

David S. Rotenstein, Ph.D.
Consulting Historian
10308 Edgewood Avenue
Silver Spring, Maryland 20901
Phone: 301.592.0646
Fax: 301.592.0618
Mobile: 240.461.7835

VIA FACSIMILE

20 April 2004

Michael J. Copps, Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**RE: FCC Historic Preservation Policies & Visual Impacts to Historic Properties
WT Docket No. 03-128**

Dear Commissioner Copps,

Yesterday representatives in an individual National Historic Preservation Act (Section 106) case under review by FCC staff filed a reply to an environmental assessment (EA) and supplemental documents filed by FCC licensees in support of a proposed communications facility on South Mountain in Frederick County, Maryland.¹ The filing by the Harpers Ferry Conservancy is significant because it addresses the methods used by FCC licensees (and FCC staff) to assess visual impacts to historic properties and more importantly refutes assertions made by telecommunications industry attorneys in individual cases and before the Commission in the instant rule making proceeding that “There are few studies involving telecommunications tower visibility issues and impacts to historic properties.”² Industry’s arguments that FCC precedents should be applied to the Maryland case and others are disingenuous and reflect a continued policy of agency indifference towards compliance with the letter and spirit of the National Historic Preservation Act. Neither the FCC nor its licensees – in the Maryland proceeding and in other cases – has demonstrated a willingness to make use of established methods for delimiting impact areas (areas of potential effects) or methods for assessing visual effects and mitigating them despite a hearty body of literature that is readily available.

Appended to this letter my report filed in the Maryland case; pages 7-11 specifically address the issue of visual impacts. Thank you for your continued interest in this matter.

Respectfully submitted,



David S. Rotenstein, Ph.D.

¹ “In the Matter of Application for Approval of an Environmental Assessment For a proposed State of Maryland Emergency Medical Services System (MIEMSS) Tower in the Lambs Knoll Section of South Mountain, Maryland.” FCC Reference Number 2002043827, ULS File Number 0001601177.

² John F. Clark and Keith R. Murphy, “Joint Opposition To Harpers Ferry Conservancy's Petition To Deny And Supplement To The Environmental Assessment” (In the Matter of Application for Approval of an Environmental Assessment for a Proposed State of Maryland Emergency Medical Services System (MIEMSS) Tower in the Lamb’s Knoll Section of South Mountain, Maryland. Submitted by State of Maryland Department of Budget and Management Office of Information Technology and T-Mobile USA) (8 April 2004), 33.

Attachment 1: Comments on the Lambs Knoll Section 106 Documentation

David S. Rotenstein, Ph.D.

15 April 2004

Cold War Military Facility

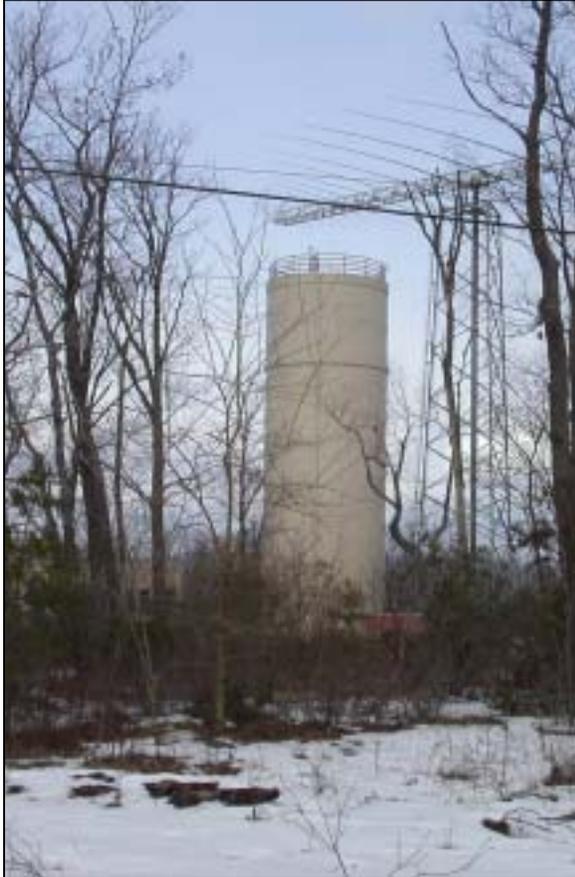


Figure 1. Presidential Emergency Facility, Lambs Knoll. Photographed by D.S. Rotenstein, February 2004.

In October 1962, the State of Maryland leased eight acres “lying at the crest of Lambs Knoll on top of South Mountain” to the United States Army. The Army intended to use the land for “Government Requirements.”¹ The Lambs Knoll facility (Figure 1) was one of seventy-five “Presidential Emergency Facilities” (PEF) scattered throughout the United States. Located on property controlled by the U.S. Army, the U.S. Navy funded the facility and its command was administered through the White House Military Office. In its *Addendum*, Tracerics relied on a 1998 U.S. Army study of “Cold War Era Military-Industrial Historic Properties” to dismiss the facility’s significance as a property eligible for listing in the National Register of Historic Places.² The Lambs Knoll facility is a property type not fully covered in the 1998 study and its application to the Lambs Knoll facility is a fatal flaw to the significance statement Tracerics prepared.

Like its counterparts in Fort Reno Park in Washington, DC (Figure 2) and Cross Mountain in Franklin County, Pennsylvania (Figure 3), the Lambs Knoll facility is a silo-like structure constructed atop a complex of underground bunkers. The visible portion of each of the

Presidential Emergency Facilities is constructed of reinforced masonry (brick and/or concrete) and each has two tiers of interior antennas concealed in the upper portions of the structures by plexiglass panels. Together, these properties comprise a cohesive resource type within the

¹ Lease, State of Maryland to the United States of America, Department of the Army, Corps of Engineers. 26 October 1962, Lease No. DA-18-020-ENG-1870. Copy in the files of the Harpers Ferry Conservancy.

² Laura H. Hughes and Gerald M. Maready, *Lambs Knoll Telecommunications Tower, Frederick County, Maryland Addendum*, EHT Tracerics, Inc., Washington, DC (Washington, DC: Report Prepared for Maryland Department of Budget and Management, Office of Information Technology, April 2004), 4-6.

“Command and Control, Communications, Computers, and Intelligence” theme described in the “Cold War Era Military-Industrial Historic Properties” study cited by Traceries.³



Figure 2. Presidential Emergency Facility, Fort Reno Park, Washington, DC. Photographed by D.S. Rotenstein, April 2004.

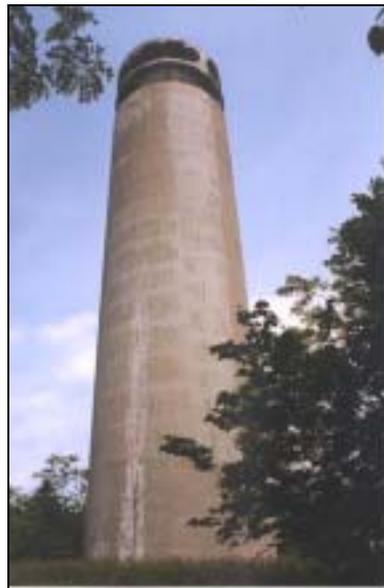


Figure 3. "Cannonball" Presidential Emergency Facility, Cross Mountain, Franklin County, Pennsylvania. Image courtesy of Albert LaFrance.

The 1998 Army study mentioned one secret Cold War communications facility: the so-called “Site R” in the Catoctin Mountains sixteen miles north of Lambs Knoll.⁴ Built between 1951 and 1953, the Raven Rock facility was designed as a Department of Defense “Alternate Joint Communications Center” for relocation of military officials in the event of nuclear war.⁵ The Lambs Knoll, Fort Reno, and Franklin County, Pennsylvania (known as “Cannonball”), facilities on the other hand were designed, built, and used as command and control facilities accessible to the Executive Branch as hardened communications centers and bunkers where the president could find refuge in the event of a nuclear exchange.

The Presidential Emergency Sites were “literally holes in the ground, deep enough to withstand a nuclear blast and outfitted with elaborate communications equipment,” recounted former White House Military Office Director W.L. Gulley.⁶ According to Gulley, funds to

³ Mary K. Lavin, *Thematic Study and Guidelines: Identification and Evaluation of U.S. Army Cold War Era Military-Industrial Historic Properties* (Aberdeen Proving Ground, Maryland: U.S. Army Environmental Center, January 1998), 78-79.

⁴ Lavin, *U.S. Army Cold War Era Military-Industrial Historic Properties*, 79.

⁵ Bill Gifford, “Bunker? What Bunker?” *The New York Times* (New York, New York), 2 December 2000; John Pike, “Site-R Raven Rock Alternate Joint Communications Center (AJCC),” *GlobalSecurity.Org*, 13 January 2003, 12 April 2004 <<http://www.globalsecurity.org/wmd/facility/raven-rock.htm>>.

⁶ Bill Gulley and Mary Ellen Reese, *Breaking Cover* (New York, New York: Simon and Schuster, 1980), 35.

support the sites wound their way through a circuitous route in the Defense Department. “Authorization to spend the money, although it was allocated to the Army, was given to the Navy – specifically, the Chesapeake Division, Navy Engineers – who did know what the fund was for.”⁷ All oversight for these facilities originated in the White House Military Office.⁸

Traceries did not fully research the Lambs Knoll facility and was unaware of the facility’s specific history beyond the cursory information provided in my earlier report.⁹ Traceries wrote that the Lambs Knoll facility “probably fits into the Contingency Command and Control Facilities building type” as described in the 1998 Army Cold War properties thematic study. Contrary to Traceries’ incorrect assertion that there is not sufficient information to determine this property’s eligibility, there does appear to be adequate baseline information to evaluate not only the Lambs Knoll facility, but other similar sites (Fort Reno and “Cannonball”). Traceries determination that the Lambs Knoll facility is “ineligible” for listing in the National Register of Historic Places is not supported by the existing documentation.

Because of the dispute regarding the National Register of Historic Places eligibility of this property, the Federal Communications Commission should request a formal determination of eligibility from the Keeper of the National Register.

Lambs Knoll Fire Tower

In its *Addendum*, Traceries dismisses the significance of the Lambs Knoll fire lookout tower by writing that the structure “is not eligible for the National Register of Historic Places under any of the Criteria for Evaluation.”¹⁰ Citing the structure’s diminished integrity – including its missing cab and steps – Traceries wrote, “The tower’s original purpose is no longer immediately clear, as it once must have been, and therefore its meaning is obscured.”¹¹

The Lambs Knoll fire tower has suffered from neglect and from alterations to its original fabric by the collocation of wireless antennas undertaken by FCC licensees. The structure, contrary to claims by Traceries, is still recognizable as a forest fire lookout tower – albeit one with diminished integrity. Thematically, forest fire lookouts “embody the evolution of a distinct

⁷ Gulley and Reese, *Breaking Cover*, 36.

⁸ Gulley and Reese, *Breaking Cover*, 36; John C. Maxwell III, “Current Information on Abandoned Site 2 (Cannonball) at Cross Mountain in Franklin County, Pennsylvania,” Memorandum for the Record, 31 May 1988, Scanned document available online at <<http://coldwardc.homestead.com/files/cannonball/maxwell1.htm>>.

⁹ David S. Rotenstein, *A Review of the State of Maryland’s National Historic Preservation Act (Section 106) Compliance Efforts in Support of a Proposed Communications Facility at Lambs Knoll, Frederick County, Maryland*, Report Prepared on Behalf of the Harpers Ferry Conservancy (Silver Spring, Maryland: David S. Rotenstein, Ph.D., Consulting Historian, 2 March 2004), 21-23.

¹⁰ Hughes and Maready, *Lambs Knoll Addendum*, 2.

¹¹ Hughes and Maready, *Lambs Knoll Addendum*, 2.

architectural style which over time became characterized by standardized plans.”¹² In the National Register of Historic Places Multiple Property Documentation form prepared for fire lookouts in New York State, historian Wes Haynes wrote that lookout towers eligible for listing in the National Register of Historic Places “should be capable of functioning, but need not be in use.”¹³ Furthermore, the registration requirements for New York State lookout towers noted that the structures should retain “substantial physical integrity,” including intact original truss design and integral staircases.”¹⁴

Although the Lambs Knoll lookout fails to meet the National Register of Historic Places registration requirements developed for New York State lookouts, its associations with the Appalachian Trail and historically prominent position atop Lambs Knoll mitigate towards weighing its associational significance (Criterion A) more heavily in any determination of eligibility. The Lambs Knoll tower still retains its original truss design and the support structure itself appears to have not been raised or lowered during its time at Lambs Knoll. The structure’s spatial relationships to the mountaintop remained unchanged until the 1960s with the construction of the nearby Cold War facility and later communications towers.

As for the lookout tower’s diminished integrity, much of its present condition appears to be attributable to neglect of the structure and to the collocation of wireless antennas on it. According to the “Joint Opposition” filed by counsel representing the State of Maryland and T-Mobile, the lookout “has been used to support radio antennas since the 1960s.”¹⁵ Each of the structure’s tenants (antenna collocators) holds a Federal Communications Commission license and the current tenants include local, state, and federal governmental agencies.¹⁶

The National Historic Preservation Act was enacted in 1966 and has been amended several times. The Act (as originally passed by Congress) required “The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking ... take into account” the effects of its undertakings to historic properties.¹⁷ Originally, “historic properties” encompassed only properties listed in the National Register of Historic Places. In 1971 President Richard M. Nixon issued Executive Order 11593 expanding

¹² Peter L. Steere, *National Forest Fire Lookouts in the Southwestern Region*, USDA Forest Service, National Register of Historic Places Inventory-Nomination Form (July 1987), Continuation Sheet Item 8, Page 30.

¹³ Wes Haynes, *Fire Observation Stations of the New York State Forest Preserve*, National Register of Historic Places Multiple Property Documentation Form (March 2001), Section F, Page 7.

¹⁴ Haynes, *Fire Observation Stations of the New York State Forest Preserve*, Section F, Page 6.

¹⁵ John F. Clark and Keith R. Murphy, “Joint Opposition To Harpers Ferry Conservancy’s Petition To Deny And Supplement To The Environmental Assessment” (In the Matter of Application for Approval of an Environmental Assessment for a Proposed State of Maryland Emergency Medical Services System (MIEMSS) Tower in the Lamb’s Knoll Section of South Mountain, Maryland. Submitted by State of Maryland Department of Budget and Management Office of Information Technology and T-Mobile USA) (8 April 2004), 9.

¹⁶ Clark and Murphy, “Joint Opposition,” 13.

¹⁷ Public Law 89-665; 16 U.S.C. 470(f). The Act was approved 15 October 1966.

the scope of the National Historic Preservation Act to ensure that properties eligible for listing in the National Register of Historic Places are considered in the federal environmental planning process; the consideration of “properties eligible for listing in the National Register of Historic Places” and the assessment of effects to them has been codified in the National Historic Preservation Act since its 1980 amendment.¹⁸

“The new Lamb’s Knoll facility was properly categorically excluded from most environmental processing because it will be clustered with other similar existing structures,” wrote the authors of the “Joint Opposition.”¹⁹ It appears from filings in the administrative record for the proposed Lambs Knoll communications facility that the FCC licensees involved (nor the FCC itself) never attempted to evaluate the National Register of Historic Places eligibility of the Lambs Knoll lookout tower and didn’t consult with the Maryland State Historic Preservation Officer prior to any FCC-licensed actions at the structure during the 1980s and 1990s. In many respects, the FCC’s own policies of indifference and inertia with regards to compliance with the National Historic Preservation Act have contributed towards the diminished integrity of the Lambs Knoll lookout tower.

Mitigation on behalf of the FCC and its licensees may restore the structure in accordance with the *Secretary of the Interior’s Standards for the Treatment of Historic Properties*. Defined as “the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features,” restoration is an appropriate treatment for historic properties with diminished integrity.²⁰ Organizations such as the Forest Fire Lookout Association offer technical assistance and information on locating historic lookout parts to groups nationwide in their efforts to stabilize and restore historic fire lookouts.²¹

Because of the dispute regarding the National Register of Historic Places eligibility of this property, the Federal Communications Commission should request a formal determination of eligibility from the Keeper of the National Register.

¹⁸ Executive Order No. 11593, May 13, 1971, 36 F.R. 8921. Thomas F. King, *Cultural Resource Laws and Practice: An Introductory Guide* (Walnut Creek, California: Alta Mira Press, 1998).

¹⁹ Clark and Murphy, “Joint Opposition,” 8. This is a specious argument. The citation in the “Joint Opposition” filing is to the FCC’s NEPA rules (47 C.F.R. § 1.1306 - note 3). Although an action may be categorically excluded from a federal agency’s National Environmental Policy Act (NEPA) compliance program, unless there is a program alternative in place (e.g., a programmatic agreement), the agency is still required to comply with Section 106 of the National Historic Preservation Act (a separate statute). The preamble to the 2000 Advisory Council on Historic Preservation’s rules clearly states: “Section 106 of the NHPA covers ‘undertakings’ regardless of NEPA categorical exclusions. The NHPA and NEPA are independent statutes with separate obligations for Federal agencies,” 65 FR 77709.

²⁰ Kay D. Weeks and Anne E. Grimmer, *The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings* (Washington, DC: U.S. Department of the Interior. National Park Service, 1995), 117.

²¹ Forest Fire Lookout Association, Inc. *FFLA Projects Page*. Forest Fire Lookout Association Web Site, n.d., Accessed 12 April 2004 <<http://www.firelookout.org/fflaprojectsHome.htm>>.

South Mountain Battlefields

Traceries wrote in its *Addendum* that the South Mountain Battlefields “is not eligible under any other National Register Criteria for Evaluation” other than Criterion A for its association with the 1862 battle that took place there.²² The South Mountain Battlefields is an extensive area embracing not only the physical battle sites themselves but also later, historic, commemorative sites. In addition to the cultural landscape features (circulation networks [roads], boundary demarcations [stone walls], and spatial organization), there are landscape elements that include the Major Jesse L. Reno Monument in Fox’s Gap; the Reno Monument has been documented by the Historic American Building Survey (HABS).²³ Traceries has parsed previous Section 106 compliance work to suit its National Register of Historic Places determination of eligibility for the Battlefields in ways that minimize the cultural landscape.

The FCC should request that the Keeper of the National Register review the original National Register form completed by historian Dennis Frye and comment on the eligibility (Criteria that apply) of this historic property.

Appalachian Trail

According to the *Addendum* Traceries prepared the Appalachian Trail conceded that my earlier evaluation of the historic property is correct and that it appears to be eligible for listing in the National Register of Historic Places under three of the four Criteria for Evaluation:

The Appalachian Trail, in its entirety, is eligible as a district for the National Register under Criterion A, for its association with regional planning and garden city movement, under Criterion B, for its associations with Benton MacKaye and other members of the RPAA, and under Criterion C, in its role as a designed and constructed wilderness.²⁴

The consultant, however, then wrote that “Individual portions of the Trail have no inherent significance beyond their associations with the entire Trail” and that individual Trail portions, in Traceries’ opinion, may only be evaluated as contributing elements to the larger Appalachian Trail Historic District.²⁵ In its review of the Traceries determination of eligibility for the

²² Hughes and Maready, *Lambs Knoll Addendum*, 7-8.

²³ “Major General Jesse L. Reno Monument, Fox’s Gap, South Mountain, East of Route 67, South, Sharpsburg vicinity, Washington County, MD.” HABS No. MD-1066.

²⁴ Hughes and Maready, *Lambs Knoll Addendum*, 4.

²⁵ Hughes and Maready, *Lambs Knoll Addendum*, 4.

Appalachian Trail the Maryland Historical Trust concurred.²⁶ State Historic Preservation Officer J. Rodney Little wrote in the agency's April 2004 letter commenting on the Traceries *Addendum*, "We believe that within the context of the entire Appalachian Trail, this portion is eligible for the National Register" and "This portion of the AT retains its overall integrity of design, feeling, and association."²⁷ There is a consensus among the various parties that the Appalachian Trail is a property eligible for listing in the National Register of Historic Places. The only point of contention is the effects that the proposed FCC undertaking will have on this historic property.

Visual Impacts to Historic Properties

In its "Joint Reply," counsel for T-Mobile and the State of Maryland wrote, "There are few studies involving telecommunications tower visibility issues and impacts to historic properties."²⁸ This observation is not supported by the robust body of academic landscape architecture studies and environmental impact studies documenting the measurable visual impacts of a wide array of tower structures. These studies span the globe, from Australia to the United Kingdom and the United States. These studies, some of which date to the late 1960s, include tested methodologies for delimiting impact areas and evaluating visual effects to landscapes and historic properties.²⁹ In fact, the literature evaluating the various impacts introduced by vertical infrastructure (towers and poles) may be traced to the first quarter of the twentieth century.³⁰

²⁶ J. Rodney Little, Letter to Ellis Kitchen, Maryland Department of Budget and Management, RE: State of Maryland Emergency Communication Tower, Lamb's Knoll, Frederick County, MD (Section 106 -- FCC). FCC Reference Number 0001601177 (State Historic Preservation Officer. Maryland Historical Trust, 8 April 2004).

²⁷ Little, Letter to Ellis Kitchen, 2.

²⁸ Clark and Murphy, "Joint Opposition," 34.

²⁹ Ian D. Bishop, et al., "Object, Environment and Observer Related Variables in the Visual Effect of Electricity Transmission Structures," *Landscape Australia* 1 (1990): 23-30; William G.E. Blair, et al., *Visual Impact of High-Voltage Transmission Facilities in Northern Idaho and Northwestern Montana* (Seattle, WA: Jones & Jones, 1976); Edward C. Driscoll, et al., *Measuring the Visibility of High Voltage Transmission Facilities in the Pacific Northwest* (Seattle, WA: Jones & Jones, 1976); George A. Goulty, *Visual Amenity Aspects of High Voltage Transmission* (New York, New York: John Wiley & Sons, 1990); R. Bruce Hull and Ian D. Bishop, "Scenic Impacts of Electricity Transmission Towers: The Influence of Landscape Type and Observer Distance," *Journal of Environmental Management* 27 (1988): 99-108; Grant R. Jones, et al., "A Method for the Quantification of Aesthetic Values for Environmental Decision Making," *Nuclear Technology* 25 (April 1975): 682-713; Scottish Executive Development Department, "Radio Telecommunications," in *National Planning Policy Guideline*, NPPG 19 (Edinburgh, Scotland, July 2001); Richard C. Smardon and James P. Karp, *The Legal Landscape: Guidelines for Regulating Environmental and Aesthetic Quality* (New York, New York: Van Nostrand Reinhold, 1993); Richard C. Smardon, James F. Palmer, and John P. Felleman, editors, *Foundations for Visual Project Analysis* (New York, NY: John Wiley & Sons, 1986); Richard C. Smardon, et al., *Visual Resources Assessment Procedure for US Army Corps of Engineers*, Department of the Army, U.S. Army Corps of Engineers no. Environmental Impact Research Program. Instruction Report EL-88-1 (Syracuse, NY: State University of New York, 1988); Susan R. Wilson, *Guidelines for Landscape and Visual Impact Assessment* (London, England: Spon Press, 2002).

³⁰ E.H. Bennett, "Aesthetic Considerations Affecting Power Development," *Annals of the American Academy* 118, no. 207 (March 1925): 116-19; Eugene Levy, "The Aesthetics of Power: High-Voltage Transmission Systems and the American Landscape," *Technology and Culture* 38, no. 3 (1997): 575-607.

Many of the visual impact studies focus on the various types of electricity transmission structures (towers). Communications towers and electricity transmission structures have a common engineering history and are morphologically very similar.³¹ Both types were derived from windmill support structures and, in fact, many windmill manufacturers included electricity transmission towers and radio towers in their product lines.³² Tower types for which there is an extensive body of comparative studies relevant to communications facilities include various lattice tower configurations, wind turbines, and poles.³³

A more accurate statement by the “Joint Opposition” authors would have reflected the fact that the FCC and its licensees refuse to acknowledge this literature or deploy it in identifying areas of potential effects and assessing effects to historic properties in compliance with Section 106 of the National Historic Preservation Act. In fact, as early as December 2002, the FCC was urged to undertake studies specific to American communications infrastructure: “The FCC should engage in a technical study conducted by qualified professionals to first define what constitutes an effect to historic properties by communications facilities.”³⁴

In the sentence following the one about the lack of technical studies available to the FCC and its licenses, “Joint Opposition” counsel suggested that recent Commission Section 106 findings might be an appropriate body of precedents applicable to the Lambs Knoll case:

A growing body of Commission decisions on the issue of adverse visual impacts however, demonstrates that the addition of a new tower in an area containing pre-existing visual intrusions, very much like the situation at Lamb’s Knoll, has seldom been found to be an adverse visual impact.³⁵

³¹ Leah S. Glaser, “Nice Towers, Eh?: Evaluating a Transmission Line in Arizona,” *CRM* 20, no. 17 (1997): 23-24; Frederic L. Quivik, “Early Steel Transmission Towers and Energy for Montana’s Copper Industry,” *Montana: The Magazine of Western History* 38, no. 4 (Autumn 1988): 67-69; David S. Rotenstein, “Communications Towers: An Endangered Recent Past Resource,” Newsletter of the Recent Past Preservation Network, *RPPN Bulletin* 2004; David S. Rotenstein, “Looking Out For the FCC’s Towers,” *Lookout Network* 15, no. 1 (Winter 2004): 12-13.

³² Aermotor Company, *Aermotor Galvanized Steel Towers* (Chicago, Illinois: Aermotor Company), Catalog on file, US Forest Service.

³³ Driscoll, et al., *Measuring the Visibility of High Voltage Transmission Facilities in the Pacific Northwest*, 10-12; EDAW, *Portland Wind Energy Project: Landscape and Visual Impact Assessment*, Report to Pacific Hydro Limited (Report on file, Department of Sustainability and Environment (DSE), Melbourne, Australia, October 2001); Gouly, *Visual Amenity Aspects of High Voltage Transmission*, 83-105.

³⁴ David S. Rotenstein, Letter to Jeffrey Steinberg, Wireless Telecommunications Bureau, Federal Communications Commission, RE: Comments on the proposed Nationwide Programmatic Agreement for FCC Undertakings (18 December 2002).

³⁵ Clark and Murphy, “Joint Opposition,” 34.

A close review of recent (and historical) FCC decisions regarding adverse effects to historic properties by communications facilities reveals a troubling trend. In three highly visible 2003 cases involving visual impacts to historic properties, FCC staff wrote decisions that cannot be supported. In cases involving two proposed wireless telecommunications facilities along historic parkways in New York State, the FCC challenged the New York State Historic Preservation Officer's comments that the proposed facilities would adversely affect historic properties. One of the facilities is proposed on property near the Taconic State Parkway, a property eligible for listing in the National Register of Historic Places. The FCC's assessment of effects included the following statement:

The observer of this tower in most instances will see the tower from a vehicle that never approaches closer than 1000 feet to the tower. The fact the viewer is confined to a moving vehicle has two important implications. First, the automobile's window will provide framing for the setting that imposes modern features in the field of view. The viewer will look at the scenery past a dashboard, steering wheel and rearview mirror, each of which is a modern intrusion. Beyond the vehicle, the viewer's gaze will pass through a middle ground of foliage that covers the lower two-thirds of the tower itself and frequently contains branches and tree trunks that appear to rise higher than the tower itself. In other words, distance and intermediate features will mediate the observer's perception of the tower's size, relative to other objects.³⁶

The FCC supported its technical assessment in the following footnote: "One of the rules of perspective points out that small objects standing between the viewer and a large distant feature appear larger than the feature. So, for example, a thumb raised at the end of an extended arm appears larger than a distant tree."³⁷

In its assessment of effects, the FCC failed to cite a single credible published source to defend its findings. Although it cited several Internet Web sites, including an American Automobile Association Web site on distractions in everyday driving, and documents in the administrative record, the FCC did not include any citations to academic or technical literature on its methodology or the rationale used to make the effects statement.³⁸ John Nau III, chairman of the Advisory Council on Historic Preservation, wrote to FCC Chairman Michael Powell in response to the FCC's letters. Nau objected to the FCC's findings and made substantive

³⁶ Jeffrey S. Steinberg, Letter to Don Klima, Advisory Council on Historic Preservation, Re: Proposed Communications Tower, Independent Wireless One, Pond Gutt, Town of Pleasant Valley, Dutchess County, New York (1 December 2003), 6.

³⁷ Steinberg, Letter to Klima, Proposed Communications Tower, Independent Wireless One, Pond Gutt, 6.

³⁸ This observation is true of the FCC letter to the Advisory Council on Historic Preservation regarding a second Dutchess County, New York facility Steinberg, Letter to Klima, Proposed Communications Tower, Independent Wireless One, Pond Gutt.

comments regarding the FCC's inconsistent application of the Criteria of Adverse Effects in the two Dutchess County, New York, cases.³⁹

Another New York case involving potential adverse effects to a historic property underscores the FCC's present incapacity to adequately assess visual impacts by communications facilities. In March 2003, the FCC released findings that a proposed personal wireless services facility near Cazenovia, New York, would not adversely affect historic properties despite comments by the New York State Historic Preservation Officer (and other consulting parties, including the National Trust for Historic Preservation) to the contrary.⁴⁰ FCC attorney Jeffrey Steinberg based his findings of no adverse effects to historic properties on technical reports prepared by the FCC's licensee and by FCC cultural resource specialist Amos Loveday. Loveday's 28 November 2002 memorandum to Steinberg concluded that the proposed wireless facility would not adversely affect Lorenzo, a property listed in the National Register of Historic Places and owned and operated by New York State as a historical park. In his memorandum, Loveday wrote: "Given the weak evidence that the viewshed in which the tower is to be located should be considered a characteristic that qualifies Lorenzo for inclusion in the National Register and the limited visual effect of the tower, the Commission finds that the undertaking will not have an Adverse Effect on Lorenzo."⁴¹

Loveday's conclusion was based solely on "the record," which included a National Register of Historic Places nomination form completed c. 1970, cultural resource management reports, and several Internet Web sites. Loveday wrote, "Based on the record before us, the presence of the tower at the proposed location will in no way interfere with the property presenting itself as an authentic historic site or destroy evidence of the site's past."⁴² In the Cazenovia case there was no attempt by the licensee or the FCC to re-evaluate the Lorenzo under the National Register Criteria for Evaluation taking into account. Reliance on a National Register nomination form completed three decades before and excluding cultural landscapes as integral to Lorenzo's significance is inconsistent not only with National Park Service guidelines on the evaluation of landscapes, but also is inconsistent with the Advisory Council on Historic Preservation's rules.⁴³

³⁹ John L. Nau III, Letter to Michael Powell, Chairman, Federal Communications Commission (5 December 2004).

⁴⁰ Jeffrey S. Steinberg, Letter to Don Klima, Advisory Council on Historic Preservation, Re: Proposed Communications Tower, Proposed Communications Tower, American Tower Corporation, Town of Stanford, 343 Willow Brook Road, Dutchess County, New York (1 December 2003).

⁴¹ Amos Loveday, Memorandum to Jeffrey Steinberg & Dan Abeyta, Finding of no Adverse Effect at the Woodfield Road Site near Cazenovia, New York (Federal Communications Commission, Washington, DC., 28 November 2003), 14-15.

⁴² Loveday, Cazenovia Finding of No Adverse Effect, 14.

⁴³ Linda F. McClelland, et al., *Guidelines for Evaluating and Documenting Rural Historic Landscapes*, National Register Bulletin (Washington, D.C.: U.S. Department of the Interior. National Park Service, 1999). See 36 CFR §800.4(c)(1): "The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible."

The “Joint Opposition” counsel’s arguments that FCC precedents should be applied here are disingenuous and reflect a continued policy of agency indifference towards compliance with the letter and spirit of the National Historic Preservation Act. Neither the FCC nor its licensees – in the Lambs Knoll proceeding and other cases – has demonstrated a willingness to make use of established methods for delimiting impact areas (areas of potential effects) or methods for assessing visual effects and mitigating them.

The FCC licensees’ assessment of effects to historic properties with regards to the proposed Lambs Knoll facility is fundamentally flawed on several levels. At the most basic, there will be a direct – not visual – direct impact to historic properties through the removal of the Lambs Knoll fire tower. The project proponents purport that there are no established ways to qualify and quantify the effects of communications towers except through reliance on flawed FCC precedents; as it is clearly shown above, this argument is disingenuous and deceptive. The methods used by the FCC licensees to evaluate the potential effects to properties for which there is a consensus that they are eligible for listing in the National Register (e.g., the Appalachian Trail, South Mountain Battlefields, and the Park Hall/Locust Grove Rural Historic Landscape) are not defensible. For example, there was no attempt to integrate user/viewer perceptions of the proposed facility by the project proponents or their consultants. In fact, the National Park Service – the federal body that administers the various Civil War battlefield sites on and around South Mountain and the Appalachian Trail was not brought into the proceedings through consultations beyond being parties on a documents service list.

The project proponents have only provided photographs, photographic simulations, and maps as the basis for their assessment of effects to historic properties. The data submitted for review in this proceeding involving nationally significant scenic *and* historic resources would not be considered sufficient documentation for visual impact analyses by various federal and state authorities.⁴⁴ The information provided by the project proponents does not include any analysis – it merely consists of maps and photographs from which the various reviewers are asked to render their own opinions based on the denotative information presented, i.e., it is arbitrary and indefensible.

⁴⁴ See, for example, Jeffrey Sama, *Assessing and Mitigating Visual Impact* (Albany, NY: New York Department of Environmental Conservation, 2000); United States. Department of Agriculture. Forest Service, *Landscape Aesthetics: A Handbook for Scenery Management*, Agriculture Handbook No. 701 (Washington, DC: U.S. Dept. of Agriculture, 1995).