

**Definitive Map Review 2005-08:  
Parish of Milton Abbot**

Joint report of the County Solicitor and Director of Environment, Economy and Culture

***Please note these recommendations are subject to consideration and determination by the Committee before taking effect.***

**Recommendation: It is recommended that:**

- (a) the depiction of the county road shown on the List of Streets as a continuous through route between points A and F on drawing no. ED/PROW/06/182 be confirmed as correct; and**
- (b) action be taken to remove the obstructions on the route and for it to be re-opened for public use.**

**1. Summary**

This report concerns a dispute regarding a section of a minor county road through Willesley in the parish of Milton Abbot shown between points B – E on plan ED/PROW/06/182 attached to this report.

**2. Background**

The landowners have owned the property since 2000 and have claimed since 2002 that the section of the county road is incorrectly recorded on the List of Streets and is not a public highway.

The route in question starts at its junction with the county road at Willesley Cross as a narrow metalled lane between points A and B. From this point onwards it becomes an unmetalled track to point C where it passes through a gate and across a field towards another gate at point D. It continues along a defined sunken lane at point E, where it is currently obstructed by a wired gate and notice, and proceeds to point F to join the surfaced county road known as Uppaton Lane. It is known historically and locally as Market Lane. The total length is 1,550 metres with the disputed section between points B and E measuring approximately 425 metres.

**3. Matters for Consideration**

The landowners at Willesley Farm believe that the section of the road from B – E through their property has no public status and that the records held by Devon County Council should be formally amended. Their submission was made to the County Council in response to a complaint received by the Okehampton Local Service Office by a member of the public who was prevented from using the highway by the current landowners, previously they used the route freely.

The purpose of this report is to evaluate all the available evidence for the disputed section of county road in the context of the entire route between Willesley Cross and Uppaton Lane, in order to determine whether it is currently correctly recorded as a public highway.

#### 4. Consultations

A consultation was carried out in July 2006 with respect to this issue and the responses have been:

County Councillor Christine Marsh	-	No response
Milton Abbot Parish Council	-	No comment
West Devon Borough Council	-	No response
National Farmers' Union	-	No response
British Horse Society	-	No response
Byways and Bridleways Trust	-	No response
Open Spaces Society	-	No response
Trail Riders' Fellowship	-	Included in the report
Devon Green Lanes Group	-	No response
The Ramblers' Association	-	No response

Further responses were received from the following:

Mr & Mrs Snow of Willesley Farm	-	Included in report
Trail Riders Fellowship	-	Included in report

#### 5. Conclusion

It is recommended that the depiction of the entire route of this highway on the List of Streets be confirmed as correct. The proposal is discussed in detail in Appendix I to this report.

There are no other recommendations to make concerning any further modifications. However, should any valid claim be made in the next six months it would seem sensible for it to be determined promptly rather than deferred.

Edward Chorlton  
Roger Gash

#### **Electoral Division: Okehampton Rural**

Local Government Act 1972

List of Background Papers

Contact for enquiries: Mike Jenkins

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Background Paper	Date	File Ref.
MAB	060207	DMR/MAB

## 1. Documentary Evidence

The submission of the Willesley Farm owners is considered in this Appendix together with all other available evidence. The submission is included in full in the backing papers. The main points of this submission are set out below in *italic type* with appropriate comments.

### **Milton Abbot Parish Map, 1770**

*Superimposed on the Milton Abbot Parish Map of 1770 is the line of the Highway and it will be seen that the Highway is not shown on the map. The White Tor Common is shown unenclosed.*

The route is shown coloured between points A – F, with the exception of a short section between points B and C. This section crossed common land and it is not unusual for the map makers of the time not to show such sections. Indeed, other routes crossing nearby commons are similarly not shown coloured but are recorded as county roads today.

### **Ordnance Survey mapping, 1809 - 1953**

**1" to 1 mile (1809)** – The route is shown passing through the hamlet of Willesley. The map is at a scale of one inch to the mile, and is shown as a ‘cross-road’, a road running between two main roads. It also shows the original continuation of Market Lane where it crossed Heathfield, across the part formerly known as the Milton Abbot Common.

### **1<sup>st</sup> Edition 25" (1884), 2<sup>nd</sup> Edition 25" (1906), Post War A Edition 25" (1953)**

*For the first time the Highway is shown...It is well known that the fact that a way is shown on an OS map is no indication of its status but merely that it existed on the ground. The ...map of 1884 shows [the Highway] braced...and...gated...It cannot therefore have been a public through highway.*

The highway has been consistently shown on Ordnance Survey mapping since the 1809 Old Series, when it was shown as a cross-road passing through the White Tor Common. Later editions depict an enclosed lane between points A – B and D, with the section between B and D parcelled with adjacent features. Parcels were measured areas and when features were too small to be measured separately, they were braced with adjacent parcels, which had no significance with regard the land ownership. All public roads were separately numbered and measured. A solid line across a thoroughfare as at points B and D may reasonably be interpreted as a gate though there is no known Ordnance Survey Instruction to this effect. Gates for stock control were a common feature of the rural highways network and many still exist today. Guidance on the depiction of detail on Ordnance Survey mapping comments that all gates and toll gates across roads and tracks were shown closed according to Instructions for detailed survey, revision and examination of large scale plans. [Caroline – this last sentence needs amending – I’m not sure what it’s meant to be saying] In practice, small enclosures and features were braced by an ‘S’ symbol to larger ones for the purpose of acreage information.

### **Tavistock Estate Survey (Duke of Bedford), 1817**

The survey details the road access to the two farms at Willesley. The section of the route between points B and F was described as being very bad, possibly rough, but firm. The

alternative road was the turnpike via the Sydenham Inn and Tool (Tuell) Down, which was in good repair but was the longer way to market and more costly to use.

### **Fortescue Estates Map, 1825**

A survey by Mr TH Lakeman in 1825 of Earl Fortescue's estates in various Devon parishes includes the Cardwell estate south-east of Willesley, whose boundaries are adjacent to the route. It depicts the route between points E and F as 'Market Lane'. Estate surveys were normally compiled by professional surveyors and therefore likely to be reasonably accurate. The survey appears to be a working document, with field and farm boundaries depicted in bright colour wash. Its purpose was to understand and control property, and any information regarding public rights of way or public highways contained therein were incidental to the survey's main purpose. Public roads and highways that ran through or around the manors were significant features of the landscape.

### **Greenwood's Map, 1827**

The route A – F is shown passing through the hamlet of Willesley, sandwiched between the commons of Ramsdown and Heathfield. The map appeared in 1827 at a scale of one inch to the mile.

### **Brent Heathfield Inclosure Award, 1835**

Formally executed and legally binding, an inclosure award took effect as a legal document to create new highways and conclusively declare their existence. It has a statutory foundation and provides definitive evidence of the status and existence of public highways. The text of the Award is the legally effective part with the plan being illustrative and supportive. The Brent Heathfield Inclosure Act was passed in 1835. The Award describes the road for a short distance from point F towards point E and names it as 'Market Lane', linking with public carriage roads set out in the Award.

### **Quarter Sessions, 1837**

The Justices of the Peace Certificate regarding the stopping up of highways across the common, dated 28 February 1837, notes the continuation of the road between Long Cross and Market Lane, and from there to the Lifton to Tavistock road. The signed plan accompanying the certificate also shows the new roads set out by the Commissioners under the Inclosure Act.

The later certificate of the roads of the Inclosure Award inclusion in these records demonstrates that the roads were set out and made up according to the inclosure legislation, which affects the eastern end of Market Lane where it meets Uppaton Lane at point F.

### **Milton Abbot Tithe map, 1840**

*Superimposed on the Milton Abbot Tithe Map and Apportionment of 1840 is the line of the Highway. It is to be noted that the Common appears to have been enclosed by that time and yet the Highway is still not shown as existing. The remainder of the highway was obviously a private accommodation way.*

The tithe map shows the route between points A – F with the exception of a short length between B and D. At the time the map was prepared, Willesley was being re-developed by the Duke of Bedford and it is possible that no clear line could be determined. The colouration of highways depicted the construction/surface of such highways, which could not be titheable as grass or crops could not grow there, and is likely to indicate some type of

metalling. Lots 1132 (between points A and B) and 1140 (which runs south from Willesley) are listed in the apportionment as roads. However, these appear to be different types of road due to differences in colouration. Lot 1132 is coloured in the same manner as Market Lane which is depicted as starting at point D, rather than point E, while Lot 1140 is uncoloured.

### **Tavistock Estate Maintenance and Repair Accounts, 1840s/50s**

Thorough accounts were made of all maintenance and repair works carried out by the Duke of Bedford throughout the estate. There are detailed accounts regarding the re-development of Willesley Farm but, no mention is made of maintenance being carried out, which suggests that the route was not their responsibility.

### **Duke of Bedford's Tavistock Estate Map Books, circa 1840s/60s**

The maps depict the area around Willesley before and after the re-development of the farm, showing the changes made. No inference can be made regarding the status of the highway from this map, only its availability.

### **Sale Particulars of Viscount Ebrington's South Devon Estates, 1896/7**

Estate surveys were normally compiled by professional surveyors and therefore likely to be reasonably accurate. The survey appears to be a working document, with field and farm boundaries depicted in bright colour wash. Its purpose was to understand and control property, and any information regarding public rights of way or public highways contained therein were incidental to the survey's main purpose. Public roads and highways that ran through or around the manors were significant features of the landscape.

The sale plan depicts the route as a continuous through route in the same manner as other recorded public highways, with the book of reference naming three fields adjacent to the southern hedge of the lane as '...Market Lane Field'.

### **Willesley Abstract of Title, circa C 19th**

This document merely repeats the Ordnance Survey numbering and acreages, and no inference can be made regarding the description of the plots.

### **Willesley Conveyance, 1899**

*The Bedford Estates sold off Willesley Farm [in 1899]...It will be seen that the freehold of the Route was included within the conveyance, whereas public roads...were not. ...The two main fields through which the Route ran... OS 355 and 384...were described as "pasture"... This is further evidence...that the Route was no more than a private accommodation road. The... unbroken green colouring across the eastern boundary shows that this was not a public through -route.*

The land exchange document between the Duke of Bedford of Tavistock and Mr Reginald Kelly of Kelly is an incomplete draft version and no final version has been discovered. Little weight can be given to it due to incomplete entries, inaccurate lot descriptions and inaccurate representation on the associated map.

Several tracks shown on the Parish map are depicted through lots 384 and 355 and none are recorded in the conveyance. The route in question is referred to as Lot 572 and is described as buildings etc, yet there are no buildings in this location, and other mapping sources, including the Ordnance Survey also do not show buildings in that location. Lot 360 between points D and E is noted as a road, though no assumption can be made as to

whether it was private or public. The original entry was crossed out and this infers inaccuracy in the document, for example the route is described as 'buildings etc'. The conveyance merely uses the Ordnance Survey numbering and acreages from which nothing can be drawn.

The conveyance boundary is drawn across the route through Lot 360. This is not evidence that the route was not public as near Willesley Cross and Ramsdown Plantation the conveyance boundary crosses several county roads. It also differs with the tithe map as the tithe map colouration crosses that boundary, stopping west of Point D, near the quarry formally leased by the Tavistock Rural District Council in the early part of the 20th century.

### **Finance Act, 1910**

*[On the Finance Act 1910] the Highway is shown...colour washed as with the rest of Willesley Farm...the Highway was included within the hereditament.*

The Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920, and it was a criminal offence for any false statement to be knowingly made for the purpose of reducing tax liability. If a highway is not included within any hereditament (unit of land ownership) this may simply indicate that it was not claimed to be part of any adjacent landholding and such highways may be public or private. It is possible for roads and parts of roads to be included or partly included within a hereditament to be subject to carriageway rights.

The Field Book records a large deduction of £75 under the heading 'Public Right of Way or User', while the Valuation Book records the same calculations as the Field Book though the surveyor omitted to enter the £75, but it is the remaining amount. The road number 69 between A – B – C – D is consistently mapped since 1770 and there is no other known public highway within the hereditament. This provides good evidence of the reputation of the route as public, any private rights would be expected to be found under the heading of easements.

### **Sale Particulars of Duke of Bedford's Tavistock Estate, 1911**

The sale plan depicts the eastern end of Market Lane as a continuous through highway in the same manner as other recorded public highways, with the sale guide naming the field closest to point D as 'Market Lane Field'.

### **Milton Abbot Parish Council minutes, circa C 20th**

References are relatively recent and mainly relate to the road after it was partly metalled as far as the farm. 2005 is the first and only reference querying the status of the road through Willesley. The Parish Council describe it as being partly metalled and partly unmetalled.

### **Tavistock Rural District Council minutes, circa 1940s**

In 1949 the Divisional Surveyor submitted a report on work completed and drew attention to certain matters including the *'dangerous conditions and need for warning signs at entrance to Willesley Farm near Milton Abbot'* at point B. This indicates that the Council considered the route a public highway as they were prepared to discuss works required on it. It would also be illogical for such a sign if the route only existed as a public highway between Willesley Cross and Willesley Farm.

## **County Council Roads records**

Since the Handover of the highway records for the Tavistock Rural District in 1948, the route has been depicted on the List of Streets held by the Land Charges Section as a through route between points A and F. The route is also included in the Mileage Register of Unclassified County roads for the Tavistock Rural District. However, the section between points B and F was subsequently erased. No reason is known for the alteration or its date, and no legal stopping up order has ever been made on the route.

The maps held by the local highways department are used for maintenance purposes only. They are not regarded as the official record of public highways which is the List of Streets referred to above.

## **Devon Road Network, circa 1985**

The route is shown as a through route between points A and F. The section A – B is categorised as a minor service road and the section B – C – D – E – F is shown as a track not normally used by vehicular traffic.

## **Aerial Photography 1940s & 1999/2000**

The route can be easily seen with a metalled surface between A – B and unmetalled for the remainder.

## **Land Registry**

The route is excluded from landownership between A – B and E – F.

## **2. Landowner Evidence**

### **Mr Snow of Willesley Farm**

He has owned the farm for 7 years. He was unaware on purchasing the property that the route was recorded as a public highway, though was aware that there were no public rights of way recorded there. He has never completed a Section 31(6) deposit. In 2001, he blocked the route with a locked gate and notice and since 2002 he has turned people back. Sometimes he also locks the gate at point C. During his ownership, approximately 16 users have attempted to use the route on foot, horse and various motor vehicles. It was not until 2004 that a submission was lodged with the County Council disputing the status of the highway.

When he bought the property the vendor Mr Gilbert made a statutory declaration regarding his knowledge of the route. He believed that the route called Market Lane, was a public highway until maintenance of it ceased by the County Council in the 1930s. Prior to that time, the previous owner and his son, regularly used the route as an access. Mr Gilbert maintains that since 1989 local TRF members have used the highway in order to establish a public right.

According to Mr Snow there is no public user evidence save for some recent and occasional permissive use.

### **Mr Barkwill of Uppaton Farm**

He has been a tenant of the farm since 1983 and has never believed the route to be public. He has never prevented anyone from using it.

### **3. User Evidence**

#### **Mr Cox**

He believes the route to be a byway open to all traffic and has used it between 1975 and 1985 and in 2001 on horseback. There have always been gates on the highway and the previous owners obstructed the route with electric fencing. He has never obtained permission to use it but was stopped by the current owners of Willesley in 2002. He has never seen any notices saying that it was not a public highway or right of way. His father knew it to be public and his grandfather, a local councillor believed it was a bridleway and had used it as a child. The section of the route between points E – F has been overgrown for some years and though it is consequently not possible to ride that section, he has walked it.

#### **Mr Sussex (Mr Cooper)**

Mr Sussex is aware that Mr Cooper used the route between 1985 and 1995 as part of a motorbike trail run. He recalls a gate at the east end, and the ground being wet or covered in deep slurry.

#### **Ms Baker**

She believes the route to be a bridleway or byway, though she has not used it, having been put off by the rumour of unpleasant landowners. She was told by old farmers and locals that it always was a public path.

#### **Mr Hearn**

He attempted to lead a trail bike run along the route in 2006 and on reaching the obstruction was informed by the landowner that no right of way existed and that he did not want one as it would devalue the property.

#### **Mr Sargeant**

He believes the route to be a bridleway though he has only used it as a walker, and is aware that recently the owner of Willesley has wired the gates shut at point C.

### **4. Discussion**

The owners of Willesley have only partially interpreted and evaluated the evidence they have presented. As this report has shown above there is more evidence available for consideration. Consequently, it would be unsafe to make a decision on the landowner's submission alone. If the section of route through Willesley Farm was private, then the two sections either end of it, would be highways for which there would be no public purpose. Therefore, the evidence regarding the disputed section of highway must be analysed and evaluated in the context of a continuous route between Willesley Cross and Uppaton Lane.

The superimposition of modern mapping onto old maps as carried out by the landowners in their submission, is problematic and unreliable, due to the differing standards of drawing, styles, purposes for which the maps were prepared, information contained on them, and level of accuracy. Consequently, the superimposition of the current route over the historical maps cannot be done with any degree of precision.

Until 150 years ago, Willesley was a hamlet of several cottages and small farms. As such, it is very probable that the route was used by through traffic, being a likely alternative to the



nearby turnpike road. The Highways Act of 1835, made all public routes maintainable at public expense. The historic evidence indicates that the route has existed prior to this date and therefore is publicly maintainable.

Following the enclosure of the common, the hamlet of Willesley was re-developed. Prior to such inclosures, public highways frequently went across unenclosed and common land. The disputed section of highway had the greatest amount of change happening around it, as the hamlet was consolidated into one farm. The fact that the route through the farm is not shown is not evidence that it did not exist. The Tavistock Estate records make no mention of the route through Willesley, inferring that it was not its responsibility.

Though the Inclosure Award did not specifically deal with the whole of Market Lane between points A and F, it sheds light on the status of the route. The Award certificate only dealt with carriage roads and it is likely that Market Lane and its continuation through to Willesley Cross were also considered as such.

The Finance Act documentation merely respects the farm boundary drawn for the 1899 land conveyance. The conveyance is only in draft form and is incomplete and inconsistent. The section A – B is included, yet this is recorded as county road.

The Parish and Rural District Council minutes demonstrate the reputation of the route as public. The District Council had included the highway on their Handover Roads records in 1948 to the County Council where it remained undisputed until 2004. The alteration of the maintenance records has no legal basis, and no stopping up order exists.

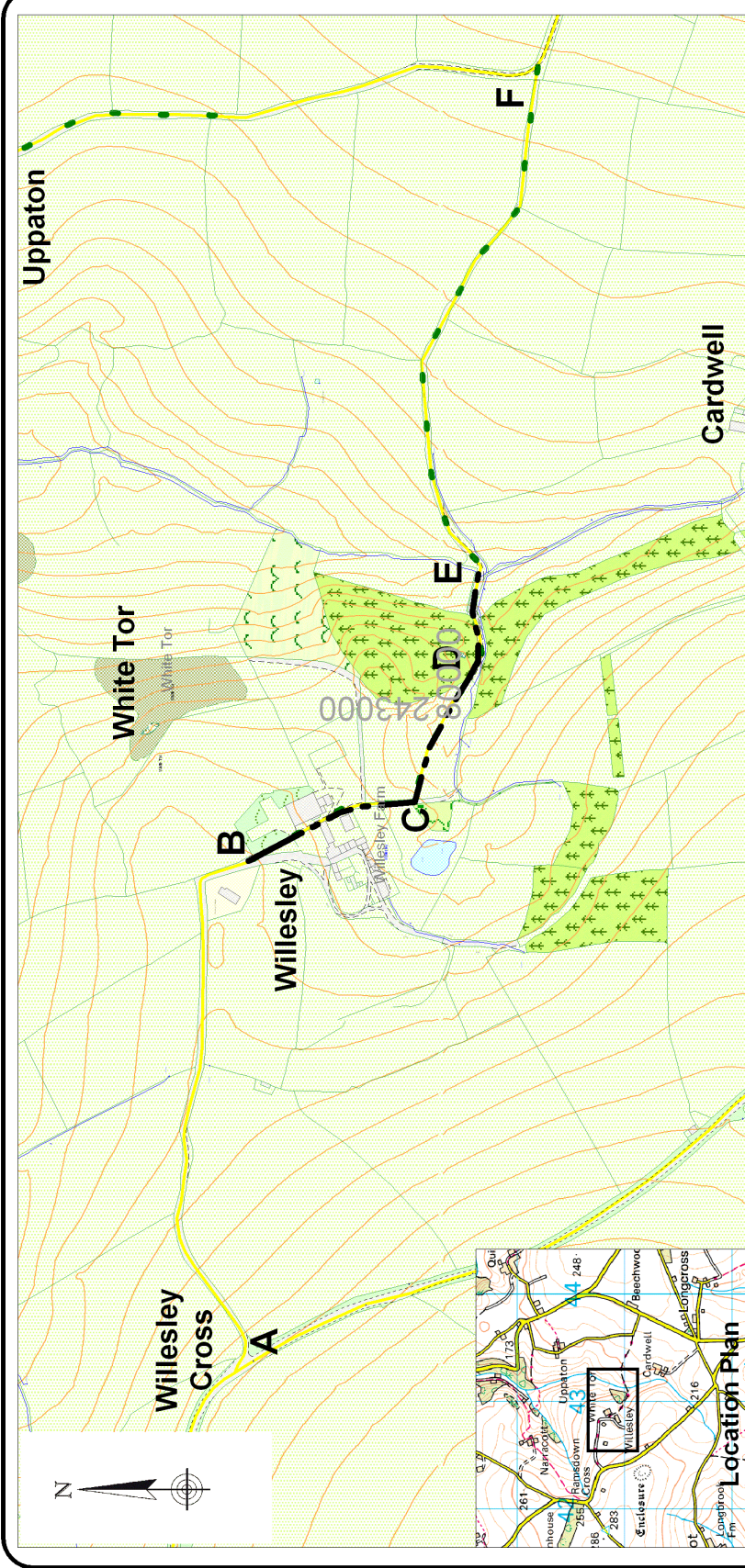
The aerial photography of 1947 demonstrates the accessibility of the highway at the time of the Handover Records. As vehicles have improved, the use of this unmetalled lane has decreased, but the evidence has demonstrated its status as a county road.

Since 2002 the current owner of Willesley Farm has blocked the highway at point E and more recently at point C, as well as turn back approximately 16 users but, there is no evidence of such actions prior to 2002. Coupled with this, the lightness of public use in modern times is less significant due to the historic evidence of the route. Prior to the blocking, users were using the route unhindered, for at least 200 years. The cessation of actual maintenance of the highway by Devon County Council has no significance in terms of its status, on the basis that once a route is a highway it remains a highway irrespective of actual maintenance unless and until it is formally stopped up.

## **5. Conclusion**

This minor county road was included on the Handover Maps given to the County Council by the Tavistock Rural District Council in 1948 and included in the Mileage Registers associated with the maps. However, after the route was recorded on the County Council's List of Streets, the entry was altered. No Magistrates Order can be found indicating that the route was formally stopped up. The alteration of the records kept by the Local Service office related to current maintenance practices, rather than the highway's status and the rights of the public to pass along it.

The applicants have provided some evidence relating to their application to delete part of the county road near Willesley in the parish of Milton Abbot between points B – E on plan no. ED/PROW/05/142. However, it is not considered that the submission in conjunction with all other available evidence discovered demonstrates that an error was made in recording the highway. It is, therefore, recommended that no action be taken to remove any part of the minor county road through Willesley from the List of Streets.



map ref: **SX 4280, 4380**

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drawing number	ED/PROW/06/182
date	December 2006
scale	1:12,500
drawn by	CLP

**Milton Abbot**  
**Definitive Map Review - Route 2**  
**Investigation of UCR through Willesley**

<b>Notation</b> Recorded public roads	
Existing unmetalled roads	
Section of UCR to be investigated	B - C - D - E
	(approx 425 metres)

**Edward Chorlton**  
 COUNTY COUNCIL  
 DIRECTOR OF ENVIRONMENT, ECONOMY & CULTURE