

~~promulgated effective February 1, 1999, if there is no substantial change between the preliminary and final plat, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Plats that have received final approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Land divisions on which the department acted between February 1, 1999 and February 1, 2001 are subject to ch. Trans 233 as it existed February 1, 1999.~~

~~(3) Any structure or improvement lawfully placed within a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed within a setback area before a land division, may be kept in a state of repair, efficiency or validity in order to preserve from failure or decline, and if unintentionally or tortiously destroyed, may be replaced substantially in kind.~~

Trans 233.015 Definitions. Words and phrases used in this chapter have the meanings given in s. 340.01, Stats., unless a different definition is specifically provided. In this chapter:

~~(1) "Certified survey map" or "CSM" means a map that complies with the requirements of s. 236.34, Stats.~~

(1m) "Desirable traffic access pattern" means traffic access that is consistent with the technical and professional guidance provided in the department's facilities development manual.

(1r) "District office" means an office of the division of transportation districts of the department.

~~(2) "Improvement" means any permanent addition to or betterment of real property that involves the expenditure of labor or money to make the property more useful or valuable. "Improvement" includes parking lots, driveways, loading docks, in-ground swimming pools, wells, septic systems, retaining walls, signs, buildings, building appendages such as porches, and drainage facilities. "Improvement" does not include sidewalks, terraces, patios, landscaping and open fences.~~

~~(2m) "In-ground swimming pool" includes a swimming pool that is designed or used as part of a business or open to use by the general public or members of a group or association. "In-ground swimming pool" does not include any above-ground swimming pools without decks.~~

(3) "Land divider" means the owner of land that is the subject of a land division or the land owner's agent for purposes of creating a land division.

(4) "Land division" means a division under s. 236.12, ~~236.34, 236.45 or 703.11, Stats., or other means not provided by statute,~~ of a lot, parcel or tract of land by the owner or the owner's agent for the purposes of sale or of building development.

(5) "Land division map" means an official map of a land division, including all certificates required as a condition of recording the map.

(5m) "Major intersection" means the area within one-half mile of the intersection or interchange of any state trunk highway or connecting highway with a designated expressway, or freeway, under s. 84.295, Stats., or a designated interstate highway under s. 84.29, Stats.

~~(6) "Public utility" means any corporation, company, individual or association that furnishes products or services to the public, and that is regulated under ch. 195 or 196, Stats., including rail roads, telecommunications or telegraph companies, and any company furnishing or producing heat, light, power, cable television service or water, or a rural electrical cooperative, as described in s. 32.02 (10), Stats.~~

(6m) "Reviewing municipality" means a city or village to which the department has delegated authority to review and object to land divisions under s. Trans 233.03 (7).

(6r) "Secretary" means the secretary of the department of transportation.

~~(7) "Structure" includes a temporary or non-permanent addition to or betterment of real property that is portable in nature, but that adversely affects the safety of entrance upon or departure from state trunk or connecting highways or the preservation of public interest and investment in those highways, as determined by the department. "Structure" does not include portable swing sets, movable lawn sheds without pads or footings, and above-ground swimming pools without decks.~~

~~(7m) "Technical land division" means a land division involving a structure or improvement that has been situated on the real property for at least 5 years, does not result in any change to the use of existing structures and improvements and does not negatively affect traffic. "Technical land division" includes the conversion of an apartment building that has been in existence for at least 5 years to condominium ownership, the conversion of leased commercial spaces in a shopping mall that has been in existence for at least 5 years to owned spaces, and the exchange of deeds by adjacent owners to resolve mutual encroachments.~~

(8) "Unplatted" means not legally described by a plat, land division map, certified survey map or condominium plat.

(8m) "User" means a person entitled to use a majority of the property to the exclusion of others.

~~(9) "Utility facility" means any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment or other structure used for transmission or distribution of electrical power or light or for the transmission, distribution or delivery of heat, water, gas, sewer, tele-~~

~~graph or telecommunication service, cable television service or broadcast service, as defined in s. 196.01 (1m), Stats.~~

Trans 233.017 Other abutments. For purposes of this chapter, land shall be considered to abut a state trunk highway or connecting highway if the land is any of the following:

~~(1) Land that contains any portion of a highway that is laid out or dedicated as part of a land division if the highway intersects with a state trunk highway or connecting highway.~~

~~(2) Separated from a state trunk highway or connecting highway by only unplatted lands that abut a state trunk highway or connecting highway if the unplatted lands are owned by, leased to or under option, whether formal or informal, or under contract or lease to the owner.~~

~~(3) Separated from a state trunk highway or connecting highway by only a service road.~~

Trans 233.02 Basic principles. To control the effects of land divisions on state trunk highways and connecting highways and to carry out the purposes of ch. 236, Stats., the department promulgates the following basic requirements:

(1) Local traffic from a land division or development abutting a state trunk highway or connecting highway shall be served by an internal highway system of adequate capacity, intersecting with state trunk highways or connecting highways at the least practicable number of points and in a manner that is safe, convenient and economical.

(2) A land division shall be so laid out that its individual lots or parcels do not require direct vehicular access to a state trunk highway or connecting highway.

~~(3) The department, in order to integrate and coordinate traffic on a highway or on a private road or driveway with traffic on any affected state trunk highway or connecting highway, shall do both of the following:~~

~~(a) Consider, particularly in the absence of a local comprehensive general or master plan, or local land use plan, that plat or map's relationship to the access requirements of adjacent and contiguous land divisions and unplatted lands.~~

~~(b) Apply this chapter to all lands that are owned by, or are under option, whether formal or informal, or under contract or lease to the land divider and that are adjacent to or contiguous to the land division. Contiguous lands include those lands that abut the opposite side of the highway right-of-way.~~

~~(4) Setbacks from a state trunk highway or connecting highway shall be provided as specified in s. Trans 233.08.~~

~~(5) A land division map shall include provision for the handling of surface drainage in such a manner as specified in s. Trans 233.105 (3).~~

(6) A land division map shall include provisions for the mitigation of noise if the noise level exceeds noise standards in s. Trans 405.04, Table I.

(7) A land division shall provide vision corners at intersections and driveways per department standards.

Trans 233.03 Procedures for review. The following procedures apply to review by the department, district office or reviewing municipality of ~~proposed certified survey maps, condominium plats and other land divisions:~~

(1) **CONCEPTUAL REVIEW.** (a) Before the lots are surveyed and staked out, the land divider shall submit a sketch to the department's district office for review. The sketch shall indicate roughly the layout of lots and the approximate location of streets, and include other information required in this chapter.

(b) Unless the land divider submits a preliminary plat under s. 236.12 (2) (a), Stats., the land divider shall have the district office review the sketch described in par. (a).

(c) There is no penalty for failing to obtain conceptual review; the conceptual review procedure is encouraged to avoid waste that results from subsequent required changes.

(2) **PRELIMINARY AND FINAL PLAT REVIEW.** The department shall conduct preliminary and final subdivision plat review under s. 236.12, Stats., when the land divider or approving authority submits, through the department of administration's plat review office, a formal request for departmental review of the plat for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee.

~~(3) **PRELIMINARY AND FINAL REVIEW FOR LAND DIVISIONS OCCURRING UNDER S. 236.45 AND S. 703.11, STATS.** The department shall review preliminary and final land division maps under ss. 236.45 and 703.11, Stats., when the approving authority, or the land divider, when there is no approving authority, submits a formal request for departmental review for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register of deeds, any approving agency, the land division map preparer and the land divider. This information is to be submitted to the district office. Review of preliminary and final land division maps occurring under ss. 236.45 and 703.11, Stats., by the department shall occur when the approving authority, or the land divider, when there is no approving authority, submits a formal request for departmental review for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register of deeds, any approving agency, the land division map preparer and the land divider. This information is to be submitted to the department.~~

~~(4) PRELIMINARY AND FINAL REVIEW FOR LAND DIVISIONS OCCURRING UNDER S. 236.34 AND BY OTHER MEANS NOT PRESCRIBED BY STATUTES. The department shall conduct preliminary and final review of land division maps under s. 236.34, Stats., or under any other means not prescribed by statutes, when the land divider submits a formal request for departmental review for certification of non-objection to the land division as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register of deeds, any approving agency, the land division map preparer and the land divider. This information shall be submitted to the district office or to the department.~~

(5) TIME LIMIT FOR REVIEW. (a) Except as provided in pars. (b) to (d), not more than 20 calendar days after receiving a completed request to review a land division map, the department, district office or reviewing municipality shall do one of the following:

- ~~1. Determine that the land division is a technical land division. Upon determining that a land division is a technical land division, the department, district office or reviewing municipality shall certify that it has no objection to the land division map and shall refund all fees paid for review of that land division map.~~
2. Provide written notice to the land divider either objecting to or certifying that it has no objection to the land division.

(b) The department and district offices are not required to complete conceptual reviews under sub. (1) within a specified time, but shall endeavor to complete a conceptual review under sub. (1) within 30 calendar days after receiving the completed request.

~~(c) If a special exception is requested under s. Trans 233.11, the department, district office or reviewing municipality shall complete its review of the land division map within the time limit provided in s. Trans 233.11 (6).~~

(d) A request is considered complete under this subsection unless, within 5 working days after receiving the request, the department, district office or reviewing municipality provides written notice to the land divider stating that the request is incomplete and specifying the information needed to complete the request. On the date that additional information is requested under this subdivision, the time period for review ceases to run, but resumes running upon receipt of the requested information.

(e) If the department, district office or reviewing municipality fails to act within the time limit provided in this section or s. Trans 233.11 (6), the department, district office or reviewing municipality shall be considered to have no objection to the land division map or special exception.

(6) DISTRICT AUTHORITY TO REVIEW LAND DIVISION MAPS. Beginning on February 1, 2001, each district office may review land division maps under this chapter. The department shall develop implementing procedures to assure consistency and uniformity of such reviews among district offices and shall provide uniform guidance in

figure 3 of procedure 7-50-5 of the department's facilities development manual dated December 1, 2000.

(7) MUNICIPAL AUTHORITY TO REVIEW LAND DIVISION MAPS. The department may, upon request, delegate to a city or village authority to review and object to any proposed land division that abuts a state trunk highway or connecting highway lying within the city or village. The department shall develop a uniform written delegation agreement in cooperation with cities and villages. ~~The delegation agreement may authorize a city or village to grant special exceptions under s. Trans 233.11. Any decision of a reviewing municipality relating to a land division map or special exception is subject to the appeal procedure applicable to such decisions made by the department or a district office, except that the department may unilaterally review any such decision of a reviewing municipality to ensure conformity with the delegation agreement and this chapter and may reverse or modify the municipality's decision as appropriate. No reviewing municipality may change its setback policy after executing a delegation agreement under this section, except by written amendment to the delegation agreement approved by the department.~~

(8) APPEALS. (a) Department review. Except as provided in this paragraph and par. (b), a land divider, ~~governmental officer or entity, or member of the general public~~ may appeal a final decision of a district office or reviewing municipality regarding a land division map, ~~special exception~~, or consequence of a failure to act to the secretary or the secretary's designee. Appeals may be made not more than 20 calendar days after that final decision or failure to act. The secretary or the secretary's designee may reverse, modify or affirm the decision. Not more than 60 calendar days after receiving the appeal, the secretary or secretary's designee shall notify the appealing party and the land divider in writing of the decision on appeal. If the secretary or secretary's designee does not provide written notice of his or her decision within the 60-day limit, the department is considered to have no objection to the final decision of the district office or reviewing municipality. The department may not unilaterally initiate a review of a decision of a district office certifying non-objection to a land division map, ~~with or without a special exception. The department may unilaterally review any decision of a reviewing municipality relating to a land division map to ensure conformity with the delegation agreement and this chapter, and may reverse or modify the municipality's decision as appropriate. No person may appeal a conceptual review under sub. (1).~~

(b) Judicial review. 1. ~~'Chapter 236 land divisions.'~~ Judicial review of any final decision of the department, district office or reviewing municipality relating to a land division that is subject to chapter 236, Stats., shall follow appeal procedures specified in that chapter.

2. ~~'All other land divisions.'~~ Judicial review of any final decision of the department, district office or reviewing municipality relating to a land division that is not subject to chapter 236, Stats., shall follow the procedures specified in chapter 227, Stats., for judicial review of agency decisions.

Trans 233.04 Required information. The land divider shall show on the face of the preliminary or final land division map or on a separate sketch, at a scale of not more than 1,000 feet to the inch, the approximate distances and relationships between the following, and shall show the information in subs. (1) to (8) about the following:

(1) The geographical relationship between the proposed land division and of any unplatted lands that abut any state trunk highway or connecting highway and that abut the proposed land division, and the ownership rights in and the land divider's interest, if any, in these unplatted lands.

(2) The locations of all existing and proposed highways within the land division and of all private roads or driveways within the land division that intersect with a state trunk highway or connecting highway.

(3) The location, and identification of each highway and private road or driveway, leading to or from the land division.

(4) The principal use, as agricultural, commercial, industrial or residential, of each private road or driveway that leads to or from the land division.

(5) The locations of all easements for accessing real property within the land division.

(6) The location of the highway nearest each side of the land division.

(7) The location of any highway or private road or driveway that connects with a state trunk highway or connecting highway that abuts the land division, if the connection is any of the following:

(a) Within 300 feet of the land division, ~~if any portion of the land division lies within a city or village.~~

(b) ~~Within 1,000 feet of the land division, if no part of the land division lies within a city or village.~~

(8) All information required to be shown on a land division map shall be shown in its proper location

Trans 233.05 Direct access to state trunk highway or connecting highway. (1) No land divider may divide land in such a manner that a private road or driveway connects with a state trunk highway or connecting highway ~~or any service road lying partially within the right-of-way of a state trunk highway or connecting highway, unless the land divider has received a special~~ exception for that purpose approved by the department, district office or reviewing municipality under s. Trans 233.11. The following restriction shall be placed on the face of the land division map, or as part of the owner's certificate required under s. 236.21 (2) (a), Stats., and shall be executed in the manner specified for a conveyance:

~~"All lots and blocks are hereby restricted so that no owner, possessor, user, licensee or other person may have any right of direct vehicular ingress from or egress to any highway lying within the right-of-way of (U.S.H.)(S.T.H.)~~

~~_____ or _____
Street; it is expressly intended that this restriction constitute a restriction for the benefit of the public as provided in s. 236.293, Stats., and shall be enforceable by the department or its assigns. Any access shall be allowed only by special~~

~~exception. Any access allowed by special exception shall be confirmed and granted only through the driveway permitting process and all permits are revocable."~~

~~(2) The department may require a desirable traffic access pattern between a state trunk highway or connecting highway and unplatted lands that abut the proposed land division and that are owned by or under option, whether formal or informal, contract or lease to the owner. The department may require a recordable covenant running with the land with respect to those unplatted lands.~~

(3) No person may connect a highway or a private road or driveway with a state trunk highway, connecting highway, ~~or with a service road lying partially within the right of way of a state trunk highway or connecting highway,~~ without first obtaining a permit under s. 86.07, Stats. The department may not issue a permit authorizing the connection of a highway with a state trunk highway or connecting highway to any person other than a municipality or county. The department may not issue any permit under s. 86.07, Stats., prior to favorable department review of the preliminary or final ~~land division map or, for a subdivision plat,~~ prior to the department's certification of no objection.

~~(4) Whenever the department finds that existing and planned highways provide the land division with reasonable and adequate access to a highway, the department shall prohibit the connection to a state trunk highway or connecting highway of any highway and private road or driveway from within the land division.~~

Trans 233.06 Frequency of connections with a state trunk highway or connecting highway. (1) The land division shall be laid out with the least practicable number of highways and private roads or driveways connecting with abutting state trunk highways or connecting highways.

(2) The department shall determine a minimum allowable distance between connections with the state trunk highway or connecting highway, between any 2 highways within the land division and between a highway within the land division and any existing or planned highway. To the extent practicable, the department shall require a distance of at least 1,000 feet between connections with a state trunk highway or connecting highway.

Trans 233.07 Temporary connections. (1) The department may issue temporary connection permits, which authorize the connection of a highway or a private road or driveway with a state trunk highway or connecting highway. The department may issue temporary connection permits in the case of:

- (a) A land division which at the time of review cannot provide direct traffic access complying with the provisions of s. Trans 233.06 (2).
- (b) A land division layout which might necessitate a point or pattern of traffic access for a future adjacent land division, not in accordance with s. Trans 233.06 (2).

(2) The department may require that such temporary connections be altered or closed by the permit holder at a later date in order to achieve a desirable traffic access pattern. The permit may require the permit holder to alter or close the temporary connection by a specified date or upon the completion of a specified activity. The permit holder is responsible for the expense of closing or altering the temporary connection.

(2m) A temporary connection shall be prominently labeled "Temporary Connection" on the land division map, and the following restriction shall be lettered on the land division map:

"The temporary connection(s) shown on this plat shall be used under a temporary connection permit which may be canceled at such time as a feasible alternate means of access to a highway is provided."

(3) When such a temporary connection is granted, the owner shall dedicate a service road or a satisfactory alternative, to provide for a present or future pattern of access that complies with s. Trans 233.06 (2).

~~Trans 233.08 Setback requirements and restrictions. (1) Except as provided in this section or in s. Trans 233.11 or, with respect to connecting highways, as provided in s. 86.16 (1), Stats., no person may erect, install or maintain any structure or improvement within a setback area determined under sub. (2) or (3).~~

~~(2) (a) Except as provided in par. (b), the setback area is the area within 110 feet of the centerline of a state trunk highway or connecting highway or within 50 feet of the nearer right-of-way line of a state trunk highway or connecting highway, whichever is furthest from the centerline.~~

~~(b) If an applicable ordinance allows structures or improvements to be located closer to the right-of-way of a state trunk highway or connecting highway than is provided under par. (a), the setback area is the area between the right-of-way and the more restrictive of the following:~~

- ~~1. The distance allowed under the ordinance.~~
- ~~2. 42 feet from the nearer right-of-way line.~~
- ~~3. 100 feet from the centerline.~~

~~(c) At least once every 2 years, the department shall produce general reference maps that generally identify major intersections and the highways specified in subds. 1. to 5. The department may reduce or extend, by not more than 3 miles along the highway, the area subject to a setback established under par. (a) or (b) to establish logical continuity of a setback area or to terminate the setback area at a readily identifiable physical feature or legal boundary, including a highway or property boundary. Persons may seek special exceptions to the setback requirement applicable to these major intersections and highways, as provided in s. Trans 233.11 (3). The setback area established under par. (a) or (b) applies only to major intersections and to highways identified as:~~

~~1. State trunk highways and connecting highways that are part of the national highway system and approved by the federal government in accordance with 23 USC 103(b) and 23 CFR 470.107(b).~~

~~2. State trunk highways and connecting highways that are functionally classified as principal arterials in accordance with procedure 4-1-15 of the department's facilities development manual dated July 2, 1979.~~

~~3. State trunk highways and connecting highways within incorporated areas, within an unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or within an unincorporated area within 1 1/2 miles of a fourth class city or a village.~~

~~4. State trunk highways and connecting highways with average daily traffic of 5,000 or more.~~

~~5. State trunk highways and connecting highways with current and forecasted congestion projected to be worse than level of service "C," as determined under s. Trans 210.05 (1), within the following 20 years.~~

~~(3) If any portion of a service road right-of-way lies within the setback area determined under sub. (2), the setback area shall be increased by the lesser of the following:~~

~~(a) The width of the service road right-of-way, if the entire service road right-of-way lies within the setback area. Any increase under this paragraph shall be measured from the boundary of the setback area determined under sub. (2).~~

~~(b) The distance by which the service road right-of-way lies within the setback area, if the entire service road right-of-way does not lie within the setback area. Any increase under this paragraph shall be measured from the nearer right-of-way line of the service road.~~

~~(3m) (a) Notwithstanding sub. (1), a public utility may erect, install or maintain a utility facility within a setback area.~~

~~(b) If the department acquires land that is within a setback area for a state trunk highway, as provided by this chapter, and on which a utility facility is located, the department is not required to pay compensation or other damages relating to the utility facility, unless the utility facility is any of the following:~~

~~1. Erected or installed before the land division map is recorded.~~

~~2. Erected or installed on a recorded utility easement that was acquired prior to February 1, 1999.~~

~~3. Erected or installed after the land division map is recorded but with prior notice in writing, with a plan showing the nature and distance of the work from the nearest right-of-way line of the highway, to the department's appropriate district office within a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, nor less than 60 days, before any major utility erection or installation work commences, if any utility work is within the setback.~~

~~4. Erected or installed before the land division map is recorded but modified after that date in a manner that increases the cost to remove or relocate the utility facility. In such a case, the department shall pay compensation or other damages related to the utility facility as it existed on the date the land division map was recorded, except that if the modification was made with prior notice in writing, with a plan showing the nature and distance of the work from the nearest right-of-way line of the highway, to the department's appropriate district office within a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, nor less than 60 days, before any major utility erection or installation work commences, if any utility work is within the setback, then the department shall pay compensation or other damages related to the utility facility as modified.~~

~~(c) If a local unit of government or the department acquires land that is within a setback area for a connecting highway as provided by this chapter and on which a utility facility is located, the department is not required to pay compensation or other damages relating to the utility facility, unless the utility facility is compensable under the applicable local setbacks and the utility facility is in any of the categories described in par. (b) 1. to 4.~~

~~(d) The department shall review the notice and plan to determine whether a planned highway project within a 6-year improvement program under s. 84.01 (17), Stats., or a planned major highway project enumerated under s. 84.013 (3), Stats., will conflict with the planned utility facility work. If the department determines a conflict exists, it will notify the utility in writing within a normal time of 30 days, but no more than 5 days, after receiving the written notice and plan for any routine, minor utility erection or installation work, nor more than 60 days, after receiving the written notice and plan for any major utility erection or installation work, and request the utility to consider alternative locations that will not conflict with the planned highway work.~~

~~The department and utility may also enter into a cooperative agreement to jointly acquire, develop and maintain rights of way to be used jointly by WISDOT and the public utility in the future as authorized by s. 84.093, Stats. If the department and utility are not able to make arrangements to avoid or mitigate the conflict, the utility may proceed with the utility work, but notwithstanding pars. (b) and (c), the department may not pay compensation or other damages relating to the utility facility if it conflicts with the planned highway project. In order to avoid payment of compensation or other damages to the utility, the department is required to record a copy of its written notice to the utility of the conflict, that adequately describes the property and utility work involved, with the register of deeds in the county in which the utility work or any part of it is located.~~

~~(3n) Any person may erect, install or maintain any structure or improvement at 15 feet and beyond from the nearer right-of-way line of any state trunk highway or connecting highway not identified in s. Trans 233.08 (2) (c). Any person may request a special exception to the setback requirement established under this subsection, as provided in s. Trans 233.11 (3). This subsection does not apply to major intersections or within the desirable stop-ping sight distance, as determined under procedure 11-10-5 of~~

the department's facilities development manual dated June 10, 1998, of the intersection of any state trunk highway or connecting highway with another state trunk highway or connecting highway. This subsection does not supersede more restrictive requirements imposed by valid applicable local ordinances.

(4) The land division map shall show the boundary of a setback area on the face of the land division map and shall clearly label the boundary as a highway setback line and shall clearly show existing structures and improvements lying within the set back area.

(5) The owner shall place the following restriction upon the same sheet of the land division map that shows the highway set back line:

"No improvements or structures are allowed between the right of way line and the highway setback line. Improvements and structures include, but are not limited to, signs, parking areas, drive ways, wells, septic systems, drainage facilities, buildings and retaining walls. It is expressly intended that this restriction is for the benefit of the public as provided in section 236.293, Wisconsin Statutes, and shall be enforceable by the Wisconsin Department of Transportation or its assigns. Contact the Wisconsin Department of Transportation for more information. The phone number may be obtained by contacting the County Highway Department."

If on a CSM there is limited space for the above restriction on the same sheet that shows the setback line, then the following abbreviated restriction may be used with the standard restriction placed on a subsequent page: "Caution Highway Set back Restrictions Prohibit Improvements. See sheet _____."

Trans 233.105 Noise, vision corners and drainage. (1) NOISE. When noise barriers are warranted under the criteria specified in ch. Trans 405, the department is not responsible for any noise barriers for noise abatement from existing state trunk highways or connecting highways. Noise resulting from geographic expansion of the through-lane capacity of a highway is not the responsibility of the owner, user or land divider. In addition, the following notation shall be placed on the land division map:

"The lots of this land division may experience noise at levels exceeding the levels in s. Trans 405.04, Table I. These levels are based on federal standards. The department of transportation is not responsible for abating noise from existing state trunk highways or connecting highways, in the absence of any increase by the department to the

highway's through-lane capacity.”

(2) VISION CORNERS. The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection by approaching vehicles. The owner shall have the choice of providing the vision corner by permanent easement or by dedication. If the department requires such a dedication or grant, the owner shall include the following notation on the land division map:

“No structure or improvement of any kind is permitted within the vision corner. No vegetation within the vision corner may exceed 30 inches in height.”

~~(3) DRAINAGE. The owner of land that directly or indirectly discharges stormwater upon a state trunk highway or connecting highway shall submit to the department a drainage analysis and drainage plan that assures to a reasonable degree, appropriate to the circumstances, that the anticipated discharge of stormwater upon a state trunk highway or connecting highway following the development of the land is less than or equal to the discharge preceding the development and that the anticipated discharge will not endanger or harm the traveling public, downstream properties or transportation facilities. Various methods of hydrologic and hydraulic analysis consistent with sound engineering judgment and experience and suitably tailored to the extent of the possible drainage problem are acceptable. Land dividers are not required by this subsection to accept legal responsibility for unforeseen acts of nature or forces beyond their control. Nothing in this sub-section relieves owners or users of land from their obligations under s. 88.87(3)(b), Stats.~~

~~Trans 233.11 Special exceptions. (1) DEPARTMENT CONSENT. No municipality or county may issue a variance or special exception from this chapter without the prior written consent of the department.~~

~~(3) (a) Special exceptions for setbacks allowed. The department, district office or, if authorized by a delegation agreement under sub. (7), reviewing municipality may authorize special exceptions from this chapter only in appropriate cases when warranted by specific analysis of the setback needs, as determined by the department, district office or reviewing municipality. A special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter. The department, district office or reviewing municipality may grant a special exception that adjusts the setback area or authorizes the erection or installation of any structure or improvement within a setback area only as provided in this subsection. The department, district office or reviewing municipality may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.~~

~~(b) Specific analysis for special exceptions for setbacks. Upon request for a special exception from a setback requirement of this chapter, the department, district office or reviewing municipality shall specifically analyze the setback needs. The analysis may consider all of the following:~~

- ~~1. The structure or improvement proposed and its location.~~
- ~~2. The vicinity of the proposed land division and its existing development pattern.~~
- ~~3. Land use and transportation plans and the effect on orderly overall development plans of local units of government.~~
- ~~4. Whether the current and forecasted congestion of the abutting highway is projected to be worse than level of service "C," as determined under s. Trans 210.05 (1), within the following 20 years.~~
- ~~5. The objectives of the community, developer and owner.~~
- ~~6. The effect of the proposed structure or improvement on other property or improvements in the area.~~
- ~~7. The impact of potential highway or other transportation improvements on the continued existence of the proposed structure or improvement.~~
- ~~8. The impact of removal of all or part of the structure or improvement on the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement.~~
- ~~9. Transportation safety.~~
- ~~10. Preservation of the public interest and investment in the highway.~~
- ~~11. Other criteria to promote public purposes consistent with local ordinances or plans for provision for light and air, providing fire protection, solving drainage problems, protecting the appearance and character of a neighborhood, conserving property values, and, in particular cases, to promote aesthetic and psychological values as well as ecological and environmental interests.~~

~~(c) Adjust setback. If the department, district office or reviewing municipality grants a special exception by adjusting the setback area, the department shall pay just compensation for any subsequent department required removal of any structure or improvement that the department has allowed outside of the approved, reduced setback area on land that the department acquires for a transportation improvement. The department may not decrease the 15 foot setback distance established under s. Trans 233.08 (3n), except in conformity with a comprehensive local setback ordinance, generally applicable to the vicinity of the land division, that expressly establishes a closer setback line.~~

~~(d) Allow in setback removal does not affect viability. The department, district office or reviewing municipality may authorize the erection of a structure or improvement within a setback area only if the department, district office or reviewing municipality determines that any required removal of the structure or improvement, in whole or in part, will not affect the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement, and will not adversely affect the community in which it is located. Any owner or user who erects a structure or improvement under a special exception granted under this paragraph assumes the risk of future department required removal of the structure or improvement and waives any~~

right to compensation, relocation assistance or damages associated with the department's acquisition of that land for a transportation improvement, including any damage to property outside the setback caused by removal of the structure or improvement in the setback that was allowed by special exception. The department, district office or reviewing municipality may not grant a special exception within an existing setback area, unless the owner executes an agreement or other appropriate document required 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 special exception. The department, district office or reviewing municipality may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter. The department, district office or reviewing municipality shall require the executed agreement or other appropriate document to be recorded with the register of deeds under sub. (7) as part of the special exception.

(e) Blanket or area special exceptions for setbacks. 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 from setback requirements of this chapter that are generally applicable. The department shall record blanket or area special exceptions with the register of deeds in the areas affected or shall provide public notice of the blanket or area special exceptions by other means that the department determines to be appropriate to inform the public.

(f) Horizon of setback analysis. For purposes of its specific analysis, the department, district office or reviewing municipality shall consider the period 20 years after the date of analysis.

~~(4) SPECIAL EXCEPTIONS FOR PROVISIONS OF THIS CHAPTER OTHER THAN SETBACKS.~~ Except as provided in sub. (3), the department may not authorize special exceptions from this chapter, except in appropriate cases in which the literal application of this chapter would result in practical difficulty or unnecessary hardship, or would defeat an orderly overall development plan of a local unit of government. A special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter. The department may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

~~(5) MUNICIPAL SPECIAL EXCEPTIONS.~~ A delegation agreement under s. Trans 233.03 (8) may authorize a reviewing municipality to grant special exceptions. No municipality may grant special exceptions to any requirement of this chapter, except in conformity with a delegation agreement under this subsection. Any decision of a reviewing municipality relating to a special exception is subject to the appeal procedure applicable to such decisions made by the department or a district office, except that the

~~department may unilaterally review any such decision of a reviewing municipality only for the purposes of ensuring conformity with the delegation agreement and this chapter.~~

~~(6) TIME LIMIT FOR REVIEW. Not more than 60 calendar days after receiving a completed request for a special exception under s. Trans 233.11, the department, district office or reviewing municipality shall provide to the land divider written notice of its decision granting or denying a special exception. The 60 day time limit may be extended only by written consent of the land divider.~~

~~(7) RECORDING REQUIRED. A special exception granted under this section is effective only when the special exception is recorded in the office of the register of deeds. Any structure or improvement erected under authority of a special exception granted under this section is presumed to have been first erected on the date the special exception is recorded.~~

Trans 233.12 Performance bond. The department may, in appropriate cases, require that a performance bond be posted, or that other financial assurance be provided, to ensure the construction of any improvements in connection with the land division which may affect a state trunk highway.

Trans 233.13 Fees. The department shall charge a fee of \$110 for reviewing a land division map that is submitted under s. 236.10, 236.12, ~~236.34, 236.45 or 703.11, Stats., or other means not provided by statute,~~ on or after the first day of the first month beginning after February 1, 1999. The fee is payable prior to the department's review of the land division map. The department may change the fee each year effective July 1 at the annual rate of inflation, as determined by movement in the consumer price index for all urban consumers (CPI-U), published the preceding January in the CPI detailed report by the U.S. department of labor's bureau of labor statistics, rounded down to the nearest multiple of \$5.

Trans. 233
Impacts of Proposed Suspension By JCRAR
December 22, 2003

Option B (Less Restrictive)

Key Talking Points

- Trans. 233 has become one of the biggest barriers to economic development and job growth in Wisconsin.
- WisDOT has been given more than ample time to make substantive changes to Trans. 233, but has failed to do so.
- Statutory authority is limited to the regulation of "subdivisions" (5 or more lots of 1 ½ acre or less within a 5 year period) adjacent to state highways, as provided in Wis. Stat. §§ 236.12 and 236.13(1)(e).
- Trans. 231 (not Trans. 233) regulates ingress and egress onto state highways
- None of the surrounding Midwestern states regulate setbacks along state highways
- Trans. 233's prohibition of all structures and improvements within setback areas will cost property owners approximately \$275 M (according to testimony from WisDOT Secretary Busalacchi) over a 20-year period
- Counties and local municipalities have the authority to review and impose conditions upon all land divisions (i.e., those reviewed and not reviewed by WisDOT)

How this option is different than Option A

- Major difference -- WisDOT can review subdivisions that abut state highways, but cannot regulate improvements and structures in setbacks
- Other differences as noted below

What WisDOT is allowed to do:

- Review "subdivision" plats, as defined in Chapter 236 of the statutes (same authority as existed prior to 1999).
- Review subdivision plats if the plats directly touch a state highway or connecting highway
- Prohibit access onto state highway or connecting highway
- Minimize number of access points onto state highways
- Prohibit excess water drainage onto state highways
- Require a notice to be placed on land division maps notifying property owners of possible excessive noise levels
- Require vision corners at intersections and driveways
- Conduct conceptual reviews if desired by land divider
- Conduct preliminary and final subdivision plat reviews
- Grant review authority to district offices
- Grant review authority to municipalities
- Require the identification of all the current information on a subdivision plat except connecting roads located beyond 300 feet of the subdivision (eliminates

IS there a problem w/ regulation of subdivisions under ch. 236

the distinction between land divisions in incorporated areas and unincorporated areas)

- Issue temporary connection onto state highways if WisDOT determines such a connection is necessary
- Regulate drainage onto highways under Wis. Stat. § 88.87(3) (If a person fails to provide adequate drainage, WisDOT may bring a legal action to enforce the statutory requirements and recover any damages. See Wis. Stat. § 88.87(3)(b).)
- Require performance bonds to insure construction of improvements which may impact state highway
- Charge \$110 fee for reviewing subdivision plats

What WisDOT is NOT allowed to do:

- Review CSMs, condominium plats, and other land divisions (Counties and municipalities will continue to be able to review these land divisions under separate statutory authority)
- Review subdivision plats if the plats do not touch a state highway or connecting highway. This includes subdivision plats that are separated from the highway by unplatted land or a service road.
- Apply Trans. 233 standards to land that is not being subdivided, but is adjacent to the land being subdivided and is owned by the same entity.
- Consider access requirements of adjacent and unrelated land as part of subdivision plat approval process.
- Regulate access and traffic onto local roads, private roads, or driveways.
- Review "technical land divisions" (not authorized by statute and not necessary due to changes in setback regulations)
- Grant special exceptions (not necessary due to changes in setback regulations)
- Unilaterally review, reverse, or modify decisions by municipalities
- Prohibit access onto service roads
- Require deed restriction to be placed on subdivision plat which prohibits future access onto state highways (access onto state highways is regulated under Trans. 231 and should not be part of Trans. 233)
- Require a "desirable traffic access pattern" between state highway and unplatted land abutting the subdivision if the land is owned by the same person
- Prohibit improvements and structures within setback, unless WisDOT acquires the property owner under eminent domain authority
- Regulate drainage under Trans. 233. (See above for statutory authority discussion.) (Authority for regulating drainage is found in Wis. Stat. § 88.87(3), not Ch. 236. See above for further discussion of statutory authority.)



Is there a problem with the authority under 88.87

Other Changes

- Eliminates grandfathering of existing structures and improvements (this is unnecessary due to the changes in setback regulations)
- Eliminates the statement absolving WisDOT of the responsibility to construct noise barriers

- Only land dividers may appeal WisDOT decisions (government entities and members of the public are not allowed to (otherwise, WisDOT could appeal their own decisions)

For Executive Action only:

TRANS 233

**Relating to the Division of Land
Abutting a State Trunk Highway or
Connecting Highway.**

1. Motion

2. Trans 233 as a result of the motion.

Trans 233.01 Purpose. This chapter specifies the department's minimum standards for the division of land that abuts a state trunk highway or connecting highway. The authority to impose minimum standards for subdivisions is s. 236.13 (1) (e), Stats.

Trans 233.015 Definitions. In this chapter:

(2) "Improvement" means buildings.

(3) "Land divider" means the owner of land that is the subject of a land division or the land owner's agent for purposes of creating a land division.

(4) "Land division" means a division under s. 236.12 of a lot, parcel or tract of land by the owner or the owner's agent for the purposes of sale or of building development.

(5) "Land division map" means an official map of a land division, including all certificates required as a condition of recording the map.

Trans 233.017 Other abuttals. For purposes of this chapter, land shall be considered to abut a state trunk highway or connecting highway if the land is ~~any of the following~~:

(1) Land that contains any portion of a highway that is laid out or dedicated as part of a land division if the highway intersects with a state trunk highway or connecting highway.

(2) Separated from a state trunk highway or connecting highway by only unplatted lands that abut a state trunk highway or connecting highway if the unplatted lands are owned by, leased to or under option, whether formal or informal, or under contract or lease to the owner.

Trans 233.02 Basic principles. To control the effects of land divisions on state trunk highways and connecting highways and to carry out the

purposes of ch. 236, Stats., the department promulgates the following basic requirements:

(1) Local traffic from a land division abutting a state trunk highway or ~~connecting highway~~ shall be served by an internal highway system of adequate capacity, intersecting with state trunk highways or connecting highways at the least practicable number of points and in a manner that is safe, convenient and economical.

(2) A land division shall be so laid out that its individual lots or parcels do not require direct vehicular access to a highway.

→ Add State Trunk
(3) The department, in order to integrate and coordinate traffic on a highway or on a private driveway, shall do both of the following:

(a) Consider, particularly in the absence of a local comprehensive general or master plan, or local land use plan, that plat or map's relationship to the access requirements of adjacent and contiguous land divisions and unplatted lands.

(b) Apply this chapter to all lands that are owned by, or are under option, whether formal or informal, or under contract or lease to the land divider and that are adjacent to or contiguous to the land division.

(4) Setbacks from a state trunk highway or connecting highway shall be provided as specified in s. Trans 233.08.

(5) A land division map shall include provision for the handling of surface drainage.

Trans 233.03 Procedures for review. The following procedures apply to review by the department:

(1) CONCEPTUAL REVIEW. (a) Before the lots are surveyed and staked out, the land divider shall submit a sketch to the department's district office for review. The sketch shall indicate roughly the layout of lots and the approximate

location of streets, and include other information required in this chapter.

(b) Unless the land divider submits a preliminary plat under s. 236.12 (2) (a), Stats., the land divider shall have the district office review the sketch described in par. (a).

(c) There is no penalty for failing to obtain conceptual review; the conceptual review procedure is encouraged to avoid waste that results from subsequent required changes.

Trans 233.04 Required information. The land divider shall show on the face of the preliminary map or on a separate sketch, at a scale of not more than 1,000 feet to the inch, the approximate distances and relationships between the following:

(1) The geographical relationship between the proposed land division and of any unplatted lands that abut any state trunk highway or connecting highway and that abut the proposed land division, and the ownership rights in and the land divider's interest, if any, in these lands.

(2) The locations of all existing and proposed highways within the land division and of all private roads or driveways within the land division that intersect with a state trunk highway or connecting highway.

(3) The location, and identification of each highway and private road or driveway, leading to or from the land division.

(4) The principal use, as agricultural, commercial, industrial or residential, of each private road or driveway that leads to or from the land division.

(6) The location of the highway nearest each side of the land division.

(7) The location of any highway or private road or driveway that connects with a state trunk highway or connecting highway that abuts the

land division, if the connection is Within 300 feet of the land division

Trans 233.05 Direct access to state trunk highway or connecting highway. (1) No land divider may divide land in such a manner that a private road or driveway connects with a state trunk highway or connecting highway, unless the land divider has received a special exception for that purpose approved by the department. The following restriction shall be placed on the face of the land division map, or as part of the owner's certificate required under s. 236.21 (2) (a), Stats., :

"All lots and blocks are hereby restricted so that no owner, possessor, user, licensee or other person may have any right of direct vehicular ingress from or egress with (U.S.H.)(S.T.H.)

_____ or
_____ Street; it is expressly intended that this restriction constitute a restriction for the benefit of the public as provided in s. 236.293, Stats., and shall be enforceable by the department."

(2) The department may require a desirable traffic access pattern between a state trunk highway or connecting highway and lands that abut the proposed land division and that are owned by or under option, whether formal or informal, contract or lease to the owner. The department may require a recordable covenant running with the land with respect to those unplatted lands.

(3) No person may connect a highway or a private road or driveway with a state trunk highway, connecting highway without first obtaining a permit under s. 86.07, Stats. The department may not issue a permit authorizing the connection of a highway with a state trunk highway or connecting highway to any person other than a municipality or county. The department may not issue any permit under s.

86.07, Stats., prior to favorable department review of the preliminary or final land division map.

Trans 233.06 Frequency of connections with a state trunk highway or connecting highway.

(1) The land division shall be laid out with the least practicable number of highways and private roads or driveways connecting with abutting state trunk highways or connecting highways.

(2) The department shall determine a minimum allowable distance between connections with the state trunk highway or connecting highway, between any 2 highways within the land division and between a highway within the land division and any existing or planned highway. To the extent practicable, the department shall require a distance of at least 1,000 feet between connections with a state trunk highway or connecting highway.

Trans 233.07 Temporary connections. (1) The department may issue temporary connection permits in the case of:

(a) A land division which at the time of review cannot provide direct traffic access complying with the provisions of s. Trans 233.06 (2).

(b) A land division layout which might necessitate a point or pattern of traffic access for a future adjacent land division, not in accordance with s. Trans 233.06 (2).

(2) The department may require that such temporary connections be altered or closed by the permit holder at a later date in order to achieve a desirable traffic access pattern.

(2m) A temporary connection shall be prominently labeled "Temporary Connection" on the land division map, and the following restriction shall be lettered on the land division map:

"The temporary connection(s) shown on this plat shall be used under a temporary connection permit which may be canceled at such time as a feasible alternate means of access to a highway is provided."

(3) When such a temporary connection is granted, the owner shall dedicate a service road or a satisfactory alternative, to provide for a present or future pattern of access that complies with s. Trans 233.06 (2).

Trans 233.08 Setback requirements and restrictions. (1) no person may erect, install or maintain any structure or improvement within a setback area determined under sub. (2).

(2) (a) Except as provided in par. (b), the setback area is the area within 110 feet of the centerline of a state trunk highway or connecting highway or within 50 feet of the nearer right-of-way line of a state trunk highway or connecting highway, whichever is furthest from the centerline.

(b) If an applicable ordinance allows structures or improvements to be located closer to the right-of-way of a state trunk highway or connecting highway than is provided under par. (a), the setback area is the area between the right-of-way and the more restrictive of the following:

2. 42 feet from the nearer right-of-way line.

3. 100 feet from the centerline.

(4) The land division map shall show the boundary of a setback area on the face of the land division map and shall clearly label the boundary as a highway setback line. The owner shall place the following restriction upon the same sheet of the land division map that shows the highway setback line:

this restriction is for the benefit of the public as provided in section 236.293, Wisconsin Statutes.

Trans 233.11 Special exceptions. The department may authorize special exceptions from this chapter only in appropriate cases when warranted by specific analysis of the setback needs, as determined by the department. A special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter.

Trans 233.12 Performance bond. The department may, in appropriate cases, require that a performance bond be posted to ensure the construction of any improvements in connection with the land division which may affect a state trunk highway.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter Trans 233

DIVISION OF LAND ABUTTING A STATE TRUNK HIGHWAY OR CONNECTING HIGHWAY

Trans 233.01	Purpose.
Trans 233.012	Applicability.
Trans 233.015	Definitions.
Trans 233.017	Other abutments.
Trans 233.02	Basic principles.
Trans 233.03	Procedures for review.
Trans 233.04	Required information.
Trans 233.05	Direct access to state trunk highway or connecting highway.

Trans 233.06	Frequency of connections with a state trunk highway or connecting highway.
Trans 233.07	Temporary connections.
Trans 233.08	Setback requirements and restrictions.
Trans 233.105	Noise, vision corners and drainage.
Trans 233.11	Special exceptions.
Trans 233.12	Performance bond.
Trans 233.13	Fees.

Note: Chapter Hy 33 was renumbered chapter Trans 233, under s. 13.93 (2m) (b) 1., Stats., Register, August, 1996, No. 488. Chapter Trans 233 as it existed on January 31, 1999, was repealed and a new Chapter Trans 233 was created effective February 1, 1999.

Trans 233.01 Purpose.

Dividing or developing lands, or both, affects highways by generating traffic, increasing parking requirements, reducing sight distances, increasing the need for driveways and other highway access points and, in general, impairing highway safety and impeding traffic movements. The ability of state trunk highways and connecting highways to serve as an efficient part of an integrated intermodal transportation system meeting interstate, statewide, regional and local needs is jeopardized by failure to consider and accommodate long-range transportation plans and needs during land division processes. This chapter specifies the department's minimum standards for the division of land that abuts a state trunk highway or connecting highway, in order to provide for the safety of entrance upon and departure from those highways, to preserve the public interest and investment in those highways, to help maintain speed limits, and to provide for the development and implementation of an intermodal transportation system to serve the mobility needs of people and freight and foster economic growth and development, while minimizing transportation-related fuel consumption, air pollution, and adverse effects on the environment and on land owners and users. Preserving the public investment in an integrated transportation system also assures that no person, on the grounds of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any transportation program or activity. The authority to impose minimum standards for subdivisions is s. 236.13 (1) (e), Stats. The authority to impose minimum standards for land divisions under ss. 236.34, 236.45 and 703.11, Stats., is s. 86.07 (2), Stats. The authority to impose minimum standards for land divisions to consider and accommodate long-range transportation plans and needs is ss. 1.11 (1), 1.12 (2), 1.13 (3), 20.395 (9) (qx), 66.001 (2) (e), 84.01 (2), (15), and (17), 84.015, 84.03 (1), 85.02, 85.025, 85.05, 85.16 (1), 86.31 (6), 88.87 (3), and 114.31 (1), Stats.

Note: The Department is authorized and required by ss. 84.01 (15), 84.015, 84.03 (1) and 20.395 (9) (qx), to plan, select, lay out, add to, decrease, revise, construct, reconstruct, improve and maintain highways and related projects, as required by federal law, Title 23, USC and all acts of Congress amendatory or supplementary thereto, and the federal regulations issued under the federal code; and to expend funds in accordance with the requirements of acts of Congress making such funds available. Among these federal laws that the Department is authorized and required to follow are 23 USC 109 establishing highway design standards; 23 USC 134, requiring development and compliance with long-range (minimum of 20 years) metropolitan area transportation plans; and 23 USC 135, requiring development and compliance with long-range (minimum of 20 years) statewide transportation plans. Similarly, the Department is authorized and required by the state statutes cited and other federal law to assure that it does not unintentionally exclude or deny persons equal benefits or participation in transportation programs or activities on the basis of race, color, national origin and other factors, and to give appropriate consideration to the effects of transportation facilities on the environment and communities. A "state trunk highway" is a highway that is part of the State Trunk Highway System. It includes State numbered routes, federal numbered highways, the Great River Road and the Interstate System. A listing of state trunk highways with geographic end points is available in the Department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31. The County Maps published by the Wisconsin Department of Transportation also show the breakdown

county by county. As of January 1, 1997, there were 11,813 miles of state trunk highways and 529 center-line miles of connecting highways. Of at least 116 municipalities in which there are connecting highways, 112 are cities and 4 or more are villages.

A "connecting highway" is not a state trunk highway. It is a marked route of the State Trunk Highway System over the streets and highways in municipalities which the Department has designated as connecting highways. Municipalities are responsible for their maintenance and traffic control. The Department is generally responsible for construction and reconstruction of the through lanes of connecting highways, but costs for parking lanes and related municipal facilities and other desired local improvements are local responsibilities. The Department reimburses municipalities for the maintenance of connecting highways in accordance with a lane mile formula. See ss. 84.02 (11), 84.03 (10), 86.32 (1) and (4), and 340.01 (60), Stats. A listing of connecting highways with geographic end points is also available in the Department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31.

A "business route" is an alternate highway route marked to guide motorists to the central or business portion of a city, village or town. The word "BUSINESS" appears at the top of the highway numbering marker. A business route branches off from the regular numbered route, passes through the business portion of a city and rejoins the regularly numbered route beyond that area. With very rare exceptions, business routes are not state trunk highways or connecting highways. The authorizing statute is s. 84.02 (6), Stats. This rule does not apply to business routes.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. Register, January, 2001, No. 541, eff. 2-1-01; corrections made under s. 13.93 (2m) (b) 7., Stats.

Trans 233.012 Applicability. (1) In accordance with ss. 86.07 (2), 236.12, 236.34 and 236.45, Stats., this chapter applies to all land division maps reviewed by a city, village, town or county, the department of administration and the department of transportation. This chapter applies to any land division that is created by plat or map under s. 236.12 or 236.45, Stats., by certified survey map under s. 236.34, Stats., or by condominium plat under s. 703.11, Stats., or other means not provided by statute, and that abuts a state trunk highway, connecting highway or service road.

(2) Structures and improvements lawfully placed in a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed in a setback area before a land division, are explicitly allowed to continue to exist. Plats that have received preliminary approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, if there is no substantial change between the preliminary and final plat, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Plats that have received final approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Land divisions on which the department acted between February 1, 1999 and February 1, 2001 are subject to ch. Trans 233 as it existed February 1, 1999.

(3) Any structure or improvement lawfully placed within a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed within a setback area before a land division, may be kept in a state of repair, efficiency or validity in order to preserve from failure or decline, and if unintentionally or tortiously destroyed, may be replaced substantially in kind.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; renum. Trans. 233.012 to be (1), cr. (2) and (3), Register, January, 2001, No. 541, eff. 2-1-01; correction made under s. 13.93 (2m) (b) 7., Stats.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Trans 233.015 Definitions.

Words and phrases used in this chapter have the meanings given in s. 340.01, Stats., unless a different definition is specifically provided in this chapter.

(1) "Certified survey map" or "CSM" means a map that complies with the requirements of s. 236.34, Stats.

(1m) "Desirable traffic access pattern" means traffic access that is consistent with the technical and professional guidance provided in the department's facilities development manual.

Note: Guidelines established in the Department's Facilities Development Manual are not considered "rules" as defined in s. 227.01(13), Stats., and so are not subject to the requirements under s. 227.10, Stats.

(1r) "District office" means an office of the division of transportation districts of the department.

(2) "Improvement" means any permanent addition to or betterment of real property that involves the expenditure of labor or money to make the property more useful or valuable. "Improvement" includes parking lots, driveways, loading docks, in-ground swimming pools, wells, septic systems, retaining walls, signs, buildings, building appendages such as porches, and drainage facilities. "Improvement" does not include sidewalks, terraces, patios, landscaping and open fences.

(2m) "In-ground swimming pool" includes a swimming pool that is designed or used as part of a business or open to use by the general public or members of a group or association. "In-ground swimming pool" does not include any above-ground swimming pools without decks.

(3) "Land divider" means the owner of land that is the subject of a land division or the land owner's agent for purposes of creating a land division.

(4) "Land division" means a division under s. 236.12, 236.34, 236.45 or 703.11, Stats., or other means not provided by statute, of a lot, parcel or tract of land by the owner or the owner's agent for the purposes of sale or of building development.

(5) "Land division map" means an official map of a land division, including all certificates required as a condition of recording the map.

(5m) "Major intersection" means the area within one-half mile of the intersection or interchange of any state trunk highway or connecting highway with a designated expressway, or freeway, under s. 84.295, Stats., or a designated interstate highway under s. 84.29, Stats.

(6) "Public utility" means any corporation, company, individual or association that furnishes products or services to the public, and that is regulated under ch. 195 or 196, Stats., including railroads, telecommunications or telegraph companies, and any company furnishing or producing heat, light, power, cable television service or water, or a rural electrical cooperative, as described in s. 32.02 (10), Stats.

(6m) "Reviewing municipality" means a city or village to which the department has delegated authority to review and object to land divisions under s. Trans 233.03 (7).

(6r) "Secretary" means the secretary of the department of transportation.

(7) "Structure" includes a temporary or non-permanent addition to or betterment of real property that is portable in nature, but that adversely affects the safety of entrance upon or departure from state trunk or connecting highways or the preservation of public interest and investment in those highways, as determined by the department. "Structure" does not include portable swing sets, movable lawn sheds without pads or footings, and above ground swimming pools without decks.

(7m) "Technical land division" means a land division involving a structure or improvement that has been situated on the real property for at least 5 years, does not result in any change to the use of existing structures and improvements and does not negatively affect traffic. "Technical land division" includes the conversion of an apartment building that has been in existence for at

least 5 years to condominium ownership, the conversion of leased commercial spaces in a shopping mall that has been in existence for at least 5 years to owned spaces, and the exchange of deeds by adjacent owners to resolve mutual encroachments.

(8) "Unplatted" means not legally described by a plat, land division map, certified survey map or condominium plat.

(8m) "User" means a person entitled to use a majority of the property to the exclusion of others.

(9) "Utility facility" means any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment or other structure used for transmission or distribution of electrical power or light or for the transmission, distribution or delivery of heat, water, gas, sewer, telegraph or telecommunication service, cable television service or broadcast service, as defined in s. 196.01 (1m), Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; cr. (1m), (1r), (2m), (5m), (6m), (6r), (7m) and (8m), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.017 Other abutments. For purposes of this chapter, land shall be considered to abut a state trunk highway or connecting highway if the land is any of the following:

(1) Land that contains any portion of a highway that is laid out or dedicated as part of a land division if the highway intersects with a state trunk highway or connecting highway.

(2) Separated from a state trunk highway or connecting highway by only unplatted lands that abut a state trunk highway or connecting highway if the unplatted lands are owned by, leased to or under option, whether formal or informal, or under contract or lease to the owner.

(3) Separated from a state trunk highway or connecting highway by only a service road.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.02 Basic principles. To control the effects of land divisions on state trunk highways and connecting highways and to carry out the purposes of ch. 236, Stats., the department promulgates the following basic requirements:

(1) Local traffic from a land division or development abutting a state trunk highway or connecting highway shall be served by an internal highway system of adequate capacity, intersecting with state trunk highways or connecting highways at the least practicable number of points and in a manner that is safe, convenient and economical.

(2) A land division shall be so laid out that its individual lots or parcels do not require direct vehicular access to a state trunk highway or connecting highway.

(3) The department, in order to integrate and coordinate traffic on a highway or on a private road or driveway with traffic on any affected state trunk highway or connecting highway, shall do both of the following:

(a) Consider, particularly in the absence of a local comprehensive general or master plan, or local land use plan, that plat or map's relationship to the access requirements of adjacent and contiguous land divisions and unplatted lands.

(b) Apply this chapter to all lands that are owned by, or are under option, whether formal or informal, or under contract or lease to the land divider and that are adjacent to or contiguous to the land division. Contiguous lands include those lands that abut the opposite side of the highway right-of-way.

(4) Setbacks from a state trunk highway or connecting highway shall be provided as specified in s. Trans 233.08.

(5) A land division map shall include provision for the handling of surface drainage in such a manner as specified in s. Trans 233.105 (3).

(6) A land division map shall include provisions for the mitigation of noise if the noise level exceeds noise standards in s. Trans 405.04, Table I.

(7) A land division shall provide vision corners at intersections and driveways per department standards.

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Notes: Guide dimensions for vision corners are formally adopted in the Department's Facilities Development Manual, Chapter 11, pursuant to s. 227.01 (13) (c), Stats. Rules governing construction of driveways and other connections with highways are found in ch. Trans 231. Detailed specifications may be obtained at the department's district offices.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (intro.), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.03 Procedures for review. The following procedures apply to review by the department, ~~district office or reviewing municipality of proposed certified survey maps, condominium plats and other land divisions:~~

(1) **CONCEPTUAL REVIEW.** (a) Before the lots are surveyed and staked out, the land divider shall submit a sketch to the department's district office for review. The sketch shall indicate roughly the layout of lots and the approximate location of streets, and include other information required in this chapter.

(b) Unless the land divider submits a preliminary plat under s. 236.12 (2) (a), Stats., the land divider shall have the district office review the sketch described in par. (a).

(c) There is no penalty for failing to obtain conceptual review; the conceptual review procedure is encouraged to avoid waste that results from subsequent required changes.

(2) **PRELIMINARY AND FINAL PLAT REVIEW.** The department shall conduct preliminary and final subdivision plat review under s. 236.12, Stats., when the land divider or approving authority submits, through the department of administration's plat review office, a formal request for departmental review of the plat for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee.

(3) **PRELIMINARY AND FINAL REVIEW FOR LAND DIVISIONS OCCURRING UNDER S. 236.45 AND S. 703.11, STATS.** The department shall review preliminary and final land division maps under ss. 236.45 and 703.11, Stats., when the approving authority, or the land divider, when there is no approving authority, submits a formal request for departmental review for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register of deeds, any approving agency, the land division map preparer and the land divider. This information is to be submitted to the district office. Review of preliminary and final land division maps occurring under ss. 236.45 and 703.11, Stats., by the department shall occur when the approving authority, or the land divider, when there is no approving authority, submits a formal request for departmental review for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register of deeds, any approving agency, the land division map preparer and the land divider. This information is to be submitted to the department.

Note: The appropriate department address is Access Management Coordinator, Bureau of Highway Development, 4802 Sheboygan Avenue, Room 651, P. O. Box 7916, Madison, WI 53707-7916.

(4) **PRELIMINARY AND FINAL REVIEW FOR LAND DIVISIONS OCCURRING UNDER S. 236.34 AND BY OTHER MEANS NOT PRESCRIBED BY STATUTES.** The department shall conduct preliminary and final review of land division maps under s. 236.34, Stats., or under any other means not prescribed by statutes, when the land divider submits a formal request for departmental review for certification of non-objection to the land division as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register

of deeds, any approving agency, the land division map preparer and the land divider. This information shall be submitted to the district office or to the department.

Note: The appropriate department address is Access Management Coordinator, Bureau of Highway Development, 4802 Sheboygan Avenue, Room 651, P. O. Box 7916, Madison, WI 53707-7916.

(5) **TIME LIMIT FOR REVIEW.** (a) Except as provided in pars. (b) to (d), not more than 20 calendar days after receiving a completed request to review a land division map, the department, district office or reviewing municipality shall do one of the following:

Determine that the land division is a technical land division. Upon determining that a land division is a technical land division, the department, district office or reviewing municipality shall certify that it has no objection to the land division map and shall refund all fees paid for review of that land division map.

2. Provide written notice to the land divider either objecting to or certifying that it has no objection to the land division.

Note: The 20-day time limit for action on a review without any special exception or variance is also established by statute for subdivision plat reviews in sec. 236.12(3) and (6), Stats.

(b) The department and district offices are not required to complete conceptual reviews under sub. (1) within a specified time, but shall endeavor to complete a conceptual review under sub. (1) within 30 calendar days after receiving the completed request.

(c) If a special exception is requested under s. Trans 233.11, the department, district office or reviewing municipality shall complete its review of the land division map within the time limit provided in s. Trans 233.11 (6).

(d) A request is considered complete under this subsection unless, within 5 working days after receiving the request, the department, district office or reviewing municipality provides written notice to the land divider stating that the request is incomplete and specifying the information needed to complete the request. On the date that additional information is requested under this subdivision, the time period for review ceases to run, but resumes running upon receipt of the requested information.

(e) If the department, district office or reviewing municipality fails to act within the time limit provided in this section or s. Trans 233.11 (6), the department, district office or reviewing municipality shall be considered to have no objection to the land division map or special exception.

(6) **DISTRICT AUTHORITY TO REVIEW LAND DIVISION MAPS.** Beginning on February 1, 2001, each district office may review land division maps under this chapter. The department shall develop implementing procedures to assure consistency and uniformity of such reviews among district offices and shall provide uniform guidance in figure 3 of procedure 7-50-3 of the department's facilities development manual dated December 1, 2000.

Note: Guidelines established under this subsection are not considered "rules," as defined in s. 227.01(13), Stats., and so are not subject to the requirements under s. 227.10, Stats. However, this rule references uniform guidance by date so that future revisions to that uniform guidance will become effective only if ch. Trans 233 is amended.

(7) **MUNICIPAL AUTHORITY TO REVIEW LAND DIVISION MAPS.** The department may, upon request, delegate to a city or village authority to review and object to any proposed land division that abuts a state trunk highway or connecting highway lying within the city or village. The department shall develop a uniform written delegation agreement in cooperation with cities and villages. The delegation agreement may authorize a city or village to grant special exceptions under s. Trans 233.11. Any decision of a reviewing municipality relating to a land division map or special exception is subject to the appeal procedure applicable to such decisions made by the department or a district office, except that the department may unilaterally review any such decision of a reviewing municipality to ensure conformity with the delegation agreement and this chapter and may reverse or modify the municipality's decision as appropriate. No reviewing municipality may change its setback policy after executing a delegation agreement

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under this section, except by written amendment to the delegation agreement approved by the department.

(8) **APPEALS.** (a) *Department review.* Except as provided in this paragraph and par. (b), a land divider, governmental officer or entity, or member of the general public may appeal a final decision of a district office or reviewing municipality regarding a land division map, special exception, or consequence of a failure to act to the secretary or the secretary's designee. Appeals may be made not more than 20 calendar days after that final decision or failure to act. The secretary or the secretary's designee may reverse, modify or affirm the decision. Not more than 60 calendar days after receiving the appeal, the secretary or secretary's designee shall notify the appealing party and the land divider in writing of the decision on appeal. If the secretary or secretary's designee does not provide written notice of his or her decision within the 60-day limit, the department is considered to have no objection to the final decision of the district office or reviewing municipality. The department may not unilaterally initiate a review of a decision of a district office certifying non-objection to a land division map, with or without a special exception. The department may unilaterally review any decision of a reviewing municipality relating to a land division map to ensure conformity with the delegation agreement and this chapter, and may reverse or modify the municipality's decision as appropriate. No person may appeal a conceptual review under sub. (1).

(b) *Judicial review.* 1. 'Chapter 236 land divisions.' Judicial review of any final decision of the department, district office or reviewing municipality relating to a land division that is subject to chapter 236, Stats., shall follow appeal procedures specified in that chapter.

Note: Land divisions subject to plat approval under sec. 236.10, Stats., shall follow the procedures specified in sec. 236.13(5), Stats.

2. 'All other land divisions.' Judicial review of any final decision of the department, district office or reviewing municipality relating to a land division that is not subject to chapter 236, Stats., shall follow the procedures specified in chapter 227, Stats., for judicial review of agency decisions.

Note: Final administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to judicial review as provided in ch. 227, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. Intro., (2), (3) and (4), r. and recr. (5), cr. (6) to (8), Register, January, 2001, No. 54, eff. 2-1-01.

Trans 233.04 Required information. The land divider shall show on the face of the preliminary or final land division map or on a separate sketch, at a scale of not more than 1,000 feet to the inch, the approximate distances and relationships between the following, and shall show the information in subs. (1) to (8) about the following:

- (1) The geographical relationship between the proposed land division and of any unplatted lands that abut any state trunk highway or connecting highway and that abut the proposed land division, and the ownership rights in and the land divider's interest, if any, in these unplatted lands.
- (2) The locations of all existing and proposed highways within the land division and of all private roads or driveways within the land division that intersect with a state trunk highway or connecting highway.
- (3) The location, and identification of each highway and private road or driveway, leading to or from the land division.
- (4) The principal use, as agricultural, commercial, industrial or residential, of each private road or driveway that leads to or from the land division.
- (5) The locations of all easements for accessing real property within the land division.
- (6) The location of the highway nearest each side of the land division.
- (7) The location of any highway or private road or driveway that connects with a state trunk highway or connecting highway

that abuts the land division, if the connection is any of the following:

(a) Within 300 feet of the land division, if any portion of the land division lies within a city or village.

(b) Within 1,000 feet of the land division, if no part of the land division lies within a city or village.

(8) All information required to be shown on a land division map shall be shown in its proper location

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.05 Direct access to state trunk highway or connecting highway. (1) No land divider may divide land in such a manner that a private road or driveway connects with a state trunk highway or connecting highway or any service road lying partially within the right-of-way of a state trunk highway or connecting highway, unless the land divider has received a special exception for that purpose approved by the department, district office or reviewing municipality under s. Trans 233.H. The following restriction shall be placed on the face of the land division map, or as part of the owner's certificate required under s. 236.21 (2) (a), Stats., and shall be executed in the manner specified for a conveyance:

"All lots and blocks are hereby restricted so that no owner, possessor, user, licensee or other person may have any right of direct vehicular ingress from or egress to any highway lying within the right-of-way of (U.S.H.)(S.T.H.)

or

Street; it is expressly intended that this restriction constitute a restriction for the benefit of the public as provided in s. 236.293, Stats., and shall be enforceable by the department

or its assigns. Any access shall be allowed only by special exception. Any access allowed by special exception shall be confirmed and granted only through the driveway permitting process and all permits are revocable."

Note: The denial of a special exception for access or connection purposes is not the functional equivalent of the denial of a permit under s. 86.07(2), Stats. Appeal of disapproval of a plat (and thus disapproval of a special exception) is available only by certiorari under s. 236.13(5), Stats. There is no right to a contested case hearing under ss. 227.43 or 227.51(1) for the denial of a special exception.

(2) The department may require a desirable traffic access pattern between a state trunk highway or connecting highway and unplatted lands that abut the proposed land division and that are owned by or under option, whether formal or informal, contract or lease to the owner. The department may require a recordable covenant running with the land with respect to those unplatted lands.

(3) No person may connect a highway or a private road or driveway with a state trunk highway, connecting highway, or with a service road lying partially within the right-of-way of a state trunk highway or connecting highway, without first obtaining a permit under s. 86.07, Stats. The department may not issue a permit authorizing the connection of a highway with a state trunk highway or connecting highway to any person other than a municipality or county. The department may not issue any permit under s. 86.07, Stats., prior to favorable department review of the preliminary or final land division map, or for a subdivision plat, prior to the department's certification of no objection.

Note: The authority maintaining the highway is the one that issues, denies or places conditions on any permit issued under s. 86.07(2), Stats. Cities and villages are responsible for the maintenance of connecting highways under s. 86.32(1), Stats. Cities and villages must condition any permit issued with respect to a connecting highway upon compliance with all requirements imposed pursuant to this chapter.

(4) Whenever the department finds that existing and planned highways provide the land division with reasonable and adequate access to a highway, the department shall prohibit the connection to a state trunk highway or connecting highway of any highway and private road or driveway from within the land division.

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Note—Rules governing construction of driveways and other connections with a state trunk highway are found in ch. Trans 231. Detailed specifications may be obtained at the Department's district offices.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (1), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.06 Frequency of connections with a state trunk highway or connecting highway.

(1) The land division shall be laid out with the least practicable number of highways and private roads or driveways connecting with abutting state trunk highways or connecting highways.

(2) The department shall determine a minimum allowable distance between connections with the state trunk highway or connecting highway, between any 2 highways within the land division and between a highway within the land division and any existing or planned highway. To the extent practicable, the department shall require a distance of at least 1,000 feet between connections with a state trunk highway or connecting highway.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.07 Temporary connections. (1) The department may issue temporary connection permits, which authorize the connection of a highway or a private road or driveway with a state trunk highway or connecting highway. The department may issue temporary connection permits in the case of:

(a) A land division which at the time of review cannot provide direct traffic access complying with the provisions of s. Trans 233.06 (2).

(b) A land division layout which might necessitate a point or pattern of traffic access for a future adjacent land division, not in accordance with s. Trans 233.06 (2).

(2) The department may require that such temporary connections be altered or closed by the permit holder at a later date in order to achieve a desirable traffic access pattern. The permit may require the permit holder to alter or close the temporary connection by a specified date or upon the completion of a specified activity. The permit holder is responsible for the expense of closing or altering the temporary connection.

(2m) A temporary connection shall be prominently labeled "Temporary Connection" on the land division map, and the following restriction shall be lettered on the land division map:

"The temporary connection(s) shown on this plat shall be used under a temporary connection permit which may be canceled at such time as a feasible alternate means of access to a highway is provided."

(3) When such a temporary connection is granted, the owner shall dedicate a service road or a satisfactory alternative, to provide for a present or future pattern of access that complies with s. Trans 233.06 (2).

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.08 Setback requirements and restrictions. (1) Except as provided in this section or in s. Trans 233.11 or, with respect to connecting highways, as provided in s. 86.16 (1), Stats., no person may erect, install or maintain any structure or improvement within a setback area determined under sub. (2) or (3).

(2) (a) Except as provided in par. (b), the setback area is the area within 110 feet of the centerline of a state trunk highway or connecting highway or within 50 feet of the nearer right-of-way line of a state trunk highway or connecting highway, whichever is furthest from the centerline.

(b) If an applicable ordinance allows structures or improvements to be located closer to the right-of-way of a state trunk highway or connecting highway than is provided under par. (a), the setback area is the area between the right-of-way and the more restrictive of the following:

1. The distance allowed under the ordinance.

2. 42 feet from the nearer right-of-way line.

3. 100 feet from the centerline.

(c) At least once every 2 years, the department shall produce general reference maps that generally identify major intersections and the highways specified in subds. 1. to 5. The department may reduce or extend, by not more than 3 miles along the highway, the area subject to a setback established under par. (a) or (b) to establish logical continuity of a setback area or to terminate the setback area at a readily identifiable physical feature or legal boundary, including a highway or property boundary. Persons may seek special exceptions to the setback requirement applicable to these major intersections and highways, as provided in s. Trans 233.11 (3). The setback area established under par. (a) or (b) applies only to major intersections and to highways identified as:

1. State trunk highways and connecting highways that are part of the national highway system and approved by the federal government in accordance with 23 USC 103(b) and 23 CFR 470.107(b).

2. State trunk highways and connecting highways that are functionally classified as principal arterials in accordance with procedure 4-1-15 of the department's facilities development manual dated July 2, 1979.

3. State trunk highways and connecting highways within incorporated areas, within an unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or within an unincorporated area within 1½ miles of a fourth class city or a village.

4. State trunk highways and connecting highways with average daily traffic of 5,000 or more.

5. State trunk highways and connecting highways with current and forecasted congestion projected to be worse than level of service "C," as determined under s. Trans 210.05 (1), within the following 20 years.

Note: The National Highway System (NHS) includes the Interstate System, Wisconsin's Corridors 2020 routes, and other important routes. Highways on the NHS base system were designated by the Secretary of USDOT and approved by Congress in the National Highway System Designation Act of 1995. NHS Intermodal Connector routes were added in 1998 with the enactment of the Transportation Equity Act for the 21st Century. Modifications to the NHS must be approved by the Secretary of USDOT. Guidance criteria and procedures for the functional classification of highways are provided in (1) the Federal Highway Administration (FHWA) publication "Highway Functional Classification—Concepts, Criteria and Procedures" revised in March 1989, and (2) former ch. Trans 76. The federal publication is available on request from the FHWA, Office of Environment and Planning, HEP-10, 400 Seventh Street, SW, Washington, DC 20590. Former ch. Trans 76 is available from the Wisconsin Department of Transportation, Division of Transportation Investment Management, Bureau of Planning. The results of the functional classification are mapped and submitted to the Federal Highway Administration (FHWA) for approval and when approved serve as the official record for Federal-aid highways and one basis for designation of the National Highway System. In general, the highway functional classifications are rural or urban: Principal Arterials, Minor Arterials, Major Collectors, Minor Collectors, and Local Roads. The definition of "level of service" used for this paragraph is the same as in ss. Trans 210.03(4) and 210.05(1) for purposes of the MAJOR HIGHWAY PROJECT NUMERICAL EVALUATION PROCESS. In general, the "level of service" refers to the ability of the facility to satisfy both existing and future travel demand. Six levels of service are defined for each type of highway facility ranging from A to F, with level of service A representing the best operating conditions and level of service F the worst. Department engineers will use the procedures outlined in the general design consideration guidelines in Chapter 11, Section 5 of the Wisconsin Department of Transportation's Facilities Development Manual to determine the level of highway service. Under the rule as effective February 1, 1999, s. Trans 233.08(1) provides 4 ways to erect something in a setback area (1) for utilities, follow the procedures set forth in the rule, (2) obtain a variance (now "special exception"), (3) for utilities, get local approval for utilities on or adjacent to connecting highways, or for utilities within the right of way of state trunk highways, get department approval (a mere "technical" exception), and (4) erect something that doesn't fall within the definition of "structure" or within the definition of "improvement." The provision below now adds a fifth "exception," (5) be 15 feet or more outside the right of way line of a defined and mapped set of highways.

(d) In addition to producing general reference maps at least once every 2 years that identify highways and intersections under par. (c), at least every 2 years the department shall also produce more detailed reference maps suitable for use in the geographic area of each district office.

(3) If any portion of a service road right-of-way lies within the setback area determined under sub. (2), the setback area shall be increased by the lesser of the following:

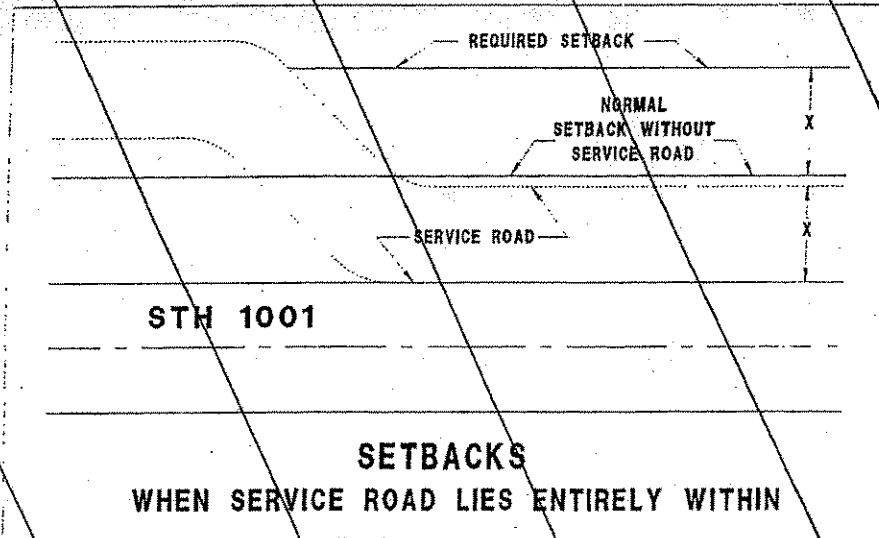
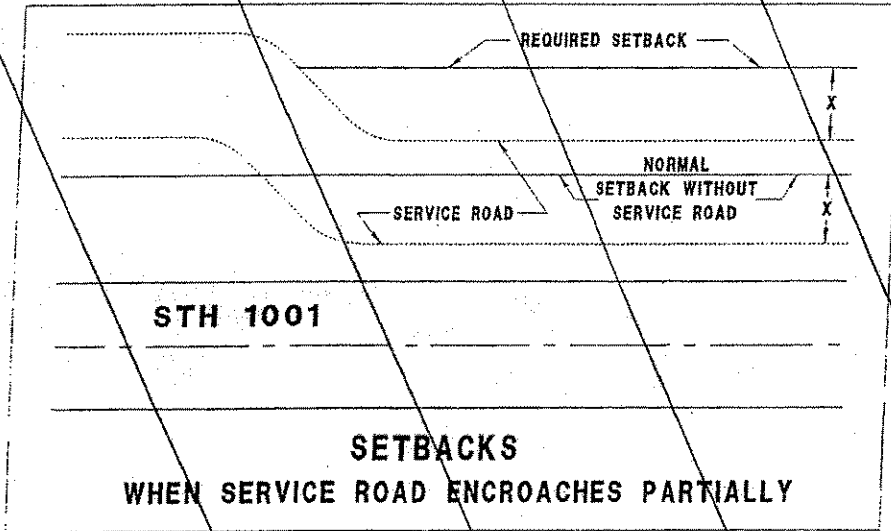
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(a) The width of the service road right-of-way, if the entire service road right-of-way lies within the setback area. Any increase under this paragraph shall be measured from the boundary of the setback area determined under sub. (2).

(b) The distance by which the service road right-of-way lies within the setback area, if the entire service road right-of-way does not lie within the setback area. Any increase under this para-

graph shall be measured from the nearer right-of-way line of the service road.

Note: For example, if a service road ROW extends 15 feet (measured perpendicularly to the setback) into the setback determined under sub. (2), and runs for a distance of 100 feet, the setback determined under sub. (2) shall be pushed 15 feet further from the centerline, running for a distance of 100 feet. See Graphic.



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(3m) (a) Notwithstanding sub. (1), a public utility may erect, install or maintain a utility facility within a setback area.

(b) If the department acquires land that is within a setback area for a state trunk highway, as provided by this chapter, and on which a utility facility is located, the department is not required to pay compensation or other damages relating to the utility facility, unless the utility facility is any of the following:

1. Erected or installed before the land division map is recorded.

2. Erected or installed on a recorded utility easement that was acquired prior to February 1, 1999.

3. Erected or installed after the land division map is recorded but with prior notice in writing, with a plan showing the nature and distance of the work from the nearest right-of-way line of the highway, to the department's appropriate district office within a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, nor less than 60 days, before any major utility erection or installation work commences, if any utility work is within the setback.

Note: For purposes of this section, "major utility erection or installation work" includes, but is not limited to, work involving transmission towers, communication towers, water towers, pumping stations, lift stations, regulator pits, remote switching cabinets, pipelines, electrical substations, wells, gas substations, antennae, satellite dishes, treatment facilities, electrical transmission lines and facilities of similar magnitude. "Routine minor utility erection or installation work" refers to single residential distribution facilities and similar inexpensive work of less magnitude. The concept behind the flexible, "normal" time of 30 days standard for utility submission of notice and plans to the department is to encourage and require at least 60 days notice from utilities for larger, complex or expensive installations, but not for routine, minor utility work that has traditionally involved only a few days notice for coordination and issuance of utility permits by the department for which a minimum of 5 days notice is mandatory. However, the normal time for submission and review is 30 days. This notice and plan requirement does not apply to maintenance work on existing utilities.

4. Erected or installed before the land division map is recorded but modified after that date in a manner that increases the cost to remove or relocate the utility facility. In such a case, the department shall pay compensation or other damages related to the utility facility as it existed on the date the land division map was recorded, except that if the modification was made with prior notice in writing, with a plan showing the nature and distance of the work from the nearest right-of-way line of the highway, to the department's appropriate district office within a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, nor less than 60 days, before any major utility erection or installation work commences, if any utility work is within the setback, then the department shall pay compensation or other damages related to the utility facility as modified.

(c) If a local unit of government or the department acquires land that is within a setback area for a connecting highway as provided by this chapter and on which a utility facility is located, the department is not required to pay compensation or other damages relating to the utility facility, unless the utility facility is compensable under the applicable local setbacks and the utility facility is in any of the categories described in par. (b) 1. to 4.

Note: A "connecting highway" is not a state trunk highway. It is a marked route of the state trunk highway system over the streets and highways in municipalities which the Department has designated as connecting highways. Municipalities have jurisdiction over connecting highways and are responsible for their maintenance and traffic control. The Department is generally responsible for construction and reconstruction of the through lanes of connecting highways, but costs for parking lanes and related municipal facilities and other desired local improvements are local responsibilities. See ss. 84.02 (11), 84.03 (10), 86.32 (1) and (4), and 340.01 (60), Stats. A listing of connecting highways and geographic end points are available in the department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31.

(d) The department shall review the notice and plan to determine whether a planned highway project within a 6-year improvement program under s. 84.01 (17), Stats., or a planned major highway project enumerated under s. 84.013 (3), Stats., will conflict with the planned utility facility work. If the department determines a conflict exists, it will notify the utility in writing within a normal time of 30 days, but no more than 5 days, after receiving the written notice and plan for any routine, minor utility

erection or installation work, nor more than 60 days, after receiving the written notice and plan for any major utility erection or installation work, and request the utility to consider alternative locations that will not conflict with the planned highway work. The department and utility may also enter into a cooperative agreement to jointly acquire, develop and maintain rights of way to be used jointly by WISDOT and the public utility in the future as authorized by s. 84.093, Stats. If the department and utility are not able to make arrangements to avoid or mitigate the conflict, the utility may proceed with the utility work, but notwithstanding pars. (b) and (c), the department may not pay compensation or other damages relating to the utility facility if it conflicts with the planned highway project. In order to avoid payment of compensation or other damages to the utility, the department is required to record a copy of its written notice to the utility of the conflict, that adequately describes the property and utility work involved, with the register of deeds in the county in which the utility work or any part of it is located.

Note: The Department will make the general and detailed maps readily available to the public on the internet and through other effective means of distribution.

(3n) Any person may erect, install or maintain any structure or improvement at 15 feet and beyond from the nearer right-of-way line of any state trunk highway or connecting highway not identified in s. Trans 233.08 (2) (c). Any person may request a special exception to the setback requirement established under this subsection, as provided in s. Trans 233.11 (3). This subsection does not apply to major intersections or within the desirable stopping sight distance, as determined under procedure 11-10-5 of the department's facilities development manual dated June 10, 1998, of the intersection of any state trunk highway or connecting highway with another state trunk highway or connecting highway. This subsection does not supersede more restrictive requirements imposed by valid applicable local ordinances.

Note: Technical figures 2, 3, 3m, 4, 4m, 5, 6 and 6m within Procedure 11-10-5 have various dates other than June 10, 1998 or are updated.

(4) The land division map shall show the boundary of a setback area on the face of the land division map and shall clearly label the boundary as a highway setback line and shall clearly show existing structures and improvements lying within the setback area.

(5) The owner shall place the following restriction upon the same sheet of the land division map that shows the highway setback line:

~~"No improvements or structures are allowed between the right-of-way line and the highway setback line. Improvements and structures include, but are not limited to, signs, parking areas, drive-ways, wells, septic systems, drainage facilities, buildings and retaining walls. It is expressly intended that this restriction is for the benefit of the public as provided in section 236.293, Wisconsin Statutes, and shall be enforceable by the Wisconsin Department of Transportation or its assigns. Contact the Wisconsin Department of Transportation for more information. The phone number may be obtained by contacting the County Highway Department."~~

If on a CSM there is limited space for the above restriction on the same sheet that shows the setback line, then the following abbreviated restriction may be used with the standard restriction placed on a subsequent page: "Caution - Highway Setback Restrictions Prohibit Improvements. See sheet _____"

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; cr. (2) (c), (d) and (3n), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.105 Noise, vision corners and drainage.

(1) NOISE. When noise barriers are warranted under the criteria specified in ch. Trans 405, the department is not responsible for

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any noise barriers for noise abatement from existing state trunk highways or connecting highways. Noise resulting from geographic expansion of the through-lane capacity of a highway is not the responsibility of the owner, user or land divider. In addition, the following notation shall be placed on the land division map:

"The lots of this land division may experience noise at levels exceeding the levels in s. Trans 403.04, Table I. These levels are based on federal standards. The department of transportation is not responsible for abating noise from existing state trunk highways or connecting highways, in the absence of any increase by the department to the highway's through-lane capacity."

Note: Some land divisions will result in facilities located in proximity to highways where the existing noise levels will exceed recommended federal standards. Noise barriers are designed to provide noise protection only to the ground floor of abutting buildings and not other parts of the building. Noise levels may increase over time. Therefore, it is important to have the caution placed on the land division map to warn owners that the department is not responsible for further noise abatement for traffic and traffic increases on the existing highway, in the absence of any increase by the department to the highway's through-lane capacity.

(2) **VISION CORNERS.** The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection by approaching vehicles. The owner shall have the choice of providing the vision corner by permanent easement or by dedication. If the department requires such a dedication or grant, the owner shall include the following notation on the land division map:

"No structure or improvement of any kind is permitted within the vision corner. No vegetation within the vision corner may exceed 30 inches in height."

Note: Guide dimensions for vision corners are formally adopted in the Department's Facilities Development Manual, Chapter 11, pursuant to s. 227.01 (13) (e), Stats.

(3) **DRAINAGE.** The owner of land that directly or indirectly discharges stormwater upon a state trunk highway or connecting highway shall submit to the department a drainage analysis and drainage plan that assures to a reasonable degree, appropriate to the circumstances, that the anticipated discharge of stormwater upon a state trunk highway or connecting highway following the development of the land is less than or equal to the discharge preceding the development and that the anticipated discharge will not endanger or harm the traveling public, downstream properties or transportation facilities. Various methods of hydrologic and hydraulic analysis consistent with sound engineering judgment and experience and suitably tailored to the extent of the possible drainage problem are acceptable. Land dividers are not required by this subsection to accept legal responsibility for unforeseen acts of nature or forces beyond their control. Nothing in this subsection relieves owners or users of land from their obligations under s. 88.87 (3) (b), Stats.

Note: In sec. 88.87 (1), Stats., the Legislature has recognized that development of private land adjacent to highways frequently changes the direction and volume of flow of surface waters. The Legislature found that it is necessary to control and regulate the construction and drainage of all highways in order to protect property owners from damage to lands caused by unreasonable diversion or retention of surface waters caused by a highway and to impose correlative duties upon owners and users of land for the purpose of protecting highways from flooding or water damage. Wisconsin law, sec. 88.87 (3), Stats., imposes duties on every owner or user of land to provide and maintain a sufficient drainage system to protect downstream and upstream highways. Wisconsin law, sec. 88.87 (3) (b), Stats., provides that whoever fails or neglects to comply with this duty is liable for all damages to the highway caused by such failure or neglect. The authority in charge of maintenance of the highway may bring an action to recover such damages, but must commence the action within 90 days after the alleged damage occurred. Section 893.59, Stats. Additional guidance regarding drainage may be found in Chapter 13 and Procedure 13-1-1 of the Department's Facilities Development Manual.

History: Cr Register, January, 1999, No. 517, eff. 2-1-99; am. (1), (2) (intro.) and (3), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.11 Special exceptions. (1) **DEPARTMENT CONSENT.** No municipality or county may issue a variance or spe-

cial exception from this chapter without the prior written consent of the department.

(3) (a) *Special exceptions for setbacks allowed.* The department, district office or, if authorized by a delegation agreement under sub. (7), reviewing municipality may authorize special exceptions from this chapter only in appropriate cases when warranted by specific analysis of the setback needs, as determined by the department, district office or reviewing municipality. A special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter.

The department, district office or reviewing municipality may grant a special exception that adjusts the setback area or authorizes the erection or installation of any structure or improvement within a setback area only as provided in this subsection. The department, district office or reviewing municipality may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

Note: The phrase "practical difficulty or unnecessary hardship" has been eliminated from the rule that was effective February 1, 1999, to avoid the adverse legal consequences that could result from the existing use of the word "variance." The Wisconsin Supreme Court has interpreted "variance" and this phrase to make it extremely difficult to grant "variances" and in so doing has eased the way for third party legal challenges to many "variances" reasonably granted. See *State v. Kenosha County Bd. of Adjust.*, 218 Wis. 2d 396, 577 N.W.2d 813 (1998). The Supreme Court defined "unnecessary hardship" in this context as an owner having "no reasonable use of the property without a variance." Id. at 413. The "special exception" provision in this rule is not intended to be so restrictive and has not been administered in so restrictive a fashion. In the first year following revision of ch. Trans 233, effective February 1, 1999, the Department granted the vast majority of "variances" requested, using a site and neighborhood-sensitive context based on specific analysis.

(b) *Specific analysis for special exceptions for setbacks.* Upon request for a special exception from a setback requirement of this chapter, the department, district office or reviewing municipality shall specifically analyze the setback needs. The analysis may consider all of the following:

1. The structure or improvement proposed and its location.
 2. The vicinity of the proposed land division and its existing development pattern.
 3. Land use and transportation plans and the effect on orderly overall development plans of local units of government.
 4. Whether the current and forecasted congestion of the abutting highway is projected to be worse than level of service "C" as determined under s. Trans 210.03 (1), within the following 20 years.
 5. The objectives of the community, developer and owner.
 6. The effect of the proposed structure or improvement on other property or improvements in the area.
 7. The impact of potential highway or other transportation improvements on the continued existence of the proposed structure or improvement.
 8. The impact of removal of all or part of the structure or improvement on the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement.
 9. Transportation safety.
 10. Preservation of the public interest and investment in the highway.
 11. Other criteria to promote public purposes consistent with local ordinances or plans for provision for light and air, providing fire protection, solving drainage problems, protecting the appearance and character of a neighborhood, conserving property values, and, in particular cases, to promote aesthetic and psychological values as well as ecological and environmental interests.
- (c) *Adjust setback.* If the department, district office or reviewing municipality grants a special exception by adjusting the setback area, the department shall pay just compensation for any subsequent department-required removal of any structure or improvement that the department has allowed outside of the approved, reduced setback area on land that the department acquires for a transportation improvement. The department may

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not decrease the 15 foot setback distance established under s. Trans 233.08 (3n), except in conformity with a comprehensive local setback ordinance, generally applicable to the vicinity of the land division, that expressly establishes a closer setback line.

(d) *Allow in setback - removal does not affect viability.* The department, district office or reviewing municipality may authorize the erection of a structure or improvement within a setback area only if the department, district office or reviewing municipality determines that any required removal of the structure or improvement, in whole or in part, will not affect the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement, and will not adversely affect the community in which it is located. Any owner or user who erects a structure or improvement under a special exception granted under this paragraph assumes the risk of future department-required removal of the structure or improvement and waives any right to compensation, relocation assistance or damages associated with the department's acquisition of that land for a transportation improvement, including any damage to property outside the setback caused by removal of the structure or improvement in the setback that was allowed by special exception. The department, district office or reviewing municipality may not grant a special exception within an existing setback area, unless the owner executes an agreement or other appropriate document required 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 special exception. The department, district office or reviewing municipality may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter. The department, district office or reviewing municipality shall require the executed agreement or other appropriate document to be recorded with the register of deeds under sub. (7) as part of the special exception.

(e) *Blanket or area special exceptions for setbacks.* 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 from setback requirements of this chapter that are generally applicable. The department shall record blanket or area special exceptions with the register of deeds in the areas affected or shall provide public notice of the blanket or area special exceptions by other means that the department determines to be appropriate to inform the public.

(f) *Horizon of setback analysis.* For purposes of its specific analysis, the department, district office or reviewing municipality shall consider the period 20 years after the date of analysis.

Note: 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).

(4) **SPECIAL EXCEPTIONS FOR PROVISIONS OF THIS CHAPTER OTHER THAN SETBACKS.** Except as provided in sub. (3), the department may not authorize special exceptions from this chapter, except in appropriate cases in which the literal application of this chapter would result in practical difficulty or unnecessary hardship, or would defeat an orderly overall development plan of a local unit of government. A special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter. The depart-

ment may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

Note: This subsection uses the phrase "practical difficulty or unnecessary hardship" to indicate a higher standard for special exceptions from provisions of this chapter other than setbacks. However, the phrase "special exception" has been used rather than the word "variance." The Supreme Court defined "unnecessary hardship" in a variance context as an owner having "no reasonable use of the property without a variance." See *State v. Kenosha County Bd. of Adjust.*, 218 W. 2d 396, 413, 377 N.W.2d 813 (1998). The department intends the "special exception" provision in this rule to be administered in a somewhat less restrictive fashion than "no reasonable use of the property" without a "variance."

(5) **MUNICIPAL SPECIAL EXCEPTIONS.** A delegation agreement under s. Trans 233.03 (8) may authorize a reviewing municipality to grant special exceptions. No municipality may grant special exceptions to any requirement of this chapter, except in conformity with a delegation agreement under this subsection. Any decision of a reviewing municipality relating to a special exception is subject to the appeal procedure applicable to such decisions made by the department or a district office, except that the department may unilaterally review any such decision of a reviewing municipality only for the purposes of ensuring conformity with the delegation agreement and this chapter.

(6) **TIME LIMIT FOR REVIEW.** Not more than 60 calendar days after receiving a completed request for a special exception under s. Trans 233.11, the department, district office or reviewing municipality shall provide to the land divider written notice of its decision granting or denying a special exception. The 60-day time limit may be extended only by written consent of the land divider.

Note: The Department intends that decisions concerning special exceptions be made in the shortest practicable period of time. The Department intends the 60-day time limit applicable to special exceptions to allow sufficient time for a land divider and the Department, district office or municipality to explore alternative locations or plans to avoid and minimize conflicts and to facilitate mutually acceptable resolutions to conflicts.

(7) **RECORDING REQUIRED.** A special exception granted under this section is effective only when the special exception is recorded in the office of the register of deeds. Any structure or improvement erected under authority of a special exception granted under this section is presumed to have been first erected on the date the special exception is recorded.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; renum. (2) to be (3) (a) and (m), cr. (3) (b) to (f) and (4) to (7), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.12 Performance bond. The department may, in appropriate cases, require that a performance bond be posted, or that other financial assurance be provided, to ensure the construction of any improvements in connection with the land division which may affect a state trunk highway.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.13 Fees. The department shall charge a fee of \$110 for reviewing a land division map that is submitted under s. 236.10, 236.12, 236.34, 236.45 or 703.11, Stats., or other means not provided by statute, on or after the first day of the first month beginning after February 1, 1999. The fee is payable prior to the department's review of the land division map. The department may change the fee each year effective July 1 at the annual rate of inflation, as determined by movement in the consumer price index for all urban consumers (CPI-U), published the preceding January in the CPI detailed report by the U.S. department of labor's bureau of labor statistics, rounded down to the nearest multiple of \$5.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.