

**INFORMATION FOR USERS OF THIS CWMTF TEMPLATE FOR
DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR RESTORATION PURPOSES
("RESTORATION DECLARATION")**

Purpose:

This template is intended to help CWMTF grant recipients prepare declarations of covenants associated with CWMTF-funded stream and wetlands restoration construction. It also sets forth CWMTF's minimum requirements for restoration declarations.

Background:

CWMTF requires grant recipients to commit to certain restrictions on activities and land use in buffer areas along restored streams. These restrictions must be recorded in either a restoration easement or a restoration declaration. Restoration declarations provide local government units and municipal corporations the option of entering into a one-party commitment to restrictions instead of a two-party commitment via conservation easement. Restoration declarations may be used only by local governments and municipal corporations. CWMTF does not permit their use by private landowners.

All conditions in this template are mandatory for all restoration declarations associated with construction of restoration projects funded at least in part by CWMTF. Declarations need not conform to the exact format or wording of this template, but CWMTF expects all conditions given in this template to be addressed in recorded declarations. Exceptions must be approved in writing by CWMTF before a declaration is recorded. Also, CWMTF must sign for "Accepted as to Form" before a declaration is recorded. CWMTF encourages our grant recipients and their agents to confer with CWMTF staff before drafting a declaration.

Possible alternatives to this restoration easement template:

- CWMTF grant recipients may choose from a number of documents for restricting activities on project sites. Refer to [Conservation Documents Applicable to CWMTF-funded projects](#) for a list of documents and how each might apply to a given project.
- If the riparian buffer to be protected is on private property (i.e., not on property owned by, the State of North Carolina, a local government unit, or a municipal corporation), a [Deed of Restoration Easement](#) or (similar) must be used instead of a restoration easement.

- If property-owner commitment to land-use restrictions is required by a CWMTF grant contract, and funding for stream restoration is not yet available, a limited-term [Option Agreement for Restoration Easement](#) may be used to fulfill the grant contract requirement pending funding for construction. By a recorded option, the property owner commits to executing and recording a restoration easement if and when construction is funded.

Process for recording a restoration declaration:

CWMTF grant recipients should proceed as follows when preparing a restoration declaration:

- 1) Verify that a restoration declaration is appropriate for the type of project, property ownership, and commitment to maintain the riparian buffer.
- 2) Prepare a draft restoration declaration using this template (delete this “Information for Users”).
- 3) Review the draft restoration declaration with CWMTF’s Restoration/Stormwater Project Manager.
- 4) Obtain the following signatures on the final restoration declaration, notarized where appropriate: declarant and CWMTF.
- 5) Record the fully executed restoration declaration with the county register of deeds.
- 6) Send a copy of the recorded restoration declaration to CWMTF.

This template is not intended to provide technical or legal advice. Users of this template should confer with their own attorneys and other appropriate professionals in preparing and recording easement documents.

Per requirements of most county registers of deeds, please provide a top margin of at least three inches on the first page of this document.

**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR RESTORATION PURPOSES
("RESTORATION DECLARATION")**

[project name]
[property name]

Prepared by: _____
After Recording Return to: _____

NORTH CAROLINA _____ COUNTY
CWMTF Project No.: _____ PIN: _____

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR RESTORATION PURPOSES ("Restoration Declaration") is made this _____ day of _____, 20____, by **NAME, ADDRESS AND CAPACITY** (the "Declarant").

RECITALS AND CONSERVATION PURPOSES

A. The Declarant is a unit of local government and accepts responsibility for enforcing the terms of this Restoration Declaration and for upholding its conservation purposes forever.

B. The Declarant is the sole owner in fee simple of certain real property containing _____ acres more or less, located in _____ Township, _____ County, North Carolina, and more particularly described *[by metes and bounds on the attached Exhibit A which is incorporated by reference as if fully set forth herein, by lot and block – preferred – if there is a recorded map, or by reference to prior recorded instruments]* (hereinafter the "Property").

C. The State of North Carolina (“State”) enacted the Uniform North Carolina Conservation and Historic Preservation Agreements Act (the “Conservation Agreements Act”), Chapter 121, Article 4 of the North Carolina General Statutes (“NCGS”), which provides for enforceability of restrictions, easements, covenants, or conditions “appropriate for retaining in land or water areas predominantly in their natural, scenic, or open condition . . .”.

D. This Restoration Declaration is intended to be a “conservation agreement” and/or a “preservation agreement” as defined and contemplated in the Conservation Agreements Act.

E. The North Carolina Clean Water Management Trust Fund (the “Fund”), an independent agency of the State with its address at 1651 Mail Service Center, Raleigh, North Carolina 27699-1651, is authorized by NCGS Chapter 113A, Article 18, to provide funding for projects and to acquire land and interests in land for riparian buffers for the purposes of protecting surface waters and urban drinking water supplies.

F. The Declarant is party to an agreement with the Fund through which it has received a grant from the Fund, identified as Grant Contract no. [REDACTED] (the “Grant Contract”), entered into between the Declarant and the Fund effective [REDACTED], for improving water quality by restoring [REDACTED] Creek on or bordering the Property and restoring and/or protecting riparian buffers on the Property (the “Restoration Project”).

G. The Declarant and the Fund have determined that water quality will benefit by implementation of the Restoration Project and subsequent protection and maintenance of riparian resources and other natural values on the Property (the “Conservation Values”).

H. In order to protect and maintain the Conservation Values, the Declarant wishes to restrict and limit in perpetuity activities on and uses of the Property that could conflict with the Conservation Values, such restrictions and limitations applying only to that portion of the Property shown on the map of survey dated [REDACTED] entitled “[REDACTED]” (the “Protection Area”), attached hereto as *[or, as described in]* Exhibit A and hereby made a part of this document, to the terms, conditions and purposes hereinafter set forth.

[If the Protection Area is less than the Property, the Protection Area must be described separately. Otherwise, the Property and the Protection Area are one and the same. If the Protection Area is less than the Property and has no road frontage, the restoration declaration must include a right of access across the Property: e.g., “The Protection Area is described in the attached Exhibit B, incorporated by reference as if fully set forth herein, and is conveyed together with the right of ingress, egress, and regress over, upon, and across the Property to and from the Protection Area.”]

NOW, THEREFORE, the Declarant hereby unconditionally and irrevocably declares that the Protection Area will be held and subject to the following restrictions, covenants and conditions as set out herein, to run with the subject real property and be binding on all parties that have or may have any right, title, or interest in said property.

ARTICLE I. DURATION OF RESTORATION DECLARATION

The covenants, conditions, and restrictions contained in this Restoration Declaration are permanent and perpetual, run with the land, and are be binding on the Declarant and its successors and assigns as owner of the Property and on all those claiming by, through, or under each such owner, in perpetuity.

ARTICLE II. ACTIVITIES AND USES EXPRESSLY RESTRICTED OR PROHIBITED AND EXCEPTIONS THERETO

A. Prohibited Activities and Uses. The Protection Area will be maintained in a manner and will not be developed or used in any manner that would impair or interfere with the purposes of this Restoration Declaration. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, except as expressly identified herein as exceptions:

(1) Industrial, Residential and Commercial Uses. Industrial, residential and commercial activities and the rights of passage for such purposes.

(2) Agricultural, Grazing and Horticultural Use. Agriculture, grazing, horticultural and animal husbandry operations.

(3) New Construction. Buildings, facilities, mobile homes, antennas, utility poles, towers, and other structures.

(4) Dumping or Storing. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material.

(5) Mitigation. Neither the Protection Area nor any portion thereof may be used to satisfy compensatory mitigation requirements under 33 USC Section 1344 or NCGS §143-214.11 or any successor or replacement provision of the foregoing.

(6) Open Space Requirements. The Protection Area may not be used to satisfy open space requirements of any cluster or other development scheme.

(7) Development Rights. All development rights are extinguished from the Protection Area and may not be transferred to any other lands pursuant to a transfer of development rights scheme or cluster development arrangement or otherwise.

B. Activities and Uses Restricted in the Easement Area. Without limiting the generality of the foregoing, the following activities and uses are expressly restricted, except as expressly identified herein as exceptions:

(1) Cutting of Vegetation. Except as related to removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, destabilizes or renders unsafe the Protection Area to persons or natural habitat or as necessitated by the activities described in Article III, above, all cutting, removal, mowing, harming, or destruction of any trees and vegetation on the

Protection Area is prohibited. *[Subject to the prior written approval of the Fund, this section may contain additional language regarding vegetation management if a project is located in a setting where a more manicured look is warranted such as a golf course or public park.]*

(2) Stream Crossings and Roads. New stream crossings for livestock and access to adjacent property are prohibited, with the understanding that any crossing may not impede flow of water or aquatic life. Existing roads, trails, or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces.

(3) Signs. Signs are prohibited, except interpretive signs describing activities and the purpose and function of the Protection Area, signs identifying the owner of the Property, signs giving directions, and signs prescribing rules and regulations for the use of the Protection Area.

(4) Grading, Mineral Use, Excavation, Dredging. Grading, filling, excavation, dredging, mining, drilling, and removal of topsoil, sand, gravel, rock, peat, minerals, and other materials are prohibited, except as necessitated by activities described in Article III.

(5) Water Quality and Drainage Patterns. Except as necessitated by activities described in Article III, diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water; altering or tampering with water control structures or devices; disruption or alteration of the restored, enhanced, or created drainage patterns; and removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides are prohibited.

(6) Subdivision and Conveyance. The Protection Area may not be subdivided, partitioned nor conveyed, except in its current configuration as an entity or block of property.

ARTICLE III. ACTIVITIES AND USES EXPRESSLY ALLOWED

Any activity on or use of the Protection Area not consistent with the purposes of this Restoration Declaration or that could interfere with maintenance of the Protection Area in its natural or restored condition is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly allowed on the Protection Area:

A. Passive Recreational Uses. The Declarant may engage in undeveloped recreational uses, including hiking, bird watching, hunting and fishing, and access to the Protection Area for the purposes thereof. Motorized vehicles may be used on trails, paths, and roads existing on the date hereof and only for managing, maintaining, and stewarding the Protection Area.

B. Educational Uses. The Declarant may engage in and permit others to engage in educational uses on the Protection Area consistent with this Restoration Declaration and the right of access to the Protection Area for such purposes, including organized educational activities such as site visits and observations. Educational uses of the Protection Area may not alter vegetation, hydrology, or topography.

C. Restoration. The Declarant and its representatives may engage in the Restoration Project. All activity associated with the Restoration Project will be conducted according to the requirements hereof and those incorporated herein from the Grant Contract and pursuant to all applicable laws, rules, regulations, and permits.

ARTICLE IV. RIGHT OF ENFORCEMENT IN STATE

In the event that the Declarant fails to comply with the terms of this Restoration Declaration, pursuant to the terms of the Grant Contract between the Declarant and the State acting by and through the Fund, the State has the independent right to enforce the terms of this Restoration Declaration through any and all authorities available under State law. Any forbearance by the State to exercise this right of enforcement may not be deemed or construed to be a waiver by the State of such right in general or with respect to a specific violation of any of the terms of this Restoration Declaration. The State and its agents and employees have such right of entry and access to the Protection Area as may be necessary to carry out the rights of enforcement set forth herein.

ARTICLE V. DECLARANT'S WARRANTY OF TITLE

The Declarant covenants, represents, and warrants that (i) the Declarant is the sole owner and is seized of the Protection Area in fee simple and has good right to grant and convey the aforesaid Restoration Declaration; (ii) there is legal access to the Property and the Protection Area; (iii) the Protection Area is free and clear of any and all encumbrances, except those exceptions of record, none of which would nullify, impair or limit in any way the terms or effect of this Restoration Declaration; and (iv) the Declarant will defend its title against the claims of all persons whomsoever.

ARTICLE VI. MISCELLANEOUS

A. Stewardship of the Protection Area. Pursuant to the terms of the Grant Contract, the Declarant hereby covenants and agrees that it will monitor and observe the Protection Area in perpetuity to assure compliance with the purposes and provisions of this Restoration Declaration and the provisions of the Grant Contract.

B. Subsequent Transfer of Fee. The Declarant may not convey the Property or any interest therein and may not incur, assume, or suffer to exist any lien upon or with respect to the Property without disclosing to the prospective buyer the Restoration Declaration, the obligations of an owner of the Property, and limitations on use of the Property hereunder. The Declarant further agrees to make any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Restoration Declaration herein created.

C. Transfer of the Restoration Declaration. The Declarant has have the right to transfer this Restoration Declaration to a "qualified conservation organization" under Section 170(h) of the Code, only if the agency or organization expressly agrees to assume the

responsibility imposed on the Grantee by this declaration and if said transfer is approved by the State acting by and through the Fund or its successor agency.

D. Amendments. The Declarant or its successors in interest in the Protection Area is free to amend this Restoration Declaration to meet changing conditions, provided that no amendment will be allowed that is inconsistent with the purposes of this Restoration Declaration or affects the perpetual duration of this Restoration Declaration. Such amendment(s) require the written consent of both the Declarant and the Fund and will be effective upon recording in the public records of [REDACTED] County, North Carolina. The Declarant acknowledges that it has no right to agree to any activity that would result in the termination of this Restoration Declaration.

E. Interpretation. This Restoration Declaration will be construed and interpreted under the laws of the State, and any ambiguities herein will be resolved so as to give maximum effect to the purposes of this Restoration Declaration as stated herein. Further, this Restoration Declaration will be construed to promote the purposes of the Conservation Agreements Act, which authorizes the creation of conservation agreements for purposes including those set forth herein, such conservation purposes as are defined in Section 170(h) (4) (A) of the Code and set forth in NCGS Chapter 113A, Article 18. If any provision of this Restoration Declaration is found to be invalid, the remainder of the provisions of this Restoration Declaration, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, will not be affected thereby.

[SEE FOLLOWING PAGES FOR SIGNATURES AND NOTARY]

IN WITNESS WHEREOF, Declarant, by authority duly given, has hereunto caused these presents to be executed by its respective officers and its seal affixed, to be effective the day and year first above written.

DECLARANT:

[name of organization]

By: _____(SEAL)

STATE OF NORTH CAROLINA
COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

Name of Signatory

Date _____

Official Signature of Notary

Notary's printed or typed name

(Official Seal) My commission expires: _____

APPROVED AS TO FORM:

CITY/COUNTY/TOWN ATTORNEY

**ACCEPTED AS TO FORM:
NORTH CAROLINA CLEAN WATER MANAGEMENT TRUST FUND**

BY: _____
RESTORATION/STORMWATER PROJECT MANAGER

[Attach appropriate exhibits such as:]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[Describe the Property by reference to a recorded map (preferred), by metes and bounds, or by reference to prior recorded instruments. Use an exhibit if the Property is not described in the body of the document.]

EXHIBIT B

LEGAL DESCRIPTION OF THE PROTECTION AREA

[If the Protection Area is less than the Property, refer to a recorded map that describes the Protection Area in relation to the Property, and provide a copy of this map to CWMTF with a copy of the recorded restoration declaration. Alternatively, describe the Protection Area by metes and bounds.]

[If the Protection Area is less than the Property and has no independent road frontage, add the following to its legal description: “, together with the right of ingress, egress and regress over, upon and across the Property to and from the Protection Area.”]