STATE OF NORTH CAROLINA **COUNTY OF ORANGE**	**IN THE GENERAL COURT OF JUSTICE** **SUPERIOR COURT DIVISION** **FILE NO.: 25CV002097-670**
TRIANGLE LAND CONSERVANCY, **Plaintiff,** **v.** **UNION GROVE FARM, INC., BANDIT FARMS II, LLC; BANDIT FARMS III, LLC; EASTWEST ORGANICS, LLC; HARPER GRACE, LLC; and MEREDITH G. SAYBE,** **Defendants.**	**EASTWEST ORGANICS, LLC'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF'S MOTION TO DISMISS**

NOW COMES Defendant EastWest Organics, LLC (hereinafter referred to as "EastWest"), by and through its undersigned counsel, and submits its Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and Plaintiff's Motion to Dismiss.

BACKGROUND

1. Plaintiff is a North Carolina nonprofit corporation.
2. EastWest is a North Carolina Limited Liability Company, operated for the purpose of conducting farm business.
3. This action relates to the interpretation and enforcement of the Grant of Conservation Easement and Development Rights recorded with the Register of Deeds of Orange County at Book 1421, Pages 151-165.
4. The Grant of Conservation Easement and Development Rights encumbers approximately 107 acres of property located in rural Orange County, North Carolina. The Grant of Conservation Easement and Development Rights is hereinafter referred to as the "Conservation Easement." The property encumbered by the Conservation Easement is hereinafter referred to as the "Conservation Property."
5. The Conservation Easement was granted on December 28, 1995, by Mr. Roger P. Nutter and Mrs. Aubrey C. Nutter.
6. Plaintiff is the Grantee of the Conservation Easement.
7. Mr. Nutter used the Conservation Property to operate Maple View Farm and Milk Company.

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8. The Conservation Property remained in the ownership of the Nutter family until approximately 2022, when the Nutter family began to sell the tracts comprising the Conservation Property to Defendants.

9. On or about December 28, 2023, EastWest acquired its undivided fifty-percent (50%) tenancy-in-common interest in the real property located in Orange County, North Carolina, and specifically identified by the Parcel Identification Number: 9851-50-8662.

10. EastWest's parcel is in the southeast corner of the Conservation Property.

11. EastWest's co-tenant is Harper Grace, LLC, which is also a defendant in this action.

12. EastWest, as a subsequent owner of the Conservation Property, is a Grantor of the Conservation Easement, and its rights are accordingly encumbered and established by the terms of the Conservation Easement.

13. Paragraph 2 of the Conservation Easement restricts the construction of buildings or other structures outside of the designated Farm Operations Envelope, (hereinafter, the "Farm Envelope") which is shown on Exhibit B of the Conservation Easement.

14. Paragraph 2(d) of the Conservation Easement provides that three "single-family residential dwellings, together with reasonable appurtenances such as garages, swimming pools and sheds" may be built on the Conservation Property. The building envelopes for the single-family residential dwellings are shown on Exhibit B of the Conservation Easement.

15. Paragraph 12 of the Conservation Easement provides a procedure for the grant of consent, by Grantee, for activities otherwise prohibited by the Conservation Easement.

16. Paragraph 17 of the Conservation Easement provides that the Conservation Easement mya only be amended with the written consent of Grantor and Grantee.

17. One of the building envelopes for a single-family residential dwelling is located on the parcel owned by EastWest. This building envelope is shown on Exhibit B of the Conservation Easement as "SR-1."

18. In 2009, while Mr. Nutter owned the property now-owned by EastWest, Mr. Nutter constructed an approximately 6500-square-foot building in the center of the property, as well as a gravel road and parking lot to service the building. This building was known as the Maple View Farm Agricultural Center, and is referred to hereinafter as the "Ag Center."

19. The Ag Center is not a single-family residential dwelling; it was used by Mr. Nutter for agricultural purposes including hosting events related to farm business and agricultural education.

20. Plaintiff initiated this action by filing its Complaint on August 15, 2025.

21. Plaintiff's Complaint requests the following relief:

    a. That the Court enter a judgment declaring that Road 1, Road 2, and Road 3 violate the terms of the Conservation Easement.

    b. That the Court enter a judgment declaring that the Proposed Amphitheater, and any other new building structure that could be used as an amphitheater and/or any similar use, such as a farm stage, violates the terms of the Conservation Easement and is prohibited outside the Farm Envelope.

    c. That the Court enter a judgment declaring the Proposed Amphitheater, and any other new building or structure that could be used as an amphitheater and/or any similar use, such as a farm stage, violates the terms of the Conservation Easement and is prohibited inside of the Farm Envelope.

    d. That the Court grant temporary and permanent injunctive relief, enjoining Defendants from developing new roads, requiring Defendants to restore Roads 1, 2, and 3, and prohibiting development of the Proposed Amphitheater.

    e. That the Court grant Plaintiffs an award of its costs and attorneys' fees.

22. On September 11, 2025, EastWest filed its Motion to Dismiss Plaintiff's claims.

23. On December 15, 2025, this Court heard and denied EastWest's Motion to Dismiss.

24. On January 8, 2026, EastWest filed its Answer and Counterclaims.

25. EastWest's Counterclaims request the following affirmative relief:

    a. That the Court enter a declaratory judgment that EastWest's current use of its parcel, including its use of the Ag Center is within EastWest's rights under the Conservation Easement.

    b. That the Court enter a declaratory judgment that the Ag Center is not a violation of the Conservation Easement.

    c. That the Court enter a declaratory judgment that EastWest is entitled to construct a single-family residential dwelling on its property, in the building envelope shown on Exhibit B of the Conservation Easement as "SR-1."

d. That the Court enter a declaratory judgment that EastWest is entitled to construct and operate renewable energy improvements, including solar arrays, on its property consistent with the Conservation Easement's purposes.

26. On March 11, 2026, Plaintiff filed its Motion to Dismiss EastWest's Counterclaim pursuant to Rules 12(b)(1), 12(b)(6) and 12(b)(7) of the North Carolina Rules of Civil Procedure.

27. On August 3, 2026, Plaintiff filed its Motion for Summary Judgment, seeking summary judgment in its favor on all claims against all defendants.

28. Plaintiff's Motion to Dismiss EastWest's Counterclaims and Plaintiff's Motion for Summary Judgment are set to be heard on October 5, 2026, by the Honorable John M. Morris.

ARGUMENT

I. This Court should deny Plaintiff's Motion for Summary Judgment in its favor because Plaintiff cannot show that it is entitled, as a matter of law, to any injunctive relief against EastWest.

A. Standard of Review.

In reviewing a motion for summary judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, a court must determine if the pleadings and other admissions on file, together with any filed affidavits (which can include facts that would be admissible in evidence, even those that are not contained in the pleadings), show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law. N.C. R. Civ. P. 56(c). All facts asserted by the non-moving party are taken as true, and their inferences must be viewed in the light most favorable to that party. *Dobson v. Harris*, 352 N.C. 77, 83 (2000).

B. Plaintiff is not entitled to summary judgment in its favor on its claims for temporary and permanent injunctive relief against EastWest as there exist genuine issues as to the material facts upon which Plaintiff's claims rely, and Plaintiff is not entitled to such judgments as a matter of law.[1]

[1] Plaintiff's Complaint seeks declaratory judgments in addition to temporary and permanent injunctive relief. Plaintiff's requests for declaratory judgments are not addressed here; EastWest maintains, as asserted in its Answer, that the Conservation Easement is a written document and that the express language of the written document should be applied.

In its Complaint, Plaintiff asks this Court to grant it temporary and permanent injunctive relief in order to: 1) enjoin Defendants from developing new roads; 2) require Defendants to restore Roads 1, 2, and 3; and 3) prohibit development of the Proposed Amphitheater. Injunctive relief is appropriate where an injury to the plaintiff is actually threatened, not merely anticipated, and it must be practically certain, not merely probable. *Hooks v. International Speedways, Inc.*, 263 N.C. 686, 690-91 (1965). To be granted injunctive relief, the plaintiff must further show that the threatened injury will be irreparable. *Id*. (see also *Pee Dee Electric Membership Corp. v. Carolina Power & Light Co*., 256 N.C. 56 (1961)).

Viewing the facts in the light most favorable to EastWest, it is apparent that Plaintiff is not in need of temporary or permanent injunctive relief to prevent EastWest from building any new roads on the Conservation Property. As alleged in EastWest's Answer, EastWest has not constructed any roads on the Conservation Property nor has it threatened to do so. Further, Plaintiff is not entitled to a judgment requiring EastWest to "restore" Roads 1, 2, and 3. As alleged in EastWest's Answer, no portion of these roads are on EastWest's property, and EastWest did not build or otherwise direct the construction of such roads. Plaintiff has not presented any facts indicating that EastWest has a legal right to enter property it neither owns nor controls to "restore" the roads.

Viewing the facts in the light most favorable to EastWest, it is also apparent that Plaintiff is not in need of temporary or permanent injunctive relief to prevent EastWest from attempting to develop the Proposed Amphitheater. As alleged in EastWest's Answer, no portion of the Proposed Amphitheater is on EastWest's property. There has been no allegation that EastWest is attempting to build any other new building or structure that could be used as an amphitheater and/or any similar use, such as a farm stage on property that it does own.

Plaintiff has not shown that EastWest's actions have created an actual threat of irreparable harm to Plaintiff, nor has it shown that it is practically certain that such harm will occur. The facts, viewed in the light most favorable to EastWest, show the opposite. For these reasons, Plaintiff is not entitled to a grant of summary judgment on its claims for temporary and permanent injunctive relief against EastWest.

II. This Court should deny Plaintiff's Motion to Dismiss pursuant to N.C. R. Civ. P. 12(b)(1) because there is an actual, justiciable controversy between the parties regarding the interpretation and enforcement of the Conservation Easement on EastWest's property.

A. Standard of Review.

In reviewing a motion to dismiss pursuant to Rule 12(b)(1), the court must determine if it has jurisdiction over the subject matter of the claims. N.C. R. Civ. P. 12(b)(1). Subject matter jurisdiction is conferred upon the courts by either the North Carolina Constitution or by statute. *Harris v. Pembaur*, 84 N.C. App. 666, 667 (1987). Under the North Carolina Declaratory Judgment Act, "any person interested under a deed, will, written contract or other writings constituting a contract may have determined any question of construction or validity arising under the instrument and obtain a declaration of rights." N.C.G.S. § 1-254. The court's subject matter jurisdiction to make such determinations is limited to cases where the pleadings and evidence disclose the existence of a genuine controversy between the parties, arising out of conflicting contentions as to their respective legal rights under the contract. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 287 (1964).

B. This Court has subject matter jurisdiction to hear claims for declaratory judgment related to the interpretation and enforcement of the Conservation Easement.

As stated above, the Declaratory Judgment Act provides that any person with interests under a "deed, will, written contract or other writings constituting a contract" may seek a declaration of the rights created therein. N.C.G.S. § 1-254. In *Duke Energy Progress Inc. v. Kane*, the North Carolina Court of Appeals recognized that an express easement, when recorded, is a contract. *Duke Energy Progress Inc. v. Kane*, 265 N.C. App. 1, 7 (2019). Accordingly, the Declaratory Judgment Act provides this Court subject matter jurisdiction to hear claims arising out of conflicting contentions of legal rights created by an easement such as the Conservation Easement. *Duke Energy Progress Inc.*, 265 N.C. App. at 7; *Nationwide Mut. Ins. Co.*, 261 N.C. at 287.

C. There is an actual, justiciable controversy between the parties regarding the Ag Center and the right to construct a single-family residential dwelling within the SR-1 site.

The purpose of the Declaratory Judgment Act is to "settle and afford relief from uncertainty and insecurity, with respect to rights, status, and other legal relations." *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. at 287, quoting *Walker v. Phelps*, 202 N.C. 344, 349 (1932). EastWest has asked this Court to afford it relief from uncertainty and insecurity as to its own rights and obligations under the Conservation Easement.

As discussed in more detail in Section III hereinbelow, the parties appear to agree that Plaintiff, utilizing Paragraph 12 of the Conservation Easement, granted its Discretionary Consent to allow the construction of the Ag Center by Mr. Nutter, when Mr. Nutter owned EastWest's parcel. The parties disagree, however, about what impact that grant of Discretionary Consent and the subsequent construction of the Ag Center had on the expressly created right to construct a single-family residential dwelling within the SR-1 site.

EastWest's position, as articulated in its Counterclaims and discussed in more detail in Section III hereinbelow, is that based on the plain language of the Conservation Easement EastWest is entitled to construct a single-family residential dwelling in the building envelope shown on Exhibit B of the Conservation Easement as "SR-1."

Plaintiff's position, as articulated in its Rule 30(b)(6) deposition testimony, is that Mr. Nutter agreed to not build a residential dwelling within the SR-1 site. Plaintiff stated that, in determining whether to grant Discretionary Consent for the construction of the Ag Center, Plaintiff's then-executive director considered the impact that the construction of the Ag Center would have in contrast to the impact that construction of a single-family residential dwelling would have. After the Rule 30(b)(6) deposition, Plaintiff's counsel produced a letter from Mr. Kevin Brice, which is attached hereto as Memo Exhibit A. In this letter, Mr. Brice, writing as the "President and CEO" of Triangle Land Conservancy, grants "permission" to Mr. Nutter to construct the "farm education center" (the Ag Center). *See* Memo Exhibit A.

Mr. Brice further states that "Triangle Land Conservancy finds that constructing the new farm education center in a location already determined to be suitable for residential development is an *acceptable trade*, especially as the new farm education center will serve to protect and enhance the agricultural productivity and long-term economic viability of Mapleview Farm." *See* Memo Exhibit A (emphasis added).

This evidence discloses that Plaintiff believes the right to build a single-family residential dwelling within the SR-1 site was somehow extinguished by Mr. Nutter prior to the construction of the Ag Center. While Plaintiff has been cautious to avoid stating, on the record, that EastWest does not have the right to build a single-family residential dwelling within the SR-1 site, this avoidance does not negate the existence of an actual controversy between the parties regarding this right, and the inevitability of continued, future litigation to establish this right.

The positions asserted by EastWest in its pleadings and by Plaintiff in its production of evidence disclose conflicting contentions as to their respective legal rights under the Conservation Easement. Due to this uncertainty regarding EastWest's rights under the Conservation Easement, there is an actual, justiciable controversy between the parties, and this Court should deny Plaintiff's Motion to Dismiss pursuant to Rule 12(b)(1).

III. This Court should deny Plaintiff's Motion to Dismiss pursuant to N.C. R. Civ. P. 12(b)(6) because Plaintiff cannot show that the facts alleged in EastWest's Counterclaims are insufficient to state a claim upon which relief may be granted.

A. Standard of Review.

In reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court must consider whether, as a matter of law, the allegations of the pleading are sufficient to state a claim upon which relief may be granted under any legal theory. *Harris v. NCNB Nat'l Bank*, 85 N.C. App. 669, 670 (1987). All facts alleged by the pleading are taken as true. *Id*. The motion should not be granted unless it appears to a certainty that the non-moving party is entitled to no relief from the court, either due to the disclosure of facts which will necessarily defeat the claim or due to an absence of law or fact necessary to support the claim. *Id*. at 671.

B. The facts alleged in EastWest's Counterclaims, taken as true, are sufficient to state claims upon which relief may be granted under the Declaratory Judgment Act, and there are no disclosed facts which would necessarily defeat the claims.

Plaintiff's 12(b)(6) Motion does not raise any specific basis for the Motion. This Memorandum shall address, briefly and generally, the basis for EastWest's entitlement to relief.

In its Counterclaims, EastWest seeks relief under the Declaratory Judgment Act. The Declaratory Judgment Act provides that any person with interests under a "deed, will, written contract or other writings constituting a contract" may seek a declaration of the rights created therein. N.C.G.S. § 1-254. The declaration may be either affirmative or negative in effect. N.C.G.S. §1-253.

i. The facts alleged in EastWest's Counterclaims are sufficient to support the grant of a declaratory judgment that EastWest's current use of the Ag Center and the building itself are not violations of the Conservation Easement.

In its First Counterclaim, EastWest seeks declaratory judgments that: 1) its current use of its property, including its use of the building located on its property, is within EastWest's rights under the Conservation Easement; and 2) the building itself is not in violation of the Conservation Easement.

The Conservation Easement prohibits the construction or reconstruction of new buildings or structures outside of the Farm Envelope, except for the three permissible single-family residential dwellings. *See* Conservation Easement, Par. 2. The building envelope for such a single-family residential dwelling on the parcel owned by EastWest is shown as "SR-1" on Exhibit B of the Conservation Easement. *See* Conservation Easement.

As alleged in EastWest's Counterclaim, in 2009, while Mr. Nutter owned the Conservation Property, Mr. Nutter constructed the building referred to as the Ag. Center. The Ag Center is an approximately 6500-square foot building that was used by Mr. Nutter to host events related to farm business and agricultural education. Mr. Nutter's use of the Ag Center is evidenced by articles written while he was still the owner of the property. *See* EastWest's Answer and Counterclaims, Exhibit 5. The Ag Center is clearly not a single-family residential dwelling; however, Mr. Nutter applied for and was able to obtain permits for its construction on the Conservation Property. *See* EastWest's Answer and Counterclaims, Exhibit 6.

When EastWest purchased its parcel, the Ag Center was still in use. EastWest's current use of the building is consistent with the use of the building by the Nutters.

Plaintiff has already admitted that the Ag Center and its current use is not a violation of the Conservation Easement. In his affidavit submitted on August 3, 2026, Bo Howes states as follows:

> "90. At this time, the only activities at the Conservation Property that TLC is aware of that constitute violations of the Conservation Easement, and which have not otherwise been previously consented to by TLC under the Discretionary Consent clause of the Conservation Easement, are the violations described in the Complaint. With respect to these violations, as described in the Complaint and herein, TLC timely and promptly acted on these violations and pursued enforcement action." Affidavit of Robert (Bo) Howes, Par. 90.

Plaintiff did not describe the Ag Center, or EastWest's use of the Ag Center, as a violation of the Conservation Easement in its Complaint. Further in the letter from Mr. Brice, Plaintiff

granted "permission" to Mr. Nutter to construct the farm education center (the Ag Center). *See* Memo Exhibit A.

Taking the facts as alleged in EastWest's Counterclaims as true, facts exist to support a grant of declaratory judgment that EastWest's current use of the Ag Center and the building itself are not violations of the Conservation Easement. EastWest's use of the Ag Center is consistent with Mr. Nutter's use of the Ag Center, which, according to Plaintiff, was not a violation of the Conservation Easement. The Ag Center itself, although it is a building constructed outside of the Farm Envelope and is not a single-family residential dwelling, is also not a violation of the Conservation Easement according to Plaintiff. Plaintiff has failed to disclose any facts that would necessarily defeat this claim for declaratory judgment.

ii. The facts alleged in EastWest's Counterclaims are sufficient to support entry of a declaratory judgment that EastWest is entitled to construct a single-family residential dwelling on its property in the location shown on Exhibit B of the Conservation Easement as "SR-1."

In its Second Counterclaim, EastWest seeks a declaratory judgment that it is entitled to construct a single-family residential dwelling on its property, in the location shown on Exhibit B of the Conservation Easement as "SR-1." This claim is based on the plain language of Paragraph 2(d) of the Conservation Easement, which reads as follows:

> "(d) *Single Family Residential Dwellings* – No more than three (3) new single-family residential dwellings, together with reasonable appurtenances such as garages, swimming pools and sheds, may be built on and subdivided from the Property in the locations designated as SR-1, SR-2, and SR-3 on Exhibit B. All such structures located at SR-1, SR-2 and SR-3 shall be contained within a building envelope of no more than seven (7) acres each. At the time that construction of such dwellings is to commence, Grantee shall be notified so that its records can be updated. Reasonable access to and utilities for such structures are permitted." *See* Conservation Easement, Paragraph 2(d).

As discussed previously, an express easement is a contract. *Duke Energy Progress Inc.,* 265 N.C. App. at 7. It is well-established that when the language of a contract is plain and unambiguous, effect must be given to its terms. *Id*.

Here, the language of the Conservation Easement plainly and unambiguously creates the right to build three single-family residential dwellings on the property encumbered by the Conservation Easement. *See* Conservation Easement, Paragraph 2. Paragraph 2(d) refers to "Exhibit B" of the Conservation Easement, which is a map attached to the Conservation Easement and recorded with the Conservation Easement, and "SR-1" is a section of the map. *See* Conservation Easement, Paragraph 2; Exhibit B.

The facts alleged in EastWest's Counterclaim, taken as true, show that EastWest's parcel includes the area on Exhibit B of the Conservation Easement labeled "SR-1" and that there is no single-family residential dwelling on the property owned by EastWest. Accordingly, based on the language of the Conservation Easement, EastWest has the right to construct a single-family residential dwelling on its property, within the area labeled as "SR-1."

Further, Paragraph 17 of the Conservation Easement provides that the Conservation Easement "may be amended only with the written consent of Grantor and Grantee." *See* Conservation Easement, Par. 17. There is no evidence that the Grantor and Grantee of the Conservation Easement have executed a written agreement to amend the Conservation Easement such that the rights to build a residential dwelling on the SR-1 site have been extinguished.

For these reasons, this Court should deny Plaintiff's Motion to Dismiss pursuant to N.C. R. Civ. P. 12(b)(6).

IV. This Court should deny Plaintiff's Motion to Dismiss pursuant to N.C. R. Civ. P. 12(b)(7) because all necessary parties are already parties to this case and can sufficiently protect their interests.

A. Standard of Review.

In reviewing a motion to dismiss pursuant to Rule 12(b)(7), the court must first decide if the absent party is a necessary party to the action. *Crosrol Carding Developments, Inc., v. Gunter & Cooke, Inc.*, 12 N.C. App. 448, 453 (1971). A party is a necessary party to an action when he is so vitally interested in the controversy involved that a valid judgment cannot be rendered to completely and finally determine the controversy without his presence as a party. *Long v. City of Charlotte*, 306 N.C. 187, 212. (1982).

B. All necessary parties are already parties to this lawsuit, and can sufficiently protect their interests.

As pled in EastWest's Counterclaims and as described hereinabove, EastWest is seeking declaratory relief regarding the rights and obligations imposed by the Conservation Easement. Under the Declaratory Judgment Act, when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings. N.C.G.S. § 1-260.

EastWest and its co-defendants, as entities with property interests in the Conservation Property, have an interest in the determination of their rights under the Conservation Easement. As noted by Plaintiff in its Motion to Dismiss, all the owners of the Conservation Property are therefore necessary parties in any action to interpret and enforce the Conservation Easement. Fortunately, all the owners of the Conservation property are already parties to this case, and there is, therefore, no risk that the rights of persons not parties to the proceedings would be prejudiced by the grant of a declaratory judgment as requested by EastWest.

In its Motion, Plaintiff cites no case in which a North Carolina court has compelled a person who is already a party to a lawsuit to join additional claims or counterclaims of that lawsuit. Instead, Plaintiff relies on cases in which necessary parties are entirely absent from the lawsuit.

For example, in *Regency Lake Owners' Ass'n v. Regency Lake, LLC*, the plaintiff homeowners' association sought a declaratory judgment declaring that the plaintiff and the owners of lots in the Regency Lake Village subdivision had a private access easement over a lakefront area in the subdivision. *Regency Lake Owners' Ass'n v. Regency Lake, LLC*, 258 N.C. App. 636, 638 (2018). While the declaratory judgment sought to establish the rights of all the owners, only three individual owners were parties to the suit. *Id*. at 637. The trial court found that necessary parties were absent because not all the owners were parties to the lawsuit. *Id*. at 638. The trial court ordered that all the remaining owners be joined as parties to the action, and that the matter be rescheduled for hearing once all necessary parties had been joined. *Id*. On appeal, the Court of Appeals agreed that all owners were necessary parties and that, as the other owners were not parties to the lawsuit, joinder was required. *Id*. at 641.

Similarly, in *Hine v. Blumenthal*, there were multiple persons with property interests in the property encumbered by the disputed easement who were not parties to the lawsuit. *Hine v. Blumenthal*, 239 N.C. 537, 543 (1954). The North Carolina Supreme Court determined that those persons were necessary parties and ordered that they be joined. *Id*. at 543.

Contrast these cases with the instant case, in which all the owners of property encumbered by the Conservation Easement are already parties. Defendant Union Grove Farm, Inc., is neither a Conservation Property owner nor a party to the Conservation Easement and yet is still a party to this case as it operates its business on the Conservation Property. Accordingly, all persons who have any interest in the property or whose rights might be otherwise impacted in any way by the grant of a declaratory judgment sought by EastWest are already parties to this lawsuit, and none are at risk of being subjected to a decision that would impact those rights without first having the opportunity to assert such rights.

C. Even if there were necessary parties who were absent, dismissal of EastWest's counterclaims is not the appropriate remedy for failure to join necessary parties.

When a court decides that there is an absent but necessary party, the court will order that the party be joined. *Crosrol Carding Developments, Inc.*, 12 N.C. App. at 453. If the absent party cannot be joined, the court must then determine whether to proceed without the absent party or dismiss the action. *Id*.

In applying Rule 12(b)(7), the North Carolina Court of Appeals has found that the following language regarding Rule 12(b)(7) of the Federal Rules of Civil Procedure is also applicable to our Rule 12(b)(7):

> "When faced with a motion under Rule 12(b)(7), the court will decide if the absent party should be joined as a party. If it decides in the affirmative, the court will order him brought into the action. However, if the absentee cannot be joined, the court must then determine, by balancing the guiding factors set forth in Rule 19(b), whether to proceed without him or to dismiss the action." *Crosrol Carding Developments, Inc.*, 12 N.C. App. at 453, quoting 5 Wright & Miller, Federal Practice and Procedure, § 1359, pp. 628, 631.

The Court of Appeals' adoption of this language advises lower courts that the appropriate remedy for failure to join a necessary party is an order requiring joinder, and that dismissal is only appropriate if the absent and necessary party cannot be joined *and* proceeding without the absent and necessary party would be contrary to the principles of equity and good conscience. *Crosrol Carding Developments, Inc.*, 12 N.C. App. at 453; Fed. R. Civ. P. Rule 19(b).

Plaintiff has not explained why dismissal is appropriate prior to the issuance of an order requiring joinder or any determination by the court that proceeding without the absent and

necessary parties would be contrary to the principles of equity and good conscience. The cases cited by Plaintiff do not support the conclusion that 12(b)(7) dismissal is the appropriate remedy in this case. In *Regency Lake Owners' Ass'n.*, the trial court ordered that the matter be rescheduled for hearing once all remaining owners of subdivision property had been joined as parties to the proceeding. *Regency Lake Owners' Ass'n*., 258 N.C. App. at 638. And, as stated above, when the North Carolina Supreme Court in *Hine v. Blumenthal* affirmed that necessary parties were not present, the Court simply ordered that such parties be joined. *Hine*, 239 N.C. at 543.

If this Court found that Union Grove Farm, Inc., Bandit Farms II, LLC, Bandit Farms III, LLC, Harper Grace, LLC, and Meredith Sabye needed to be joined as parties to EastWest's counterclaims, an order requiring joinder could be issued and easily followed, as these persons are already defendants in this lawsuit. There is no indication that these defendants could not be joined, if so required.

For these reasons, this Court should deny Plaintiff's Motion to Dismiss pursuant to N.C. R. Civ. P. 12(b)(7).

CONCLUSION

EastWest respectfully requests that the Court deny Plaintiff's Motion for Summary Judgment against EastWest and deny Plaintiff's motions to dismiss EastWest's counterclaims.

This is the 1st day of October, 2026.

ANN SHY LAW FIRM, PLLC

/s/Anna Farmer _____
Anna Farmer, Esq.
Attorney for *Defendant EastWest Organics, LLC*
Bar Number: 62353
118 E. Main Street, Rm. 206
Carrboro, NC 27510
Telephone: (919) 932-0821

Mr. and Mrs. Bob Nutter
3111 Dairyland Road
Hillsborough, NC 27278

Dear Mr. and Mrs. Nutter:

After considering your proposal to build a farm education center in the location designated as SR-1 in Exhibit B of the Mapleview Farm Conservation Easement, Triangle Land Conservancy, as the Grantee of the Conservation Easement, and in its sole discretion, is granting permission for you to proceed with your plans to construct the farm education center in the stated location.

Because this location was originally designated for future construction of a single-family residential dwelling, and therefore construction of the planned 4000ft^2 farm education center was prohibited at this site, TLC was required by the Discretionary Consent Clause (Paragraph 12 of the Conservation Easement) to determine, before granting permission for construction, that the prohibited activity 1) did not violate the purposes of the Conservation Easement and 2) either enhanced or did not impair any significant conservation interests associated with the Property. As stated in the preamble to the easement, the purposes of this Conservation Easement are "to protect in perpetuity the open space character, agricultural productivity, watershed protection and scenic qualities of the Property, and to assure the availability of the Property in perpetuity for agricultural use."

Triangle Land Conservancy finds that constructing the new farm education center in a location already determined to be suitable for residential development is an acceptable trade, especially as the new farm education center will serve to protect and enhance the agricultural productivity and long-term economic viability of Mapleview Farm. The new education center will provide Mapleview Farm a new way to reach out to the community and connect people to the land. Triangle Land Conservancy understands and appreciates the need for modern-day farms to diversify their products and find innovative ways to maintain economic success. We support you in your new endeavor.

Thank you,

Kevin Brice
President and CEO
Triangle Land Conservancy