

FRPP Deed Review Checklist (2009 and later)			
General Guidance for Easement Document: 1. Easement is to be clearly written, eliminate ambiguity. 2. Provisions should not be redundant. 3. Document should not be overly long and complex.		Required Attachments to Deed: 1. Title Commitment 2. Farmsteads Exhibit	
State:		Nest Agreement #	
State Program Manager Please Confirm:			
Does the property contain HEL?			
Does the property contain more than 20% forest land or 40 acres of forest?			
Does the property contain Prime Farmland?			
Does the property contain a Cultural of Historic Resource?			
Is easement being placed on an entire parcel?			
Policy Citation	Analysis	State Citation (Page, Paragraph)	Realty Specialist Confirmed
Critical Clauses			
519.64 B.(8)	Conservation Plan: Confirm the deed requires a conservation plan for all Highly Erodible Land (HEL). Check with State on HEL. If property contains no HEL, conservation plan MAY still be required by deed, but delete references to (HEL).		
519.64 B.(11)(i)	General Indemnifications: **REQUIRED LANGUAGE** Confirm that this section is identical to prescribed language.		
519.64 B.(11)(iii)	Environmental Warranty: **REQUIRED LANGUAGE** Confirm that this section is identical to prescribed language.		
519.64 B.(11)(xii)	U.S. Right of Enforcement: **REQUIRED LANGUAGE** Confirm that this section is identical to prescribed language.		
519.64 B.(1)	Introductory Paragraph: Confirm grantor name is identical to title policy and NRCS is not listed as a grantee. NRCS may be acknowledged as having 3rd party enforcement right and indexed as such.		
519.64 B.(2)	Responsibility of Grantee: See 519.64 B.(9)(ii) and (11)(xi)		
519.64 B.(3)	Recitals to include grantee authority: Confirm that the recitals include authority to acquire and hold a conservation easement by the holder.		
519.64 B.(3)(i)	Recitals to include Federal Authority: Confirm that the recitals include citation to FRPP enabling statute (16 U.S.C. Sections 3838h and 3838i).		
519.64 B.(3)(ii)	Recitals to include purpose: Confirm that the recitals include purpose of FRPP <i>"the protection of agricultural use and related conservation values of eligible land by limiting nonagricultural uses of that land."</i>		
519.64 B.(3)(iii)	Property Description: Confirm that deed contains a description of the protected property that matches the title policy. (If description is not for a complete parcel look for a survey.)		

519.64 B.(4)	Granting Clause: Confirm that the deed conveys a conservation easement to the grantee in perpetuity (or longest term permitted by state law).		
519.64 B.(5)	Conservation Purposes: Confirm that the conservation purposes include " <i>protecting agricultural use</i> ."		
519.64 B.(6)	Prohibitions: Confirm that easement prohibits activities inconsistent with the purposes of the conservation easement.		
519.64 B.(6)(i)	Industrial and Commercial Uses: Confirm that the deed prohibits industrial or commercial uses unless expressly for agricultural purposes.		
519.64 B.(6)(ii)	Construction on Protected Property: Confirm that construction or placement of new structures or buildings is limited to farmstead area(s) to prevent sprawl across prime farmland.		
519.64 B.(6)(iii)	Impervious Surfaces: Confirm that the deed caps impervious surfaces at 2% of the conservation easement area. Impervious surfaces include all residential building, agricultural buildings, and paved areas. Does NOT include conservation practices.		
519.64 B.(6)(iv)	Mining or Extraction of Soil: NEED POLICY LANGUAGE		
519.64 B.(6)(v)	Motorized Vehicle Use: Confirm motorized vehicle use is prohibited except as necessary for agricultural, forestry, habitat management, law enforcement and public safety, or other permitted uses of the Protected Property.		
519.64 B.(6)(vi)	Utilities: Confirm that easements for and the installation of new utilities are prohibited. Except when necessary for permitted uses, if consistent with purposes of conservation easement and done with the least impact on soils.		
519.64 B.(6)(vii)	Waste and Dumping: Confirm dumping or disposal of trash or refuse on easement area is prohibited, except for compostable agricultural products and by-products for use on the property.		
519.64 B.(6)(viii)	Recreation and Education: Confirm that recreation and education activity requiring impervious surfaces is prohibited. Recreation with minimal (negative) impact soils and agricultural operations is permitted. See 519.64 B.(7)(iv).		
519.64 B.(7)(iv)	Undeveloped Recreation and Education: Confirm that recreation and education is only permitted if consistent with easement purposes. Must be undeveloped and passive. See 519.64 B.(6)(viii).		
519.64 B.(6)(ix)	Signs: Confirm that signs are prohibited, except those that identify/advertise the farm or ranch, products or services provided by the farm or ranch, participation in FRPP and grantee's program.		
519.64 B.(6)(x)	Subdivision: Confirm all subdivision is prohibited.		

519.64 B.(6)(xi)	Water Rights: Confirm separating water rights from the underlying property is prohibited.		
519.64 B.(6)(xii)	Surface Alterations: Confirm that surface alterations are prohibited except in accord with general agricultural practices and as permitted by 519.64 B.(7)(iii). (other permitted purposes?).		
519.64 B.(7)	Permitted Uses		
519.64 B.(7)(i)	Agriculture: Confirm that the deed does NOT restrict the <u>types</u> of agricultural that can occur on the property. May include reasonable restrictions on agriculture around riparian, historic and archaeological areas.		
519.64 B.(7)(ii)	Forest Management: Confirm that there are specific rules for forest management and timber harvest. If none, then ask what percent of property is in forest.		
519.64 B.(7)(iii)	Wetland or Pond Creation/Restoration: Confirm that if wetland or pond creation/restoration is permitted that it must be consistent with easement terms and purposes.		
519.64 B.(7)(v)	Customary Rural Enterprises: Confirm that if permitted they must be compatible with easement purposes and limited to buildings constructed and maintained for agricultural use or new buildings required as an integral part of agriculture operation.		
519.64 B.(7)(vi)	Agritourism: Confirm that if permitted they must not negatively impact the soil or agricultural productivity of the easement property.		
519.64 B.(7)(vii)	Roads: Confirm that only existing roads or new roads necessary to carry out agricultural operations on the easement property. (other permitted uses? Public safety?)		
519.64 B.(7)(viii)	Fences: Confirm that deed permits maintaining and replacing existing fences along with installing new fences if necessary for agricultural operations of marking boundaries.		
519.64 B.(9)	Enforcement and Management		
519.64 B.(9)(i)	Baseline Documentation Report: Confirm that deed incorporates the BDR by reference.		
519.64 B.(9)(ii)	Grantee (Holder) Responsibility: Confirm that deed gives the grantee the responsibility to maintain BDR, enforce the easement, and follow up on violations in sufficient detail.		
519.64 B.(11)(xi)	Rights of Grantee: Confirm the deed states the grantee has the right to protect and monitor the easement property and enforce the terms of the easement.		
519.64 B.(10)	Extinguishment and Condemnation: Confirm that the deed requires advance notice of condemnation proceedings to NRCS and distribution of a portion of any resulting funds to NRCS. (and that consent is not implied?)		
519.64 B.(11)	Standard Provisions		

519.64 B.(11)(ii)	Warranty of Title: Confirm that the deed states all third party rights have been subordinated to the conservation easement and that the grantor warrants good title to the property.		
519.64 B.(11)(iv)	Interpretation: Confirm that the deed requires interpretation under state law and ambiguity to be resolved in favor of the purpose of the easement.		
519.64 B.(11)(v)	No Merger: Confirm that the deed prohibits the merger of interests if the fee is acquired by the easement holder or the U.S.		
519.64 B.(11)(vi)	Amendment: Confirm that deed contains amendment clause that requires notification of and approval by NRCS prior to any amendment for non-certified entities and for substantive amendments for certified entities.		
519.64 B.(11)(vii)	Boundary Line Adjustments: Confirm the deed limits boundary line adjustments to correcting technical areas in the survey, not to exceed to acres.		
519.64 B.(11)(viii)	Subordination: Confirm that the deed provides notice to any potential junior encumbrances that the easement takes precedence.		
519.64 B.(11)(ix)	Responsibility of Grantor: Confirm that the deed states the grantor remains responsible for all maintenance, upkeep, liability, and taxes of protected property.		
519.64 B.(11)(x)	Runs with Land: Confirm that the deed explicitly states that all rights and obligations of easement run with the land.		
519.64 B.(11)(xiii)	Transfer and Assignment: Confirm the deed requires 1. Reference to the easement in future deeds and 2. Consent by U.S. if the holder transfers the easement.		
519.64 B.(12)	Notices: Confirm deed contains notice to all parties and the U.S. Notice to U.S. shall be to appropriate State Conservationist.		
519.64 B.(13)	Habendum Clause: Confirm that grantor, grantee and U.S. are named.		
519.64 B.(14)	Signatures, Acknowledgements, and Exhibits: Confirm that signatures and acknowledgments meet requirements of state law and that a legal description, map of farmstead areas, and survey (if less than full parcel) are attached (or will be by state).		