

EXMOOR NATIONAL PARK AUTHORITY

1 FEBRUARY 2005

PUBLIC RIGHTS OF WAY AND MECHANICALLY PROPELLED VEHICLE USE

Report of the Head of Recreation & Tourism

Purpose of Report:

To INFORM Members of legal issues surrounding mechanically propelled vehicle use of un-metalled roads on Exmoor. To SEEK member's views regarding the current legal situation and to AGREE the Authority's present position regarding management of these routes.

Legal Implications including Human Rights Act 1998:

Local Government Act 1972
Highways Act 1980
Road Traffic Act 1972
Countryside and Rights of Way Act 2000

Financial Implications:

Potential cost of more intensive management of some routes used by vehicles. Additional funding requirements to be sought from Devon and Somerset County Councils as the relevant Highway Authorities.

National Park Objectives

OBJECTIVE 11/2

To ensure recreation activities are compatible with the principle of quiet enjoyment and the activities of persons living and working in the National Park and seek to achieve harmony between the recreation and conservation purposes of the National Park.

RECOMMENDATION:

To: AGREE the recommendations in this paper, working towards ensuring that Exmoor National Park Authority will seek to minimise conflict on and damage to public rights of way, maximise the benefit provided by legal routes to all users and provide a clear message for all.

1. INTRODUCTION

1.1 As with any class of user, use of un-surfaced routes by mechanically propelled vehicles can give rise to problems which Exmoor National Park Authority needs to address by means of a clear policy and effective management. Motorised use can be an extremely emotive topic, provoking strong responses from those affected by such use as well as from the users themselves. Government has been seeking to address anomalies with relevant legislation and seek a better way forward to manage the changing use of public rights of way by mechanically propelled vehicles at present but the current situation can prove confusing. Officers of Exmoor National Park Authority are regularly questioned regarding the Authority's stance regarding this issue and need to ensure that they are giving a clear and consistent message.

- 1.2 Use of un-surfaced routes by mechanically propelled vehicles on public rights of way has generally only taken place on 4% (40km out of 1000km) of the total rights of way network. These routes are classified either as Roads Used as Public Paths (RUPPs), Unclassified County Roads (UCRs) or Byways Open to All Traffic (BOATs). The Authority receives a disproportionately large number of complaints about these routes compared to other public rights of way. Some of these complaints are regarding the principle of vehicles using these routes; others are regarding noise, erosion and conflicts with other users.
- 1.3 The sale of 4x4 vehicles has increased in Britain each year for the past 10 years and 4x4s are now the best selling vehicle type in the UK. Whilst many of these vehicles will not be taken off-tarmac when new, this trend has provided a growing second hand market of affordable and suitable vehicles. In parallel with this trend motorcycle trail riding has become a very popular leisure pursuit and at the beginning of 2003 sales of trail bikes were up 34% compared to the sale of fast road motorcycles being down 36%.

2. CURRENT POLICY AND MANAGEMENT

- 2.1 Objective 11/2 of the National Park Management Plan is 'To ensure recreational activities are compatible with the principle of quiet enjoyment and the activities of persons living and working in the National Park and seek to achieve harmony between the recreation and conservation purposes of the National Park.
- 2.2 The Sandford principal (from S.62 of the Environment Act 1995) allows National Park Authorities to give primacy to the purpose of conservation and enhancement where it is in conflict with the purpose of promoting understanding and enjoyment.
- 2.3 Exmoor National Park Authority maintains RUPPs, BOATs and UCRs to bridleway standard on behalf of the Highway Authorities. Devon and Somerset County Councils, as the Highway Authorities, are responsible for maintenance over and above this and for all legal procedures. In practice it is difficult to establish what 'bridleway standard' is on a route which is also used by motor vehicles but it generally implies a loose, unbound surface finish.
- 2.4 Exmoor National Park Authority has never in the past sought to close a route to the legal use of mechanically propelled vehicular traffic, except to implement repair work or as part of a voluntary agreement.

3. THE CURRENT LEGAL SITUATION

- 3.1 All BOATs have a legal right for recreational use by mechanically propelled vehicles. All of these routes are based in the Devon area of the Park. RUPPs exist solely in the Somerset area of the Park and make up the vast majority of the tracks available to mechanically propelled vehicles on Exmoor. RUPPs are an anomaly designed as a 'stop gap' at the time of production of the original Definitive Map and may or may not have an historic legal right for use by mechanically propelled vehicles. However, use of RUPPs by motor vehicles is allowed until such time as the route is reclassified as either a BOAT or a lower classification of rights of way, eg bridleway.
- 3.2 Government has tried to rectify the confusing RUPP situation by introducing Section 47 of The Countryside and Rights of Way (CRoW) Act 2000 that proposes that all RUPPs be reclassified as a new class of public right of way, a restricted byway. Restricted byways would have definitive public rights for horses, cyclists, walkers and horse-drawn vehicles, but not mechanically propelled vehicles. It was proposed that users of mechanically propelled vehicles could apply to get restricted byways upgraded to BOATs but would be guilty of an offence when using these routes until the legal process has successfully found the route to be a BOAT. This process has now been stalled due to the Human Rights Act.

3.3 Under Section 56 of the CROW Act it will not be possible to use historic evidence of use as the basis to modify the Definitive Map of public rights of way after 2026. By this date Highways Authorities should have carried out a Definitive Map review. This has prompted an increase in the activity of many user groups and enthusiasts to research and claim 'missing' or wrongly classified Public Rights of Way. The Countryside Agency has set up a 'Lost Ways' project to research these missing routes. At present there may be many historic public rights of way which, through the correct legal procedure and supported by valid evidence, could be successfully claimed as having higher rights (e.g. a footpath being upgraded to a BOAT or having new rights (e.g. a private track becoming a BOAT). Applications for public rights are on the basis of there having been a historic right for the public to use a route, not on the suitability of the track for use by modern traffic. The uncertainties around the current situation obviously give cause for concern to landowners and other users of public rights of way who fear that their favourite quiet track may become accessible to mechanically propelled vehicles.

3.4 At present a BOAT can be created by proving that a public right for a horse and cart, not necessarily a motor vehicle, existed historically. Historic use by a horse and cart allows rights to be established for mechanically propelled vehicles. Government are looking at changing this situation which Rural Affairs Minister Alun Michael has described as 'not making sense'. Until this position is resolved by legislation there will continue to be uncertainty over the future status of routes where vehicle rights are claimed.

4. **POSITION STATEMENT FOR EXMOOR NATIONAL PARK AUTHORITY**

4.1 There is the need to provide a clear and consistent message on the position of Exmoor National Park Authority to residents and users on the views of the Authority in the current legal situation.

4.2 The modification process regarding the change in status of RUPPs to either BOATs or to be downgraded to bridleways or footpaths is based entirely on historic evidence. Exmoor National Park Authority has no 'say' in this process. Completion of this process as part of the definitive map review will allow proper management of the routes to their true status.

4.3 The concept of private tracks, footpaths and bridleways being upgraded to BOATs on the basis of historic horse and cart use and allowing mechanically propelled vehicles to use them potentially for the first time is of concern from an erosion, tranquillity and potential conflict standpoint. Depending on whether Government decides to change this situation, Exmoor National Park Authority may have to look in the future at introducing a policy where routes being upgraded would undergo an Environmental Impact or Landscape Character Assessment on an individual basis. Where historic public rights were found to be likely to cause a detriment to the area the National Park Authority could seek to use management tools such as Traffic Regulation Orders as required.

4.4 At present Exmoor National Park Authority believes that a policy of co-operation and physical management is the most effective way to manage un-surfaced routes being legally used by the public with mechanically propelled vehicles. Whilst tools such as Traffic Regulation Orders give potential to close certain routes, using such powers can conflict with the Authority's desire to give a wide range of people and interests the opportunity to enjoy Exmoor National Park. At present it is believed that more can be achieved through innovative solutions. In other areas of the United Kingdom it has been shown that by maintaining the routes to a high standard a great deal of undesirable use is prevented whilst all users benefit. This approach is in line with present government guidance through the guide 'Making the Best of Byways' and Exmoor National Park Authority will work to achieve a high standard of track surface quality to the benefit of all users. A narrow and well maintained track has less of a visual and environmental impact than a wide eroded scar or a track that is difficult and unpleasant for all users.

4.5 Exmoor National Park Authority believes that many issues reported to it regarding mechanically propelled vehicles are an issue for the Police. For example, many complaints we

receive allege that illegal motorcycles are being ridden in a dangerous manner. A vehicle used on any public right of way has to comply with the same legal requirements (e.g. driving licence, road fund licence, insurance, driven with due care and attention) as a vehicle on any public road. Some vehicle owners are guilty of legal offences when using these tracks. Exmoor National Park Authority will pass on relevant information to the Police and encourage their work in preventing any illegal use taking place.

- 4.6 Exmoor National Park Authority believes that ‘thrill seeking’ users wishing to use public routes solely for the challenge to their skills and vehicle would be better served using formal areas without public access and away from sensitive landscapes and habitats. To this end the Authority will work with others to lobby for private centres to be established to cater for this use away from protected areas. Both private (e.g. farmers) and public (e.g. Forestry Commission) landowners could benefit from providing for this large and potentially lucrative market. Management of routes with mechanically propelled vehicular rights will aim to reduce the challenge for ‘thrill seekers’ and make the routes as sustainable and suitable as possible for all users.

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Recreation Management Officer
1 February 2005

RUPP Case Studies:

Putham Lane, Cutcombe and Withypool to Upper Willingford Bridge

These two RUPPs have been chosen as possibly the two most contentious RUPPs in Exmoor about which the Authority receives the most complaints. The issues for both RUPPs are extremely different and hopefully highlight the fact that a 'one size fits all' approach to management is not practicable on Exmoor. Suggested potential management solutions are made as an example of how issues on these RUPPs could be minimised.

1) Putham Lane, Wheddon Cross.

General Description: A narrow and deep sunken lane with an exposed bedrock base. The whole lane climbs a hill but certain sections are particularly steep leading to regular incidences of vehicles getting stuck on the way up.

Width: Extremely narrow (3metres) in places

Slope: Extremely steep in one direction

Conflict: Sunken lane and steep slope has led to horse riders being 'trapped' between vehicles coming up and going down. In some places there is not room for a walker to pass a 4x4 without climbing the banks.

Erosion / damage: Not a great deal due to the bedrock surface of the track. Hedge banks do suffer from some vehicle damage.

Main complaints: The vast majority are regarding the conflict between motorised and non-motorised users.

ENPA management to date: Recently removed some of the 'steps' on the most technical section to make the route easier to use and prevent vehicles getting stuck. Now monitoring the situation to see if this makes a difference.

Possible future management: There is the possibility of looking at making routes such as this one a one-way street only (in the downhill direction) for mechanically propelled vehicles. This would virtually eradicate vehicles getting stuck or having to drive quickly to negotiate the slope. There would also be no chance of other users becoming trapped between vehicles going in opposite directions as has been the case in the past. The downside to this is the associated cost and the signing requirements.

2) Withypool to Upper Willingford Bridge.

General Description: This open track runs over Withypool Common to Porchester Post, where it becomes a wide enclosed track between two hedge banks. At Upper Willingford Bridge the track meets the county boundary. The track then becomes a bridleway in Devon, making it effectively a dead end for mechanically propelled vehicles.

Width: Varies from a narrow track to 20 metre wide erosion scar.

Slope: Varies, but mostly reasonably flat.

Conflict: Very little direct user conflict as walkers and riders are able to move onto moorland at the side of the track if a vehicle is coming. Deep rutting makes the track unpleasant for horses, particularly

in frosty weather. As a wide open expanse of moorland there is the issue of tranquillity and the disturbance to those seeking peace and solitude.

Erosion / damage: A lot of erosion has taken place both on and beside this track due to two reasons. The first is that the drainage on the track has not been well maintained, leading to large water gullies. The second is the track is soft in a few areas leading to erosion, rutting, standing water and all users including vehicles spreading out onto the moorland.

Main complaints: Complaints are from local people at the principle of allowing the track to be used by mechanically propelled vehicles and at the damage done both to the track and the surrounding moorland.

ENPA management to date: Some drainage work and track repairs, although some areas are not sufficiently firm to withstand prolonged use. A voluntary vehicular restraint was used a few years ago and the track has been closed twice in the past two years to enable limited repairs and recovery.

Possible future management: There is the need to prevent further damage to the track and the surrounding moorland. The best approach is to improve the track in the wet areas to make it easy and enjoyable for all users and to prevent damage to the surrounding moorland.