

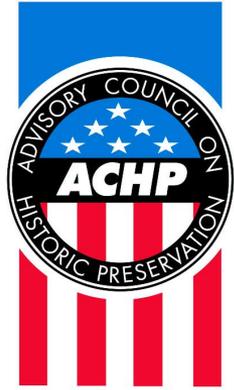
# ***Mitigation in the Section 106 Process***

***Dave Berwick***

***Army Program Manager***

***Advisory Council on Historic***

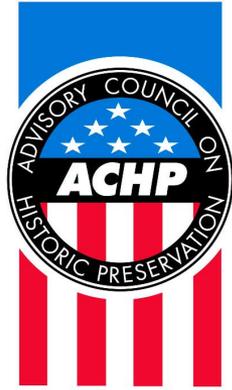
***Preservation***



# What is Section 106?

---

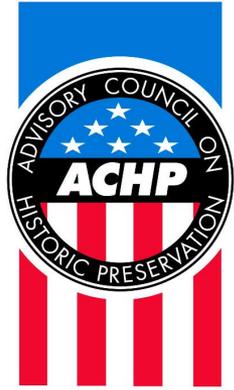
- ***Section 106 of the National Historic Preservation Act requires Federal agencies, with jurisdiction over undertakings, to:***
  - ***Take into account effects on National Register of Historic Places eligible and listed properties***
  - ***Afford the Council a reasonable opportunity to comment, and***
  - ***Do these prior to approving expenditure of funds or issuing licenses, leases, or other forms of approval***



## Section 106: A 4-Step Process

---

- **Determine Applicability**
  - *Is the Federal action an undertaking under 36 CFR Part 800?*
- **Determine Area of Potential Effects and Identify and Evaluate Resources**
  - *Is there a potential for historic properties to exist in areas affected by the undertaking?*
  - *If properties do exist, are they eligible or potentially eligible for the National Register?*
- **Determine Effects**
  - *How will historic properties be effected?*
- **Resolve Adverse Effects**
  - *Can adverse effects be avoided, minimized or mitigated?*

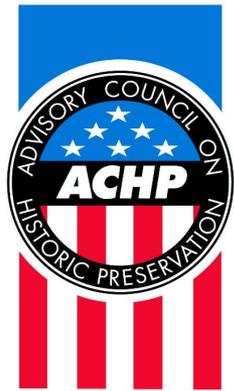


# *The Keystone of Section 106*

---

- *Consultation*
- *Consultation*
- *Consultation*
- *Consultation*

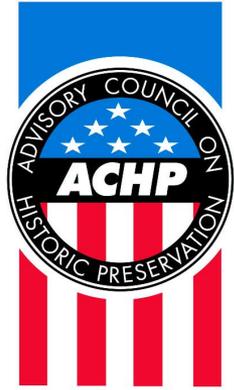
*All four steps of the process require consultation - the earlier the better!*



# ***Resolving Adverse Effects***

---

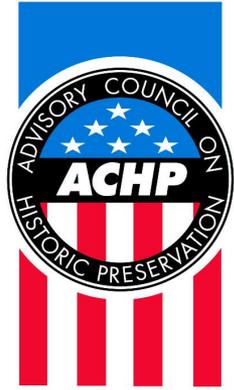
- ***Typically resolved through an agreement document – MOAs or PAs***
- ***ACHP may or may not be involved in these agreement documents***
- ***Where agreement can't be reached, agency requests Council comments***
- ***Council responds to agency head***
- ***Agency must take comments into consideration in making a decision***



## ***Facts About NEPA & Section 106***

---

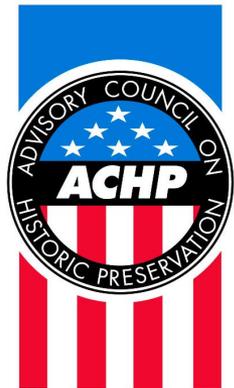
- ***NEPA and Section 106 are separate laws requiring separate compliance***
- ***Although possible, NEPA and Section 106 are rarely integrated***
- ***Section 106 typically is done after NEPA***
- ***NEPA is the agency's decision-making process***
- ***NEPA provides historic preservation its best chance to avoid or minimize adverse effects***



# ***The Benefits of Integrating NEPA and Section 106***

---

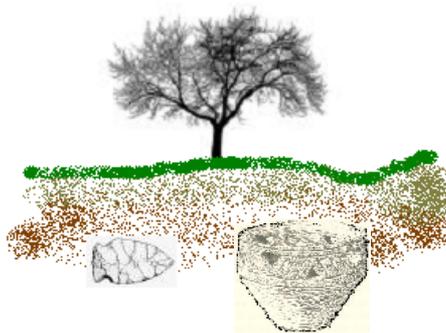
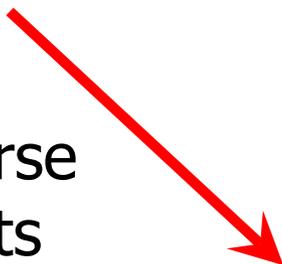
- ***Focuses public interest review on historic properties along with other environmental values***
- ***Requires agencies to consider historic properties early in the planning process***
- ***Historic preservation values become part of project alternative identification & selection***
- ***Reduces likelihood of Section 106 consultation becoming mitigation options***



# *When Mitigation is The Only Option*

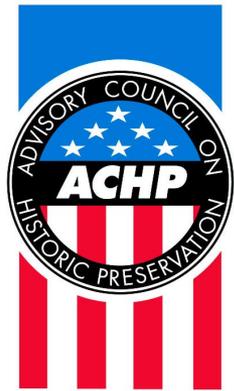


Adverse  
Effects



Only Result  
in Mitigation

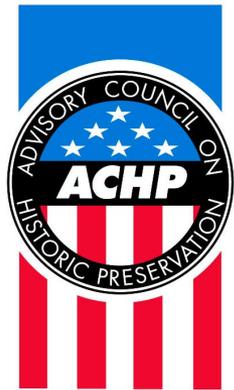




# *What Are The Costs of Mitigation*

---

- ***Loss of the resource***
  - ***Archeological sites***
  - ***Historic structures and buildings***
  - ***Traditional cultural properties/sacred sites***
- ***Loss of agency assets***
- ***Harm to partnerships***
- ***Reduces future heritage tourism potential***
- ***Financial cost to the agency***



# *Typical Mitigation Strategy*

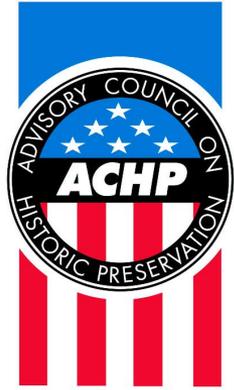
---

- *Negotiations with stakeholders to mitigate adverse effects typically result in a mitigation strategy that involves:*

*Site A impacts = Site A mitigation*

*Site B impacts = Site B mitigation*

*Site C impacts = Site C mitigation*



## *What Drives This Strategy?*

---

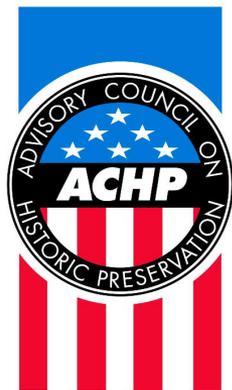
- *Agency historic preservation programs are compliance oriented & project driven*
- *Section 106 is a project driven process*
- *We are nurtured,  
trained, and  
rewarded for  
project management*



# *Thinking Outside the Box*

---

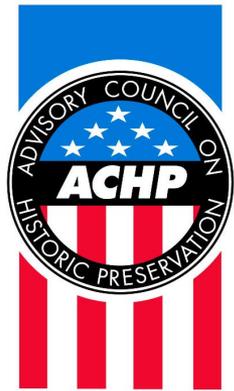
- ***Should Federal Funds be spent to mitigate sites A?***
  - ***What is the value of the site to others?***
    - ***Scientific value***
    - ***Educational value***
    - ***Sacred or traditional value***
    - ***Heritage tourism value***
  - ***Are mitigation costs in line with the value of the site?***



## ***Thinking Outside the Box***

---

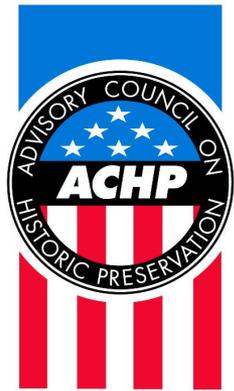
- ***Is site B the best site on which to spend Federal funds to mitigate?***
- ***What is the value of this site in relation to other sites in an installation's inventory of historic properties?***
  - ***Do other sites have equal or greater value?***
  - ***Can we trade off adverse impacts on one site for mitigation of another?***



## *Thinking Outside the Box*

---

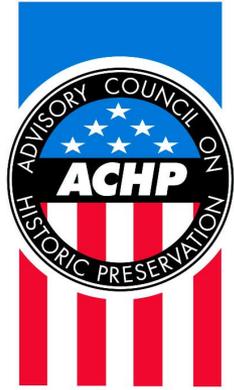
- *Are there other options for site C that don't include archeological site excavation or historic building documentation?*
  - *Do other sites offer more long-term preservation potential?*
  - *Could we synthesize gray literature on archeological sites to provide a more structured context for future investigations?*



# *Thinking Outside the Box*

---

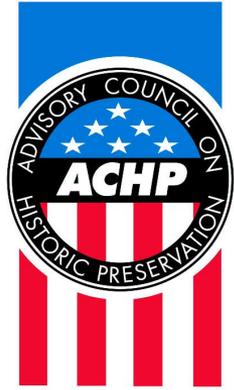
- ***Does mitigation have to be limited to the installation?***
  - ***Could we partner with others, like the Archaeological Conservancy, to preserve archeological sites off the installation?***
  - ***Can we use historic preservation values as a justification to provide “outside the fence” buffer areas for installations?***



## *Thinking Outside the Box*

---

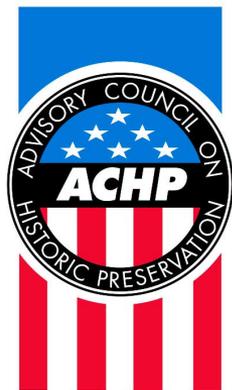
- *Does archeological mitigation have to be done after project conception?*
- *Could we develop mitigation banking for archeological sites similar to banking for wetlands?*



# *Thinking Outside the Box*

---

- *Two key points to remember about innovative mitigation strategies:*
  - *They probably won't win you any friends*
  - *They require changing agency historic preservation programs from a project driven strategy to a resource management philosophy*



# Final Thoughts

---

- ***Focus on the significant:***  
*When every building, structure or archeological site is significant, none are significant*
- ***Know your agency's mission:***  
*The best opportunity for preserving historic properties is where preservation supports an agency's mission*
- ***Manage the resources wisely:***  
*The history of our forbearers is available to our children only through what we choose to leave them*