



TOWN OF CHAPEL HILL
Office of the Manager

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February 10, 2012

Mr. Bruce Runberg
Associate Vice Chancellor Facilities Planning and Construction
The University of North Carolina at Chapel Hill
304 South Building
CB#1000
Chapel Hill, North Carolina 27599-1000

Dear Mr. Runberg,

We received the [*Minor Modification Request 2012-1: improve ecological value and connectivity of the 311 acres of the Carolina North property that are to be placed in conservation under the terms of the Development Agreement*](#) from the University on January 5, 2012 and deemed it complete on January 11, 2012. The Town subsequently reviewed the request and I classified it as a minor modification since it did not include:

- a substantial change in the boundaries of the development agreement;
- a substantial change in floor area or number of parking spaces;
- substantial changes to pedestrian, bicycle or vehicular access or circulation beyond the boundaries of the agreement; or
- substantial changes in the amount or location of open space within the boundaries of the development agreement.

I also determined that the proposed modification should be included on the [January 23, 2012](#) Town Council meeting agenda to allow an opportunity for Council review and public comment, as allowed for in section 3.3.5 (j) of the Land Use Management Ordinance.

After the Council's discussion and the public comments, and considering the additional information provided by the University in the attached "Comparison Chart Restrictive Covenants and Conservation Easements Min Mod 2012-1", the proposed Exhibit E-2012-1 is approved as a minor modification to the Development Agreement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roger L. Stancil". The signature is stylized and somewhat cursive.

Roger L. Stancil
Town Manager

**Comparison of Restrictive Covenants and Conservation Easements
Carolina North Development Agreement: Section 5.5.1**

	Restrictive Covenants	Conservation Easement
Definition	A landowner encumbers property with restrictions on use of the property that run with the land and any current and future owners of the property are bound to those restrictions.	A landowner gives a property right that runs with the property to a third-party to enforce a set of restrictions on use of the property.
“Conservation Agreement”	“5.5.1.b: It is the intent of the Town and University that the conservation easement(s) shall constitute a "conservation agreement" as defined by N.C.G.S. 121-35(1) in that the conservation easement(s) shall serve to retain the applicable land and water areas predominantly in their natural, scenic or open condition.” The Conservation and Historic Preservation Agreements Act, codified in N.C.G.S. Chap. 121, Art. 4, allows for the creation of conservation agreements that might otherwise be invalid under North Carolina’s common law. A conservation agreement is broadly defined as “a right, whether or not stated in the form of a <u>restriction</u> , reservation, easement, <u>covenant</u> or condition, in any deed, will or other instrument executed by or on behalf of the owner of land or improvement thereon or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition.” [emphasis added] Both restrictive covenants and conservation easements constitute “conservation agreements” as defined in N.C.G.S. Chap. 121, Art. 4.	
Requirements	A property owner may create a conservation agreement by encumbering the property with restrictive covenants that run with the land to bind the owner and any future owners of the property.	A property owner may also create a conservation agreement by granting a conservation easement to a third-party holder. The property owner conveys a property right in the property to the third-party holder. The third-party holder must be the state, a local government, or a conservation organization.
Enforcement Mechanism	In the context of Carolina North, if the University fails to abide by the terms of the restrictive covenants, the University will have breached the DA. An uncured breach of the DA by University gives TOCH the right to terminate DA.	The holder of a conservation easement may bring an enforcement action against the landowner to assert its property rights. In the context of Carolina North, if the University fails to abide by the terms of a conservation easement, the University will have breached the DA. An uncured breach of the DA by University gives TOCH the right to terminate DA.

	Restrictive Covenants	Conservation Easement
Recordation Required	Yes	Yes
Term	Perpetual	Perpetual
Land Use Restrictions	List of land use restrictions in Section 5.5.1 of Development Agreement	List of land use restrictions in Section 5.5.1 of Development Agreement
Ability to Amend, Modify, and Terminate	Yes, but in the context of the Carolina North DA, if the modified restrictive covenants no longer meet the requirements in Section 5.5.1 of the DA, the University will have breached the DA. An uncured breach of the DA by University gives TOCH the right to terminate DA.	Yes, but in the context of the Carolina North DA, if the modified conservation easement no longer meets the requirements in Section 5.5.1 of the DA, the University will have breached the DA. An uncured breach of the DA by University gives TOCH the right to terminate DA.
Approval of State Property Office & Council of State	Permitted, subject to review and approval of the restrictive covenants document by State Property Office and Council of State.	Not permitted. State Property Office recently informed University that it will not permit the use of conservation easements at Carolina North.