STATE OF NORTH CAROLINA ORANGE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 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; MEREDITH G. SAYBE Defendants.	**TRIANGLE LAND CONSERVANCY'S BRIEF IN SUPPORT OF MOTION TO DISMISS EASTWEST ORGANICS, LLC'S COUNTERCLAIMS**

NOW COMES Plaintiff, Triangle Land Conservancy ("TLC" or "Plaintiff"), by and through undersigned counsel, and hereby submits its Brief in Support of TLC's Motion to Dismiss the Counterclaims of Defendant, EastWest Organics, LLC ("EastWest") in the above-captioned case.

STATEMENT OF THE CASE

TLC filed the Complaint in this action on August 15, 2025 (the "Complaint"). The Complaint involves an ongoing dispute between Plaintiff, Triangle Land Conservancy ("TLC"), a North Carolina non-profit corporation which holds a conservation easement on property known as the Union Grove Farm in Orange County and Defendants, who each own either a fee simple or leasehold interest in Union Grove Farm.

The conservation easement is entitled "Mapleview Farm Easement," "Grant of Conservation Easement and Development Rights" and was granted to TLC in 1995 by the former fee simple owners Robert and Aubrey Nutter (the "Conservation Easement"). The property subject to the Conservation Easement is approximately 107 acres (the "Conservation Property"), and its

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uses and development are governed by, *inter alia*, the terms of the Conservation Easement. While the entire 107 acres was owned solely by the Nutters at the time the Conservation Easement was created, in or around 2022 it was subdivided and sold to five different owners, including the named Defendants, except Union Grove Farm, Inc. which leases property from the Bandit Farms LLCs to conduct UGF's regenerative farming operations. For the Court's reference, attached hereto as **Exhibit A** is a map from Orange County GIS showing the 5 parcels that make up the Conservation Property and the owners of each parcel.[1]

The Complaint seeks declaratory judgments to interpret the terms of and to enforce the Conservation Easement with respect to certain activities at the Conservation Property which Defendants have engaged in, or have indicated their intent to engage in. Specifically, the construction of three new roads and Defendants' proposal to locate a 2,500-seat music amphitheater at the Conservation Property. TLC contends these all constitute violations of the Conservation Easement and the Complaint requests injunctions to prevent the amphitheater and require the restoration of the Property.

Defendants, who are represented by multiple different attorneys, answered and otherwise responded in various ways. The relevant motions and counterclaims are summarized below:

1. Defendant EastWest Organics, LLC ("EastWest").

Defendants EastWest and Harper Grace, LLC jointly own one parcel, each with a ½ interest, located at the southwest corner of the Conservation Property adjacent to Dairyland Road. *See*, **Exhibit A**. This parcel includes an existing agricultural center[2].

[1] Despite the multiple owners, the Conservation Easement remains in full force and applies to all parcels and owners the same as when originally conveyed.

[2] *See,* Complaint, Exhibit J and Exhibit 4 to Exhibit I ("To better share understanding of regenerative farming, the Union Grove Farm team opened and operates the Center for Regenerative

On September 11, 2025, EastWest filed a Motion to Dismiss the Complaint pursuant to N.C.R. Civ. P. 12(b)(1) and 12(b)(6). The crux of the Motion was that the alleged violations did not occur on the parcel owned by EastWest and that TLC failed to provide EastWest with adequate notices of the 3 road violations. TLC's position has consistently been that, *inter alia,* all Conservation Easement owners are necessary parties to the Complaint to obtain a binding judgment regarding the meaning of Conservation Easement terms. *See* TLC's Memorandum of Law in Opposition to EastWest's Motion to Dismiss. *See also, e.g. Regency Lake Owner's Association, Inc. v. Regency Lake, LLC*, 258 N.C. App. 636, 814 S.E.2d 121 (2018). Following a hearing on December 15, 2025, Superior Court Judge Thomas Currin agreed with TLC and denied EastWest's motions to dismiss. *See* Order Denying Defendant EastWest Organics, LLC's Motion to Dismiss, filed December 22, 2025.

Thereafter, on January 8, 2026, EastWest filed an Answer and Counterclaims. The Counterclaims, which are the subject of this Motion, ask for declaratory judgments that the use of the existing agricultural center and several other hypothetical "potential" uses of the parcel owned jointly by EastWest and Harper Grace, which do not exist and have not been proposed, are permitted by the Conservation Easement. Specifically, EastWest's Counterclaims request declaratory judgments that: 1) the existing "Agricultural Center" is not a violation of the Conservation Easement; 2) pursuant to the Conservation Easement, EastWest would be entitled to construct one single-family residential dwelling on the parcel it owns jointly with Harper Grace; and 3) pursuant to the Conservation Easement, EastWest would be entitled to construct and operate

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Agriculture on its property. … Bohlen's partner, Meredith Sabye, co-founded the center and helps inform its variety of visitors while connecting with agricultural leaders.").

renewable energy improvements, including solar arrays, on the parcel it owns jointly with Harper Grace.

EastWest's Counterclaims specifically state EastWest seeks these declarations only "as to its own rights and obligations under the Conservation Easement and does not seek to adjudicate or impair the rights of its co-tenant, Harper Grace, LLC."[3]

On March 11, 2026, TLC filed a Motion to Dismiss EastWest's Counterclaims, which is the matter currently before the Court.

2. Defendants Union Grove Farm, Inc., Bandit Farms II, LLC, Bandit Farms III, LLC and Harper Grace, LLC.

Defendant Bandit Farms II owns one parcel located on the eastern side of the Conservation Property, adjacent to Meadowview Road. *See* **Exhibit A**. Defendant Bandit Farms III also owns one parcel located on the northern portion of the Property, which includes the majority of the Farm Operations Envelope. *See* **Exhibit A**; Conservation Easement, Exhibit B. As stated above, Defendant Harper Grace, LLC co-owns one parcel with EastWest. Union Grove Farm, Inc. leases several of the Conservation Property parcels and operates Union Grove Farm. Union Grove Farm, Inc. is owned by Greg Bohlen, who also owns Bandit Farms II and Bandit Farms III.

On September 22, 2025, Defendants Union Grove Farm, Inc., Bandit Farms II, LLC, and Bandit Farms III, LLC (the "UGF Defendants") filed an Answer and Counterclaims[4]. The Counterclaims alleged that TLC breached an alleged oral agreement. They later asked to add even more counterclaims seeking declaratory judgments to interpret Conservation Easement terms regarding potential uses of the Conservation Property, which are not currently in dispute. On June

[3] Notably, and as stated, *supra*, Judge Currin has already held that all Property Owners must be named for the court's jurisdiction and a binding judgment.
[4] Defendant Harper Grace, LLC joined in the Answer, but not the Counterclaims.

15, 2026, Superior Court Judge Stephanie Reese dismissed the UGF Defendants' existing Counterclaims and denied their request to add more. Specifically, their Motion to Amend was denied as futile because the only live controversies at this time relate to the 3 roads and the amphitheater – not other hypothetical questions.[5]

On August 3, 2026, TLC filed a Motion for Summary Judgment as to all claims in the Complaint, along with the Affidavits of Robert (Bo) Howes and Hannah Royal. TLC's Motion for Summary Judgment is currently pending and scheduled to be heard with TLC's Motion to Dismiss Defendant EastWest's Counterclaims.

STATEMENT OF THE FACTS

I. The Conservation Easement.

Conservation easements are voluntary legal agreements established pursuant to the Conservation and Historic Preservation Agreements Act (the "Conservation Act"), which is set forth in the North Carolina General Statutes, Chapter 121, Article 4, §§ 121-34, thru 121-42.

In general, a conservation easement is created when a landowner, the grantor, wishes to restrict and prohibit the future use and development of their property to ensure the long-term protection of the property's defined conservation values. An entity, typically a conservation organization like TLC or a public body, is named as the grantee and holder of the conservation easement. The holder is granted the right and obligation to monitor the property and enforce the restrictions in perpetuity. Conservation easements are recorded in the local register of deeds, are perpetual and remain in place with each change in property ownership. *See, e.g.,* Conservation Act.

[5] TLC successfully argued that its lawsuit was not an opportunity to go through the Conservation Easement line by line and obtain a ruling on whether the UGF Defendants could engage in activities in the future not yet proposed or denied by TLC. *See* Order Denying UGF Defendants' Motion for Leave to Amend their Counterclaims, filed July 20, 2026. A copy of the July 20 Order is attached hereto as **Exhibit B.**

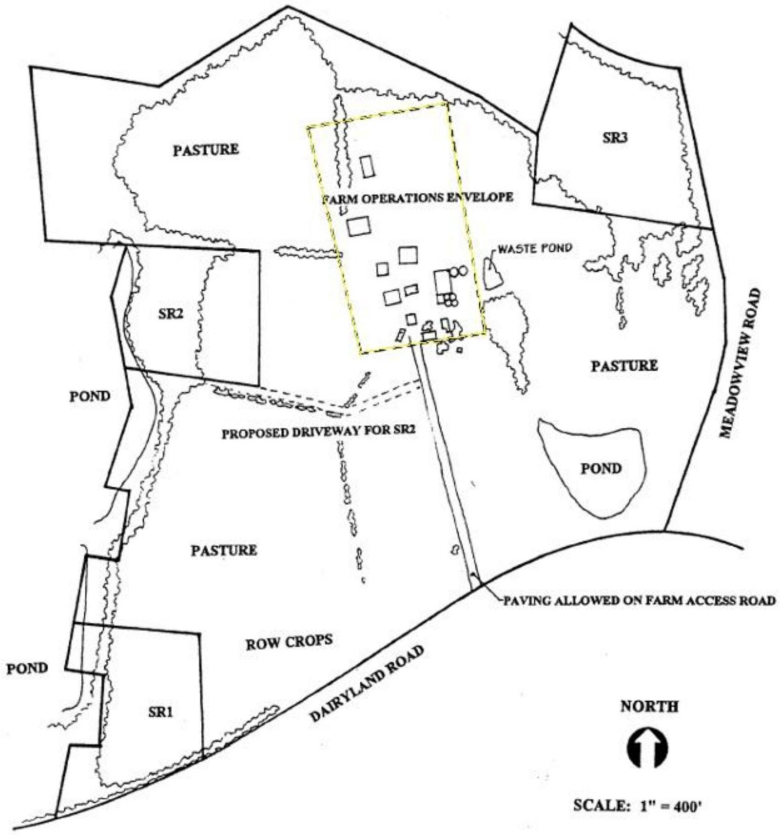
In this case, the express "purpose" of the Conservation Easement is to:

> "protect in perpetuity the open space character, agricultural productivity, watershed protection and scenic qualities of the Property (collectively the 'Conservation Values') and to assure the availability of the Property in perpetuity for agricultural use."

See EastWest's Counterclaims, Exhibit 4, Conservation Easement, p. 2.

The Conservation Property is described in the Easement as "primarily open farmland" with "outstanding scenic qualities that can be enjoyed by the general public." These include: 1) "long open views of Mapleview Farm" from Dairyland Road; 2) "the visibility of every element of indigenous traditional piedmont farming;" and 3) "the harmonious variety of curving tree lines, open fields, winding country roads, and silos silhouetted against the skyline."

The Conservation Easement's restrictions refer to various identified areas on the Conservation Property. The diagram below is Exhibit B to the Conservation Easement. To assist the Court, the Farm Operations Envelope is highlighted in yellow.



The Nutters conveyed to TLC: "all developmental rights that are now or hereafter allocated to, implied, reserved or inherent in the Property," with the exception of three (3) limited circumstances, set forth in paragraphs 2(c), 2(d) and 8. *See* Conservation Easement, p. 5, ¶ 4, entitled "Development Rights." As successors-in-interest, Defendants stand in the shoes of the Nutters. *See*, *e.g.*, Conservation Easement, p. 9, ¶ 20.

Per the Conservation Easement, Defendants' only remaining development rights are as follows:

> • **Paragraph 8: <u>New Roads within the Farm Operations Envelope & Certain Access Roads</u>** – The Property Owners are prohibited from constructing new roads, except for roads built within the Farm Operations Envelope or except for access roads as shown on Exhibit B to the Conservation Easement. *See* Conservation Easement, p. 6, ¶ 8;
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> • **Paragraph 2(c): <u>Agricultural uses within the Farm Operations Envelope</u>** – The Property Owners may, without TLC's written consent, construct "[n]ew buildings and other structures and improvements to be used solely for agricultural purposes" which are located within the confines of the Farm Operation Envelope shown on Exhibit B to the Conservation Easement. *See* Conservation Easement, p. 4, ¶ 2(c); and
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> • **Paragraph 2(d): <u>Single-Family Dwellings within SR-1, SR-2 and SR-3</u>** – The Property Owners may build and subdivide out no more than three (3) new single-family residential dwellings, together with reasonable appurtenances, in the locations designated as SR-1, SR-2 and SR-3. At the time that construction of such dwellings is to commence, the Property Owners must notify TLC. *See* Conservation Easement, p. 4, ¶ 2(d). Any subdivided tract "shall remain subject to the terms of th[e] easement to ensure the continued agricultural use of the Property." *See* Conservation Easement, p. 5, ¶ 3."

The Conservation Easement also includes a Discretionary Consent clause, which allows TLC to consent to activities which are otherwise prohibited at the Conservation Property. Per the Discretionary Consent clause, "[i]f, owing to unforeseen or changed circumstances, any of the activities prohibited [] are deemed desirable by both the Grantor and the Grantee, the Grantee may,

in its sole discretion, give permission for such activities, subject to the limitations herein." *See* Conservation Easement, p. 7, ¶ 12.

The Discretionary Consent clause requires requests for permission "be in writing and [] describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the purpose of th[e] Conservation Easement." Upon receiving a written request, TLC "may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of th[e] Conservation Easement and (2) either enhance or do not impair any significant conservation interests associated with the Property." *See* Conservation Easement, p. 7, ¶ 12.

II. Defendants' Violations of the Conservation Easement and the Complaint.

As detailed in the Complaint, beginning in 2023, Defendants constructed three new roads and took steps to develop the proposed amphitheater.

With respect to the roads, and relevant to this Motion to Dismiss, the Notice of Violation ("NOV") for Road 2 describes the violation as a new road built across the northwest portion of the Conservation Property, from a point north of the Center for Regenerative Agriculture across a field to access the Farm Operations Envelope. *See* Complaint, Exhibit C. (Notice of Violation issued April 17, 2024). The Road 2 NOV only identified Road 2 as a violation of the Conservation Easement, and not the Center for Regenerative Agriculture.

With respect to the amphitheater, on June 13, 2024, Defendants' then-legal counsel, Bob Hornik, sent a letter to the Orange County Planning and Inspections Director (the "Planning Director"), requesting a determination that, among other things, a proposed 2,500 seat amphitheater at the Conservation Property (the "proposed amphitheater") would constitute "agritourism" and, thus, be exempt from County zoning regulations under state law. *See*

Complaint, ¶ 46. As proposed, the amphitheater is located outside of the Farm Operations Envelope. As detailed in the Complaint, the amphitheater is a violation of the Conservation Easement, regardless of where it is located, because, *inter alia*, it is not an agricultural use. TLC's counsel also sent a letter to the County opposing the requested agritourism interpretation. *See,* Complaint, Ex. I. On June 4, 2025, the Planning Director issued a "final and binding" determination that the amphitheater is not "agritourism." On July 3, 2025, Defendants appealed that determination to the Orange County Board of Adjustment. (Complaint, ¶¶ 56-59, Ex. J).

Having exhausted all other means to obtain and ensure Conservation Easement compliance, TLC filed the Complaint.

III. EastWest's Counterclaims.

On January 8, 2026, EastWest filed its Answer and Counterclaims, seeking 3 declaratory judgments as to its rights only under the Conservation Easement. *See*, EastWest's Counterclaims, § 42.

EastWest alleges the Counterclaims are necessary because TLC's "allegations and requests for relief" in the Complaint "have created uncertainty and ambiguity relating to the enforcement of the Conservation Easement and EastWest's rights under the Conservation Easement." *See* EastWest's Counterclaims, ¶ 40. EastWest makes this claim despite previously alleging in its Motion to Dismiss that the claims in the Complaint have no "tie" to EastWest or the parcel co-owned by EastWest.

In Counterclaim 1, EastWest alleges that, although TLC has been aware for decades about the Agricultural Center located on the parcel co-owned by EastWest and has never deemed the Agricultural Center to be a violation of the Conservation Easement, TLC's "allegations and requests for relief create uncertainty as to whether [TLC] now considers the building … to be a

violation of the Conservation Easement." *See* EastWest's Counterclaims, ¶ 54. EastWest requests the court enter a declaratory judgment that its use of the Agricultural Center is "within EastWest's rights under the Conservation Easement," and the building "is not a violation." *See* EastWest's Counterclaims, ¶¶ 59-60.

Counterclaim 2 alleges that EastWest "desires to evaluate and potentially construct" a single-family residential dwelling "consistent with the Conservation Easement's purposes," and requests a declaratory judgment that it may do so in the location shown as SR-1 on Exhibit B of the Conservation Easement. *See* EastWest's Counterclaims, ¶¶ 70-71.

Counterclaim 3 alleges that in 2010 the prior property owner, Mr. Nutter, constructed and operated a solar energy installation at the Conservation Property, which was subsequently removed by Duke Energy. EastWest alleges it "desires to evaluate and potentially construct and operate renewable energy improvements, including solar energy," and requests a declaratory judgment that "allows" EastWest to do so. *See* EastWest's Counterclaims, ¶¶ 80, 84.

STANDARD OF REVIEW

A. Rule 12(b)(6).

A claim should be dismissed under N.C. R. Civ. P. 12(b)(6) for failure to state a claim when: "(1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim." *Wilson v. SunTrust Bank*, 257 N.C. App. 237, 244, 809 S.E.2d 286, 292 (2017) (quoting *Freedman v. Payne*, 246 N.C. App. 419, 422, 784 S.E.2d 644, 647 (2016)).

"When ruling on a Rule 12(b)(6) motion, a court may properly consider documents which

are the subject of a plaintiff's complaint and to which the complaint specifically refers even though they are presented by the defendant." *Holton v. Holton*, 258 N.C. App. 408, 419, 813 S.E.2d 649, 657 (2018). "A document attached to and incorporated within a complaint is not considered a matter outside of the pleading." *Id.* at 418, 813 S.E.2d at 657. *See also Woolard v. Davenport*, 166 N.C. App. 129, 133-34, 601 S.E.2d 319, 322 (2004) (documents that are attached to the complaint as exhibits and referenced therein will be considered by the Court for Rule 12(b)(6) purposes). The Court may also consider records of which it can take judicial notice. *Wood v. J.P. Stevens & Co.*, 297 N.C. 636, 641, 256 S.E.2d 692, 696 (1979) ("[I]t is clear that judicial notice can be used in rulings on ... motions to dismiss for failure to state a claim.").

B. Rule 12(b)(1).

"A Rule 12(b)(1) motion to dismiss represents a challenge to the trial court's subject matter jurisdiction over a plaintiff's claims." *Marlow v. TCS Designs, Inc.*, 288 N.C. App. 567, 572, 887 S.E.2d 448, 452 (2023). "Subject matter jurisdiction refers to the power of the court to deal with the kind of action in question." *Id*. (*quoting Harris v. Pembaur*, 84 N.C. App. 666, 667, 353 S.E.2d 673, 675 (1987)). "The filing of a motion to dismiss under Rule 12(b)(1) does not raise an issue of fact, it challenges the jurisdiction of the court over the subject matter." *Moss v. N.C. Dept. of State Treasurer*, 282 N.C. App. 505, 512, 872 S.E.2d 113, 119 (2022)(*quoting Journeys International, Inc. v. Corbett*, 53 N.C. App. 124, 125, 280 S.E.2d 5, 6 (1981)).

"[A] motion to dismiss for lack of subject-matter jurisdiction is not viewed in the same manner as a motion to dismiss for failure to state a claim upon which relief can be granted. In such cases, matters outside the pleadings may be considered and weighed by the court in determining the existence of jurisdiction." *North Carolina ex rel. Expert Discovery, LLC v. AT&T Corp.*, 287

N.C. App. 75, 85, 882 S.E.2d 660, 669 (2022)(*citing Tart v. Walker,* 38 N.C. App. 500, 502, 248 S.E.2d 736, 737 (1978)).

LEGAL ARGUMENT

I. EastWest's Counterclaims Should be Dismissed Because they Seek Declaratory Judgments Regarding Matters Not In Controversy.

EastWest's counterclaims should be dismissed for the same reason the Court previously denied the UGF Defendants' request to add counterclaims. Like the UGF Defendants' proposed counterclaims, EastWest's counterclaims seek declaratory judgments regarding matters which are not in controversy and over which the Court has no jurisdiction to decide. *See* **Exhibit B**.

"[A] justiciable controversy must exist in order to invoke the provisions of the Declaratory Judgment Act." *Wendell v. Long*, 107 N.C. App. 80, 84, 418 S.E.2d 825, 827 (1992). "A justiciable controversy exists when there is an actual controversy between parties having adverse interests in the matter in dispute." *Id*. The presence of an actual controversy is necessary for the court to have subject matter jurisdiction. *See Sharpe v. Park Newspapers of Lumberton, Inc.*, 317 N.C. 579, 584, 347 S.E.2d 25, 29 (1986). "[I]n order 'to satisfy the jurisdictional requirement of an actual controversy, it is necessary that litigation appear unavoidable.'" *Id*. at 589, 347 S.E.2d at 32(*quoting Gaston Bd. Of Realtors v. Harrison,* 311 N.C. 230, 234, 316 S.E.2d 59, 61 (1984)). To constitute an actual controversy, the plaintiff "must establish that something more than a disagreement as to rights exist between the parties." *Id*. "When the record shows that there is no basis for declaratory relief, or the complaint does not allege an actual, genuine existing controversy, a motion for dismissal under … Rule 12(b)(6) will be granted." *Gaston Bd. Of Realtors v. Harrison, supra,* at 234-235, 316 S.E.2d at 62. *See also, Wendell, supra* and *Sharpe, supra*, dismissing declaratory judgment claims for lack of subject matter jurisdiction when no actual controversy exists.

The North Carolina Supreme Court has also routinely held that "[t]he Uniform Declaratory Judgment Act does not license litigants to fish in judicial ponds for legal advice." *Lide v. Mears*, 231 N.C. 111, 117, 56 S.E.2d 404, 409 (1949). The Act "does not extend to the determination of abstract questions," and is not a mechanism to obtain "a purely advisory opinion which the parties might, so to speak, put on ice to be used if and when occasion might arise." *Town of Tryon v. Duke Power Co.*, 222 N.C. 200, 204, 22 S.E.2d 450, 453 (1942). Instead, there must be "an actual or real existing controversy between parties" and "[i]t necessarily follows that when a litigant seeks relief under the declaratory judgment statute, he must set forth in his pleadings all facts necessary to disclose the existence of an actual controversy between the parties to the action with regard to their respective rights and duties in the premises." *Lide, supra,* at 118, 56 S.E.2d at 409. *See also Sharpe, supra,* at 590, 347 S.E.2d at 32.

a. Counterclaim 1 – Agricultural Center.

EastWest's Counterclaim 1 fails to set forth any facts that disclose the existence of an actual controversy between TLC and EastWest regarding the existing Ag Center and whether it is a violation of the Conservation Easement. EastWest alleges Counterclaim 1 is based on "the allegations and request for relief" in the Complaint, which EastWest alleges "create uncertainty as to whether [TLC] now considers" the Ag Center to be a violation of the Conservation Easement. However, as explained in the Complaint and *supra*, the scope of the Complaint is narrow and is limited to the three (3) roads and the amphitheater[6]. TLC is unsure how EastWest can reasonably

[6] For purposes of TLC's 12(b)(1) Motion, TLC would also refer the Court to the Affidavit of Robert (Bo) Howes. Per Mr. Howes's Affidavit, TLC conducts routine, annual monitoring of the Conservation Property and "[a]t 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." *See* Howes Affidavit, ¶ 90.

read the Complaint to be about the Ag Center and whether the Ag Center is allowed at the Conservation Property. Regardless, this allegation is easily disputed by the plain language of the Complaint. There is nothing in the Complaint that states or even indicates that TLC believes the Ag Center is a violation of the Conservation Easement. In fact, the Complaint only indicates that the opposite is true. As shown on the Road 2 Notice of Violation attached to the Complaint at Exhibit C, TLC is aware of the Ag Center and, in issuing the Road 2 Notice of Violation, did not include a notice of violation related to the Ag Center.

Because EastWest's Counterclaims fail to include facts that show the existence of an actual controversy between TLC and EastWest regarding the Ag Center, EastWest's Counterclaim 1 should be dismissed.

b. Counterclaims 2 and 3 – Single Family Dwelling and Renewable Energy Improvements.

EastWest's Counterclaims 2 and 3 should also be dismissed because they seek "anticipatory judgments" regarding controversies that have not, and may never, arise, which is exactly the type of fishing-expedition that the North Carolina Supreme Court has held repeatedly is not an appropriate use of the Declaratory Judgment Act. *See, e.g., Wendell, supra*.

Counterclaims 2 and 3 allege that EastWest seeks declaratory judgments because it "desires to evaluate" and "potentially construct" certain developments at the Conservation Property. EastWest's reasoning for seeking the declaratory judgments is nearly identical to those alleged by the plaintiff in *Sharpe, supra*, which the NC Supreme Court held was insufficient to justify a declaratory judgment act claim.

In *Sharpe*, the plaintiffs sought a declaratory judgment to interpret an anticompetitive provision of a promissory note as being unenforceable to them and a declaration that they were entitled to compete with the new owner in the newspaper business. The plaintiffs' stated intention

for seeking the declaratory judgments was to "explore the feasibility" and "ascertain opportunities" for engaging in activities which would be covered by the anti-compete provisions. The NC Supreme Court dismissed the complaint, holding that no justiciable controversy existed because there was "no evidence of a practical certainty that the plaintiffs will compete with the defendant … or that they have the intention of doing so if the provisions of the note are declared invalid." *See Sharpe, supra,* at 590, 347 S.E.2d at 32.

As with the plaintiffs in *Sharpe*, EastWest's stated intention for obtaining the declaratory judgments in Counterclaims 2 and 3 is to "evaluate" and "potentially" engage in certain activities (*i.e.*, a single family dwelling and renewable energy infrastructure). However, there is nothing in the Counterclaims to "make it appear reasonably certain" that EastWest will actually engage in these activities, or to show that, even if the Court were to agree with EastWest, EastWest would not merely 'put the opinion on ice to be used if and when occasion may arise.'" *See*, *Sharpe, supra*, at 589-90, 347 S.E.2d at 32(*quoting Tryon v. Power Co.*, 222 N.C. 200, 204, 22 S.E.2d 450, 453 (1942)). Because Counterclaims 2 and 3 seek only "anticipatory judgments," and not judgments related to matters which EastWest has actually proposed to pursue, Counterclaims 2 and 3 should be dismissed[7]. *See also, Wendell v. Long, supra*.

II. The Counterclaims Should be Dismissed for Failure to Join All Necessary Parties, Pursuant to N.C. R. Civ. P. 12(b)(7).

[7] Counterclaim 3 should further be dismissed because it is so vague TLC cannot even ascertain what EastWest is proposing. EastWest only states it wants to potentially construct "renewable energy improvements, including solar energy." TLC has no way of knowing what EastWest considers to be "renewable energy improvements," nor can TLC ascertain the scale and extent of these potential "improvements." In fact, it is not clear that EastWest itself knows what "renewable energy improvements" it wishes to install. At a minimum, EastWest would need to propose a specific plan, sufficient for TLC to understand what EastWest is proposing. Unless and until that happens there is simply no way to know if there is an actual controversy between EastWest and TLC regarding the proposed activity.

EastWest's Counterclaims should also be dismissed for failure to include all necessary parties, specifically, its co-owner and the other owners of the Conservation Property. This too was already litigated in this case when the Court denied EastWest's Motion to Dismiss the Complaint. As TLC argued in opposition to EastWest's Motion to Dismiss, all owners of property subject to the Conservation Easement are necessary parties to a declaratory judgment action seeking the interpretation of the Conservation Easement. Harper Grace, LLC, is further a necessary party to EastWest's Counterclaims, because the Counterclaims seek an interpretation regarding the allowed use and development of the property which EastWest and Harper Grace, LLC jointly own.

Pursuant to the Declaratory Judgment Act, "[w]hen 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." *See* N.C. Gen. Stat. § 1-260. *See also* Rule 19(a) of the N.C. R. Civ. P. ("Necessary joinder. - Subject to the provisions of Rule 23 [class actions], those who are united in interest must be joined as plaintiffs or defendants ….").

A necessary party is one with a material interest in the subject matter or controversy, and whose interests will be directly affected by an adjudication of the controversy. *See Rice v. Randolph*, 96 N.C. App. 112, 113, 384 S.E.2d 295, 297 (1989). "A person is united in interest with a party when that person's presence is necessary for the court to determine the claim before it without prejudicing the rights of a party or the rights of another who is not before the court." *Id*. at 113, S.E.2d at 296-297 (citation omitted). The failure to join a necessary party invalidates a judgment. *Id*.; *see also, e.g., Cole v. Bonaparte's Retreat Property Owners' Ass'n, Inc.*, 259 N.C. App. 27, 815 S.E.2d 403 (2018).

It is well-established in North Carolina that in declaratory judgment actions related to the enforcement or recognition of legal rights in an easement, all owners of real property subject to an easement are necessary parties. *See, e.g., Regency Lake Owners' Association, Inc. v. Regency Lake, LLC, supra* (plaintiff sought a determination regarding the neighborhood's ability to use an easement to access a neighboring lake; because any determination would affect every resident within the neighborhood, each resident was a necessary party, whether they used the subject easement or not); *Rice v. Randolph, supra* (action to determine whether a subdivision easement had been extinguished "[could not] be resolved without the joinder of the grantor, or his heirs, who retain fee title to the soil … and the record owners of lots in the subdivision, who have user rights in the easement"); *Hine v. Blumenthal*, 239 N.C. 537, 80 S.E.2d 458 (1954)(heirs of easement grantor, who are currently the fee simple owners of the property subject to the easement in question, were all necessary parties to declaratory judgment action); *N.C. Dept. of Transp. V. Stagecoach Village*, 174 N.C. App. 825, 622 S.E.2d 142 (2005) (regarding condemnation of common area, the "owners of the easement have a material interest in the subject matter of the controversy…and their interest will be directly affected by the trial court's decision" thus making them necessary parties); *Boone v. Rogers*, 210 N.C. App. 269, 708 S.E.2d 103 (2011)(vacating judgment entered without a necessary party and holding that husband and wife, who jointly owned property, were both necessary parties to action filed by the husband seeking a declaratory judgment that their neighbor had no easement across their property).

In the case *sub judice*, Defendants' properties are all subject to the covenants and restrictions in the Conservation Easement and each Defendants' property interests will be directly affected by the adjudication of EastWest's Counterclaims. By way of example, if the Court issues a declaratory judgment that the Conservation Easement prohibits renewable energy infrastructure,

then that decision would have a preclusive effect on each property owner subject to the Conservation Easement, as they too would be prohibited from installing renewable energy infrastructure. On the other hand, it is possible that one or more of the other Property Owners, including Harper Grace, LLC who is a co-owner of EastWest's property, disagrees with Counterclaim Defendants' requested interpretations and would oppose EastWest's future proposal for a single-family dwelling or renewable energy infrastructure. These reasons are exactly why our courts require the joinder of all property owners subject to the easement in such declaratory judgment actions, as well as any co-owners of the property. *See, e.g., Regency Lake Owners' Association, Inc. v. Regency Lake, LLC, supra*; and *Boone v. Rogers*, *supra.* Because EastWest's Counterclaims do not include Harper Grace, LLC and the other owners of the Conservation Property, they should be dismissed.

CONCLUSION

For the reasons set forth herein, EastWest's Counterclaims should be dismissed.

This the 1st day of October 2026.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned electronically filed the attached ***Triangle Land Conservancy's Brief in Support of Motion to Dismiss EastWest Organics LLC's Counterclaims*** with the Clerk of Court using the Odyssey eFileNC system which will automatically send email notification of such filing to the following:

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This the 1st day of October 2026.

SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, LLP

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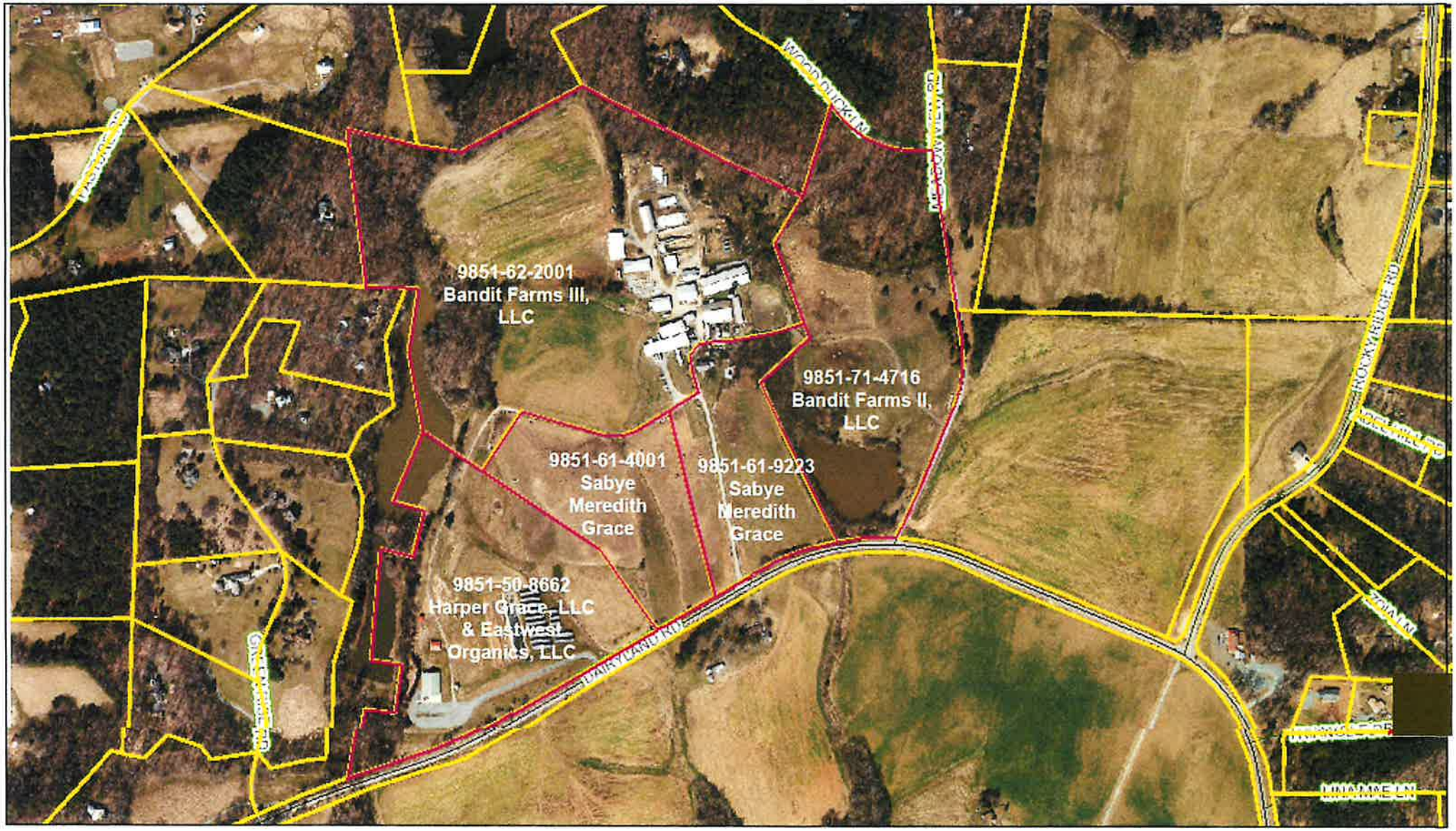
Robin L. Tatum

EXHIBIT A

TLC - Parcels in Conservation Easement



FILED
DATE: July 20, 2026
TIME: 10:21:07 AM
ORANGE COUNTY
CLERK OF SUPERIOR COURT
BY: C. Perryman

EXHIBIT B

STATE OF NORTH CAROLINA

ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
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; MEREDITH G. SAYBE

Defendants.

ORDER DENYING UNION GROVE FARM, INC.'S, BANDIT FARMS II, LLC'S, AND BANDIT FARMS III, LLC'S MOTION FOR LEAVE TO AMEND THEIR COUNTERCLAIMS

THIS MATTER came on for hearing before the Honorable Stephanie L. Reese, Superior Court Judge presiding, on June 15, 2026 in Orange County Civil Superior Court upon the Motion for Leave to Amend Counterclaims (the "Motion to Amend"), filed by Defendants, Union Grove Farm, Inc., Bandit Farms II, LLC, and Bandit Farms III, LLC ("Counterclaim Defendants"). At the June 15, 2026 hearing, Samuel Slater and Mary Kate Gladstone appeared on behalf of Counterclaim Defendants. Catherine Hill and Robin Tatum appeared on behalf of Plaintiff, Triangle Land Conservancy ("TLC").

After considering the pleadings, including TLC's Complaint, Counterclaim Defendants' Counterclaims, and the Motion to Amend, TLC's Brief in Opposition to Counterclaim Defendants' Motion to Amend, and the arguments of counsel, the Court finds that the Motion to Amend should be denied, for the reasons set forth below.

This matter relates to a Grant of Conservation Easement and Development Rights (the "Conservation Easement") located on what is now known as Union Grove Farm in Orange County. TLC is a North Carolina nonprofit corporation and is the holder of the Conservation

Easement. Defendants each own either a fee simple or leasehold interest in properties which are subject to the Conservation Easement (the "Conservation Property").

TLC filed the Complaint in this action on August 15, 2025. The Complaint seeks, *inter alia*, a declaratory judgment to interpret the terms of and enforce the Conservation Easement with respect to: 1) three new roads at the Conservation Property; and 2) Defendants' proposal to locate an amphitheater at the Conservation Property.

Counterclaim Defendants filed their Answer and Counterclaims on September 22, 2025. On April 10, 2026, Counterclaim Defendants filed their Motion to Amend. The Motion to Amend seeks to add a new claim for declaratory judgment, requesting that the Court find: 1) that "[t]he Conservation Easement restricts the construction of buildings and structures on the Conservation Property, but it does not regulate or limit uses at the Conservation Property with the exception of golf courses, airstrips, and helicopter pads;" and 2) "[u]ses other than golf courses, airstrips, and helicopter pads are permitted on the Conservation Property without any oversight or approval by TLC unless that use requires the construction of a building or facility." *See*, Counterclaim Defendants' proposed amended counterclaims ¶ 111.

"Leave of court to amend a pleading is left within the trial court's discretion, and such decision is not reversible absent a showing of abuse of discretion." *Draughon v. Harnett Cnty. Bd. of Educ.*, 166 N.C. App. 464, 467, 602 S.E.2d 721, 724 (2004). "A motion to amend may be denied for (a) undue delay, (b) bad faith, (c) undue prejudice, (d) futility of amendment, and (e) repeated failure to cure defects by previous amendments." *Id*. (citations omitted).

With respect to declaratory judgment claims, it is well-established that "a justiciable controversy must exist in order to invoke the provisions of the Declaratory Judgment Act." *Wendell v. Long*, 107 N.C. App. 80, 84, 418 S.E.2d 825, 827 (1992). To establish a justiciable

controversy, there must be "an actual controversy between parties having adverse interests in the matter in dispute." *Id*.

"When the record shows that there is no basis for declaratory relief, or the complaint does not allege an actual, genuine existing controversy, a motion for dismissal under … Rule 12(b)(6) will be granted." *Gaston Bd. of Realtors v. Harrison,* 311 N.C. 230, 234-235, 316 S.E.2d 59, 62 (1984). Additionally, a motion to amend is futile when the proposed new counterclaim could not survive a motion to dismiss for failure to state a claim. *Smith v. McRary*, 306 N.C. 664, 671, 295 S.E.2d 444, 448 (1982).

The Court finds the Counterclaim Defendants' Motion to Amend should be denied for the following reasons:

1. Counterclaim Defendants' have requested to add declaratory judgment claims that would define the entirety of uses permitted and regulated at the Conservation Property by the Conservation Easement. However, the only uses or activities at the Conservation Property that are currently in controversy between TLC and the Counterclaim Defendants are the three roads and proposed amphitheater, which are the subject of TLC's Complaint. Regarding these matters, TLC's Complaint already includes declaratory judgment claims that request the same determinations as Counterclaim Defendants' proposed new declaratory judgment claims. Specifically, TLC's Complaint requests the Court to determine not only Defendants' ability to construct buildings and structures at the Conservation Property for an amphitheater use, but also whether Defendants may use the Conservation Property for the use proposed, or any similar use. The Complaint raises issues of whether the proposed amphitheater use, or any similar use, constitutes, *inter alia*, an agricultural purpose. The Complaint also questions whether Defendants are allowed to

build structures and associated supporting buildings for music and other performances, and to engage in related uses. These issues are live controversies between the parties, and will be litigated through the determinations already requested in the Complaint. As such, granting the Motion to Amend would be futile with respect to these issues.

2. Granting the Motion to Amend would also be futile because it seeks to add declaratory judgment claims regarding matters which are not in controversy and over which the Court has no jurisdiction. Again, the only uses or activities at the Conservation Property that are currently in controversy between TLC and Counterclaim Defendants are the three roads and proposed amphitheater. Any other declarations sought by Counterclaim Defendants are not defined with specificity and do not relate to other proposed uses or activities at the Conservation Property, for which there is a current actual controversy. Decisions on the application of the Conservation Easement to situations and actions that have not yet occurred, and may never occur, would be purely advisory in nature, which is contrary to the purpose of the Declaratory Judgment Act. Because these proposed Amended Counterclaims do not allege current justiciable controversies under the Declaratory Judgment Act, it would be futile to allow the Motion to Amend.

THEREFORE, it is ORDERED, ADJUDGED, and DECREED that Union Grove Farm, Inc.'s, Bandit Farms II, LLC's, and Bandit Farms III, LLC's Motion for Leave to Amend their Counterclaims is hereby denied.

This the 17th of July, 2026
7/17/2026 3:02:42 PM



The Honorable Stephanie Reese
Superior Court Judge Presiding