

Parish of Uffculme
Schedule 14 Application – Addition of Public Footpath from the county road east of Five Fords Farm, north to the county road Penslade Cross Road, Uffculme.

Report of the Executive Director of Environment, Economy and Culture

Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that no modification order be made to add a footpath along the route A - B as shown on drawing number ED/PROW/08/81

1. Summary

This report relates to a Schedule 14 Application made by The Devon Green Lanes Group to add a public footpath from the county road east of Five Fords Farm, Uffculme, north to Penslade Cross Road. The application is dated 3 July 2008 and is supported by eight pieces of documentary evidence supplied by The Devon Green Lanes Group. This claim is based purely on documentary evidence.

2. Background to Application

The Definitive Map Review opened in Uffculme in 1997 and revived in June 2003. A consultation map was published in August 2005 with 11 suggestions for changes. This application was not one of the original suggestions. As the review in Uffculme is in its closing stages, it was considered appropriate to progress this application quickly.

A public consultation on the application took place in September 2008, with the following responses:

County Councillor Ray Radford	- no comment
Mid Devon District Council	- no comment
Uffculme Parish Council	- oppose the application
Ramblers' Association	- no comment
British Horse Society	- no comment
Open Spaces Society	- no comment
Byways & Bridleways Trust	- no comment
Country Land & Business Assoc.	- no comment
National Farmers Union	- no comment

3. Description of the Route

The proposal starts from the county road approximately 100m east of Five Fords Farm, Uffculme. The route proceeds north through three fields to the county road Penslade Cross Road as shown between point A - B on drawing number ED/PROW/08/81. The length of the route is approximately 480m.

4. Basis of Claim

The Wildlife and Countryside Act 1981, Section 53 (5) enables any person to apply to the surveying authority for an order to modify the Definitive Map. The procedure is set out under Schedule 14 of the Act.

The Wildlife & Countryside Act 1981, Section 53 (3)(c) enables the Definitive Map and Statement to be modified if the County Council discovers evidence which, when considered with all relevant evidence to it, shows that: (i) a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.

The Wildlife and Countryside Act 1981, Section 56(1) states that the Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein, but without prejudice to any question whether the public had at that date any right of way other than those rights.

The Highways Act 1980, Section 31 (1) states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

Common Law presumes that a public right of way subsists if, at some time in the past, the landowner dedicated the way to the public either expressly, the evidence of the dedication having since been lost, or by implication, by making no objection to the use of the way by the public.

5. Documentary Evidence

Documentary Evidence put forward by The Devon Green Lanes Group

- 1) Ordnance Survey 2nd Edition map 1905-6 shows the path with 'F.P.' written to it.
- 2) The 1910 Finance Act Map covering Five Fords Farm (Hereditament No.542) shows the footpath as one of three on the farm. The footpath is shown crossing field numbers (from north to south) OS 42, 96 and 100.
- 3) Finance Act Field Book for Uffculme shows a claim for three footpaths on Hereditament 542 and a deduction under 'Public Rights of Way or User' of £75.
- 4) The 1932 Rights of Way Act - maps completed for this survive in the parish, unusually for Devon, and clearly show the path as Number 1 with two gates (G) and three (hedge) gaps (GAP). The associated 'Schedule of Footpaths' dated 1934 describes Footpath 1 as 'Penslade - Penslade Dairy - Five Fords'. 'Not required' is written alongside, as it is alongside nine of the forty -four paths on the schedule.
- 5) Parish minutes of January 27 1934 - 'It was unanimously agreed that all the ordnance maps should be procured in order that all the footpaths of the parish could be marked thereon'.

March 24 1934. 'The Clerk produced the Maps delineating the Footpaths of the Parish...'

These two entries demonstrate that Uffculme parish council believed that the route was a

public footpath at that time; the Commons, Open Spaces and Footpath Preservation Society had issued a leaflet entitled 'FOOTPATH MAPS AND SURVEY' to help parish councils with recording public rights of way.

6) The 1949 National Parks and Access to the Countryside Act - Parish Submission form for Footpath No.1, shows the path in its entirety from Penslade through to Five Fords. The initial form has a hand-drawn map with '5G' (referring to five-bar gates across the route) marked four times along the section concerned with this application and written below the map are the words 'The path from Culliford to Five Fords is not clearly defined and is probably used by the farm only.' 'Not required' is written on the form. The final submission form is in the Uffculme parish file in County Hall; on the reverse of the form, under the question 'Who has repaired the path in the past' the statement 'Parish Council if necessary' is written.

The words 'farm only' in the above paragraph could not have applied to the path in 1909 as an allowance under the 1910 Finance Act, would have been inappropriate for a private farm path, which presumably would have benefited the farm and therefore enhanced its value; the allowances were for detriment.

7) There is no statement for Uffculme Footpath No.1 but a list accompanying the parish statements says 'No 1 - Withdrawn by the Parish Council, 'No 28 was also withdrawn by the Parish Council with the words 'Private Path' added and No. 35 says 'Omitted - Private Path.' We can deduce from this that FP No.1 was believed public at that time. If it had been private the words 'Private Path' would have been used as clarification.

8) No stopping up order has been found for Footpath No.1.

The whole of The Devon Green Lanes evidence and attached papers supporting their claim are included in full in the backing papers.

6. Additional and Further Documentary Evidence

OS Map 1st Edition 1809 1 inch to a mile

The route is not shown on this small scale map.

Greenwood's Map 1827

The route is not shown on this small scale map.

Ordnance Survey Map 1st Edition 1880s 25 inch to a mile

A footpath is shown on this map through OS field numbers, south to north, 100, 96, 42 which corresponds to the line claimed by The Devon Green Lanes Group. This path is notated with *F.P.* by the Ordnance Survey.

Ordnance Survey Map 2nd Edition 1905 25 inch to a mile

A footpath is again shown on this map in the same location as the 1880s, across the same field numbers as the first edition map and the same as The Devon Green Lanes claim.

Ordnance Survey Map First Edition New Popular 1946 (Military overlay 1947)

This map shows the line of the claimed footpath, although it is very close to the grid lines on the map. The route is shown to continue north near Culliford Farm. On this map there is no notation text adjacent to the route, however the Map Key notes dashed lines as *Footpaths & Bridle Paths*.

All of the above Ordnance Survey Maps carry the disclaimer that the representation on the map of a road, track or footpath is no evidence of a right of way.

Finance Act 1910

The purpose of the Finance Act Maps was to ascertain the value of land for the purpose of taxation. These maps were based on the 1904 - 06, 2nd Edition 25" Ordnance Survey maps. Accompanying these maps were Field Books containing the information the surveyors made about the land holdings at that time. The fields crossed by this Schedule 14 Application are part of Hereditament 542 for Five Fords Farm, Uffculme.

The Finance Act Map shows the line of a path marked "F.P." along the route claimed by The Devon Green Lanes Group. The surveyor's field books shows that £75 was claimed, under Charges, Easements and Restrictions affecting market value of Fee Simple, for three footpaths over the land of Five Fords Farm. The sum of £75 is repeated under the heading Public Rights of Way or User further on in the field book.

There are no Ordnance Survey field numbers recorded against the entries in the field books to identify the fields that the paths ran through. However due to the maps used at that time, it is reasonable to suggest two of the paths from this 1910 survey can be identified as the current Footpath No.12, Culmstock and a small section of Footpath No. 8, Culmstock and the third is likely to be the claimed route.

Aerial Photography

The 1946 - 49 RAF aerial photography shows a very faint track through the middle section of the claimed route OS field number 96. However it is not possible to conclude if these are tracks made by stock, farm machinery or human feet.

Uffculme Parish Schedule of Footpaths 1934

Uffculme Parish Council are fortunate to have a list of footpaths in the parish as of 1934 and accompanying sections of the 2nd Edition 1906 OS map. The list consists of 44 paths with a brief description of where the path went to and from. Two further paths, 45 & 46, appear to have been added to the list, perhaps at a later date.

Path No.1 is described; *Penslade - Penslade Diary - Five Fords* and a line is drawn on the accompanying plan with gates and or gaps marked upon it. Adjacent to this description is written *not required*.

The additional hand writing on this schedule was most likely added at a later date during the surveying of the paths during the 1950s in readiness for the Definitive Map.

Uffculme Parish Footpath Survey 1950s

23 October 1950 Uffculme Parish Council sent a letter to the Clerk of Tiverton Rural District Council enclosing maps and schedules duly completed for the footpath survey. Footpath No. 1, Uffculme survey return form states the path would not be required in the future. The route is described in the general description; "*Penslade - Penslade Diary - Five Fords There is no trace of the path from Penslade to Penslade Diary and the owner of the first field "A" says it has not been used for more than 20 years. The path from Culliford to Five Fords is not clearly defined and is probably used by the farm only*". The claimed Schedule 14 route is across the last part of the description Culliford to Five Fords.

Uffculme Parish appeared to be diligent in the surveying of their rights of way over the years as the entry of the 30 May 1950 demonstrates: "*A letter was received from the Devon County Council asking the Parish Council to make a survey of the footpaths of the parish for record purposes and it was agreed that the full Council should undertake this work and the following were made responsible for portions of the parish.....*"

Following on from this survey as the process neared the publication of the Definitive Map, a further list of public rights of way for Uffculme was submitted to the Rural District Council as a "List of Public Rights of Way in the Parish of Uffculme agreed with the Clerk to the Parish Council on 30th December 1957"

Footpath No. 1 was withdrawn by the Parish Council, along with several others.

The Uffculme Parish minutes for the meeting 4 February 1958 record "DCC Survey. Parish Footpaths". The entry records *"The clerk reported that the Devon County Council argued with the parish councillors' survey of these paths, as to the non -requirement of certain of them. They desired the Council to adopt a footpath running from Southey Farm to the parish boundary from where it continued as footpath number 21 in the parish of Culmstock. The County Council looked to publish a draft map of the adopted footpaths by the end of March and such a map would be deposited at the residence of the clerk for four months, during which time it would be available for inspection by interested persons. It was unanimously decided to include the Southey's Farm - Parish Boundary footpath on the schedule of Footpaths for this parish. Footpath to be numbered 47"*

This entry shows that Uffculme Parish Council were active in their discussions with Devon County Council about the rights of way survey at that time and that it was possible to make changes if appropriate.

Uffculme Parish Minutes 1960 - 1970s

At the parish meeting 29 May 1962 it was recorded that *"The National Association of Parish Councils circular 132 (Legal) Digest of advice iv Footpaths and other Rights of Way. A copy was given to each councillor for his or her information"*

This entry continues to show Uffculme Parish Council's up to date involvement with the process of recording public rights of way.

The parish minutes of 29 January 1963 record *"Footpaths. The map of the parish footpaths and statements had been returned to the Devon County Council for inclusion on the Provisional Map which would be available at the RDC Offices and also at the residence of the Clerk to this Council for 28 days"*

Following the publication of the Definitive Map and Statements for Tiverton Rural District in July 1964, the legislation had anticipated a quinquennial review of the rights of way maps. It was found to be an impossible task. Devon County Council conducted a Limited Special Review during the 1970s.

This limited review is reflected in the meeting of The Uffculme Parish Council on 25 May 1971. The Parish minutes record:

"Before the Parish Council meeting took place there was a Special Parish Meeting held the purpose of which was to Re-Designate any footpath in the Parish which needed such. The Vice Chairman took the chair for this and explained to the public present that the Council had met previously and had been through the schedule of footpaths and also the map provided by the county and decided that no path need be re-designated. After a short discussion it was proposed by Mr A Carnell and seconded by Mrs Thorne that the paths be left as at present schedule".

As part of the evidence put forward during a recent Public Inquiry (18.9.2007) into the status of the lane known locally as Violet Lane, at Five Fords Farm is a letter from E.J..Gollop.

Mr Gollop is the original surveyor of the old Footpath No.1 Uffculme and as part of the supporting evidence for Violet Lane in Uffculme Mr Gollop submitted a letter 18th July 2007, to the Uffculme P3 co-ordinator, Mr Hilson.

The letter says *“I hope that the following background information may be of interest to you. I was a Parish Councillor in the late 1940’s when we were asked to look at all the existing footpaths and report upon them. We were paired off for the task. My colleague was Mr Ernest Dunbar who was I think chairman at the time. Our batch included a footpath which had run from near Five Fords Farm to near Lower Penslade Farm. Mr Dunbar drove, dropped me at one end of the footpath, and met me at the other end. There was no evidence at all that the path was being used and in view of this, and the fact that Violet Lane is more or less parallel, we had no hesitation in recommending that the path be omitted. Incidentally Mr Dunbar had lived at Little Southdown and knew the area well”*

Uffculme Parish Council view 4 October 2008

Uffculme Parish Council had a site visit to the claimed route and then considered the matter at their meeting at the end of September 2008. The Uffculme Parish Council unanimously agreed that they would offer no evidence in respect of re-opening the path and that the application by The Devon Green Lanes would not be supported. In their letter of the 4 October 2008 Uffculme Parish Council state *“This path was never included on the Definitive Map and extinguished in 1949 by my Council. It was further noted that its non-existence was used in evidence at the recent public inquiry to support the current Modification Order to Bridleway No.1 - Violet Lane”*

7. Landowner Evidence

The fields crossed by the claimed route are part of Five Fords Farm Uffculme, farmed by Mr & Mrs Waller. Mrs Stella Waller completed a Landowner Evidence Form at the beginning of September 2008 and states that the land has been in her ownership for 44 years. She states that she does not believe the route to be public nor has she been aware of members of the public using it. There are no stiles on the route and the gate is locked on the county road near Five Fords. Mrs Waller says there have never been any notices or signs because there was no need and she has never been asked for permission by anyone to use the claimed route.

8. Evaluation of Evidence

The claimed route is shown on the early Ordnance Survey maps of the 1880s, 1904-6 and first edition New Popular 1946 map. All of these Ordnance maps carry the disclaimer that *“The representation on this map of any other road, track or path is no evidence of the existence of a right of way”*. However the surveyors obviously saw a track on the ground at that time or they would not have included it on the map. The route was also put forward in the 1934 Schedule of Footpaths made by Uffculme Parish at that time whilst considering the provisions of the 1932 Rights of Way Act. The added notation *“not required”* is likely to have been added at a later date. These maps provide an early record of the path, but do not in themselves provide strong enough evidence to include that path on the Definitive Map.

The 1910 Finance Act records for Five Fords Farm indicate that at that time it was likely that a tax relief was given for this route being one of three public rights of way or user on the land. However as the parish minutes reveal, this view has not been perpetuated into the recent and present history of footpaths in Uffculme. The current landowner of Five Ford Farm for the last 44 years, clearly states in their evidence that the path has not been used by the public at any time.

Following the National Parks and Access to the Countryside Act 1949, the Uffculme Parish minutes show continued diligence by the parish in surveying and recording their footpath network. In May 1950 the Parish Council had the full parish council assigned to record the footpaths within the parish. By October 1950 Uffculme parish had completed the survey and returned it to the Clerk of Tiverton RDC. The returned statement for Footpath No.1 said there was no trace of the of the northern section of the old footpath and that the path from Culliford to Five Fords was not clearly defined and probably used only by the farm. Against the question "Whether path required in the future" the answer was "No". Although there appears to be a pencil question mark and on the top of the statement is written "not required" and a tick. The continued omission of this path from the Parish Councils survey list, can be demonstrated again in the List of Public Rights of Way in the Parish of Uffculme agreed with the clerk to the Parish Council on 30 December 1957. Footpath No.1 was withdrawn by the Parish Council.

The Parish minutes of 4 February 1958 indicated that the Parish Council and the County Council were discussing the omission of a path in Uffculme that provided a link into the parish of Culmstock, where it continues as Footpath No.21 Culmstock. The County Council appear to have disagreed with the Uffculme parish councillors about the "no - requirement" of certain paths. In the end it was unanimously decided to include the Southey's Farm path to the Culmstock parish boundary on the parish schedule. The Footpath was numbered No.47 and still remains the same today. This parish minute also notes that the draft map published by Devon County Council would be deposited at the clerk's house for four months, during which time they would be available for inspection by interested persons.

Throughout the parish minutes it is clear that Uffculme Parish Council have been very active and conscientious in the recording of rights of way. The parish records provide cogent evidence that the recording process has been carefully carried out with opportunities for the provisional and draft map to be inspected at the Clerk's house and the Rural District Council offices giving interested persons the opportunity to make comments or representations. There was no action by the Parish Council or anyone else to reinstate the withdrawn path no.1 Uffculme during the original Definitive Map Review process 1950 - 1964, or in May 1971, nor was the route put it forward when the proposals map for Uffculme was published in August 2005.

It is rare to have any of the original survey forms from the 1950s parish survey to be verified by the same surveyor 57 years later. This is a unique piece of documentary evidence that strongly supports the local knowledge of that time, that this particular path was not to be recorded as a public footpath and that view is still echoed by the Uffculme Parish Council today.

9. Conclusion

On the basis of the evidence received and in conjunction with other historical evidence, it is clear that neither the Parish Council, the landowner nor the public recognised the claimed route as a public right of way. It is therefore recommended that no Order be made to record the claimed route as a public footpath.

10. Reasons for Recommendation

To determine the Schedule 14 Application to record a claimed footpath over land at Five Fords Farm, Uffculme.

11. Legal Considerations

The implications of the recommendation have been taken into account in preparing this report.

Edward Chorlton

Electoral Division: Willand & Uffculme

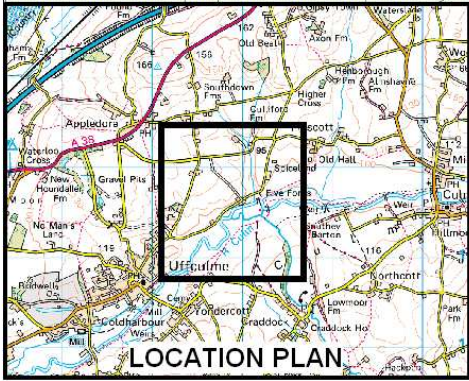
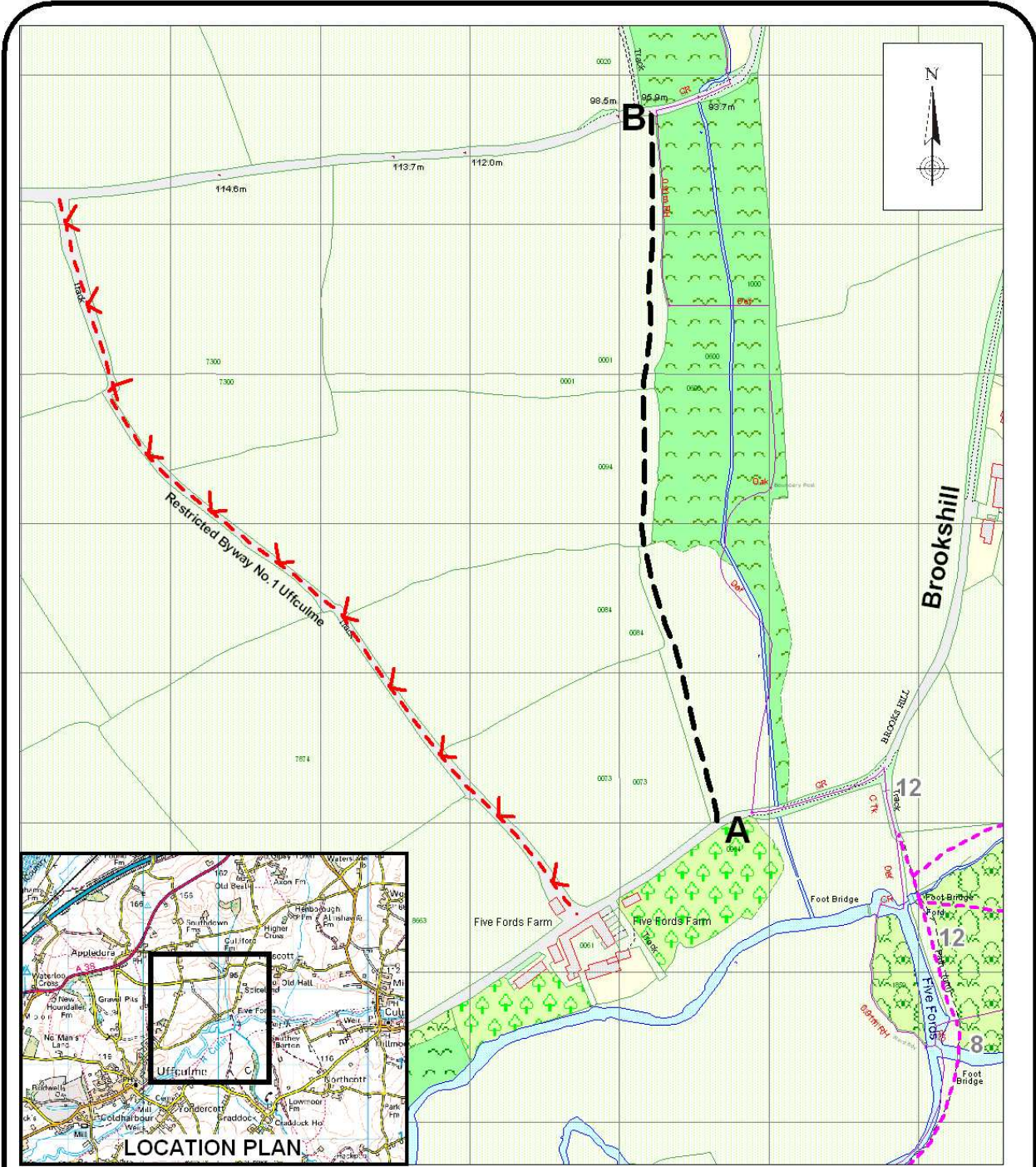
Local Government Act 1972

List of Background Papers

Contact for enquiries: M J Jenkins
Room No: ABG, Lucombe House
Tel No: 01392 383240

Background Paper	Date	File Ref
Correspondence file	2007-	ES/DMR/UFF

es211008pra
sc/parish of Uffculme
2 hq 201008



Map ref: ST 0806 1370

Reproduced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright
 Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Licence No. 100019783

DEVON COUNTY COUNCIL
 Schedule 14 Application
 Proposed Footpath Five Fords Uffculme

drawing number	ED/PROW/08/81
date	Sept 2008
scale	1: 3500 (at A4)
drawn by	ES

Notation

Claimed Footpath A - B **-----**

Existing footpaths **-----**

Edward Chorlton
 COUNTY ENVIRONMENT,
 ECONOMY & CULTURE DIRECTOR

