When that circumstance arises, then the Court should grant the intervenor's motion to intervene under Rule 24(a)(2).

Neither would the other proposed intervenor in this case adequately represent Kenck's interests should its motion to intervene be granted, for the same reasons stated above. Shelter WF, which filed its motion to intervene as Defendant on January 17, 2024, is "a Montana nonprofit public benefit corporation" that advocates for the construction of affordable housing and specifically advocated for the laws challenged in this lawsuit prior to their enactment. Shelter WF's

Motion to Intervene (Doc. 22), ¶¶ 1–25. Shelter WF does not purport to represent any Montana property owners impacted by this case and makes significantly different arguments than those made by Kenck. For example, like the State of Montana, Shelter WF seeks to defend the entirety of the new zoning regime it advocated for and may be willing to accept a settlement that serves its broader policy interests at the expense of Kenck's specific economic interests in his duplex. Nor is Shelter WF likely to present as vigorous a defense of the economic side of the arguments in this case as Kenck—who, again, would be the only actual property owner represented in the case.

Neither, for that matter, would proposed intervenor David Kuhnle adequately represent Kenck's interests in this case. While Kenck and Kuhnle have similar interests and have been similarly impacted by this litigation, their interests concern *two different laws* both challenged by MAID here. Kuhnle seeks to build an ADU pursuant to one law, and Kenck seeks to build a duplex pursuant to another. Therefore, the two individuals' interests are legally distinct, and Kuhnle may not always be able to adequately represent the interests of prospective builders of duplexes.

5. Permissive Intervention

Mont. R. Civ. P. 24(b)(1)(B) provides: "On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Under that standard, which the Montana Supreme Court has interpreted consistently with the analogous federal rule, courts have broad discretion to grant intervention. *See Orange Cnty. v. Air California*, 799 F.2d 535, 539 (9th Cir. 1986). That standard is certainly met on these facts.

There is no serious question that Kenck has a claim or defense that shares with the main action a common question of law or fact—MAID asked for an injunction prohibiting SB 323, now codified as §§ 76-2-304(3), (5), and 76-2-309, MCA, the law allowing duplexes, from becoming

effective, and Kuhnle planned to build a duplex on his property until this Court entered the injunction blocking SB 323 that MAID sought. Kenck will show, if allowed to intervene, that MAID's contention that a law allowing for a property owner to use his property to build a duplex does not violate his neighbors' due process or equal protection rights. To the contrary, it is his property rights that the injunction violated since his right to use his property to build a duplex was taken away by the Court's injunction. *See Wineries of the Old Mission Peninsula Ass'n v. Township of Peninsula, Michigan*, 41 F. 4th 767, 773 (6th Cir. 2022) (granting association of property owners intervention as of right to defend zoning ordinance relating to the operation of wineries, because of the potential impact striking down the ordinance would have on their property values).

IV. Conclusion

Kenck respectfully requests that the Court grant his Motion to Intervene as of Right but in the Alternative requests that the Court grant his Motion for Permissive Intervention.[3]

DATED: September 27, 2024.

Respectfully submitted,

/s/ Ethan W. Blevins

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[3] Kenck has contacted the Plaintiff, the Defendant, and the current Defendant-Intervenors in this case regarding their position on Kenck's motion to intervene in the case. The Defendant State of Montana, Defendant-Intervenor David Kuhnle, and Defendant-Intervenor Shelter WF, Inc., do not oppose Kenck's intervention in the case. Plaintiff MAID opposes Kenck's intervention.

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I, Ethan Winfred Blevins, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion to Intervene to the following on 09-27-2024:

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