

**Table 1: State and Federal Agencies**

Role	Federal Agencies	Maryland / State Agencies
<b>Lead Agencies</b>	<ul style="list-style-type: none"> <li>• Federal Highway Administration (FHWA) – Maryland Division</li> </ul>	<ul style="list-style-type: none"> <li>• Maryland Transportation Authority (MDTA)</li> </ul>
<b>Cooperating Agencies</b>	<ul style="list-style-type: none"> <li>• US Army Corps of Engineers (USACE)</li> <li>• US Coast Guard (USCG)</li> <li>• Environmental Protection Agency (EPA)</li> <li>• National Marine Fisheries Service (NMFS)</li> </ul>	<ul style="list-style-type: none"> <li>• MDOT State Highway Administration (MDOT SHA)</li> <li>• MD Department of Environment (MDE)</li> <li>• Maryland Department of Natural Resources (MDNR)</li> </ul>
<b>Participating Agencies</b>	<ul style="list-style-type: none"> <li>• National Park Service (NPS)</li> <li>• Federal Emergency Management Agency (FEMA)</li> <li>• <b>Natural Resource Conservation Service (NRCS)</b></li> <li>• Federal Transit Administration (FTA)</li> <li>• US Fish and Wildlife Service (USFWS)</li> <li>• Advisory Council on Historic Preservation (ACHP)</li> </ul>	<ul style="list-style-type: none"> <li>• MDOT Maryland Port Administration (MDOT MPA)</li> <li>• MDOT Maryland Transit Administration (MDOT MTA)</li> <li>• Maryland Department of Planning (MDP)</li> <li>• Critical Areas Commission for the Chesapeake and Atlantic Coastal Bays (CAC)</li> <li>• Maryland Emergency Management Agency</li> <li>• Maryland Board of Public Works</li> <li>• Virginia Department of Transportation (VDOT)</li> <li>• Maryland Historical Trust (MHT)</li> </ul>
<b>Notified Agencies</b>	<ul style="list-style-type: none"> <li>• Federal Aviation Administration</li> <li>• US Geological Survey</li> <li>• FHWA – Virginia Division</li> <li>• FHWA – Delaware Division</li> </ul>	<ul style="list-style-type: none"> <li>• Maryland State Police</li> <li>• <b>Maryland Department of Agriculture</b></li> <li>• MDOT Motor Vehicle Administration (MDOT MVA)</li> <li>• Delaware Department of Transportation (DelDOT)</li> <li>• Maryland Aviation Administration (MAA)</li> <li>• Maryland Commission on Indian Affairs</li> <li>• Maryland Natural Resources Police</li> <li>• Maryland Department of Commerce</li> </ul>

## US Code Title 7 (Agriculture) Chapter 73 (Farmland Protection Policy) Section 4201

**(a) Congressional statement of findings** Congress finds that—

**(1)** the Nation's farmland is a unique natural resource and provides food and fiber necessary for the continued welfare of the people of the United States;

**(2)** each year, a large amount of the Nation's farmland is irrevocably converted from actual or potential agricultural use to nonagricultural use;

**(3)** continued decrease in the Nation's farmland base may threaten the ability of the United States to produce food and fiber in sufficient quantities to meet domestic needs and the demands of our export markets;

**(4)** the extensive use of farmland for nonagricultural purposes undermines the economic base of many rural areas;

**(5)** Federal actions, in many cases, result in the conversion of farmland to nonagricultural uses where alternative actions would be preferred;

**(6)** the Department of Agriculture is the agency primarily responsible for the implementation of Federal policy with respect to United States farmland, assuring the maintenance of the agricultural production capacity of the United States, and has the personnel and other resources needed to implement national farmland protection policy; and

**(7)** the Department of Agriculture and other Federal agencies should take steps to assure that the actions of the Federal Government do not cause United States farmland to be irreversibly converted to nonagricultural uses in cases in which other national interests do not override the importance of the protection of farmland nor otherwise outweigh the benefits of maintaining farmland resources.

## Code of Federal Regulations Title 7 Subtitle B Chapter VI Section 658

### § 658.1 Purpose

This part sets out the criteria developed by the Secretary of Agriculture, in cooperation with other Federal agencies, pursuant to section 1541(a) of the Farmland Protection Policy Act (FPPA or the Act) 7 U.S.C. 4202(a). As required by section 1541(b) of the Act, 7 U.S.C. 4202(b), Federal agencies are (a) to use the criteria to identify and take into account the adverse effects of their programs on the preservation of farmland, (b) to consider alternative actions, as appropriate, that could lessen adverse effects, and (c) to ensure that their programs, to the extent practicable, are compatible with State and units of local government and private programs and policies to protect farmland. Guidelines to assist agencies in using the criteria are included in this part. The Department of Agriculture (hereinafter USDA) may make available to States, units of local government, individuals, organizations, and other units of the Federal Government, information useful in restoring, maintaining, and improving the quantity and quality of farmland.

**(a) Farmland** means prime or unique farmlands as defined in section 1540(c)(1) of the Act or farmland that is determined by the appropriate state or unit of local government agency or agencies with concurrence of the Secretary to be farmland of statewide or local importance.

"Farmland" does not include land already in or committed to urban development or water storage. Farmland "already in" urban development or water storage includes all such land with a density of 30 structures per 40-acre area. Farmland already in urban development also includes lands identified as "urbanized area" (UA) on the Census Bureau Map, or as urban area mapped with a "tint overprint" on the USGS topographical maps, or as "urban-built-up" on the USDA Important Farmland Maps. Areas shown as white on the USDA Important Farmland Maps are not "farmland" and, therefore, are not subject to the Act. Farmland "committed to urban development or water storage" includes all such land that receives a combined score of 160 points or less from the land evaluation and site assessment criteria.

**(b) Federal agency** means a department, agency, independent commission, or other unit of the Federal Government.

**(c) Federal program** means those activities or responsibilities of a Federal agency that involve undertaking, financing, or assisting construction or improvement projects or acquiring, managing, or disposing of Federal lands and facilities.

**(1)** The term "Federal program" does not include:

- (i)** Federal permitting, licensing, or rate approval programs for activities on private or non-Federal lands; and
- (ii)** Construction or improvement projects that were beyond the planning stage and were in either the active design or construction state on August 4, 1984.

**(2)** For the purposes of this section, a project is considered to be "beyond the planning stage and in either the active design or construction state on August 4, 1984" if, on or before that date, actual construction of the project had commenced or:

- (i)** Acquisition of land or easements for the project had occurred or all required Federal agency planning documents and steps were completed and accepted, endorsed, or approved by the appropriate agency;
- (ii)** A final environmental impact statement was filed with the Environmental Protection Agency or an environmental assessment was completed and a finding of no significant impact was executed by the appropriate agency official; and
- (iii)** The engineering or architectural design had begun or such services had been secured by contract. The phrase "undertaking, financing, or assisting construction or improvement projects" includes providing loan guarantees or loan insurance for such projects and includes the acquisition, management and disposal of land or facilities that a Federal agency obtains as the result of foreclosure or other actions taken under a loan or other financial assistance provided by the agency directly and specifically for that property. For the purposes of this section, the phrase "acquiring, managing, or disposing of Federal lands and facilities" refers to lands and facilities that are acquired, managed, or used by a Federal agency specifically in support of a Federal activity or program, such as national parks, national forests, or military bases, and does not refer to lands and facilities that are acquired by a Federal agency as the incidental result of actions by the agency that give the agency temporary custody or ownership of the lands or facilities, such as acquisition pursuant to a lien for delinquent taxes, the exercise of conservatorship or receivership authority, or the exercise of civil or criminal law enforcement forfeiture or seizure authority.

**(d) State or local government policies or programs to protect farmland** include: Zoning to protect farmland; agricultural land protection provisions of a comprehensive land use plan which has been adopted or reviewed in its entirety by the unit of local government in whose jurisdiction it is operative within 10 years preceding proposed implementation of the particular Federal program; completed purchase or acquisition of development rights; completed purchase or acquisition of conservation easements; prescribed procedures for assessing agricultural viability of sites proposed for conversion; completed agricultural districting and capital investments to protect farmland.

**(e) Private programs to protect farmland** means programs for the protection of farmland which are pursuant to and consistent with State and local government policies or programs to protect farmland of the affected State and unit of local government, but which are operated by a nonprofit corporation, foundation, association, conservancy, district, or other not-for-profit organization existing under State or Federal laws. Private programs to protect farmland may include: (1) Acquiring and holding development rights in farmland and (2) facilitating the transfer of development rights of farmland.

**(f) Site** means the location(s) that would be converted by the proposed action(s).

**(g) Unit of local government** means the government of a county, municipality, town, township, village, or other unit of general government below the State level, or a combination of units of local government acting through an area-wide agency under a State law or an agreement for the formulation of regional development policies and plans.

## Code of Federal Regulations Title 40 (Protection of Environment) Chapter 5 (Council on Environmental Quality) part 1500-1508

### § 1508.27 Significantly.

*Significantly* as used in NEPA requires considerations of both context and intensity:

**(a) Context.** This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

**(b) Intensity.** This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

**(1)** Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

**(2)** The degree to which the proposed action affects public health or safety.

**(3)** Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

**(4)** The degree to which the effects on the quality of the human environment are likely to be highly controversial.

**(5)** The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

**(6)** The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

**(7)** Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

**(8)** The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

**(9)** The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

**(10)** Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

## **What is Section 4(f)?**

Section 4(f) refers to the original section within the U.S. Department of Transportation Act of 1966 which provided for consideration of park and recreation lands, wildlife and waterfowl refuges, and historic sites during transportation project development. The law, now codified in 49 U.S.C. §303 and 23 U.S.C. §138, applies only to the U.S. Department of Transportation (U.S. DOT) and is implemented by the Federal Highway Administration (FHWA) and the Federal Transit Administration through the regulation 23 Code of Federal Regulations (CFR) 774.

## **When is Section 4(f) a consideration?**

Section 4(f) applies to projects that receive funding from or require approval by an agency of the U.S. DOT. 23 CFR 774.3(c)(1)

## **What does Section 4(f) require?**

Before approving a project that uses Section 4(f) property, FHWA must determine that there is no feasible and prudent alternative that avoids the Section 4(f) properties and that the project includes all possible planning to minimize harm to the Section 4(f) properties; or, FHWA makes a finding that the project has a de minimis impact on the Section 4(f) property (see discussion below).

## **What are Section 4(f) properties?**

Section 4(f) properties include significant publicly owned public parks, recreation areas, and wildlife or waterfowl refuges, or any publicly or privately owned historic site listed or eligible for listing on the National Register of Historic Places.

## **What is least overall harm?**

When multiple alternatives use Section 4(f) property and the evaluation of avoidance alternatives concludes that there is no feasible and prudent avoidance alternative, then FHWA may approve, from the remaining alternatives that use Section 4(f) property, only the alternative that causes the least overall harm in light of the preservation purpose of the statute. 23 CFR 774.3(c) includes a list of factors to consider in making this determination of least overall harm. These factors include the ability to mitigate adverse impacts to Section 4(f) property; the relative severity of remaining harm, after mitigation, to Section 4(f) property; the views of the officials with jurisdiction; and the relative significance of each Section 4(f) property. Other factors include the degree to which alternatives meet the project purpose and need, substantial differences in cost, and impacts to other resources (i.e. non Section 4(f) resources).

## **Does Section 106 of the National Historic Preservation Act duplicate Section 4(f)?**

The NHPA and Section 4(f) are separate laws with very different requirements; however, there is some overlap when historic properties are involved. A key difference between the two laws is that Section 106 is essentially a consultative procedural requirement. In contrast, Section 4(f), which is a substantive law, precludes project approval if there is a use of a historic site when a prudent and feasible avoidance alternative is available. It should be noted that an adverse effect finding under Section 106 and a Section 4(f) "use" are not the same. You will find more discussion on this point in the Related Statutes section.

## **For further information:**

- 23 CFR 774.3(c)(1)
- AASHTO Practitioner's Handbook, "Complying with Section 4(f) of the U.S. DOT Act" (2009). Available at: <http://environment.transportation.org/>
- FHWA website on Section 4(f): <https://www.environment.fhwa.dot.gov/legislation/section4f.aspx>