25CV002097-670

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION

ORANGE COUNTY

TRIANGLE LAND CONSERVANCY

Plaintiff,

**COMPLAINT** 

v.

UNION GROVE FARM, INC.; BANDIT FARMS II, LLC; BANDIT FARMS III, LLC; EASTWEST ORGANCS, LLC; HARPER GRACE, LLC; MEREDITH G. SAYBE

Defendants.

NOW COMES Plaintiff Triangle Land Conservancy ("TLC" or "Plaintiff"), by and through counsel, and complains of Defendants Union Grove Farm, Inc., Bandit Farms II, LLC, Bandit Farms III, LLC, EastWest Organics, LLC, Harper Grace, LLC and Meredith G. Saybe (collectively "Defendants") as follows:

#### **NATURE OF THE ACTION**

1. This is an action brought pursuant to N.C. Gen. Stat. §§ 121-39, et seq, 1-253, et seq and other applicable law to enforce the terms of TLC's Conservation Easement, prevent future threatened violations of the Conservation Easement and otherwise determine TLC's legal rights. Defendants have engaged in the continued unauthorized and unlawful construction of roads and seek to develop a 2,500-seat amphitheater, both of which are clear violations of the terms and intent of the Conservation Easement. Defendants' continued refusal to comply with the terms of the Conservation Easement is an ongoing threat to TLC's interests and the property protected by the Conservation Easement.

## PARTIES, JURISDICTION AND VENUE

2. TLC is a North Carolina non-profit corporation with a registered office and mailing

address at 520 S. Duke Street, Durham, North Carolina 27701 and is the record owner of a Conservation Easement over property in Orange County, North Carolina.

- 3. Union Grove Farm, Inc. is a North Carolina corporation which does business and operates a farm in Orange County, North Carolina, which is subject to TLC's Conservation Easement.
- 4. Bandit Farms II, LLC is a North Carolina limited liability company which does business and owns property in Orange County, North Carolina.
- 5. Bandit Farms III, LLC is a North Carolina limited liability company which does business and owns property in Orange County, North Carolina.
- 6. EastWest Organics, LLC is a North Carolina limited liability company which does business and owns property in Orange County, North Carolina.
- 7. Harper Grace, LLC is a North Carolina limited liability company which does business and owns property in Orange County, North Carolina.
- 8. Meredith G. Saybe is a resident of Orange County and owns property in Orange County, North Carolina.
- 9. This Court has subject matter jurisdiction over this action pursuant to N.C. Gen. Stat. § 7A-240.
- 10. This Court has personal jurisdiction over all Defendants named in this action pursuant to N.C. Gen. Stat. § 1-75.4.
- 11. Venue is proper in Orange County Superior Court pursuant to N.C. Gen. Stat. §§ 1-76 and 1-82.

#### **FACTUAL ALLEGATIONS**

## A. The Conservation Property

12. TLC is a North Carolina nonprofit corporation operated primarily for conservation

purposes, including the protection of environmentally valuable and sensitive land for charitable, scientific, educational, and aesthetic purposes.

- 13. TLC is the record owner of a conservation easement over certain real property owned and managed by Defendants and located in Orange County, North Carolina; specifically, Orange County PIN numbers: 9851508662; 9851622001; 9851714716; 9851614006 and 9851619223 (the "Conservation Property").
- 14. A true and accurate copy of the Conservation Easement, originally between Robert and Aubrey Nutter and TLC is attached hereto as **Exhibit A** and is recorded at Book 1421, Pages 151 165, Orange County Registry.
- 15. Defendant Bandit Farms II, LLC is the record owner of certain real property that is subject to the Conservation Easement; specifically, Orange County PIN number: 9851-71-4716.
- 16. Defendant Bandit Farms III, LLC is the current record owner of certain real property that is subject to the Conservation Easement; specifically, Orange County PIN number: 9851-62-2001.
- 17. Both Defendant Harper Grace, LLC and Defendant EastWest Organics, LLC are the current record owners of certain real property that is subject to the Conservation Easement; specifically, Orange County PIN number: 9851-50-8662.
- 18. Defendant Meredith G. Saybe is the current record owner of certain real property that is subject to the Conservation Easmment; specifically, Orange County PIN numbers: 9851-61-4006 and 9851-61-9223.
- 19. The Conservation Easement is binding on Defendant Property Owners as successors in title and as the current fee simple property owners of the Conservation Property.
  - 20. Union Grove Farm, Inc is a North Carolina corporation that manages a farming

operation on property that includes the Conservation Property, and which is committing or plans to commit, violations of the Conservation Easement on the Conservation Property.

#### B. The Conservation Easement Violations.

## 21. Section 4 of the Conservation Easement states:

With the exception of buildings permitted in paragraph 2(c) and (d) above, and permitted in paragraph 8 below, Grantor conveys to Grantee all developmental rights that are now or hereafter allocated to, implied, reserved or inherent to the Property, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property, as it now or hereafter may be bound or described, or to any other property adjacent or otherwise, nor used for the purposes of calculating permissible lot yield of the Property to another property.

#### 22. Section 5 of the Conservation Easement states:

All farming operations shall be conducted in accordance with Best Management Practices promulgated by the State of North Carolina and with a Natural Resource Conservation Service conservation plan that addresses soil and water conservation, pest management, floodplain protection, viewshed protection, nutrient management and habitat protection. This plan shall be updated periodically, and in any event at the time basic agricultural operation on the property changes or at any time ownership of the property changes.

#### 23. Section 6 of the Conservation Easement states:

Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the property. Trees may also be cut to clear land for cultivation or grazing of livestock, but only if done in accordance with the written conservation plan required by paragraph 5

#### 24. Section 8 of the Conservation Easement states:

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B.

(emphasis added)

25. Section 19 of the Conservation Easement states:

This Conservation Easement shall be interpreted under the Laws of North Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

(emphasis added)

- 26. On November 16, 2023, TLC was contacted by a neighbor of the Conservation Property to report a suspected immediate violation of the Conservation Easement related to a new road under construction on the Conservation Property.
- 27. On November 23, 2023, TLC conducted a site visit and documented that a new road had been built on the northwestern portion of the Conservation Property, in violation of the Conservation Easement, from Mapleview Road through a hardwood forest and through the Farm Operations Envelope (hereinafter "Road 1").
- 28. By letter dated November 27, 2023, TLC issued an Easement Violation for Road 1 ("Violation Notice 1"). Violation Notice 1 included a 90-day period for Defendants to remedy Road 1 and cited violations of Section 8 and Section 6 of the Conservation Easement. Violation Notice 1 is attached hereto as **Exhibit B**.
- 29. Notwithstanding Violation Notice 1 and their obligations under the Conservation

  Easement, Defendants continued with activities that violate the express terms of the Conservation

  Easement.
- 30. On April 13, 2024, TLC was again contacted by a neighbor of the Conservation Property regarding a second new road that was under construction on the Conservation Property that appeared to be an immediate violation of the Conservation Easement.
  - 31. On April 15, 2024, TLC conducted a site visit of the Conservation Property and

documented that a second road had been built on the Conservation Property ("Road 2") and determined that it was a violation of the Conservation Easement. Road 2 was built from the northern portion of the Center for Regenerative Agriculture and connects to the Farm Operations Envelope ("Farm Envelope").

- 32. By letter dated April 17, 2024, TLC issued an Easement Violation for Road 2 ("Violation Notice 2"). Violation Notice 2 included a 90-day cure period for Defendants to remedy Road 2 and cited violations of Sections 8 and 5 of the Conservation Easement. Violation Notice 2 is attached hereto as **Exhibit C.**
- 33. On February 25, 2025, TLC's legal counsel sent a notice to the legal counsel for Defendants scheduling an inspection of the Conservation Property for March 4, 2025.
- 34. On March 4, 2025, TLC conducted a site visit of the Conservation Property and documented a third easement violation ("Road 3"), containing a road that had been built on the east side of the Farm Envelope that connects a pre-existing farm road to the original Road 1 violation. TLC confirmed that Road 3 was a violation of the Conservation Easement.
- 35. By letter dated April 10, 2025, TLC issued a third easement violation for Road 3 ("Violation Notice 3"). Violation Notice 3 included a 90-day cure period for Defendants to remedy Road 3 and cited violations of Section 8 and Section 5 of the Conservation Easement. Violation Notice 3 is attached hereto as **Exhibit D.**
- 36. On April 17, 2025, in response to TLC's third easement violation, legal counsel for Defendants sent a letter to TLC denying the existence of any road violations.
- 37. Legal counsel for TLC, sent a letter in response to Defendants' denial of violations ("Final Notice Letter") detailing the Defendants' alleged violations and provided Defendants with an additional 30-day notice to remedy Road 1 and Road 2 and an additional 90-day deadline to

remedy Road 3. The Final Notice Letter warned Defendants that if Road 1 and Road 2 were not remedied in 30 days, TLC would seek legal action to enforce the Conservation Easement pursuant to Section 14 of the Conservation Easement. A copy of the Final Notice Letter is attached as **Exhibit E.** 

- 38. On May 14, 2025, legal counsel for TLC provided Defendants' legal counsel with an inspection notice for May 21, 2025 the end of the 30-day deadline to remedy Road 1 and Road 2 violations. A copy of the May 14, 2025, inspection notice is attached hereto as **Exhibit F.**
- 39. On May 21, 2025, TLC conducted an inspection of the Conservation Property and documented that Road 1 and Road 2 remained in violation of the terms Conservation Easement and that Defendants had not remedied the violations.
- 40. On July 23,2025, legal counsel for TLC provided Defendants' legal counsel with an inspection notice for August 6, 2025 after the 90-day deadline to remedy the Road 3 violation. A copy of the July 23, 2025, inspection notice is attached hereto as **Exhibit G.**
- 41. On August 6, 2025, TLC conducted an inspection of the Conservation Property and documented that Road 3 remained in violation of the Conservation Easement and that Defendants had not remedied their violations.
- 42. Under the terms of the Conservation Easement, Defendants are obligated to restore the Conservation Property and repair the damage caused by its actions. Defendants have been properly notified of their breach of the terms of the Conservation Easement and have failed to comply or cure their breach.

#### C. The Proposed Amphitheater

43. The Conservation Easement designates a portion of the Conservation Property as the

Farm Envelope. The Farm Envelope provides an exception to the Conservation Easement's general limitations on development for agricultural purposes. A map of the Farm Envelope is attached hereto as **Exhibit H**.

- 44. Conservation Easement Section 2 specifies that "[t]he construction or reconstruction of any building or other structure, except those existing on the date of this Conservation Easement is *prohibited except in accordance with paragraphs (a) through (d)*." (emphasis added).
- 45. Conservation Easement Section 2(c) limits "[n]ew buildings and other structures and improvements" to the Farm Envelope and only if used "solely for agricultural purposes." (emphasis added).
- 46. On June 13, 2024, Defendants' legal counsel submitted a letter to the Orange County Planning and Inspections Director (the "Director") requesting a determination (the "First Request") that the following proposed uses are properly classified as "agrotourism" pursuant to N.C. Gen. Stat. § 160D-903 and exempt from County zoning regulations:
  - (1) a 3-acre culinary farm;
  - (2) a 2,000 square foot pavilion;
  - (3) 5 farm cottages;
- (4) a farm stay center with 40 rooms, a 70-seat restaurant, an outdoor pool and bar, and a 1,000 square foot event space;
  - (5) 5 lake cottages;
  - (6) a regenerative distillery; and
  - (7) a 2,500 square foot amphitheater (the "Proposed Amphitheater").
  - 47. On November 12, 2024, the Director issued a determination (the "First Determination")

in response to the Request. The First Determination held that all the proposed uses, with the exception of the farm stay center, were agrotourism uses pursuant to N.C. Gen. Stat. § 160D-903.

- 48. The Proposed Amphitheater was intended to be located on the Conservation Property and outside of the Farm Envelope; the other uses were not.
- 49. The Proposed Amphitheater has been characterized by Defendants as a music venue, farm stage and amphitheater, all of which are non-agricultural uses. The Proposed Amphitheater is otherwise categorized by the County's zoning ordinance as an assembly use.
- 50. On December 11, 2024, TLC appealed the Proposed Amphitheater determination to the Orange County Board of Adjustment (the "First Appeal").
- 51. On December 11, 2024, neighboring property owners of the Conservation Property filed a BOA Appeal, also challenging the First Determination's classification of the Proposed Amphitheater as agrotourism pursuant N.C. Gen. Stat. § 160D-903.
- 52. Prior to a hearing on the First Appeal, all parties to the appeal agreed that Defendants would submit a new request for a "Final and Binding" determination that the Proposed Amphitheater should be classified as "agrotourism" under N.C. Gen. Stat. § 160D-903 (the "Second Request").
- 53. In response to the Second Request, legal counsel for TLC and the neighbors submitted letters in opposition to the classification of the Proposed Amphitheater as an agritourism use. A copy of TLC's letter in opposition is attached hereto as **Exhibit I.**
- 54. The site plan submitted with the Defendants' Requests show that the entire structure of the Proposed Amphitheater is outside of the Farm Envelope. This is a substantial violation of the Conservation Easement.
  - 55. Section 2 and Section 4 of the Conservation Easement severely restrict development

outside the Farm Envelope. Construction and the use of the Proposed Amphitheater would be a clear and egregious violation of, *inter alia*, Section 2 and Section 4 of the Conservation Easement.

- 56. On June 4, 2025, the Director issued a final and binding determination that, among other things, held that the Proposed Amphitheater was not an agrotourism use and would be subject to County zoning regulations (the "Final Determination"). The Final Determination is attached hereto as **Exhibit J.**
- 57. Specifically, the Final Determination identifies many of the substantial risks associated with the Proposed Amphitheater, stating:

[T]here are substantial new dangers presented by the traffic access and parking needs for a 2,500-seat amphitheater. At least 1,000 vehicles will need to access and park on site. Otherwise, the farm owners will need to otherwise provide for the transport of up to 2,500 people to this site from an offsite parking location(s). Both scenarios present numerous dangers related to onsite congestion management, driveway access, and the potential for vehicle accidents. Due to the distillery and bar uses on the properties, these guests may be intoxicated. These are not ordinary dangers of farming or ranching operations.

58. The Final Determination goes on to state:

A "2,500-seat Farm Stage" introduces noise, lighting, parking, stormwater runoff, and other concerns that are not identified with 'rural' or 'natural activities'. . . The construction, land disturbance, and externalities associated with this use are significant and are those of an entertainment venue or theater.

59. On July 3, 2025, the Defendants filed an appeal of the Director's Final Determination in regard to the Proposed Amphitheater pursuant to the County's regulations. That appeal is set to be heard by the Orange County Board of Adjustment on October 8, 2025.

#### FIRST CAUSE OF ACTION

# Road 1, Road 2 and Road 3 are Unauthorized Violations and Breach the Terms of the Conservation Easement

60. Plaintiff realleges and incorporates the allegations stated in the proceeding numbered

paragraphs.

- 61. The Conservation Easement is a binding agreement between the Plaintiff and the Defendants.
- 62. Pursuant to Section 4 the Conservation Easement, the development of roads, outside of the Farm Envelope and in excess of those identified in Exhibit B to the Conservation Easement, are *not* permitted on the Conservation Property.
- 63. Road 1 is a new road, developed outside of the Farm Envelope and not identified in Exhibit B to the Conservation Easement. Road 1 is a violation of the terms of the Conservation Easement.
- 64. Road 1 also violates Section 6 of the Conservation Easement by the unauthorized removal of trees to develop Road 1.
- 65. Road 2 is a new road, developed outside of the Farm Envelope and not identified in Exhibit B to the Conservation Easement. Road 2 is a violation of the terms of the Conservation Easement.
- 66. Road 3 is a new road, developed outside of the Farm Envelope and not identified in Exhibit B to the Conservation Easement. Road 3 is a violation of the terms of the Conservation Easement.
- 67. Defendants received proper notice of the Road 1 violation on November 27, 2023, which gave Defendants 90 days to remediate the identified violation.
- 68. Defendants received proper notice of the Road 2 violation on April 17, 2024, which gave Defendants 90 days to remediate the identified violation.
- 69. Defendants received proper notice of Road 3 violation on April 10, 2025, which gave Defendants 90 days to remediate the identified violation.

- 70. Defendants received an additional notice of violation for Road 1, Road 2 and Road 3 on April 21, 2025, and were given an additional 30-days to remediate the violations for Road 1 and 2 and an additional 90 days to remediate the violations for Road 3.
- 71. As of May 21, 2025, neither Road 1 nor Road 2 have been restored as required by the Conservation Easement.
- 72. As of August 6, 2025, Road 3 has not been restored as required by the Conservation Easement.
- 73. Upon information and belief, all three road violations remain present on the Conservation Property.
- 74. Defendants' continued refusal to restore Road 1, Road 2 and Road 3 by the requested deadlines significantly compromise and continue to cause damage to the Conservation Property.
- 75. Accordingly, TLC requests a declaratory judgment that the construction of Road 1, Road 2 and Road 3 are unauthorized violations and constitute a breach of the Conservation Easement.

#### **SECOND CLAIM FOR RELIEF**

# Injunctive Relief – Cease Development of New Roads and Restore Road 1, Road 2 and Road 3

- 76. Plaintiff realleges and incorporates the allegations stated in the proceeding numbered paragraphs.
  - 77. Section 14 of the Conservation Easement states:

If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction requiring the Grantor to restore the Property to its condition prior to the violation.

- 78. As alleged *supra*, the construction of Road 1, Road 2, and Road 3 violate the terms of the Conservation Easement.
  - 79. As alleged *supra*, Defendants are obligated to restore the Conservation Property and to

repair the damages caused by their actions. Defendants have been properly notified of their violations of the terms of the Conservation Easement and have failed to comply and cure their breach.

80. TLC has been damaged and continues to be damaged by the actions of the Defendants and is entitled to injunctive Relief pursuant to N.C. Gen. Stat. § 121-39 and Section 14 of the Conservation Easement to prevent the further development of new roads on the Conservation Property and to obligate the Defendants to restore the Conservation Property.

#### THIRD CLAIM FOR RELIEF

Declaratory Judgment – The Conservation Easement Prohibits the Development of the Proposed Amphitheater, and/or any Similar Use such as a Farm Stage, Outside of the Farm Envelope

- 81. Plaintiff realleges and incorporates the allegations stated in the proceeding numbered paragraphs.
- 82. As alleged *supra*, the Conservation Easement is a binding agreement between the Plaintiff and the Defendants.
- 83. As alleged *supra*, Section 2 and Section 4 of the Conservation Easement govern Defendants' developmental rights on the Conservation Property and the Conservation Property outside of the Farm Envelope.
- 84. The Proposed Amphitheater, and any new building or structure that could be used as an amphitheater and/or any similar use, such as a farm stage, is prohibited by Section 2 and Section 4 of the Conservation Easement.
- 85. Pursuant to Section 2 of the Conservation Easement, the construction or reconstruction of new buildings or structures are strictly prohibited unless they satisfy one of the four exceptions outlined in Section 2, subsections (a) through (d).
  - 86. The Proposed Amphitheater is designed to extend substantially beyond the boundaries

of the Farm Envelope and, is therefore, prohibited by the Conservation Easement.

- 87. The portion of the Proposed Amphitheater, and any new building or structure that could be used as an amphitheater and/or any similar use, such as a farm stage, that extends beyond the boundary of the Farm Envelope does not qualify for any of the permitted exceptions to Section 2 of the Conservation Easement's general prohibition on the construction of new buildings and structures.
- 88. Defendants have indicated their intent to ignore the terms of the Conservation Easement and to proceed with the development of the Proposed Amphitheater.
- 89. The construction of the Proposed Amphitheater, and any other new building or structure that could be used as an amphitheater and/or similar use, such as a farm stage, will cause significant and irreparable damage to the Conservation Easement and that injury is imminent.
- 90. Accordingly, Plaintiff requests a declaratory judgment that the Proposed Amphitheater, and any other new building or structure that could be used as an amphitheater and/or similar use, such as a farm stage, violates the terms of the Conservation Easement as an unpermitted development outside of the Farm Envelope.

#### FOURTH CLAIM FOR RELIEF

Declaratory Judgment – The Conservation Easement Prohibits the Development of the Proposed Amphitheater and/or any Similar Use such as a Farm Stage within the Farm Envelope

- 91. Plaintiff realleges and incorporates the allegations stated in the proceeding numbered paragraphs.
- 92. As alleged *supra*, the Conservation Easement is a binding agreement between the Plaintiff and the Defendants.
  - 93. As alleged *supra*, Section 2 and Section 4 of the Conservation Easement govern

Defendants' Developmental rights on the Conservation Property and the Conservation Property inside of the Farm Envelope.

- 94. The Proposed Amphitheater, and any other new building or structure that could be used as an amphitheater and/or similar use, such as a farm stage, is prohibited by Section 2 and Section 4 of the Conservation Easement.
- 95. Pursuant to Section 2 of the Conservation Easement, the construction or reconstruction of new buildings or structures are strictly prohibited unless they satisfy one of the four exceptions outlined in Section 2, subsections (a) through (d).
- 96. Conservation Easement Section 2, subsection (c) permits the construction of new buildings and structures to be used *solely* for agricultural purposes.
- 97. The Proposed Amphitheater, and any other new building or structure that could be used as an amphitheater and/or similar use, such as a farm stage, is a new building or structure that *will not* be used solely for agricultural purposes.
- 98. Defendants have attempted to characterize the Proposed Amphitheater as an agrotourism use.
  - 99. Agrotourism is defined in N.C. Gen. Stat §160D-903 as:

[A]ny activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions.

- 100. The Director's Final Determination held that the Proposed Amphitheater was not agrotourism pursuant to N.C. Gen. Stat §160D- 903.
- 101. Specifically, as stated in the Director's Final Determination, the Proposed Amphitheater is not "incidental' to the farm, but a principal use distinct from the farm."
  - 102. Defendants have indicated their intent to ignore the terms of the Conservation

Easement and to proceed with the development of the Proposed Amphitheater.

- 103. The construction of the Proposed Amphitheater, and any other new building or structure that could be used as an amphitheater and/or similar use, such as a farm stage, will cause significant and irreparable damage to the Conservation Property and that injury is imminent.
- 104. Accordingly, Plaintiff requests a declaratory judgment that 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 as a prohibited development inside the Farm Envelope.

#### FIFTH CLAIM FOR RELIEF

# Preliminary and Permanent Injunctive Relief – Prohibiting the Development of the Proposed Amphitheater

- 105. Plaintiff alleges and incorporates the allegations in the proceeding paragraphs.
- 106. As alleged *supra*, the Conservation Easement is a binding agreement between the Plaintiff and the Defendants.
- 107. Conservation Easement Section 2 and Section 4 prohibit the development of the Proposed Amphitheater.
  - 108. Plaintiff will be irreparably harmed if Defendants develop the Proposed Amphitheater.
- 109. Plaintiff has no alternative remedy at law to enforce its rights and prevent the further improper development of the Proposed Amphitheater or any similar use.
- 110. Plaintiff further requests that this Court enter a preliminary and permanent injunction pursuant to N.C. Gen. Stat. § 121-39 and Section 14 of the Conservation Easement to prohibit Defendants from taking further action pursuant to the Proposed Amphitheater.
- 111. Plaintiff requests that this Court enter injunctive relief to enforce the declaratory rulings.

#### WHEREFORE, Plaintiff prays the Court:

- 1. Enter a judgment declaring that Road 1, Road 2 and Road 3 violate the terms of the Conservation Easement;
- 2. Enter judgment declaring that 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 outside of the Farm Envelope;
- 3. Enter 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.
  - 4. For temporary and permanent injunctive relief as requested above;
  - 5. For costs and attorney's fees as allowed by law;
  - 6. For such other and further relief as the Court may deem just and proper.

Respectfully submitted on the 15th day of August 2025.

## FOX ROTHSCHILD LLP

/s/ Robin L. Tatum\_\_\_\_

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# **EXHIBIT A**

BODA 1421 MAR 151

Prepared by and return to Michael Parker

Tax Parcel	ID#

MAPLEVIEW FARM EASEMENT

6.13.10 MAPLEVI 9851-61-265284

STATE OF NORTH CAROLINA COUNTY OF ORANGE

# GRANT OF CONSERVATION EASEMENT AND DEVELOPMENT RIGHTS

## Witness that:

The Grantor is the sole owner in fee simple of the farm property ("Property") legally described in Exhibit A, attached hereto and incorporated by this reference, which consists of Tract I, being approximately 52.960 acres and Tract II, Being approximately 54.106 acres, all located in the Bingham Township, Orange County, State of North Carolina and being a portion of Mapleview Farm.

The Property is primarily open farmland all of whose soils have been classified as "prime farmland" or "farmland of statewide or local significance" by the Natural Resource Conservation Service, U.S. Department of Agriculture because of the fertility of its soils and which has been managed as a farm since the 1930's.

The Property also has outstanding scenic qualities that can be enjoyed by the general public, namely:

- 3003.17 feet of frontage on Dairyland Road, S.R. #1177 from which long open views of Mapleview Farm can be seen;
- the visibility of every element of indigenous traditional piedmont farming including planted fields, open pastures, farm pond, barn, silo, main house and other farm buildings can be observed;

- the harmonious variety of curving tree lines, open fields, winding country roads, and silos silhouetted against the skyline;
- identification of Dairyland Road by the Transportation Advisory Subcommittee of the Orange County Planning Board in its 1988 Scenic Roads Survey; and
- description and recognition of scenic viewsheds of the Property in the 1995 Scenic Roads Study for the Scenic Road Corridors Map by the Orange County Planning Department.

The agricultural and other characteristics of the Property, its current use and state of improvement, are described in a Report entitled The Development and Preservation of Mapleview Farm, with Supplemental Appendices dated August 1995 prepared by Piedmont Planning Associates for the Grantor with the cooperation of the Grantee, and acknowledged by both to be complete and accurate as of the date hereof. Both the Grantor and the Grantee have copies of this report. It will be used by the Grantor and Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement. However, the Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

The Grantor owns the entire fee simple interest in the Property, including the entire mineral estate. All holders of liens or other encumbrances upon the Property have agreed to subordinate their interests in the Property to this Conservation 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 (collectively the "Conservation Values"), and to assure the availability of the Property in perpetuity for agricultural use.

The conservation purposes of this easement are recognized by, and this Conservation Easement will serve, the following clearly delineated governmental conservation policies:

The Farmland Protection Policy Act, PL. 97-98, 7 U.S.C. Sec. 4201, et seq., whose purpose is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent

practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland;"

- the Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. 121-34 et seq., which provides for the enforceability of restrictions, easements, covenants or conditions "appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use;" and which provides for tax assessment of lands subject to such agreements "on the basis of the true value of the land and improvement less any reduction in value caused by the agreement;"
- the special use assessment of farm and forest lands set forth in N.C.G.S. 105-277.2 et seq.;
- the zoning of the Property as "Rural Buffer" established in the <u>Orange County</u>, <u>Chapel Hill Carrboro Joint Planning Land Use Plan</u> (1986) (hereinafter "Land Use Plan");
- the designation of the majority of the Property as "University Lake Protected Watershed Overlay District" in the Land Use Plan;
- the Land Use Plan of Orange County with its goal to "maintain and protect land which contains valuable renewable resources such as productive agricultural";
- designation of portions of the Property as either Primary or Secondary Conservation Areas as proposed by the Orange County Planning Department.

The Grantee is a "qualified conservation organization, "as defined by the Internal Revenue Code, as evidenced by its IRS determination letter dated July 12, 1983 and, as certified by a resolution of its Board of Directors, accepts the responsibility of enforcing the terms of this Conservation Easement and upholding its conservation purposes forever.

Now, therefore, as an absolute gift, but in consideration of the restrictions contained herein, and pursuant to N.C.G.S. 121-34 et. seq., Grantor does hereby convey unto Grantee, its successors and assigns forever, a conservation easement and grant of development rights on and over the Property, as more particularly described, in perpetuity, and consisting of the covenants hereinafter set forth:

## 1. Prohibited Acts

Grantor promises that they will not perform, nor knowingly allow others to perform, any act on or affecting the property that is inconsistent with the preservation of the Property's open space character, agricultural productivity, watershed protection values and scenic values or with the specific covenants below. However, unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Property after any act of God or other event over which they had no other control. Grantor understands that nothing in this Conservation Easement relieves them of any obligation or restriction on the use of the Property imposed by law.

# 2. Construction of Buildings and Other Structures

The construction or reconstruction of any building or other structure, except those existing on the date of this Conservation Easement is prohibited except in accordance with paragraphs (a) through (d) below.

- (a) Fences Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife, without permission of the Grantee;
- (b) Existing Farm House, Agricultural Structures, and Improvements --All existing structures and other structures permitted under this Conservation Easement may be repaired, renovated, enlarged and replaced without permission of the Grantee.
- (c) New Agricultural Structures & Improvements -- New buildings and other structures and improvements to be used solely for agricultural purposes including the processing, packaging or sale of farm products predominantly grown or raised on the Property or in the vicinity thereof, but not including any new dwelling or farm labor housing, may be built on that portion of the Property designated as the Farm Operations Envelope on Exhibit B without the written permission of the Grantee.
- (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.

# 3. Subdivision

The subdivision of the Property into tracts less than ten (10) acres in size, whether by physical or legal process, is prohibited except as permitted in paragraph 2(d) above. Any subdivided tract shall remain subject to the terms of this easement to ensure the continued agricultural use of the Property.

# 4. Development Rights

With the exception of buildings permitted in paragraphs 2(c) and (d) above, and permitted in paragraph 8 below. Grantor conveys to Grantee all developmental rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property, as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.

# 5. Agricultural and Conservation Practices

All farming operations shall be conducted in accordance with Best Management Practices promulgated by the State of North Carolina and with a Natural Resource Conservation Service conservation plan that addresses soil and water conservation, pest management, floodplain protection, viewshed protection, nutrient management and habitat protection. This plan shall be updated periodically, and in any event at the time the basic type of agricultural operation on the property changes or at any time ownership of the property changes.

# 6. Timber Harvesting

Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the Property. Trees may also be cut to clear land for cultivation or grazing of livestock, but only if done in accordance with the written conservation plan required by paragraph 5. Any commercial timber harvesting on the Property shall be conducted pursuant to the guidelines of the Forest Stewardship Program of the N.C. Forestry Department, or similar conservation-directed forestry program in the event the Forest Stewardship Program is not in existence.

## 7. Mining

The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any method that disturbs the surface of the land, is prohibited.

## 8. Paving and Road Construction

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the Property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B.

#### 9. Trash

The dumping or accumulation of any kind of trash or refuse on the property, other than farm-related trash and refuse produced on the Property, is strictly prohibited. However, this shall not prevent the storage of agricultural products and byproducts on the Property, so long as it is done in accordance with all applicable government laws and regulations, and does not otherwise impact the conservation values of the Property.

#### 10. Recreational Uses

Golf courses, airstrips and helicopter pads are strictly prohibited on the Property. Other buildings and facilities for any other public or private recreational use may not be built on the Property without the advance written permission of the Grantee.

# 11. Rights Retained by Grantor

The Grantor retains the right to perform any act not specifically prohibited or limited by this Conservation Easement. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone they choose.

# 12. Discretionary Consent

The Grantee's consent for activities otherwise prohibited above, or for any activities requiring Grantee's consent above, may be given under the following circumstances. If, owing to unforeseen or changed circumstances, any of the activities prohibited above 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. Such requests for permission, and permission for activities requiring the Grantee's consent, shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the purpose of this Conservation Easement. The Grantee may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of this Conservation Easement and (2) either enhance or do not impair any significant conservation interests associated with the Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Conservation Easement or to allow any additional residential structures or any commercial or industrial structures or any commercial or industrial activities not in keeping with the purposes of this Conservation Easement.

# 13. Responsibilities of Grantor and Grantees Not Affected

Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantor, or in any way to affect any existing obligation of the Grantor as owners of the property. Among other things, this shall apply to:

- (a) *Taxes* -- The Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, the Grantor will reimburse the Grantee for the same.
- (b) Upkeep and Maintenance -- The Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property.

# 14. Enforcement

The Grantee shall have the right to prevent and correct violations of the terms of this Conservation Easement. With seven (7) days advance written notice

received by the Grantor, the Grantee may enter the Property for the purpose of inspecting for violations. If the Grantee finds what is a violation, it may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the open space character, agricultural productivity, watershed protection values, or scenic qualities of the Property, the Grantee shall give the Grantor written notice of the violation and one hundred twenty (120) days to correct it, before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction requiring the Grantor to restore the Property to its condition prior to the violation. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

## 15. Transfer of Easement

The Grantee shall have the right to transfer this Conservation Easement to any public agency or private nonprofit organization that (a) is approved by the Grantor, such approval not to be unreasonably withheld, and (b) at the time of transfer, is a "qualified organization" under Sec. 170(h) of the U.S. Internal Revenue Code, and under N.C.G.S. 121-34 et. seq., and (c) the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this. If the Grantee ever ceases to exist or no longer qualifies under Sec. 170(h) or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility.

# 16. Transfer of Property

Any time the Property itself, or any interest in it, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing prior to the transfer of the property, and the document of conveyance shall expressly refer to this Conservation Easement.

# 17. Amendment of Easement

This easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and the Grantee's easement amendment policies, and shall comply with Sec. 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with N.C.G.S. 121-34 et. seq. or any regulations promulgated pursuant to that law.

# 18. Termination of Easement

If it determines that conditions on or surrounding the Property change so much that it becomes impossible to fulfill its conservation purposes, a court with jurisdiction may, at the joint request of both the Grantor and Grantee, terminate this Conservation Easement.

If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the Conservation Easement may be terminated through condemnation proceedings.

If the easement is terminated and the Property is sold or taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement. The Grantee shall use the proceeds consistently with the conservation purposes of this Conservation Easement.

## 19. Interpretation

This Conservation Easement shall be interpreted under the laws of North Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

# 20. Perpetual Duration

This Conservation Easement shall be a servitude running with the land in perpetuity. Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective agents, heirs executors, administrators, assigns, and all other successors as their interests may appear.

## 21. *Notices*

Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:

# 800 × 1421 MOE 160

To Grantor:

with a copy to:

Mr. and Mrs. Robert Nutter 3111 Dairyland Road Hillsborough, North Carolina 27278 D. Michael Parker, Esq. Cheshire & Parker 100 N. Churton Street P.O. Box 100 Hillsborough, North Carolina 27278

To the Grantee:

Triangle Land Conservancy
P.O. Box 13031
Research Triangle Park, North Carolina 27709

#### 22. Environmental Condition

The Grantor warrants that they have no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property.

# 23. Subsequent Liens on Property

No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Conservation Easement.

# 24. Acceptance & Effective Date

As attested by the Seal of the Triangle Land Conservancy and the signature of its President affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Orange County Registry of Deeds.

To Have and To Hold, this Grant of Conservation Easement and Development Rights unto the Grantee, its successors and assigns, forever.

In Witness Whereof, the Grantor and Grantee, intending to legally bind themselves, have set their hands and seals on the date first written above.

	Robert O. Nutty (Seal)
	Robert P. Nutter  Aubrey C. Nulle (Seal)
	Aubrey C. Nullerseal
	Aubrey C. Nutter
Accepted:	
•	GRANTEE:
	Triangle Land Conservancy, a North Carolina
	Non-profit Corporation
Attest:	611/01
Closo T. Juge!	
Secretary	President
(Corporate Seal)	
(2012년) 1일 (2012년) 1일 (2012년) 1일 (2012년) 1일	
NORTH CAROLINA	
	JNTY
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I. Dispose G Brown	a Notary Public of Orange County, North
Gromatio ereby certify	that Robert P. Nutter and wife Aubrey C. Nutter
personally appeared befor	re me and acknowledged the due execution of the
foregonigunstrument.	and the state of t
WITNESS my band and not	carial seal this the 78th day of December, 1995.
	Jame & Sion
	Notary Public (SEAL)
CONTRACTOR OF THE PROPERTY OF	My commission expires: 10 . 1-1997
NORTH CAROLINA	
$\mathcal{C}$ . $\mathcal{C}$	INTY
STATUTE COO	
I. Vivainia P. Horton	a Notary Public of Classifica County North
Carolina do hereby certif	y that Gra T. Noocr personally appeared before me
this day and acknowledge	d that she is the Secretary of Triangle Land Conservancy,
a non-profit corporation,	and that by authority duly given and as act of the
corporation the foregoing	g instrument was signed in its name by its President,
sealed with its corporate se	eal and attested by herself as its secretary
Witness my hand and nota	urial seal this the 28 day of Orthodox, 1995.
	Wound Houten
	Notary Public (SEAL)
	My commission expires: 5-27-99

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## STATE OF NORTH CAROLINA

## **NORTH CAROLINA - ORANGE COUNTY**

The foregoing certificate(s) of	
Dianne G. Brown and	d Virginia P. Horton.
**Notary (of Notaries) Public of the designat	ted Governmental units is (are) certified to be correct. Filed for registration
this the day of Dece	ember 19 95 , at 12:08:20 o'clock, P.M.
in Record Book Page	Betty June Hayes, Register of Deeds
Return:	By: Thiscilla O. They
	Assistant/Deputy Register of Deeds

, Register of Deeds

Exhibits A and B (Legal Description and sketch) Attached

This instrument prepared by:

Camilla M. Herlevich 313 North Front Street Suite A Wilmington, North Carolina 28401

Return to:

D. Michael Parker, Esq. Cheshire & Parker Post Office Box 100 Hillsborough, NC 27278 FILED
28 DEC 1995, at 12:08:20PM
Book 1421, Page 151 - 165
Betty June Hayes,
Register of Deeds,
Orange County, N. C.

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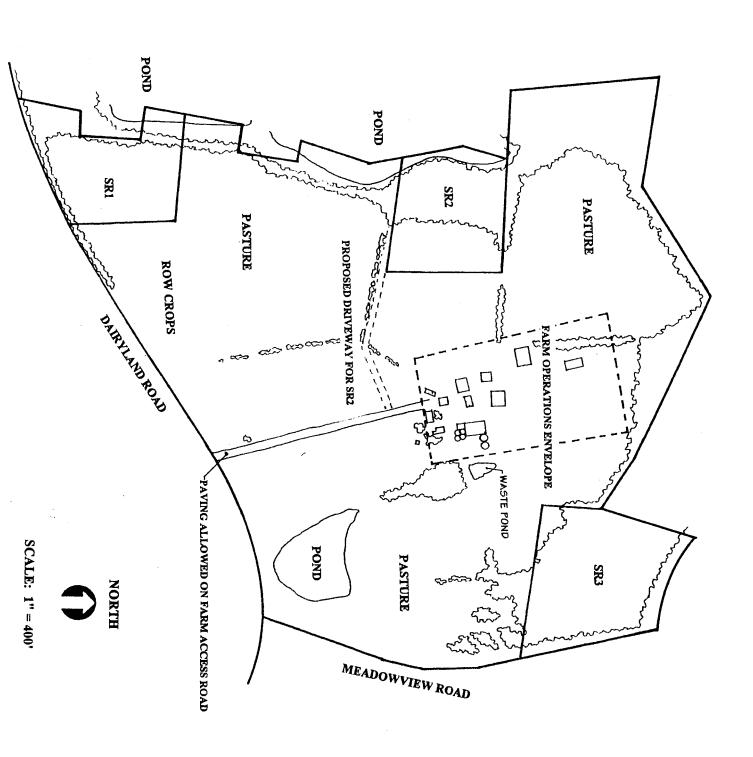
TRACT I: LYING and being in Bingham Township, Orange County, North Carolina and being more particularly described as follows:

BEGINNING at an iron stake set at the point where the center of the right-of-way to Dairyland Road intersects the center of the rightof-way to Meadowview, a 60 foot private road right-of-way; running thence from said beginning point with the center of the right-ofway to Dairyland Road the following courses and distances: along the arc of the circle to the left having a arc of 554.99 feet, a radius of 965.00 feet, a chord of South 76° 37' 09" West, 547.37 feet and South 60° 08' 36" West 521.66 feet to an iron stake; running thence North 07° 36' 00" West 819.20 feet to an iron stake; running thence North 00° 42′ 51" East 388.91 feet to an iron stake; running thence North 03° 03′ 23" West 756.40 feet to an iron stake; running thence North 18° 05′ 29" West 333.63 feet to an iron stake set in the southeastern corner of Lot 7-R as shown in plat recorded in Plat Book 61, at Page 194 of the Orange County Registry, the southwest corner of Lot 6-R as shown on said plat; running thence with the southern and eastern line of 6-R the following courses and distances: South 65° 24' 54" East 695.76 feet; South 53° 45' 16" East 304.39 feet; North 18° 50' 14" East 417.91 feet to an iron stake in the center of the right-of-way to Wood Duck Lane; thence with the center of the right-of-way to wood Duck Lane the following courses and distances: along the arc of the circle to the left having an arc of 395.45 feet, a radius of 400 feet, a chord of South 60° 14' 28" East and a distance of 379.54 feet and South 88° 32' 09" East 80 feet to a point in the center of the right-of-way to Meadowview Road; running thence with the center of the right-ofway to Meadowview Road the following courses and distances: South 01° 27' 51" West 69.93 feet; along the arc of the circle to the left having a arc of 274.76 feet, a radius of 1305.28 feet, a chord of South  $04^{\circ}$  33' 58" East and a distance of 274.25 feet; South 10° 35' 47" East 326.84 feet; South 10° 35' 47" East 128.09 feet; along the arc of a circle to the right having a arc of 259.13 feet, a radius of 438.95 feet, a chord of South 06° 18' 56 " West, a distance of 255.38 feet; South 23° 13' 39" West 331.02 feet; along the arc of the circle to the left having an arc of 199.63 feet, a radius of 1342.87 feet, a chord of South 27° 29' 10" West and a distance of 199.45 feet; South 31° 44' 42" West 47.16 feet to an iron stake set on the northern margin of the margin of the rightof-way to Dairyland Road; running thence along the arc of the circle to the left having a arc of 60.59 feet, a radius of 125.00 feet, a chord of South 17° 51' 35" West and a distance of 59.99 feet to the center of the right-of-way to Dairyland Road the place and point of beginning and being described as the "HOMEPLACE TRACT", containing 52.960 acres, all according to plat of survey entitled "PROPERTY OF ROBERT P. NUTTER", dated February 8, 1994 by Holland Land Surveying.

Page 2

TRACT II:

BEGINNING at an iron stake set in the center of the right-of-way to Dairyland Road, the southwest corner of Tract I above; running thence with the western line of Tract I above the following courses and distances: North 07° 36' 00" West 819.20 feet; North 00° 42' 51" West 388.91 feet; North 03° 03' 23" West 756.40 feet and North 18° 05' 29" West 333.63 feet to an iron stake set in the southwest corner of Lot 7-R as shown on plat recorded in Plat Book 61, at Page 194 of the Orange County Registry; running thence with the southern line of Lot 7-R South 61° 14' 21" West 562.53 feet to an iron stake; thence continuing with the southern line of Lot 7-R North 81° 58' 02" West 204.26 feet to an iron stake; running thence North 76° 52' 50" West 270.54 feet to an iron stake; running thence South 05° 29' 03" East 626.31 feet to an iron stake set in the northeast corner of Lot 3 as shown on plat recorded in Plat Book 61, at Page 194 of the Orange County Registry; running thence South 88° 02' 21" East 213.88 feet to a point in the center of a pond; running thence South 09° 30′ 56" West 262.59 feet to a point in the center of a pond; running thence South 09° 37' 03" East 344.44 feet to a point in the center of a pond; running thence South 25° 14' 18" West 294.78 feet to a point in the center of a pond; running thence South 74° 38' 29" East 132.58 feet to an iron stake; running thence South 15° 21' 31" West 200.00 feet to an iron stake; running thence North 74° 38' 29" West 132.58 feet to a point in the center of a pond; running thence South 05° 28' 43" West 457.86 feet to a point in the center of a pond; running thence South 82° 01' 11" East 124.37 feet to an iron stake; running thence South 07° 58' 49" East 200.00 feet to an iron stake; running thence North 82° 01' 11" West 124.37 feet to an iron stake; running thence South 10° 28' 54" West 346.34 feet to an iron stake set in the center of the rightof-way to Dairyland Road; running thence with the center of the right-of-way to Dairyland Road the following courses and distances: along the arc of a circle to the left having an arc of 97.73 feet, a radius of 3,840.42 feet, a chord of North 71° 22' 43" East 97.72 feet; North 72° 06' 27" East 245.35 feet; along the arc of a circle to the left having an arc of 298.52 feet, a radius of 1,429.59 feet, a chord of North 66° 07' 32" East 297.98 feet and North 60° 08' 36" East 730.00 feet to the place and point of beginning and containing 54.106 acres, all according to plat of survey entitled "FINAL PLAT-PROPERTY OF NUTTER FAMILY LIMITED PARTNERSHIP", dated September 5, 1995 by Holland Land Surveying.



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# **EXHIBIT B**



Greg Bohlen Union Grove Farm 3501 Dairyland Road Hillsborough, NC 27278

Sent via email and paper copy

November 27, 2023

RE – Easement violation Maple View Farm Phase I

Dear Mr. Bohlen,

On November 16, 2023, Triangle Land Conservancy (TLC) was contacted by a neighbor with a concern over a new road that has been built on the farm. On November 18, 2023, Bo Howes, Triangle Land Conservancy's Director of Land Protection and Stewardship, West, visited the property and documented that a new road has been built across the Northeast portion of the property. The new road was constructed from Meadowview Road through a hardwood forest to access the Farm Operations Envelope.

Section 8 of the Maple View Farm conservation easement states:

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B. (emphasis added)

Additionally, Section 6 of the easement states:

Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the property. Trees may also be cut to clear land for cultivation or grazing of livestock, but only if done in accordance with the written conservation plan required by paragraph 5.

Union Grove Farm has constructed a new road through a forested area, removing numerous trees during construction. TLC staff conclude the new road is not permitted under the easement, and construction of the impermissible road is not a permitted reason for cutting trees.

According to TLC's Easement Enforcement Policy, this constitutes a Tier 3 violation. You, as the landowner, are responsible for the closure of the road and restoration of the site to the condition that existed prior to the violation. **You have 90 days from receipt of this letter to comply.** After 90 days, TLC will make a site visit to ensure compliance and follow up as needed.

TLC appreciates your cooperation in rectifying this situation. Please contact Matt Rutledge at 919-908-0057 with any questions or concerns.

Sincerely,

Sandy Sweitzer Executive Director

Triangle Land Conservancy

Sandy Events

Enclosures:

Exhibit B of the Maple View Phase I Conservation Easement

TLC's Easement Enforcement Policy

## Photo Documentation



# **EXHIBIT C**

April 17, 2024



Greg Bohlen Union Grove Farm 3501 Dairyland Road Hillsborough, NC 27278

Sent via email and paper copy

RE – Second Easement violation Maple View Farm Phase I

Dear Mr. Bohlen,

On April 13, 2024, a neighbor contacted Triangle Land Conservancy (TLC) about a second new road built on the farm. On April 15, 2024, Bo Howes, Triangle Land Conservancy's Director of Land Protection and Stewardship, West, and Matt Rutledge, TLC's Associate Director of Stewardship, visited the property and documented that a new road has been built across the Northwest portion of the property. The new road was constructed from a point north of the Center for Regenerative Agriculture across a field to access the Farm Operations Envelope.

Section 8 of the Maple View Farm conservation easement states:

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B. (emphasis added)

Additionally, Section 5 of the easement states:

All farming operations shall be conducted in accordance with Best Management Practices promulgated by the State of North Carolina and with a **Natural Resource Conservation Service conservation plan that addresses soil and water conservation**, pest management, floodplain protection, viewshed protection, nutrient management and habitat protection. This plan shall be updated periodically, and in any event at the time basic agricultural operation on the property changes or at any time ownership of the property changes.

Union Grove Farm has constructed a new road through an existing field to access the farm operations envelope. **TLC staff conclude the new road is not permitted under the easement.** 

P.O. Box 1848, Durham NC 27702 | 919-908-8809 | www.triangleland.org

According to TLC's Easement Enforcement Policy, this constitutes a Tier 3 violation. You, as the landowner, are responsible for the closure of the road and restoration of the site to the condition that existed prior to the violation. You have 90 days from receipt of this letter to comply. After 90 days, TLC will make a site visit to ensure compliance and follow up as needed.

TLC appreciates your cooperation in rectifying this situation. Please contact Matt Rutledge at 919-908-0057 with any questions or concerns.

Sincerely,

Sandy Sweitzer Executive Director

Sandy Svets

Triangle Land Conservancy

Enclosures:

Exhibit B of the Maple View Phase I Conservation Easement

TLC's Easement Enforcement Policy

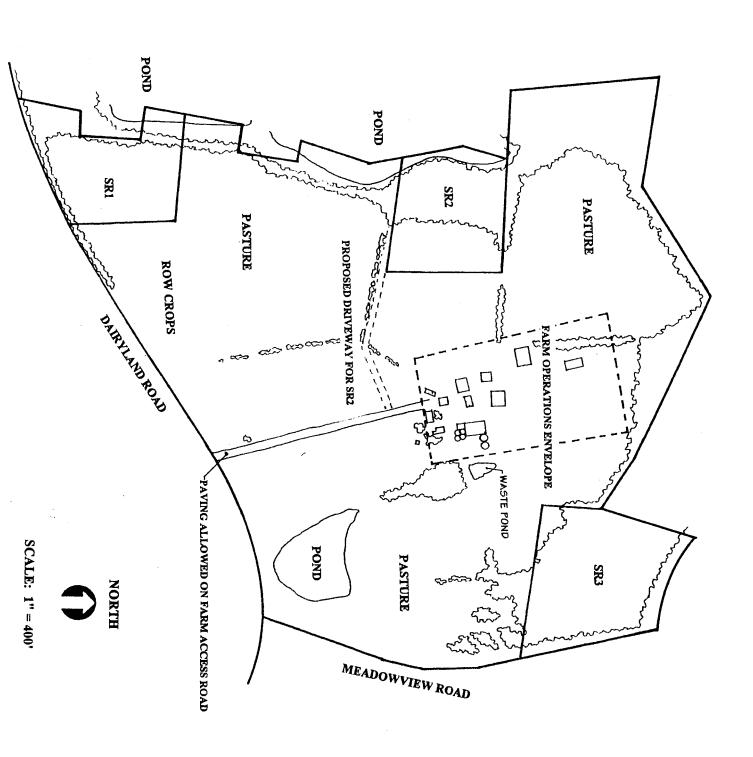
Photo Documentation













### TRIANGLE LAND CONSERVANCY

#### EASEMENT ENFORCEMENT POLICY

#### Board Approved March 27, 2014

#### Purpose

The purpose of this document is to outline Triangle Land Conservancy ("TLC")'s policy for addressing easement violations and to guide related TLC practices. TLC holds conservation easements to ensure the perpetual protection of conservation values on privately-owned lands. The long-term strength of conservation easements depends on TLC's ability to effectively enforce the terms of the easement. Strong enforcement builds public confidence in easements as a land protection tool. Moreover, in order to accept tax-deductable gifts and to qualify for tax-exempt status under Internal Revenue Service (IRS) regulations, TLC must commit to uphold the terms of all conservation easements it holds (See Treas. Reg. 1.170A-14 (c)(1).)

Conservation easements can be violated by a landowner or by a third party. When an easement is violated, TLC is responsible for restoring compliance with the terms of the easement and ensuring the perpetual protection of the conservation values of the property. TLC will aim to resolve easement violations with the greatest degree of cooperation from the landowner and the least expense to both landowner and the land trust.

The following policy is intended to provide guidance to staff, board, volunteers, and consultants to ensure that TLC follows a consistent set of steps to uphold its easement responsibilities. TLC acknowledges that each easement violation presents a unique situation and the following guidelines may need to be adapted for certain situations.

TLC intends for this policy to be consistent with all requirements of law, the Land Trust Alliance Standards and Practices, and all other TLC policies.

#### **Principles for Responding to Suspected Easement Violations**

A. Respond quickly to all suspected violations and adhere to the land trust's enforcement policy and procedure and to its conflict of interest policy.

- B. Address all potential violations, no matter how minor, but maintain perspective and keep TLC's response proportional to the severity and circumstances of the violation.
- C. Comply with all applicable laws.
- D. Maintain the conservation purpose(s) of the conservation easement and protect the land's conservation values in perpetuity, in keeping with the documented intent of the original grantor.
- E. Maintain public confidence in TLC's ability to enforce easement restrictions generally.
- F. Take no action that would result in private inurement or impermissible private benefit.
- G. Protect TLC's legal rights and financial investment (if any) in the conservation easement.
- H. Maintain a constructive working relationship with the landowner, if possible.
- I. Never give a landowner an on-the-spot opinion as to whether a violation has occurred. Do not tell a landowner what the land trust's response will be until the matter has been reviewed by Staff, or the Conservation Strategies Committee, when necessary.
- J. Use litigation as a last resort and only when counsel advises that the land trust is likely to prevail in court
- K. Act promptly to resolve the issues. The dispute may cause the landowner stress and concern. The longer the matter remains unresolved, the more difficult it may be to find a resolution

### **Definitions – Types of Violations**

- **1. Technical Violation** a procedural violation that has no impact on the conservation easement's intent, purpose and/or protected conservation values. Technical violations may include but are not limited to:
  - a. Failure to give the required notice of an approved use on the protected property
  - b. Discovery of a pre-existing condition on the property
  - c. Failure to give the required notice of sale or transfer of land
- **2. Tier 1** a violation that has a negligible impact on the conservation easements' intent, purpose, and/or the protected conservation values. Tier 1 violations may include but are not limited to:
  - a. Minor ground disturbances
  - b. Minor tree cutting in non sensitive areas
  - c. Minor dumping (e.g. area impacted is small or dumped materials are non-toxic)
  - d. Undertaking a reserved permitted activity that requires pre-approval without seeking that pre approval

- e. Minor trail construction (e.g. social trails)
- **3. Tier 2** a violation that has moderate impact on the conservation easement's intent, purpose and/or protected conservation values. Tier 2 violations may include but are not limited to:
  - a. Construction of small or prohibited structures (e.g. small shed, tree stands, small concrete pads, etc.)
  - b. Minor tree cutting in riparian buffers or sensitive areas
  - c. Dumping on a larger scale (e.g. area impacted is large or dumped materials are toxic)
  - d. Construction of permitted structures outside of but reasonably close to the designated building area
  - e. Moderate road construction involving some grading or excavating
- **4. Tier 3** a violation that has significant impact upon or consequences to the conservation easement's intent, purpose, and/or protected conservation values. Tier 3 violations may include but are not limited to:
  - a. Construction of significant prohibited structures (e.g. residential structures, buildings)
  - b. Wetland filling or draining
  - Significant excavation in sensitive areas (buffers, wetlands, shale barrens) or surface mining activities
  - d. Drilling for oil and gas when prohibited
  - e. Large clear cuts or damaging timbering activities not in accordance with approved stewardship plans or the easement
  - f. Major road construction involving large scale grading, excavating, and reshaping of the topography, and/or paving of significant amounts of existing roads

#### **Steps in Response to Easement Violation**

1. Review the easement and documentation of conditions on the property – TLC staff will likely encounter a potential violation during the annual easement monitoring visit or may receive a report of a suspected violation. At this time, TLC staff should review the entire easement deed, amendments (if any), baseline documentation report, and monitoring reports to determine whether it is likely that an easement violation has occurred and what specific easement terms may have been violated. If legal interpretation of easement terms is needed, TLC's attorney can be consulted.

2. **Document the potential violation** – TLC staff should then (A) Document the potential violation with photos keyed to a photomap, (B) Complete the *Easement Violation Report* (attached). When possible, damage should be documented in quantitative terms (e.g. number of trees cut down, length and width of unpermitted trail, etc.) and be referenced to specific sections of the baseline documentation report and/or reports of monitoring visits conducted before the violation occurred. All forms, maps, and field notes should be signed and dated by the staff member that is documenting.

If the landowner refuses to allow TLC to enter the property to conduct the inspection, TLC staff should consult the land trust's attorney for how to proceed.

#### 3. Establish whether violation has occurred and determine its severity -

Once the potential easement violation has been documented, the staff that observed the violation should bring the *Easement Violation Report* and relevant information to the Director of Conservation. The Director of Conservation and staff member will determine if the there was a violation. If there was a violation, the Director of Conservation and staff member will determine whether the violation was technical, Tier 1, Tier 2, or Tier 3 based on the definitions above. If there is a question as to the type of violation, the Director of Conservation will consult the Executive Director or other relevant staff members.

#### a. If a technical, Tier 1, or Tier 2 violation has occurred –

- i. Easement Steward or designated TLC staff will contact the landowner by telephone or personal visit to explain the violation and the required corrective action. If an easement has pre-established time period for compliance with the corrective action, then that timeline and deadline should be adhered to. If there is no language in the easement that sets up a time period for compliance then the deadline for compliance and inspection should be set for 90 days after the landowner is given notification, unless staff determines an allowance for more time is appropriate.
- ii. A written letter via registered mail with return receipt requested should be sent following any phone or in person conversation to reiterate the verbal communication. Copies of the written correspondence should be recorded in the monitoring folders of the hard and electronic property files ("on file").

- iii. Staff should inspect site 90 days after the landowner notification or the length of compliance time set out in the conservation easement to ensure the completion of corrective actions.
  - If corrective actions have been successfully implemented an acknowledgment note and thank you should be sent to the landowner. Copies should be kept on file.
  - 2. If corrective actions have not been successfully implemented a second written letter via registered mail with return receipt requested should be sent to landowner with a deadline of 30 days to correct actions. Copies of the letter should be kept on file.
    - a. Staff should inspect site 30 days after second landowner notification to ensure completion of corrective actions.
      - If corrected actions have been successfully implemented, send an acknowledgment or thank you note and keep correspondence on file
      - If correctional actions have not been successfully implemented, notify Executive Director and discuss if it is appropriate to involve legal counsel and/or the Board or Directors.

#### b. If a Tier 3 violation has occurred –

- i. The Executive Director and the Conservation Strategies Committee of the Board should be notified of any suspected Tier 3 violations and should participate in any discussions with Conservation staff and with legal counsel if necessary on the final determination of whether a violation has occurred and the strategy for moving forward.
- ii. After appropriate discussions with the Committee, Executive Director, and staff, the landowner should be contacted by phone or in person to explain the violation and necessary corrective actions. Deadline for compliance and inspection should be set based on the required time period for corrective actions in the conservation easement. If the easement does not set out a time period then deadline for compliance an inspection should be set for 90 days after the landowner is given notification, unless staff determines an allowance for more time is appropriate.
- iii. A written letter via registered mail with return receipt requested should be sent following any phone or in person conversation to reiterate the verbal communication. Copies of the written correspondence should be recorded

- in the monitoring folders of the hard and electronic property files ("on file").
- iv. Staff should inspect site 90 days after landowner notification or the length of compliance time set out in the conservation easement to ensure the completion of corrective actions.
  - If corrective actions have been successfully implemented, an acknowledgment note and thank you should be sent to the landowner. Copies should be kept on file.
  - 2. If corrective actions have not been successfully implemented a second written letter via registered mail with return receipt requested should be sent to landowner with a deadline of 30 days to correct actions. Copies of the letter should be kept on file.
  - 3. Staff should inspect site 30 days after second landowner notification to ensure completion of corrective actions.
    - a. If corrected actions have been successfully implemented, an acknowledgment note and thank you should be sent to the landowner. Copies should be kept on file.
    - b. If corrective actions have not been successfully implemented, the Conservation Strategies Committee has the option to recommend to the Full Board of Directors that TLC pursue enforcement through more formal legal channels (e.g. arbitration, mediation, litigation). Judicial proceedings should be viewed as a means of last resort.

#### **Potential Violation Remedies**

Ideally, resolution of the violation will result in the restoration of the property to its previolation condition. But this is not always possible. In situations where full restoration is not achievable, the land trust may consider additional remedies, such as mitigation payments, amending the conservation easement to include more land or to enhance the restrictions on the existing land, etc. In proposing such remedies, the land trust must take care to avoid giving the impression that a landowner can buy his or her way out of an easement violation. Any remedy short of full restoration must be carefully scrutinized to make sure that it does not confer impermissible private benefit or private inurement on the landowner. The proposed remedy must be approved by the land trust's Conservation Strategies Committee and full Board before it is offered to the landowner.

#### **Covering the Costs of Enforcement**

The land trust maintains a reserve fund to cover the costs of enforcement and landowners are required to replenish it by reimbursing the land trust for the costs the land trust incurred in enforcing the easement, as provided in the easement deed. This requirement may be waived, in exceptional circumstances, by the land trust's Board of Directors. The land trust also maintains legal defense insurance.

#### **Third Party Violations**

The land trust regards its relationship with owners of conserved land as a partnership in which both parties seek a common goal: effective stewardship of the conserved land. When third parties trespass on conserved land and damage the resources that the owner and the land trust have conserved, the land trust will work collaboratively with the owner to stop the trespass and have the trespasser remediate any damage caused by his or her actions.

The land trust considers third-party violations on a case-by-case basis when deciding what education measures and remedies are necessary. If the trespasser is unwilling to cooperate with the landowner and the land trust, the land trust may seek a court order (alone or in conjunction with the landowner) compelling the third-party violator to cease activity that violates the terms of the easement and remediate the damage.

#### **Violation Prevention Strategy**

In stewardship of a conservation easement, violation prevention is the best defense. TLC has adopted the following practices to encourage ongoing landowner compliance with conservation easements.

A. Maintain constructive and collaborative relationship with landowners and help them feel connected to TLC through newsletters, invitations to events and outing, landowner recognitions, and informal services such as information on enhancing wildlife habitat, good forestry practices, etc.

- B. Conduct annual monitoring visits and record findings in a written monitoring report. Invite landowners to accompany the monitor on the inspection visit.
- C. Track changes in ownership.
- D. Promptly contact new owners (and work with real estate agents) to ensure that they understand TLC's mission, the easement restrictions of the property, and the concept and purpose of conservation easements in general.
- E. Encourage landowners to ask TLC to review a proposed action whether or not it is contemplated under the terms of the easement in order to avoid a potential violation.
- F. Periodically send landowner a written summary of the terms of their easements every 3-5 years.



### TRIANGLE LAND CONSERVANCY

### **EASEMENT VIOLATION REPORT**

Description of suspected violation:
Amount of area impacted by suspected violation:
Qualitative information about suspected violation (e.g. number of trees cut down, length and width of unpermitted road):

Specific section of easement action is in violation of:						
Specific section of BDR action is inconsistent with:						
Signed	Date:					

# **EXHIBIT D**



April 10, 2025

Greg Bohlen Union Grove Farm 7203 Union Grove Road Hillsborough, NC 27516

Sent via email and paper copy

RE – Third Easement violation Maple View Farm Phase I

Dear Mr. Bohlen,

Triangle Land Conservancy (TLC), who holds a conservation easement on your property, has documented the presence of a third easement violation on site. On March 4, 2025, TLC conducted a site visit to Union Grove Farms to inspect the conservation easement. Bo Howes, Triangle Land Conservancy's Director of Land Protection and Stewardship, West, and Hannah Royal, Stewardship Manager, visited the property and documented that a new road has been completed to the East of the Farming Operations Envelope. A follow-up review of the property using recent satellite imagery confirmed what was viewed on site. The new road connects a previously existing farm road from Meadow View Rd. to another outstanding road violation (November 2023) in the northeast corner of the property.

Section 8 of the Maple View Farm conservation easement states:

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B. (emphasis added)

Additionally, Section 5 of the easement states:

All farming operations shall be conducted in accordance with Best Management Practices promulgated by the State of North Carolina and with a **Natural Resource Conservation Service conservation plan that addresses soil and water conservation**, pest management, floodplain protection, viewshed protection, nutrient management and habitat protection. This plan shall be updated periodically, and in any event at the time basic agricultural operation on the property changes or at any time ownership of the property changes.

Union Grove Farm has constructed a new road through an existing field to connect existing farm roads on site, one of which is an outstanding violation of the conservation easement terms. **TLC staff conclude the new road is not permitted under the easement.** Furthermore, this road was completed after UGF was instructed to cease all work outside of the farming operations envelope and agreed to comply.

According to TLC's Easement Enforcement Policy, this constitutes a Tier 3 violation. You, as the landowner, are responsible for the closure of the road and restoration of the site to the condition that existed prior to the violation. You have 90 days from receipt of this letter to

**comply.** After 90 days, TLC will make a site visit to ensure compliance and follow up as needed.

TLC appreciates your cooperation in rectifying this situation. Please contact Matt Rutledge at 919-908-0057 with any questions or concerns.

Sincerely,

Sandy Sweitzer Executive Director

Triangle Land Conservancy

Enclosures:

Exhibit B of the Maple View Phase I Conservation Easement

TLC's Easement Enforcement Policy

## Photo Documentation









# **EXHIBIT E**

## Attachment A



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ROBIN L. TATUM Direct No: 919.719.1275 Email: rtatum@foxrothschild.com

April 21, 2025

#### VIA EMAIL AND FIRST-CLASS MAIL

Samuel Slater Wyrick Robbins Yates & Ponton LLP 4101 Lake Boone Trail, STE. 300 Raleigh, NC 27607 SSlater@wyrick.com

Dear Sam:

In response to your April 17 letter, no binding agreement was ever reached between your client and TLC to modify the terms of the Conservation Easement. The emails you cite are no more than preliminary negotiations, which was plainly recognized by UGF, because it continued to propose new and different terms in multiple written communications, well past the date of those emails.

I am also sure you remember that we met at Wyrick Robbins on April 30, 2024, to discuss UGF's violations and a potential resolution which included, *inter alia*, a potential modification of the farm envelope, as well as changes to the new roads. TLC was clear at the April 2024 meeting that it needed to see a site plan of proposed uses and locations before any agreement could be reached. On June 18, 2024, you provided a document entitled "Proposed Modifications to Existing Easement with Triangle Land Conservancy," which acknowledged the parties were "exchang[ing] written proposals" for "proposed modifications to the existing easement." This document introduced for the first time a request that TLC consent and agree to the County's determination regarding UGF's proposed "agritourism" activities. TLC discovered soon after (although formerly unbeknownst to them), this would include a 2,500-seat concert venue on the Conservation Easement. The June 18 document, as well as subsequent communications between the parties on June 18, August 6, September 18 and October 14, unequivocally establish that no meeting of the minds has ever taken place with respect to a modification of the Conservation Easement.

#### VIA EMAIL AND FIRST-CLASS MAIL



April 21, 2025 Page 2

Given the breakdown of negotiations and now pending litigation related to the concert venue, TLC is at a point where it believes it is obligated to move forward with enforcement. To that end, please consider this letter as the final notice to your client to immediately cease all unauthorized work on the Conservation Easement and to remediate UGF's three current easement violations, which are the subjects of Notices of Violations (or "NOVs"). These will be identified herein as Road 1, Road 2 and Road 3.

Section 8 of the Maple View Farm Conservation Easement states:

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B.

(emphasis added)

UGF was issued the NOV for Road 1 on November 27, 2023, which is attached to this letter as Exhibit 1. Road 1 is a new road that was built between Meadowview Road and the Farm Operations Envelope in the northeast corner of the easement property. The November 27 NOV gave UGF 90 days to close Road 1 and restore the site to its prior existing condition. This has not been done.

UGF was issued the second NOV on April 17, 2024, regarding Road 2, which is attached to this letter as Exhibit 2. Road 2 was built on the property following TLC's November 27 NOV. Road 2 was built from the northern point of the Center for Regenerative Agriculture to the Farm Operations Envelope. The April 17 NOV gave UGF 90 days to close Road 2 and return the site to its prior existing condition. This has also not been done.

Now, and while the parties are involved in active litigation regarding UGF's proposed concert venue, UGF has constructed yet another road in violation of the Conservation Easement. TLC sent an NOV for Road 3 on April 10, 2025, which is attached as Exhibit 3. Road 3 connects a pre-existing road to Road 1. UGF has been given 90 days to close Road 3 and restore the site to its prior existing condition.

In sum, TLC is not willing to continue to tolerate UGF's ongoing and blatant disregard for the terms of the Conservation Easement. Section 14 authorizes TLC to initiate legal action to

#### VIA EMAIL AND FIRST-CLASS MAIL



April 21, 2025 Page 3

enforce its terms. At this point, TLC has no choice other than to file a lawsuit to force compliance with respect to Roads 1 and 2 and will take that step if remediation is not completed within 30 days of the date of this letter. TLC will take the same action with respect to Road 3 if compliance is not achieved by the 90-day deadline in accordance with the terms of the Conservation Easement.

Please let me know if you have questions or would like to have further discussions.

Sil. When

Robin L. Tatum

cc: Bo Howes (rhowes@triangleland.org)
Sandy Sweitzer (ssweitzer@trianlgeland.org)
Hannah Royal (hroyal@triangleland.org)
Robert Hornik (bhornik@broughlawfirm.com)
Timberly Southerland (tsoutherland@foxrothschild.com)



Greg Bohlen Union Grove Farm 3501 Dairyland Road Hillsborough, NC 27278

Sent via email and paper copy

November 27, 2023

RE - Easement violation Maple View Farm Phase I

Dear Mr. Bohlen,

On November 16, 2023, Triangle Land Conservancy (TLC) was contacted by a neighbor with a concern over a new road that has been built on the farm. On November 18, 2023, Bo Howes, Triangle Land Conservancy's Director of Land Protection and Stewardship, West, visited the property and documented that a new road has been built across the Northeast portion of the property. The new road was constructed from Meadowview Road through a hardwood forest to access the Farm Operations Envelope.

Section 8 of the Maple View Farm conservation easement states:

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B. (emphasis added)

Additionally, Section 6 of the easement states:

Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the property. Trees may also be cut to clear land for cultivation or grazing of livestock, but only if done in accordance with the written conservation plan required by paragraph 5.

Union Grove Farm has constructed a new road through a forested area, removing numerous trees during construction. TLC staff conclude the new road is not permitted under the easement, and construction of the impermissible road is not a permitted reason for cutting trees.

According to TLC's Easement Enforcement Policy, this constitutes a Tier 3 violation. You, as the landowner, are responsible for the closure of the road and restoration of the site to the condition that existed prior to the violation. You have 90 days from receipt of this letter to comply. After 90 days, TLC will make a site visit to ensure compliance and follow up as needed.

TLC appreciates your cooperation in rectifying this situation. Please contact Matt Rutledge at 919-908-0057 with any questions or concerns.

Sincerely,

Sandy Sweitzer

Executive Director

Triangle Land Conservancy

Enclosures:

Exhibit B of the Maple View Phase I Conservation Easement

TLC's Easement Enforcement Policy

Photo Documentation



April 17, 2024



Greg Bohlen Union Grove Farm 3501 Dairyland Road Hillsborough, NC 27278

Sent via email and paper copy

RE - Second Easement violation Maple View Farm Phase I

Dear Mr. Bohlen,

On April 13, 2024, a neighbor contacted Triangle Land Conservancy (TLC) about a second new road built on the farm. On April 15, 2024, Bo Howes, Triangle Land Conservancy's Director of Land Protection and Stewardship, West, and Matt Rutledge, TLC's Associate Director of Stewardship, visited the property and documented that a new road has been built across the Northwest portion of the property. The new road was constructed from a point north of the Center for Regenerative Agriculture across a field to access the Farm Operations Envelope.

Section 8 of the Maple View Farm conservation easement states:

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B. (emphasis added)

Additionally, Section 5 of the easement states:

All farming operations shall be conducted in accordance with Best Management Practices promulgated by the State of North Carolina and with a **Natural Resource Conservation Service conservation plan that addresses soil and water conservation**, pest management, floodplain protection, viewshed protection, nutrient management and habitat protection. This plan shall be updated periodically, and in any event at the time basic agricultural operation on the property changes or at any time ownership of the property changes.

Union Grove Farm has constructed a new road through an existing field to access the farm operations envelope. TLC staff conclude the new road is not permitted under the easement.

P.O. Box 1848, Durham NC 27702 | | 919-908-8809 | | www.triangleland.org

According to TLC's Easement Enforcement Policy, this constitutes a Tier 3 violation. You, as the landowner, are responsible for the closure of the road and restoration of the site to the condition that existed prior to the violation. You have 90 days from receipt of this letter to comply. After 90 days, TLC will make a site visit to ensure compliance and follow up as needed.

TLC appreciates your cooperation in rectifying this situation. Please contact Matt Rutledge at 919-908-0057 with any questions or concerns.

Sincerely,

Sandy Sweitzer

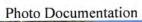
**Executive Director** 

Triangle Land Conservancy

Enclosures:

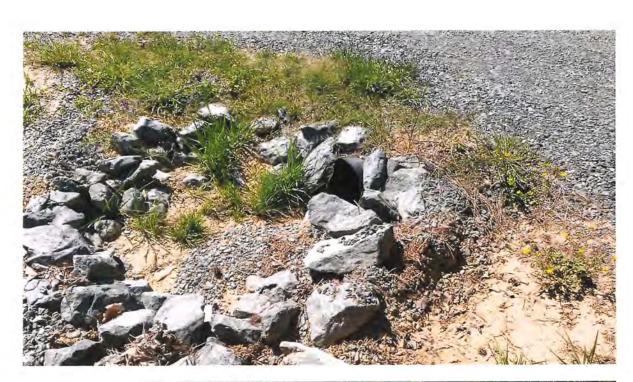
Exhibit B of the Maple View Phase I Conservation Easement

TLC's Easement Enforcement Policy

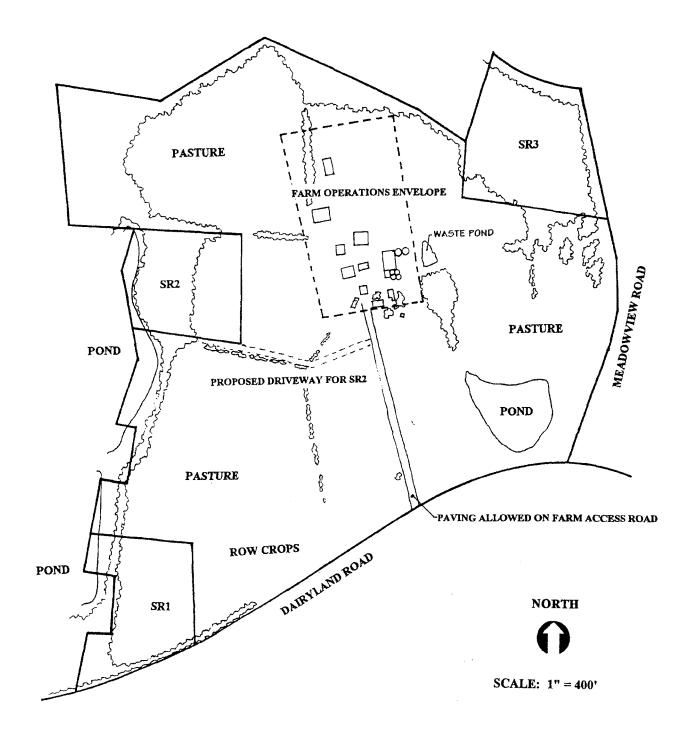














# TRIANGLE LAND CONSERVANCY

## EASEMENT ENFORCEMENT POLICY

# Board Approved March 27, 2014

# Purpose

The purpose of this document is to outline Triangle Land Conservancy ("TLC")'s policy for addressing easement violations and to guide related TLC practices. TLC holds conservation easements to ensure the perpetual protection of conservation values on privately-owned lands. The long-term strength of conservation easements depends on TLC's ability to effectively enforce the terms of the easement. Strong enforcement builds public confidence in easements as a land protection tool. Moreover, in order to accept tax-deductable gifts and to qualify for tax-exempt status under Internal Revenue Service (IRS) regulations, TLC must commit to uphold the terms of all conservation easements it holds (See Treas. Reg. 1.170A-14 (c)(1).)

Conservation easements can be violated by a landowner or by a third party. When an easement is violated, TLC is responsible for restoring compliance with the terms of the easement and ensuring the perpetual protection of the conservation values of the property. TLC will aim to resolve easement violations with the greatest degree of cooperation from the landowner and the least expense to both landowner and the land trust.

The following policy is intended to provide guidance to staff, board, volunteers, and consultants to ensure that TLC follows a consistent set of steps to uphold its easement responsibilities. TLC acknowledges that each easement violation presents a unique situation and the following guidelines may need to be adapted for certain situations.

TLC intends for this policy to be consistent with all requirements of law, the Land Trust Alliance Standards and Practices, and all other TLC policies.

### Principles for Responding to Suspected Easement Violations

A. Respond quickly to all suspected violations and adhere to the land trust's enforcement policy and procedure and to its conflict of interest policy.

- B. Address all potential violations, no matter how minor, but maintain perspective and keep TLC's response proportional to the severity and circumstances of the violation.
- C. Comply with all applicable laws.
- D. Maintain the conservation purpose(s) of the conservation easement and protect the land's conservation values in perpetuity, in keeping with the documented intent of the original grantor.
- E. Maintain public confidence in TLC's ability to enforce easement restrictions generally.
- F. Take no action that would result in private inurement or impermissible private benefit.
- G. Protect TLC's legal rights and financial investment (if any) in the conservation easement.
- H. Maintain a constructive working relationship with the landowner, if possible.
- I. Never give a landowner an on-the-spot opinion as to whether a violation has occurred. Do not tell a landowner what the land trust's response will be until the matter has been reviewed by Staff, or the Conservation Strategies Committee, when necessary.
- J. Use litigation as a last resort and only when counsel advises that the land trust is likely to prevail in court
- K. Act promptly to resolve the issues. The dispute may cause the landowner stress and concern. The longer the matter remains unresolved, the more difficult it may be to find a resolution

# **Definitions – Types of Violations**

- **1. Technical Violation** a procedural violation that has no impact on the conservation easement's intent, purpose and/or protected conservation values. Technical violations may include but are not limited to:
  - a. Failure to give the required notice of an approved use on the protected property
  - b. Discovery of a pre-existing condition on the property
  - c. Failure to give the required notice of sale or transfer of land
- **2. Tier 1** a violation that has a negligible impact on the conservation easements' intent, purpose, and/or the protected conservation values. Tier 1 violations may include but are not limited to:
  - a. Minor ground disturbances
  - b. Minor tree cutting in non sensitive areas
  - c. Minor dumping (e.g. area impacted is small or dumped materials are non-toxic)
  - d. Undertaking a reserved permitted activity that requires pre-approval without seeking that pre approval

- e. Minor trail construction (e.g. social trails)
- 3. Tier 2 a violation that has moderate impact on the conservation easement's intent, purpose and/or protected conservation values. Tier 2 violations may include but are not limited to:
  - a. Construction of small or prohibited structures (e.g. small shed, tree stands, small concrete pads, etc.)
  - b. Minor tree cutting in riparian buffers or sensitive areas
  - c. Dumping on a larger scale (e.g. area impacted is large or dumped materials are toxic)
  - d. Construction of permitted structures outside of but reasonably close to the designated building area
  - e. Moderate road construction involving some grading or excavating
- **4. Tier 3** a violation that has significant impact upon or consequences to the conservation easement's intent, purpose, and/or protected conservation values. Tier 3 violations may include but are not limited to:
  - a. Construction of significant prohibited structures (e.g. residential structures, buildings)
  - b. Wetland filling or draining
  - c. Significant excavation in sensitive areas (buffers, wetlands, shale barrens) or surface mining activities
  - d. Drilling for oil and gas when prohibited
  - e. Large clear cuts or damaging timbering activities not in accordance with approved stewardship plans or the easement
  - f. Major road construction involving large scale grading, excavating, and reshaping of the topography, and/or paving of significant amounts of existing roads

### Steps in Response to Easement Violation

1. Review the easement and documentation of conditions on the property – TLC staff will likely encounter a potential violation during the annual easement monitoring visit or may receive a report of a suspected violation. At this time, TLC staff should review the entire easement deed, amendments (if any), baseline documentation report, and monitoring reports to determine whether it is likely that an easement violation has occurred and what specific easement terms may have been violated. If legal interpretation of easement terms is needed, TLC's attorney can be consulted.

2. **Document the potential violation** – TLC staff should then (A) Document the potential violation with photos keyed to a photomap, (B) Complete the *Easement Violation Report* (attached). When possible, damage should be documented in quantitative terms (e.g. number of trees cut down, length and width of unpermitted trail, etc.) and be referenced to specific sections of the baseline documentation report and/or reports of monitoring visits conducted before the violation occurred. All forms, maps, and field notes should be signed and dated by the staff member that is documenting.

If the landowner refuses to allow TLC to enter the property to conduct the inspection, TLC staff should consult the land trust's attorney for how to proceed.

# 3. Establish whether violation has occurred and determine its severity -

Once the potential easement violation has been documented, the staff that observed the violation should bring the *Easement Violation Report* and relevant information to the Director of Conservation. The Director of Conservation and staff member will determine if the there was a violation. If there was a violation, the Director of Conservation and staff member will determine whether the violation was technical, Tier 1, Tier 2, or Tier 3 based on the definitions above. If there is a question as to the type of violation, the Director of Conservation will consult the Executive Director or other relevant staff members.

### a. If a technical, Tier 1, or Tier 2 violation has occurred –

- i. Easement Steward or designated TLC staff will contact the landowner by telephone or personal visit to explain the violation and the required corrective action. If an easement has pre-established time period for compliance with the corrective action, then that timeline and deadline should be adhered to. If there is no language in the easement that sets up a time period for compliance then the deadline for compliance and inspection should be set for 90 days after the landowner is given notification, unless staff determines an allowance for more time is appropriate.
- ii. A written letter via registered mail with return receipt requested should be sent following any phone or in person conversation to reiterate the verbal communication. Copies of the written correspondence should be recorded in the monitoring folders of the hard and electronic property files ("on file").

- iii. Staff should inspect site 90 days after the landowner notification or the length of compliance time set out in the conservation easement to ensure the completion of corrective actions.
  - 1. If corrective actions have been successfully implemented an acknowledgment note and thank you should be sent to the landowner. Copies should be kept on file.
  - 2. If corrective actions have not been successfully implemented a second written letter via registered mail with return receipt requested should be sent to landowner with a deadline of 30 days to correct actions. Copies of the letter should be kept on file.
    - a. Staff should inspect site 30 days after second landowner notification to ensure completion of corrective actions.
      - If corrected actions have been successfully implemented, send an acknowledgment or thank you note and keep correspondence on file
      - ii. If correctional actions have not been successfully implemented, notify Executive Director and discuss if it is appropriate to involve legal counsel and/or the Board or Directors.

### b. If a Tier 3 violation has occurred -

- i. The Executive Director and the Conservation Strategies Committee of the Board should be notified of any suspected Tier 3 violations and should participate in any discussions with Conservation staff and with legal counsel if necessary on the final determination of whether a violation has occurred and the strategy for moving forward.
- ii. After appropriate discussions with the Committee, Executive Director, and staff, the landowner should be contacted by phone or in person to explain the violation and necessary corrective actions. Deadline for compliance and inspection should be set based on the required time period for corrective actions in the conservation easement. If the easement does not set out a time period then deadline for compliance an inspection should be set for 90 days after the landowner is given notification, unless staff determines an allowance for more time is appropriate.
- iii. A written letter via registered mail with return receipt requested should be sent following any phone or in person conversation to reiterate the verbal communication. Copies of the written correspondence should be recorded

- in the monitoring folders of the hard and electronic property files ("on file").
- iv. Staff should inspect site 90 days after landowner notification or the length of compliance time set out in the conservation easement to ensure the completion of corrective actions.
  - 1. If corrective actions have been successfully implemented, an acknowledgment note and thank you should be sent to the landowner. Copies should be kept on file.
  - 2. If corrective actions have not been successfully implemented a second written letter via registered mail with return receipt requested should be sent to landowner with a deadline of 30 days to correct actions. Copies of the letter should be kept on file.
  - 3. Staff should inspect site 30 days after second landowner notification to ensure completion of corrective actions.
    - a. If corrected actions have been successfully implemented, an acknowledgment note and thank you should be sent to the landowner. Copies should be kept on file.
    - b. If corrective actions have not been successfully implemented, the Conservation Strategies Committee has the option to recommend to the Full Board of Directors that TLC pursue enforcement through more formal legal channels (e.g. arbitration, mediation, litigation). Judicial proceedings should be viewed as a means of last resort.

#### **Potential Violation Remedies**

Ideally, resolution of the violation will result in the restoration of the property to its previolation condition. But this is not always possible. In situations where full restoration is not achievable, the land trust may consider additional remedies, such as mitigation payments, amending the conservation easement to include more land or to enhance the restrictions on the existing land, etc. In proposing such remedies, the land trust must take care to avoid giving the impression that a landowner can buy his or her way out of an easement violation. Any remedy short of full restoration must be carefully scrutinized to make sure that it does not confer impermissible private benefit or private inurement on the landowner. The proposed remedy must be approved by the land trust's Conservation Strategies Committee and full Board before it is offered to the landowner.

# **Covering the Costs of Enforcement**

The land trust maintains a reserve fund to cover the costs of enforcement and landowners are required to replenish it by reimbursing the land trust for the costs the land trust incurred in enforcing the easement, as provided in the easement deed. This requirement may be waived, in exceptional circumstances, by the land trust's Board of Directors. The land trust also maintains legal defense insurance.

# **Third Party Violations**

The land trust regards its relationship with owners of conserved land as a partnership in which both parties seek a common goal: effective stewardship of the conserved land. When third parties trespass on conserved land and damage the resources that the owner and the land trust have conserved, the land trust will work collaboratively with the owner to stop the trespass and have the trespasser remediate any damage caused by his or her actions.

The land trust considers third-party violations on a case-by-case basis when deciding what education measures and remedies are necessary. If the trespasser is unwilling to cooperate with the landowner and the land trust, the land trust may seek a court order (alone or in conjunction with the landowner) compelling the third-party violator to cease activity that violates the terms of the easement and remediate the damage.

# **Violation Prevention Strategy**

In stewardship of a conservation easement, violation prevention is the best defense. TLC has adopted the following practices to encourage ongoing landowner compliance with conservation easements.

A. Maintain constructive and collaborative relationship with landowners and help them feel connected to TLC through newsletters, invitations to events and outing, landowner recognitions, and informal services such as information on enhancing wildlife habitat, good forestry practices, etc.

- B. Conduct annual monitoring visits and record findings in a written monitoring report. Invite landowners to accompany the monitor on the inspection visit.
- C. Track changes in ownership.
- D. Promptly contact new owners (and work with real estate agents) to ensure that they understand TLC's mission, the easement restrictions of the property, and the concept and purpose of conservation easements in general.
- E. Encourage landowners to ask TLC to review a proposed action whether or not it is contemplated under the terms of the easement in order to avoid a potential violation.
- F. Periodically send landowner a written summary of the terms of their easements every 3-5 years.



# TRIANGLE LAND CONSERVANCY EASEMENT VIOLATION REPORT

Description of suspected violation:
Amount of area impacted by suspected violation:
Qualitative information about suspected violation (e.g. number of trees cut down, length and
width of unpermitted road):

Specific section of easement action is in violation of:	
Considire nation of BDB nation in improvement with	
Specific section of BDR action is inconsistent with:	
Signed	Date:



April 10, 2025

Greg Bohlen Union Grove Farm 7203 Union Grove Road Hillsborough, NC 27516

Sent via email and paper copy

RE - Third Easement violation Maple View Farm Phase I

Dear Mr. Bohlen,

Triangle Land Conservancy (TLC), who holds a conservation easement on your property, has documented the presence of a third easement violation on site. On March 4, 2025, TLC conducted a site visit to Union Grove Farms to inspect the conservation easement. Bo Howes, Triangle Land Conservancy's Director of Land Protection and Stewardship, West, and Hannah Royal, Stewardship Manager, visited the property and documented that a new road has been completed to the East of the Farming Operations Envelope. A follow-up review of the property using recent satellite imagery confirmed what was viewed on site. The new road connects a previously existing farm road from Meadow View Rd. to another outstanding road violation (November 2023) in the northeast corner of the property.

Section 8 of the Maple View Farm conservation easement states:

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B. (emphasis added)

Additionally, Section 5 of the easement states:

All farming operations shall be conducted in accordance with Best Management Practices promulgated by the State of North Carolina and with a Natural Resource Conservation Service conservation plan that addresses soil and water conservation, pest management, floodplain protection, viewshed protection, nutrient management and habitat protection. This plan shall be updated periodically, and in any event at the time basic agricultural operation on the property changes or at any time ownership of the property changes.

Union Grove Farm has constructed a new road through an existing field to connect existing farm roads on site, one of which is an outstanding violation of the conservation easement terms. **TLC** staff conclude the new road is not permitted under the easement. Furthermore, this road was completed after UGF was instructed to cease all work outside of the farming operations envelope and agreed to comply.

According to TLC's Easement Enforcement Policy, this constitutes a Tier 3 violation. You, as the landowner, are responsible for the closure of the road and restoration of the site to the condition that existed prior to the violation. You have 90 days from receipt of this letter to

comply. After 90 days, TLC will make a site visit to ensure compliance and follow up as needed.

TLC appreciates your cooperation in rectifying this situation. Please contact Matt Rutledge at 919-908-0057 with any questions or concerns.

Sincerely.

Sandy Sweitzer

**Executive Director** 

Triangle Land Conservancy

Enclosures:

Exhibit B of the Maple View Phase I Conservation Easement

TLC's Easement Enforcement Policy

# Photo Documentation









# **EXHIBIT F**



301 Hillsborough Street Suite 1120 Raleigh, NC 27603 **4** 919.755.8700 **₽** 919.755.8800 WWW.FOXROTHSCHILD.COM

ROBIN L. TATUM Direct No: 919.719.1275 Email: rtatum@foxrothschild.com

May 14, 2025

# VIA E-MAIL & FEDEX

Samuel A. Slater Wyrick Robbins Yates & Ponton LLP 4101 Lake Boone Trail, STE. 300 Raleigh, NC 27607 SSlater@wyrick.com

**Property Owners:** Harper Grace, LLC Eastwest Organics, LLC Meredith Sabye Bandit Farms II LLC Bandit Farms III LLC

Re: **Triangle Land Conservancy – Inspection Notice - Union Grove Farms Easement Property** 

Dear Sam:

I am reaching out on behalf of our client, Triangle Land Conservancy ("TLC"), to provide notice of inspection of the Union Grove Farm's Easement Property (the "Easement Property"). See Section 14 of the Conservation Easement.

The landowners and their representatives are invited to be present during the inspection but are not required. TLC plans to inspect the Easement Property on the morning of Wednesday, May 21, 2025. TLC staff will conduct an inspection of the Easement Property to inspect easement violations previously identified as Road 1 and Road 2 in my April 21 letter (attached as Attachment A). Please let us know if the landowners and/or any representatives will be present during the visit and if that date works for your client.



May 14, 2025 Page 2

As a reminder, please provide TLC with prior notice of any plans or work being done on the easement property that is subject to TLC's discretion or consent pursuant to Section 12 of the Conservation Easement.

If you have any questions regarding the inspection or the date, please reach out to me or my Associate Timberly Southerland at (919) 420-7836.

Sincerely,

Robin L. Tatum

cc: Bo Howes (rhowes@triangleland.org)
Hannah Royal (hroyal@triangleland.org)
Timberly Southerland (tsoutherland@foxrothschild.com)

# Attachment A



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ROBIN L. TATUM Direct No: 919.719.1275 Email: rtatum@foxrothschild.com

April 21, 2025

# VIA EMAIL AND FIRST-CLASS MAIL

Samuel Slater Wyrick Robbins Yates & Ponton LLP 4101 Lake Boone Trail, STE. 300 Raleigh, NC 27607 SSlater@wyrick.com

Dear Sam:

In response to your April 17 letter, no binding agreement was ever reached between your client and TLC to modify the terms of the Conservation Easement. The emails you cite are no more than preliminary negotiations, which was plainly recognized by UGF, because it continued to propose new and different terms in multiple written communications, well past the date of those emails.

I am also sure you remember that we met at Wyrick Robbins on April 30, 2024, to discuss UGF's violations and a potential resolution which included, *inter alia*, a potential modification of the farm envelope, as well as changes to the new roads. TLC was clear at the April 2024 meeting that it needed to see a site plan of proposed uses and locations before any agreement could be reached. On June 18, 2024, you provided a document entitled "Proposed Modifications to Existing Easement with Triangle Land Conservancy," which acknowledged the parties were "exchang[ing] written proposals" for "proposed modifications to the existing easement." This document introduced for the first time a request that TLC consent and agree to the County's determination regarding UGF's proposed "agritourism" activities. TLC discovered soon after (although formerly unbeknownst to them), this would include a 2,500-seat concert venue on the Conservation Easement. The June 18 document, as well as subsequent communications between the parties on June 18, August 6, September 18 and October 14, unequivocally establish that no meeting of the minds has ever taken place with respect to a modification of the Conservation Easement.

# VIA EMAIL AND FIRST-CLASS MAIL



April 21, 2025 Page 2

Given the breakdown of negotiations and now pending litigation related to the concert venue, TLC is at a point where it believes it is obligated to move forward with enforcement. To that end, please consider this letter as the final notice to your client to immediately cease all unauthorized work on the Conservation Easement and to remediate UGF's three current easement violations, which are the subjects of Notices of Violations (or "NOVs"). These will be identified herein as Road 1, Road 2 and Road 3.

Section 8 of the Maple View Farm Conservation Easement states:

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B.

(emphasis added)

UGF was issued the NOV for Road 1 on November 27, 2023, which is attached to this letter as Exhibit 1. Road 1 is a new road that was built between Meadowview Road and the Farm Operations Envelope in the northeast corner of the easement property. The November 27 NOV gave UGF 90 days to close Road 1 and restore the site to its prior existing condition. This has not been done.

UGF was issued the second NOV on April 17, 2024, regarding Road 2, which is attached to this letter as Exhibit 2. Road 2 was built on the property following TLC's November 27 NOV. Road 2 was built from the northern point of the Center for Regenerative Agriculture to the Farm Operations Envelope. The April 17 NOV gave UGF 90 days to close Road 2 and return the site to its prior existing condition. This has also not been done.

Now, and while the parties are involved in active litigation regarding UGF's proposed concert venue, UGF has constructed yet another road in violation of the Conservation Easement. TLC sent an NOV for Road 3 on April 10, 2025, which is attached as Exhibit 3. Road 3 connects a pre-existing road to Road 1. UGF has been given 90 days to close Road 3 and restore the site to its prior existing condition.

In sum, TLC is not willing to continue to tolerate UGF's ongoing and blatant disregard for the terms of the Conservation Easement. Section 14 authorizes TLC to initiate legal action to

# VIA EMAIL AND FIRST-CLASS MAIL



April 21, 2025 Page 3

enforce its terms. At this point, TLC has no choice other than to file a lawsuit to force compliance with respect to Roads 1 and 2 and will take that step if remediation is not completed within 30 days of the date of this letter. TLC will take the same action with respect to Road 3 if compliance is not achieved by the 90-day deadline in accordance with the terms of the Conservation Easement.

Please let me know if you have questions or would like to have further discussions.

Sil. When

Robin L. Tatum

cc: Bo Howes (rhowes@triangleland.org)
Sandy Sweitzer (ssweitzer@trianlgeland.org)
Hannah Royal (hroyal@triangleland.org)
Robert Hornik (bhornik@broughlawfirm.com)
Timberly Southerland (tsoutherland@foxrothschild.com)



Greg Bohlen Union Grove Farm 3501 Dairyland Road Hillsborough, NC 27278

Sent via email and paper copy

November 27, 2023

RE - Easement violation Maple View Farm Phase I

Dear Mr. Bohlen,

On November 16, 2023, Triangle Land Conservancy (TLC) was contacted by a neighbor with a concern over a new road that has been built on the farm. On November 18, 2023, Bo Howes, Triangle Land Conservancy's Director of Land Protection and Stewardship, West, visited the property and documented that a new road has been built across the Northeast portion of the property. The new road was constructed from Meadowview Road through a hardwood forest to access the Farm Operations Envelope.

Section 8 of the Maple View Farm conservation easement states:

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B. (emphasis added)

Additionally, Section 6 of the easement states:

Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the property. Trees may also be cut to clear land for cultivation or grazing of livestock, but only if done in accordance with the written conservation plan required by paragraph 5.

Union Grove Farm has constructed a new road through a forested area, removing numerous trees during construction. TLC staff conclude the new road is not permitted under the easement, and construction of the impermissible road is not a permitted reason for cutting trees.

According to TLC's Easement Enforcement Policy, this constitutes a Tier 3 violation. You, as the landowner, are responsible for the closure of the road and restoration of the site to the condition that existed prior to the violation. You have 90 days from receipt of this letter to comply. After 90 days, TLC will make a site visit to ensure compliance and follow up as needed.

TLC appreciates your cooperation in rectifying this situation. Please contact Matt Rutledge at 919-908-0057 with any questions or concerns.

Sincerely,

Sandy Sweitzer

Executive Director

Triangle Land Conservancy

Enclosures:

Exhibit B of the Maple View Phase I Conservation Easement

TLC's Easement Enforcement Policy

Photo Documentation



April 17, 2024



Greg Bohlen Union Grove Farm 3501 Dairyland Road Hillsborough, NC 27278

Sent via email and paper copy

RE - Second Easement violation Maple View Farm Phase I

Dear Mr. Bohlen,

On April 13, 2024, a neighbor contacted Triangle Land Conservancy (TLC) about a second new road built on the farm. On April 15, 2024, Bo Howes, Triangle Land Conservancy's Director of Land Protection and Stewardship, West, and Matt Rutledge, TLC's Associate Director of Stewardship, visited the property and documented that a new road has been built across the Northwest portion of the property. The new road was constructed from a point north of the Center for Regenerative Agriculture across a field to access the Farm Operations Envelope.

Section 8 of the Maple View Farm conservation easement states:

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B. (emphasis added)

Additionally, Section 5 of the easement states:

All farming operations shall be conducted in accordance with Best Management Practices promulgated by the State of North Carolina and with a **Natural Resource Conservation Service conservation plan that addresses soil and water conservation**, pest management, floodplain protection, viewshed protection, nutrient management and habitat protection. This plan shall be updated periodically, and in any event at the time basic agricultural operation on the property changes or at any time ownership of the property changes.

Union Grove Farm has constructed a new road through an existing field to access the farm operations envelope. TLC staff conclude the new road is not permitted under the easement.

P.O. Box 1848, Durham NC 27702 | | 919-908-8809 | | www.triangleland.org

According to TLC's Easement Enforcement Policy, this constitutes a Tier 3 violation. You, as the landowner, are responsible for the closure of the road and restoration of the site to the condition that existed prior to the violation. You have 90 days from receipt of this letter to comply. After 90 days, TLC will make a site visit to ensure compliance and follow up as needed.

TLC appreciates your cooperation in rectifying this situation. Please contact Matt Rutledge at 919-908-0057 with any questions or concerns.

Sincerely,

Sandy Sweitzer

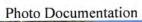
**Executive Director** 

Triangle Land Conservancy

Enclosures:

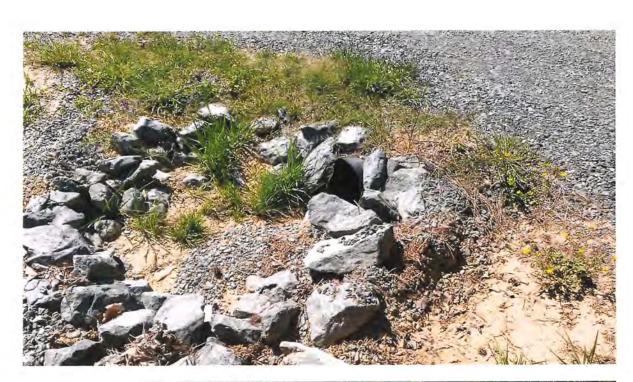
Exhibit B of the Maple View Phase I Conservation Easement

TLC's Easement Enforcement Policy

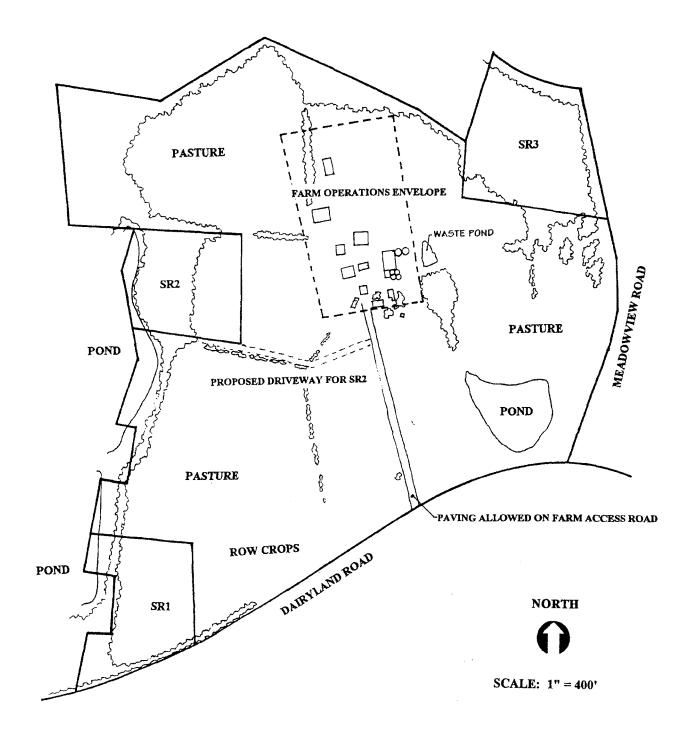














# TRIANGLE LAND CONSERVANCY

## EASEMENT ENFORCEMENT POLICY

# Board Approved March 27, 2014

# Purpose

The purpose of this document is to outline Triangle Land Conservancy ("TLC")'s policy for addressing easement violations and to guide related TLC practices. TLC holds conservation easements to ensure the perpetual protection of conservation values on privately-owned lands. The long-term strength of conservation easements depends on TLC's ability to effectively enforce the terms of the easement. Strong enforcement builds public confidence in easements as a land protection tool. Moreover, in order to accept tax-deductable gifts and to qualify for tax-exempt status under Internal Revenue Service (IRS) regulations, TLC must commit to uphold the terms of all conservation easements it holds (See Treas. Reg. 1.170A-14 (c)(1).)

Conservation easements can be violated by a landowner or by a third party. When an easement is violated, TLC is responsible for restoring compliance with the terms of the easement and ensuring the perpetual protection of the conservation values of the property. TLC will aim to resolve easement violations with the greatest degree of cooperation from the landowner and the least expense to both landowner and the land trust.

The following policy is intended to provide guidance to staff, board, volunteers, and consultants to ensure that TLC follows a consistent set of steps to uphold its easement responsibilities. TLC acknowledges that each easement violation presents a unique situation and the following guidelines may need to be adapted for certain situations.

TLC intends for this policy to be consistent with all requirements of law, the Land Trust Alliance Standards and Practices, and all other TLC policies.

### Principles for Responding to Suspected Easement Violations

A. Respond quickly to all suspected violations and adhere to the land trust's enforcement policy and procedure and to its conflict of interest policy.

- B. Address all potential violations, no matter how minor, but maintain perspective and keep TLC's response proportional to the severity and circumstances of the violation.
- C. Comply with all applicable laws.
- D. Maintain the conservation purpose(s) of the conservation easement and protect the land's conservation values in perpetuity, in keeping with the documented intent of the original grantor.
- E. Maintain public confidence in TLC's ability to enforce easement restrictions generally.
- F. Take no action that would result in private inurement or impermissible private benefit.
- G. Protect TLC's legal rights and financial investment (if any) in the conservation easement.
- H. Maintain a constructive working relationship with the landowner, if possible.
- I. Never give a landowner an on-the-spot opinion as to whether a violation has occurred. Do not tell a landowner what the land trust's response will be until the matter has been reviewed by Staff, or the Conservation Strategies Committee, when necessary.
- J. Use litigation as a last resort and only when counsel advises that the land trust is likely to prevail in court
- K. Act promptly to resolve the issues. The dispute may cause the landowner stress and concern. The longer the matter remains unresolved, the more difficult it may be to find a resolution

# **Definitions – Types of Violations**

- **1. Technical Violation** a procedural violation that has no impact on the conservation easement's intent, purpose and/or protected conservation values. Technical violations may include but are not limited to:
  - a. Failure to give the required notice of an approved use on the protected property
  - b. Discovery of a pre-existing condition on the property
  - c. Failure to give the required notice of sale or transfer of land
- **2. Tier 1** a violation that has a negligible impact on the conservation easements' intent, purpose, and/or the protected conservation values. Tier 1 violations may include but are not limited to:
  - a. Minor ground disturbances
  - b. Minor tree cutting in non sensitive areas
  - c. Minor dumping (e.g. area impacted is small or dumped materials are non-toxic)
  - d. Undertaking a reserved permitted activity that requires pre-approval without seeking that pre approval

- e. Minor trail construction (e.g. social trails)
- 3. Tier 2 a violation that has moderate impact on the conservation easement's intent, purpose and/or protected conservation values. Tier 2 violations may include but are not limited to:
  - a. Construction of small or prohibited structures (e.g. small shed, tree stands, small concrete pads, etc.)
  - b. Minor tree cutting in riparian buffers or sensitive areas
  - c. Dumping on a larger scale (e.g. area impacted is large or dumped materials are toxic)
  - d. Construction of permitted structures outside of but reasonably close to the designated building area
  - e. Moderate road construction involving some grading or excavating
- **4. Tier 3** a violation that has significant impact upon or consequences to the conservation easement's intent, purpose, and/or protected conservation values. Tier 3 violations may include but are not limited to:
  - a. Construction of significant prohibited structures (e.g. residential structures, buildings)
  - b. Wetland filling or draining
  - c. Significant excavation in sensitive areas (buffers, wetlands, shale barrens) or surface mining activities
  - d. Drilling for oil and gas when prohibited
  - e. Large clear cuts or damaging timbering activities not in accordance with approved stewardship plans or the easement
  - f. Major road construction involving large scale grading, excavating, and reshaping of the topography, and/or paving of significant amounts of existing roads

### Steps in Response to Easement Violation

1. Review the easement and documentation of conditions on the property – TLC staff will likely encounter a potential violation during the annual easement monitoring visit or may receive a report of a suspected violation. At this time, TLC staff should review the entire easement deed, amendments (if any), baseline documentation report, and monitoring reports to determine whether it is likely that an easement violation has occurred and what specific easement terms may have been violated. If legal interpretation of easement terms is needed, TLC's attorney can be consulted.

2. **Document the potential violation** – TLC staff should then (A) Document the potential violation with photos keyed to a photomap, (B) Complete the *Easement Violation Report* (attached). When possible, damage should be documented in quantitative terms (e.g. number of trees cut down, length and width of unpermitted trail, etc.) and be referenced to specific sections of the baseline documentation report and/or reports of monitoring visits conducted before the violation occurred. All forms, maps, and field notes should be signed and dated by the staff member that is documenting.

If the landowner refuses to allow TLC to enter the property to conduct the inspection, TLC staff should consult the land trust's attorney for how to proceed.

# 3. Establish whether violation has occurred and determine its severity -

Once the potential easement violation has been documented, the staff that observed the violation should bring the *Easement Violation Report* and relevant information to the Director of Conservation. The Director of Conservation and staff member will determine if the there was a violation. If there was a violation, the Director of Conservation and staff member will determine whether the violation was technical, Tier 1, Tier 2, or Tier 3 based on the definitions above. If there is a question as to the type of violation, the Director of Conservation will consult the Executive Director or other relevant staff members.

### a. If a technical, Tier 1, or Tier 2 violation has occurred –

- i. Easement Steward or designated TLC staff will contact the landowner by telephone or personal visit to explain the violation and the required corrective action. If an easement has pre-established time period for compliance with the corrective action, then that timeline and deadline should be adhered to. If there is no language in the easement that sets up a time period for compliance then the deadline for compliance and inspection should be set for 90 days after the landowner is given notification, unless staff determines an allowance for more time is appropriate.
- ii. A written letter via registered mail with return receipt requested should be sent following any phone or in person conversation to reiterate the verbal communication. Copies of the written correspondence should be recorded in the monitoring folders of the hard and electronic property files ("on file").

- iii. Staff should inspect site 90 days after the landowner notification or the length of compliance time set out in the conservation easement to ensure the completion of corrective actions.
  - 1. If corrective actions have been successfully implemented an acknowledgment note and thank you should be sent to the landowner. Copies should be kept on file.
  - 2. If corrective actions have not been successfully implemented a second written letter via registered mail with return receipt requested should be sent to landowner with a deadline of 30 days to correct actions. Copies of the letter should be kept on file.
    - a. Staff should inspect site 30 days after second landowner notification to ensure completion of corrective actions.
      - If corrected actions have been successfully implemented, send an acknowledgment or thank you note and keep correspondence on file
      - ii. If correctional actions have not been successfully implemented, notify Executive Director and discuss if it is appropriate to involve legal counsel and/or the Board or Directors.

### b. If a Tier 3 violation has occurred -

- i. The Executive Director and the Conservation Strategies Committee of the Board should be notified of any suspected Tier 3 violations and should participate in any discussions with Conservation staff and with legal counsel if necessary on the final determination of whether a violation has occurred and the strategy for moving forward.
- ii. After appropriate discussions with the Committee, Executive Director, and staff, the landowner should be contacted by phone or in person to explain the violation and necessary corrective actions. Deadline for compliance and inspection should be set based on the required time period for corrective actions in the conservation easement. If the easement does not set out a time period then deadline for compliance an inspection should be set for 90 days after the landowner is given notification, unless staff determines an allowance for more time is appropriate.
- iii. A written letter via registered mail with return receipt requested should be sent following any phone or in person conversation to reiterate the verbal communication. Copies of the written correspondence should be recorded

- in the monitoring folders of the hard and electronic property files ("on file").
- iv. Staff should inspect site 90 days after landowner notification or the length of compliance time set out in the conservation easement to ensure the completion of corrective actions.
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    - a. If corrected actions have been successfully implemented, an acknowledgment note and thank you should be sent to the landowner. Copies should be kept on file.
    - b. If corrective actions have not been successfully implemented, the Conservation Strategies Committee has the option to recommend to the Full Board of Directors that TLC pursue enforcement through more formal legal channels (e.g. arbitration, mediation, litigation). Judicial proceedings should be viewed as a means of last resort.

#### **Potential Violation Remedies**

Ideally, resolution of the violation will result in the restoration of the property to its previolation condition. But this is not always possible. In situations where full restoration is not achievable, the land trust may consider additional remedies, such as mitigation payments, amending the conservation easement to include more land or to enhance the restrictions on the existing land, etc. In proposing such remedies, the land trust must take care to avoid giving the impression that a landowner can buy his or her way out of an easement violation. Any remedy short of full restoration must be carefully scrutinized to make sure that it does not confer impermissible private benefit or private inurement on the landowner. The proposed remedy must be approved by the land trust's Conservation Strategies Committee and full Board before it is offered to the landowner.

#### **Covering the Costs of Enforcement**

The land trust maintains a reserve fund to cover the costs of enforcement and landowners are required to replenish it by reimbursing the land trust for the costs the land trust incurred in enforcing the easement, as provided in the easement deed. This requirement may be waived, in exceptional circumstances, by the land trust's Board of Directors. The land trust also maintains legal defense insurance.

#### Third Party Violations

The land trust regards its relationship with owners of conserved land as a partnership in which both parties seek a common goal: effective stewardship of the conserved land. When third parties trespass on conserved land and damage the resources that the owner and the land trust have conserved, the land trust will work collaboratively with the owner to stop the trespass and have the trespasser remediate any damage caused by his or her actions.

The land trust considers third-party violations on a case-by-case basis when deciding what education measures and remedies are necessary. If the trespasser is unwilling to cooperate with the landowner and the land trust, the land trust may seek a court order (alone or in conjunction with the landowner) compelling the third-party violator to cease activity that violates the terms of the easement and remediate the damage.

#### **Violation Prevention Strategy**

In stewardship of a conservation easement, violation prevention is the best defense. TLC has adopted the following practices to encourage ongoing landowner compliance with conservation easements.

A. Maintain constructive and collaborative relationship with landowners and help them feel connected to TLC through newsletters, invitations to events and outing, landowner recognitions, and informal services such as information on enhancing wildlife habitat, good forestry practices, etc.

- B. Conduct annual monitoring visits and record findings in a written monitoring report. Invite landowners to accompany the monitor on the inspection visit.
- C. Track changes in ownership.
- D. Promptly contact new owners (and work with real estate agents) to ensure that they understand TLC's mission, the easement restrictions of the property, and the concept and purpose of conservation easements in general.
- E. Encourage landowners to ask TLC to review a proposed action whether or not it is contemplated under the terms of the easement in order to avoid a potential violation.
- F. Periodically send landowner a written summary of the terms of their easements every 3-5 years.



# TRIANGLE LAND CONSERVANCY EASEMENT VIOLATION REPORT

Description of suspected violation:
Amount of area impacted by suspected violation:
Qualitative information about suspected violation (e.g. number of trees cut down, length and
width of unpermitted road):

Specific section of easement action is in violation of:	
Considire nation of BDB nation is in consistent with	
Specific section of BDR action is inconsistent with:	
Signed	Date:



April 10, 2025

Greg Bohlen Union Grove Farm 7203 Union Grove Road Hillsborough, NC 27516

Sent via email and paper copy

RE - Third Easement violation Maple View Farm Phase I

Dear Mr. Bohlen,

Triangle Land Conservancy (TLC), who holds a conservation easement on your property, has documented the presence of a third easement violation on site. On March 4, 2025, TLC conducted a site visit to Union Grove Farms to inspect the conservation easement. Bo Howes, Triangle Land Conservancy's Director of Land Protection and Stewardship, West, and Hannah Royal, Stewardship Manager, visited the property and documented that a new road has been completed to the East of the Farming Operations Envelope. A follow-up review of the property using recent satellite imagery confirmed what was viewed on site. The new road connects a previously existing farm road from Meadow View Rd. to another outstanding road violation (November 2023) in the northeast corner of the property.

Section 8 of the Maple View Farm conservation easement states:

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B. (emphasis added)

Additionally, Section 5 of the easement states:

All farming operations shall be conducted in accordance with Best Management Practices promulgated by the State of North Carolina and with a Natural Resource Conservation Service conservation plan that addresses soil and water conservation, pest management, floodplain protection, viewshed protection, nutrient management and habitat protection. This plan shall be updated periodically, and in any event at the time basic agricultural operation on the property changes or at any time ownership of the property changes.

Union Grove Farm has constructed a new road through an existing field to connect existing farm roads on site, one of which is an outstanding violation of the conservation easement terms. **TLC** staff conclude the new road is not permitted under the easement. Furthermore, this road was completed after UGF was instructed to cease all work outside of the farming operations envelope and agreed to comply.

According to TLC's Easement Enforcement Policy, this constitutes a Tier 3 violation. You, as the landowner, are responsible for the closure of the road and restoration of the site to the condition that existed prior to the violation. You have 90 days from receipt of this letter to

comply. After 90 days, TLC will make a site visit to ensure compliance and follow up as needed.

TLC appreciates your cooperation in rectifying this situation. Please contact Matt Rutledge at 919-908-0057 with any questions or concerns.

Sincerely.

Sandy Sweitzer

**Executive Director** 

Triangle Land Conservancy

Enclosures:

Exhibit B of the Maple View Phase I Conservation Easement

TLC's Easement Enforcement Policy

## Photo Documentation









# **EXHIBIT G**



301 Hillsborough Street Suite 1120 Raleigh, NC 27603 ◆ 919.755.8700 
→ 919.755.8800 WWW.FOXROTHSCHILD.COM

ROBIN L. TATUM Direct No: 919.719.1275 Email: rtatum@foxrothschild.com

July 23, 2025

#### VIA E-MAIL & FEDEX

Samuel A. Slater Wyrick Robbins Yates & Ponton LLP 4101 Lake Boone Trail, STE. 300 Raleigh, NC 27607 SSlater@wyrick.com

**Property Owners:** Harper Grace, LLC Eastwest Organics, LLC Meredith Sabye Bandit Farms II LLC Bandit Farms III LLC

Re: **Triangle Land Conservancy – Inspection Notice - Union Grove Farms Easement Property** 

Dear Sam:

I am reaching out on behalf of our client, Triangle Land Conservancy ("TLC"), to provide notice of the yearly conservation easement inspection of the Union Grove Farm's Easement Property (the "Easement Property"). See Section 14 of the Conservation Easement.

TLC plans to inspect the Easement Property on Wednesday, August 6, 2025, beginning at 8:30 a.m. TLC staff will begin at the farm and then proceed to the forested areas across the road. While the landowners and their representatives are welcome to attend, their presence is not required. TLC staff will be accompanied by at least one additional team member. We would request that, should the landowners choose to attend, that communication be respectful and limited to matters related to the routine inspection itself. The inspection visit is not the time or place to discuss the parties' differences or legal disputes between them. Please confirm whether the landowners or any representatives intend to be present.



July 23, 2025 Page 2

As a reminder, please provide TLC with prior notice of any plans or work being done on the easement property that is subject to TLC's discretion or consent pursuant to Section 12 of the Conservation Easement.

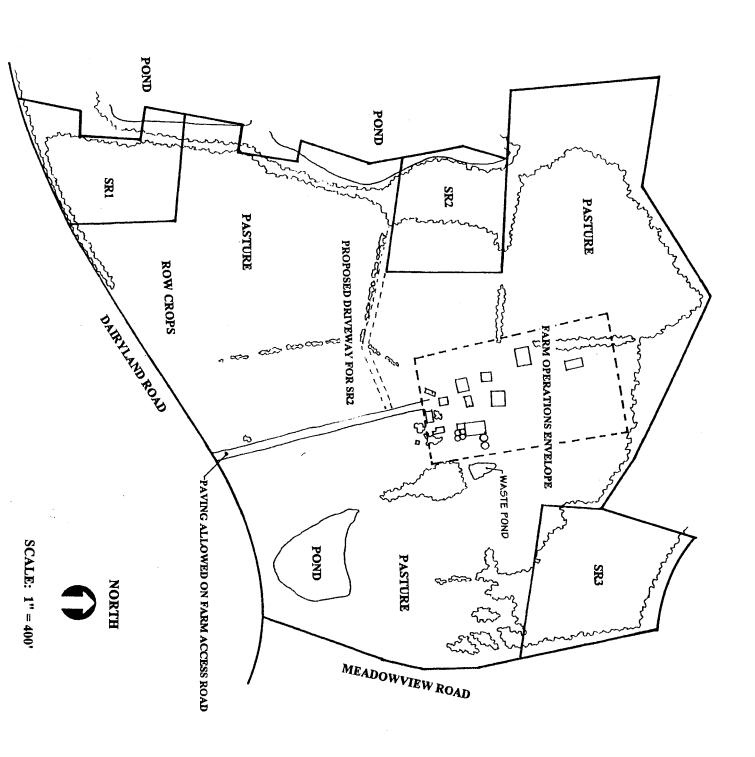
If you have any questions regarding the inspection or the date, please let me know.

Sincerely,

Robin L. Tatum

cc: Bo Howes (rhowes@triangleland.org)
Hannah Royal (hroyal@triangleland.org)
Timberly Southerland (tsoutherland@foxrothschild.com)

# **EXHIBIT H**



# **EXHIBIT I**



434 Fayerteville Street Suite 2800 Raleigh, NC 27601 ▶ 919 755-8700 ➡ 919.755.8800 www.fexrothschild.com

ROBIN L. TATUM
Direct No: 919.719.1275
Email: rtatum@foxrothschild.com

April 10, 2025

#### VIA EMAIL

Cy Stober, Director
Planning and Inspections
Orange County
131 West Margaret Lane, Suite 201
Hillsborough, North Carolina 27278
Cstober @orangecountyne.gov

RE: Triangle Land Conservancy ("TLC") Response to March 21, 2025 Letter from Bob Hornik Re: Union Grove Farm Request for Opinion on Whether its Proposed Concert Venue is "Agritourism" under State Law

Dear Cy:

I am writing to provide TLC's response to Bob Hornik's March 21, 2025 letter requesting that, *inter alia*, you determine the proposed plans for the Union Grove Farm ("UGF") constitute agritourism and are, thus, not subject to Orange County zoning regulations. Per my March 27, 2025, letter to Mr. Hornik, attached hereto as Exhibit 1, we agreed to resubmit to you only the question related to the proposed "amphitheater," which is the subject of a pending Board of Adjustment appeal. Therefore, that is the only part of Mr. Hornik's March 21 letter to which we are responding. It is still our position that your prior interpretation that the proposed "farm stay

<sup>&</sup>lt;sup>1</sup> Mr. Hornik has changed the name of the proposed 2500-seat concert venue from "amphitheater," which was used in his first request and your previous interpretation, to "farm stage." This is another deviation from our agreement with UGF and the County, however, as discussed *infra*, the label is meaningless when the use and proposed activities, arguments and supporting documentation remain the same. It is also a disingenuous attempt to gain some advantage by using an undefined term that includes the word "farm" for the first time during the entire course of this dispute over several years. "Amphitheater" is defined as an "indoor or outdoor place for public contests, games, performances, exhibitions, etc.; an arena, stadium, or auditorium." *See* Dictionary.com. We can locate no definition for "farm stage," so will use the term "concert venue" to cover both.

center" is not agritourism is final and binding,<sup>2</sup> and also that it was correct, but that will not be addressed by this response.

Also, while your November 2024 interpretation concluded that the then-amphitheater did qualify as agritourism, you did not have the opportunity to consider any contrary arguments. Now you do, and when the controlling law and facts are correctly analyzed, the concert venue is neither an agritourism nor a farm use and, thus, should be subject to the Orange County Unified Development Ordinance (the "UDO") and other applicable controlling County regulations.

#### I. Facts and Background.

UGF is an existing farm in Orange County that has asked the County to allow it to develop and operate a 2,500-seat concert venue on two (2) parcels of existing farmland (the "Property"). The Property is zoned Rural Buffer under the UDO and is owned by: Bandit Farms II LLC (owner of PIN: 9851-71-4716); and Bandit Farms III LLC (owner of PIN: 9851-62-2001). The use of the Property for this proposed concert venue - regardless of the name - is not permitted in the Rural Buffer district without a rezoning. This is why UGF has asked it to be classified as "agritourism." Specifically, UGF seeks to be exempt from both the rezoning process and compliance with all other County zoning regulations that would be applicable in any zoning district to a concert venue of this size and intensity.

TLC is a nonprofit entity that exists and operates for conservation purposes. TLC holds a conservation easement over both parcels (PINS: 9851-71-4716 and 9851-62-2001) and most of the proposed concert venue is located on TLC's conservation easement. This is not allowed without TLC's permission. TLC does not consent to the use of the easement for this purpose and that has been communicated to UGF. UGF has nonetheless asked the County not only to allow the concert venue in contravention of the County's zoning regulations, but also in direct violation of TLC's conservation easement rights.

Mr. Hornik attached to both his interpretation requests the same documents to explain UGF's proposal, including a presentation entitled "Union Grove Farm & Inn," which "provides an overview of my client's vision," and includes the "Union Grove Inn Master Plan." The Master Plan has ten (10) components, one of which is the 2,500-seat concert venue. Despite UGF's recent decision to change the reference from an amphitheater to a farm stage, it is referred to multiple times in the attachments to Mr. Hornik's letter as a "concert venue." See, e.g., Letter Attachment A, Union Grove Farm & Inn Presentation, slide 4 ("Future Development: ... Outdoor Concert Venue") and slide 15 ("2500-Person Concert Venue"); and Letter Attachment C, Site Plan, (showing location of "new concert stage;" and "dressing rooms/artist areas"). Prior site plans and

<sup>&</sup>lt;sup>2</sup> We have not received an official position from the County regarding whether your November 12, 2024 determination was final. However, you state in an email to Tom Altieri dated November 1, 2024 (attached hereto as Exhibit 2) that you "expect an appeal, perhaps from both sides." Because only final and binding determinations can be appealed, this email is some indication the County agrees with TLC's position on finality.

<sup>&</sup>lt;sup>3</sup> The Site Plan attached to the Letter is scaled in a way that makes it illegible; however, TLC previously obtained a clear version from UGF, which is attached hereto as Exhibit 3.

depictions provided to TLC have consistently referenced an "amphitheater" and that is the term used in all prior discussions and negotiations between TLC and UGF over the past several years. See also April 2024 article from Chapelboro.com, What's Happening at Union Grove Farm? A New Grape. A Distillery, and A Coffee Trailer - Chapelboro.com, attached hereto as Exhibit 4 (there will be a music venue at UGF to complement the proposed distillery).

With respect to UGF's bases to claim the concert venue is agritourism, Mr. Hornik's letter argues the following:

- It will be "located amidst other structures on the working farm, and one would not be able to miss the rural, agricultural setting as they sit at the open-air venue."
- It "will feature stones originating onsite and other repurposed materials previously used on the Farm;" and
- "[e]very event scheduled at the farm stage will include an educational component describing regenerative farming practices and the benefits derived from them."

Mr. Hornik's letter includes examples of the alleged "educational component" that will accompany each show. These are found at a link to a 4 minute and 39-second-long video entitled "Sheep are key to regenerative vineyards" and a link to a 4 minute and 19-second-long video entitled "UGF Founding Microbiologist." However, based on your previous email to me on November 15, 2024, attached hereto as Exhibit 5, these videos played no part in your decision that the then-amphitheater was a farm use, so we assume you will not consider the videos in this new request. Regardless, playing a pre-recorded video on a farm that could be played anywhere else should be irrelevant to the agritourism determination, as explained in detail *infra*.

According to Mr. Hornik's March 21 letter, UGF's proposal "aligns with other agritourism properties throughout North Carolina;" however, there has never been a decision in North Carolina of which we are aware that classifies a 2500-seat concert venue as agritourism – free from all zoning regulations otherwise designed to protect neighbors and others from adverse impacts and the public health and safety generally. And there is no legal or factual basis for the County to make that unprecedented determination in this case.

# II. The Proposed Concert Venue is Not an Agritourism Use Under N.C. Gen. Stat. § 160D-903.

#### A. Summary of the Applicable Law.

Per state statute, property used for "bona fide farm purposes" is exempt from County zoning regulations. See N.C. Gen. Stat. § 160D-903. The application of this statute is limited to property that is actually being used for a bona fide farm. See Jeffries v. Harnett County, 259 N.C. App. 473, 817 S.E.2d 36 (2018), cert denied, 826 S.E.2d 710 (2019). Land on a farm that is used

<sup>&</sup>lt;sup>4</sup> Mr. Hornik's initial interpretation request included the actual website addresses for these video links; however, the March 21 letter only provides a hyperlink and not the actual website address.

for non-farm purposes is not exempt from zoning regulation by the statute or Orange County's UDO. *Id.*; see also N.C. Gen. Stat. § 160D-903(a); UDO § 1.1.8(A)(the provisions of the UDO still apply to "[a]ny non-farm use of farm property")(emphasis added).

The statute defines a "bona fide farm purpose," which includes traditional farming production and activities, as well as "a building or structure that is used for agritourism." The term "agritourism" is also defined in the statute as:

"any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting."

Certain activities are clearly identified in the statute as agritourism; however, farm stages, amphitheaters and concert venues are not. Furthermore, binding appellate precedent as well as guidance from the UNC School of Government (the "SOG"<sup>5</sup>) are clear that the statutory definition of agritourism cannot reasonably be interpreted to include UGF's proposed concert venue. Again, there is no precedent or legal opinions to support UGF's requested determination.

Jeffries v. Harnett County, supra, set forth the framework to determine whether a use is agritourism and controls here. The issue in Jeffries was whether commercial shooting activities on a bona fide farm such as "shooting towers, sporting clay, skeet and trap ranges, rifle ranges and pistol pits" constituted agritourism, and the court held they did not. The decision was based on the court's analysis of legislative intent. Jeffries held that simply operating a use on a farm does not automatically convert it to a farm use. Instead, the court must use the canons of statutory construction to determine what the General Assembly intended when it defined "agritourism." <sup>6</sup>

Applying those canons, the *Jeffries* court held the proposed uses "even when performed on a bona fide farm, and even when done in preparation for the hunt, were not contemplated by our legislature as types of 'agritourism' activities intended to be shielded from countywide zoning under the statutory farm exemption." *Id.* at 496, 817 S.E.2d at 51. This was because, *inter alia*, "shooting activities that require the construction and use of artificial structures and the alteration of natural land, such as clearing farm property to operate gun ranges, share little resemblance to

<sup>6</sup> Your November 1, 2024 email to Tom Altieri erroneously states that the courts have "repeatedly ruled" counties must interpret agritourism broadly. *Jeffries* correctly holds the courts must instead determine whether the proposed use was intended by the statute drafters to include the requested exemption. *Jeffries* is also proof that the General Assembly does not always react to add uses after an adverse court ruling. *Jeffries* is currently the controlling law on shooting ranges and related activities.

<sup>&</sup>lt;sup>5</sup> SOG publications and opinions are frequently cited as persuasive authority in zoning and land use cases in North Carolina.

the listed rural agritourism activity examples or the same spirit of preservation or traditionalism." *Id.* at 495, 817 S.E.2d at 51. The court defined "rural" as "in, related to or characteristic of the countryside." *Id.* at 493, 817 S.E.2d at 49. The examples in the statute are the types of uses that are rural, and typically occur in a rural setting, and the proposed shooting activities did not meet this test.

SOG Professor Jim Joyce aptly summarized *Jeffries* and the analysis of agritourism question as follows:

- 1. Agritourism uses are those performed on a farm because it derives some value from or requires the farm or natural setting. For example, a shooting range just needs open space—it does not derive any other value from being on a farm or in a natural environment. On the other hand, a game reserve with animals kept on site necessarily must be in a rural setting. In practice, this can be a tricky factor to analyze, but one might consider what value the use derives from being on a farm or in a rural environment. For instance, does it have to be in a rural setting? Does being on a farm add substantially to the experience?
- 2. A use is more likely to be considered agritourism if its risk profile aligns with that of farm uses. Chapter 99E of the General Statutes, where the definition of "agritourism" was found at the time of the Jeffries decision, also defines the "inherent risks of agritourism activity." These risks include "surface and subsurface conditions, natural conditions of land, vegetation, and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations." Thus, as the Jeffries court reasoned, if the risks inherent to a use differ greatly from those related to natural conditions, animals, and farm structures and equipment, it is likely not agritourism. For instance, a shooting range has risks (misfires, accidental shooting, etc.) that differ significantly from the risks of operating a farm.
- 3. Agritourism uses do not require much in the way of artificial structures or alterations to the land. The Jeffries court also described the construction and use of artificial structures or the altering of natural land as making it less likely that a structure or activity would be considered agritourism. So, a hunting preserve, which does not require alteration of the natural environment save for the odd deer stand or duck blind that is relatively easy to remove, is more likely to be an agritourism use. On the other hand, an outdoor shooting range that requires construction of berms or baffles, targets, possibly lights, and a covered firing line substantially alters the natural environment.

See Jim Joyce, "What the heck is "agritourism? Defining a non-farming agricultural use," UNC School of Government (July 7, 2022). Attached hereto as Exhibit 6.

In another SOG article, Professor David Owens, a well-known and often-cited authority in North Carolina land use law, specifically discusses whether an outdoor concert venue, such as an "outdoor amphitheater," is a farm or nonfarm use. *See* David Owens, "*What Does the Farm Exemption from Zoning Regulations Include?*," UNC School of Government (February 17, 2016). Attached hereto as Exhibit 7. Specifically, Professor Owens states:

"If you consider a continuum with "farm purposes" on one end and "nonfarm purposes" on the other, activities on either end of the scale are easy to identify. A horse stable, a commercial greenhouse, and a pond growing fish for sale are farm purposes exempt from county zoning. An asphalt plant, a convenience store/gas station, or a residential subdivision are nonfarm purposes subject to county zoning even if conducted on a qualifying farm. A roadside farm stand is incidental to the farm. A Super Walmart that has a produce section is not. Clearing out the barn fora monthly square dance is likely incidental to farming or agritourism, but an outdoor amphitheater with regular large concerts is a nonfarm commercial activity subject to zoning."

Id. (emphasis added).

#### B. Application of North Carolina Law to UGF's Proposed Concert Venue.

There are multiple reasons that the proposed concert venue should not be classified as agritourism, which are explained below:

First, as the *Jeffries* court held, the concert venue is not agritourism simply because it is located on a bona fide farm. If the location of a use among historic farm buildings is all that is required for a use to be considered agritourism, then an asphalt plant or a Super Walmart, could be located on farm property free from local zoning regulations. *See D. Owens, supra; see also Jeffries v. Harnett County.* Not only would this lead to an illogical and potentially dangerous result, but this would also render meaningless the distinction in the state statute between farm and nonfarm uses. Simply put, whether or not a proposed use will be located in the farm setting and among the historic farm buildings, is not the test to determine whether a use meets the definition of agritourism. Instead, the determination is made by reviewing the actual use proposed, the statutory definition of agritourism, and an analysis of legislative intent, including whether the proposed use is a traditionally rural versus an urban use. *See also, e.g., Hammock & Assoc. v. Washington County*, 89 Or. App. 40, 747 P.2d 373 (1987)(proposed use of rural land for an amphitheater was "urban" rather than "rural," and was thus subject to land use regulation because of its large capacity for people and the substantial increase in traffic).

Nonetheless, each of Mr. Hornik's arguments attempt to convert a concert venue that could be located in many different settings to be agritourism just because it is on a farm. This was one of the arguments expressly rejected in *Jeffries*. Concert venues have no traditional connection to farming and are not historically "rural" activities. Instead, they are often located in highly populated urban areas across the state. One example is the Red Hat Amphitheater in downtown Raleigh, which has 1,800 fixed seats, plus additional open seating areas. In 2024, Red Hat hosted 50 concerts with 280,687 attendees. There is no reason a new concert venue larger than Red Hat should be exempted from zoning regulations, which are intended to protect the impacts of intense uses and the public health and safety. There are simply no agritourism uses that have been upheld

<sup>&</sup>lt;sup>7</sup> See <a href="https://www.bizjournals.com/triangle/news/2025/03/03/red-hat-amphitheater-economic-impact-33-million.html">https://www.bizjournals.com/triangle/news/2025/03/03/red-hat-amphitheater-economic-impact-33-million.html</a>. Attached hereto as Exhibit 8.

by the North Carolina courts to date that are analogous to the proposed concert venue. The closest is *Jeffries* which rejected the agritourism designation.

UGF's arguments that sitting outside at a concert venue on a farm to hear music and which features "stones" and other repurposed materials converts an otherwise nonfarm use to agritourism should be rejected out of hand. Statements by Mr. Hornik such as the concert venue "will demonstrate the pragmatism of historic farm life," are nonsensical and belie UGF's own description of the use which is that of a traditional large concert venue. The proposed music venue does not derive any value from, or require the use of, the farm setting. See Jeffries, supra (agritourism uses are those performed on a farm because it derives some value from or requires the farm or natural setting).<sup>8</sup>

Additionally, Mr. Hornik's March 21 letter includes examples of "North Carolina bona fide farms supported by agritourism;" however, this is misleading because, as explained herein, non-farm uses may be located on bona fide farms if they comply with local zoning regulations. Mr. Hornik's letter does not provide any evidence to support his allegation that the other locations listed are bona fide farms, or to show that concert venues akin to the one proposed here were allowed as farm uses exempt from local zoning regulations. At least one of the examples provided in Mr. Hornik's letter is a portable stage, which is typically a temporary use, and others had very small stages. See images attached hereto as Exhibit 9.

Furthermore, the statements in Mr. Hornik's letter made to connect the concert venue to agritourism do not change the commonsense fact that the proposed use is not agritourism. For example, stating the venue will "feature stones originating onsite and other repurposed materials previously on the Farm" does not somehow convert the construction of a new concert venue to a farm purpose. Likewise, offering to show a four-minute video at some point during a concert event to highlight individuals who work on a farm does not change the fact that the amphitheater is serving as a concert venue. See, e.g, Site Plan. As Professor Owens succinctly stated, "an outdoor amphitheater with regular large concerts is a nonfarm commercial activity subject to zoning." See David Owens, supra.

Second, the risk profile of a 2,500-seat concert venue is inherently different than the risk profile of a farm use. See Jeffries (a use is more likely to be considered agritourism if its risk profile aligns with that of farm uses). As you determined previously in your November 2024 decision, absent the agritourism exception, the proposed use is an "Assembly Use (Theater, Use 84)," which "is not permitted in Rural Buffer zoning districts." (emphasis added). This fact alone shows the risk profile of the concert venue is different than the risk profile of a true farm use, as one is allowed at the Property and the other is not.

-7-

<sup>&</sup>lt;sup>8</sup> It should also be noted that the overall project includes other components, such as the Center for Regenerative Agriculture and the 2,000 square foot pavilion, both of which offer events and education related to the farm use. These components further amplify the difference between an agritourism use and the proposed concert venue. The inclusion and purpose of these components also demonstrate UGF's claim that playing videos at a concert venue to convert it to agritourism is a ruse, because farming education is already properly conducted elsewhere on UGF.

The difference in the risk profile is also evident from the traffic that will be generated by the proposed amphitheater. To add perspective, Union Grove Church Road, which is adjacent to the Property, has an average daily trip generation of fifteen vehicles a day, with peak hours seeing less than five vehicles. This type of trip generation is typical of a rural farm. Our initial investigation shows that the concert venue would generate an average of 550 vehicles per day.

The risk profile difference is also demonstrated by the noise that will be generated by the proposed use. According to the National Institute of Health, outdoor music concerts average 94-110 decibels of sound. The Orange County UDO sets a limit of 50 decibels between 7 a.m. and 7 p.m. and 45 decibels between 7:00 p.m. and midnight. These are all concerns that traditionally are evaluated when a proposal of this size and magnitude is considered, which have not been addressed here.

Third and finally, pursuant to *Jeffries*, agritourism uses do not require much in the way of artificial structures or alterations to the land. The concert venue likewise fails this test. Simply using "stones originating onsite" and "other repurposed materials previously used on the farm," does not change the fact that the concert venue will require the construction of a new venue with a new stage, 2,500 seats, restrooms, and backstage dressing rooms and artist areas. These are all artificial structures and alterations to the land, similar to the proposed uses in *Jeffries*.

Classifying this concert venue as agritourism also raises public safety and welfare concerns. Zoning regulations, as well as Building Code regulations, are enacted to ensure the public health, safety and welfare. The proposed concert venue would bring thousands of public visitors and require, among other things, the coordination of on-site traffic and parking and maneuvering vehicles associated with performances and stage set-up. Zoning and building code regulations are intended to address issues such as traffic, ingress and egress, life safety measures (including exit signs and lighting in the event of a power outage or emergency), parking spaces, ensuring appropriate spacing between structures, and buffering uses between neighboring properties. Classifying the concert venue as agritourism would allow the operation of a use with significant impacts to proceed without complying with any of these measures, which ordinarily provide safeguards to ensure appropriate and safe development.

In sum, a determination that UGF's proposed concert venue is an agritourism use and, thus, exempt from zoning regulation is not supported by any facts or law and we respectfully request that you agree with TLC's position. The additional information we have submitted establishes that exempting this use from the UDO is contrary to the intent of the General Assembly in providing the agritourism exception and will likely cause significant adverse impacts to the surrounding neighbors and others.

If you require further information, please let us know, and we appreciate your consideration.

Sincerely,

Robin L. Tatum

il. Tath

### Attachments.

cc: Sandy Sweitzer (via email)

Robert Howes (via email) Robert Hornik (via email) Catherine Hill (via email)

LeAnn Nease Brown (via email)



434 Fayetteville Street Suite 2800 Raleigh MC 27601 € 919,755,8700 € 919,755,8800 asswernsenthschild com-

ROBIN L. TATUM Direct No: 919,719,1275 Email: rtatum@foxrothschild.com

March 27, 2025

#### VIA EMAIL

Robert E. Hornik, Jr., Esq. 1526 E. Franklin Street, Suite 200 Chapel Hill, North Carolina 27514 hornik a broughlaw firm.com

> Re: Union Grove Farm – Request for Determination Re: Whether Proposed

Amphitheater is "Agritourism"

#### Dear Bob:

We were perplexed and surprised by your March 21 letter to Cy Stober requesting a decision as to whether all of the "current and proposed activities at Union Grove Farm" qualify as agritourism under N.C. Gen. Stat. §160D-903.

Our client Triangle Land Conservancy ("TLC") and neighbors, Susan Worthy, Sara Howard and Scott Oglesby (represented by LeAnn Brown) appealed Mr. Stober's November 11, 2024 determination that the amphitheater proposed by Union Grove Farm ("UGF") on its proposed plans was "agritourism" under N.C. Gen. Stat. § 160D. TLC also appealed Mr. Stober's characterization of the determination as an "advisory" opinion.

As you know, the parties' attorneys met on March 4 to discuss the upcoming March 12 hearing. To streamline the issues and avoid litigation on the finality question at the BOA, we jointly agreed to allow Mr. Stober to again consider the "amphitheater" question under certain terms.

The email memorializing our Agreement, which was prepared and sent by you, provides as follows:

Thanks for the meeting this morning. This email will confirm the scheduling agreement reached last week regarding the appeal from Cy Stober's advisory opinion concerning the proposed amphitheater at Union Grove Farm. The parties agree to this process to avoid additional costs and expenses from litigating procedural matters. The appellants have not



waived their arguments that the Nov 12, 2024 letter was a final, binding and appealable decision nor have they waived any other arguments related to their filed appeals, nor have my clients waived their arguments to the contrary.

Based on our discussion, we agreed, first, that we to jointly request that the Board of Adjustment hearing scheduled for Wednesday March 12, 2025 be continued until June 11, 2025 (the Board's regular meeting date in June); my client (Union Grove Farm and its constituent LLC's) will submit a request to Cy Stober for a final determination regarding the amphitheater proposed as part of the agritourism use of the Farm by March 21, 2025. The applicants/appellants (your clients) will submit any objection/input they may have regarding my client's new submission by April 11, 2025; Cy Stober will make a determination identified as final and binding on my client's new submission regarding the amphitheater issue by May 1, 2025; then any aggrieved person/party may appeal from that final and binding determination in accordance with Chapter 160D and the Ordinance provisions on appeals of final and binding determinations. That appeal, if any, and the original appeals would be placed on the Board of Adjustment's meeting agenda for hearing on June 11, 2025.

### (emphasis added).

Based upon all counsels' agreement, as memorialized in your email, we expected a request related solely to a proposed amphitheater use at UGF. The March 21 letter violates our agreement in most every respect. We agreed to a new request related *only* to the amphitheater. Our agreement was intended to bring the narrow amphitheater issue to the board of adjustment and not to provide your client with a second "bite at the apple" to obtain a different decision on a question we contend has already been finally decided and was not appealed, *i.e.*, whether the proposed "farm stay center" is "agritourism." *See*, *e.g.*, *S.T. Wooten Corp. v. BOA of Town of Zebulon*, 210 N.C. App. 633, 711 S.E. 2d 158 (2011). We did not and would never have agreed to postponing the hearing or allowing a new request on determinations not appealed. We were convinced to agree to a clarifying process for efficiency before the Board of Adjustment. Our agreement has not been honored.

Since you are not following the agreement reached, the Appellants will proceed with the initial appeals filed by our clients in December 2024 and ask the BOA to place those appeals only on the June 11, 2025 agenda. It is our position that the decision appealed is final and binding. See In re: Appeal of the Society for the Preservation of Historic Oakwood 153 N.C. App. 737, 571 E.E. 2d 588 (2002); Meier v. City of Charlotte, 206 N.C. App. 471, 698 S.E.2d 704 (2010). If we prevail on the initial appeal, your second interpretation request will be moot. As such, there is no reason to hear a second appeal if we prevail on the first.

We will provide a response to the portion of your second request in the March 21 letter that changes the label of the amphitheater to a "farm stage" by the agreed upon April 11, 2025 deadline. Our responses will be to that issue alone. We ask Cy Stober (copied) to await our



response on that limited matter before responding and request his response be limited to the agreed upon amphitheater (now "farm stage") only until our appeals are heard and decided.

While I am signing this letter, please consider it a collective response from LeAnn on behalf of her clients and me on behalf of mine.

Sincerely,

Robin L. Tatum

RLT

cc: Cy Stober (via email cstober@orangecountync.gov)
James Bryan (via email jbryan@orangecountync.gov)
LeAnn Nease Brown (via email lnease@brownandbunch.com)
Catherine Hill (via email catherinehill@foxrothschild.com)

 From:
 Cy Stober

 To:
 Tom Altieri

 Cc:
 Perdita Holtz

Subject: RE: Heads up - Farm use exemptions
Date: Friday, November 1, 2024 8:45:00 AM

Attachments: <u>image002.png</u>

#### Thanks Tom!

Yeah, she I spoke at the Legion meeting – she is very interested in the Union Grove Farm (Greg Bohlen, former Mapleview Farm) plan to have an amphitheater and hotel as bona fide farm uses. My advisory opinion is under review by James but I hope to issue it in the next week or two. I expect an appeal, perhaps from both sides of the issue.

I can only relay what the School of Government and what James/John have provided as guidance on this matter: the courts have repeatedly ruled that counties are to interpret this statute broadly but that a nexus of the farm use and the proposed use must be demonstrated by the farmer/landowner vis a vis "agritourism". Any time the courts support a reading that excludes "agritourism" uses, the General Assembly seems to revise the language to be even broader and more vague. I am analyzing proposed uses with that lens.

Thanks again for the heads up!

Cy Stober

Planning & Inspections Director

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From: Tom Altieri <taltieri@orangecountync.gov>

Sent: Friday, November 1, 2024 8:24 AM

**To:** Cy Stober <cstober@orangecountync.gov> **Cc:** Perdita Holtz Cpholtz@orangecountync.gov>

**Subject:** Heads up - Farm use exemptions

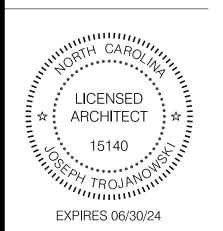
#### Hi Cy,

I saw Bonnie Hauser at a trunk or treat event hosted by United Voices of Efland. She asked me if I new anything about a forthcoming written position around farm exemptions. I tossed out a couple ideas of what I thought she may have been referring to but I was wrong on both counts. Apparently, there's an opinion among some that feel there may have been an overly liberal application of land uses or activities determined to be farm exempt. It wasn't a long conversation and she was friendly in her inquiry. She said she would be reaching out to you.



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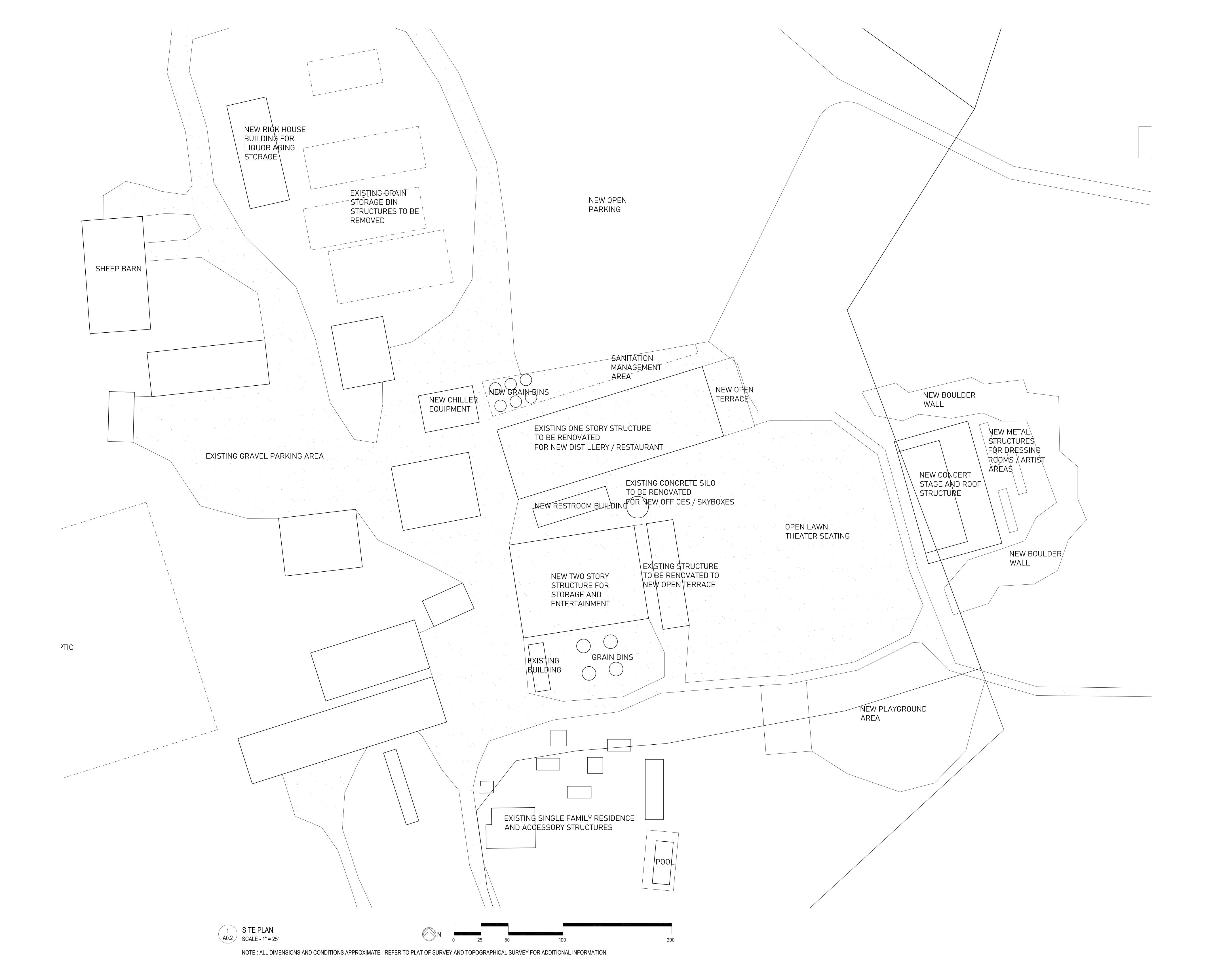
FOR PERMIT ONLY - NOT FOR CONSTRUCTION
SCALE: AS NOTED

SHEET TITLE:

PROPOSED SITE
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SHEET NUMBER:

A0.



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# What's Happening at Union Grove Farm? A New Grape, A Distillery, and A Coffee Trailer

Posted by Brighton McConnell | Apr 16, 2024 | Business, Environment, Instagram



00:00

When the Maple View Farm and Milk Company announced in 2021 it was shutting down, many people mourned not being able to get fresh dairy products from the rural Orange County business. But what would become of the hundreds of acres of farmland?

As customers have visited the still-operating Maple View Ice Cream store, they've been taking notice of the change in scenery – as the 1,250 acres that used to have either cows or corn for feed are now filled with grapevines and sheep.

The former Maple View land is now Union Grove Farm, a major investment from a local venture capitalist who has a grand vision for the area. And while many people's initial



questions may be about the different crops and products it is producing, another element is *how* the farm is producing them.

\_\_\_\_

Sheep cover a plot of land with tall grass, munching away as they stand between hundreds of stakes and lines for eventual grape vines. The sheep are moved – plot by plot across the various pieces of land – nearly every day as part of a rotational grazing system, which is a method known for being more eco-friendly than gas-powered mowers.

Union Grove Farm majority owner Greg Bohlen says it's just one way his farm is approaching things differently than many others. Bohlen, who is known for running Union Grove Venture Partners and for having early investment in businesses like Beyond Meat and Poshmark, is also a fifth-generation farmer. But he's taking an approach he says is more sustainable, environmentally friendly, and – frankly – palatable than traditional methods.

"We are the first certified regenerative table grape farm in the United States," says Bohlen, "which we are proud of. We don't use any of the 'cides': no pesticides, herbicides, insecticides, or fungicides."

As its name suggests, regenerative farming aims to restore or improve the quality of soil where its crops are grown. For Union Grove Farm, that means using cover crops and treating the soil with its own vermiculture compost mix. Bohlen said his business partnered with Weaver Street Market locations and the Orange County Schools district to collect food waste, which is then given to hundreds of thousands of worms that create a nutrient-rich mix later sprayed onto the vineyard fields.

"Organic' has been a term that's been widely used," he says, "and the problem with organic foods is you're only concerned with the inputs, you're not concerned with the outputs of what the food looks [and tastes] like. With regenerative [farming], one of the things that we've learned is that the best predictor of nutrient quality of the things that grow [is] the density of the biological activity under the surface of the soil.

"So," Bohlen continues, "the more biological activity, the higher the nutrient density."

To better share understanding of regenerative farming, the Union Grove Farm team opened and operates the Center for Regenerative Agriculture on its property. The space — repurposed from the Maple View Agricultural Center — is where farmers, soil experts, and community members can learn more about the process and its benefits for crops, consumers, and the climate. Bohlen's partner, Meredith Sabye, co-founded the center and helps inform its variety of visitors while connecting with agricultural leaders.

The style of farming is not the only ambitious venture Bohlen is making with Union Grove Farm. The vineyard's goal is to grow a new type of table grape developed by a Hillsborough resident and former grape breeder for N.C. State, Jeff Bloodworth. The fruit – for which Bohlen owns the license and says does not yet have an official name – is a thin-skinned, seedless muscadine, with the benefits of grapes known for juices but easier to eat. Bohlen says Union Grove planted about 8,000 vines in 2023, and it expects to plant 8,000 a week this year.



Along the fence posts separate Dairyland Road from Union Grove Farm's vineyards, signs about regenerative farming methods are posted to inform those traveling by.

With Union Grove Farm operating in a voluntary agricultural district, Bohlen says he wants this venture to promote agricultural tourism in many ways. His business aspirations across the 1,250 acres are evident when looking at operations tangential to the farm. Union Grove sells lamb meat from its sheep herd and partners with local restaurants. An 1800s style cabin constructed with modern amenities on the property is available to rent on Airbnb, and Bohlen's son constructed and runs a wedding venue a mile from the main farm house.

Up next, the business is looking to establish a distillery on site. After partnering with Steven Raets of Sonark Media to buy equipment off the closing Top of the Hill distillery, Bohlen is creating a team and a space he hopes will be open to customers by the fall. It will make brandy, as well as other amber and white liquors, and have a tasting room with limited restaurant service – for now. The founder says he hopes to scale it up further, adding more food options and a beer garden with a second story accessible by the silo with the Union Grove Farm mural.

"We had to first take an open-stall cow barn and completely rebuild [it]," says Bohlen of the distillery facility. "We brought in windows from Apple in Cupertino when they were doing their demo of one of their buildings. The windows are 60 feet long by 9 feet high, and it gives the building a very distinct look. But it also gives you a tremendous view of the vineyard and the space."



The distillery equipment installed at Union Grove Farm, some of which came from Top of the Hill's distillery after it shut down in February 2023.

Another element of the vision is a potential performance venue right outside the distillery, with artists playing against a backdrop of boulders dug up from the farmland and grapevines in the distance. While that aspect of the project is a long way off from

being official, Raets says it's hard not to get excited about its prospects for attracting artists and audiences.

"It is a natural marriage, almost, to have the scenery that Greg has created together with the music – potentially – and together with the distillery," he says. "The fact you can eat something, take your kids out on a Saturday, and just hang out. Both the kids can be entertained and the parents – and that's a no-brainer. There's not a lot of stuff like that out here."

And, like everything else with Union Grove, Bohlen says his distillery will be completely regenerative as well, including the local grains.

"We would be the first fully regenerative distillery in the United States," he describes. "Again, when you taste what's produced, there's a jaw-dropping difference in the quality of the alcohol."

Bohlen understands that the Maple View Ice Cream store is still a major part of day-to-day tourism to the area – and was how he discovered the farmland after moving to Chapel Hill in the late 1990s. With that, he says Union Grove Farm is regularly in touch with the shop to make sure people are well and happy. The latest step in the relationship is coming soon, which Bohlen jokingly credits to Sabye's love of coffee.

"We are putting a mobile coffee trailer up across from the ice cream store," he says, which will be called Blue Heeler Coffee. "People will be able to come and hopefully be able to get delicious Larry's Coffee from 7 to 10 in the morning. We're trying to provide more utilization of the space, have more reasons for people to come and enjoy a little bit of time in the country."

And with more people visiting the farmlands west of Chapel Hill and Carrboro, Bohlen says he hopes they take away more than just great products from what Union Grove Farm has to offer.

"The only reason I'm doing any of this," he says, "is I want consumers to begin to understand and hear the word 'regenerative.""

Editor's Note: An earlier version of this article incorrectly said Union Grove Farm is operating in a building envelope approved by the Triangle Land Conservancy. That exemption is still being negotiated and the line has been removed.

Featured photo via Meredith Sabye/Union Grove Farm.

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2 Comments



Vikki Cates on April 16, 2024 at 10:26 am

Maybe look at the other side of businesses like these out in out countryside. What about the music venue noise and the firing range and all that is associated with that being near to neighborhoods.

REPLY



Abby Normal on February 26, 2025 at 5:58 pm The only reason he is doing this is to make money, not educate people, get a clue!

REPLY

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From: Cy Stober <cstober@orangecountync.gov>

Sent: Friday, November 15, 2024 1:11 PM

**To:** Tatum, Robin L. <RTatum@foxrothschild.com>; Southerland, Timberly

<TSoutherland@foxrothschild.com>

**Cc:** James Bryan <jbryan@orangecountync.gov>

**Subject:** [EXT] RE: Triangle Land Conservancy - Union Grove Farm 2/2

Hi Robin,

I did not review the videos in crafting the opinion on the amphitheater land use. The commitment to having "[e]very event scheduled at the amphitheater will include an educational component describing regenerative farming practices and the benefits derived from them," was considered sufficient and the expectation is that the final video will fulfill that commitment. As stated, the primary focus of the opinion is largely based on "...Attachments C, E, and F show[ing] structures, seating, and a stage fully integrated among the historic farm buildings and among the working farm operations," noting that this layout and location relative to "...the historic farm buildings is critical to this opinion."

Please let me know if you have any further questions or concerns.

Regards,

Cy Stober Planning & Inspections Director

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(919) 430-0446 (Cell) (919) 245-2592 (Direct)

E-mail: <a href="mailto:cstober@orangecountync.gov">cstober@orangecountync.gov</a>

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From: Tatum, Robin L. < <a href="mailto:RTatum@foxrothschild.com">RTatum@foxrothschild.com</a>>

**Sent:** Friday, November 15, 2024 12:30 PM

**To:** Cy Stober < cstober@orangecountync.gov >; Southerland, Timberly

<TSoutherland@foxrothschild.com>

Subject: [EXTERNAL MAIL!] RE: Triangle Land Conservancy - Union Grove Farm 2/2

Thank you Cy. There are video links on page 5 of Bob's letter that – when we try - do not bring up the "samples" that the letter references. Can you please provide us with the actual links that the Country reviewed in making its decision? Thanks.

Robin L Tatum
Partner
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tsoutherland@foxrothschild.com

**From:** Cy Stober <<u>cstober@orangecountync.gov</u>> **Sent:** Friday, November 15, 2024 12:01 PM **To:** Southerland, Timberly < <a href="mailto:TSoutherland@foxrothschild.com">TSoutherland@foxrothschild.com</a>> Cc: Tatum, Robin L. < <a href="mailto:RTatum@foxrothschild.com">RTatum@foxrothschild.com</a>> **Subject:** [EXT] RE: Triangle Land Conservancy - Union Grove Farm 2/2 **From:** Southerland, Timberly < TSoutherland@foxrothschild.com > **Sent:** Friday, November 15, 2024 11:45 AM **To:** Cy Stober < <a href="mailto:cstober@orangecountync.gov">cstober@orangecountync.gov</a>> **Cc:** Tatum, Robin L. <<u>RTatum@foxrothschild.com</u>> Subject: [EXTERNAL MAIL!] RE: Triangle Land Conservancy - Union Grove Farm Good morning Cy, We appreciate you sending over this advisory opinion for Union Grove Farms. Will you please send us the materials that were submitted by the applicant that you used to draft your opinion. It seems that some application materials have been updated since our last public records request. Thanks, Timberly **Timberly Southerland** Associate 434 Fayetteville Street **Suite 2800** 

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From: Cy Stober <<u>cstober@orangecountync.gov</u>>
Sent: Tuesday, November 12, 2024 4:32 PM
To: Haynes, Robin <<u>RHaynes@foxrothschild.com</u>>

**Cc:** rhowes@triangleland.org; ssweitzer@triangleland.org; hroyal@triangleland.org;

mrutledge@triangleland.org; Tatum, Robin L. < RTatum@foxrothschild.com >; Southerland, Timberly

<<u>TSoutherland@foxrothschild.com</u>>; James Bryan <<u>ibryan@orangecountync.gov</u>>

**Subject:** [EXT] RE: Triangle Land Conservancy - Union Grove Farm

Robin,

Please find the attached Orange County Planning Advisory Opinion for Union Grove Farm and its proposed uses and activities attached to this email.

Please let me know if you have any questions or concerns.

Sincerely,

Cy Stober

Planning & Inspections Director

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(919) 430-0446 (Cell)

(919) 245-2592 (Direct)

E-mail: <a href="mailto:cstober@orangecountync.gov">cstober@orangecountync.gov</a>

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**From:** Haynes, Robin < RHaynes@foxrothschild.com>

Sent: Tuesday, August 6, 2024 2:52 PM

**To:** Cy Stober < <a href="mailto:cstober@orangecountync.gov">cstober@orangecountync.gov</a>>



## Coates' Canons NC Local Government Law

## What the heck is "agritourism"? Defining a non-farming agricultural use

**Published: 07/07/22** 

**Author: Jim Joyce** 

N.C. General Statute 160D-903(a) prevents zoning ordinances in county and municipal extraterritorial jurisdiction from affecting "property used for bona fide farm purposes." This statute also blocks zoning regulations in these same areas from applying to buildings or structures used for "agritourism." But what is agritourism and what uses does it include? Halloween hayrides? Campsites? Shooting ranges? This blog reviews the factors one can use in evaluating whether a use should be considered "agritourism."

Before we dive in, it is important to keep in mind the limits of this exemption: <u>G.S. 160D-903</u> only blocks *zoning* regulations from affecting property used for bona fide farm purposes. Other local regulations, such as nuisance ordinances, sound regulations, subdivision ordinances, and the like *still apply* to bona fide farms and agritourism uses, wherever they might be located. Zoning ordinances also still apply to farm-related property inside municipal limits and property that may be on a farm but is not being put to farm use. For more on other aspects of zoning and agricultural uses, please see <u>David Owens's April 2020 summary of zoning and agricultural uses</u>, or <u>Adam Lovelady's recent post</u> on the related issue of housing for agricultural workers.

#### The Rules

Most bona fide farm uses are no surprise – the growing and producing of plants, animals, and dairy are all bona fide farm uses that qualify property for protection from county and extraterritorial zoning. Others might be less obvious but nonetheless involve growing and maintaining plants and animals, such as horticulture (raising house plants), silviculture (tree farming), and aquaculture (fish farming).

As mentioned above, the zoning protection of G.S. 160D-903(a) also applies to "a building or structure that is used for agritourism." The term "agritourism" is defined as "any activity carried

out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions." The statute explicitly includes as buildings used for agritourism those that are used for "weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting."

There are some agritourism activities that should fall squarely within this definition if they occur on a bona fide farm, such as corn mazes, horsemanship demonstrations, and nature walks; these activities allow members of the public to enjoy "rural activities" and take place on a farm because of its farm or rural setting. There are other less-obvious uses that are explicitly included, such as the old horse barn that is now used for weddings and corporate events. But what about the situations that are not so clear, like camping areas, rodeos, or even tractor pulls?

The statutes do not give us any other clues, but the North Carolina Court of Appeals provided some additional guidance through its decision in the case of *Jeffries et al v. Harnett County*, 259 N.C. App. 473, 817 S.E.2d 36 (2018), *cert denied* 826 S.E.2d 710 (2019). In that case, the court analyzed what factors might make shooting-related uses, such as a shooting range, sporting clays, or a game reserve, more or less likely to be considered agritourism.

The *Jeffries* court identified three main factors that contribute to whether a use can be considered agritourism and exempted from the application of zoning regulations:

- 1. <u>Agritourism uses are those performed on a farm because it derives some value from or requires the farm or natural setting</u>. For example, a shooting range just needs open space—it does not derive any other value from being on a farm or in a natural environment. On the other hand, a game reserve with animals kept on site necessarily has to be in a rural setting. In practice, this can be a tricky factor to analyze, but one might consider what value the use derives from being on a farm or in a rural environment. For instance, does it *have* to be in a rural setting? Does being on a farm add substantially to the experience?
- 2. A use is more likely to be considered agritourism if its risk profile aligns with that of farm uses. Chapter 99E of the General Statutes, where the definition of "agritourism" was found at the time of the *Jeffries* decision, also defines the "inherent risks of agritourism activity." These risks include "surface and subsurface conditions, natural conditions of land, vegetation, and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations." Thus, as the *Jeffries* court reasoned, if the risks inherent to a use differ greatly from those related to natural conditions, animals, and farm structures and equipment, it is likely not agritourism. For instance, a shooting range has risks (misfires, accidental shooting, etc.) that differ significantly from the risks of operating a farm.

3. <u>Agritourism uses do not require much in the way of artificial structures or alterations to the land</u>. The *Jeffries* court also described the construction and use of artificial structures or the altering of natural land as making it less likely that a structure or activity would be considered agritourism. So a hunting preserve, which does not require alteration of the natural environment save for the odd deer stand or duck blind that is relatively easy to remove, is more likely to be an agritourism use. On the other hand, an outdoor shooting range that requires construction of berms or baffles, targets, possibly lights, and a covered firing line substantially alters the natural environment.

#### **Evaluating possible agritourism uses**

Based on the factors listed in the statute and used by the *Jeffries* court, when evaluating a potential agritourism use, consider the following:

- 1. Does the activity allow members of the general public to view or enjoy activities that are necessarily rural in nature (such as farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions)?
- 2. Is the building or structure used for weddings, receptions, meetings, demonstrations of farm activities, meals, and similar events?
- 3. Is the activity taking place on the farm *because* of its farm or rural setting in other words, is there a reason this activity should be or needs to be on a farm or in a rural setting, besides just needing a lot of space?
- 4. Are the risks inherent to the activity similar to risks of working on a farm?
- 5. Does the use require no or little alteration of the farm and natural environment?

The more you answer "yes" to these questions, the more likely it is that the use you are evaluating is an agritourism use.

## What if there's no farm to go with the agritourism?

Some rural properties are not in farm use but provide agritourism services. Imagine, if you will, a barn. When the land on which it sits was used for raising crops and animals, that barn was an important part of the bona fide farm use of the property. Now, the property is not used as a farm, but the barn is rented out for special events. All of the property's "farm" income comes from agritourism. Does it still qualify for the zoning exemption?

One might think that, since farm property used for agritourism tends to be protected from the application of zoning regulations, it would be protected even as its own use. However, if we look closely at the statutory language, it would appear that agritourism may need some other form of agriculture on the property to maintain its protected status.

G.S. 160D-903(a) exempts agritourism uses from being affected by county or extraterritorial zoning "if the building or structure is located on a property that (i) is owned by a person who holds a qualifying farm sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a) or (ii) is enrolled in the present-use value program pursuant to G.S. 105-277.3." This language suggests that, if there is no sales tax exemption for the property and it is not in the present use valuation program (for property tax purposes), the agritourism protections do not apply. Further, the definition of "agriculture" in G.S. 106-581.1, which is referenced in G.S. 160D-903(a), describes agritourism as an "activit[y] incident to" farming or farm operation (emphasis added). This language likewise suggests that there must be a farming use to which the agritourism use is incident, or else it might not be considered *agri*tourism.

#### Losing agritourism status

So what happens to the property when it is no longer used as a bona fide farm? G.S. 160D-903 refers to property that is "used for bona fide farm purposes" in the present tense. Presumably, this means that once the property is no longer used for a bona fide farm use, it would be subject to the local zoning code.

More precisely, the statute refers to "building[s] or structure[s]...used for agritourism," so if a building or structure ceases to be used for agritourism, it will no longer be shielded from county and extraterritorial zoning. In addition, once the building or structure is classified as a bona fide farm purpose, any "[f]ailure to maintain the requirements of this subsection" for the next three years makes the building or structure subject to zoning regulations. The statute does not specify exactly which "requirements of this subsection" must be met, but the preceding sentence states that agritourism buildings and structures must be on property that holds a sales tax exemption or present-use property tax valuation. Presumably it is special sales or property tax status (and documentation of the same) that must be maintained for three years from the structure's classification as a bona fide farm purpose.

Once a building or structure loses agritourism or bona fide farm zoning protection, does the use have to come into compliance with the zoning code immediately, and does a structure immediately need to be altered to comply with zoning regulations? Not necessarily. Once the zoning ordinance applies, the jurisdiction's regulations on nonconformities will most likely apply (for more on nonconformities, see this blog post from David Owens). In most cases, nonconforming uses that

were legally established (such as bona fide farm uses and attendant agritourism uses) can remain as long as they do not change to another nonconforming use or expand the nonconforming use of the property. Hence, as long as the use of the property was legally an agritourism use on a working farm, it will likely be allowed to continue under certain conditions.

#### **Takeaways**

Even with the additional clarity provided by legislative tweaks and by the *Jeffries* case, whether a given use could be considered "agritourism"—and thus whether it can avoid zoning regulations—will depend a great deal on the facts of each individual situation: does the activity take place on a farm? Is it listed among or like one of the "agritourism" uses in the statutes? Does it need to be in a farm or rural setting? Does it have risks similar to those for farming activities? To what degree does it require altering the natural environment? All of these factors will play into whether a particular use should be considered an agritourism activity. Planning practitioners should consider these factors in evaluating potential agritourism uses and use their best judgment, at least until the courts take up the question again...

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Coates Canons

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## Coates' Canons NC Local Government Law

## What Does the Farm Exemption from Zoning Regulation Include?

**Published: 02/17/16** 

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**Author: David Owens** 

When the legislature in 1959 extended zoning powers to counties, it was determined that farming should not be subject to county zoning regulation. Cities had been using zoning since 1923 to address "urban" issues such as the compatibility of adjacent land uses. Given the rural nature of unincorporated areas of counties in 1959, along with the considerable political influence of the agricultural community, exempting farming from county zoning regulation was a relatively noncontroversial policy choice.

That policy choice still applies and is still relatively noncontroversial. Counties can elect to use their zoning powers to regulate residential, commercial, and industrial land uses, but not farming.

A question that is increasingly arising around the state, however, is just what is "farming" that is exempt from county zoning regulation? It clearly includes growing crops and farm animals, but does it also include shooting ranges? Garden shops? Rodeos? Wedding and special event facilities? Are these land uses "farming" when it comes to zoning regulation?

The scope of the farming exemption from zoning is sometimes contentious. In some instances this has involved a proposed land use that has more intense or different land use impacts than is the case with traditional farming, raising concerns in the rural neighborhood about traffic, noise, and similar land use concerns. In other instances the surrounding farm community has expressed concern about activity that is "not really farming" using the exemption to avoid regulation and disrupt farm areas. These concerns are often pitted against the interests of the landowner — sometimes a farmer and sometimes not – seeking a more profitable use of the land.

## The Farm Exemption

The original county zoning exemption for farming was simple and straightforward: County zoning may not affect bona fide farms, but use of farm property for nonfarm purposes is subject to county zoning. That basic proposition is still included within the zoning statutes at **G.S. 1600D-903(a)**.

As Rich Ducker details in this blog **post**, legislative and judicial refinements have been made to the basic policy over the decades. A definition was added for "farm purposes." What qualifies property to be considered a "farm" was specified. Some limited sale of non-farm products was allowed. Large-scale hog farms were allowed to be subject to county zoning, but this allowance was later repealed. A half-dozen cases have litigated various aspects of the zoning exemption for farming.

The bona fide farm exemption has also been extended beyond county zoning. In 2011 G.S. the statutes were amended to exclude land being used for farm purposes from municipal extraterritorial jurisdiction (ETJ). Farming in the ETJ is exempt from city zoning to the same extent it would be exempt from county zoning. G.S. 160D-903(c). Cities also have the option of exempting farm accessory buildings from the building code to the same extent they would be exempt under county jurisdiction. G.S. 160D-903(d).

#### Two Dimensions of the Zoning Exemption

There are two critical qualifications an activity must have to be exempt from zoning regulation in county or municipal ETJ areas. First, the property involved must be on a "farm." Second, the activity must be a "farming purpose."

The first of these questions is usually easy to resolve. In the early decades of the farm exemption, some counties wrestled with what constituted a "bona fide" farm as opposed to a hobby farm or some clever developer's scheme to avoid regulation. Did the farm have to generate a minimum amount of farm income? Was it enrolled in the present use value property tax program? These questions are now rarely raised because in 2011 **G.S. 160D-903(a)** was amended to simplify resolution of this first question. The statute now provides that production of any one of four items is sufficient to establish that a property is being used for bona fide farm purposes: (1) a farm sales tax certificate; (2) eligibility for present use value property taxation; (3) a Schedule F for federal income taxes; or (4) a forest management plan. This list used to include a USDA farm identification number, but that was deleted from the statute in 2017. While not the exclusive means

to establish that property is being used as a farm, these qualifiers are sufficiently easy and inexpensive to obtain that they resolve most disputes as to whether the property qualifies as a "farm."

The second question is more difficult to resolve. While production of one of the four items noted above is sufficient to establish that the property is being used for farm purposes, it is very important to remember that just as was the case in 1959, <u>G.S. 160D-903(a)</u> provides that county zoning regulation still applies to the use of farm property for nonfarm purposes. Nonfarm land uses are not exempt from county zoning. <u>Hampton v. Cumberland County</u>, 256 N.C. App. 656, 808 S.E.2d 763 (2017).

So what activities on a farm qualify as a bona fide farm purpose? The zoning statute provides that the exempt activities are the production of agricultural products. The statute incorporates the broad definition of agriculture from **G.S. 106-581.1**, which includes:

- 1. Production and harvesting of crops, including fruits, vegetables, sod, flowers and ornamental plants;
- 2. Planting and production of trees and timber;
- 3. Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals;
- 4. Aquaculture;
- 5. Operation and maintenance of farm land, structures and buildings;
- 6. Marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities that add value to agricultural items produced on the farm and on any other farm owned or leased by the bona fide farm operator; and
- 7. Public or private grain warehouses. There is also a limited additional exemption for production of a modest amount of nonfarm products identified under the "Goodness Grows in North Carolina" program if it is done on a farm subject to a conservation easement.

Several cases illustrate the difficulty in drawing the line between farm and nonfarm uses.

The court in <u>Ball v. Randolph County</u>, 129 N.C. App. 300, *appeal dismissed*, 349 N.C. 348 (1998), held that use of farm equipment to till petroleum contaminated soil into farm land may look like farming, but it is pollution remediation, not farming, and is subject to county zoning. Any land use claimed to be exempt must itself be a farm purpose. The facts that the use is conducted on a farm or that it produces useful income for a farmer do not make the use exempt from zoning if it is a

nonfarm purpose. G.S. 130A-291(g), however, provides that production of a crop in accordance with an approved nutrient-management plan on land that is permitted as a septage-land-application site is a bona-fide-farm use for county zoning purposes.

The court in <u>Jeffries v. County of Harnett</u>, 259 N.C. App. 473, 817 S.E.2d 36 (2018), *rev. denied*, 372 N.C. 297, 826 S.E.2d 710 (2019), addressed whether commercial shooting activities (shooting towers, archery ranges, ranges and courses for clay pigeon shooting, rifle ranges, and pistol pits) constituted agritourism when conducted on a bona fide farm. The court noted that while hunting is a traditional rural activity, that is not the case with shooting ranges. The court noted the examples of agritourism listed in the statute were all rural activities, and this implied that other exempt agritourism should be similar "natural" activities that could be enjoyed without alteration of the land. An outdoor shooting range may require land space that only a rural setting can provide, but they are not purposefully performed on a farm for the aesthetic value of the farm or its rural setting. The court thus held the shooting activities were not agritourism and were subject to county zoning.

Activities "relating or incidental to" the production of these seven listed activities are also exempt. Merriam-Webster defines "incidental" to be "happening as a minor part or result of something else." In the context of this statute then, the activity claimed to be exempt as incidental to farming must be a minor part of or directly related to the exempt farm purposes listed above. Unless the activity falls within one of these categories, it is a nonfarm purpose that is subject to county zoning even if conducted on bona fide farm property.

Cases have addressed the scope of what can reasonably be considered incidental to exempt farm purposes. In County of Durham v. Roberts, 145 N.C. App. 655 (2001), the court held sale of excavated soil was incidental to the exempt activity of improving pasture land and expanding ponds for horses. In North Iredell Neighbors for Rural Life v. Iredell County, 196 N.C. App. 68, review denied, 363 N.C. 582 (2009), the court held a biodiesel production operation was an industrial use rather than a farm use. The fact that the facility would use some agricultural products grown elsewhere and would produce more fuel than could be used on-site were key factors in this determination. The statute was amended in 2017 to clarify that residential use is incidental to the farm use is the residents are the owner, lessee, or operator of the farm. See this **post** by Adam Lovelady for a discussion of the scope of the farm exemption for housing. Also,

The statute was also amended in 2017 to provide some clarity for the scope of the exemption for "agritourism" as an exempt farm use. G.S. <u>160D-903(a)</u> limits use of the farm exemption for

agritourism to those farms that have a farm sales tax exemption or is enrolled in the present-use value property tax program. Both of these require some real farm income to qualify. The properties must maintain that qualification for three years after after qualification as a bona fide farm to retain the zoning exemption. "Agritourism" is defined by the statute to include "any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions." A building or structure may be used for weddings, receptions, meetings, meals, and other events "that are taking place on the farm because of its farm or rural setting."

#### Questions at the Margins

If you consider a continuum with "farm purposes" on one end and "nonfarm purposes" on the other, activities on either end of the scale are easy to identify. A horse stable, a commercial greenhouse, and a pond growing fish for sale are farm purposes exempt from county zoning. An asphalt plant, a convenience store/gas station, or a residential subdivision are nonfarm purposes subject to county zoning even if conducted on a qualifying farm. A roadside farm stand is incidental to the farm. A Super Walmart that has a produce section is not. Clearing out the barn for a monthly square dance is likely incidental to farming or agritourism, but an outdoor amphitheater with regular large concerts is a nonfarm commercial activity subject to zoning.

It is the activities in the center of this spectrum, at the border between "farm" and "nonfarm" that are most difficult to characterize. A wine making operation located on a vineyard is exempt. An adjacent tasting room is likely incidental to that winery and would also be exempt. But at some point as the tasting room expands to a restaurant or bed and breakfast facility, it is no longer a minor part of the winery but a commercial use that is subject to county zoning. The difficult question, which must be resolved on a case by case basis, is determining just when this line is passed.

So, when a farm exemption from county zoning or municipal land use regulation in the ETJ is claimed, the zoning administrator must make a determination on whether the property qualifies as a bona fide farm AND, if so, whether the activity is a farm purpose. Land uses meeting both criteria qualify for the zoning exemption but if the activity is an industrial, commercial, or residential activity that is not closely tied to legitimate farming, it is subject to zoning.

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From the Triangle Business Journal: https://www.bizjournals.com/triangle/news/2025/03/03/red-hat-amphitheater-economic-impact-33-million.html

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Travel & Tourism - TBJ Plus

# Red Hat Amphitheater rides banner year with change ahead

## And Raleigh home values soar



The economic impact of Red Hat Amphitheater's 2024 season nearly doubled the prior year, the City of Raleigh said.

CITY OF RALEIGH



By Cameron Snipes - Associate Editor, Triangle Business Journal Mar 3, 2025



Listen to this article 5 min



## Red Hat Amphitheater has banner year

Red Hat Amphitheater was red hot in 2024.

According to the City of Raleigh, the concert venue contributed to \$33.7 million in total economic impact, up nearly double from \$17.6 million in 2023.

In 2024 Red Hat Amphitheater welcomed 280,687 attendees to 50 concerts, including multiple sell-outs from artists such as Chappell Roan, Lainey Wilson and Tate McRae.

"We're so proud to continue to stand out as such a vital economic driver for Downtown Raleigh," said Kerry Painter, executive director of the Raleigh Convention and Performing Arts Complex, in a statement. "Not only do thousands attend shows at the amphitheater, but those fans also visit restaurants, bars and retail shops adding to the vibrancy and generating much needed revenue for these local small businesses."

The venue hosts concerts from April to October, and is also home to a few other city events.

TBJ Plus just might be in that number this year while breathing in a bit of nostalgia before the venue **is scheduled to move to a new spot** one block south to make way for the Raleigh Convention Center expansion – especially for Teddy Swims.



Red Hat Amphitheater in Raleigh will be relocated. VISIT RALEIGH

## Raleigh metro among tops for home values

Raleigh metro area home values have grown 49.7 percent since February 2020 – the 12th-largest gain of any of the 50 largest metros in the United States, according to *new research from Zillow*.

And home inventory is increasing in the Triangle. The total number of home listings added in January was the highest since January 2020 and 5 percent higher than the 12-year January average, according to the latest report from Triangle Area Residential Realty.

Across the U.S., home values are up 45.3 percent since February 2020, just before the pandemic, Zillow said.

Topping the Zillow list was the Miami metro – where area home values have grown 61.1 percent since February 2020. Charlotte and Hartford, Connecticut, rounded out the top three.

## ABB pumping \$120M into U.S. expansion

Electrification and automation products manufacturer ABB announced Monday it's pumping \$120 million into a U.S. expansion effort to beef up its production capacity of its low-voltage electrification products.

The investment will enable the company, with its U.S. headquarters in Cary, to meet increasing demand from customers in a wide range of key growth industries, including data centers, buildings and utilities, a release said.

ABB expects to create 50 new jobs at a new advanced manufacturing facility in Selmer, Tennessee, and will double the size of its existing manufacturing site in Senatobia, Mississippi, creating 200 new jobs.

ABB has about 720 employees in the Triangle area in addition to a small Hickory outpost and a large manufacturing plant in Mebane that houses more than 600 workers.



The U.S. headquarters of ABB in Cary. WAKE COUNTY

#### Wilmington-shot movie gets release date

A movie shot in Wilmington that was directed by an Oscar-nominated actor now has a trailer and a release date.

The film, called "Eric LaRue," is the directorial debut of Michael Shannon, who received best supporting actor Oscar nominations for roles in "Revolutionary Road" and "Nocturnal Animals."

"Eric LaRue" will be released into theaters April 4 by Magnolia Pictures. It will be available on various digital platforms starting April 11, the *Wilmington Star News reports*.

The film is based on a 2002 play by Brett Neveu, who serves as screenwriter, and stars Judy Greer (who also starred in Wilmington-shot horror film

"Halloween Kills") and Alexander Skarsgård (TV's "Succession") as the parents of a boy who has murdered three of his high school classmates, the publication said.

The movie premiered in 2023 at New York City's Tribeca Film Festival.

## J.Jill names new CEO

Women's apparel company J.Jill Inc. (NYSE: JILL) late last week announced the appointment of Mary Ellen Coyne as president and chief executive officer, effective May 1.

In addition, Coyne will join the company's board of directors. CEO Claire Spofford, who announced her retirement in December, will step down on April 30.

J.Jill has locations at both Crabtree Valley Mall in Raleigh and The Streets at Southpoint in Durham.



Mary Ellen Coyne will be the new J.Jill CEO starting May 1.

The Farm at Old Edwards (Highlands, NC)



Juneberry Ridge (Norwood, NC)



## Zinchouse Winery and Brewery (Durham, NC)



## **EXHIBIT J**



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June 4, 2025

Robert E. Hornik, Jr. The Brough Law Firm, PLLC 1526 E. Franklin Street Suite 200 Chapel Hill, NC 27514

RE: Final and Binding Determination Regarding the Proposed Uses of the Properties Collectively Known as "Union Grove Farm"

Mr. Hornik,

In a letter dated March 21, 2025, you requested a Final and Binding Determination on behalf of Bandit Farms II LLC, Bandit Farms III LLC, and Harper Grace, LLC/Eastwest Organics, LLC, regarding five (5) proposed uses and whether they may be considered bona fide farm and agritourism uses, and thereby exempt from Orange County zoning regulations, on four (4) properties with the following Parcel Identification Numbers (PINs): 9851-71-4716, 9851-81-3226, 9851-62-2001, and 9851-50-8662. The letter describes the current and proposed activities on Union Grove Farm and Inn, including regenerative farming and public engagement, and is supported by six (6) exhibits, including a Master Plan, accompanying illustrations, and a "Menu of Proposed Experiences at Union Grove Farm". A clarifying supplement to the "Exhibit C site plan" was sent by you on April 22, 2025, at my request.

The proposed uses subject to determination in this letter are described as follows:

- 1) A 3-acre culinary farm with a 2,000-square foot (s.f.) fruit and vegetable growing pavilion;
- 2) Overnight guest stay accommodations, including five (5) "Farm cottages", 5 "lake cottages", and a farm stay center ("25 Key Inn") featuring 40 rooms with overnight accommodations, a 70-seat restaurant, an outdoor pool and bar, and a 1,000-s.f. event space;
- 3) A regenerative distillery and associated parking;
- 4) A 2,500-seat amphitheater (aka "farm stage") near the distillery and working farm; and
- 5) A Center for Regenerative Agriculture at Union Grove Farm that will host education programming.

The Orange County Unified Development Ordinance (UDO) does not regulate uses for "bona fide farm purposes" or "agritourism" but defers to the North Carolina General Statutes, primarily 160D-903(a), on such uses and claims of use. This statute states that "[c]ounty zoning regulations may not affect property used for bona fide farm purposes." Accordingly, no zoning and use regulations found exclusively in the Orange County UDO can be applied to a bona fide farm, though State stormwater, stream buffer, and environmental health regulations do apply. The statute defines bona fide farm



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purposes to "...include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture"; and notes that, among other uses, "[a] building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a [farm] property."

Agritourism is defined, as you note in your letter, with the following language: "...[A]ny activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting."

This determination takes no position on the established bona fide farm purposes on the properties for a vineyard and "regenerative farm". As described in the materials, "regenerative farming is an agricultural approach that focuses on restoring and enhancing soil health, biodiversity, and ecosystem functions through sustainable practices like crop rotation, cover cropping, reduced tillage, and livestock integration." This primary use is presumed throughout the interpretation and, per NCGS 160D-903(a), is uncontroverted as exempt from Orange County zoning. The County applies "Rural Buffer" zoning districts to all of the subject properties for all uses other than bona fide farm purposes. This zoning districts has a 87,120-s.f. minimum lot area and allows for 21 uses by right and 17 uses allowed with approval of a special use permit by the county's Board of Adjustment.

In formulating this Final and Binding Determination, I refer to the precedents in North Carolina of bona fide farm purposes, including agritourism, that provide clarity and guidance on statutory interpretation and appropriate application of the UDO to land use. The precedent of reference is *Jeffries v. County of Harnett* (COA17-729), in which the NC Court of Appeals evaluated whether a gun range qualified as a form of agritourism under the legislative intent and framework established by the State. In interpreting and applying the statue, the Court determined that a gun range primarily features "shooting activities" and is not a qualifying form of agritourism. The Court established qualitative considerations of evaluation to determine whether an agritourism event/use is:

- A) "...purposefully performed on a farm for the aesthetic value of the farm or its rural setting";
- B) consistent with the"...dangers or conditions that an integral part of an agritourism activity... and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations;" and
- C) "...squarely within traditional notions of... a "rural" activity [or] the category of a 'natural activity."

Furthermore, the Court's ruling against the gun range use as statutory agritourism held that "...activities that require the construction and use of artificial structures and the alteration of natural land, such as clearing farm property... share little resemblance to the listed rural agritourism activity examples or the same spirit of preservation or traditionalism." Though Union Grove Farm is not proposing a gun range



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the proposed forms, structures, and uses of agritourism described and illustrated in the submitted materials will be primarily evaluated with the agritourism considerations established in *Jeffries*.

Each of the five proposed uses of the properties with PINs 9851-71-4716, 9851-81-3226, 9851-62-2001, and 9851-50-8662 are evaluated on the established considerations for agritourism established in *Jeffries*, and in reference to submitted materials and exhibits. Additionally, *Jeffries* was decided in 2018 prior to the recodification of land development authorities to NCGS Chapter 160D. In 160D agritourism is fully defined which puts into question whether the reliance upon NCGS § 99E–30(1) remains necessary. As such, I will apply both the Jeffries risk assessment test as the controlling case but also apply the statute as written and as you argue, namely that it is an activity carried out on a farm that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities. Since the requested determination is prospective for proposed uses not yet occurring, I will assume all facts as proposed with no further assumptions. Accordingly, as Orange County Planning Director, I hereby offer the following analysis for each of the following five proposed uses with the Final & Binding Determinations for each contained in a double-lined box and non-binding advisory opinions in separate dash-lined boxes:

1) The 3-acre culinary garden with a 2,000-square foot (s.f.) structure ("pavilion") for year-round fruit and vegetable cultivation for educational and farm-to-table agricultural experiences. This use is identified by you as being solely on Parcel 9851-81-3226 and is shown on the "Union Grove Inn Master Plan" in Attachment A. It is established as a location where both a) fruits and vegetables will be grown year-round; and b) agritourism is provided in the forms of i) an educational experiences; ii) farm-to-table agricultural experiences; and iii) hosting "programmed events... revolving around the regenerative farming experience."

#### As evaluated:

- A) Is this an event or use that is "...purposefully performed on a farm for the aesthetic value of the farm or its rural setting"?
  - Yes, both the culinary garden and associated structure uses, described being a location where fruits and vegetables are grown year-round and a place to host educational and harvesting events, fulfill the statutory definition of a bona fide farm use; these are bona fide farm purposes. The activities and structure directly support "...the production and activities relating or incidental to **the production of crops, fruits, vegetables,** ornamental and flowering plants, [etc.]"; and are an "activity carried out on a farm or ranch that allows members of the general public, for... educational purposes, to view or enjoy rural activities, including farming [and] harvest-your-own activities" (emphasis added).
- B) Is the use consistent with the "...dangers or conditions that are an integral part of an agritourism activity... and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations"?



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Yes, all proposed activities and inherent dangers or conditions associated with the garden and structure are "...ordinarily used in farming and ranching operations." They are being used for production of vegetables and fruits and providing space to educate the public on cultivation.

- C) Is this use an activity that is "...squarely within traditional notions of... a "rural" activity [or] the category of a 'natural activity"?
  - Yes, the cultivation of fruits and vegetables is a traditional farming and rural activity, as is the invitation of the public to participate and learn about such activities.
- D) Is the use an activity carried out on a farm that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, as provided for by NCGS 160D?

Yes, both the culinary garden and associated structure uses, as described, fulfill the statutory definition of a bona fide farm purpose. The uses and structures directly enable an "activity carried out on a farm or ranch that allows members of the general public, for... educational purposes, to view or enjoy rural activities, including farming [and] harvest-your-own activities."

#### **FINAL & BINDING DETERMINATION** as to the culinary garden and pavilion:

As presented and described, this use is determined to be a bona fide farm purpose, as it directly involves the "production of crops, fruits, [and] vegetables... carried out on a farm or ranch" that creates a venue and activity to educate the public about farming. As such, it is not subject to Orange County zoning regulation.

2) Parcel 9851-81-3226 will feature ten cottages and a farm stay center (aka "25 Key Inn") with 40 rooms with overnight accommodations, a 70-seat restaurant, an outdoor pool and bar, and a 1,000-s.f. event space. These proposed structures are shown on the "Union Grove Inn Master Plan" (Attachment A, where the five "Farm cottages" are labeled "Garden cottages"), displayed on the site plan (Attachment C), and illustrated in Attachment D with architectural renderings, including surrounding landscapes. The 25 Key Inn is described as being "...available for individuals and groups participating in the educational and cultural activities and programs conducted on site". The inn is also stated to feature "...art and artifacts and furnishings connected with the history of the Farm and its surroundings", and, "to the extent possible", building materials will be "repurposed" from the farm or resourced from trees on the farm. The restaurant and bar also noted to "...feature food and beverages grown or processed from the surrounding community". As described in the letter, these



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structures will be sited "...adjacent to or among the vineyards" but the exhibits show them separated from the vineyards. In the case of the Farm/Garden Cottages, should they be built, their access to the vineyards would be deprived by the farm stay center "25 Key Inn".

#### As evaluated:

A) Is this an event or use that is "...purposefully performed on a farm for the aesthetic value of the farm or its rural setting"?

Yes, the inn and cottages benefit from being located on Union Grove Farm due to its active farm operations and rural setting. As described in the letter, overnight guests will have opportunities to enjoy a "restaurant and bar [that] will feature food and beverages grown or processed on the Farm and the surrounding community." The inn will feature "art and artifacts and furnishings connected with the history of the Farm and its surroundings," and will feature materials repurposed from the Farm "as much as possible." Both the narrative description and the supporting exhibits provide evidence that the overnight guest stays are being placed at Union Grove Farm due to "...the aesthetic value of the farm or its rural setting."

B) Is the use consistent with the "...dangers or conditions that an integral part of an agritourism activity... and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations"?

No, there are substantial new dangers presented from the potentially 110 new guests and their vehicles using the property simultaneously for overnight stay and recreation purposes. There are no details on how the cottages and inn will accommodate these vehicles safely except for a basic driveway design and designated parking area. No detail was provided that the vehicles accessing the site have room to park and safely travel on the subject properties. Due to the distillery and bar uses on the properties, these guests may be intoxicated. There are likely dangers introduced, as well, from the combination of pedestrians who may be guests of the onsite overnight accommodations and the vehicles accessing the site solely for the events at the proposed Farm Stage. This is not a typical condition of farming or ranching operations.

The Orange County UDO provides standards for parking, circulation, and lighting that address safety concerns associated with the land use of a hotel/inn that ensure that there is adequate parking and circulation for all vehicles. The NC Department of Transportation also has safety measures to minimize dangers associated with site access, visibility, and congestion that can be addressed through a review of a sealed engineered Traffic Impact Analysis. In the absence of these regulatory reviews and the application of safety standards, the use of the site as described could create dangerous



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conditions that are greater than those "ordinarily used in farming and ranching operations."

The structures for the cottages and the inn present no new "dangers" that are unusual for a farm or ranch, as they will have to permitted by the NC State Building Code since they are providing overnight accommodations.

C) Is this use an activity that is "...squarely within traditional notions of... a "rural" activity [or] the category of a 'natural activity"?

No, the 25 Key Inn is described as having "...forty (40) rooms for overnight guests, a 70-seat restaurant, an outdoor pool and bar, and 1,000 square foot event space which will be used for exhibits, classes, seminars and other small gathering[sic]." The cottages are new structures that have no farm purpose, nor are they incidental to the farm purpose. The inn and cottages are hospitality structures and uses and not reflective of a rural or natural activity. There is not a direct relationship of the farm with these new structures, particularly the inn, which is not surrounded by the vineyards in either exhibit provided, These hospitality uses disrupt and degrade the rural setting with an intensive and transformative principal hospitality uses that are disruptive to the farm itself, consuming land for the structures and parking that could otherwise be used for a farm purpose, including agritourism that is integrative and compatible with the farm.

There is a recognition in the materials of the need to narratively connect the two primary uses of the farm and the overnight accommodations by integrating some of the farms products into the construction of the cottages and inn and restaurant menus, as well as offering the inn as a venue partly for events related to the farm. However, no tangible, binding connection is established between the two principal uses, which remain separated both physically and in character from each other, with separate driveways, geographic orientations, and purposes. The "surrounding community" intended to be the resource for supplying restaurant, bar, and decorative materials is never identified. Without definition, this "community" could be broadly defined, including sourcing from locations out of the State of North Carolina. The inn's 1,000 square feet "event space," does not meet the statutory requirement that "building[s] or structure[s] used for public or private events... are taking place on the farm because of its farm or rural setting," as there is no evidence that it will interact with the inn's surroundings. The event space may have no windows and could conceivably be a generic conference room.

Both the site plan in Attachment C and the "Union Grove Inn Master Plan" shown in Attachment A display the Inn and cottages at locations separate from the rest of the farm and its operations, including a separate point of access. It therefore would be theoretically possible for a visitor to stay at the inn or a cottage and have no direct or



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incidental interaction with"...rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions".

The "educational and cultural activities and programs conducted on site" proposed for both are not tethered in any way to renting a room or cottage, nor is there any requirement for paying visitors to participate in farm activities. All proposed education materials in the inn and within the rooms require individual visitor behavior to compel interaction and can be ignored and disregarded.

Indeed, when assessed by the Court's consideration that "...activities that require the construction and use of artificial structures and the alteration of natural land, such as clearing farm property... [and] share little resemblance to the listed rural agritourism activity examples or the same spirit of preservation or traditionalism," the 25 Key Inn and cottages fail to qualify agritourism. The construction, land disturbance, and externalities associated with this hospitality use are likely to disrupt the farm and its operations as well as the surrounding rural area. They are a distinct principal use from the farm and do not resemble "traditional notions" of farming or rural activities.

D) Is the use an activity carried out on a farm that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, as provided for by NCGS 160D?

No, though both the cottages and inn are described as being sited on these properties intentionally for their ability to "allow members of the general public to view or enjoy rural activities," they lack a connection that compels guests to interact with the farm or any rural activities. The uses are separated from the farm itself by a separate driveway access and there is no compulsion for a guest to actually interact with it or the rural landscape, should they choose not to. Effectively, the farm serves as an appealing bucolic backdrop to market these hospitality uses, and one that can effectively ignored by an overnight guest who never leaves the inn's rooms, except to perhaps enjoy the restaurant and bar.



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## ADVISORY OPINION (NON-BINDING, NO RIGHT ESTABLISHED, NO VIOLATION EXISTING)

If not a Bona Fide Farm Purpose, then the proposed use of the overnight guest accommodations (25 Key Inn and 10 cottages) would either be an Assembly Use "Retreat Center" (Use 80) or a Service Use "Short Term Rental – Non-Host Occupied" (Use 62(K)), as permitted in UDO Section 5.2 "Table of Permitted Uses". The former is defined as "[a]n assembly land use operated as a commercial activity", and the latter defined as "[a] building or group of buildings which provides guestrooms for rental or lease but is not occupied by a Host." A "Retreat Center" use is permitted as a special use in "Rural Buffer" zoning districts by the Orange County UDO. The "Short Term Rental – Non-Host Occupied" use is not permitted in the RB zoning district and would require rezoning to either "Master Plan Development – Conditional Districts" and "Non-Residential – Conditional Districts," and likely subdivision of the subject properties.

#### FINAL & BINDING DETERMINATION as to the cottages and farm stay center:

The use is not a bona fide farm purpose because, as presented, there is no compelling evidence that this proposed use fulfills the statutory definition of a bona fide farm purpose. It does not fulfill the statutory definition of "agritourism", as there is no compulsion for guests to "view or enjoy rural activities."

- 3) A regenerative distillery on Parcels 9851-71-4716 and 9851-62-2001 is proposed to feature products made from grapes, "...many or most of which will be grown on the Farm," and that "[t]here will be regular tours and classes at the distillery where guests can learn the distilling process from the vine to the wine glass". More specifically, there will be "...exhibits and demonstrations of the distilling process, where guests may observe various aspects of the distilling process and sample the end products of the process," and demonstrations on "...how the 'spent' fruits and grains to be re-processed as the organic materials can be used on site, eliminating transport costs for the 'waste' products and instead using those products for other purposes at the Farm." It is also noted that the distillery may process "...other fruits and grains... grown on the Farm and others from local or regional sources".
  - A) Is this an event or use that is "...purposefully performed on a farm for the aesthetic value of the farm or its rural setting"?



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Yes, the distillery and associated parking, as described, fulfill the statutory definition of a bona fide farm use, as they are used for "...the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, [etc.]"; and the statutory definition of "agritourism", as they are an "activity carried out on a farm or ranch that allows members of the general public, for... educational purposes, to view or enjoy rural activities, including farming [and] harvest-your-own activities" (emphasis added). The distillery will be using fruits and grains grown on the farm to produce distilled products and providing a space to educate the public on this process and related processes like reuse of "waste" products.

- B) Is the use consistent with the "...dangers or conditions that an integral part of an agritourism activity... and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations"?
  - Yes, all proposed activities and inherent dangers or conditions are associated with the production of vegetables and fruits into distilled products, including spirits and wine. While there are distinct and greater dangers associated with distillation than for most farm activities due to the use of highly pressured machinery, they are dangers associated with processing a farm product and will be a farm purpose regardless of public access to the site. The provision of space to educate the public on cultivation does not introduce any dangers, though, as farm structures, they will not be permitted by Orange County for compliance with NC State Building Codes.
- C) Is this use an activity that is "...squarely within traditional notions of... a "rural" activity [or] the category of a 'natural activity"?
  - Yes, the production of fruits and vegetables into distilled products like wine is a traditional farming and rural activity, as is the invitation of the public to participate and learn about such activities. This established bona fide farm use and form of agritourism throughout North Carolina is acknowledged as such here.
- D) Is the use an activity carried out on a farm that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, as provided for by NCGS 160D?
  - Yes, the production of fruits and vegetables into distilled products like wine is a traditional farming and rural activity, as described, and fulfills the statutory definition of a bona fide farm use. The use and associated structures directly enable an "activity carried out on a farm or ranch that allows members of the general public, for... educational purposes, to view or enjoy rural activities, including farming [and] harvest-your-own activities."



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## ADVISORY OPINION (NON-BINDING, NO RIGHT ESTABLISHED, NO VIOLATION EXISTING)

If the primary source of the materials for the distilling operation were to originate offsite, the County may re-evaluate any determination. Should it be determined that the distillery is not part of Union Grove Farm's activities or otherwise not a Bona Fide Farm Purpose, this "Manufacturing, Assembly, Processing, and Distribution Uses – Food" use may be permitted as a "Winery" (Use 27(F), UDO Section 5.2) and further defined as a "Winery with Major Events: A facility utilized for making wines for consumption on- or off-site with tours of the facility, tastings of the products produced on-site, and periodic events that are expected to attract more than 150 people to the site. Food services may be permitted under the conditional district or special use permit approval." This use is a permitted Special Use in the Rural Buffer zoning district of the subject properties. Alternatively, this use could be a featured element of a rezoning to any of the following conditional zoning districts: "Master Plan Development", "Agricultural Support Enterprise", or Non-Residential".

#### **FINAL & BINDING DETERMINATION** as to the regenerative distillery:

As presented and described, this proposed use is considered a farm use and an explicit form of agritourism, as defined and described in NCGS 160D-903, and, as such, is not subject to Orange County zoning regulation.

- 4) A 2,500-seat "Farm Stage" (aka "amphitheater") near the distillery and working farm, described and illustrated as an "open air venue" on Parcels 9851-71-4716 and 9851-62-2001, and situated in immediate proximity to "...barns, farm equipment, the vermicompost labs and other features of the working regenerative farm". The letter states that "[e]very event scheduled at the amphitheater will include an educational component describing regenerative farming practices and the benefits derived from them" (emphasis in original text). Furthermore, Attachments C, E, and F shows structures, seating, and a stage integrated among the historic farm buildings and among the working farm operations.
  - A) Is this an event or use that is "...purposefully performed on a farm for the aesthetic value of the farm or its rural setting"?

Yes, the Farm Stage appears to be intentionally located on the property. As presented, it will be "...amidst other structures on the working farm, and one would not be able to miss the rural, agricultural setting as they sit at the open-air venue." The exhibits



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consistently demonstrate this intent, as does the description, which makes commitments to include materials "originating onsite", including stones, on the stage, and incorporate videos about the farm into every event held on that stage, whether that event is recreational, entertainment, or educational, as included in the statutory definition of "agritourism".

B) Is the use consistent with the "...dangers or conditions that an integral part of an agritourism activity... and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations"?

No, there are substantial new dangers presented by the traffic access and parking needs for a 2,500-seat amphitheater. At least 1,000 vehicles will need to access and park on site. Otherwise, the farm owners will need to otherwise provide for the transport of up to 2,500 people to this site from an offsite parking location(s). Both scenarios present numerous dangers related to onsite congestion management, driveway access, and the potential for vehicle accidents. Due to the distillery and bar uses on the properties, these guests may be intoxicated. These are not ordinary dangers of farming or ranching operations.

Both Orange County and NCDOT have safety standards to address these concerns that are applicable to this Assembly use. The Orange County UDO provides standards for parking, circulation, and lighting to ensure that there is adequate and safe parking and circulation for all vehicles. The NC Department of Transportation also has safety measures to minimize dangers associated with site access, visibility, and congestion that can be addressed through a review of a sealed engineered Traffic Impact Analysis. In the absence of these regulatory reviews and the application of safety standards, the use of the site by 1,000 – 2,5000 vehicles will create dangerous conditions that are greater than those "ordinarily used in farming and ranching operations."

C) Is this use an activity that is "...squarely within traditional notions of... a 'rural' activity [or] the category of a 'natural activity'"?

No, the use could be a rural activity, except that its scale removes it from being "squarely" within the traditional notions. Live music is a traditional type of "rural activity" and is a common form of recreation in many rural communities. A 2,500-seat concert venue, however, is not part of this tradition and not a form of agritourism. It introduces thousands of people, noise, traffic, and lighting that are consistent with an Assembly use and disruptive to both Union Grove Farm and the rural area.

A "2,500-seat Farm Stage" introduces noise, lighting, parking, stormwater runoff, and other concerns that are not identified with 'rural' or 'natural activities'. The crowd attending these concerts can be disruptive in the noise and traffic they generate and



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there is also the potential of the entertainers themselves to disrupt the natural and rural character of both the farm and the area. The Orange County UDO provides standards for lighting and landscaping that would minimize the impacts of this use to other areas of the farm and neighboring properties. That such externalities are of immediate concern for compromising the rural and natural character of the area in and of itself makes a case that this use is incompatible as a form of agritourism. They also exceed the concerns of the farm and the area, representing a substantial principal land use that is distinct from the farm and degradative to its operations and purpose, as well as the rural character of both the subject properties and the area.

Further, when assessed by the Court's metric that "...activities that require the construction and use of artificial structures and the alteration of natural land, such as clearing farm property... [and] share little resemblance to the listed rural agritourism activity examples or the same spirit of preservation or traditionalism," the 2,500-seat Farm stage is not a qualifying form of agritourism. The construction, land disturbance, and externalities associated with this use are significant and are those of an entertainment venue or theater, and can be effectively regulated by the standards of the Orange County UDO. The theater is as a principal land use distinct from the farm and must be evaluated through zoning regulation.

D) Is the use an activity carried out on a farm that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, as provided for by NCGS 160D?

Yes, the Farm Stage appears to be intentionally located on the property. As presented, it will be "...amidst other structures on the working farm, and one would not be able to miss the rural, agricultural setting as they sit at the open-air venue." The exhibits consistently demonstrate this intent, as does the description, which makes commitments to include materials "originating onsite", including stones, on the stage, and incorporate videos about the farm into every event held on that stage, whether that event is recreational, entertainment, or educational, as included in the statutory definition of "agritourism". As an entertainment venue, it is within the statutory description of a use that "...allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities". As stated above, however, while submitted and described as "an activity carried out on a farm", it is a principal use distinct from the farm and should be considered and regulated accordingly.



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## ADVISORY OPINION (NON-BINDING, NO RIGHT ESTABLISHED, NO VIOLATION EXISTING)

If not a Bona Fide Farm Purpose, the amphitheater described would be an Assembly Use (Theater, Use 84) in the Orange County UDO Section 5.2, and defined as "A building or outdoor area in which performances are performed or shown. The term does not include structures primarily constructed to support the holding and/or staging of sporting events where outdoor performances may be held as an accessory use". It is not permitted in Rural Buffer zoning districts and would require rezoning and likely subdivision from the subject properties as a principal use.

#### FINAL & BINDING DETERMINATION as to the Farm Stage:

As presented and described, the amphitheater is not a form of agritourism as it is not "incidental" to the farm, but a principal use distinct from the farm and requires transformations of the property and creates potential dangers that are unrelated and possibly detrimental to the farm, contrary to a "traditional notion of a rural activity."

5) The Center for Regenerative Agriculture ("Center") at Union Grove Farm that will host education programming related to the farm and its products on Parcel 9851-50-8662. The programming that will be centered and focused upon at this structure is described in both the letter and in more detail in the "Menu of Proposed Experiences at Union Grove Farm". The letter generally describes the Center as being a venue for "...regular 'classes' or demonstrations where staff or guest presenters will teach practices such as cheesemaking, beeswax candle rolling and regenerative winemaking. There will be 'farms schools' - single-or multi-day courses for guests of all ages - where guests can be immersed in regenerative farming life. There will be tours of the vineyards, the apiaries, and fields, the equipment, the composting facilities, and other features of the Farm. There will be classes offering instruction about the economics of regenerative farming."

#### As evaluated:

A) Is this an event or use that is "...purposefully performed on a farm for the aesthetic value of the farm or its rural setting"?

Yes, the Center, as described, fulfills the statutory language for both the definition of a bona fide farm purpose, as they are used for "...the production and activities relating or



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incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, [etc.]"; and the following language defining "agritourism", as they are an "activity carried out on a farm or ranch that allows members of the general public, for... educational purposes," and that "[a] building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting" (emphasis added).

- B) Is the use consistent with the "...dangers or conditions that an integral part of an agritourism activity... and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations"?
  - Yes, all proposed activities and inherent dangers or conditions associated with the Center are "...ordinarily used in farming and ranching operations." It is providing space to educate the public on farm production and activities already occurring elsewhere on the farm properties.
- C) Is this use an activity that is "...squarely within traditional notions of... a "rural" activity [or] the category of a 'natural activity"?
  - Yes, all classes detailed in the Menu focus on farming activities, including creation of farm products for materials generated at the farm, and, as such, are reflective and consistent with traditional farming and rural activity, as is the invitation of the public to participate and learn about such activities. As a venue limited in description to those detailed in the letter and exhibits, the Center is consistent with the farm activities occurring on Union Grove Farm.
- D) Is the use an activity carried out on a farm that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, as provided for by NCGS 160D?
  - Yes, the Center, as described, fulfills the statutory definition of a bona fide farm, as it is used for "...the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, [etc.]"; and the fo statutory definition of "agritourism", as it is an "allows members of the general public, for... educational purposes to enjoy rural activities," and that "[a] building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting" (emphasis added).



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**FINAL & BINDING DETERMINATION** as to the Center for Regenerative Agriculture use:

As presented and described, this proposed use is considered a farm use and an explicit form of agritourism, as defined and described in NCGS 160D-903, and, as such, is not subject to Orange County zoning regulation.

Any additional uses or changes in use not discussed in this final and binding determination will require the appropriate review and permitting by Orange County, including those required by other departments. These determinations and advisory opinions apply to the letter and materials provided to staff as detailed herein and substantial changes from those materials will require additional review and would not be covered by this letter.

This letter does not replace the need to submit applications for applicable permits to Orange County or State agencies in the future but does reflect the Planning Department's Final and Binding Determination of the use of these subject properties as proposed and permitted by the Orange County UDO. As determined herein, eligible bona fide farm purposes do not require zoning approval, nor building permits unless otherwise noted. However, the activities represent a significant change in use of the farm in ways that are anticipated to affect the surrounding area, with potential changes in traffic volumes and patterns, and the number of individuals coming to the farm. I appreciate the courtesy of you and your client to share any information as the farm activities detailed in this determination proceed to be realized. Non-farm uses may be addressed with County staff as potential applications for a special use permit or zoning atlas amendment.

Please let me know if you have any further questions or concerns in this matter.

Sincerely,

Cy Stober

Planning and Inspections Director

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