

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

MICHAEL J. CLEMENT, Esquire,)	
)	
Plaintiff,)	
v.)	Civil Action No. 2:26-cv-1-ABJ
CHAD HUDSON, in his capacity)	
as Forest Supervisor, USDA)	
Forest Service, Bridger-Teton National Forest,)	
)	
Defendant.)	

**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AS OF RIGHT
PURSUANT TO FED. R. CIV. P. 24(A)(2)**

I. INTRODUCTION

Proposed Intervenors Nelson Neighborhood Conservation Coalition (“NNCC” or “Proposed Intervenors”), by and through their undersigned counsel, respectfully move this Court for an Order permitting them to intervene as of right as plaintiffs in this action pursuant to Federal Rule of Civil Procedure 24(a)(2).

Proposed Intervenors are residents of Nelson Drive in Jackson, Wyoming, or the immediate area around Nelson Trailhead, whose properties are located immediately adjacent the site of a proposed 36-unit residential development on National Forest System land. This development is authorized by a Special Use Permit issued by Defendant Chad Hudson on November 21, 2025, which Plaintiff Michael J. Clement challenges in his Complaint filed on December 30, 2025.

Proposed Intervenors seek to intervene as plaintiffs to challenge the same federal agency action: Defendant Hudson's issuance of the Special Use Permit without adequate environmental review, without current public notice and comment, in violation of explicit commitments made

by the Forest Service in 2012, and in violation of the National Environmental Policy Act ("NEPA") and the Administrative Procedure Act ("APA").

This case involves a particularly egregious violation of reasoned decision-making under the APA. In 2012, after extensive public engagement including "many public workshops," Forest Supervisor Jacqueline Buchanan issued a Finding of No Significant Impact authorizing a maximum of 13 housing units at the Nelson Drive site. **Exhibit A – 2012 Finding of No Significant Impact.** Supervisor Buchanan explicitly committed to the community that development would be located "within the 6.04 acres" of existing Forest Service footprint and would "reduce the sprawl into new habitat to the east." **Exhibit B – Communications with Eastridge Homeowners.** In 2025, without any acknowledgment of these prior commitments and without any reasoned explanation for the change, Defendant Hudson authorized 36 units, nearly triple the number analyzed and promised. **Exhibit C – Review of Environmental Compliance.** This unexplained departure from prior agency policy violates *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 537 (2009), and *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016). Defendant issued a special use permit to Jackson Hole Community Houstin Trust. **Exhibit D – Special Use Permit.**

As adjacent property owners and daily users of the Nelson Drive Trailhead who will suffer direct and irreparable harm, including child safety dangers from dramatically increased traffic, degradation of recreational use, loss of wildlife habitat, light pollution, and deprivation of procedural rights, Proposed Intervenors have distinct interests that may not be adequately represented by Mr. Clement, who is proceeding pro se.

Proposed Intervenors satisfy all four requirements for intervention as of right under Rule 24(a)(2): (1) This Motion is timely; (2) Proposed Intervenors have legally protectable interests;

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(3) Those interests may be impaired by disposition; and (4) Those interests are not adequately represented by the existing party.

II. BACKGROUND

A. The Proposed Intervenors and Their Members

NNCC is a Wyoming nonprofit corporation formed in March 2026 for the express purpose of preserving and protecting the environmental quality, recreational access, and residential character of the Nelson Drive area and ensuring compliance with federal environmental laws affecting the area. NNCC currently has 35 members consisting of homeowners along Nelson Drive, E. Hansen Avenue, and the surrounding Eastridge neighborhood.

Three NNCC members have provided declarations (attached as **Exhibits E1 – E3**) establishing standing for the Coalition:

Kailey Gieck resides at 65 Nelson Drive with her husband and three young children (ages 6, 3, and 1). Her property is on Nelson Drive, the main access road to the proposed development site. Ms. Gieck and her family use Nelson Drive daily and the Nelson Drive Trailhead near-daily: she walks her three children near-daily, walks two dogs near-daily, and regularly mountain bikes, runs, and hikes using the trailhead. Her primary concern is child safety: the proposed development will generate an additional 160-230 vehicle trips per day on a narrow street with no sidewalks, a blind corner adjacent to her property, and three young children who play outside and walk to the trailhead.

Lisa Gillette resides at 880 E. Hansen Avenue, at the intersection where E. Hansen Avenue "T's" into Nelson Drive. She has lived at this address since 2004—over 20 years. She purchased her home specifically for its direct access to National Forest land, the quiet nature of the neighborhood, and daily connection to open space and wildlife. Ms. Gillette experiences compounded traffic impacts because of the intersection on E. Hansen Avenue and Nelson Drive. She regularly uses the Nelson Drive Trailhead for hiking and stress management. Her concerns include: intersection-specific traffic impacts, loss of wildlife habitat (she regularly views wildlife and the area has seasonal restrictions showing ecological sensitivity), degradation of the dark sky environment from artificial lighting from

36 additional units, and loss of the quiet, natural character she has relied upon for 20 years.

Michael McDonnell resides at 405 Henley Road of the Eastridge Subdivision with his wife and two young children (ages 6 and 9). The Eastridge Subdivision shares a border with the Forest Service land designated to be developed by this project. His primary concern is the safety of his young children regarding the increase of traffic on Hansen and Nelson with no sidewalks or traffic mitigation. Additionally, Michael is an avid wildlife viewer and is concerned with the impacts on the local wildlife in the area. He has spent 25 years watching wildlife use this area, especially during the winter months. Deer, elk, moose, and big horn sheep utilize this area during the winter closures for refuge and sanctuary during the critical months. This development will displace the wildlife and remove the viewing opportunities that have been fulfilling to Michael, his family, and the entire community.

B. The 2012 FONSI and Forest Service Commitments

In 2012, the Forest Service completed an Environmental Assessment for the "Jackson Administrative Site Lands Conveyance and Development" project. The May 4, 2012, Finding of No Significant Impact ("FONSI"), signed by Forest Supervisor Jacqueline A. Buchanan, authorized "up to 13 housing units" at the Nelson Drive site. **Exhibit A at 3.**

The 2012 decision followed extensive public engagement. As documented in a September 22, 2012, letter from the "Protect the Putt-Putt" community action organization, the Forest Service conducted "many public workshops" in response to community concerns about sprawling development east of the existing Forest Service footprint into new habitat areas.

On June 14, 2012, Supervisor Buchanan issued a letter of clarification (**Exhibit B**) to community representatives making explicit commitments about the scope and location of development. Buchanan wrote: "My decision is to locate the housing within the 6.04 acres, thus increasing housing density to reflect the character of the surrounding neighborhood, and reduce the sprawl into new habitat to the east." *Id.* She further stated: "My intent is twofold: first I prefer that the final site plan not go outside the 6.04 acres; and second, should the site planning

prove this to be unachievable, then my intent is to place 'overflow' east of the north south boundary line." *Id.* The letter was accompanied by a site plan map showing development contained within the existing Forest Service footprint. *Id.*

The community relied on these commitments for 13 years. Between May 2012 and November 2025, the Forest Service published no notice of any action or change with respect to development at the Nelson Drive site.

C. The Challenged Agency Action

On November 21, 2025, Defendant Hudson approved a Special Use Permit authorizing construction of 14 buildings comprising 36 dwelling units: 24 one-bedroom apartments and 12 two-bedroom apartments. This represents a 177% increase from the 13 housing units authorized by the 2012 Finding of No Significant Impact.

The Special Use Permit relies on environmental review conducted 13-16 years ago (2009 EA, 2012 supplement). No current environmental assessment has been conducted analyzing the impacts of 36 units versus 13 units, the impacts of 160-230 additional daily vehicle trips on narrow Nelson Drive, the child safety hazards on a street with no sidewalks, or the cumulative impacts when combined with other development in East Jackson. There are other developments in the area that were not present in 2012. The development known as Daisey Bush (on Wheatleigh Way) and a current development (owned by Continental Divide Holdings LLC) adjacent to Daisey Bush both access Nelson Drive.

Most significantly, Defendant Hudson made no mention of Supervisor Buchanan's 2012 commitments to contain development within the existing 6.04-acre footprint and to reduce sprawl into new habitat. Hudson provided no acknowledgment that he was departing from

explicit prior agency commitments and no reasoned explanation for authorizing nearly triple the number of units previously analyzed and promised to the community.

D. Current Procedural Posture

On December 30, 2025, Michael J. Clement filed this action challenging the Special Use Permit. As of this Motion: (1) No answer has been filed by Defendant Hudson; (2) No scheduling order has been entered; (3) No discovery has commenced; (4) The Jackson Hole Community Housing Trust filed a Motion to Dismiss arguing it is not a proper defendant for NEPA/APA claims.

Proposed Intervenors learned of the permit in November 2025, learned of this litigation in early January 2026, immediately formed the nonprofit corporation NNCC, retained counsel, and are filing this *Motion* promptly.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 24(a)(2) provides that the Court must permit intervention as of right when the movant: (1) claims an interest relating to the property or transaction; (2) is so situated that disposition may impair or impede protection of that interest; and (3) the interest is not adequately represented by existing parties. If all requirements are met, intervention is mandatory. *Utah Ass'n of Cnty's. v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001). The Tenth Circuit “follow[] a somewhat liberal line in allowing intervention.” *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 995 (10th Cir. 2009). The burden to show inadequacy of representation is “minimal.” *Id.* at 1254.

IV. ARGUMENT

A. This Motion Is Timely

Timeliness is determined from all circumstances using four factors: (1) length of time the applicant knew of interest before moving; (2) prejudice to existing parties from delay; (3) prejudice to applicant if denied; and (4) unusual circumstances. *Utah Ass'n of Cntys.*, 255 F.3d at 1250.

1. Proposed Intervenors Acted Promptly

Proposed Intervenors learned of the permit in November 2025, learned of this litigation in early January 2026, immediately retained counsel, and are filing within weeks. This is prompt action. Courts routinely find intervention timely when filed within weeks or months of learning of litigation. *Coal. of Ariz./N.M. Ctys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 844 (10th Cir. 1996)(Motion to intervene filed 8 months after underlying suit was deemed timely). Moreover, the September 2025 Review was conducted without public notice, and the permit was issued without notice to adjacent property owners. Proposed Intervenors cannot be faulted for failing to act on information they did not have.

2. No Prejudice to Existing Parties

The most important timeliness factor is whether delay will prejudice other parties. *Utah Ass'n of Cntys.*, 255 F.3d at 1250. There will be no prejudice: (1) no answer filed; (2) no scheduling order; (3) no discovery; (4) no dispositive motions (except Housing Trust's motion to dismiss itself); (5) no trial date. Adding plaintiffs now causes no delay. *Western Energy Alliance v. Zinke*, 877 F.3d 1157, 1164-1165 (10th Cir. 2017).

Proposed Intervenors' *Complaint in Intervention* names only Defendant Hudson (consistent with *Sierra Club v. U.S. EPA*, 995 F.2d 1478, 1482 (9th Cir. 1993)), further streamlining the case.

3. Substantial Prejudice If Denied

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If denied, Proposed Intervenors face: (1) risk of claim preclusion—they may be in privity with Mr. Clement and barred from later suit; (2) practical impairment—if permit upheld, construction will proceed promptly, and courts will not order demolition of completed buildings; (3) loss of procedural rights—they will never vindicate their NEPA rights to notice and comment.

B. Proposed Intervenors Have Sufficient Interests

The Tenth Circuit construes the interest requirement liberally with a minimal burden. *WildEarth Guardians*, 573 F.3d at 995. The interest must be direct, legally protectable, and related to the subject matter.

1. Property Interests

Proposed Intervenors' members own real property immediately adjacent to the development. Kailey Gieck resides at 65 Nelson Drive. Lisa Gillette resides at 880 E. Hansen Avenue at the intersection with Nelson Drive where all development traffic will impact her quiet enjoyment. Lisa Gillette and Michael McDonnell live in the Eastridge Subdivision, which share a direct boundary with the proposed project. Adjacent property owners have a legally protectable interest in land use decisions. *Northfork Citizens for Responsible Development v. Park County Bd. of County Com'rs*, 2008 WY 88, ¶14, 189 P.3d 260, 264 (Wyo. 2008). They will suffer concrete harms including child safety hazards from 160-230 additional daily vehicle trips on a narrow street with no sidewalks where young children play and walk; compounded traffic impacts at the E. Hansen/Nelson intersection; diminished property values from 36-unit apartment complex; loss of quiet enjoyment from increased traffic, noise, and light pollution; degradation of wildlife habitat and dark sky environment; and visual impacts from 14 buildings and associated infrastructure at the trailhead location.

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2. Recreational and Aesthetic Interests

Proposed Intervenor members regularly use the Nelson Drive Trailhead for hiking, walking, mountain biking, running, wildlife viewing and accessing National Forest land. Kailey Gieck uses the trailhead near-daily with her children and dogs. Lisa Gillette uses it regularly for stress management and physical well-being. Michael McDonnell has engaged in wildlife viewing for 25 years and routinely uses the trailhead with his children for recreation. Courts recognize recreational users have sufficient interest. *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011).

The development will degrade the trailhead experience by replacing open, natural character with a 36-unit apartment complex in 14 buildings. The development will increase congestion from 36 households generating dramatic increases in daily vehicle trips. The development will create safety hazards for pedestrians walking to the trailhead on a street with no sidewalks. The development will fragment wildlife habitat in an area with seasonal restrictions showing ecological sensitivity. The development will create light pollution degrading the dark sky environment.

3. Procedural Rights Under NEPA

NEPA creates procedural rights to participate in environmental review. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 572 n.7 (1992). These rights are themselves sufficient interests for intervention. *WildEarth Guardians*, 573 F.3d at 995.

Proposed Intervenor members were denied their rights notice or comment on September 2025 Review and no opportunity to comment on actual project (36 apartments vs. 13 units authorized in 2012). There is no current environmental assessment for the proposed use as the Defendant's decision relies on a 2009 assessment with a 2012 update.

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C. Disposition May Impair Their Interests

This requirement is satisfied if stare decisis would bind applicant, claim preclusion might bar future suit, or practical considerations make future litigation impossible. *San Juan Cnty., Utah v. U.S.* , 503 F.3d 1163, 1195 (10th Cir. 2007).

1. Departure from Prior Agency Commitments Creates Urgency

The Forest Service's unexplained departure from the explicit commitments made in 2012 creates particular urgency for intervention. In 2012, Supervisor Buchanan committed to the community (**Exhibit B**) that development would be contained "within the 6.04 acres" and would "reduce the sprawl into new habitat to the east." The community relied on these commitments for 13 years. If the 2025 permit, which authorizes 36 units in violation of these commitments, is upheld, the Forest Service will have successfully evaded its prior promises through the simple expedient of waiting 13 years and issuing a new permit without acknowledgment or explanation. This would set a dangerous precedent allowing agencies to escape accountability for explicit commitments to affected communities.

Under *FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009), an agency changing course must "display awareness that it is changing position" and "show that there are good reasons for the new policy." Defendant Hudson did neither. If this unexplained policy reversal is allowed to stand, NNCC members will have lost their ability to hold the Forest Service to its written commitments.

2. Risk of Claim Preclusion

If this case proceeds to final judgment without Proposed Intervenors, they may be barred from later claims under res judicata. The question is whether they would be in "privity" with Mr. Clement. There is risk of privity because they: (1) challenge same permit; (2) assert same

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theories (NEPA and APA); (3) seek same relief; (4) share identity of interest as Nelson Drive neighbors. Even uncertainty about preclusion supports intervention. The possibility of stare decisis or collateral estoppel may be sufficient. *Coal. of Ariz./N.M. Ctys., v. Department of Interior*, 100 F.3d 837, 844 (10th Cir. 1996).

3. Practical Impairment From Construction

If the permit is upheld, construction will proceed immediately. Once residential buildings are constructed and occupied, courts will be extremely reluctant to order demolition. *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) (environmental injury often irreparable). This is a "now or never" situation. If Proposed Intervenors wait until after this case resolves and construction proceeds, their chance of stopping development will be lost. *San Juan Cnty., Utah v. U.S.*, 503 F.3d 1163, 1195 (10th Cir. 2007).

4. Interests Not Adequately Represented

The burden is "minimal." *WildEarth Guardians*, 573 F.3d at 996. Where parties share the same ultimate objective, a presumption arises that representation is adequate, but this may be overcome by showing interests differ or existing party doesn't diligently prosecute. *Utah Ass'n of Cntys.*, 255 F.3d at 1254.

5. No Formal Relationship

The fundamental reason Mr. Clement cannot adequately represent Proposed Intervenors is he has no legal relationship with them. He is proceeding pro se, representing only himself. He has no fiduciary duty to Proposed Intervenors, owes them no obligation, cannot bind them to strategy, cannot waive their rights.

Mr. Clement is appearing pro se on his own behalf and has no obligation to represent Proposed Intervenors' interests. While Mr. Clement is a licensed attorney, he has chosen to proceed pro se

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rather than act as counsel for others, and he has no legal or fiduciary duty to Proposed Intervenor. This structural inability to represent is alone sufficient to satisfy the minimal burden. *Trbovich v. United Mine Workers of America*, 404 U.S. at 538 n.10.

6. Distinct Factual Circumstances

While sharing legal theories, Proposed Intervenor have distinct facts. The Proposed Intervenor live at different locations with differing proximity to the project. The Proposed Intervenor have different family dynamics including young children facing concrete child safety hazards resulting from the project. The Proposed Intervenor include 20-year homeowners with reliance on 2012 commitments. The Proposed Intervenor will experience different harms including child safety risks, intersection impacts, degradation of wildlife habitat and dark sky environment. The Proposed Intervenor will have different discovery needs (traffic studies, child safety analysis, wildlife impacts, property appraisals).

7. Different Priorities and Settlement

Proposed Intervenor and Mr. Clement may have different litigation priorities and settlement thresholds. Mr. Clement might accept mitigation measures that don't satisfy Proposed Intervenor based on their closer proximity and different concerns. Mr. Clement cannot bind Proposed Intervenor to settlement. If he settles and dismisses, Proposed Intervenor would be left without representation if they haven't intervened.

8. Pro Se Status Creates Inadequacy

As a pro se litigant, Mr. Clement has limited capacity. He must research all issues, draft all pleadings, handle all discovery, and balance litigation with personal obligations. He cannot be expected to carry the burden of representing multiple additional property owners.

9. Proposed Intervenor's Complaint in Intervention

Attached as **Exhibit F** is Proposed Intervenors' proposed *Complaint in Intervention for Declaratory and Injunctive Relief* with associated Exhibits. The *Complaint* names only Defendant Hudson (consistent with *Sierra Club v. EPA and Housing Trust's Motion to Dismiss*); establishes standing for each intervenor; asserts claims under NEPA, and APA; and seeks declaratory relief.

Upon grant of this Motion, Proposed Intervenors request 14 days to file their Complaint to allow for any necessary revisions based on case developments.

V. CONCLUSION

Proposed Intervenors satisfy all four requirements for intervention as of right: (1) timely—case in earliest stages, with no prejudice to the parties; (2) sufficient interests—adjacent property owners with property, recreational, and procedural interests; may be impaired—through preclusion and practical impossibility after construction; and are not adequately represented—Mr. Clement is pro se with no obligation to represent Proposed Intervenors' distinct interests.

Federal Rule 24(a)(2) requires the Court "must permit" intervention when all elements are satisfied. Because Proposed Intervenors have satisfied all four elements, the Court should grant this Motion.

WHEREFORE, Proposed Intervenors respectfully request that this Court:

1. Grant this Motion to Intervene as of Right pursuant to Fed. R. Civ. P. 24(a)(2);
2. Alternatively, grant Permissive Intervention pursuant to Fed. R. Civ. P. 24(b);
3. Allow Proposed Intervenors 14 days to file their *Complaint in Intervention*; and
4. Award such other relief as the Court deems just.

Dated this 1st day of May, 2026.

Respectfully submitted,

By: /s/ J. Austin Dunlap

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification to the following registered users:

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