

specific analysis. I have also included the definition of "level of service" that is used by WISDOT and that is already contained in TRANS 210.03(4), Wis. Admin. Code.]

(b) Adjust setback. If the department determines that it may grant the special exception by adjusting the setback area, the department assumes the risk and shall pay just compensation for future department required removal of a structure or improvement that the department has allowed outside of the approved reduced setback area on land that the department acquires in the future for a transportation improvement.

(c) Allow in setback – removal does not affect viability. If the department determines that it may grant the special exception within the existing setback area and future removal of the structure or improvement, in whole or in part, will not:

1. Affect the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement, or
2. Adversely affect the community in which it is located,

then the land divider assumes the risk of future department required removal of the structure or improvement and waives any right to compensation or relocation assistance associated with the acquisition of land the department acquires in the future for a transportation improvement. unless the owner As a condition of granting the special exception, the land divider shall executes an agreement or other appropriate document as determined by the department, binding on successors and assigns of the property, providing that, should the department need to acquire lands within the setback area, the department is not required to pay compensation, relocation costs or damages relating to any structure or improvement authorized by the variance special exception. The department may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

[NOTE: I have restructured this paragraph to make it more readable.]

(d) Blanket or area special exceptions. Based on its experience granting special exceptions on similar land divisions, similar structures or improvements, or the same area and development pattern, the department may grant blanket or area special exceptions that are generally applicable. The department will record these special exceptions with the register of deeds in the areas affected or by other means that the department determines to be appropriate to inform the public.

[NOTE: I added the phrase "and development pattern" to clarify the general focus of an area factor that is considered.]

(4) Horizon of analysis. For purposes of its analysis, the department will consider a period of no more than 20 years.⁶

⁶ Federal law requires a minimum 20-year forecast period for transportation planning for all areas of the State. 23 USC 134(g)(2)(A) and 135(e)(1)

[NOTE: There was some discussion that this period was too short or that, as phrased, it might be construed to limit the use of common sense if it was generally well known that the setback was needed regardless of the time frame because there would be no reasonable alternatives other than the setback area at any time. In fact, WISDOT will use the best information it has available to make a rational decision. I believe the existing wording is flexible enough allow such consideration within the 20-year analysis period, regardless of whether the setback is currently programmed for physical acquisition and occupation by the Department or other governmental entity during the 20-year period.]

(5) Procedure. Land division reviews and approvals and special exceptions shall be granted by department district offices or by municipalities that have requested and been formally delegated the authority. Any district or municipal approval or denial of a land division or special exception may be appealed to the secretary of the department or designee, who may reverse, modify or affirm the decision of the district or municipality. A land divider, governmental officer or entity, or member of the general public may appeal a decision of the district or municipal authority to the secretary of the department or designee. The department will not unilaterally initiate a review a decision of a district approving a land division or special exception, but the department may unilaterally review a municipal decision to require conformity with the delegation agreement.

[NOTE: I have added the phrase "but the department may unilaterally review a municipal decision to require conformity with the delegation agreement" in order to make more explicit what we intended by the original language, as discussed at our May 23 meeting.]

(6) Time limits.

(a) Initial decision. In the absence of any request for a special exception, the district or municipality shall complete the review by either objecting or certifying non-objection to the land division map within 20 calendar days from the date that a complete request is submitted to the required office of the department or municipality that has been delegated the review authority. If a special exception is requested, the district or municipality shall inform the land divider of its decision in writing granting or denying a special exception within a period of no more 60 calendar days from receipt of the land divider's specific written request for a special exception. If the district or municipality fails to act within the 60-day limit, the district or municipality shall be deemed to have no objection to the special exception.

(b) Appeal. Any final decision of a district or municipality regarding a special exception, or consequence of failure to act within the time limits provided, may be appealed to the secretary or designee within 20 days of that final decision or failure to act. The secretary or designee shall inform the land divider of its decision on appeal in writing granting or denying or modifying a special exception within a period of no more 60 days from receipt of the appeal. If the secretary or designee fails to

act within the 60-day limit, the department shall be deemed to have no objection to the special exception.

[NOTE: The 20-day time limit for action on a review without any special exception or variance is already established in TRANS 233.03(5). That subsection will also be amended to make it clear that if the district or municipality fails to act within the time limits, there shall be deemed to be no objection to the land division.]

(c) Intent of 60-day provision. It is the intent of this 60-day special exception provision to allow land dividers and the district, municipality or department sufficient time to explore alternative locations or plans to avoid or minimize conflicts and facilitate mutual resolution. It is intended that decisions will be made sooner if practicable.

[NOTE: I have restructured this subsection for clarity and to set specific special exception time limits for initial decisions, appeals, and decisions on appeal.

(7) Treatment of land divisions involving changes in use of existing structures and improvements. If a land division involves changes in the type of ownership of structures or improvements that existed for 5 years prior to the land division, the department will approve the land division if there is no substantial change to the safety of entrance to or departure from the highway or public investment in the highway. Example of this type of land division would be the conversion of an existing apartment building to condominium ownership or the conversion of leased commercial spaces in a shopping mall to owned spaces. When the department, district, or authorized municipality makes a determination that a land division fits this category, the land division will be deemed a technical land division only and the department, district, or authorized municipality shall certify approval or declare the land division exempt from this chapter, and shall refund any fee paid.

[NOTE: I have added the idea that this type of technical land division will be handled as exempt or will be appropriately certified without charge after appropriate review to determine it fits this category and time limits so that it does not create a loophole to evade the safety and public investment purposes of the law on which this rule is based.]

connecting Wisconsin to the world



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WTBA Testimony on Trans 233

Joint Committee for Review of Administrative Rules

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Tom Walker

♦ **Deputy Executive Director**

Jack Arseneau

Tom Walker
Executive Director
June 21, 2000



American Road &
Transportation Builders
Association

My name is Tom Walker and I am Executive Director of the Wisconsin Transportation Builders Association (WTBA).

WTBA represents almost 300 Wisconsin companies, that design, build, and repair all segments of Wisconsin's transportation infrastructure, including roads, airports, railroads, bridges, bikepaths and pedestrian facilities.

WTBA members are very supportive of the basic public policy goals incorporated by the Department in Trans 233, as promulgated. We believe that access to new development should not compromise highway safety. We also believe that new buildings and other permanent improvements that generate traffic should be laid out to allow sufficient room for needed new transportation capacity along existing rights-of-way. In many ways, development has an obligation to provide long-term solutions to the traffic it generates, at a minimum by making sure that space for new capacity is assumed as business plans are drawn.

A recent poll published in On Common Ground asked the public what solution they preferred for congestion. The top choice was to plan for transportation needs as we plan for growth, with widening existing roads and interchanges a close second. These are precisely the goals Trans 233 seeks to facilitate.

We recognize that a number of legitimate concerns have been raised about the details of Trans 233, and applaud the Department's efforts to respond to many of them.

However, there is still considerable disagreement on the issue of setbacks. The key first question we ask you to think carefully about, is "Why Setbacks?"

WTBA strongly supports the fundamental public policy that new transportation capacity should be provided within or along *existing* highways wherever possible, rather than by creating new corridors.

There are very significant environmental, fiscal and land use reasons for this position.

- New corridors can fragment ecological habitat areas, require extensive wetland conversion, and increase run-off to streams and lakes during and after construction.
- New corridors often utilize active farmland, and in areas near cities, can be one factor in creating new pressure for unplanned exurban development.
- In rural areas, new corridors can fragment existing farms into uneconomic parcels.
- Building new corridors is much more expensive than adding lanes to existing highways, provided development has not encroached on needed right-of-way. Saved resources can then be reallocated to other transportation priorities.

- Adding lanes to existing highways, where a community is supportive, encourages in-fill development, reinforces existing communities, and makes the maximum use of existing infrastructure and public facilities. These goals are clearly spelled out in the “Smart Growth” provisions of 1999 ACT 9.

Given these compelling policy goals, the critical question is what tools are needed to achieve them. Over the past decade, numerous state and regional studies have repeatedly pointed to the need for enhanced corridor preservation mechanisms. Corridor preservation allows DOT to plan now, but postpone actually building new capacity until it is clearly needed, while keeping that option open by steering development away from a likely corridor. Corridor preservation saves taxpayer dollars, minimizes inducements for sprawl by making sure that highway capacity follows development, and ensures that long-term mobility and safety needs can be successfully addressed.

Setbacks are a very effective corridor preservation tool along existing highways.

Once a setback line is broken, development will fill in and effectively foreclose the Department’s ability to add lanes along the existing highway in the future. The issue really is not the cost of paying for new right-of-way, as improved, although that will indeed be prohibitive. The real problem is that the owners of developed property will inevitably oppose being bought out, and argue to put the highway somewhere else.

In some cases, there will be no viable alternative to increasing long-term congestion; in others, new corridors will be the only possibility. In either case, the public will lose out.

These situations can be avoided through well-crafted setback provisions in Trans 233.

The second question then is, “where should setbacks apply?”

WTBA agrees that not every highway’s capacity needs to be protected through setbacks.

We would strongly prefer to see a map where setbacks will be enforced. That map should include all Corridors 2020 and National Highway System mileage, plus interchanges and intersections on those systems, as well as other principal arterials (the red lines on the Wisconsin highway map) and all State Highway mileage within and adjacent to incorporated municipalities over a certain size, where development is likely.

In the spirit of compromise, however, we are willing to accept the approach proposed by the Department in May, where all conditions are evaluated.

Nevertheless, we believe that the Department’s May 26th Draft Proposal is severely defective, because it incorporates by reference a narrow, indefensible policy definition of congestion that would leave unprotected hundreds of miles of state highways that already have projections of current or emerging congestion.

Much of this mileage is in urban or urbanizing areas, where development pressures are real and new capacity is virtually inevitable at some future point. Without setbacks on these routes, the state or local units of government at their expense will eventually have to develop entire new corridors to handle projected traffic, in some cases leading to a new round of unplanned development.

Attached to my testimony is a series of maps. The first two are from the recently adopted State Highway Plan.

The first shows state highway routes that will face congestion prior to 2020. When funding permits, most of these will need new capacity. Actual timing will depend on how many dollars the legislature puts in the appropriation for Major Projects.

The second shows routes on which the Department is now planning, tentatively, to add capacity, pending environmental studies and subsequent TPC action.

The rest of the maps detail what is on the first map, but not the second. These are routes that are congested, but not yet included in the State Highway Plan, due to funding limits. Most of them will be incorporated into future Plan updates. I hope you will agree that we don't want to lose the ability to add capacity to these routes in the future, due to encroachment by new structures, given that we can clearly see it will be needed.

WTBA strongly believes that these routes should be protected by Trans 233 setbacks as well, not just those that have been incorporated in this edition of the Plan. What is relevant is the fact they will all be congested and need new capacity, not the happenstance of what is affordable in this edition of the Plan.

Unfortunately, the Department proposes to use in its revised Trans 233 a definition of congestion derived from policies recently adopted in its State Highway Plan, and incorporated in its March 13th edition of the Facilities Development Manual. That Plan reflects current limited funding, not real needs. For lack of funding, it tolerates near-gridlock conditions in the future on non-Corridors 2020 routes, before a solution is sought.

WTBA strongly urges that the Committee direct the Department to revise its May 26th draft rule revision to be consistent with the "minimum threshold standard" for congestion incorporated in Trans 210.05(1), that defines when a project is eligible for ranking by the Transportation Projects Commission. To accomplish this, points #4 and #9 on p. 4 should be deleted, and replaced with the following language: "Current and forecasted congestion, where travel conditions are projected to exceed Level of Service "C" within the following 20 years." As a preamble to #1-12, "The analysis of the Department *may* consider:" should be changed to "The analysis of the Department *will* consider:"

It is fundamentally illogical for the Department to promulgate one standard for when new lanes are justified in one rule, and then propose a different less restrictive standard in another rule for when setbacks should apply, given that setbacks will be a critical tool in meeting future capacity needs on all of these congested routes.

I would like to complete my testimony with some brief comments on the use of a 20-year planning horizon, vs. a 6-year program.

Under federal law, states and Metropolitan Planning Organizations, or MPO's, must cooperatively develop state and metropolitan transportation plans, using a minimum 20-year planning horizon. All transportation decisions, even the state's air quality compliance plans, must be derived from those plans. Recently proposed revisions to federal planning regulations filled over 200 pages in the federal register. A great deal of work, obviously, is invested in travel projects and plan development.

In addition, 1999 Act 9 requires local comprehensive plans to incorporate state and regional transportation plans. After adoption, local governments will need to follow these plans in their decision-making.

It is even illegal to spend federal highway or transit funds in a metropolitan area for any project that is not included in the 20-year transportation plan.

Programs are derived from plans, and merely list which of the Plan's projects will be built during the time-frame of the program, given resources at hand.

When a needed project makes its way into a Plan or Program ultimately depends on funding availability.

In the case of Major Projects, the time lapse from identifying emerging congestion to a completed project is very long, often 20-30 years. The EIS and location decisions on Highway 50 in Kenosha and Walworth Counties, for example, were made in 1981.

The Department studies many possible projects, before selecting a few for the TPC to approve for EIS work.

At its May, 2000 meeting, the TPC ratified EIS work on 10 potential new capacity projects. It is important to emphasize that not one of these is in the current FY 2000-2005 six-year program. Under the Coalition's proposal then, WisDOT would not be able to enforce setbacks on the very routes that the TPC has formally approved to evaluate for possible enumeration.

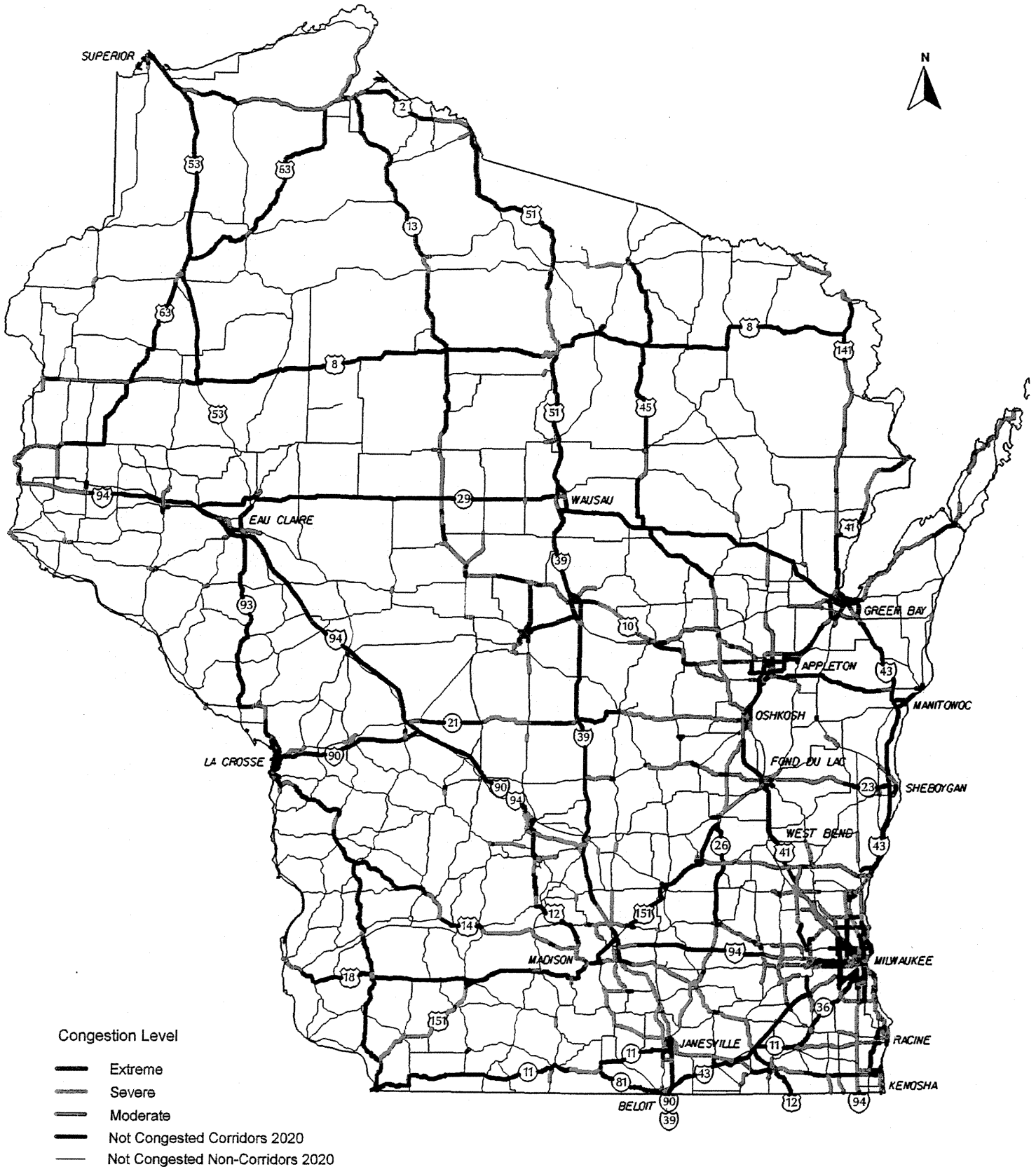
This is surely illogical.

These projects, if eventually enumerated by the Legislature, will be programmed from FY 2006 through FY 2014, or even later.

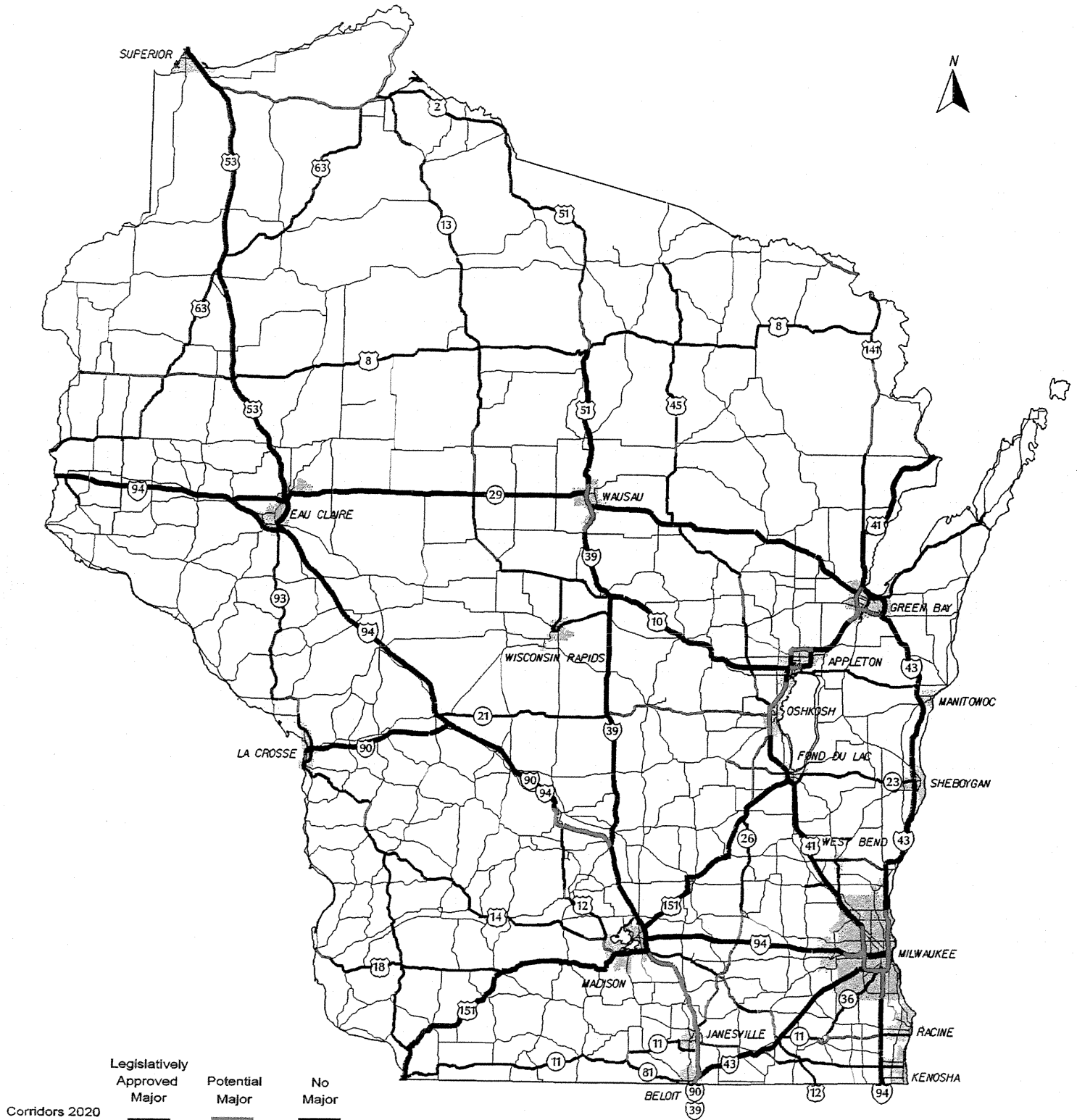
Programs are literally the end of the process, after all the policy decisions are final. Waiting for programming decisions to define setbacks is far too late, and will seriously jeopardize these needed future projects.

Thank you for the opportunity to comment on this complex issue.

Map 1. Traffic congestion in year 2020
(assuming no capacity expansion)



Map 2. Legislatively approved and potential Major Projects

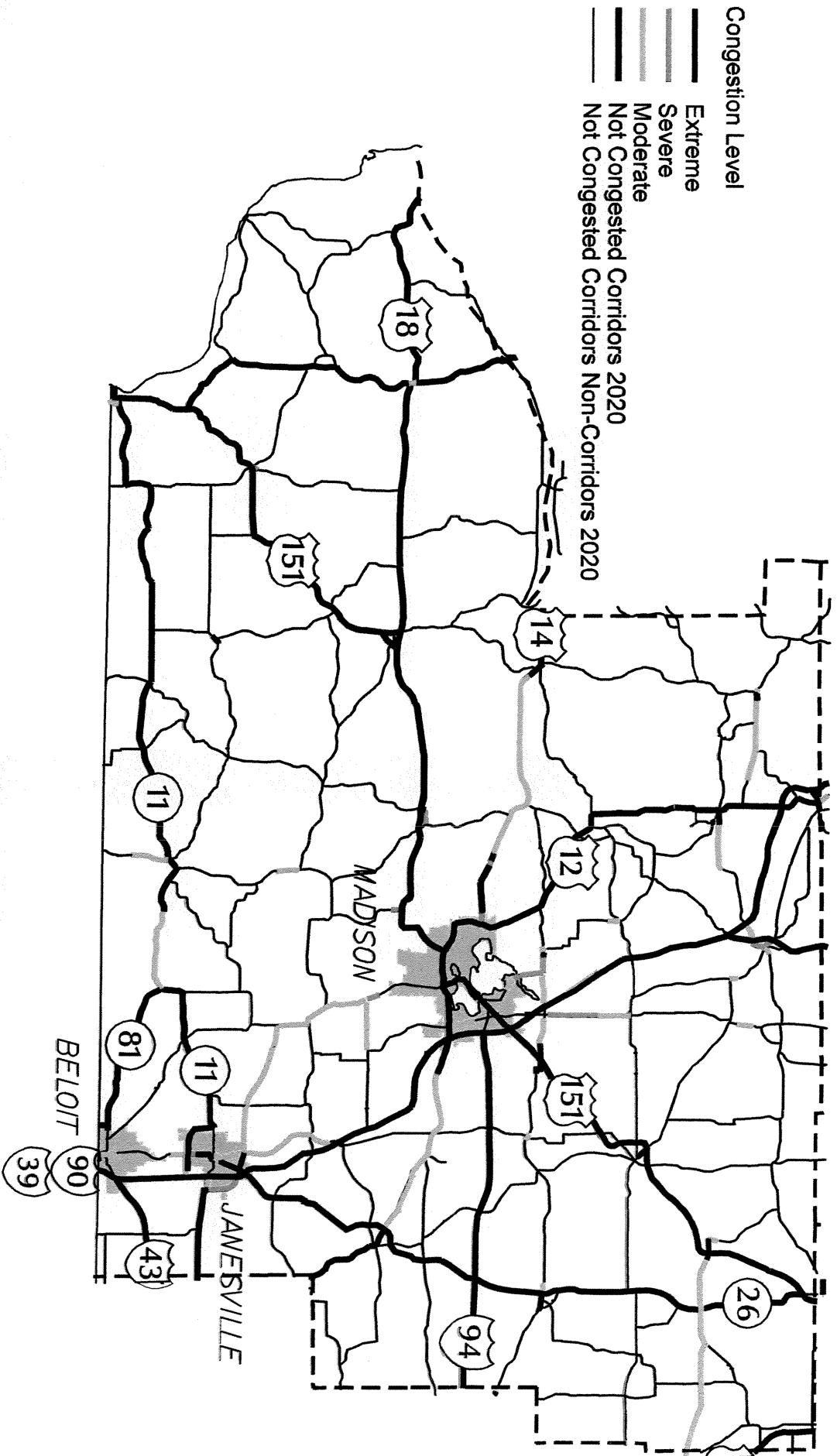


	Legislatively Approved Major	Potential Major	No Major
Corridors 2020 Backbone			
Corridors 2020 Connectors			
Other State Trunk Highways			

Note: Potential projects are subject to environmental analysis and legislative approval; they will be re-evaluated in future plans.

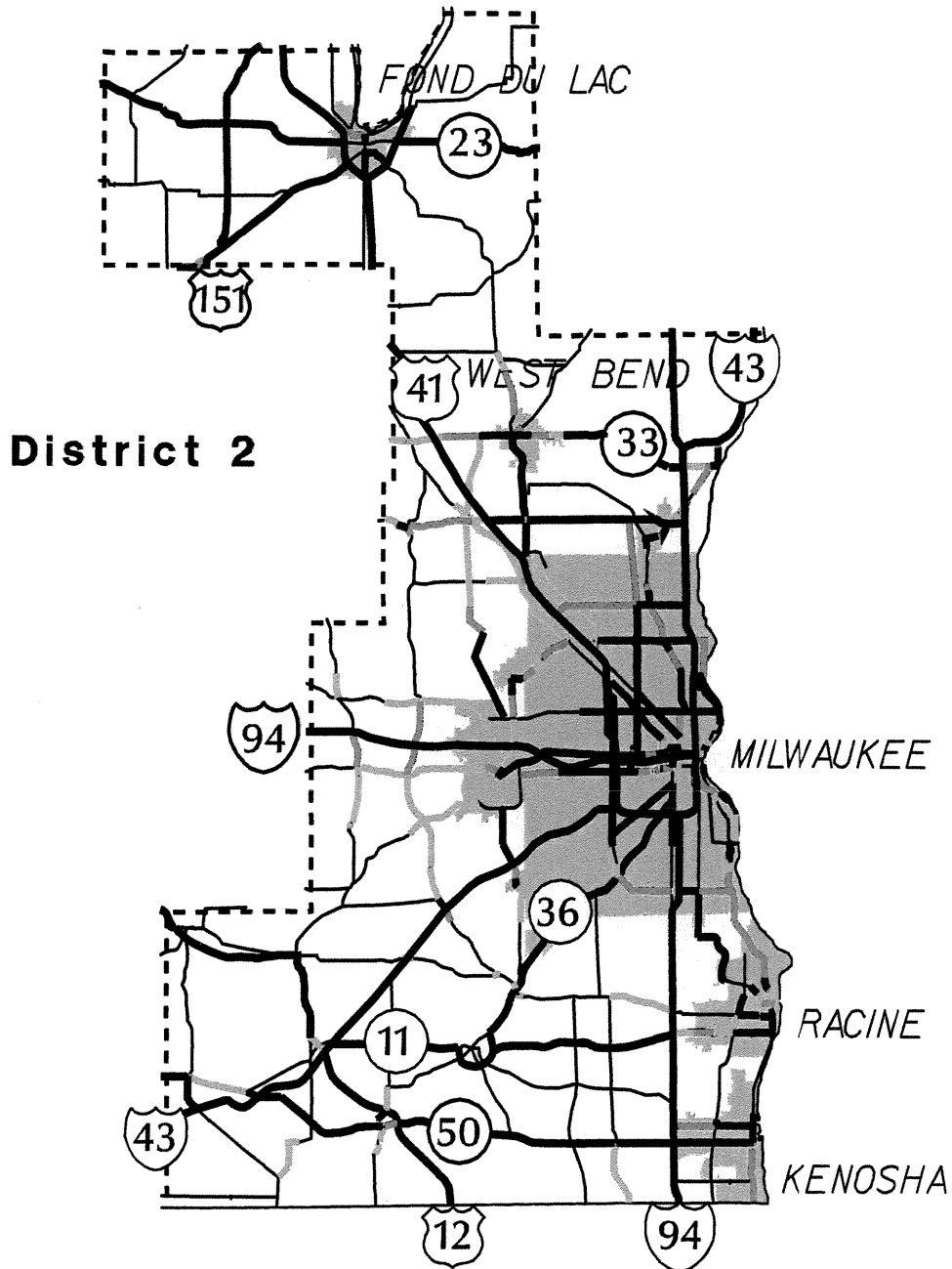
TRAFFIC CONGESTION IN YEAR 2020 (EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)

District 1



TRAFFIC CONGESTION IN YEAR 2020

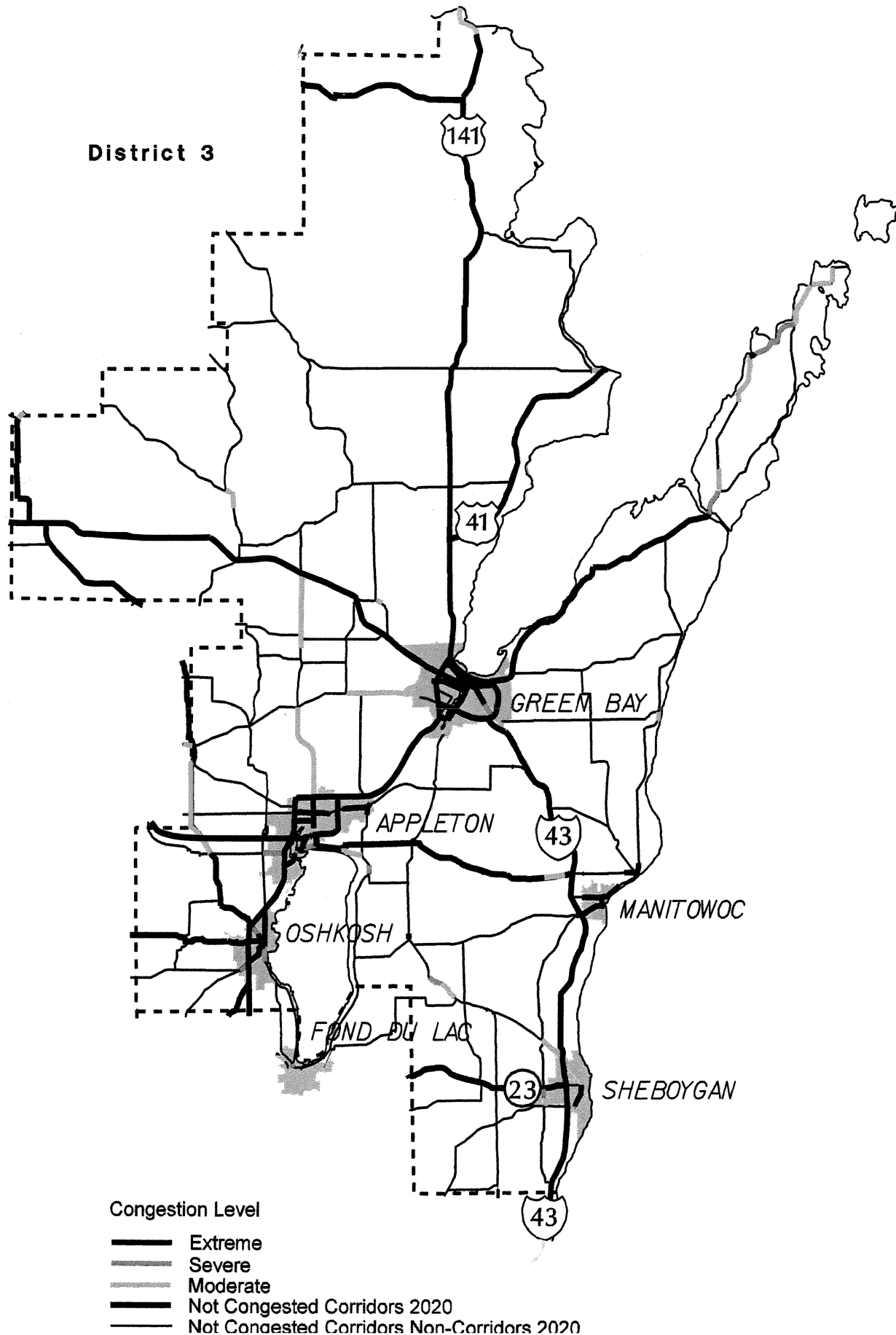
(EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)



Congestion Level

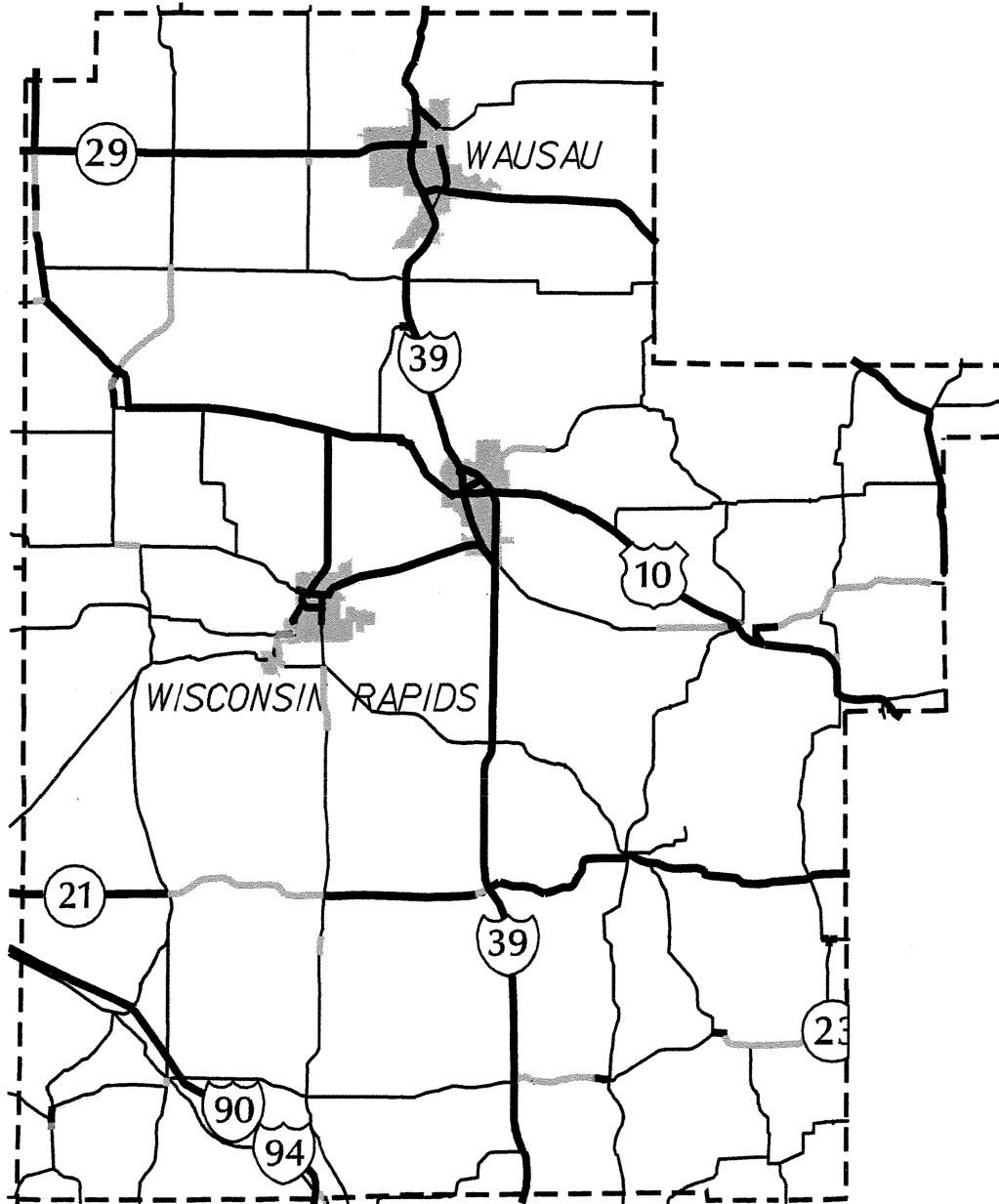
-  Extreme
-  Severe
-  Moderate
-  Not Congested Corridors 2020
-  Not Congested Corridors Non-Corridors 2020

TRAFFIC CONGESTION IN YEAR 2020
 (EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)



TRAFFIC CONGESTION IN YEAR 2020
(EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)

District 4

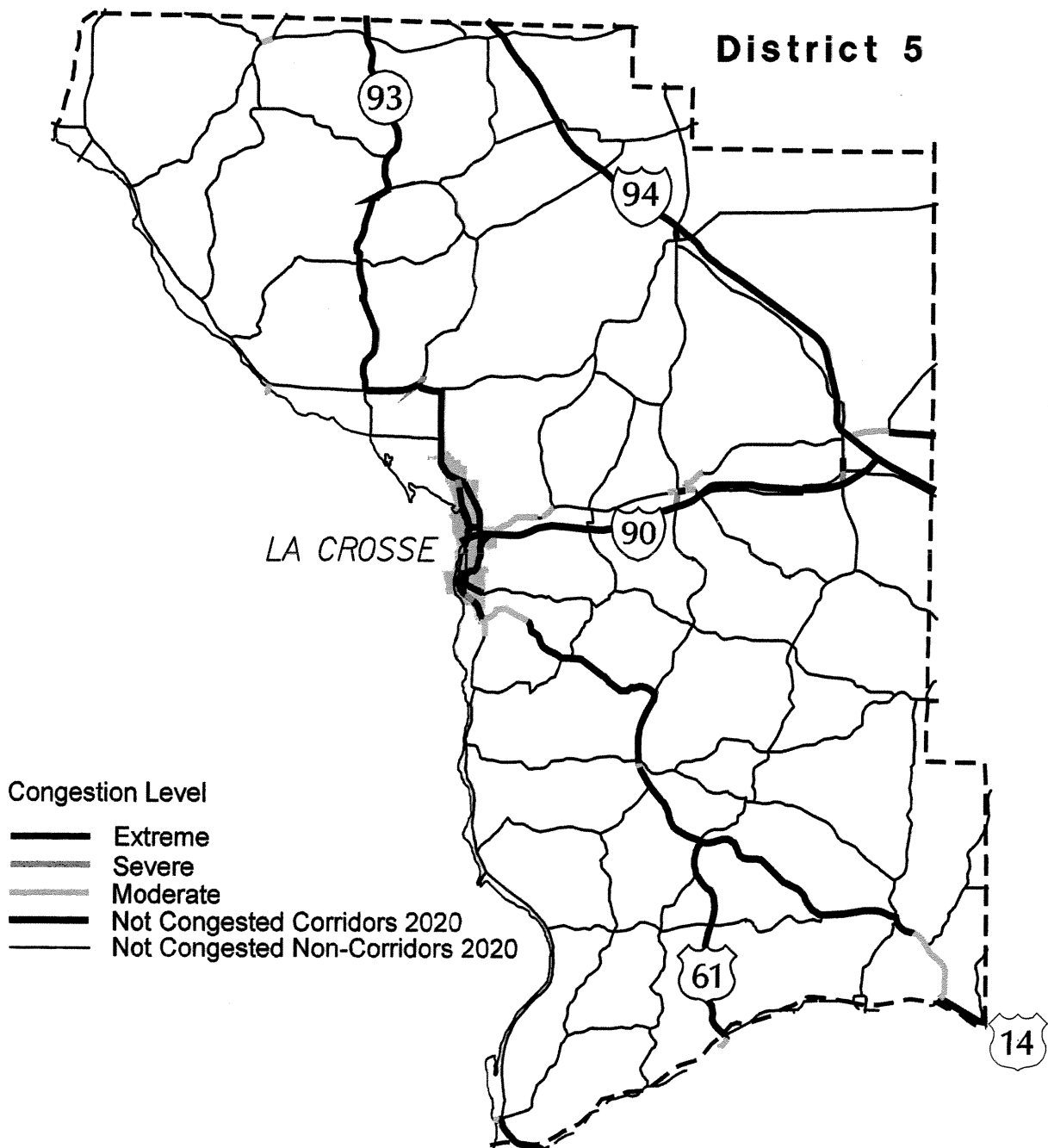


Congestion Level

- Extreme
- Severe
- Moderate
- Not Congested Corridors 2020
- Not Congested Corridors Non-Corridors 2020

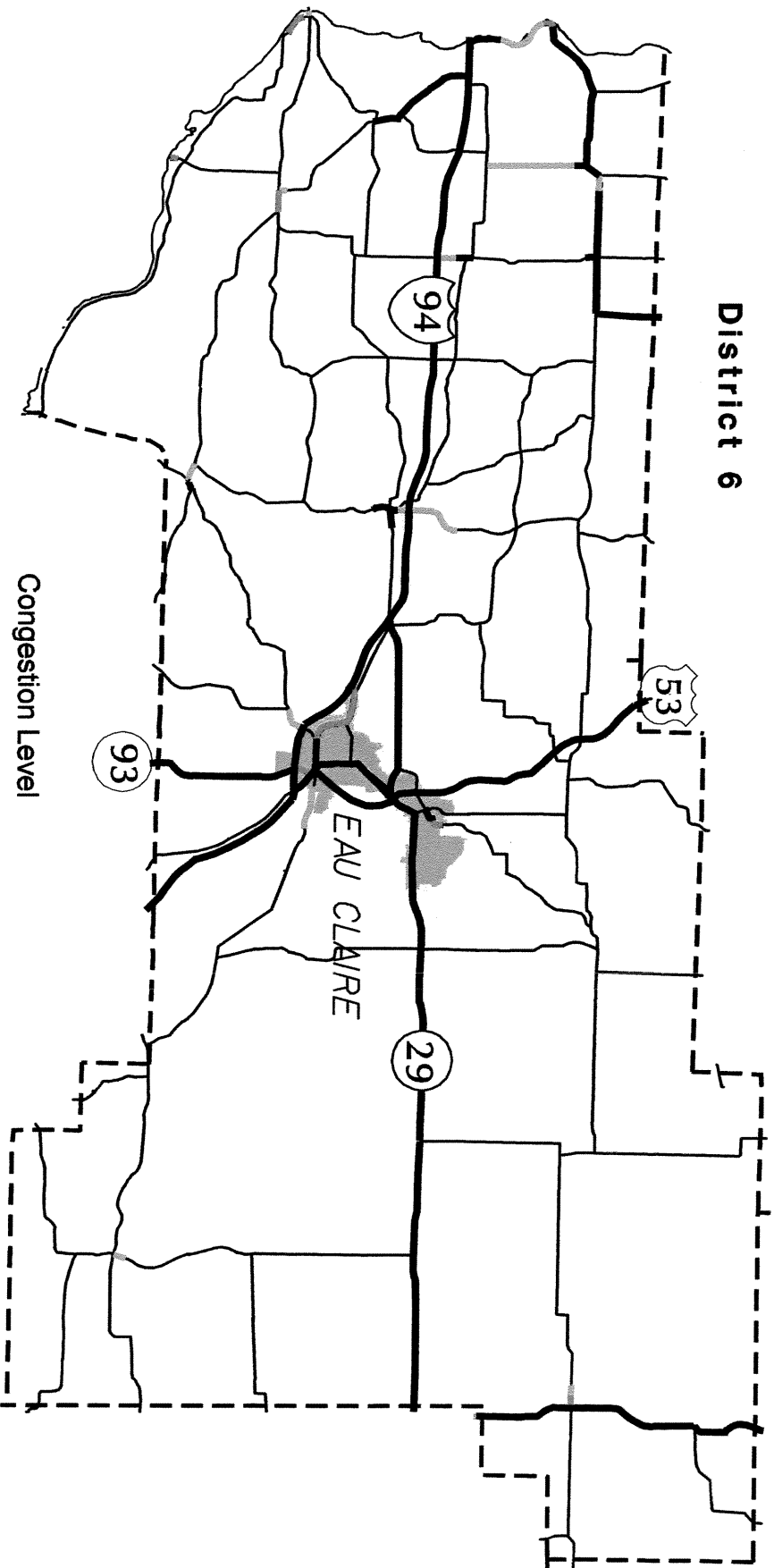
TRAFFIC CONGESTION IN YEAR 2020

(EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)



TRAFFIC CONGESTION IN YEAR 2020
(EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)

District 6

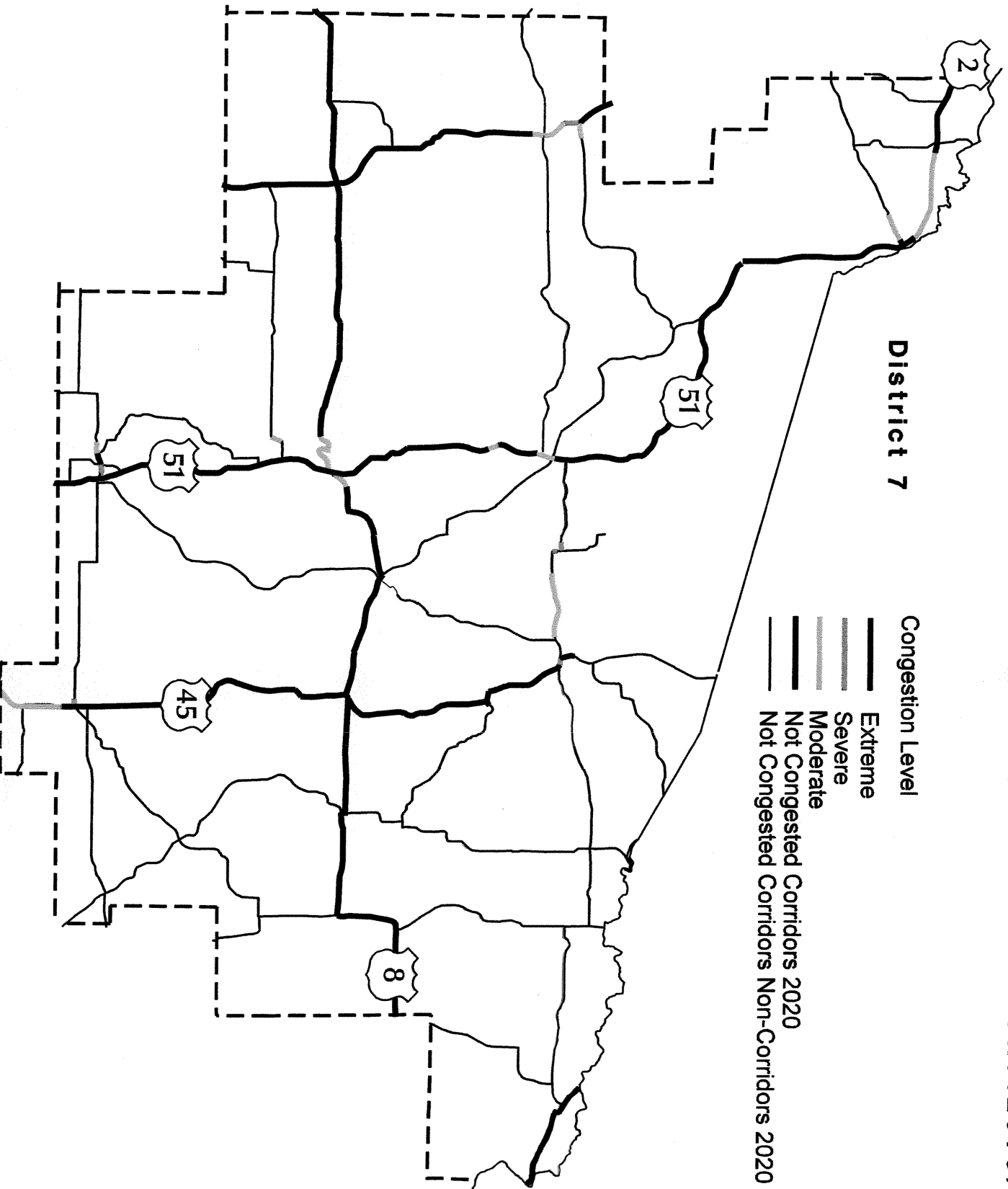
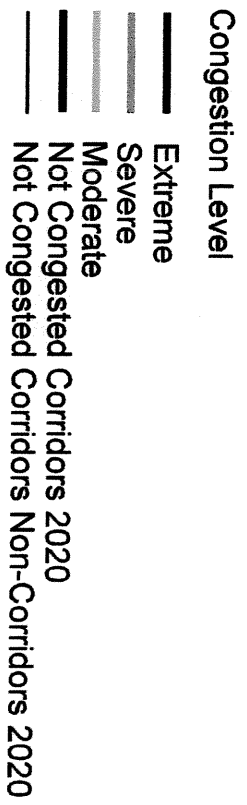


- Congestion Level
- Extreme
 - Severe
 - Moderate
 - Not Congested Corridors 2020
 - Not Congested Corridors Non-Corridors 2020

TRAFFIC CONGESTION IN YEAR 2020

(EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)

District 7

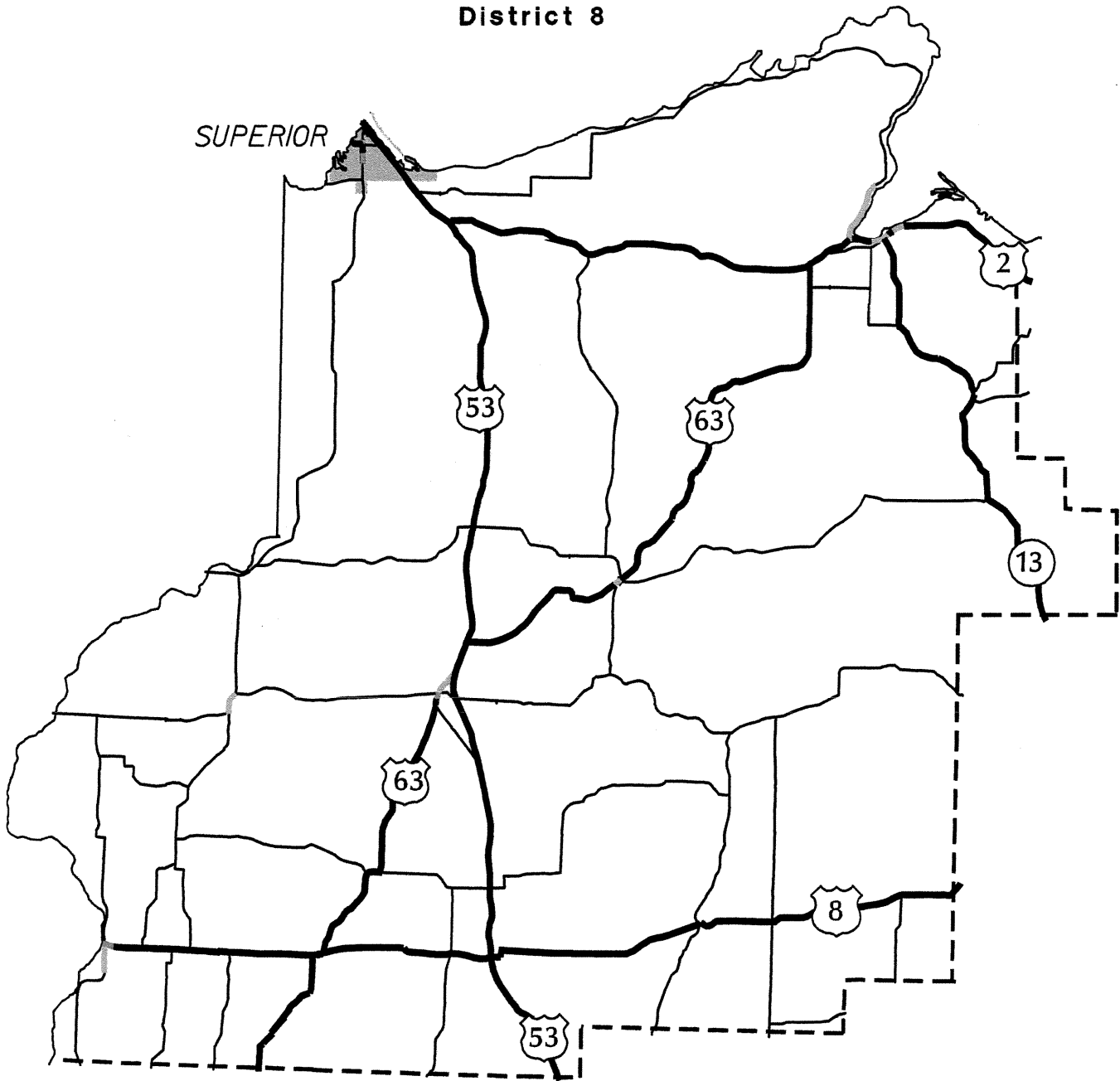


TRAFFIC CONGESTION IN YEAR 2020

(EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)

District 8

SUPERIOR



Congestion Level

-  Extreme
-  Severe
-  Moderate
-  Not Congested Corridors 2020
-  Not Congested Corridors Non-Corridors 2020



TRANS 233

**Wisconsin Administrative Code regarding
the division of land abutting a state trunk
or connecting highway.**



What are “State Trunk” and “Connecting” Highways?

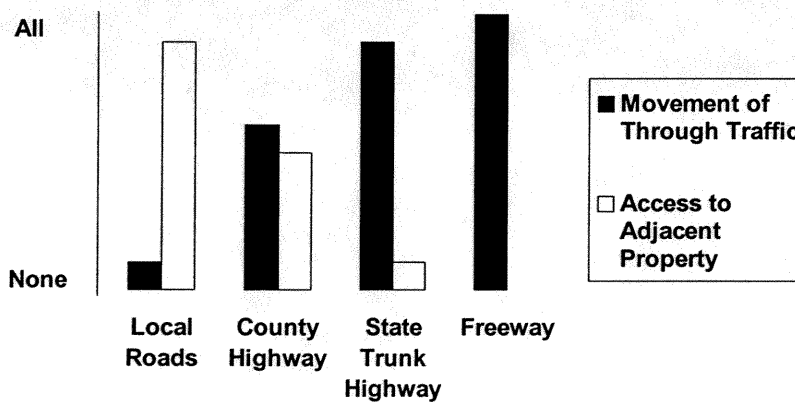
- ◆ The State Trunk System, about 11,800 miles, marked by a State, Federal or Interstate number (such as STH 73, USH 12, or IH 94)
- ◆ Connecting Highways are department designated local streets maintained and operated by the municipalities. They are not part of the official STH System but are marked as numbered highways. About 530 miles in Wisconsin.




Purpose of State Trunk and Connecting Highway Systems


- ◆ The major intent of the systems is to carry traffic from one part of the state to another.
- ◆ A secondary function is to provide access to adjacent properties

Uses for Classes of Highways







The History of Trans 233

- ◆ Originally labelled as Hy 33, the Rule was first created in 1956 in response to Chapter 236, Wis. Stats. (the Subdivision Chapter written in 1955).
 - ◆ Chapter 236 requires that subdivisions being created along the STH System comply with the department's rules relating to "the safety of entrance upon and departure from those highways and for preservation of public interest and investment in those highways".
- 




Trans 233 History (continued)

- ◆ DOT is one of several review agencies
 - ◆ Only change until 1999 was to re-number Rule from Hy 33 to Trans 233 in 1996.
 - ◆ In 1998 the department went through the Rules revision process to update Trans 233 which resulted in a revised Rule becoming effective February 1, 1999.
- 



What were HY 33 provisions?

- ◆ Access: spacing
 - direct access vs public street
 - existing access
 - access to adjacent parcels
- ◆ Setbacks: structures and improvements
- ◆ Vision Corners
- ◆ Drainage
- ◆ A Variance Procedure




Why Have Trans 233?


- ◆ Land division usually leads to land development which creates impacts upon the highway system. Main concerns are:
 - Safety of entrance upon and departure from those highways (access, vision corners)
 - Preservation of public interest and investment in those highways (access , setbacks, drainage, noise abatment)







What Are The Benefits?

- ◆ Safety (reduction of conflict points and improved vision resulting in fewer crashes, injuries and deaths)
 - ◆ Protecting the current investment in the highway system
 - ◆ Providing for future transportation needs
 - ◆ Preserving neighborhoods
- 




Clarifications to the Rule in 1999

- ◆ More definitions were added to clarify many aspects of the rule
 - ◆ Encouraged developers to approach the department early through a new, conceptual review process
 - ◆ Setbacks include definition of “improvements”
 - ◆ Noise abatement, vision corners, and drainage
 - ◆ Variance procedures
- 



What were major NEW provisions added to the rule?

- ◆ Now pertains to **ALL** land divisions abutting STH's or Connecting Highways
 - Subdivision plats; County plats; Certified Survey Maps (CSM's); Condo plats; any other form such as deeds
- ◆ Noise abatement responsibility language
- ◆ There is now a fee charged to cover DOT's costs in reviewing the land division
- ◆ Statutory authorities: 84.25,84.29,84.295, 86.07(2),236.12(2)(a)&(7),236.13(1)(e)&(3)



Access - safety

- ◆ Spacing - Increase in access points along a given stretch leads to increase crash potential

◆ Access Points/Mile	Crash Rate/MillionVM
0.2	1.3
2.0	2.7
20.0	17.2



Access (continued)

- ◆ Existing Access (for NEW land divisions)
 - Should it remain if alternate access is available?
 - If still necessary, is it in safest location?
 - Will it continue to function properly for the proposed use?



Access (continued)


- ◆ Direct access to the highway versus public street
 - Turning movements are expected by drivers at street intersections more than at driveways
 - Does traffic being generated by the development warrant a public street to serve the development?






Access (continued)

- ◆ Access to adjacent parcels
 - Keep local trips on local lower speed roadways
 - Minimize the number of conflicts
 - Minimize the number of connections to the STH
 - Maintain capacity longer on the STH




Setbacks - preservation

- ◆ 50' from R/W line or 110' from C/L, which - ever is more restrictive
- ◆ New structures and certain improvements to be kept out of the setback area
- ◆ Taking of improvements for highway expansion can have just as severe effect as taking of structures



Setbacks (continued)

- ◆ Development itself often contributes to the need to expand the highway
- ◆ Structures and improvements built close to the existing R/W line may make it extremely difficult for future transportation needs to be met within the existing corridor.
- ◆ Bypasses, when there is no room to expand the existing highway, are not always viable options




Setbacks (continued)


- ◆ Local zoning in many communities enforce setbacks
- ◆ Some communities have more stringent regulations
- ◆ Existing structures and improvements are grandfathered as okay to remain and will be paid for if taken in future highway expansion







Setbacks (continued)

- ◆ Impacts of taking “improvements” :
 - 5’ strip (taking parking only) = \$104,000 severance damage; land only value = \$6,000
 - parking area on side of drive thru made business uneconomic = \$750,000 for entire parcel and building plus \$30,000 for franchisee/tenant; land only value = minor
- 



Setbacks (continued)

- ◆ Impacts (cont’d)
 - 50’ strip along commercial avenue, loss of parking and cost to cure \$300,000; land only value = \$30,000
 - 49’ strip took area for trucks to back up to loading dock, cost to cure \$17,500; land value only = \$2,850
- 




Setbacks (continued)

- ◆ Impacts (cont'd)
 - Other recent statewide examples showed additional costs for severance, relocation, or “to cure” because of loss of “improvements” in the setback area often exceeding 10 to 20 times or more of the value of the actual land.



Vision Corners

- ◆ Vision corners provide for adequate visibility of on-coming vehicles.
 - safety - lack of visibility at intersections can be major cause of crashes
 - preservation - dedication creates a situation where the department can maintain the visibility. Easements also work and are acceptable as an option



Drainage

- ◆ Developers must provide a drainage system which will not be damaging to highway drainage system.
 - safety - do not want localized flooding to impact traveling public
 - preservation - damage could occur to highway facilities
 - provision based upon drainage law




Noise Barriers


- ◆ To notify developers that highways can cause noise problems and that it will be the owners responsibility to mitigate if it becomes a problem
- ◆ Under other rules, department may mitigate through construction of noise berms or barriers, if impact is because of additional capacity construction on the highway





Variations

- ◆ If provisions of the rule cannot be met, a variance must be applied for.
 - ◆ Currently, variance requests are made by the owner or owner's representative to district offices who evaluate and make recommendations to Central Office for final determination.
- 



Trans 233 Process

- ◆ Timing - Chapter 236 requires agencies to review subdivisions within 20 calendar days (variance requests will take more time to review and time extensions are often requested).
 - ◆ Fee - \$110 for each preliminary or final review. Conceptual reviews are done at no charge.
- 