STATE OF NORTH CAROLINA ORANGE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 25CV002097-670
TRIANGLE LAND CONSERVANCY Plaintiff, v. UNION GROVE FARM, INC.; BANDIT FARMS II, LLC; BANDIT FARMS III, LLC; EASTWEST ORGANICS, LLC; HARPER GRACE, LLC; MEREDITH G. SAYBE Defendants.	**TRIANGLE LAND CONSERVANCY'S BRIEF IN OPPOSITION TO UNION GROVE FARM, INC.'S, BANDIT FARMS II, LLC'S, AND BANDIT FARMS III, LLC'S MOTION FOR LEAVE TO AMEND THEIR COUNTERCLAIMS**

NOW COMES Plaintiff, Triangle Land Conservancy ("TLC" or "Plaintiff"), by and through undersigned counsel, and hereby submits its Brief in Opposition to the Motion filed by Defendants, Union Grove Farm, Inc., Bandit Farms II, LLC, and Bandit Farms III, LLC, requesting leave to amend their Counterclaims in the above-captioned case.

STATEMENT OF THE CASE

TLC filed the Complaint in this action on August 15, 2025 (the "Complaint"). As explained, *infra*, the Complaint relates to a Grant of Conservation Easement and Development Rights (the "Conservation Easement") located on what is now known as Union Grove Farm in Orange County. TLC is a North Carolina nonprofit corporation and is the holder of the Conservation Easement. Defendants each own either a fee simple or leasehold interest in the properties which are subject to the Conservation Easement (the "Conservation Property"), on which Union Grove Farm ("UGF") operates.

The Complaint seeks a declaratory judgment to interpret the terms of and enforce the Conservation Easement with respect to: 1) the construction of three roads at the Conservation

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Property; and 2) Defendants' proposal to locate an amphitheater at the Conservation Property, all of which TLC believes is in violation of the Conservation Easement.

On September 22, 2025, Defendants Union Grove Farm, Inc., Bandit Farms II, LLC, Bandit Farms III, LLC, and Harper Grace, LLC filed an Answer, Defenses, and Counterclaims. With respect to the Counterclaims, Defendants Union Grove Farm, Inc., Bandit Farms II, LLC, and Bandit Farms III, LLC (hereinafter the "Counterclaim Defendants"), alleged a Counterclaim for breach of contract and specific performance. Defendant Union Grove Farm, Inc. also alleged a second Counterclaim for breach of contract and money damages.

On November 18, 2025, TLC filed an Answer and Defenses to Defendants' Counterclaims. TLC's Answer included a Motion to Dismiss pursuant to N.C.R. Civ. P. 12(b)(6) for failure to state a claim and a Motion to Dismiss because, *inter alia*, the Counterclaim Defendants' claims are barred by the statute of frauds.

On November 24, 2025, the Court entered an Order, requiring the parties to complete a mediated settlement conference by June 21, 2026 and scheduling the case for trial on August 3, 2026.

On December 5, 2025, Defendant Union Grove Farm, Inc. served TLC with its First Set of Interrogatories and Requests for Production of Documents ("UGF's First Set of Discovery Requests"). On February 3, 2026, TLC provided its discovery responses, with supplemental discovery responses provided on March 18, 2026.

On December 15, 2025, the Orange County Civil Superior Court, the Honorable S. Thomas Currin II presiding, held a hearing on Defendant, EastWest Organics, LLC's, Motion to Dismiss the Complaint pursuant to N.C.R. Civ. P. 12(b)(1) and 12(b)(6). The crux of EastWest's Motion to Dismiss was an allegation that there is no "tie" between the parcel owned by EastWest

and the road violations and proposed amphitheater. In response, TLC argued that all owners of the Conservation Property are necessary parties to TLC's declaratory judgement actions and the failure to include any one property owner would render any judgment invalid and void. *See* TLC's Memorandum of Law in Opposition to EastWest's Motion to Dismiss. At the hearing, Judge Currin ruled from the bench to deny EastWest's Motion to Dismiss on all counts.

On February 5, 2026, all parties conducted a mediated settlement conference. The mediation conference lasted eight (8) hours and ended with the mediator declaring an impasse.

On April 10, 2026, Counterclaim Defendants filed a Motion for Leave to Amend their Counterclaims (the "Motion to Amend"), which is the Motion before the Court.

The Motion to Amend was filed:

- almost eight (8) months after the Complaint was filed;
- over five (5) months after Counterclaim Defendants filed their Answer and Counterclaims;
- over four (4) months after TLC answered Defendants' Counterclaims;
- two (2) months after TLC provided discovery in response to UGF's First Set of Discovery Requests;
- two (2) months after the parties engaged in an all-day mediated settlement conference; and
- after the Court set the trial date for this case.

TLC opposes the Counterclaim Defendants' Motion to Amend for multiple reasons, as set forth in this Brief.

STATEMENT OF THE FACTS

I. The Conservation Easement.

The Conservation Easement was granted to TLC on December 28, 1995, by Robert P. Nutter and wife, Aubrey C. Nutter. The Conservation Easement applies to approximately 107.066 acres of farmland located in Orange County (the Conservation Property).

The Conservation Easement is, by title and substance, both a grant of conservation easement and a grant of development rights. The purpose of the Conservation Easement is to "protect in perpetuity the open space character, agricultural productivity, watershed protection and scenic qualities of the [Conservation] Property (collectively the 'Conservation Values'), and to assure the availability of the Property **in perpetuity for agricultural use**." *See* Conservation Easement, p. 2 (emphasis added).

Per the Conservation Easement, the owners of the Conservation Property have conveyed to TLC "all developmental rights that are now or hereafter allocated to, implied, reserved or inherent in the Property," with the exception of three (3) limited circumstances. *See* Conservation Easement, p. 5, ¶ 4, entitled "Development Rights." The three (3) exceptions to this grant of development rights are:

1. New buildings, structures and improvements "**to be used solely for agricultural purposes**" which are located within the confines of the Farm Operation Envelope. *See* Conservation Easement, p. 4, ¶ 2(c)(emphasis added). The Farm Operations Envelope is a rectangle shaped area on the northern portion of the Conservation Property, the location of which is shown on Exhibit B to the Conservation Easement;

2. No more than three (3) new single-family residential dwellings, together with reasonable appurtenances, in certain locations specified in the Conservation Easement. *See* Conservation Easement, p. 4, ¶ 2(d); and

3. New roads built within the Farm Operations Envelope or access roads as shown on Exhibit B to the Conservation Easement. *See* Conservation Easement, p. 6, ¶ 8.

II. Defendants' Violations of the Conservation Easement.

As detailed in the Complaint, beginning in 2023, Defendants have engaged in, or have indicated their intent to engage in, several actions which violate the terms of the Conservation

Easement. These actions fall into two (2) categories: the paving and construction of three (3) roads; and the construction of a new amphitheater[1] outside of the Farm Operations Envelope.

With respect to the amphitheater, on June 13, 2024, Defendants' legal counsel sent a letter to the Orange County Planning and Inspections Director (the "Planning Director"), requesting a determination that, among other things, a proposed 2,500 seat amphitheater at the Conservation Property (the "proposed amphitheater") was "agritourism" and exempt from local zoning regulations. As proposed, the majority of the amphitheater is located outside of the Farm Operations Envelope. *See* Complaint, ¶ 46.

On November 12, 2024, the Planning Director issued an "informal" interpretation that the proposed amphitheater constituted agritourism and, thus, was exempt from local zoning. *See, e.g.,* Complaint, Exhibit I. TLC appealed that determination to the Orange County Board of Adjustment (the "BOA"). Thereafter, on March 21, 2025, Defendants' legal counsel sent a second letter to the Planning Director, requesting another interpretation that the proposed amphitheater is agritourism, but this time requesting the determination be considered "final and binding." *See id.*

In response to Defendants' second interpretation request, TLC's legal counsel sent a letter to the Planning Director in opposition to allowing the proposed amphitheater as an agritourism use. *See* Complaint, Exhibit I. In the letter, TLC's counsel stated that the proposed amphitheater 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." *See* Complaint, Exhibit I.

[1] At various times, Defendants have referred to the amphitheater as an "amphitheater," "concert venue," or "farm stage." *See, e.g.,* Complaint, Exhibit I. However, Defendants' label is irrelevant, as the description of the use, proposed activities and their supporting documentation have stayed the same. For purposes of this Brief, TLC will refer to the use as the "amphitheater."

On June 4, 2025, the Planning Director issued a final and binding determination that reversed his earlier "informal" interpretation and instead determined the proposed amphitheater was not agritourism and, thus, was subject to local zoning regulations. *See* Complaint, Exhibit J.

On July 3, 2025, Defendants appealed the Planning Director's final and binding determination to the Orange County Board of Adjustment. *See* Complaint, ¶ 59.

III. The Complaint.

On August 15, 2025, TLC filed the Complaint, seeking declaratory judgments to interpret and enforce the Conservation Easement with respect to both the road violations and the proposed amphitheater.

With respect to the amphitheater, the Complaint makes clear that both the construction **and the use** of the proposed amphitheater is a violation of the Conservation Easement. *See*, *e.g.*, Complaint ¶ 55, "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." (emphasis added). *See also, e.g.,* Complaint ¶¶ 84, 87, 89, 90, 94, 97, 103, 104.

The Complaint's Third and Fourth Claims for Relief also seek declaratory judgements that the Conservation Easement "prohibits the **development** of the Proposed Amphitheater, and/or **any similar use** such as a farm stage," either inside or outside the Farm Operations Envelope. (emphasis added). Likewise, in the Prayer for Relief, the Complaint requests the Court "[e]nter judgement 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." *See* Complaint, p. 17, Prayer for Relief ¶¶ 2 and 3.

IV. Counterclaim Defendants' Motion to Amend.

On April 10, Counterclaim Defendants filed the Motion to Amend, seeking to amend their Counterclaims filed more than five (5) months earlier. The Motion to Amend consists of: 1) a Motion, by which Counterclaim Defendants summarize their requested amendment and provide an alleged basis for the proposed counterclaim; and 2) a redline document showing the proposed amended counterclaims.

As described in their Motion, Counterclaim Defendants "seek declarations related to the meaning of the Conservation Easement that have been necessitated by the same operative facts upon which TLC's Complaint and [Counterclaim] Defendant[]s' Counterclaims are based." *See* Motion to Amend ¶ 6. Counterclaim Defendants allege, although incorrectly, that TLC's Complaint only seeks declarations regarding the right to construct an amphitheater and that "TLC is not seeking any declaration regarding the scope of permitted uses (as opposed to structures or buildings) on the Conservation Property." *See* Motion to Amend, ¶ 5. Counterclaim Defendants state their amendment would "add a declaratory judgement claim that addresses the scope of the permitted uses on the Conservation Property" and "[a]bsent such a declaration, the matters currently in controversy regarding the Union Grove Defendants' plans for the Conservation Property will not be fully adjudicated, subjecting them to further disputes in the future." *Id*.

The language of the proposed new declaratory judgement; however, far exceeds the scope of what is described in the Motion and what is in actual controversy between the parties (*i.e.*: the "operative facts" upon which the Complaint is based). Specifically, Counterclaim Defendants wish to add a claim for a declaratory judgement that the Conservation Easement does not "regulate or limit" **any uses** at the Conservation Property, not just an amphitheater use, "with the exception of golf courses, airstrips, and helicopter pads." *See* Motion to Amend, Exhibit B, ¶ 111. Counterclaim Defendants further request a declaratory judgement that **all uses**, other than golf courses, airstrips

and helicopter pads, "are permitted on the Conservation Property without any oversight or approval by TLC unless that use requires the construction of a building or facility." *Id*.

STANDARD OF REVIEW

After the 30-day window to amend pleadings by right has passed, a party may amend a pleading only by leave from the court or written consent from the adverse party. N.C.R. Civ. P. 15(a). "[L]eave shall be freely given when justice so requires." *Id*.

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

LEGAL ARGUMENT

I. The Motion to Amend is Futile Because the Requested Counterclaim Seeks a Broad, Advisory Opinion Regarding Matters Not In Controversy.

Granting the Motion to Amend would be futile because it seeks a declaratory judgement regarding matters which are not in controversy and which the Court has no jurisdiction to decide.

"[A] justiciable controversy must exist in order to invoke the provisions of the Declaratory Judgement Act." *Wendell v. Long*, 107 N.C. App. 80, 84, 418 S.E.2d 825, 827 (1992). "A justiciable controversy exists when there is an actual controversy between parties having adverse interests in the matter in dispute." *Id*. The presence of an actual controversy is necessary for the court to have subject matter jurisdiction to render a declaratory judgment. *See Sharpe v. Park Newspapers of Lumberton, Inc.*, 317 N.C. 579, 584, 347 S.E.2d 25, 29 (1986). "[I]n order 'to satisfy the jurisdictional requirement of an actual controversy, it is necessary that litigation appear unavoidable.'" *Id*. at 589, 347 S.E.2d at 32(*quoting Gaston Bd. of Realtors v. Harrison,* 311 N.C.

230, 234, 316 S.E.2d 59, 61 (1984)). To constitute an actual controversy, the plaintiff "must establish that something more than a disagreement as to rights exists between the parties." *Id*. at 588-589, 347 S.E.2d at 32.

As the North Carolina Supreme Court has routinely held, "[t]he Uniform Declaratory Judgment Act does not license litigants to fish in judicial ponds for legal advice." *Lide v. Mears*, 231 N.C. 111, 117, 56 S.E.2d 404, 409 (1949). The Act also "does not extend to the determination of abstract questions," and is not a mechanism to obtain "a purely advisory opinion which the parties might, so to speak, put on ice to be used if and when occasion might arise." *Town of Tryon v. Duke Power Co.*, 222 N.C. 200, 204, 22 S.E.2d 450, 453 (1942)(citations omitted). Instead, there must be "an actual or real existing controversy between parties" and "[i]t necessarily follows that when a litigant seeks relief under the declaratory judgement statute, he must set forth in his pleadings all facts necessary to disclose the existence of an actual controversy between the parties to the action with regard to their respective rights and duties in the premises." *Lide, supra,* at 118, 56 S.E.2d at 409. *See also Sharpe, supra,* at 590, 347 S.E.2d at 32 (plaintiffs sought declaratory judgment to determine the validity of anti-compete provisions in a promissory note for the sale of a newspaper; however, the Court determined that no justiciable controversy existed because there was "no evidence of a practical certainty that the plaintiffs will compete with the defendant … or that they have the intention of doing so if the provisions in the note are declared invalid.").

Counterclaim Defendants' proposed new counterclaim is exactly the type of fishing-expedition that the North Carolina Supreme Court has held repeatedly is not an appropriate use of the Declaratory Judgement Act.

As explained in the Complaint and *supra*, the only controversy that currently exists between TLC and the Counterclaim Defendants is with respect to the roads and the amphitheater.

As also explained, *infra*, contrary to Counterclaim Defendants' allegations in their Motion to Amend, TLC's Complaint already includes declaratory judgements related to the permissibility of the amphitheater use at the Conservation Property.

Despite this, Counterclaim Defendants seek to add a broad and sweeping declaratory judgement that *all* uses, except for three, are allowed at the Conservation Property. Counterclaim Defendants have not, however, specified in their proposed Counterclaims what, if any, additional uses they wish to engage in at the Conservation Property. Counterclaim Defendants have also not otherwise disclosed to TLC what they wish to do at the Conservation Property, nor have they asked for TLC's position on the permissibility of any proposed use and/or development pursuant to the Conservation Easement. Simply put, TLC is in the dark as to what Counterclaim Defendants are insinuating they wish to do. It is also not clear whether Counterclaim Defendants themselves are certain how, specifically, they wish to use the Property.

The only details that can be deduced from the proposed counterclaim is that Counterclaim Defendants wish to engage in some use *besides* a golf course, airstrip or helicopter pads. The possibilities of what such uses could entail are endless[2]. For example - do Counterclaim Defendants wish to engage in horse racing, a motor vehicle racetrack, the outdoor storage of gypsum, commercial sports fields, a borrow pit, a burn pit, mining, a petting zoo? Without specifying a proposed use, there is simply no way to evaluate whether the use is allowed under the Conservation Easement.

[2] In theory, the uses that are allowed at the Conservation Property are also limited to those that are allowed in the Rural Buffer zoning district, pursuant to the Orange County Unified Development Ordinance (the "UDO"). However, by seeking the amphitheater / farm stage interpretation, Counterclaim Defendants have already shown their desire to pursue uses not allowed under the current zoning and, thus, TLC has no way of accurately predicting what uses Counterclaim Defendants may try to pursue at the Property.

Importantly, there is also no way to know whether there is an "actual controversy" between TLC and Counterclaim Defendants regarding the use, or whether litigation is "unavoidable" because TLC has not been asked for their position. Counterclaim Defendants also offer no evidence that they intend to proceed with any, yet to be identified, plans. This is why, in their proposed counterclaim, Counterclaim Defendants do not, nor could they ever, set forth facts that disclose the existence of an actual controversy between TLC and the Counterclaim Defendants over any use beside the roads and amphitheater. This alone necessitates denial of their motion to amend as futile. *See*, *e.g., Lide, supra*.

In short – Counterclaim Defendants seek a blanket, advisory opinion, that, at any time now or in the future, they can do whatever they wish at the Conservation Property so long as it is not a golf course, airstrip or helicopter pad. They seek this interpretation without first confirming that an actual controversy exists between TLC and Counterclaim Defendants regarding their proposed plan, and without alleging any intention or "practical certainty" that they will engage in the yet to be disclosed activity. Again, the Declaratory Judgment Act is not a tool to obtain an advisory opinion to "keep on ice" until a later date and, thus, the Motion to Amend should be denied. *See also*, *e.g.*, *Smith v. McRary*, 306 N.C. 664, 671, 295 S.E.2d 444, 448 (1982)(Motion to Amend is futile when new counterclaim could not survive a motion to dismiss for failure to state a claim.); *Gaston Bd. of Realtors v. Harrison, supra,* at 234-235, 316 S.E.2d at 62 ("When the record shows that there is no basis for declaratory relief, or the complaint does not allege an actual, genuine existing controversy, a motion for dismissal under … Rule 12(b)(6) will be granted.").

II. The Request to Amend is Futile Because it Seeks to Add Facts and a Declaratory Judgement Which are Already Included in the Complaint.

Granting the Motion to Amend would also be futile because, with respect to the matters actually in controversy (ie: the amphitheater, or any similar use such as a farm stage), the facts and

declaratory judgement Counterclaim Defendants' wish to add are already included in the Complaint. *See*, *e.g.*, *Smith v. McRary*, at 671, 295 S.E.2d at 448 (denial of motion to amend was not an abuse of discretion when "the proposed amendment is no more than surplusage.").

Again, Counterclaim Defendants base their Motion to Amend on a mischaracterization of the Complaint. Specifically, Counterclaim Defendants allege, incorrectly, that the Complaint only relates to the permissibility of constructing buildings and structures at the Conservation Property, and not what uses are allowed. TLC is unsure how Counterclaim Defendants can reach this conclusion based on the plain language of the Complaint. As explained, *infra*, the only use at issue is the proposed amphitheater. The Complaint states repeatedly that the "**construction and use**" of the proposed amphitheater, or any similar use such as a farm stage, would violate the Conservation Easement. *See, e.g.,* Complaint ¶¶ 55, 84, 87, 89, 90, 94, 97, 103, 104. The Complaint also seeks several declaratory judgements regarding the "construction and use" of the proposed amphitheater. *See, e.g.,* Complaint, Third and Fourth Claims for Relief.

A side-by-side comparison of TLC's Complaint and Counterclaim Defendants' proposed amended counterclaim, attached hereto as **Exhibit 1**, further shows that the facts, claims for relief and prayer for judgement Counterclaim Defendants wish to add are already included in TLC's Complaint.

With respect to the facts, Counterclaim Defendants attempt to add facts related to TLC's opposition to Defendants' request for an interpretation from the Orange County Planning and Inspections Director that the proposed amphitheater constituted "agritourism." Specifically, Counterclaim Defendants' proposed "new" facts all relate to the April 10, 2025 letter TLC's counsel sent to the Orange County Planning and Inspections Director, with several proposed facts being nothing more than direct quotes from the letter. However, a copy of the April 10, 2025 letter,

as well as the facts related to the letter, are already included in the Complaint. *See, e.g.,* Complaint, Exhibit I. The facts Counterclaim Defendants wish to add are, thus, nothing more than a duplication of what is already in the Complaint.

Additionally, Counterclaim Defendants attempt to add a new cause of action "regarding their rights and the scope of permitted uses and activities under the Conservation Easement." *See*, proposed amended counterclaim, ¶ 110. Counterclaim Defendants allege this proposed new cause of action is related to TLC's "inten[tion] … to prevent the owners of the Conservation Property from engaging in various uses at the property, including but not limited to live music events or other gatherings." *See*, proposed amended counterclaim, ¶ 108.

As explained *infra* and as illustrated on **Exhibit 1**, the Complaint already includes several declaratory judgments related to this same question, *i.e.*: requests for declaratory judgements that the Conservation Easement prohibits the development of the property for an amphitheater, and/or any similar use such as a farm stage, at the Conservation Property. *See* Complaint, Third, Fourth and Fifth Claims for Relief. Thus, the declaratory judgement that Counterclaim Defendants allege is necessary to "fully adjudicate[]" the "matters currently in controversy regarding the Union Grove Defendants' plans for the Conservation Property," is already included in the Complaint. *See*, Motion to Amend, ¶ 5.

Since the facts and declaratory judgement that Counterclaim Defendants wish to add are already included in the Complaint, the proposed counterclaim amendment is duplicative and mere surplusage, and the request to amend should be denied as futile. *See, e.g., Smith v. McRary, supra.*

III. The Request to Amend is Futile Because the Proposed Counterclaim Fails to Join All Necessary Parties, Pursuant to N.C. R. Civ. P. 12(b)(7).

Allowing the Motion to Amend is also futile because Counterclaim Defendants' have failed to name all necessary parties as defendants to the proposed claim; specifically, the other owners

of the Conservation Property (EastWest Organics, LLC; Harper Grace, LLC; and Meredith G. Saybe).

All owners of property subject to the Conservation Easement are necessary parties to a declaratory judgment action seeking the interpretation of the Conservation Easement. This is especially true with Counterclaim Defendants' proposed declaratory judgement, which seeks to define the entirety of uses allowed at the Conservation Property.

Pursuant to the Declaratory Judgement Act, "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings." *See* N.C. Gen. Stat. § 1-260. *See also* Rule 19(a) of the N.C. R. Civ. P. ("Necessary joinder. - Subject to the provisions of Rule 23 [class actions], those who are united in interest must be joined as plaintiffs or defendants ….").

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

It is well-established in North Carolina that in declaratory judgment actions related to the enforcement or recognition of legal rights in an easement, all owners of real property subject to an easement are necessary parties. *See, e.g., Regency Lake Owners' Association, Inc. v. Regency Lake,*

LLC, 258 N.C. App. 636, 814 S.E.2d 121 (2018) (plaintiff sought a determination regarding the neighborhood's ability to use an easement to access a neighboring lake; because any determination would affect every resident within the neighborhood, each resident was a necessary party, whether they used the subject easement or not); *Rice v. Randolph, supra*, at 114, 384 S.E.2d at 297(action to determine whether a subdivision easement had been extinguished "[could not] be resolved without the joinder of the grantor, or his heirs, who retain fee title to the soil … and the record owners of lots in the subdivision, who have user rights in the easement"); *Hine v. Blumenthal*, 239 N.C. 537, 80 S.E.2d 458 (1954)(heirs of easement grantor, who are currently the fee simple owners of the property subject to the easement in question, were all necessary parties to declaratory judgement action); *N.C. Dept. of Transp. V. Stagecoach Village*, 174 N.C. App. 825, 622 S.E.2d 142 (2005) (regarding condemnation of common area, the "owners of the easement have a material interest in the subject matter of the controversy…and their interest will be directly affected by the trial court's decision" thus making them necessary parties); *Boone v. Rogers*, 210 N.C. App. 269, 708 S.E.2d 103 (2011)(vacating judgment entered without a necessary party and holding that husband and wife, who jointly owned property, were both necessary parties to action filed by the husband seeking a declaratory judgment that their neighbor had no easement across their property).

In the case *sub judice*, the property owner Defendants' properties are all subject to the covenants and restrictions in the Conservation Easement and each Defendants' property interests will be directly affected by the adjudication of this lawsuit. By way of example, if the Court issues a declaratory judgment that the Conservation Easement's regulation of uses extends beyond golf courses, airstrips, and helicopter pads, then that decision would have a preclusive effect on each property owner subject to the Conservation Easement. On the other hand, it is possible that one or more of the other property owners disagrees with Counterclaim Defendants' requested

interpretation and would oppose the use of the Property for any number of uses, aside from golf courses, airstrips or helicopter pads. These reasons are exactly why our courts require the joinder of all property owners subject to the easement in such declaratory judgement actions. *See, e.g., Regency Lake Owners' Association, Inc. v. Regency Lake, LLC, supra*.

In sum, all owners of the Conservation Property are subject to the covenants and requirements of the Conservation Easement, and each have a material interest in the subject matter of the controversy. Because the property owners' interests would be directly affected by a decision on Counterclaim Defendants' proposed new counterclaim, such counterclaim must include all owners of the Conservation Property as a party to the counterclaim.

IV. The Request to Amend is Futile Because the Proposed Counterclaim Seeks an Interpretation that is Contrary to the Plain Language of the Conservation Easement.

The Motion to Amend is also futile because the proposed new counterclaim seeks an interpretation of the Conservation Easement that is contrary to the plain language of the Conservation Easement and would essentially render the Easement and Grant of Development Rights meaningless.

Again, Counterclaim Defendants' request to add a declaratory judgement that interprets the Conservation Easement to mean that the only uses prohibited at the Conservation Property are golf courses, helicopter pads and airstrips.

As explained, *supra*, per the Conservation Easement, TLC is the holder of "all developmental rights" in the Property, with the exception of three (3) limited circumstances. There is nothing in the Conservation Easement that limits the term "development" to mean only the

construction of buildings or structures, and not the use of land[3]. It is also clear throughout the Conservation Easement that the "development" of the Property, and the restrictions placed on the same, includes both how the property is used and what is constructed at the Property. For example:

- The purpose of the Conservation Easement is to "assure the availability of the Property **in perpetuity for agricultural use**." *See* Conservation Easement, p. 2 (emphasis added).
- The exceptions to the grant of developmental rights include the ability to construct "single-family residential dwellings" and new buildings "used solely for agricultural purposes." *See* Conservation Easement, p. 4, ¶¶ 2(c) and 2(d). These exceptions regulate not just the construction of buildings, but the use of the structures.
- Other provisions further limit specific uses which, notably, also do not include buildings. For example, the Conservation Easement limits tree removal and "commercial timber harvesting" (Conservation Easement, p. 5, ¶ 6); and prohibits "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" (Conservation Easement, p. 6, ¶ 7).
- There is also a provision that limits what "recreational uses" TLC may permit at the Conservation Property. *See* Conservation Easement, p. 6, ¶ 10. The "recreational uses" provision reads as follows:

[3] *See, e.g.,* N.C. Gen. Stat. § 160D-102(12) defining development to include not only the building of structures, but "[t]he initiation or substantial change in the **use** of land or the intensity of **use** of land." (emphasis added). Chapter 160D applies to and governs development regulations in all North Carolina counties and municipalities.

"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."

Counterclaim Defendants requested declaratory judgement that "the Conservation Easement does not regulate uses of the Conservation Property, with the exception of three specifically stated prohibited uses: golf courses, airstrips, and helicopter pads," is, thus, unsupported by the clear, unambiguous language of Conservation Easement.

As an initial matter, the plain language of the "recreational use" provision shows that it does not give Defendants the authority to engage in any use at the Property. Instead, this provision only allows the Property Owners to request "written permission" from TLC to engage in recreational uses, and prohibits TLC from approving requests for golf courses, airstrips and helicopter pads.

Counterclaim Defendants' requested interpretation is also non-sensical because it would nullify and contradict all other provisions of the Conservation Easement regulating the use and development of the Property, as discussed *supra*, leaving the Conservation Easement and Grant of Development Rights essentially meaningless. Additionally, and even assuming, *arguendo*, there was ambiguity in the language of the Conservation Easement, the Conservation Easement contains an interpretation clause which requires the Conservation Easement be interpreted to "resolv[e] any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes." *See* Conservation Easement, p. 9, ¶ 19. Accepting the Counterclaim Defendants' requested interpretation that the Conservation Easement only prohibits golf course, airstrip and helicopter pad uses would run afoul of this interpretation clause, because such interpretation contradicts the stated conservation purpose, which is to "assure the availability of the Property **in perpetuity for agricultural use**." *See* Conservation Easement, p. 2 (emphasis added).

Because the plain language of the Conservation Easement could never support the interpretation Counterclaim Defendants seek, and because the requested interpretation would nullify the very purpose of the Conservation Easement, the proposed counterclaim fails and allowing the requested amendment would be futile for this reason as well.

V. The Motion to Amend Should be Denied Due to Undue Delay.

Finally, and in addition to all other reasons set forth herein, Counterclaim Defendants' Motion to Amend should be denied for undue delay.

A substantial amount of time has passed since the Complaint and the Defendants' original Answer and Counterclaims were filed. The Complaint was filed on August 15, 2025. At that time, as well as prior to the initiation of the Complaint, Counterclaims Defendants were aware of TLC's position that the Conservation Easement prohibits the **use** of the amphitheater at the Conservation Property. *See*, *e.g.* Complaint, ¶¶ 55, 84, 87, 89, 90, 94, 97, 103, 104 and Exhibit I.

Counterclaim Defendants filed their original Answer and Counterclaims on September 22, 2025 and choose not to include the proposed new counterclaim at that time. If, as Counterclaim Defendants now allege, they believed TLC's Complaint did not "seek[] any declaration regarding the scope of permitted use" and it was necessary to add such claim for "the matters currently in controversy regarding the Union Grove Defendants' plans for the Conservation Property [to] be fully adjudicated," then Counterclaim Defendants should have alleged such a claim in their original Counterclaims. Importantly, and as explained *infra*, Counterclaim Defendants do not seek now to add any new facts that were not already included in the Complaint, and their proposed counterclaim is instead based entirely on facts and a letter which was already attached to the Complaint.

The Motion to Amend was not filed until April 10, 2026, which was over five (5) months after Counterclaim Defendants filed their original counterclaims, and nearly eight (8) months after the Complaint was filed. The Motion to Amend was also filed over four (4) months after TLC answered Defendants' original counterclaims, and two (2) months after the parties engaged in an eight (8) hour mediated settlement conference and TLC responded to UGF's First Set of Discovery Requests.

Counterclaim Defendants offer no explanation for their substantial delay in filing the Motion to Amend, nor could there be a plausible explanation to justify the delay when the facts and allegations have been the same since the beginning. For this reason, Counterclaim Defendants' Motion to Amend should be denied. *See*, *e.g.*, *Media Network, Inc. v. Long Haymes Carr, Inc.*, 197 N.C. App. 433, 447-448, 678 S.E.2d 671, 681 (2009)(affirming denial of defendant's motion to amend to add counterclaims when the motion to amend was filed three-months after defendant filed its answer and defendant did not offer any credible explanation for the delay); *Walker v. Sloan*, 137 N.C. App. 387, 402, 529 S.E.2d 236, 247 (2000)(no abuse of discretion when trial court denied plaintiff's motion for leave to amend based on a three-month delay between answer and motion to amend); *Caldwell's Well Drilling, Inc. v. Moore*, 79 N.C. App. 730, 340 S.E.2d 518 (1986)(affirming denial of leave to amend where record does not indicate why plaintiff waited three months from filing of answer before moving to amend complaint); *Draughon v. Harnett Cty. Bd. Of Ed.,* at 467, 602 S.E.2d at 724 ("In deciding if there was undue delay, the trial court may consider the relative timing of the proposed amendment in relation to the progress of the lawsuit.").

CONCLUSION

For the reasons set forth herein, Counterclaim Defendants' Motion to Amend should be denied.

This, the 11th day of June 2026.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned electronically filed the attached ***Triangle Land Conservancy's Brief in Opposition to Union Grove Farm, Inc.'s, Bandit Farms II, LLC's, and Bandit Farms III, LLC's Motion for Leave to Amend Their Counterclaims*** with the Clerk of Court using the Odyssey eFileNC system which will automatically send email notification of such filing to the following:

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EXHIBIT 1

Motion to Amend - Proposed Additions	**Complaint**
Facts	
71. In tandem with TLC's efforts to distance itself from its agreement to expand the Conservation Easement, TLC participated in efforts to oppose UGF's request to the Orange County Planning and Inspections Director, Cy Stober, for a determination that certain proposed uses, including the proposed amphitheater, constitute "agritourism" and, therefore, are exempt from county zoning regulations.	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: …. (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. 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"). 53. In response to the Second Request, legal counsel for TLC … 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.** 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. **Complaint, Exhibit I** – TLC's April 10, 2025 letter to Orange County Planning and Inspections Director.

72. TLC's written submissions to Mr. Stober opposing an "agritourism" determination for UGF's proposed activities, make clear that TLC is not solely concerned with construction of an amphitheater on the Conservation Property. It is, instead, concerned with the specific use of hosting live music and other events on the Conservation Property.	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 in Complaint). 49. The Proposed Amphitheater has been characterized by Defendants as a music venue, farm stage and amphitheater, all of which are non-agricultural uses. …. 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. **Complaint, Exhibit I** – TLC's April 10, 2025 letter to Orange County Planning and Inspections Director. *See also*, **Complaint, Exhibit E** - TLC's Counsel April 21, 2025 letter to Defendants' counsel Sam Slater, p. 1 ("I am also sure you remember that we met … on April 30, 2024, to discuss UGF's violations and a potential resolution …. 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.")
73. For example, in an April 10, 2025 letter to Mr. Stober, counsel for TLC discussed the "risk profile" of a concert venue versus a "farm use," noting the expected increased traffic in the area following construction of a "concert venue" and the expected sound impacts of "outdoor music concerts."	53. In response to the Second Request, legal counsel for TLC … 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.** **Complaint, Exhibit I** – TLC's April 10, 2025 letter to Orange County Planning and Inspections Director.
74. TLC's counsel concluded the April 10, 2025 letter by noting: Classifying this concert venue as agritourism also raises public safety and welfare concerns.... The proposed concert venue would bring thousands of public visitors and require, among other things, the coordination of on-site traffic	53. In response to the Second Request, legal counsel for TLC … 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.** **Complaint, Exhibit I** – TLC's April 10, 2025 letter to Orange County Planning and Inspections Director.

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 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[.]	
75. TLC's submissions to the Orange County Planning and Inspections Director reflect that TLC is not chiefly concerned with an amphitheater being built on the Conservation Property it is concerned with the uses that would be conducted on such an amphitheater.	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 in Complaint). 49. The Proposed Amphitheater has been characterized by Defendants as a music venue, farm stage and amphitheater, all of which are non-agricultural uses. …. 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. **Complaint, Exhibit I** – TLC's April 10, 2025 letter to Orange County Planning and Inspections Director. *See also*, **Complaint, Exhibit E** - TLC's Counsel April 21, 2025 letter to Defendants' counsel Sam Slater, p. 1 ("I am also sure you remember that we met … on April 30, 2024, to discuss UGF's violations and a potential resolution …. 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.")

Claims for Relief	
THIRD CLAIM FOR RELIEF (Declaratory Judgment) 103. UGF, Bandit Farms II, and Bandit Farms III reallege and incorporate the allegations stated in the preceding numbered paragraphs. 104. An actual dispute and justiciable controversy exists between UGF, Bandit Farms II, and Bandit Farms III and TLC concerning the Conservation Easement's scope and meaning, as well as the permitted activities on and uses of the Conservation Property. 105. The Conservation Easement regulates the construction of buildings and other structures on the Conservation Property. 106. The Conservation Easement does not regulate uses of the Conservation Property, with the exception of three specifically stated prohibited uses: golf courses, airstrips, and helicopter pads. 107. TLC seeks in this litigation declaratory judgments that the owners of the Conservation Property are prohibited by the terms of the Conservation Easement from building any structure that could be used as an amphitheater and/or similar use, such as a farm stage. 108. TLC intends not only to restrict construction on the Conservation Property, but also to prevent the owners of the Conservation Property from engaging in various uses at the property, including but not limited to live music events or other gatherings. 109. TLC seeks to restrict the uses and activities that may be conducted on the Conservation Property. 110. Due to TLC's efforts to prevent certain uses and activities on the Conservation Property, owners of the Conservation Property face uncertainty regarding their rights and the scope of permitted uses and activities under the Conservation Easement.	**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** 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. 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** 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.

111. Accordingly, UGF, Bandit Farms II, and Bandit Farms III request a declaratory judgment stating that: a. The Conservation Easement restricts the construction of buildings and structures on the Conservation Property, but it does not regulate or limit uses at the Conservation Property with the exception of golf courses, airstrips, and helicopter pads; b. Uses other than golf courses, airstrips, and helicopter pads are permitted on the Conservation Property without any oversight or approval by TLC unless that use requires the construction of a building or facility.	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. 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. 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** 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.
Prayer for Relief	
4. That the court enter judgments declaring: a. The Conservation Easement restricts the construction of buildings and structures on the Conservation Property, but it does not regulate or limit uses at the Conservation Property with the exception of golf courses, airstrips, and helicopter pads; b. Uses other than golf courses, airstrips, and helicopter pads are permitted on the Conservation Property without any oversight or approval by TLC unless that use requires the construction of a building or facility.	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;