

COMPARISON OF VISUAL IMPACT ANALYSIS UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT AND SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

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Abstract.—Section 106 of the National Historic Places Act requires Federal agencies to consider the impacts, including visual impacts, of their undertakings on the ability of certain historic properties to convey their historic significance. Visual impacts of Federal agency undertakings must also be considered under the National Environmental Policy Act of 1969 (NEPA) for their potential to affect historic properties, scenic resources present in the landscape, and the scenic experiences of people who view the landscape. This paper discusses important differences between visual impact analysis (VIA) under Section 106 and under NEPA. In essence, VIA under Section 106 looks at impacts on places, while a NEPA VIA includes impacts on the people at those places and on the larger landscape. Where there are potential visual impacts on both scenic values and historic properties, both NEPA and Section 106 VIAs must be conducted.

INTRODUCTION

In considering the effects of proposed projects or activities on society and the environment, assessment of visual impacts is important to several types of resources. Obviously, visual impacts affect purely scenic resources and people's scenic experiences of the landscape. However, projects or activities may affect other resources and experiences that have an important visual component or aspect such as wild and scenic rivers, wilderness, or historic sites and trails.

Even though the quality and condition of these different resources are vulnerable to visual impacts, the unique characteristics of each resource call for somewhat different approaches to visual impact assessment (VIA). In practice, varying VIA approaches are used for different reasons that sometimes go beyond fundamental distinctions in the nature and role of the visual experience. Different laws, regulations, and/or policies of the various agencies responsible for managing these resources may dictate VIA practices for different resources (though this is seldom stated explicitly).

When conducting VIAs, there may be confusion about the resources that must be evaluated and the appropriate method for assessing impacts on a given resource. When stakeholders focus on a particular resource or when impact assessment professionals are accustomed to using a familiar methodology, the result may be a tendency to see the impacts and assessment approach through the "lens" of the resource they are accustomed to dealing with. This can result in overlooking important impacts and/or using inappropriate methods to conduct the assessment.

Section 106 of the National Historic Preservation Act requires Federal agencies to consider the impacts, including visual impacts, of their undertakings on the ability of certain historic properties to convey their historic significance. Under the National Environmental Policy Act of 1969 (NEPA), Federal agencies must consider visual impacts of proposed projects, including potential effects on historic properties, scenic resources, and the scenic experiences of people who view the landscape. This paper discusses important differences between visual impact assessments (VIA) under Section 106 and under NEPA.

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Visual Impact Assessment Under NEPA

A stated purpose of the National Environmental Policy Act of 1969, as amended, more commonly known as NEPA, is to “assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings” (National Environmental Policy Act 1994). NEPA requires Federal agencies to assess the environmental effects of their proposed actions prior to making decisions on permit applications, the adoption of Federal land management actions, and construction of highways and other publicly owned facilities (U.S. Environmental Protection Agency 2017).

NEPA does not explicitly require VIAs to be conducted, and, indeed, some environmental impact statements (EISs) do not include VIA if the Federal agency determines that there is no likelihood of significant visual impacts. However, if the agency determines that there is potential for significant environmental impacts, including visual impacts that cannot be mitigated such that they are no longer significant, the impacts must be assessed in an environmental impact statement (EIS) (National Preservation Institute 2017). In fact, visual impacts are routinely analyzed in EISs, particularly for large-scale energy generation and transport facilities, including electric transmission (see, for example, National Park Service 2012; Bureau of Land Management 2012, 2013a, 2016; Bureau of Land Management and Western Area Power Administration 2015; U.S. Department of Energy 2017).

NEPA does not, however, dictate *how* to conduct environmental analyses for particular resources. Instead, the Council on Environmental Quality (CEQ) oversees NEPA implementation, ensures that Federal agencies meet their obligations under NEPA, oversees Federal agency implementation of the environmental impact assessment process, and issues regulations and other guidance to Federal agencies regarding NEPA compliance (U.S. Environmental Protection Agency 2017). However, CEQ guidance for impact analysis is general in nature, and Federal agencies determine their own procedures for NEPA compliance. The agencies therefore have considerable leeway in how they conduct EISs, including how they analyze specific resource impacts.

Some Federal agencies have issued their own guidance for conducting EISs that may include fairly specific

instructions for VIAs. For example, the Bureau of Land Management (BLM) policy is that the agency’s visual contrast rating process is used to assess visual impacts (Bureau of Land Management 1986). The visual contrast rating process assesses a proposed project’s effects on views from key observation points (KOPs) deemed to be locations from which people are likely to view the landscape. BLM NEPA directives also require assessing effects on the resource itself although visual resources are not called out specifically in the directive.²

The U.S. Federal Highway Administration (FHWA) and the U.S. Army Corps of Engineers (USACE) have specific procedures for conducting VIAs, but these guidelines are not mandatory and their use in practice is variable (Federal Highway Administration 2015, Smardon et al. 1988). Other Federal agencies, such as the National Park Service (NPS), Bureau of Ocean Energy Management (BOEM), and the USDA Forest Service (FS), do not have specific procedures for conducting VIAs, though NPS and BOEM are currently developing them.

In the absence of specific requirements, agency staff often conduct VIAs with methods that have previously been used by the agency, or methods that are selected by a contractor assisting with preparation of the VIA. The methodology may be dictated or influenced by State or other agency requirements, as in California where VIAs must adhere to the California Environmental Quality Act. Contractors may choose a methodology established by a Federal agency such as the BLM as a sort of “default” VIA approach, even when the proposed project does not affect BLM-administered lands. Sometimes they establish hybrid approaches. In rare instances, they establish their own methodology. Regardless of the details of the methodology, these “scenic resource VIAs” are generally similar in their approach (Fig. 1).

Characteristics of VIAs Under NEPA

Almost all “scenic resource VIAs” for NEPA EISs use KOP-based methods for assessing impacts on views and viewers. In these methods, photorealistic visual simulations depict visual changes or contrasts,

² McCarty, J. 2017. Personal communication from McCarty (Chief Landscape Architect, Bureau of Land Management) to R. Sullivan (Environmental Scientist, Argonne National Laboratory), Sept. 12.

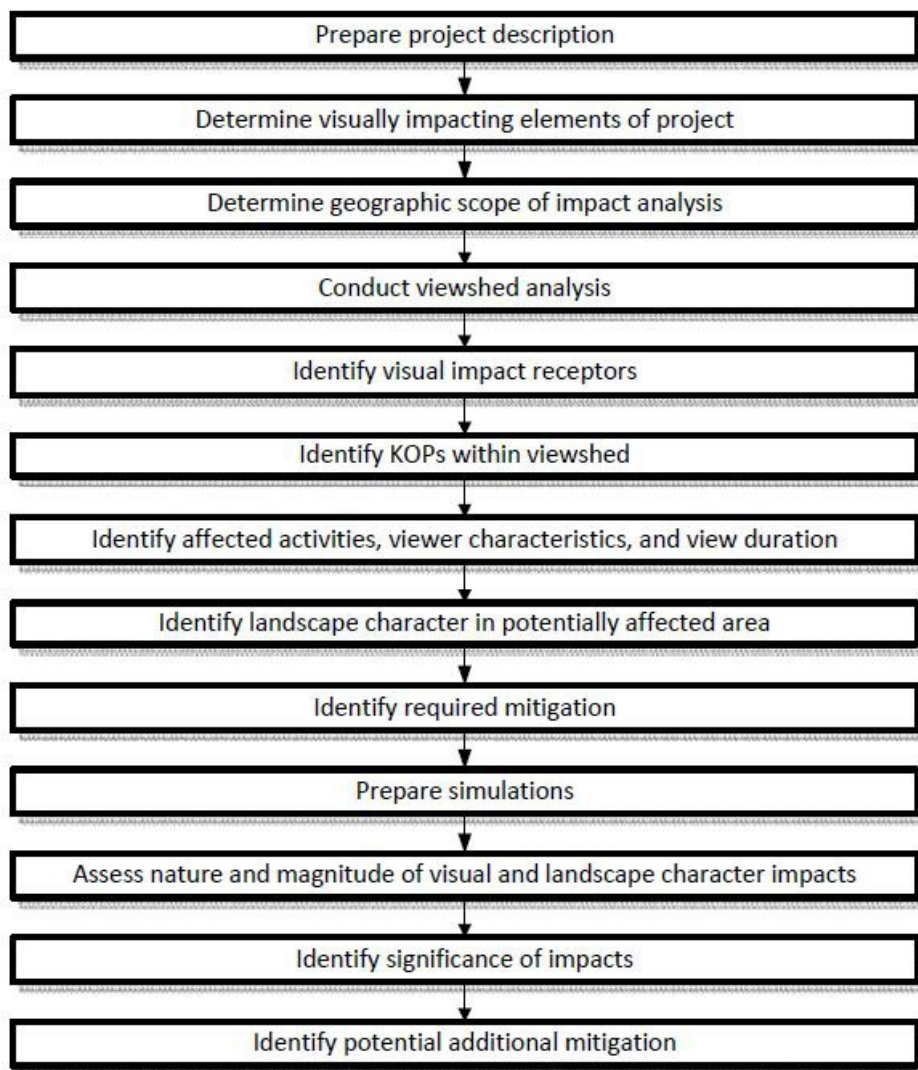


Figure 1.—Typical scenic resource VIA process under NEPA.

as seen from KOPs, that the proposed project may cause. The contrast determinations are used as a basis to determine potential impacts on viewers' visual experiences. These methods also generally include measures of viewer sensitivity that account for the number of potential viewers at a given KOP, the nature of the viewers, the activities in which they are likely to be engaged while viewing the proposed project, and the duration of the views. For example, potential differences in impacts on residents, visitors, commuters, and recreationists are factored into the sensitivity analysis. The sensitivity analysis also typically considers public concern for scenic values in the vicinity of the KOP, including special designations such as congressionally designated wilderness areas and national parks. The methods account for visibility factors, such as the distance from the project to the KOP, the presence of screening elements in the

landscape, and the visual properties of the project elements (e.g., color, size, reflectivity, and motion) since these factors affect the magnitude of the visual contrast from the project. Viewer sensitivity is then typically combined with the predicted magnitude of visual contrast from the project to make a final determination of the level of impact (often described as negligible, minor, moderate, or major, or similar descriptors).

Scenic resource VIAs for NEPA EISs routinely use viewshed analyses to determine the potentially affected area. A maximum distance is established around the project within which visual impacts will be assessed. Visual impacts are usually considered direct impacts that can sometimes extend for long distances from the project; for example, proposed wind power projects may have impacts up to 30 miles away (e.g.,

see Bureau of Land Management 2012). The distance for potential visual impacts is usually adjusted for the type of project based on predicted visibility. Electricity transmission projects' visual impacts are usually expected to extend 5 to 10 miles from the project (e.g., see U.S. Department of Energy 2017).

Definition of Visual Impacts Under NEPA

Neither NEPA nor CEQ guidance define what “visual impacts” actually are. As with the VIA methodology, Federal agencies determine for themselves what constitutes visual resources and impacts. Several agencies (e.g., United States Army Corps of Engineers) include impacts on both viewers and visual resources in their definitions (Bureau of Land Management 2013b, Federal Highway Administration 2015, Smardon et al. 1988, Sullivan and Meyer 2014). Sullivan and Meyer (2014, p. 120) define visual impact as:

Any modification in landforms, water bodies, or vegetation, or any introduction of structures or other human-made visual elements, that negatively or positively affect the visual character or quality of a landscape and the visual experience of persons viewing the landscape through the introduction of visual contrasts in the basic elements of form, line, color, and texture.

This clearly identifies both humans and the landscape as visual impact receptors. The definition arose from substantial consultation with visual resource professionals in Federal government, academia, and private practice, as well as review of existing literature on the topic.

While most Federal agencies with visual resource impact assessment or management responsibilities define visual impacts as including both impacts on people (through changes to views and the visual quality of views) and impacts on the underlying visual resource values, some EISs confine the VIA to identifying effects on views. This may be because there is an assumption that impacts on views are, or include, impacts on the underlying scenic resource values, or because for a given proposed project there are no inventoried scenic values to serve as a baseline for assessing effects from the project.

Limitations of Key Observation Point Analysis in VIAs Under NEPA

Using KOP analysis in a VIA to assess impacts on people's visual experience and enjoyment is clearly consistent with the NEPA mandate to assure that all people have aesthetically pleasing surroundings, in part because it addresses the interaction of humans and their aesthetic experience of the landscape. This implies that humans are the receptors for visual impacts. Relying solely on KOP analysis in VIA is problematic, however, because as land uses and people's viewing behaviors and locations change over time, KOPs and viewer sensitivities may also change. For example, the development of new roads or trails may result in new areas being opened up for scenic viewing and other recreational uses. A project that has little impact on views from current KOPs may have much larger effects if evaluated from different KOPs in the future.

Assessing visual impacts based solely on views from KOPs may also underemphasize cumulative visual effects because they focus too much on the proposed project and not the density of, and relationships between, multiple projects in the larger landscape. This is of special concern because visual impacts may cover very large areas depending on the type of facilities involved, thus increasing the potential for large cumulative effects (Sullivan and Meyer 2014). Although in theory cumulative effects should be addressed in a cumulative impact analysis, KOP-based assessment essentially ignores the very real visual impact that may affect the larger landscape when a project's impacts combine with the impacts of other projects to degrade the overall visual qualities of the area.

Of course, underlying visual resource values may also change over time, but they are not based on “snapshots” of current views from a few selected locations; rather, they reflect more stable visual qualities for a generalized area. Recording and monitoring impacts on the underlying visual resource values facilitate the emergence of a “bigger picture” associated with the effects of both the individual project and the cumulative effects of visual change at a larger scale and over a longer time period.

Landscape Character and Landscape Assessment

In addition to impacts on people and impacts on underlying scenic values, a third type of impact with a strong visual component is often referred to as “landscape effect,” or “landscape character impact.” Landscape character is defined as the “distinct, recognizable, and consistent pattern of elements in the landscape that makes one landscape different from another, rather than better or worse” (Landscape Institute and Institute of Environmental Management and Assessment 2013). Landscape character is not necessarily entirely visual in nature; it arises from the “interplay of physical, natural, and cultural elements of the surroundings and the way that people perceive these interactions” (National Cooperative Highway Research Program 2013), and includes the concept of “sense of place” (Landscape Institute and Institute of Environmental Management and Assessment 2013). It is a product of both the natural and human influences on the landscape. Typical landscape character descriptors include “natural,” “rural,” “suburban,” and “urban,” words that encompass a combination of physical elements, but also human land uses and humanmade cultural elements that suggest an overall “feel,” pattern, or character of an area. Landscape effects are changes in the landscape, its character, and its quality (Landscape Institute and Institute of Environmental Management and Assessment 2013).

Assessment of landscape effects is an integral part of environmental impact assessments in the United Kingdom (UK) and constitutes a completely separate but related assessment to the VIA (Landscape Institute and Institute of Environmental Management and Assessment 2013). Under the terms of the European Landscape Convention, to which the UK is a signatory, landscape is considered a separate resource in its own right, not simply an element of visual, ecological, cultural, or other individual resources commonly associated with the landscape (Council of Europe 2017). U.S. Federal agency VIA methodologies do not require formal assessment of landscape effects, but both the NPS “Guide to Evaluating Visual Impact Assessments for Renewable Energy Projects” (Sullivan and Meyer 2014) and the FS Scenery Management System (USDA Forest Service 1995) refer to “landscape character” or “scenic character,” though in a more restricted sense than the term is used in

UK environmental assessments. Similarly, the NPS Visual Resource Inventory system assesses landscape character (Sullivan and Meyer 2016) but limits the assessment to those elements of character that are evident within visual elements, rather than assessing both visual and non-visual aspects of landscape character, such as sounds, or feelings of tranquility or remoteness. Landscape effects are sometimes discussed in U.S. EISs, but generally in a much more limited way than in VIAs in the UK. They may be considered as being related to effects on underlying visual values, which are inherent attributes of the landscape rather than simply being elements of views from KOPs. Figure 1 shows the steps in a typical “scenic resource VIA” including assessment of landscape character impacts.

In summary, general conclusions regarding “scenic resource VIAs” under NEPA include the following:

- Where Federal agency actions are likely to cause significant visual impacts that cannot be mitigated to a level of nonsignificance, NEPA requires that those impacts be assessed in an EIS.
- NEPA does not specify a methodology for the conduct of VIAs. Federal agencies may specify VIA methodologies as they apply to projects within their jurisdiction or rely on contractors to select or create VIA methods, and as a result, VIA methodologies in use vary somewhat.
- The widely accepted minimum standard for VIAs conducted as part of EISs under NEPA is to assess a proposed project’s or action’s visual contrast in a KOP-based analysis that then examines the effects of the visual contrast on the human visual experience. In this type of analysis, the impact receptors are human beings. Viewshed analysis and visual simulations are commonly used as tools for visual contrast assessment in a KOP-based analysis.
- KOP-based impact analyses usually include various measures of viewer sensitivity. These account for characteristics of the potential viewers, including their numbers, their nature (e.g., residents or tourists), the activities in which they are engaged, and the location from which they are viewing the project (including specially designated areas), as well as the anticipated length of time the project would likely be in view.

- Impacts are usually classified by importance on a graduated scale (e.g., negligible, minor, moderate, or major).
- NEPA does not specify what constitutes visual impact. Federal agencies define visual impacts as they apply to projects within their jurisdiction.
- Some EISs also assess impacts on the visual qualities of the existing surrounding landscape.
- Historically, most EISs do not include in-depth analysis of landscape or landscape character effects.

VISUAL IMPACT ASSESSMENTS UNDER SECTION 106 OF THE NHPA

The National Historic Preservation Act of 1966 (NHPA) as amended, is a Federal law intended to help preserve the Nation's historical and archaeological sites. Among other things, the NHPA established the Advisory Council on Historic Preservation (ACHP), State Historic Preservation Offices (SHPOs), and the National Register of Historic Places (NRHP). It also established a process for determining if Federal projects would affect historical properties, that is, the Section 106 review process.

Section 106 of the NHPA requires Federal agencies to consider the impacts of their undertakings on the integrity of properties either listed or eligible for listing on the NRHP. U.S. Code 36 CFR Part 800—Protection of Historic Properties—sets out the process known as the Section 106 review. Figure 2 shows the Section 106 process under which a VIA for an historic property would be conducted. Federal agencies are required to consult during the Section 106 process with SHPOs, Tribal Historic Preservation Offices, Federally recognized Indian Tribes, and Native Hawaiian Organizations.

The ACHP advises the President and Congress on historic preservation issues, develops policies and guidelines for Federal agencies, and participates in the Section 106 review process. The ACHP is an important source of guidance with respect to implementing Section 106; however, ACHP guidance is general in nature. SHPOs can and sometimes do issue their own guidance for the methodology used for implementation of the Section 106 review process within their jurisdictions. This guidance can have an important effect on the content and conduct of a VIA under Section 106, as discussed below. In addition, Federal agencies and SHPOs may create programmatic agreements (PAs) that specify how the agency will conduct Section 106 analyses, including

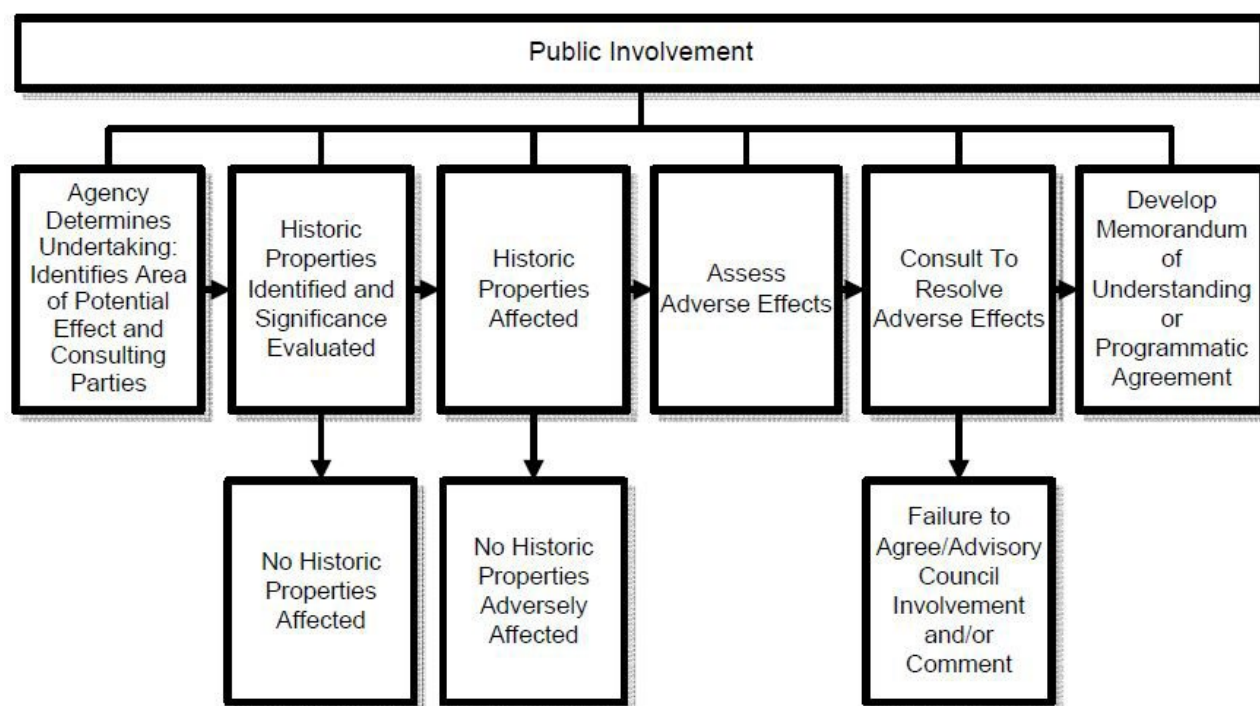


Figure 2.—Section 106 review process steps.

VIA. For example, BLM Wyoming and the Wyoming SHPO developed a PA that specified, among other things, that the BLM's visual contrast rating process is to be used to determine adverse impacts under Section 106 for historic properties on BLM lands in Wyoming (Bureau of Land Management and Wyoming State Historic Preservation Office 2014). Other entities may provide guidance on the conduct of VIA under Section 106—for example, the Virginia Department of Historic Resources' "Assessing Visual Effects on Historic Properties" (Virginia Department of Historic Resources 2010). In addition, a PA may guide the Section 106 process for a particular type of undertaking as was done for considering the effects from construction of new cell towers (Federal Communications Commission 2004).

The NRHP is the official list of the United States' districts, sites, buildings, structures, and objects worthy of preservation. The NPS administers the NRHP. In order to be listed on the NRHP, historic properties must be shown to be significant under the following National Register criteria. They must:

- Be associated with events that have made a significant contribution to the broad patterns of U.S. history
- Be associated with the lives of persons significant in our past
- Embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction
- Have yielded, or may be likely to yield, information important in prehistory or history (National Park Service 1997).

If historic properties meet one or more of these criteria, they must also possess integrity of location, design, setting, materials, workmanship, feeling, and association.

Integrity of Historic Properties

Integrity is the ability of a property to convey its significance. Under Section 106, the potential visual impacts from a proposed project or activity are considered with respect to the integrity of setting,

feeling, and/or association of historic properties. Integrity of historic properties is discussed in "National Register Bulletin: How to Apply the National Register Criteria for Evaluation" (National Park Service 1997), and integrity of setting, feeling, and association of historic properties is summarized/quoted from the Bulletin here.

Setting

Setting is the physical environment of a historic property and includes the character of the place in which the property played its historical role. Setting can include natural or humanmade elements, such as topographic features, vegetation, paths, or fences, and, importantly, the relationships between buildings and other features or open space. Setting should be examined not only within the exact boundaries of the property, but also between the property and its surroundings (National Park Service 1997).

Feeling

Quoting from the Bulletin (National Park Service 1997): "Feeling is a property's expression of the aesthetic or historic sense of a particular period of time. It results from the presence of physical features that, taken together, convey the property's historic character."

Association

Again, quoting from the Bulletin (National Park Service 1997): "Association is the direct link between an important historic event or person and a historic property. A property retains association if it is the place where the event or activity occurred and is sufficiently intact to convey that relationship to an observer. Like feeling, association requires the presence of physical features that convey a property's historic character."

Scope and Analysis of Impacts

Under Section 106, visual impacts are often (but not always) considered indirect impacts because they do not physically impact the historic property. This contrasts with the normal practice in a scenic resource VIA where visual impacts are almost always considered to be direct impacts.

The area within which impacts are considered in a Section 106 analysis is referred to as the Area of Potential Effect (APE). Typically, the APE is determined in the context of direct impacts, so it is

often much smaller than the area of impact analysis for visual impacts, which may extend for very long distances depending on the project type as noted above. However, in some Section 106 analyses where visual impacts are anticipated, an indirect effects APE may be identified that is considerably larger than the standard APE (e.g., see Bureau of Land Management and Wyoming State Historic Preservation Office 2014).

In some respects, conducting a VIA under Section 106 may resemble a VIA under NEPA. Viewshed analysis is commonly used to determine the APE. Simulations may be used, and, given that simulations require viewpoints, KOP-like viewpoints may be used in a Section 106 analysis. However, they are not necessarily selected based on viewer usage and preferences. Also, the assessment does not consider viewer sensitivity or analyze impacts on scenic values of the project area or the larger landscape, although impacts on visual quality may factor into the assessment of adverse effects on historic property integrity (see discussion below).

Adverse Effects Under Section 106

Unlike scenic resource VIAs under NEPA, the impact finding in a Section 106 review is either “adverse effect” or “no adverse effect”—the proposed project or activity either adversely affects the integrity of setting, feeling, and/or association, or it does not. There is no assessment of the relative degree of impact such as “negligible,” “weak,” “moderate,” or “major.”

Under Section 106:

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association. ... Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative (U.S. Code 36 CFR Part 800.5).

U.S. Code 36 CFR Part 800.5 cites as an example of adverse impacts, “Introduction of visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features.”

36 CFR Part 800.5 regarding VIA analysis under Section 106 is important for several reasons:

- 1) It makes it very clear that visual elements, which would include a proposed project or activity, can cause an adverse effect.
- 2) It points out that impacts can be “removed in distance,” that is, do not need to physically contact or be at the same location as the historic property.
- 3) It identifies the historic property, rather than people and their aesthetic experience, as the impact receptor.

It should be noted that some historic properties include “designed landscapes” that may include purposefully designed views, vistas, or view corridors. In these cases, the view itself is a significant characteristic of the historic property. Therefore, changes to these designed views, vistas, or view corridors may adversely affect the integrity of the property’s design, not simply causing visual effects on integrity of setting, feeling, or association.

State Historic Preservation Office Guidance on VIAs Under Section 106

SHPOs may establish requirements for conducting a VIA under Section 106 and in some cases SHPO guidance may blur some of the “lines” between Section 106 VIAs and VIAs under NEPA. For example, the Delaware SHPO guidance document “Assessing Visual Effects for Historic Properties” states that adverse effects on historic property integrity can include aesthetic effects that occur “when there is an effect on the perceived beauty of a place or structure. Adverse aesthetic effects on historic properties are those that impair the character or quality of a historic property, and thus cause a diminishment of the enjoyment and appreciation of the property” (Delaware State Historic Preservation Office 2003). The guidance also states that impacts that have obstructive effects (those that literally block views of or from a historic property) may also cause adverse effects on the integrity of a historic property.

The Delaware SHPO guidance goes on to state that aesthetic effects can occur through: 1) elimination of open space or a scenic view, or 2) introduction of a visual element that is incompatible, out of scale, in great contrast, or out of character with the surrounding area. The guidance identifies as potentially adverse

effects the loss of elements that “... contribute to the visual character or image of the property, neighborhood, community, or localized area with which the property is associated. ...” (Delaware State Historic Preservation Office 2003, p. 4).

In this case, the Delaware SHPO guidance introduces elements of scenic views and visual character into the Section 106 assessment, though apparently without considering viewer numbers, viewer type, view duration, and other factors that constitute viewer sensitivity. Importantly, the context for the assessment of aesthetic effects is still whether or not they cause an adverse effect on the integrity of the historic property. As such, this assessment is still fundamentally different from a VIA under NEPA where the effects are on the visual experience of viewers and the visual resource values of the surrounding area. In a Section 106 analysis in Delaware, effects on the visual experience of viewers and on the visual resource values of the surrounding area might affect the integrity of a historic property but are not impacts in their own right which must be addressed.

In general, the Delaware SHPO guidance suggests that SHPOs have considerable leeway in interpreting visual impacts under Section 106 and may introduce elements of scenic considerations and visual character into their VIA methodologies. However, the ultimate goal of the VIA is still to assess effects on integrity of the historic property.

In summary, general conclusions regarding VIA under Section 106 of the NHPA include:

- Where Federal agency actions are likely to cause adverse effects on the integrity of a historic property listed or eligible for listing on the NRHP, the NHPA requires that those impacts be assessed in a Section 106 review.
- The NHPA does not specify a methodology for conducting VIAs under Section 106. SHPOs may establish requirements for conducting a VIA under Section 106, or Federal agencies may work with SHPOs to establish PAs on the conduct of VIAs under Section 106.
- VIAs conducted under Section 106 assess a proposed project or action's effect on integrity of the historic property. In the case of visual impacts, integrity of setting, feeling, and/or association is normally the concern.

- Section 106 review may use a KOP-like visual impact analysis approach but it does not consider measures of viewer sensitivity. Section 106 analyses often use viewshed analysis and may also use visual simulations.
- In a Section 106 VIA, impacts are classified only as adverse effects or not adverse effects without using a graduated scale of magnitude (e.g., negligible, minor, moderate, or major).
- Unlike VIA under NEPA, Section 106 clearly specifies what constitutes an adverse effect.
- Section 106 specifies that the impacts are on historic properties' integrity, not on the views of historic property visitors, visual resource values, or landscape character.
- SHPO guidance may incorporate scenic considerations and other elements of VIA usually associated with VIA under NEPA. However, these effects determine impacts on historic property integrity and are not considered impacts in their own right.

DISCUSSION AND CONCLUSION

36 CFR Part 800.5 regarding VIA analysis makes it clear that alteration of certain characteristics of a *historic property* are the potential effects that are analyzed under Section 106, but there is no mention of people or their aesthetic experiences. While the impact is clearly visual in nature, and thus connected to the human visual experience, the effect is on particular aspects of the historic property, not on the viewers, even though a human judgment about integrity of setting, feeling, and association is required. Effects under Section 106 are independent of the number and types of viewers, view duration, aesthetics, and visual resource quality and condition, all of which are included in a “scenic resource VIA” under NEPA. SHPO guidance may incorporate scenic considerations and other aspects of a “scenic resource VIA” under NEPA, but the effects are still used to determine impact on the integrity of a historic property, not on people or the visual resource values of the landscape.

If a VIA for a proposed Federal action is limited to a Section 106 analysis of visual impacts on historic properties, potential effects on the visual character or quality of a landscape and the visual experience of persons viewing the landscape will not be analyzed. If

these impacts are likely to occur at the level required for an EIS, the requirements of NEPA will not have been met. In short, VIA under Section 106 cannot substitute for a VIA under NEPA.

Similarly, a “scenic resource VIA” under NEPA cannot substitute for a VIA conducted as part of a Section 106 review. A VIA under NEPA does not address potential effects on the integrity of a historic property, which is the sole purpose of a VIA under Section 106.

What a “scenic resource VIA” under NEPA arguably can and should do is measure impacts on the visual experience of visitors to historic properties. Many historic properties are heavily visited and, depending on the nature of a particular property, enjoyment of it may have a strong visual component. All historic properties have a visual setting and are located in landscapes with some level of scenic quality. Views to and from the property are subject to visual impacts that are at least partially, and possibly wholly, independent of effects on the integrity of the property. Impacts that do not negatively affect integrity might still negatively affect the visual experience of visitors. These impacts cannot be analyzed in a Section 106 review in any event; they must be analyzed through a “scenic resource VIA” that assesses impacts on views and visual quality. A “scenic resource VIA” must also assess impacts on residents of the surrounding area, commuters, recreationists, and other people whose views and visual experiences are affected by a proposed project or action. These types of impacts are outside the scope of a VIA under Section 106.

Similarly, any large project or activity that could affect the integrity of setting, feeling, and association of a historic property could potentially have important impacts on the visual resources of the project area, not just on scenic views. This type of impact is not analyzed in a Section 106 review, though they might affect a historic property’s integrity. Section 106 reviews also do not analyze impacts on landscape character or other landscape effects. These are the purview of a “scenic resource VIA” under NEPA, or a separate landscape assessment.

In conclusion, although there are some similarities between VIA under NEPA and under Section 106 of the NHPA, the two types of VIAs analyze different impacts on different resources. Where there are potential visual impacts on both scenic values and

historic properties, both types of VIA must be applied. Currently, there is substantial variation in how both types of VIA are conducted.

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