

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

*Joint Committee for  
Review of  
Administrative Rules  
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR\_RCP\_pt01a
- 97hrAC-EdR\_RCP\_pt01b
- 97hrAC-EdR\_RCP\_pt02

➤ Appointments ... Appt

➤

➤ Clearinghouse Rules ... CRule

➤ 97hr\_JCR-AR\_CRule\_98-121\_pt01

➤ Committee Hearings ... CH

➤

➤ Committee Reports ... CR

➤

➤ Executive Sessions ... ES

➤

➤ Hearing Records ... HR

➤

➤ Miscellaneous ... Misc

➤

➤ Record of Comm. Proceedings ... RCP

➤

TRANS 233-(98-121) - LAND ABUTTING STATE  
HIGHWAY

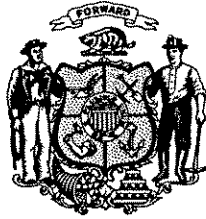
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

***RULES CLEARINGHOUSE***

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 98-121**

AN ORDER to repeal and recreate chapter Trans 233; and to create Trans 231.01 (9), relating to division of land abutting a state trunk highway or connecting highway.

Submitted by **DEPARTMENT OF TRANSPORTATION**

08-28-98 RECEIVED BY LEGISLATIVE COUNCIL.

09-24-98 REPORT SENT TO AGENCY.

RS:WF;jal;kjf

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

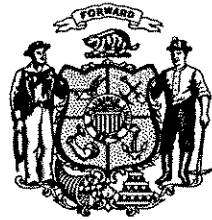
Comment Attached      YES       NO

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## CLEARINGHOUSE RULE 98-121

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### I. Statutory Authority

The department's authority under s. 86.07 (2), Stats., to require permits for connections to state trunk highways or connecting highways should be cited in s. Trans 233.01, which describes the purpose for ch. Trans 233. Chapter Trans 233 specifies minimum standards for subdivisions and other divisions of land that abut state trunk highways or connecting highways. Section Trans 233.01 states that the purpose of ch. Trans 233 is to provide for safe highways and to preserve the public interest and investment in highways "as required by s. 236.13 (1) (e), Stats." However, s. 236.13 (1) (e), Stats., is only applicable to subdivision plats. The apparent authority for the department to impose minimum standards for land divisions under ss. 236.34, 236.45 and 703.11, Stats., is s. 86.07 (2), Stats. This statutory authority should be cited in s. Trans 233.01.

In addition, s. Trans 233.012 states that ch. Trans 233 applies to all land division maps "in accordance with ss. 236.12, 236.34 and 236.45, Stats." However, ss. 236.34 and 236.45, Stats., do not appear to give the department authority to impose minimum standards for land divisions. Again, it appears that s. 86.07 (2), Stats., which authorizes the department to promulgate rules regulating connections to state trunk highways or connecting highways is the authority for ch. Trans 233, Stats., to apply to land divisions by a certified survey map under s. 236.34, Stats., by local subdivision regulations under s. 236.45, Stats., or by condominium plats under s. 703.11, Stats.

## **2. Form, Style and Placement in Administrative Code**

a. The defined term “certified survey map” in s. Trans 233.015 (1), is not used in ch. Trans 233 and, therefore, may be deleted.

b. It is suggested that the words “involved” and “designed” in s. Trans 233.015 (2), be drafted in the present tense. [See s. 1.01, Manual.]

c. The department should consider whether a definition of “structures” is needed in ch. Trans 233. Section Trans 233.08 (1) provides that no person may erect, install or maintain any structure or improvement within a setback area. Because the definition of “improvement” in s. Trans 233.015 (2) does not include terraces, patios and fences, the question arises whether these may be placed in a setback area. In addition, s. Trans 233.08 (5) requires an owner of land to place a statement on a land division map that says no improvements or structures are allowed between the right-of-way line and the highway setback line, and defines improvements and structures to include “signs, parking areas, driveways, wells, septic systems, drainage facilities, buildings and retaining walls.” Chapter Trans 233 would be more clear if the term “structures” is defined and if the terms “structures” and “improvements” are used consistently.

d. It is suggested that the word “the” be substituted for the word “such” in s. Trans 233.015 (3). [See s. 1.01 (8) (c), Manual.]

e. The department should consider moving the language of s. Trans 233.02 (intro.) to s. Trans 233.01. Section Trans 233.02 (intro.) describes the purpose of ch. Trans 233 and, therefore, more properly belongs in s. Trans 233.01.

f. It is suggested that the term “land division” be substituted for the term “land being subdivided” in s. Trans 233.02 (2) (b). The term “land division” is the term defined in s. Trans 233.015 and use of the term would also make s. Trans 233.02 (2) (b) clearly apply to land divided by certified survey maps or condominium developments.

g. Section Trans 233.05 (6) is explanatory in nature and, therefore, should be placed in a note following s. Trans 233.05. [See s. 1.09 (1), Manual.]

h. In s. Trans 233.105, the phrase “is responsible for abating” should be replaced by the phrase “shall abate.”

## **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The citations in s. Trans 233.02 (4), (5), (6) and (7) should be made more precise. Section Trans 233.02 (4) should reference s. Trans 233.08. Section Trans 233.02 (5) should reference s. Trans 233.105 (3). Section Trans 233.02 (6) should specifically cite the federal noise standards referred to. Section Trans 233.02 (7) should specifically cite the department’s standards for vision corners at intersections and driveways. [See s. 1.07 (1), Manual.]

b. It is suggested that the phrase “in subs. (1) to (8)” be substituted for the phrase “identified below” in s. Trans 233.04 (intro.).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The inclusion of s. Trans 233.03 is confusing. The section provides no direction but merely a recommendation for a procedure. The department either should direct that the procedure be followed or simply include this language in a note to the rule.

b. It is suggested that s. Trans 233.04 clearly state how land division maps are to be submitted to the department for review. If the land division is a subdivision plat required to be reviewed by the department under s. 236.11, Stats., it is clear how this information is to be submitted to the department. However, if the land division is a subdivision regulated under s. 236.45, Stats., or a certified survey map or a condominium, it is not clear how the land division map will be submitted to the department.

c. Section Trans 233.05 appears to contain a contradiction. First, it states that the express consent of the department is required in order for a private road or a driveway to connect with a state trunk highway or a connecting highway or any service road lying partially within the right-of-way of a state trunk highway or a connecting highway. Second, the provision requires a land divider to restrict all lots and blocks so that no owner, possessor, user, licensee or other person has any right of direct vehicular ingress or egress to any highway and does not provide any exception for situations where the department has consented to such a connection. This contradiction should be resolved.

d. Should the term "or connecting highway" be placed before the first comma in s. Trans 233.05 (4) and at the end of s. Trans 233.06 (1)? Also, it appears that the word "to" should be inserted before the phrase "the department's certification" in the final sentence of s. Trans 233.05 (4).

e. Section Trans 233.105 (1) first states that a *land divider* is responsible for abating noise from existing state trunk highways or connecting highways and then states that the owner must state on the land division map that the lots in the land division may experience noise at levels exceeding federal standards and that *owners of lots* are responsible for abating the noise. Section Trans 233.105 (1) should be more clear concerning who is responsible for noise abatement from state trunk highways or connecting highways.

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The Wisconsin Department of Transportation proposes an order to repeal and recreate ch. TRANS 233; and create TRANS 231.01(9), relating to division of land abutting a state trunk highway or connecting highway.

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**NOTICE OF HEARING  
AND  
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to ss. 84.25, 84.29, 84.295, 86.07(2), 236.12(2)(a) and (7), and 236.13(1)(e) and (3), Stats., and interpreting ss. 236.12(2)(a), 236.34, 236.45 and 703.11, Stats., the Department of Transportation will hold a public hearing in **Room 421** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **28th** day of **September**, 1998, at **9:00 AM**, to consider the amendment of chs. Trans 231 and 233, Wisconsin Administrative Code, relating to division of land abutting a state trunk highway or connecting highway.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business October 2, 1998, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Bonnie Tripoli, Division of Infrastructure Development, Room 651, P. O. Box 7916, Madison, WI 53707-7916.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

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Analysis Prepared by the Wisconsin Department of Transportation

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**Statutory Authority:** ss. 84.25, 84.29, 84.295, 86.07(2), 236.12(2)(a) and (7), and  
236.13(1)(e) and (3), Stats.

**Statutes Interpreted:** ss. 236.12(2)(a), 236.34, 236.45 and 703.11, Stats.

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**General Summary of Proposed Rule.** The Wisconsin Legislature created s. 236.13(1)(e), Stats., by Chapter 570, Laws of Wisconsin 1955. That law requires that approval of preliminary and final plats be conditioned upon compliance with the Department of Transportation rules relating to the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways. The Department's first rule under this statute became effective in September 1956, then known as Hy 33. This rule was renumbered in August of 1996 to Trans 233. No other change was made in the rule at that time.

This revision of the 1956 rule is necessary for consistency with existing laws, new developments in land use and transportation planning principles, and for clarification and uniformity. The objective is to recognize state and local economic land use goals in the rule, enhance the effectiveness of the rule, provide reasonable flexibility and clarity in setback requirements and criteria for variances that do not jeopardize public investments or safety now or in the future.

In general, due to the changes in laws and practices over the years, it was determined substantive changes to the rule would be needed to truly protect the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and preserve the public interest and investment in such highways. Section 236.45, Stats., allows counties to create subdivision ordinances which are more restrictive than Chapter 236, Stats., and ch. Trans 233. This option allows those plats to be created outside the Department of Administration plat review process. This is important because, unless the county forwards the plat to the Department, the Department has had no knowledge of the plat and therefore no procedure to evaluate its conformance to ch. Trans 233. However, the Department has found that some counties are not enforcing their more restrictive regulations when approving county plats. Therefore, this proposed rule now requires that these plats be reviewed by the Department.

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Development around the state has evolved in such a manner that departmental review of subdivisions alone is not providing sufficient protection of state trunk and connecting highways. Section 236.34, Stats., allows for land divisions to occur through the preparation of certified survey maps. Section 703.11, Stats., also allows for the creation of condominium plats. These two statutes, along with the above-mentioned s. 236.45, Stats., create land divisions or developments which occur outside of the Department of Administration subdivision review process, but which have similar impacts upon the state's highways. In the past, the department has not had the opportunity to review these maps or development in terms of the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation

of the public interest and investment in such highways. Section 86.07(2), Stats., requires that any person making an alteration in a highway such as constructing or modifying a driveway must obtain a permit. The Department, by revision of this rule, would now require that it review land divisions by any of these methods for compliance with this rule. Any access permit requested for a future land division which does not conform to these requirements will be denied.

This proposed rule also clarifies a number of areas which have proven unclear in the past, to both the Department and to those developing the maps. It now more clearly defines the requirements that developers and surveyors must meet. In the past, the Department's objections to a plat often resulted when the surveyor simply did not understand what exactly was required or failed to approach the Department for help. The rule now more clearly defines conceptual review, vision corners, drainage requirements, highway and driveway separation requirements, setbacks, variance procedures and noise concerns. These clarifications should make it easier for the surveyor and others to understand and comply with the rule rather than being faced with an immediate objection to the design of the plat by the Department. Other changes, such as a clarification of requirements for specific information regarding access and existing conditions that a surveyor must show on the plat, will make it easier for the Department to locate the plat in the field and evaluate areas of possible concern.

The setback provision has always contained language limiting improvements and now these limitations are clarified. Utilities have always used the setback for some of their facilities and that continued use will be allowed. However, utilities will now be required to notify the district and request approval for those facilities if they are to be compensable if the setback area is needed for a future highway project. The Wisconsin Courts have approved such setback provisions relating to utilities imposed by local units of government. Town of Portland v. WEPCO, 198 Wis. 2d 775, 543 N.W.2d 559 (1996). Also related to setbacks, when variances for allowing improvements in the setback are requested, the variance procedure established in this rule will allow the department to consider entering into an agreement to allow the variance as long as the owner understands that the improvement and any related damages will not be compensable if the department ever has the need to acquire additional right-of-way within the setback.

**Initial Regulatory Flexibility Analysis.** Section 236.12(7), Stats., allows the Department to establish by rule reasonable service fees for all or part of the costs of the activities and services provided by the Department under that chapter of the statutes. Thus, this proposed rule also establishes fees to cover the Department's costs for reviewing the documents related to land divisions. Both the district and central offices must invest considerable time in verifying and field reviewing each map. An estimation of the amount of time and costs involved determined that \$110 is the average cost for this review. In the past, the department has always done this review gratis but in this current climate of fiscal responsibility, it is felt that the cost should be borne by those creating the need for the review. This charge will be imposed on those who prepare the documents for review. Surveyors, developers and consultants would normally prepare the documents on behalf of the owners. The \$110 cost would, in all likelihood, be

passed on the owners, some of whom will be small businesses that may recover the costs through the development.

**Fiscal Estimate.** With the enactment of the fee for the services provided by the Department, the review of land division maps will now be self-supporting and should not have an effect upon any county, city, village, town, school district, vocational, technical and adult education district and sewerage district liability unless they are assuming the role of developer. However, on an annual basis, that situation occurs approximately five to ten times statewide. Thus, approximately five to ten communities per year will be required to pay an additional \$110 for any development they are pursuing which is adjacent to a state trunk or connecting highway. Developers will incur the additional costs of \$110 per submittal, that they had not previously encountered. Surveyors who submit maps for review will pay the fees but those costs should be passed onto the developer.

Several of the Department's transportation districts may use existing personnel to review more land divisions than in the past. Any costs associated with these additional reviews will be offset by the funds received through the new fee. It is estimated that a total of ½ of a person's time per district would be involved in the review. Several of the districts review all these documents now as a courtesy to the county governments so in those districts no additional costs would be incurred. It is expected that some of these costs will be defrayed by the Department delegating the review for some developments of land abutting connecting highways to the local municipality as allowed in s. 236.12(2)(a), Stats. Since, in general, local officials do review these documents now, there would be no additional costs to any reviewing authority.

**Preparation and Copies of Rule.** This proposed rule was drafted by Paul E. Nilsen, Legislative Attorney. The analysis was prepared by Bonnie Tripoli and James S. Thiel, Wisconsin Department of Transportation, (608) 266-8928. Copies of the proposed rule may be obtained upon request from Bonnie Tripoli, Division of Infrastructure Development, 4802 Sheboygan Avenue, Room 651, P.O. Box 7916, Madison, WI, 53707-7916, or by calling (608) 266-2372.

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### **TEXT OF PROPOSED RULE**

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 84.25, 84.29, 84.295, 86.07(2), 236.12(2)(a) and (7), and 236.13(1)(e) and (3), Stats., the department of transportation hereby proposes an order to amend and repeal and recreate a rule interpreting ss. 236.12(2)(a), 236.34, 236.45 and 703.11, Stats., relating to division of land abutting a state trunk highway or connecting highway.

**SECTION 1.** Trans 231.01(9) is created to read:

Trans 231.01(9) No permit may be issued under this chapter for construction of a highway or a private road or driveway that connects directly with a state trunk highway and that provides vehicular access to a land division, as defined in s. Trans 233.015(4), unless the land division was created before the effective date of this section .... [revisor inserts date] or the department determines that the land division meets the requirements of ch. Trans 233.

**SECTION 2.** Chapter Trans 233 is repealed and recreated to read:

**CHAPTER TRANS 233  
DIVISION OF LAND ABUTTING A STATE TRUNK  
HIGHWAY OR CONNECTING HIGHWAY**

**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, in order to provide for the safety of entrance upon and departure from those highways and for the preservation of public interest and investment in those highways, as required by s. 236.13(1)(e), Stats.

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**Trans 233.012 APPLICABILITY.** In accordance with ss. 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., and that abuts a state trunk highway, connecting highway or service road.

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**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:

*2 defined term not used.*

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

(2) "Improvement" means any permanent addition to or betterment of real property that involved the expenditure of labor or money designed to make the property more useful or valuable. "Improvement" includes parking lots, driveways, wells, septic systems and drainage facilities. "Improvement" does not include sidewalks, terraces, patios, landscaping and fences.

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(3) "Land divider" means the owner of land that is the subject of a land division or ~~such~~<sup>the</sup> an owner's agent for purposes of creating a land division.

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(4) "Land division" means a division under s. 236.12, 236.34, 236.45 or 703.11, Stats., 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.

(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 or water, or a rural electrical cooperative, as described in s. 32.02(10), Stats.

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

(8) "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.

**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.

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

**Trans 233.02 BASIC PRINCIPLES.** 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. To control these effects 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 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.

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(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 <sup>land division</sup> land being subdivided. 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 this chapter. <sup>(4)</sup> ~~233.105(3)~~ 233.08 <sup>(4)</sup>

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

(6) A land division map shall include provisions for the mitigation of noise if the noise level exceeds federal noise standards.

(7) A land division shall provide vision corners at intersections and driveways per department standards. <sup>?</sup> <sup>?</sup>

**Trans 233.03 CONCEPTUAL PLAN REVIEW.** In accordance with s.

236.12(2)(a), Stats., the department recommends the following procedure:

(1) Before the lots are surveyed and staked out, the land divider should submit a sketch to the department's district office. The sketch should indicate roughly the layout

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of lots and the approximate location of streets, and should include other information required in this chapter.

(2) Unless the land divider submits a preliminary plat under s. 236.12(2)(a), Stats., the land divider should have the district office review the sketch described in sub. (1).

**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 identified below about the following:

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(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 by type, 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.

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**Trans 233.05 DIRECT ACCESS TO STATE TRUNK 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 the express consent of 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., and shall be executed in the manner specified for a conveyance:

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As owner I hereby restrict all lots and blocks 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, as shown on the land division map; it is expressly intended that this restriction constitute a restriction is for the benefit of the public as provided in s. 236.293, Stats., and shall be enforceable by the department or its assigns.

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*Hand (S)*

(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.

(4) No person may connect a highway or a private road or driveway with a state trunk highway <sup>or connecting highway (5)</sup> 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 <sup>to</sup> the department's certification of no objection. X

(5) 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.

(6) 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.

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. ↙ ?

(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 COMPENSATION 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:

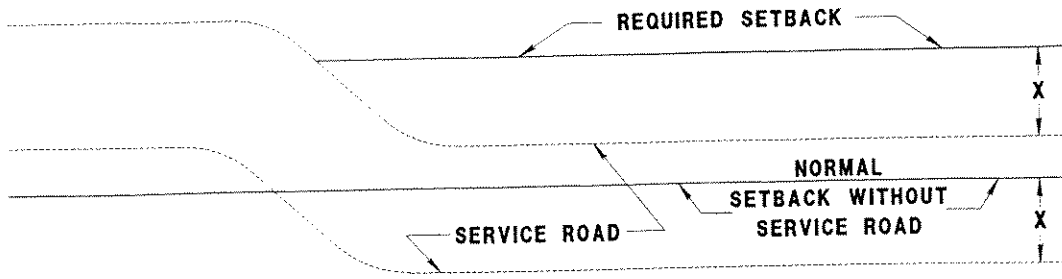
1. The distance allowed under the ordinance.
2. 42 feet from the nearer right-of-way line.
3. 100 feet from the centerline.

(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).

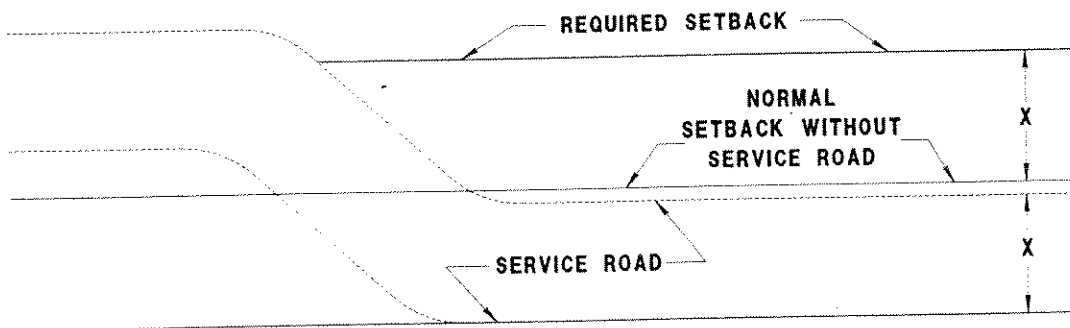
(b) The distance by which the service road right-of-way lies within the setback area, if the entire service road right-of-way does not lie within the setback area. Any increase under this paragraph shall be measured from the nearer right-of-way line of the service road.

**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 on next page.



**STH 1001**

**SETBACKS  
WHEN SERVICE ROAD ENCROACHES PARTIALLY**



**STH 1001**

**SETBACKS  
WHEN SERVICE ROAD LIES ENTIRELY WITHIN**

(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 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 after the land division map is recorded but with the prior written approval of the department's appropriate district office.
3. 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 the prior written approval of the department's appropriate district office the department shall pay compensation or other damages related to the utility facility as modified.

(c) Notwithstanding par. (b), the department may not pay compensation or other damages relating to a utility facility described in par. (b) if the payment by any person of such compensation or other damages is not required for any reason, including a local ordinance under s. 236.45, Stats. ?

(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, driveways, 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."

Trans 233.105 NOISE, VISION CORNERS AND DRAINAGE. (1) The land divider ~~is responsible for abating~~ <sup>shall abate</sup> noise from existing state trunk highways or connecting highways, as provided in ch. Trans 405. The owner shall include the following notation on the land division map: "The lots of this land division may experience noise at levels exceeding federal standards. Owners of these lots are responsible for abating noise sufficient to protect these lots." (S)

(2) 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. 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) 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 ensures 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 travelling public, downstream properties or transportation facilities.

**Trans 233.11 VARIANCES.** (1) No municipality or county may issue a variance from this chapter without the prior written consent of the department.

(2) The department may not authorize variances 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 variance 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 not grant a variance authorizing the erection or installation of any structure or improvement within a setback area unless the owner executes an agreement providing that, should the department need to acquire lands within the setback area, the department is not required to pay compensation, relocation costs or damages relating to any structure or improvement authorized by the variance. The department may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

**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., on or after the first day of the first month beginning after publication .... [revisor inserts date]. 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.

(END OF RULE TEXT)

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**Effective Date.** This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 27 day of August, 1998.

  
\_\_\_\_\_  
CHARLES H. THOMPSON  
Secretary  
Wisconsin Department of Transportation

**RULES CLEARINGHOUSE**

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**PART 3**

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 98-121**

AN ORDER to repeal and recreate chapter Trans 233; and to create Trans 231.01 (9), relating to division of land abutting a state trunk highway or connecting highway.

Submitted by **DEPARTMENT OF TRANSPORTATION**

08-28-98      RECEIVED BY LEGISLATIVE COUNCIL.  
09-24-98      REPORT SENT TO AGENCY.

RS:WF:jal;kjf

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

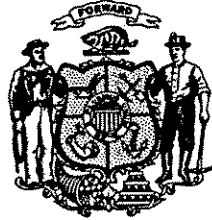
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

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## CLEARINGHOUSE RULE 98-121

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### I. Statutory Authority

The department's authority under s. 86.07 (2), Stats., to require permits for connections to state trunk highways or connecting highways should be cited in s. Trans 233.01, which describes the purpose for ch. Trans 233. Chapter Trans 233 specifies minimum standards for subdivisions and other divisions of land that abut state trunk highways or connecting highways. Section Trans 233.01 states that the purpose of ch. Trans 233 is to provide for safe highways and to preserve the public interest and investment in highways "as required by s. 236.13 (1) (e), Stats." However, s. 236.13 (1) (e), Stats., is only applicable to subdivision plats. The apparent authority for the department to impose minimum standards for land divisions under ss. 236.34, 236.45 and 703.11, Stats., is s. 86.07 (2), Stats. This statutory authority should be cited in s. Trans 233.01.

In addition, s. Trans 233.012 states that ch. Trans 233 applies to all land division maps "in accordance with ss. 236.12, 236.34 and 236.45, Stats." However, ss. 236.34 and 236.45, Stats., do not appear to give the department authority to impose minimum standards for land divisions. Again, it appears that s. 86.07 (2), Stats., which authorizes the department to promulgate rules regulating connections to state trunk highways or connecting highways is the authority for ch. Trans 233, Stats., to apply to land divisions by a certified survey map under s. 236.34, Stats., by local subdivision regulations under s. 236.45, Stats., or by condominium plats under s. 703.11, Stats.

## 2. Form, Style and Placement in Administrative Code

a. The defined term "certified survey map" in s. Trans 233.015 (1), is not used in ch. Trans 233 and, therefore, may be deleted.

b. It is suggested that the words "involved" and "designed" in s. Trans 233.015 (2), be drafted in the present tense. [See s. 1.01, Manual.]

c. The department should consider whether a definition of "structures" is needed in ch. Trans 233. Section Trans 233.08 (1) provides that no person may erect, install or maintain any structure or improvement within a setback area. Because the definition of "improvement" in s. Trans 233.015 (2) does not include terraces, patios and fences, the question arises whether these may be placed in a setback area. In addition, s. Trans 233.08 (5) requires an owner of land to place a statement on a land division map that says no improvements or structures are allowed between the right-of-way line and the highway setback line, and defines improvements and structures to include "signs, parking areas, driveways, wells, septic systems, drainage facilities, buildings and retaining walls." Chapter Trans 233 would be more clear if the term "structures" is defined and if the terms "structures" and "improvements" are used consistently.

d. It is suggested that the word "the" be substituted for the word "such" in s. Trans 233.015 (3). [See s. 1.01 (8) (c), Manual.]

e. The department should consider moving the language of s. Trans 233.02 (intro.) to s. Trans 233.01. Section Trans 233.02 (intro.) describes the purpose of ch. Trans 233 and, therefore, more properly belongs in s. Trans 233.01.

f. It is suggested that the term "land division" be substituted for the term "land being subdivided" in s. Trans 233.02 (2) (b). The term "land division" is the term defined in s. Trans 233.015 and use of the term would also make s. Trans 233.02 (2) (b) clearly apply to land divided by certified survey maps or condominium developments.

g. Section Trans 233.05 (6) is explanatory in nature and, therefore, should be placed in a note following s. Trans 233.05. [See s. 1.09 (1), Manual.]

h. In s. Trans 233.105, the phrase "is responsible for abating" should be replaced by the phrase "shall abate."

## 4. Adequacy of References to Related Statutes, Rules and Forms

a. The citations in s. Trans 233.02 (4), (5), (6) and (7) should be made more precise. Section Trans 233.02 (4) should reference s. Trans 233.08. Section Trans 233.02 (5) should reference s. Trans 233.105 (3). Section Trans 233.02 (6) should specifically cite the federal noise standards referred to. Section Trans 233.02 (7) should specifically cite the department's standards for vision corners at intersections and driveways. [See s. 1.07 (1), Manual.]

b. It is suggested that the phrase "in subs. (1) to (8)" be substituted for the phrase "identified below" in s. Trans 233.04 (intro.).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The inclusion of s. Trans 233.03 is confusing. The section provides no direction but merely a recommendation for a procedure. The department either should direct that the procedure be followed or simply include this language in a note to the rule.

b. It is suggested that s. Trans 233.04 clearly state how land division maps are to be submitted to the department for review. If the land division is a subdivision plat required to be reviewed by the department under s. 236.11, Stats., it is clear how this information is to be submitted to the department. However, if the land division is a subdivision regulated under s. 236.45, Stats., or a certified survey map or a condominium, it is not clear how the land division map will be submitted to the department.

c. Section Trans 233.05 appears to contain a contradiction. First, it states that the express consent of the department is required in order for a private road or a driveway to connect with a state trunk highway or a connecting highway or any service road lying partially within the right-of-way of a state trunk highway or a connecting highway. Second, the provision requires a land divider to restrict all lots and blocks so that no owner, possessor, user, licensee or other person has any right of direct vehicular ingress or egress to any highway and does not provide any exception for situations where the department has consented to such a connection. This contradiction should be resolved.

d. Should the term "or connecting highway" be placed before the first comma in s. Trans 233.05 (4) and at the end of s. Trans 233.06 (1)? Also, it appears that the word "to" should be inserted before the phrase "the department's certification" in the final sentence of s. Trans 233.05 (4).

e. Section Trans 233.105 (1) first states that a *land divider* is responsible for abating noise from existing state trunk highways or connecting highways and then states that the owner must state on the land division map that the lots in the land division may experience noise at levels exceeding federal standards and that *owners of lots* are responsible for abating the noise. Section Trans 233.105 (1) should be more clear concerning who is responsible for noise abatement from state trunk highways or connecting highways.

**PART 4**  
**CR 98-121**

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ANALYSIS OF FINAL DRAFT OF TRANS 233

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(a) **Need for Amended Rule.** The Wisconsin Legislature created s. 236.13(1)(e), Stats., by Chapter 570, Laws of Wisconsin 1955. That law requires that approval of preliminary and final plats be conditioned upon compliance with the Department of Transportation rules relating to the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways. The Department's first rule under this statute became effective in September 1956, then known as Hy 33. This rule was renumbered in August of 1996 to Trans 233. No other change was made in the rule at that time.

This revision of the 1956 rule is necessary for consistency with existing laws, new developments in land use and transportation planning principles, and for clarification and uniformity. The objective is to recognize state and local economic land use goals in the rule, enhance the effectiveness of the rule, provide reasonable flexibility and clarity in setback requirements and criteria for variances that do not jeopardize public investments or safety now or in the future.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on September 28, 1998. Modifications made as a result of public testimony include:

Responses to Surveyors, Developers and Wisconsin Society of Land Surveyors  
Comments on Trans 233

1. The term "connecting highway" needs clarification. **The rule was revised to clarify the terms "state trunk highway," "connecting highway," and "business route" in a note. The actual definition of "connecting highway" may be found in s. 340.01(9) and s. 86.32, Wis. Stats.**
2. All plats of record prior to this revision should be grandfathered in, since previous plats were designed for use without consideration of additional reserved lands. **They are grandfathered. The existing rule limits structures and improvements within the setback. Existing plats are not required to follow the new "Improvements" portion of this proposed rule, except when the subdivision is in an area where the Department knows that a highway improvement is imminent. Then the Department is asking the developer to have the prospective buyer contact and work with the Department to try to minimize the buyer's use of the setback area, which will minimize the impact of the highway project on the development. The Department is not proposing to change this**



**rule for existing plats. The new rule clarifies the term improvement and will be imposed on only new developments.**

- 3. Opposition to storm drainage requirements. The WSLs would like more specific requirements to determine methods for storm water management calculations. Also the drainage calculations should not have to consider existing deficiencies downstream. Under existing law, sec. 88.87(3), Stats., private property owners and users of land are required to protect upstream and downstream highway property from water damage or flooding caused by private improvements. Likewise, the Department is required to protect private property owners from damage caused by unreasonable diversion or retention of surface waters by highways under sec. 88.87(1), Stats. Both can be held responsible for water passing through their property if other properties are damaged. Thus the Department is not asking the developer to analyze the impact upon downstream properties but rather to ensure there will be no impact by asking that the character of the runoff from new developments be equal to or less than that of the before development condition. The Department is not dictating the methods to be used, but is only looking at the result. This allows the designer more flexibility in how to handle runoff and places less liability upon the property owner and the Department.**
- 4. If this revision is passed it should include all land divisions within the state. The rule has been revised to include all land divisions, statutorily regulated or otherwise.**
- 5. On certified survey maps (CSM's) which are 8½" x 14" there is not enough room to place the setback note on the sheet containing the graphic. Revised the rule to allow a shorter note on the graphic sheet directing reader to the longer note on a following sheet, if there is no room on the graphic sheet to place the longer note.**
- 6. Opposition to the setback requirement because it limits owner's use of property. The Department should consider a fee purchase of future lands rather than reservations with numerous restrictions. Setbacks are universally used by local and state governments and have been upheld many times in Wisconsin courts. This particular one will enhance safety and preserve the Department's investment in the highway should a larger facility be needed in the future mainly due to new development causing congestion and safety problems with the existing facility, as well as protecting the property owner from possible relocation of the highway to another location or the relocation of the development on the property. The setback can also protect the community from the disruption that can be caused when a highway is relocated or businesses are relocated. Limited improvements will be permitted within the setback area.**

7. A procedure needs to be established to enable the review of all submittals within a reasonable time frame. **The rule was revised incorporating a procedure for review of all submittals within 20 days. Speakers at the hearing indicated that 20 days seemed reasonable.**
8. There are some concerns over whether or not review fees should be charged. **No substantive reasons were given to cause the Department to rethink this portion of the rule. The fees are expressly authorized by statute.**
9. There was concern over who would be doing the reviews, particularly for land divisions other than subdivisions. **Except for connecting highways where the Department may allow the review to be done by the municipality with jurisdiction, through written agreement, the reviews will be done by Departmental staff.**

#### Responses to Utility Comments on Trans 233

1. Utility companies and organizations objected to the requirement that the Department "approve" a utility installation within the setback before they could be compensated for moving it for a future highway project. They proposed that the utility company only needed to "notify" the Department to retain compensability. They felt there would be no incentive for the Department to approve any such installations and also felt it could eventually lead to requiring a permit and a fee. They saw the approval as unnecessary except where a highway project was planned. **The revised rule uses an approach worked out jointly with the Wisconsin Utilities Association and the Department. The utility company will notify the Department when it plans to install facilities within a setback. The Department will notify the utility whether a project is planned and will work with it to find a location within the setback where the facility will not need to be relocated. If the two organizations cannot avoid or mitigate the conflict with the planned highway project and the utility company decides to proceed, the Department may determine that if the anticipated conflict develops that requires the new installation to move due to the planned highway project, the Department will not be required to pay the cost of the utility move. The Department must record a document with the county register of deeds describing the property and its written notice to the utility if the Department wants to perfect this outcome.**
2. Utility companies wanted a reasonable time period before utility project commencement in which to submit notices and plans to the Department for utility work within the setback, and utilities wanted a set reasonable time for the Department to respond to the notice and plans in order for the Department to notify the utilities whether any conflict existed with planned highway projects. **A flexible 30 calendar day time normal frame was developed, with no less than 5 days for routine utility work review, and 60 days for major utility work review. The**

**Department believes the flexible normal approach, 5, 30 and 60 days, will be most reasonable for all concerned and the utilities have concurred.**

(c) List of Persons who Appeared or Registered at Public Hearing. The following persons **spoke in opposition** to the proposed rule:

Daniel W. Beighley, Director of Wausau Operations, Wisconsin Fuel & Light Company, 211 Forest Street, Wausau, WI 54403.

Phillip D. Ferris, Staff Attorney, Alliant-Wisconsin Power & Light Company, 222 West Washington Avenue, Madison, WI 53703.

Nick George, Vice President, Government Relations, Wisconsin Utilities Association, P. O. Box 2117, Madison, WI 53701. (Also submitted written statement)

Donald Gordon, Consultant, 5433 Lakeview Drive, Greendale, WI 53129-1931. (Also submitted written statement)

David J. Jenkins, Manager, Electric Division, Wisconsin Federation of Cooperatives, 30 West Mifflin Street, Madison, WI 53703.

William C. Jung, County Surveyor, LaCrosse County, 400 North 4<sup>th</sup> Street, County Administration Building, LaCrosse, WI 54601.

Howard F. Licht, Surveyor, Held & Associates, Inc., 6601 Grand Teton Plaza, Madison, WI 53719.

Arden T. Sandsnes, Vice President, Royal Oak Engineering, 5610 Medical Circle, #6, Madison, WI 53719.

Peter Sveum, Principal, Sveum Enterprises, 625 West Main Street, Stoughton, WI 53589.

Arlen Thayse, OSP Engineer, Northeast Telephone Company, P. O. Box 860, Pulaski, WI 54162-0860. (Also representing Wisconsin State Telecommunications Association)

The following persons **registered in opposition** to the proposed rule:

Mike Cauble, Attorney, Ameritech, 722 North Broadway, Milwaukee, WI 53217.

Jerry Humphrey, Right of Way Manager, Ameritech-Wisconsin, N17 W24300 Riverwood Drive, Waukesha, WI 53188.

Carl Lemmer, Manager, Real Estate, Wisconsin Gas Company, 5400 North Green Bay Avenue, Milwaukee, WI 53209.

Peggy L. Moe, Administrator, Joint Use/ESMT, GTE North, P. O. Box 49, Sun Prairie, WI 53590.

James J. Palzkill, Supervisor, Road Moves and Permitting, Alliant Utilities, Wisconsin Power & Light, 222 West Washington Avenue, Madison, WI 53713.

Kathleen Thompson, Regulatory Analyst, Wisconsin State Telecommunications Association, 6602 Normandy Lane, Madison, WI 53719.

Noranna Vincent, Utility Coordination Consultant, Wisconsin Public Service Corp., P. O. Box 19001, Green Bay, WI 54307.

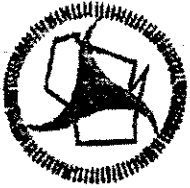
The following persons **registered for information**:

John P. Casucci, R.L.S., Project Manager, National Survey & Engineering, 16745 West Bluemound Road, Brookfield, WI 53005.

Matthew J. Janiak, President, Wisconsin County Surveyors Association, Inc., 721 Oxford Avenue, Room 1510, Eau Claire, WI 54703.

(d) **Response to Legislative Council Recommendations.** The Department made all changes and clarifications recommended by the Legislative Council.

(e) **Final Regulatory Flexibility Analysis.** Section 236.12(7), Stats., allows the Department to establish by rule reasonable service fees for all or part of the costs of the activities and services provided by the Department under that chapter of the statutes. Thus, this proposed rule also establishes fees to cover the Department's costs for reviewing the documents related to land divisions. Both the district and central offices must invest considerable time in verifying and field reviewing each map. An estimation of the amount of time and costs involved determined that \$110 is the average cost for this review. In the past, the department has always done this review gratis but, in this current climate of fiscal responsibility, it is felt that the cost should be borne by those creating the need for the review. This charge will be imposed on those who prepare the documents for review. Surveyors, developers and consultants would normally prepare the documents on behalf of the owners. The \$110 cost would, in all likelihood, be passed on the owners, some of whom will be small businesses that may recover the costs through the development.



## Wisconsin Department of Transportation

September 30, 1997

TRANSPORTATION DISTRICT 1  
2101 Wright Street  
Madison, WI 53704-2553

Telephone (608) 246-3800  
FAX (608) 246-7885

MR. ROBERT B. DVORAK  
DVORAK BROTHERS, LLC  
3028 COUNTY HIGHWAY "B"  
STOUGHTON, WI 53589

### SUBJECT: DVORAK'S ADDITION TO THE CITY OF STOUGHTON

Dear Mr. Dvorak:

We have reviewed the site plan for your proposed motel by U.S.H 51, in Stoughton.

We like the idea that the motel's entrance is to be from the Nygaard Street, not from highway 51. We also like the inner connectivity between the adjacent mall and the motel's parking lots.

We are concerned about the parking spaces which fall within the setback line. According to WisLaw under Trans. 233.08 (please see the attached sheet), there shall be no improvements or structures placed between the highway and the setback line. It appeared from your conceptual site plan that minimal parking will be provided for the motel and therefore parking within the setback will be necessary for business viability. Our concern is that if we need to purchase additional lands for a HWY 51 expansion, any loss of parking spaces would create a severe hardship and damage to the motel's property.

Therefore we suggest you to rework the site plan and redesign your parking spaces such that motel's owner does not lose any business in future. We think lot # 20 would be just perfect for your additional parking spaces, and would also allow for more green space within your site plan. We would also like to suggest constructing a sidewalk along Nygaard Street, which will not only keep pedestrians off the highway but also will be helpful for bicyclists.

If you have any question or concerns please feel free to call me @ 608-246-3868 or Matt Hintze @ 608-246-5357. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Norman DeVries".

Norman DeVries, P.E.  
Planning Engineer

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

(2) The commission may require that such temporary street connections be altered or closed by the appropriate parties or authorities at a later date in order to achieve a desirable access pattern. The street connection shall be prominently labeled "Temporary Street Connection" on the plat, and the following restriction shall be lettered on the plat:

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

(3) When such a temporary street connection is granted, the subdivider shall dedicate a frontage road or a satisfactory alternative, to provide for a present or future pattern of access in accordance with the requirements of s. Trans 233.06 (2).

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56; corrections in (1) and (3) made under s. 13.93 (2m) (b) 4, Stats., Register, June, 1989, No. 402.

**Trans 233.08 Setback requirements.** (1) There shall be a minimum building setback 110 feet from the centerline of the state trunk highway or 50 feet outside the nearer right-of-way line, whichever is more restrictive. However, if the local unit of government has a uniform setback ordinance which requires a minimum building setback for state trunk highways equal to or greater than 100 feet from the centerline or 42 feet from the nearer right-of-way line, whichever is more restrictive, the local ordinance shall govern for the sake of consistency; provided that the local unit of government shall allow no variances or exceptions for platted areas abutting state trunk highways without prior approval of the commission. There shall be no improvements or structures placed between the highway and the set back line.

(2) The setback requirement shall be shown on the plat and shall be a restriction for the benefit of the public under s. 236.293, Stats.

(3) The commission may require that a frontage road be set back from the present highway to allow for future highway improvement. When this is the case, the area between the highway and the frontage road shall be marked "Dedicated for highway purposes," and shall be deemed so dedicated.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

**Trans 233.09 Physical requirements of access.** Rules governing construction requirements of driveways and street openings will be found in ch. Hy 31. Detailed specifications may be obtained at the district offices of the commission.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

**CORRESPONDENCE/MEMORANDUM** \_\_\_\_\_ **State of Wisconsin**

**DATE:** November 5, 1997

**TO:** District Planning Chiefs  
**Rewey, Michael** District 1  
**FRIEDE, EDWARD** District 2  
**HOLLISTER, JOSEPH** District 3  
**Fredrickson, Bruce** District 4  
**Brunner, Gary** District 5  
**Beekman, Marlin** District 6  
**Wambold, Edward** District 7  
**Peterson, Daniel** District 8

**THROUGH:** Robert Bovy  
Chief, Design Services and Quality Management Section

**FROM:** Bonnie Tripoli  
Access Management Coordinator

**SUBJECT:** Setback Areas on Subdivision Plats

It has been noted that in subdivisions, setbacks are not being enforced in a manner necessary to preserve the setback area for future use by the Department. Beginning immediately the Department is notifying surveyors on all new plats of the following information.

*Section 233.08 of the abovementioned Rules relates to the **highway** setback line which must appear on the face of the plat. This **highway** setback line should be shown at the distance required in this section. A note stating the following shall be added to the sheet containing the graphic showing the setback.*

*"No improvements or structures are allowed between the right-of-way and the setback line. Improvements include but are not limited to signs, parking lots, parallel driveways, wells, septic systems, drainage facilities, etc, it being expressly intended that this restriction shall constitute a restriction for the benefit of the public according to section 236.293, Wisconsin Statutes and shall be enforceable by the Department of Transportation. Contact the Wisconsin Department of Transportation District office for more information. The phone number may be obtained by contacting your County Highway Department."*

Please note that the Administrative code does allow variances to this regulation. The general rule to consider is if the highway is in an area that will most likely require future improvements, then a variance should not be allowed. If it is in an area where there will not be an improvement in the foreseeable future or if an improvement is planned and a variance would still be considered reasonable (if it would not interfere with the project) then possibly it could be allowed but **only** if an agreement is signed by the owners that DOT will pay no damages for anything built within the setback or on anything impacted by the removal of the improvements constructed within the setback. (For example, if DOT

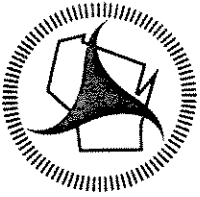
November 4, 1997  
Setback Areas

were to acquire an area in the setback where several parking spaces had been built, which in turn creates such hardship upon the business that it could no longer function at that location, then normally the DOT would have to relocate the business. In this case the DOT would not pay for the parking spaces lost nor would it pay for relocating the business.) This agreement would be a recorded document to run with the property as a type of deed restriction. Our office will be working with OGC on language for such an agreement. (Please contact us before attempting to use this variance.) These variances need to be approved by the Director of the Bureau of Highway Development.

Please pass this on to the personnel in your district who review subdivision plats. Thank you.

If you have any questions please call me (Bonnie Tripoli) at (608) 266-2372.





## Wisconsin Department of Transportation



Tommy G. Thompson  
Governor

Charles H. Thompson  
Secretary

OFFICE OF GENERAL COUNSEL  
P. O. Box 7910  
Madison, WI 53707-7910

November 20, 1998

**FAXED**  
11-20-98

The Honorable Senator Alan Lasee  
Chairman, Senate Transportation Committee  
Room 109 South  
State Capitol  
Madison, Wisconsin 53702

The Honorable Representative David Brandemuehl  
Chairman, Assembly Committee on Highways & Transportation  
Room 317 North, State Capitol  
Madison, Wisconsin 53702

**RE: Proposed Administrative Rule  
Chapter Trans 233, Wisconsin Administrative Code  
Clearinghouse Rule No. 98-121**

Gentlemen:

The Wisconsin Department of Transportation is submitting the following germane amendment to Clearinghouse Rule 98-121, relating to division of land abutting a state trunk highway or connecting highway:

**On page 8**, under Trans 233.015(6), the definition for "public utility" should read:

(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.

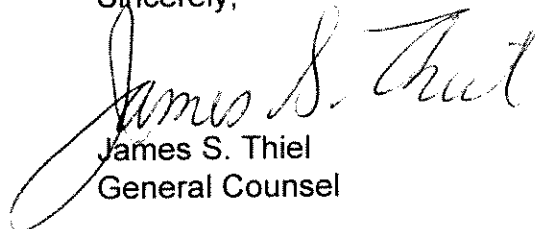
The Department was contacted by the Wisconsin Cable Communications Association asking whether cable TV facilities are subject to the setback requirements. It is the intent of the Department that the requirements of the rule apply to cable TV facilities.

Accordingly, pursuant to §227.19(4)(b)3, Stats., the Department proposes the germane modification to this proposed rule as shown on the attached redlined version. The preparation feature used shows the changes made by shading the new language. Please replace page 8 originally submitted with the attached replacement page.

This germane amendment will not extend the review period for either committee.

Thank you for your consideration of this proposal.

Sincerely,



James S. Thiel  
General Counsel

JST/JAJ/dim

cc: Senator Robert Welch  
Representative Glenn Grothman  
Gary Poulson  
Jim Gruendler  
Bob Bovy  
Bonnie Tripoli  
Thomas E. Moore, Director/Wisconsin Cable Communications Association

(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.

(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.

(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.

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

(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

December 1, 1997

Mr. Norman DeVries, P.E.  
State of Wisconsin, District 1  
Department of Transportation  
2101 Wright Street  
Madison, WI 53704-2583

Dear Mr. DeVries:

I am quite concerned whether or not any progress is being made on the problem we have regarding the use of the building setback area on our property adjacent to Highway 51.

We first contacted you in early September and now, nearly three months later we seem to be no closer to a solution than when we started. At our meeting on October 31st, you stated that within a week or ten days you would come up with a satisfactory agreement with the developer of the motel being built and following that you would make a decision on what can or cannot be done on the remaining lots. To date none of us have heard anything.

I know that many people in your department get involved with decision making, but it seems that this problem is being made more complicated than it really is. It would be so simple to follow Mayor Helen Johnson's suggestion to permit all approved plats to follow the original interpretation of the setback rule and any new plats would have to follow the new interpretation of the rule. Then, any new plats being designed can take into consideration the fact that driveways and parking lots will not be allowed in the setback area of lots along major highways.

Repeating what I said in an earlier letter, our lots were planned and designed with the intention of using the setback area for driveways and parking lots. Anything less than this will greatly effect the value of the lots. Secondly, not knowing what we can or cannot do makes it near impossible to market the lots. To go through the process of determining what is or is not allowed on each and every lot would be totally unacceptable.

Please let us know what is happening, we are anxious to get this matter settled.

Sincerely,



Robert B. Dvorak  
Dvorak Brothers, LLC  
3028 County Highway B  
Stoughton, WI 53589-3226

cc: John Haverberg  
Mayor Helen Johnson

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

(2) The commission may require that such temporary street connections be altered or closed by the appropriate parties or authorities at a later date in order to achieve a desirable access pattern. The street connection shall be prominently labeled "Temporary Street Connection" on the plat, and the following restriction shall be lettered on the plat:

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

(3) When such a temporary street connection is granted, the subdivider shall dedicate a frontage road or a satisfactory alternative, to provide for a present or future pattern of access in accordance with the requirements of s. Trans 233.06 (2).

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56; corrections in (1) and (3) made under s. 13.93 (2m) (b) 4, Stats., Register, June, 1989, No. 402.

**Trans 233.08 Setback requirements.** (1) There shall be a minimum building setback 110 feet from the centerline of the state trunk highway or 50 feet outside the nearer right-of-way line, whichever is more restrictive. However, if the local unit of government has a uniform setback ordinance which requires a minimum building setback for state trunk highways equal to or greater than 100 feet from the centerline or 42 feet from the nearer right-of-way line, whichever is more restrictive, the local ordinance shall govern for the sake of consistency; provided that the local unit of government shall allow no variances or exceptions for platted areas abutting state trunk highways without prior approval of the commission. There shall be no improvements or structures placed between the highway and the set back line.

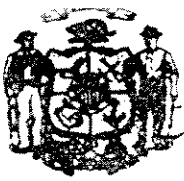
(2) The setback requirement shall be shown on the plat and shall be a restriction for the benefit of the public under s. 236.293, Stats.

(3) The commission may require that a frontage road be set back from the present highway to allow for future highway improvement. When this is the case, the area between the highway and the frontage road shall be marked "Dedicated for highway purposes," and shall be deemed so dedicated.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

**Trans 233.09 Physical requirements of access.** Rules governing construction requirements of driveways and street openings will be found in ch. Hy 31. Detailed specifications may be obtained at the district offices of the commission.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.



## 1997 BILL

1 **AN ACT to amend** 32.05 (1)(a), 32.05 (7)(a), 59.43 (1)(d), 59.43 (8), 83.08 (1), 84.09  
2 (1) and 114.33 (6); and **to create** 59.43 (2) (k), 59.43 (5) (b) 4., 84.095 and  
3 236.015 of the statutes; **relating to:** transportation project plats.

---

### *Analysis by the Legislative Reference Bureau*

Under current law, whenever the department of transportation (DOT) or a city, village, town or county (municipality) considers it necessary to acquire private land for a transportation facility, DOT or the municipality must order the acquisition of the lands and in such order or on a map or plat show the old and new locations of the transportation facility and the lands and interests required. DOT or the municipality must file a copy of the order or map with the county clerk of each county in which lands or interests in land affected by the project are located. In general, DOT and municipalities may acquire the needed private lands by negotiated sale or by the process of condemnation. Throughout the acquisition process the land is generally referred to by its legal description or tax parcel identification number.

This bill creates an alternate procedure for identifying private lands necessary for public transportation or transportation-related improvement projects. Under the bill, DOT or a municipality may file or record a plat that depicts an order authorizing a project in the office of the register of deeds, where land records are customarily kept. After filing or recording a plat, private lands or interests in land that are needed for the project may be described adequately in legal documents by referring to the plat and the land's depiction on the plat, rather than to the legal description or tax parcel identification number of the affected lands.

**BILL**

The bill specifies the required detail, format and contents of the plats, including a description of each right, title or interest in land to be acquired for the project, and the procedures for amending or correcting a plat. The bill requires registers of deeds to accept such plats for filing or recording and to index the plats. The bill prohibits any state agency or municipality from requiring review or approval of the plat as a condition of filing or recording if the plat meets the requirements specified in the bill. The bill requires plats submitted by a municipality to include a certificate of a licensed land surveyor that the plat is an accurate depiction of the project and the lands affected by the project.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 32.05 (1) (a) of the statutes is amended to read:

2           32.05 (1) (a) **Except as provided under par. (b),** the county board of supervisors  
3 (or the county highway committee when so authorized by the board), city council,  
4 village board, town board, sewerage commission governing metropolitan sewerage  
5 district created by ss. 66.22 or 66.88 to 66.918, secretary of transportation, a  
6 commission created by contract under s. 66.30, housing authority under ss. 66.40 to  
7 66.404, local exposition district created under subch. II of ch. 229, redevelopment  
8 authority under s. 66.431 or community development authority under s. 66.4325  
9 shall make an order providing for the laying out, relocation and improvement of the  
10 public highway, street, alley, storm and sanitary sewers, watercourses, mass transit  
11 facilities, airport, or other transportation facilities, gas or leachate extraction  
12 systems to remedy environmental pollution from a solid waste disposal facility,  
13 housing project, redevelopment project, exposition center or exposition center  
14 facilities which shall be known as the relocation order. This order shall include a map  
15 or plat showing the old and new locations and the lands and interests required. A  
16 copy of the order shall, within 20 days after its issue, be filed with the county clerk

**BILL**

1 of the county wherein the lands are located or, in lieu of filing a copy of the order, a  
2 plat may be filed or recorded in accordance with s. 84.095.

3 **SECTION 2.** 32.05 (7) (a) of the statutes is amended to read:

4 32.05 (7) (a) The award shall be in writing. ~~It~~ Except as provided in sub. (1)  
5 (b), the award shall state that it is made pursuant to relocation order of (name of  
6 commission, authority, board or council having jurisdiction to make the  
7 improvement) No. .... dated .... filed in the office of the County Clerk, County of .....  
8 except as provided under sub. (1) (b) or pursuant to transportation project plat no.  
9 .... dated .... filed or recorded in the office of register of deeds, .... County. If a  
10 relocation order is not required under sub. (1) (b), the award shall name the  
11 condemnor. It shall name all persons having an interest of record in the property  
12 taken and may name the other persons. It shall describe such property by legal  
13 description, or by the parcel number shown on a plat filed or recorded under s. 84.095,  
14 and state the interest therein sought to be condemned and the date when actual  
15 occupancy of the property condemned will be taken by condemnor. The award shall  
16 also state the compensation for the taking which shall be an amount at least equal  
17 to the amount of the jurisdictional offer. The award shall state that the condemnor  
18 has complied with all jurisdictional requirements. An amended award for the  
19 purpose of correcting errors wherein the award as recorded differs from the  
20 jurisdictional offer may be made, served and recorded as provided by this section.

21 **SECTION 3.** 59.43 (1) (d) of the statutes is amended to read:

22 59.43 (1) (d) Keep the books and indexes mentioned in this section and in s.  
23 84.095 in the manner required.

24 **SECTION 4.** 59.43 (2) (k) of the statutes is created to read:

25 59.43 (2) (k) For recording a transportation project plat under s. 84.095, \$25.



## BILL

1           **SECTION 5.** 59.43 (5) (b) 4. of the statutes is created to read:

2           59.43 (5) (b) 4. A transportation project plat that conforms to s. 84.095.

3           **SECTION 6.** 59.43 (8) of the statutes is amended to read:

4           59.43 (8) **REQUIRED SIGNATURE AND SEAL ON SURVEY DOCUMENT FOR FILING OR**  
5 **RECORDING.** It is unlawful for the register of deeds of any county or any proper public  
6 authority to file or record a map, plat, survey or other document within the definition  
7 of land surveying, which does not have impressed thereon, and affixed thereto, the  
8 personal signature and seal of a registered land surveyor under whose responsible  
9 charge the map, plat, survey or other document was prepared. This subsection does  
10 not apply to any deed, contract or other recordable document prepared by an  
11 attorney, or to a transportation project plat that conforms to s. 84.095 and that is  
12 prepared by a state agency.

13           **SECTION 7.** 83.08 (1) of the statutes is amended to read:

14           83.08 (1) The county highway committee may acquire by gift, devise, purchase  
15 or condemnation any lands or interests therein for the proper improvement,  
16 maintenance, relocation or change of any county aid or other highway or street or any  
17 bridge thereon which the county is empowered to improve or aid in improving or to  
18 maintain. The county highway committee may purchase or accept donation of  
19 remnants of tracts or parcels of land remaining at the time or after it has acquired  
20 portions of such tracts or parcels by purchase or condemnation where in the  
21 judgment of such committee such action would assist in rendering just compensation  
22 to a land owner, a part of whose lands have been taken for highway purposes, and  
23 would serve to minimize the overall cost of such taking by the public. Whenever the  
24 committee deems it necessary to acquire any such lands or interests therein for any  
25 such purpose, it shall so order and in such order or on a map or plat show the old and

**BILL**

1 new locations and the lands or interests required, and shall file a copy of the order  
2 and map with the county clerk or, in lieu of filing a copy of the order and map, may  
3 file or record a plat in accordance with s. 84.095. The committee shall endeavor to  
4 obtain easements or title in fee simple by conveyance of the lands or interests  
5 required, at a price, including damages, deemed reasonable by the committee. The  
6 instrument of conveyance shall name the county as grantee and shall be filed with  
7 the county clerk and recorded in the office of the register of deeds.

8 **SECTION 8.** 84.09 (1) of the statutes is amended to read:

9 84.09 (1) The department may acquire by gift, devise, purchase or  
10 condemnation any lands for establishing, laying out, widening, enlarging,  
11 extending, constructing, reconstructing, improving and maintaining highways and  
12 other transportation related facilities, or interests in lands in and about and along  
13 and leading to any or all of the same; and after establishment, layout and completion  
14 of such improvements, the department may convey such lands thus acquired and not  
15 necessary for such improvements, with reservations concerning the future use and  
16 occupation of such lands so as to protect such public works and improvements and  
17 their environs and to preserve the view, appearance, light, air and usefulness of such  
18 public works. Whenever the department deems it necessary to acquire any such  
19 lands or interests therein for any transportation related purpose, it shall so order and  
20 in such order or on a map or plat show the old and new locations and the lands and  
21 interests required, and shall file a copy of the order and map with the county clerk  
22 and county highway committee of each county in which such lands or interests are  
23 required or, in lieu of filing a copy of the order and map, may file or record a plat in  
24 accordance with s. 84.095. For the purposes of this section the department may  
25 acquire private or public lands or interests in such lands. When so provided in the

**BILL**

1 department's order, such land shall be acquired in fee simple. Unless it elects to  
2 proceed under sub. (3), the department shall endeavor to obtain easements or title  
3 in fee simple by conveyance of the lands or interests required at a price, including  
4 any damages, deemed reasonable by the department. The instrument of conveyance  
5 shall name the state as grantee and shall be recorded in the office of the register of  
6 deeds. The purchase or acquisition of lands or interests therein under this section  
7 is excepted and exempt from s. 20.914 (1). The department may purchase or accept  
8 donations of remnants of tracts or parcels of land existing at the time or after it has  
9 acquired portions of such tracts or parcels by purchase or condemnation for  
10 transportation purposes where in the judgment of the department such action would  
11 assist in making whole the landowner, a part of whose lands have been taken for  
12 transportation purposes and would serve to minimize the overall costs of such taking  
13 by the public.

14 **SECTION 9.** 84.095 of the statutes is created to read:

15 **84.095 Transportation project plats.** (1) DEFINITIONS. In this section:

16 (a) "Parcel" means one or more pieces of land, or interests or rights in land,  
17 under the same ownership or control to be acquired for a project and depicted on a  
18 plat.

19 (b) "Parcel number" means a unique number assigned to each parcel depicted  
20 on a plat.

21 (c) "Plat" means a map that is prepared for a project, or a part of a project, and  
22 that consists of a single sheet.

23 (d) "Project" means a public transportation or transportation-related  
24 improvement project.

**BILL**

1 (e) "Project number" means a unique number assigned to the project by the  
2 department or the city, village, town or county that is undertaking the project.

3 (f) "Remainder interest" means land, or an interest or right in land, that is not  
4 to be acquired for a project, but that is under the ownership or control of a person who  
5 owns or controls a parcel.

6 (2) FILING OR RECORDING PLATS. (a) The department, or a city, village, town or  
7 county, may submit any order or resolution relating to a project in the form of a plat  
8 for filing or recording in the office of the register of deeds in the county in which the  
9 parcel is located. The plat shall be filed or recorded within 20 days after the plat is  
10 signed under sub. (4) (a) 4. The register of deeds shall file or record any plat  
11 submitted under this subsection as a transportation project plat. A project  
12 authorized by an order or resolution may be described in more than one plat.  
13 Whenever a project is described in more than one plat, each plat may be submitted  
14 separately for filing or recording.

15 (b) 1. Plats filed or recorded under this section are for parcel delineation  
16 purposes only and do not effect a transfer or encumbrance of any title to real or  
17 personal property.

18 2. Submitting a plat for filing or recording under this section satisfies the  
19 requirements of ss. 32.05 (1), 83.08 (1), 84.09 (1) and 114.33 (6) with respect to filing  
20 with the county clerk or county highway committee any orders, resolutions, maps or  
21 plats for a project.

22 (3) AMENDING AND CORRECTING PLATS. (a) An order, resolution or plat filed or  
23 recorded under this section may be amended or vacated only by the entity that  
24 submitted the order, resolution or plat for filing or recording. Any amendment or  
25 vacation of an order, resolution or plat filed or recorded under this section may be

**BILL****SECTION 9**

1 filed or recorded. The office of the register of deeds shall make suitable notations on  
2 the plat affected by an amendment or vacation that is filed or recorded. The register  
3 of deeds shall number any amendments to a plat consecutively in the order filed or  
4 recorded and shall describe each amendment as follows:

5 Amendment .... (number) of transportation project plat .... (project number),  
6 recorded in volume .... (number) of transportation project plats, page .... (number),  
7 on .... (date), .... (county name) register of deeds, and located in .... (quarter section,  
8 section, township and range; recorded private claim; or federal reservation).

9 (b) Corrections to a plat may be made only by the entity that submitted the plat  
10 for filing or recording and only if the correction does not affect the interests or rights  
11 to be acquired. Corrections to a plat shall be made by filing or recording with the  
12 register of deeds an affidavit of correction that identifies the affected plat and states  
13 the defect in or change to the plat along with the correct information. The register  
14 of deeds shall make suitable notations on the plat to which the affidavit refers. The  
15 record of the affidavit of correction, or a certified copy of the record, is prima facie  
16 evidence of the facts stated in the affidavit.

17 (4) PLAT DETAIL AND FORMAT. (a) No plat may be filed or recorded in any office  
18 of a register of deeds unless the plat includes a certification that it contains all of the  
19 following, either as part of the drawing or written elsewhere on the plat:

20 1. An official order or resolution of the department, city, village, town or county  
21 authorizing the project.

22 2. The project number.

23 3. The plat number, the date on which the plat was prepared and the signature  
24 of the person under whose direction the plat was prepared.

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1           4. The signature of the person authorized by the department or the city, village,  
2 town or county to sign the plat.

3           5. A scale, north arrow and basis of reference.

4           6. The metric conversion factor, if applicable.

5           7. The coordinate reference, if applicable.

6           8. The existing and new locations of the transportation facility.

7           9. The delineation of each parcel. For each parcel, a complete description of the  
8 following shall be included:

9           a. The parcel number.

10          b. The right, title or interest in land to be acquired.

11          c. The name of the owner of record.

12          d. The approximate area of the parcel.

13          10. The approximate area of each remainder interest.

14          11. Reference to platted land surveys or other surveys of record and the  
15 locations of known monuments established for such surveys.

16          12. The locations of known public land survey monuments.

17          (b) In addition to the information required under par. (a), a plat for a highway  
18 project shall include the following:

19           1. The designation of the highway and any adjacent or intersecting streets or  
20 highways by name, number or letter.

21           2. A description of the reference line for the highway by bearing and distance.

22           3. The location of the highway reference line by bearing and distance from a  
23 boundary line of a section, if known, or from a recorded private claim or federal  
24 reservation.

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1           4. A description of the highway right-of-way boundaries by bearing and  
2 distance.

3           5. The locations of existing reference lines and right-of-way lines.

4           (c) Notwithstanding its depiction on a plat, the boundary of a parcel extends  
5 to the boundary of the adjoining property parcel or body of water.

6           (5) SURVEYOR'S CERTIFICATE. A plat prepared for filing or recording under this  
7 section shall include a certificate of a land surveyor registered under s. 443.06 that  
8 the plat is a correct representation of the project described and that the identification  
9 and location of each parcel can be determined from the plat. This subsection does not  
10 apply to plats prepared by the department.

11           (6) PLAT DIMENSIONS AND PAPER. (a) No plat may be filed or recorded in the office  
12 of a register of deeds unless the plat has a binding margin of 1.5 inches wide and a  
13 one-inch margin on all other sides, and is printed on muslin-backed white paper  
14 that is 22 inches wide by 30 inches long with nonfading black image or reproduced  
15 with photographic silver haloid image on double matt polyester film of not less than  
16 4 mil thickness. A plat that is submitted for filing or recording shall contain a blank  
17 space at least 2.5 inches by 2.5 inches in size for use by the register of deeds.

18           (b) The requirements of s. 59.43 (2m) do not apply to plats submitted under this  
19 section.

20           (7) DESCRIPTION FOR PARCELS AND REMAINDER INTERESTS. (a) Whenever a plat has  
21 been filed or recorded under this section, any parcel depicted in the plat that is  
22 acquired for a project by conveyance or eminent domain proceedings shall be  
23 described as follows:

24           Parcel .... (number) of transportation project plat .... (project number), recorded  
25 in volume .... (number) of transportation project plats, page .... (number), on ....

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1 acquired and not necessary for airport improvements, with reservations concerning  
2 the future use and occupation of those lands so as to protect the airports and  
3 improvements and their environs and to preserve the view, appearance, light, air and  
4 usefulness of the airports. Whenever the secretary deems it necessary to acquire any  
5 lands or interests in lands for any of those purposes, the secretary shall so order and  
6 in the order, or on a map or plat, show the lands and interests required. The secretary  
7 shall file a copy of the order and map with the county clerk of each county in which  
8 the lands or interests are required or, in lieu of filing a copy of the order and map, may  
9 file or record a plat in accordance with s. 84.095. For the purposes of this section the  
10 secretary may acquire private or public lands or interests therein. When so provided  
11 in the secretary's order, the land shall be acquired in fee simple. Unless the secretary  
12 elects to proceed under sub. (3), the secretary shall endeavor to obtain easements or  
13 title in fee simple by conveyance of the lands or interests required at a price,  
14 including any damages, deemed reasonable by the secretary. The instrument of  
15 conveyance shall name the state as grantee and shall be recorded in the office of the  
16 register of deeds. The purchase or acquisition of lands or interests therein under this  
17 section is excepted and exempt from s. 20.914 (1). The secretary may purchase or  
18 accept donations of remnants of tracts or parcels of land existing at the time or after  
19 the secretary has acquired portions of tracts or parcels, by purchase or condemnation  
20 for airport purposes, where in the judgment of the secretary such action would assist  
21 in making whole the land owner, a part of whose lands have been taken for airport  
22 purposes and would serve to minimize the overall cost of such taking by the public.

23 SECTION 11. 236.015 of the statutes is created to read:



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1 (date), .... (county name) register of deeds, and located in .... (quarter section, section,  
2 township and range; recorded private claim; or federal reservation).

3 (b) A description under par. (a) is a sufficient legal description for purposes of  
4 s. 32.05 or 706.05 (2m) (a).

5 (c) Subsequent conveyances, mortgages and other instruments concerning a  
6 remainder interest may refer to the parcel description in par. (a) as an exception to  
7 the conveyance.

8 **(8) INDEXING OF PLATS.** (a) The register of deeds shall index plats filed or  
9 recorded under this section in the manner described in s. 59.43 (12m), whether or not  
10 the county board has enacted an ordinance requiring such an index.

11 (b) Within 3 working days after the date on which a plat is submitted for  
12 recording under this section, the register of deeds shall assign a document number  
13 and volume and page of recording for the plat and, if the person submits with the plat  
14 a properly addressed postcard for which postage had been paid, shall provide written  
15 notice of such information to the person who submitted the plat.

16 **(9) LOCAL REVIEW.** No state agency, city, village, town or county may require the  
17 review or approval of a plat as a condition of filing or recording the plat if the plat  
18 is prepared in accordance with this section.

19 **SECTION 10.** 114.33 (6) of the statutes is amended to read:

20 114.33 (6) For the purposes of carrying out this section and ss. 114.35 and  
21 114.37, the secretary may acquire by gift, devise, purchase or condemnation any  
22 lands for establishing, protecting, laying out, enlarging, extending, constructing,  
23 reconstructing, improving and maintaining airports, or interests in lands in and  
24 about airports, and after establishment, layout and completion of such  
25 improvements, the secretary may convey as provided in this subsection lands thus

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1           **236.015   Applicability of chapter.**   This chapter does not apply to  
2   transportation project plats that conform to s. 84.095.

3

(END)

We have initiated the formal Rules review process and anticipate a timeline stretching to September 1998. There will be public hearing(s) involved where concerns can be identified and aired. Staff from the Bureau of Highway Development will also be attending the Wisconsin Land Surveyor's Society meeting in January 1998 and will also arrange to meet with the League of Municipalities to discuss this issue as they both will be impacted by decisions made. There is a land use component to this issue which may require meetings with other groups.

What to do until TRANS 233 review is completed. It has been decided at the Division Administrator/Secretary's Office level that we will refrain from strict enforcement of the note-on-the-plat, no improvements requirement issued in November until formal review of TRANS 233 is completed. Therefore, the revised procedure will be:

1. Highway setback lines will still need to be shown on subdivision plats adjacent to STH right-of-way at the distances currently required by TRANS 233. This is no different than the requirement that has been in place since 1956. They should be labeled "Highway Setback" and such line is to be enforced for "structures".

2. For those areas where we know we will have highway expansion projects in the relatively near future that are shown on some form of plan indicating that we will encroach into the setback area, you can require the owner/developer not to place "improvements or structures" in the setback area that would require us to pay their cost when we buy the needed right-of-way. The interpretive note provided in November should be placed on such plats with reference to the specific lots in question. Variances are possible to this requirement but must come with a signed agreement that the Department will not have to pay for any damages to business or property because of the acquisition of the "improvements". Language for such agreements is being developed now by OGC.

A known expansion project will include any in the 6-year program requiring additional R/W, a majors project which is enumerated, and a majors or any other project for which a design study is being done or design engineering has commenced. It may also include a roadway where the current ADT shows a clear need for added lanes within the next 10-15 years provided you spend the time to do an evaluation of potential R/W needs.

3. For all other existing plats and for all new preliminary or final plats during this interim time where we do not have certain plans for needing R/W in the setback areas for highway expansion, we will not require the interpretive note on "improvements" be placed on the plats nor will we enforce its intent. For first time reviewed preliminary or final plats, you can ask the developer/owner to do so but not require it if they object.

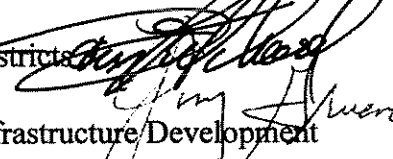

Please pass this interim policy information on to the personnel in your district who review subdivision plats. Any questions regarding this procedure may be directed to Bonnie Tripoli at (608) 266-2372. DTID staff will request your input and keep you informed as review of TRANS 233 moves forward.


**CORRESPONDENCE/MEMORANDUM** \_\_\_\_\_ **State of Wisconsin**

**DATE:** January 13, 1998

**TO:** District Directors  
Attn: District Planning and Operations Chiefs:

<b>Rewey, Michael</b>	<b>District 1</b>
<b>Friede, Edward</b>	<b>District 2</b>
<b>Hollister, Joseph</b>	<b>District 3</b>
<b>Fredrickson, Bruce</b>	<b>District 4</b>
<b>Brunner, Gary</b>	<b>District 5</b>
<b>Beekman, Marlin</b>	<b>District 6</b>
<b>Wambold, Edward</b>	<b>District 7</b>
<b>Peterson, Daniel</b>	<b>District 8</b>

**THROUGH:** Daniel Pritchard,  
Administrator, Division of Districts   
and James Gruendler  
Administrator, Division of Infrastructure Development 

**FROM:** John Haverberg  
Director, Bureau of Highway Development 

**SUBJECT:** Highway Setback Restrictions on Subdivision Plats

Enough controversy has occurred in recent months regarding interpretation and enforcement of setback provisions in TRANS 233 that we need to provide revised, interim guidance on handling the setback issue.

First, some background information. The requirement to show and follow a setback line for structures and improvements has been in effect in what is now called TRANS 233 since 1956 for plats developed adjacent to STH right-of-way. The purposes for requiring such a condition stem from Wis Statute 236 on platting of lands and include such items as the need for air, space, and light, and to control what is constructed in areas of possible future highway expansion. At issue is what we consider to be "improvements" and "structures" vs. what the surveying and developer groups think they should be. On November 5, 1997 DTID Design Services staff provided you with a note to be required on all new subdivision plats adjacent to STH right-of-way identifying prohibited uses for lands in the setback areas defined in TRANS 233. The note defined a larger group of non-setback items such as parking lots and internal drive systems that have not been enforced in the past. The surveyors and developers see this as a change of policy and, in effect, a "taking without compensation". We see it as a clarification of the Rule. Several challenges to this note requirement and its implications have occurred from developers and surveyors, one of which was discussed at an Administrators meeting earlier this fall.

TRANS 233 review. Because of the age of TRANS 233, a review and possible revisions has been suggested for some time now including but not limited to the part dealing with setbacks.