



ACEP-ALE Program

TIP SHEET FOR MICHIGAN APPLICANTS

ACEP-ALE At a Glance

Agricultural Conservation Easement Program–Agricultural Land Easements: ACEP-ALE is a voluntary program of the United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS) to protect agricultural lands by limiting non-agricultural uses. Established by the 2014 Farm Bill, ALE replaces the former Farm and Ranchland Protection and Grassland Reserve Programs.

Funds: ACEP – ALE is a cost-share program that provides up to 50 percent of fair market value of the agricultural land easement on approved parcels. A statewide competitive process uses both national and state ranking factors to select priority parcels for annual funding. ACEP – ALE does not cover cost of appraisals, surveys when needed, title search, legal and closing costs, or monitoring and enforcement of the easement.

Eligible Entities or Partners: American Indian tribes, state and local governments, and non-governmental organizations, including land conservancies, that have farmland protection programs and meet other entity requirements. Land conservancies can be non-certified or certified eligible entities, see explanation below.

Eligible Lands: Cropland, grassland, pastureland and nonindustrial private forest land are eligible. NRCS prioritizes applications that protect agricultural uses and related conservation values of the land and those that maximize the protection of contiguous acres devoted to agricultural use. State and national ranking factors are used to identify priority projects.

Match Requirements: ACEP-ALE provides no more than 50% of fair market value of an agricultural land easement so match dollars are required. Eligible entities must contribute at least as much as NRCS. A landowner may donate easement value as part of the eligibility entity share as long as the entity contributes its own cash resources in an amount equal to half of the requested federal contribution. See section on Match Requirements and Waivers below.

Enrollment: NRCS enters into cooperative agreements (ALE Agreement) with eligible entities and a perpetual conservation easement is purchased. If an award is granted, each easement is required to have an agricultural land easement plan that promotes the long-term viability of the land.

Application: To enroll land through ALE, eligible partners may submit applications anytime to NRCS, but it is unlikely that it will be reviewed until a deadline is established by the agency and all applications for the year are in hand. The NRCS State Coordinator may set more than one deadline in any one federal fiscal year. For example, January 15, 2016 was the deadline for applications for FY 16 funding. Take note that deadlines may not always be the same month and day each year. It can take several months from time of application to notice of award.

For general questions regarding ACEP, contact the NRCS State Coordinator: Brian Thomas, Acting ACEP Coordinator, 517-324-5259 or brian.thomas@mi.usda.gov

REVIEW BEFORE APPLYING

Tip: If not familiar with the program, first review the Critical Documents and Eligibility and Application Requirements (for the Entity, Land and Landowner) to determine if the program is a good fit for your project *and* the landowner. The timeline from application to closing, it can take as long as 18 to 24 months. If awarded a federal cost share, funds are not made available until after closing.

Critical Documents

All application and other important forms can be found under Documents at the Agricultural Conservation Easement Program/NRCS Michigan web page:

www.nrcs.usda.gov/wps/portal/nrcs/detail/mi/programs/easements/acep

Pre-Application Assessment Tool

Michigan requires a Pre-Application Assessment Tool to be completed, signed and submitted with an application. Before making an application, use it to help determine if the applying entity, land and landowner meet eligibility requirements for ACEP-ALE cost-share assistance.

Michigan Ranking Form

Another important document is the Michigan Ranking Form, which is used to score and rank parcels using both national (50% of points) and state factors. Parcels are selected for cost-share assistance based on their ranking. Note that more points are received if more matching funds are provided.

ACEP Cooperative Agreement Template (Agricultural Land)

Once an award is made, the Cooperative Agreement Template (also known as Statement of Work) is used with non-certified entities to construct a legal document that stipulates the terms and conditions under which NRCS will provide ACEP-ALE cost-share assistance to the Entity. (A grant agreement is used for certified entities.)

Minimum Deed Terms

These terms must be incorporated or appended to an Agricultural Land Easement under ACEP-ALE. It is a good idea to familiarize landowners with these terms.

Entity Eligibility And Application Requirements

A land conservancy acting as an eligible entity is:

- Organized for and, at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of Section 170(h)(4)(a) of the Internal Revenue Code (IRC) of 1986;
- An organization described in section 501(c)(3) of the IRC; and a
- Certified entity or non-certified entity.¹

The following information, listed by the corresponding application form, will be required or requested from the eligible entity as part of the ACEP-ALE application package:

NRCS CPA-41 Entity Application Form

- A Service Center Information Management Systems (SCIMS) record must be maintained at your local USDA Service Center Location before application. SCIMS is a repository of customer information used by NRCS and other USDA agencies when a client wants to participate in conservation programs or receive conservation assistance from USDA. A Service Center Locator can be found here: <http://offices.sc.egov.usda.gov/locator>
- As incorporated nonprofits using a Employee Identification Number (EIN), land conservancies applying for NRCS grant funding must have a Data Universal Numbering System (DUNS) number and must be registered with the System for Award Management (SAM).
 - If your organization does not currently have a DUNS number, you can make an online request: <http://fedgov.dnb.com/webform>
 - Once a DUNS number is obtained, you must also register with SAM, a government-wide registry. Formerly covered by Central Contractor Registrations (CCR), SAM registration must be renewed annually. Information for registering with SAM can be found at www.sam.gov
 - If questions, look for this helpful document, "Information on Obtaining a DUNS Number and Registration with SAM," which can be found in the Documents section of the ACEP/NRCS Michigan webpage: www.nrcs.usda.gov/wps/portal/nrcs/detail/mi/programs/easements/acep
- Eligible entities must have the authority and capability to acquire, manage, and enforce agricultural easements. (Answered by a yes or no checkbox, Michigan does not require additional documentation).
- Similarly, eligible entities must have the capacity to monitor and enforce agricultural land easements. The application form asks how many entity staff is dedicated to monitoring and easement stewardship.

¹ Land conservancies can apply to ACEP-ALE as a non-certified entity. Certification, which requires a written application to NRCS, is meant to help streamline actions and provide other benefits for a class of entities that meet specific NRCS requirements and demonstrate a capacity to complete easements, monitor and enforce them. Holding, managing and monitoring a minimum of 25 agricultural agreements is a requirement for certification; that can be lowered to 10 if granted a waiver from the State Conservationist. Certification advantages include the use of your own deed terms and conditions and the bypass of NRCS review of some documents prior to closing. If interested in certification, contact the State Coordinator for more information.

- All parcels within the application must be subject to a written pending offer. This must be attached to the application.(Also required under CPA-41A Parcel Sheet) **Tip:** It is a good practice to use a non-binding letter of intent.
- Availability of required funds for each parcel at the time of application (i.e. matching Non-Federal Cash Contribution).**Tip:** The application does not require documentation of the funds, but a self-certification. The entity must provide the total estimates of Fair Market Value, entity non-federal cash contribution, requested federal share, estimated purchase price and estimated landowner donation for all parcels. These totals are derived from information provided in Form CPA-41A Parcel Sheets for each parcel included in the application.
- Any required waiver documentation (See **Match Requirements and Waivers** below)
- Entities must also submit SF-424, a standard application for federal assistance.

Land Eligibility and Application Requirements for Each Parcel

ACEP-ALE eligible lands are:

- Private or Tribal land that is agricultural land, including land on a former ranch;
- Subject to a signed pending offer for purchase of an agricultural land easement from the eligible entity;
- Land that:
 - Is at least 50% prime, unique, or other productive soil;
 - Contains historical or archaeological resources;
 - Protects grazing uses and related conservation values by restoring and conserving land; or
 - Furthers a State or local policy consistent with the purposes of ACEP if protected;
- Land that is identified as:
 - cropland
 - rangeland;
 - grassland or land that contains forbs, or shrubland for which grazing is the predominant use;
 - located in an area that has been historically dominated by grass land, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value;
 - pastureland; or
 - non-industrial private forest land that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development;
- Land that is in an area that has access to agricultural markets for its products, infrastructure appropriate for supporting agricultural production, and other support services; and
- Land that faces development pressure from nonagricultural use.

Lands Ineligible for ACEP include:

- All lands ineligible under existing Farm and Ranchland Partnership Program, Grassland Reserve Program, and Wetland Reserve Program regulation and policy, and those specifically identified in the ACEP statute:
 - Lands owned by the United States, other than land held in trust for Indian Tribes
 - Land owned by a State or local government
 - Land subject to an easement or deed restriction which, as determined by NRCS, provides similar protection as would be provided by enrollment in ACEP
 - Land where the purposes of the program would be undermined due to onsite or offsite conditions such as risk of hazardous substances, proposed or existing rights of way, infrastructure development or adjacent land uses.
- Lands without sufficient legal access to the entire easement area are not eligible. Note: Sufficient legal access for ACEP means that the access is insurable, unconditional and transferable legal right of recorded access for the duration of the easement. It is the landowner's responsibility to provide NRCS with sufficient legal access.

The following information, listed by the corresponding application form, will be required or requested about the property as part of the ACEP-ALE application package.

NRCS CPA-41A Parcel Sheet

- Eligibility criteria categories include land that has: prime, unique, or other productive soil and percentage; historical or archaeological resources; protects grazing uses and related conservation values; or furthers a State or local government policy consistent with the purposes of ACEP.
- Evidence of land ownership such as a property deed or current written purchase agreement. (Proof of mineral ownership is also required as part of the Michigan Application Checklist)
- Parcel is subject to a written offer. (Also required in CPA-41 Entity Application; a copy is included with the application)
- Evidence and map of legal and physical access to the parcel.
- Estimated agricultural land easement value, costs, and contributions of the following for each parcel: (Needed for each parcel, totals from each parcel sheet are included in entity application CPA-41)
 - The estimated acres
 - The fair market value of the agricultural land easement
 - The total estimated entity non-Federal contribution
 - The requested federal share
 - The estimated purchase price
 - The qualified contribution from the landowner

Tip: There are two good reasons to prepare an appraisal to determine fair market value and the requested federal share instead of simply estimating. First of all, any Federal cost-share will be capped at the amount of the request. In other words, should the value of the agricultural easement be actually higher than any estimate provided at the time of application, the applying entity may need to cover those additional costs. Secondly, additional points (10) are awarded in the ranking if a USPAP or Yellowbook Self-Contained Appraisal has been completed within the last four months prior to application.

- Signature of landowner

Michigan Application Checklist

- Legal description of the property (survey, deed or title commitment).
- A location map showing the parcel and acreage being offered. If multiple parcels, boundaries for each as well as a larger property boundary.
- A map of prime, unique and statewide important soils for the parcel.
- A map showing other protected parcels in relation to the parcel being offered.
- A narrative description or evidence of how the protection of the parcel will further a State or local policy consistent with ACEP **Tip:** A narrative of about a page, include any local programs/policies as well as the Michigan Farmland Preservation and Open Space Program as examples.
- Narrative statement regarding the threat of conversion or fragmentation from non-agricultural development for each parcel. (The Michigan Ranking Form awards points based on proximity to sanitary sewer and/or water lines)
- Copies of any Phase I environmental site assessments (The Michigan Ranking adds points for completed Phase I assessments)
- Proof of ownership of subsurface mineral rights (Preliminary Title Commitment) **Tip:** A preliminary title commitment should cover both surface and subsurface ownership issues.
- Copy of the pending offer for the parcel. **Tip:** Again, a non-binding offer is best in case federal cost-share is declined

Michigan Ranking Form

Pay close attention to the Michigan Ranking Form to maximize points. Some items may not be required but can score

additional points. Example: Existence of a farm or ranch succession plan or similar plan established to address farm viability can add 10 points to the application.

Landowner Eligibility and Application Information Requirements

Landowner eligibility requirements include:

- Landowner Adjusted Gross Income (AGI) must fall below the limitations of \$900,000 with no opportunity for waiver. Use Farm Services Agency Form CCC-941: Adjusted Gross Income Certification and Consent to Disclosure of Tax Information.
- Landowners of record must establish farm records with Farm Service Agency. If the ownership of the property is a husband and wife, both husband and wife must establish farm records. Your landowner may already have their records on file. Check with your local NRCS Field Office or the local USDA Service Center or Farm Services Agency.
 - If property has no farm and tract number, then one must be established. If there is a farm and tract number, ensure the ownership records are updated.
 - If the property is owned by an entity (rather than one or more individuals), form CCC-901 or 902 must be filed with the USDA Service Center.
- Compliance with Highly Erodible Lands (HEL) and Wetland Certification (AD-1026) must be current and on file with FSA.
- Agree to provide access to the property.

Tip: The good news here is that many farmers will already have records on file with the Farm Service Agency and NRCS. It is important that their records be current, however. Some land protection practitioners simply contact the agency or have the landowner do so to make sure all required records are in place.

The following will be requested from a landowner in an ACEP-ALE application:

- Signature of the landowner on each Parcel Sheet (CPA-41A).
- A CCC-901 if the landowner does not have entity information on file with Farm Service Agency.

Match Requirements and Waivers

ACEP-ALE Federal cost-share and eligible entity match requirements:

- Federal share provided by NRCS will not exceed 50% of the fair market value of the agricultural land easement unless waived in special circumstances.
- The eligible entity is responsible for a share at least equivalent to the NRCS share. An eligible entity may include as part of its share a qualified conservation contribution from the landowner if the eligible entity contributes its own cash resources in an amount that is at least 50% of the Federal share. For example:

Fair Market Value of Conservation Easement	\$200,000
Total Requested Federal Share	\$100,000 (50% of total cost*)
Eligible Entity Cash Contribution Must Be at Least	\$50,000
Donated Conservation Easement Value from Landowner	\$50,000
<i>*Note: Points are given for a federal cost share of less than 50%</i>	

- NRCS may waive a portion of the eligible entity cash contribution of an ACEP-ALE request if the NRCS determines the parcel is of Special Significance. In these cases, the federal cost-share does not increase but instead allows an increase in the private landowner donation that is equal to the amount of the waiver. The landowner donation must be voluntary and the land in active agricultural production. In Michigan, the adjustment is limited to 25% of the Federal cost-share so in the above example, the donative value could increase to \$75,000 and the entity cash contribution lowered to \$25,000. For Special Significance criteria and how to make the request, see the Waiver Request Worksheet. Waiver requests and all supporting documentation must be:

- Submitted by the entity in writing,
- One waiver request per parcel, and
- Submitted by State before the application cut-off date to allow time for review and make determination by selection cut-off date.

APPLICATION

At the Time of Application: Eligible entities in Michigan must submit the forms listed below (see Documents section of the ACEP/NRCS Michigan webpage) and other information for a complete application. (Some landowner information need not be submitted but must be current and on file with the Farm Service Agency.) The application itself is submitted to your local NRCS office.

Note: Application materials are subject to change, especially the Michigan Ranking Form. Make certain you acquire the most recently updated forms and their contents at:

<http://www.nrcs.usda.gov/wps/portal/nrcs/detail/mi/programs/easements/acep>

Tip: The local NRCS office can be extremely helpful in making certain all the correct documents are in place—give yourself plenty of time to work with them.

1. Completed and Signed Pre-application Assessment Tool. This tool must be completed for each parcel, although several parcels can be included in one application.
2. Completed and Signed Michigan Application Checklist, again one for each parcel in the application.
3. NRCS CPA-41: Entity Application, signed by the entity.
4. SF 424 (Federal Application for General Assistance), SF 424A (Budget Information Non-Construction Programs), SF 424B (Assurances Non-Construction Programs)
5. NRCS CPA-41A: Parcel Sheet for each parcel, signed by entity and landowner
6. CCC-901: Farm Service Agency (FSA) form to determine ownership interest if the landowner. Only needed if the landowner does not have entity information on file with the Farm Service Agency
7. ACEP-ALE Ranking Form: Completed and signed by entity
8. ACEP-ALE Application Data Sheet: Completed and signed by entity
9. Average Adjusted Gross Income (AGI) Certification and Highly Erodible Land and Wetland Certification (AD-1026) must be current and on file with Farm Service Agency. **Reminder:** Work with the District Conservationist to determine if the landowner's information is on file,
10. Copy of Pending offer for the parcel(s).
11. ACEP-ALE Waiver Worksheet if you believe your project is of Special Significance and you wish to have the eligible entity cash contribution adjusted (by allowing an increase in donative value from the landowner).
12. CPA-230: Statement to Confirm Matching Funds. Provide one for every parcel, signed by the landowner and the entity.
13. Additional Checklist items for each parcel: All maps, legal description, statements and evidence as to how parcel supports state or local land protection program and level of threat from urban development, proof of ownership of subsurface mineral rights, copy of the pending offer.

AFTER THE APPLICATION

Once a complete application is submitted, it can take a few months before award announcements are made and as long as 18 to 24 months to closing. Successful conservancies will receive a Notice of Grant and Agreement Award, followed by the execution of a Cooperative Agreement. The term of the agreement is three years, but entities have two years to close on the property assuming all goes well and there is no need to make an extension request.

Keep in mind that in addition to working with the landowner, the NRCS is an invested partner and must review and approve all documents and plans prior to closing unless you conservancy is a certified entity. Funding is not made available until

closing, but an advanced request to NRCS may result in the landowner receiving the federal cost share within 7 – 10 days of closing. The conservancy share will be due at closing.

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