

Guidelines for

DECLARATION OF RESTRICTIONS AND COVENANTS FOR REPLACEMENT WETLANDS

To ensure the County Recorder will accept your document, please follow these guidelines:

➤ MARGINS:

Top margin must be 3½ inches on the first page (type below margin).

Bottom, sides and other page margins must be ½ inch.

Note: No marks or writing can be within these spaces.

➤ NOTARY STAMP AND SIGNATURES:

Notary must stamp below their signature. Signature “tails” and notary stamp cannot be in margin area.

First draft easement submitted for approval by our attorney and engineer requires no signatures.

You, the applicant, must submit the final signed document to the County Recorder. You must send RCWD a copy of the signed easement and proof of receipt by the County Recorder BEFORE YOUR PERMIT WILL BE ISSUED. After the easement document has been recorded, you must send RCWD a copy of the recorded document and mail the original to the Grantee. We will hold your surety money until we receive a copy of the recorded document. Your project must also pass final inspector by our District Inspector before surety will be returned.

➤ ALSO:

NO staples, erasures, whiteout, fax information, hole punches, computer disk information, page numbers or stains.

Failure to follow the guidelines could delay the processing and recording of your easement, resulting in a delay for starting your project.

Samples are available from the Rice Creek Watershed District office for the following form documents:

1. ponding and flowage easements
2. declaration of restrictions and covenants for replacement wetland
3. affidavit of landowner(s) for replacement wetland
4. consent to replacement wetland

INSTRUCTIONS FOR USE OF WCA DEED FORMS

General Instructions for all three forms:

1. Forms A, B and C are required by the WCA Rules to give notice to current and future landowners of the Replacement Wetland or the Altered Wetland (i.e., the wetland that was drained or filled) of obligations and restrictions on the use of the wetland. (See *Note on second page regarding Forms B and C)
2. All of these forms must be signed by the fee owner (including the husband and wife, even if the title is only in the one spouse's name) and by any other party who is defined as a "Landowner" under the rules who is doing the replacement or draining/filling of the wetland.
3. All of these forms must be notarized and filed with the county recorder's office in which the wetlands located, so that the obligations and restrictions on the use of the wetland become a permanent part of the land record.

Form A: Declaration of Restrictions and Covenants for Replacement Wetland

This form will be used most frequently because it is required for a Replacement Wetland when the Landowner seeks LGU approval of the Replacement Plan or Bank Plan. The Landowner acknowledges in this Declaration that, among other things, he is responsible for maintaining the size and type of the Replacement Wetland.

1. In addition to form A, the LGU requires proof of good title, i.e. proof that the Landowner in fact owns the land and that no encumbrances are on the land which would prevent the creation or restoration of a wetland on that parcel. This is very important! Preferably, proof of good title should be in the form of : Owner's duplicate certificate of title (for Torrens or Registered Property), updated abstract, title insurance policy, or title opinion from an attorney. At a minimum, the LGU must require a deed or certificate of title showing ownership, Landowner's Affidavit (Form A-1 below), and Consent to Replacement Wetland (Form A-2 below).

2. Although it may seem like a significant burden for landowners to provide this information and for the LGUs to review it, this is essential to protect the replacement wetland. For example, if a mortgage holder ("mortgagee") does not consent to the creation or restoration of the wetland, then a court may find that the mortgagee who forecloses on the property is not subject to the requirements of maintaining the replacement wetland, because the mortgage was granted prior to the wetland being created or restored. It may be extremely difficult for the LGU to then go after the original landowner several years later and compel him to find another replacement wetland.

3. The two supplemental forms below, A-1 and A-2, will help the LGU ensure that the Landowner has good title.

FormA-1: Affidavit of Landowner(s)

This affidavit should be signed by the Landowner to affirm that he is the owner of the property and that there are no mechanics' liens, judgments, delinquent taxes or other encumbrances against the property. This affidavit should be notarized but it need not be filed with the County Recorder.

Form A-2: Consent to Replacement Wetland

This consent form should be signed by all parties who have an interest in the Replacement Wetland (e.g. mortgages, contracts for deed vendors or vendees, licensees, lien holders, owners of easements for a drainage system or utility (pipe)line which actually runs through the Replacement Wetland). This consent form should be notarized and filed with the County Recorder.

Note: Forms B and C are only required when draining or filling of wetlands occurs on land used for agricultural purposes.

Form B: Declaration of Restrictions for Wetland Altered Under Agricultural Exemption

This form should be signed by a landowner who has obtained an exemption certificate from the LGU under one of the Agricultural Exemptions of WCA (ex. #1, 2, 4, 7, 8 and 23). This Declaration prevents the landowner from converting the land to non-agricultural use for 10 years from date of draining or filling, and also prevents the Altered Wetland from being restored for replacement credit for the same 10-year period. This form should be notarized and filed with the County Recorder.

Form C: Declaration of Restriction for Altered Wetland on Agricultural Land in County or Watershed Containing Less than 80% Pre-settlement Wetlands

This form should be signed by the Landowner who has drained or filled a wetland on agricultural land in a county or watershed containing less than 80% pre-settlement wetlands. The Declaration prevents the Landowner from converting the land to non-agricultural use for 10 years from the date of draining or filling, unless the Altered Wetland is first replaced at the ratio for non-agricultural land.

Above Space is Reserved for Recording Information

**DECLARATION OF RESTRICTIONS AND COVENANTS
FOR
REPLACEMENT WETLAND**

This Declaration of Restrictions and Covenants for Replacement Wetland (Declaration) is made this [Day] day of [Month], [Year] by the undersigned Declarant.

RECITALS

- A. The Declarant holds the fee title or perpetual easement on the real property described as follows:

[Insert legal description of the smallest parcel of land possible containing the Replacement Wetland.]
- B. This real property is the site of a Replacement Wetland as defined in Minnesota Rules 8420.0110, subp. 40.
- C. The Declarant is seeking approval of (1) a replacement plan under Minnesota Statutes section 103G.222 and Minnesota Rules 8420.0530 or (2) a bank plan under Minnesota Rules 8420.0740,
- D. The Replacement Wetland is subject to Minnesota Conservation Act of 1991, as amended, Minnesota Statutes section 103G.222 et seq., and all other provisions of law that apply to wetlands, except that the exemptions in Minnesota Statutes section 103G.2241 do not apply to the Replacement Wetland, pursuant to Minnesota Rules 8420.0115.
- E. The Local Unit of Government (LUG) charged with approval of the Replacement or Banking Plan is [Name of LGU], whose address is [Address of LGU].
- F. All references in this instrument to Minnesota Statutes and Rules are to the Statutes and Rules currently in effect and as amended or renumbered in the future.

Restrictions and Covenants

The Declarant makes the following declaration of restrictions and covenants for the Replacement Wetland. These restrictions and covenants shall run with the land, and bind Declarant and Declarant's heirs, successors and assigns:

1. The Declarant shall maintain a Replacement Wetland of the size and type specified in the replacement plan or bank approved by the LGU and on file at the offices of the LGU. Declarant shall not make any use of the Replacement Wetland that would adversely affect the functions or values of the wetland as determined by Minnesota Rules 8420.0540, subp. 10 and as specified in the replacement plan or bank.
2. Declarant shall pay the costs of maintenance, repairs, reconstruction, and replacement of the Replacement Wetland, which the LGU or the State of Minnesota through the Minnesota Board of Water and Soil Resources may deem necessary to comply with the specifications for the Replacement Wetland in the approved replacement plan or bank plan.
3. Declarant grants to the LGU, the State of Minnesota, the agents and employees of the LGU and the State of Minnesota, reasonable access to the Replacement Wetland for inspection, monitoring, and enforcement purposes. This Declaration grants no access to or entry on the lands described to the general public.
4. Declarant represents that he or she has a fee simple or easement interest in the land on which the Replacement Wetland is or will be located. Declarant represents that he or she has obtained the consent of all other parties who may have an interest in the land on which the Replacement Wetland is or will be located to the creation of the restrictions and covenants herein, and that, all such parties have agreed in writing to subordinate their interests to these restrictions and covenants, pursuant to the attached Consent and Subordination Agreement(s).
5. Declarant shall record or file this Declaration, pay all costs associated with recording or filing, and provide proof of recording or filing to the LGU. If this Declaration is given pursuant to a replacement plan, such proof shall be provided to the LGU before proceeding with construction of the Replacement Wetland.
6. These restrictions and covenants shall be unlimited in duration, without being re-recorded.
7. If the replacement plan or bank plan approved by the LGU and on file at its offices requires the establishment of areas of permanent vegetative cover, the term "Replacement Wetland" as used in this Declaration shall also include the required areas of permanent vegetative cover, even if such areas are not wetlands. All provisions of this Declaration that apply to the Replacement Wetland shall apply equally to the required areas of permanent vegetative cover. In addition, the Declarant:
 - (a) Shall comply with the applicable requirements of Minnesota Rules 8420.0540, subpart 2.D:
 - (b) Shall, at Declarant's cost, establish and maintain permanent vegetative cover on areas specified in the replacement plan or bank plan for permanent vegetative cover, including any necessary planting and replanting thereof, and other conservation practices, in accordance with the replacement plan or bank plan;
 - (c) Shall not produce agricultural crops on the areas specified in the replacement plan or bank plan;
 - (d) Shall not graze livestock on the areas specified in the replacement plan or bank plan;
 - (e) Shall not place any materials, substances, or other objects, nor erect or construct any type of structure, temporary or permanent, on the areas specified in the replacement plan or bank plan, except as provided in the replacement plan or bank plan;
 - (f) Shall, at Declarant's cost, be responsible for weed control by complying with noxious weed control laws and emergency control of pests necessary to protect the public health on the areas specified in the replacement plan or bank plan; and
 - (g) Shall comply with any other requirements or restrictions specified in the replacement plan or bank plan, including, but not limited to, haying, mowing, timber management or other vegetative alterations

that do not enhance or would degrade the ecological functions and values of the replacement site or bank site.

8. This Declaration may be modified only by the joint written approval of the LGU and the State of Minnesota through the Minnesota Board of Water and Soil Resources. Such modification may include the release of land contained in the legal description above, if it is determined that non-wetland areas have been encumbered by this Declaration, unless the approved replacement plan or bank plan designates these areas for establishment of permanent vegetative cover.
9. This Declaration may be enforced, at law or in equity, by the LGU, or by the State of Minnesota. The LGU and the State of Minnesota shall be entitled to recover and award of reasonable attorney's fees from Declarant in any action to enforce this Declaration.

Signature of Declarant

Signature of Declarant

STATE OF MINNESOTA
COUNTY OF [County]

This instrument was acknowledged before me on [Month] [Day], [Year] by [name(s) of person(s)].

Signature of Notarial Officer

Title

My commission expires

This instrument was Drafted By: [Name and Address].

AFFIDAVIT OF LANDOWNER(S)

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

_____, the Affiant herein being first duly sworn, deposes and says:

1. Affiant is the owner of land described as follows, to-wit:
 [Insert legal description of the smallest parcel of land possible containing the Replacement Wetland.]
2. Affiant is well-acquainted with the above-described land.
3. As of _____, 20___, no persons were in possession of or claiming title to said land other than Affiant.
4. There have been no improvements made during the one-hundred-twenty (120) days prior to the above date for which any mechanics' liens might have arisen.
5. All taxes and assessments levied against the property have been paid when due, and such property is free and clear of any tax lien except for current taxes not yet due or not yet delinquent.
6. No lien for unpaid income taxes has been filed or is outstanding against the property.
7. The land described above is free of all mortgages, easements, liens and other encumbrances except as specified on the attached Form A-2 (Consent to Replacement Wetland).
8. No judgment or decree has been entered against Affiant that remains unsatisfied.
9. Affiant has not filed a bankruptcy petition nor had one filed against him under Title 11 of the United States Code.

Further your Affiant sayeth not.

Subscribed and sworn to before me
this ____ day of _____, 20__.

Notary Public

CONSENT TO REPLACEMENT WETLAND

WHEREAS, _____ is the fee owner(s) of the following lands:

[Insert same legal description from Replacement Wetland Declaration]

AND WHEREAS, the undersigned, _____, has an interest in the land pursuant to:

- _____ Mortgage
- _____ Utility Easement for utility line or pipeline which runs through the Replacement Wetland
- _____ Drainage Easement for ditch, tile line or other drainage system which runs through the Replacement Wetland
- _____ Contract for Deed
- _____ Lien
- _____ Other (specify) _____

which document is dated _____, and was recorded on _____ in the Office of the County Recorder for _____ County, in Book _____, Page _____, as Document No. _____; and

WHEREAS, the fee owner or Landowner as defined in Minn. Rules part 8420.0110, subp. 29 intends to restore or create a Replacement Wetland under Minn. Stat. Sec. 103G.222 and Minn. Rules part 8420.0530 or Minn. Rules part 8420.0740, upon the land described above.

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NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the undersigned hereby consents to the creation or restoration of the Replacement Wetland. The undersigned acknowledges that its interest in the land on which the Replacement Wetland is located shall be subject to all federal, state and local laws and regulations regarding wetlands, including the Declaration of Restrictions and Covenants for Replacement Wetland that is attached hereto.

IN TESTIMONY WHEREOF, _____, the _____ of the undersigned, has executed this document this _____ day of _____.

Title

ACKNOWLEDGMENT

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of
_____, by _____.

Notary Public

Notary Stamp or Seal

This instrument was drafted by:
(NAME & ADDRESS)