

*Shewi  
hall to me*

NOV 24 1999

**To:** Secretary Charles Thompson  
**CC:** Governor Tommy Thompson  
Senator Robson, Co-Chair Joint Committee on Administrative Rules  
Representative Grothman, Co-Chair Joint Committee on Administrative Rules  
Senator Breske, Chair Senate Transportation Committee  
✓ Representative Brandemuehl, Chair Assembly Transportation Committee

**From:** Coalition to Reform Trans 233  
Contact: Jennifer Badeau

**Date:** November 22, 1999

**Re:** Trans 233

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We, the undersigned, are concerned with recent changes to Trans 233. These changes have dramatically impacted the division and development of land along state trunk highways. Already, the rule has led to situations where large, valuable parcels of property have been rendered unusable. More of these situations will arise as additional land divisions and developments fall under the new Trans 233. As a result, we predict the state will receive more and more complaints that the state of Wisconsin is effectively taking property without compensation.

The expansion of the rule has come in two ways. First, although some version of Trans 233 has been on the books since 1956, definitions within the rule have recently been changed which dramatically limit how property owners can use their land. For example, many more things have been defined as "buildings or improvements" and thus banned within the setback area of property. Prior to Feb. 1, 1999 the concept of building or improvement was far more limited.

The second expansion of the rule is the result of stricter enforcement. Trans 233 is now being rigorously carried out by the central office of DOT as opposed to the local areas, local governments and local DOT district offices. As such, the words of Trans 233 are all that is important. No longer do local development plans come into play nor is due consideration given to what neighboring properties look like.

This strict enforcement of the rule leads us to believe DOT has an unstated goal of "land banking." In other words, DOT wants to keep property values low in the event of later condemnation for highway expansions. We object to this inappropriate goal on the part of the department and its use of Trans 233 to achieve it.

For these reasons we strongly oppose the recent changes to Trans 233. We ask the department to amend the rule, in the following areas.

### **Narrow The Definition of Structures and Improvements**

As of February 1, 1999, Trans 233 severely limited what can be placed in the setback area. Since 1956 the rule has required that "There shall be no improvements or structures placed between the highway and the setback line." But, that requirement was never understood to prohibit parking lots, signs or retaining walls. Now, the new Trans 233, specifically defines these as unacceptable, prohibited "improvements."

Again, we can't understand the purpose of so broadly defining "structures" and "improvements" except to keep the value of property within the setback area low. These listed improvements do not limit the sight lines or otherwise decrease the safety of the abutting lands. Nor are these improvements particularly permanent or costly in value. In other words, property owners should be allowed to put these in the setback area, as long as they do not compromise the safety of highway drivers. Further, owners should be compensated for condemnation of these items in the event of a highway expansion. Specifically, the following should be allowed within setbacks: air pumps, catch ponds, drainage facilities, driveways, parking lots, pay phones, septic systems, signs, storm water systems, retaining walls, and vacuum stations.

### **Clarify the Conceptual Review Process**

From reviewing DOT's brochures on Trans 233, and from discussions with the Wisconsin Realtors Association, we understand that property owners are encouraged to discuss plans for divisions and developments with the local DOT offices. Yet, there is no guarantee that the feedback provided by these district offices will subsequently be approved by the main DOT office during the final review. In other words, property owners are being asked to undergo lengthy and possibly expensive meetings with district DOT offices when there is no guarantee that the plans developed will then receive final approval from the main DOT office.

We join the Wisconsin Realtors Association in asking that the conceptual review process be formalized. Specifically, if a property owner meets with the DOT district office and submits a preliminary plat to the central DOT office that adequately addresses the concerns raised by the district office, the property owner is entitled to a certification of non-objection from the central office. Conversely, property owners should be allowed to go directly to the central office for conceptual reviews. Further, we'd like Trans 233.03(5) amended to clarify that if the department does not complete a review within 20-days of submission, the division is deemed non-objectionable by the department.

### **Grandfather Prior Approved Plats and Existing Improvements**

There are many property owners and land dividers who received plat approval prior to February 1, 1999 and prior to the new Trans 233. These property owners/dividers now risk having to go through the approval process again. That means they risk being denied approval or being required to change the plat at this later date. Likewise many, many property owners received permission to place improvements within their setback area prior to February 1, 1999 and the new Trans 233. These improvements might now have to be removed as violating Trans 233. In

the interest of fairness, DOT must explicitly state that plats or improvements approved prior to February 1, 1999 are grandfathered and deemed approved under the new rule.

**Exclude Condominium Plats from the Rule**

Finally, we agree with the Wisconsin Realtors Association that the new rule improperly includes condominium plats within the definition of "land division." Condominiums are merely a form of legal ownership, not a form of land division, and therefore should not automatically fall under the jurisdiction of the DOT.

**Per Wisconsin Statutes 227.12, Amend Trans 233**

We, the below listed associations, represent many business groups. Under Wisconsin Statutes 227.12, we ask the DOT to promulgate a new Trans 233. We ask the department to use the suggestions we've made in this letter to amend the rule. And, we ask the department to do this as soon as possible. Unfortunately, every day property divisions and developments are being impacted by this rule. Therefore, we hope that our concerns can be quickly resolved. If the department does not respond to our concerns or refuses to amend the rule, please be advised that this coalition is prepared to pursue a legislative remedy. We are already considering legislation that would repeal the recent changes in Trans 233 and that would prevent the department from prohibiting certain "improvements or structures" within setback areas.

Thank you for your consideration of this matter. We look forward to your reply. You can direct your response to Jennifer Badeau, Director of Government Affairs, Petroleum Marketers Association of Wisconsin, 121 S. Pinckney Street, Suite 210, Madison, WI 53703, phone (608)256-7555, fax (608)256-7666.

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**COALITION TO AMEND TRANS 233**

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*LSLA — Lake States Lumber Association • MEDA — Midwest Equipment Dealers Association •  
NFIB — National Federation of Independent Businesses • OAAW — Outdoor Advertising  
Association of Wisconsin • PMAW — Petroleum Marketers Association of Wisconsin •  
TLW — Tavern League of Wisconsin • TPA — Timber Producers Association of Michigan &  
Wisconsin • WACS — Wisconsin Association of Convenience Stores • WACTAL — Wisconsin  
Auto Collision Technicians Association • WATA — Wisconsin Automotive Trades Association  
• WATDA — Wisconsin Automobile & Truck Dealers Association • WATSO — Wisconsin  
Association of Truck Stop Operators • WBA — Wisconsin Builders Association •  
WEDA — Wisconsin Economic Development Association • WFA — Wisconsin Fireworks  
Association • WFC — Wisconsin Federation of Cooperatives • WGA — Wisconsin Grocers  
Association • WMC — Wisconsin Manufacturers & Commerce • WMF — Wisconsin  
Merchants Federation • WRA — Wisconsin Restaurant*  
•



**Petroleum Marketers Association of Wisconsin**  
**Wisconsin Association of Convenience Stores**

121 South Pinckney St  
Suite 210  
Madison WI 53703  
(608) 256-7555  
Fax: (608) 256-7666



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**FAX TRANSMISSION COVER SHEET:**

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Date: 1/19/00

To: Sheri R. Brandemuhl

Fax: 282-3649

Subject: Trans 233

Sender: Jennifer

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YOU SHOULD RECEIVE 2 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL .

Here's my list - except Amy Bulger is probably unavailable due to back rest.

This is what I sent to the coalition.

### Senate Trans. Committee

Wednesday, January 19, 2000

10:00 a.m. 201-SE, State Capitol

*Public Testimony Accepted*

I think we should have as many people testify at this hearing as possible -- both lobbyists and "real" people. This will be our best opportunity to show opposition to the Rule. So, the more horror stories we report, the better. Please let me know if you plan to testify.

### Assembly Trans. Subcommittee

Thursday, January 27, 2000

1:00 p.m. 225-NW, State Capitol

*This is a "working" subcommittee, not open for general testimony*

After today's briefing to Brandemuehl's Transportation Committee, and all the questions that the committee posed, Rep. Brandemuehl decided to form a "working subcommittee" on this issue. That means, he would like 3 or 4 representatives of our coalition to sit down with DOT, and a few members of the Assembly Transportation Committee (Brandemuehl, Huebsch, Stone, Liebham, Lassa, Sherman and Steinbrink) and come up with recommendations for changes to Trans 233. These recommendations would then be forwarded to the JCRAR committee.

Of course this meeting is open to the public. So, although only a few of our group may speak at the table, we are all welcome to attend.

I assume our own working group will be the ones to sit at the table (Gary Antoniewicz, Amy Boyer, Jerry Deschane, Tom Larson, Janet Swandby and myself). But I will arrange and confirm that. Anyone else wanting to sit at the table -- please call me.

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These people,  
except probably  
not Amy Boyer

- Chris Dodge

1/19/00 Senate Trans. Committee hearing  
Timing - sent to legislature in Oct.  
Delays in processing variances  
(esp. SEWI)

Grandfathering

Set-backs - keep property values low  
for future purchase of land  
for highway expansion  
takings

Variance waive future right for  
compensation in order to get  
variance

"Land-banking"

*filled with  
news*

# WFC Supply Notes

Jan. 12, 2000

Wisconsin Federation of Cooperatives

Volume 4 Issue 1

## Revenue Bonds, Added Staff Aimed at Getting PECFA Program Back on Track

A new day is dawning for the processing of PECFA reimbursement claims, thanks to recent authorization of revenue bonds for the program and legislative approval of additional staff for the Department of Commerce.

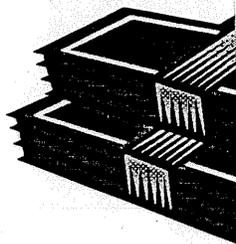
Optimism about the program has not been common among site owners, who in some cases submitted claims to the PECFA program and had to wait up to three years for reimbursements.

But lawmakers and government officials are hoping that providing substantial new financing for the program and beefing up the number of site reviewers will help get the program back on track.

WFC was part of the PECFA Stakeholders Coalition that lobbied successfully during budget bill debate for authorization of revenue bonds for PECFA program claims reimbursement.

Larry Dallia, an official with the State Executive Budget and Finance Division, recently provided WFC's John Manske with a tentative timeline for issuing up to \$270 million in revenue bonds to reimburse PECFA claims. According to Dallia:

• The financing team has been assembled and is developing the overall finance plan.



**WFC was part of PECFA Stakeholders Coalition that lobbied for authorization of revenue bonds for program claims reimbursement.**

• This month, the Wisconsin Building Commission will be asked to improve the issuance of bonds.

• Bonds will be issued late this month or in early February.

Bill Morrissey of the Department of Commerce predicts the following timeline for his department, contingent on the above timeline being met on bond action:

• PECFA reimbursement claims should start being paid from bond revenue in late February or early March, working off the approved claims file. Claims amounting to \$194 million and representing 3,267 payments have been approved.

*Dropped off by John Manske - column on Trans 233 on 2nd page.*

Commerce is in review, requests will be available for the analysis.

1999, \$58 million in re-

**ifications**

adopted the advanced

to him by the Legislature, but did make changes to several PECFA provisions before signing the budget bill into law.

Among the changes were partial vetoes made in language dealing with program deductibles and interest reimbursement.

The Legislature proposed to change deductibles for underground commercial storage tanks from \$2,500 plus 5 percent of eligible costs with a maximum deductible of \$7,500, to \$3000 for eligible costs up to \$60,000 plus 3 percent of eligible costs exceeding \$60,000.

*Please see Governor, Page 2*

**inside...**

**New coalition confronts highway rule changes  
Pesticide Database Advisory Committee convenes  
Environmental and Safety Services News  
DATCP to check retail scanning systems**

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page 6**

# ... Governor Changes PECFA Provisions

(Continued from Page 1)

The Legislature also proposed to change farm tank deductibles from the existing maximum of \$7,500 to a fixed deductible of \$5,000.

In his veto message, the governor stated, "I am partially vetoing these sections to establish a deductible of \$2,500 plus 5 percent of eligible costs for both retail and non-retail underground tanks and to return to a maximum \$7,500 deductible for farm tanks, because PECFA claimants must contribute to the fundamental changes necessary toward making the program solvent."

The Legislature proposed changes in interest reimbursement to a sliding scale based on the applicant's total gross revenue. The sliding scale ranged from the prime rate plus 1 percent to the prime rate minus 4 percent. The governor's veto message stated, "I am partially veto-

ing this section to establish a two-tier reimbursement structure because state taxpayers cannot continue to absorb significant interest cost subsidies to PECFA claimants. For an applicant with gross revenues of less than or equal to \$25 million in the previous tax year, interest costs will be reimbursed at the prime rate minus 1 percent. For an applicant with gross revenues greater than \$25 million in the previous tax year, interest costs will be reimbursed at 4 percent."

The PECFA Stakeholders Coalition had asked Governor Thompson in October 1999 to "support the PECFA compromise package (advanced by the Legislature) in its entirety." □

## Coalition to Challenge Highway Rule Changes



*Changes in Trans 233 mean that more items are now banned from being within the setback area of property.*

Changes made last year by the state Department of Transportation have led to the formation of a broad Coalition to Reform Trans 233.

The rule governs WDOT'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 on and departure from those highways. WFC is among about twenty organizations that are seeking WDOT reversal or changes to some of the rule as modified last year. WFC's Farm Supply Committee affirmed WFC's involvement at its December 15 meeting.

A WDOT briefing of the committees of the Legislature responsible for transportation issues is scheduled for January 13, 9:30 a.m., in Room 201 at the State Capitol. No public testimony will be taken at the briefing.

The heart of concern over the rule rests with the expansion of items defined as "improvements." More things are now banned from being within the setback area of property. Parking lots, signs or retaining walls are among the items not allowed in land divisions since February 1, 1999.

In addition, property owners are being asked to undergo lengthy meetings with district WDOT staff to discuss plans, but there is no guarantee that feedback collected by the district offices will be approved by the main WDOT office during the final review. □

### News Briefs

#### *Landspreading Reimbursement Discussed at ATCP 35 Meeting*

Two possible changes to ATCP 35 rules were discussed by the DATCP Agricultural Chemical Cleanup Rule Advisory Committee at its December 17 meeting. WFC's John Manske is among those serving on the committee.

One change would allow reimbursement of land rental costs associated with landspreading contaminated soil. The other would require landspreading applications to be submitted to DATCP at least two weeks in advance of the proposed landspreading date.

The possible revisions would be in addition to changes reviewed in the September 28, 1999, issue of *WFC Supply Notes*. A package of ATCP 35 changes may be ready to be presented March 14 to the DATCP board for advancing to public hearings.

#### *Farm Supply Committee to be Appointed by WFC Board*

The WFC board of directors will appoint standing committees at its next meeting, scheduled for February 10 and 11. Any person interested in serving on the WFC Farm Supply Committee should contact WFC Director of Government Relations John Manske at (608) 258-4403.

The committee meets quarterly and is made up of individuals representing WFC member regional and local farm supply cooperatives.

The committee assists in the formation of Federation positions on legislation and regulations affecting farm supply cooperatives. □

## Database Advisory Committee Begins Work

On December 15, 1999, the Department of Agriculture, Trade and Consumer Protection (DATCP) convened a Pesticide Database Advisory Committee.

While WFC is not officially represented on the committee, Federation staff will be attending the three expected future meetings during the first half of 2000 and providing input to DATCP staff.

The meeting on December 15 consisted of sharing background information, including pesticide-related data currently available for Wisconsin, and receiving presentations on pesticide database systems already in place in both New York and California.

Discussion was initiated regarding objectives for a system, and what data is needed.

Tom Dawson, director of the Wisconsin Strategic Pesticide Information Project, was quoted in the *Milwaukee Journal Sentinel* as saying, "The public wants this information. In New York State, of all the Web sites it maintains, its Web site on pesticide use was second only to the Web site on fishing information in the number of hits received."

Jim Schmitt of the Wisconsin Pest Control Association, stated, "I see it as giving up customer information that would be valuable to other businesses interested in having that location as their customer."

The biennial budget bill proposed to appropriate

\$250,000 from the agricultural chemical management fund and \$150,000 from the environmental fund for DATCP to contract for the development of a pilot pesticide sales and use database. The funds were to be placed under the control of the Legislature's Joint Finance Committee (JFC) for release upon the submittal of a plan for a database.

When the governor signed the budget bill, he partially vetoed the database proposal. His vetoes deleted funding from the agricultural chemical management fund, eliminated the requirement for DATCP to contract for the system development and changed the due date for the plan.

According to the Governor, his vetoes "will leave \$150,000 for the department to study the development of a pesticide database. This funding is adequate to accomplish the goal. I request that the department seek consensus in developing a plan for review by the Joint Committee on Finance before December 31, 2000."

Surviving budget language also states that if the JFC approves a pesticide sales and use reporting system developed by DATCP, the department shall administer a pilot program to test the system.

The second meeting of the advisory committee is scheduled for January 25 at the UW-Madison Pyle Center. □

## State Effort Responds to FQPA

By Michelle Miller, Pesticide Use and Risk Reduction Project

For the past two years, virtually all agricultural organizations in Wisconsin have been working together to respond to the challenges presented by the passage of the 1996 Food Quality Protection Act (FQPA). The Pesticide Use and Risk Reduction Project is a proactive effort to help farmers anticipate and prepare for the effects of FQPA.

In order to help farmers and their service providers be prepared for anticipated changes under FQPA, the project is:

- Identifying high priority pesticides under FQPA and the Wisconsin commodities likely to be affected.
- Developing and working with teams of UW researchers, farm organizations and farmers to identify probable alternatives and further explore research gaps.
- Developing and delivering information on the use of reduced-risk pesticides and non-pesticide options available to farmers and their organizations.
- Informing the public about initiatives Wisconsin farmers are taking to reduce pesticide use and risk.

The project is administered by the University of Wisconsin – Madison's Center for Integrated Agricultural Systems

(CIAS). Sponsoring organizations provide advice and input for the project, as do farmers themselves.

"The Project is an excellent example of cooperation between agricultural groups and the University. It is The Wisconsin Idea in action," says Rick Klemme, former CIAS director. CIAS is alerting producers to pesticides that are in the high priority group for EPA review and is trying to help them find profitable ways to adjust their practices to reduce risk.

The Project is funded by pesticide overcharge funds administered through the Wisconsin Department of Justice and with matching funds from sponsoring organizations, and UW-CIAS. The Project sponsors represent Wisconsin's general farm, major commodity, and agricultural business organizations—including WFC.

The Pesticide Use and Risk Reduction Project funds research and education on pest management options to replace high-risk pesticides. For further information, please contact Michelle Miller at (608) 262-7135, or send e-mail to [mmmille6@facstaff.wisc.edu](mailto:mmmille6@facstaff.wisc.edu) □

Public Meeting or Public Notice?**Anhydrous Ammonia System Operators Must Comply with Public Disclosure Requirements**

Last June, when farm supply cooperatives across the nation submitted Risk Management Plans to the U.S. Environmental Protection Agency, many feared the detailed plans—which included off-site consequence analyses and other information relating to anhydrous tank systems—could provide terrorists with a large database of “targets” if certain sections of the plan were posted on the Internet as originally intended.

Congress responded to those concerns with the Chemical Safety Information, Site Security and Fuels Regulatory Act, which prohibits government agencies from disclosing the off-site consequence sections of the



***A facility that meets the definition of a “small business stationary source” can comply with the public notification requirements by posting information summarizing its Risk Management Plan.***

Risk Management Plans until at least August 5, 2000.

However, the law retains the Clean Air Act public disclosure provisions by requiring affected persons to either hold a public meeting, or if applicable, utilize public posting by February 1, 2000, to summarize their RMPs, including off-site consequence information. Following the public notification process, businesses are required to send a certification of such to the Federal Bureau of Investigation by June 5, 2000.

As intended, the public notification process creates an opportunity for involving community members by creating

open dialogue. Any facility that conducts a public meeting will be in compliance, provided the necessary information is disclosed (plan summary to include off-site consequence analysis). However, small business stationary sources may publicly post the information as an alternative to conducting a public meeting.

To be defined as a small business stationary source,

certain factors must be true, including: 1) The cooperative employs less than 100 full-time equivalent employees, including contractor hours, across all facilities.

2) The facility does not emit more than 50 tons of a single, or 75 tons or more of all combined regulated pollutants, such as particulate matter 10 microns in diameter or less. Cooperatives that qualify as a small business stationary source can comply with the public notification process by publicly posting the required information.

For more information, please contact Pam Christenson with the Wisconsin Small Business Clean Air Assistance Program at (608) 267-9214. □

**Department of Commerce to Revise Flammable and Combustible Liquids Code**

The Department of Commerce has announced its intent to revise Comm 10, in light of new legislation authorizing the regulation of all CERCLA tanks, other recent legislative changes, and referenced national standards that are outdated. Comm 10 is the state code governing flammable and combustible liquids.

During the revision process, the department intends to organize an advisory committee which will include participants from the Wisconsin Federation of Cooperatives. In brief discussions with the department, identified areas of discussion for the committee will likely include the following:

- Creation of administrative rules to regulate storage tanks designed to store liquids with flashpoints greater than 200° F. This will include tanks used to store corrosive materials and other hazardous substances regulated

under CERCLA.

- Recognition of new technologies and trends within the industry through the review and adoption of up-to-date national standards.

- Evaluation of existing requirements and possible rule additions affecting aboveground bulk (inclusion of SPCC containment provisions), aviation, marina, and farm tanks.

- Update of Comm 10 to reflect current legislative changes.

Anyone with a strong technical background dealing with the installation and regulation of storage tank systems and the desire to serve as a WFC technical representative should contact Tim Clay as soon as possible at (608) 258-4384. □

## Owners of Home Heating Oil Tanks Get Break

Most residents who use heating oil for heating their dwellings were extended an exemption that economically helps preserve their energy source as an alternative to natural gas. The State Budget Bill (Wisconsin Act 9) eliminated costly maintenance and potential upgrading requirements for thousands of residential home heating oil tanks of 1,100 gallons or less in Wisconsin. Most other states do not regulate these systems at all.



**Residential owners of heating oil tanks 1,100 gallons or less are now exempt from the biannual testing provisions which were to be implemented May 1, 2001.**

Residential owners of heating oil tanks 1,100 gallons or less are now exempted from the biannual tightness testing provisions, which were to be implemented by May 1, 2001. The exemption, however, does not exclude these

tank systems from the pre-existing closure requirements if they are no longer being used. These closure requirements include agency notification and tank cleaning and removal via a certified contractor.

Although originally proposed to be included within the exemption, commercial owners of heating oil tanks used for consumptive purposes, are not exempt from the tightness testing, or for certain tanks, the upgrading provisions. Owners of these tank systems must meet certain requirements by no later than May 1, 2001, or otherwise may have to properly remove the system from service. □

## Supply Co-ops Can Assist War on Drugs

Wisconsin farm supply cooperatives are being asked to assist the Department of Justice in its campaign to aggressively pursue and prosecute persons who manufacture and distribute methamphetamine (meth). Educating and involving community members in the effort are key components of the DOJ's campaign.

WFC's Farm Supply Committee unanimously recognized the need for such efforts and is encouraging all of WFC member farm supply cooperatives to educate their employees about methamphetamine.

To assist cooperatives in this effort, the Department of Justice has prepared posters, brochures and other materials that are available upon request from the Wisconsin Federation of Cooperatives.

Though there are several ways to manufacture meth, a fairly simple procedure involving the combination of common household products with anhydrous ammonia is becoming the method of choice in Wisconsin.

Many cooperatives sell several of these products at retail outlets (ephedrine, solvents, acids, etc.) except for anhydrous ammonia. Since anhydrous is not sold as a household commodity, in most cases, anhydrous is stolen from nurse tanks or permanent storage facilities, potentially creating a serious health hazard.

"The manufacture of methamphetamine is a very dangerous and illegal activity," says Tim Clay, director of WFC's Environmental and Safety Services Program. "By acting together we can make a difference." □

## DNR Prepared to Revise Non-Point Abatement Rules

As the lead agency responsible for abating non-point pollution and regulating large animal feeding operations, the Department of Natural Resources (DNR) is preparing to advance a rewrite of the non-point abatement program.

The proposed revisions were largely shaped by the Non-Point Outreach Advisory Committee, which has been advising the departments of Natural Resources and Agriculture since the spring of 1998. A similar package of revisions affecting persons regulated by Department of Agriculture's Soil and Water Resources Management Program is expected soon.

Among the rules that will be revised or created are:

- NR 120—Establishes criteria for ranking priority watershed and lake programs.
- NR 151—Establishes run-off pollution performance standards for agricultural and non-agricultural operations.
- NR 152—Provides outline for model ordinances for storm water and construction site erosion control.
- NR 153—Outlines grant programs for rural and urban run-off abatement, including cost-sharing for agricultural corrective practices.
- NR 154—Identifies Best Management Practices and technical standards and conditions for cost sharing.
- NR 216—Amends provisions to the Storm Water Discharge Permits Program.
- NR 243—Recreates provisions regulating large animal feeding operations and other livestock operations in violation of performance standards.

For copies of these rules, contact the DNR's Carol Holden at (608) 266-0140. □

Regulatory Watch

# DATCP to Check Retail Scanning Systems



## State Update

■ **Department of Agriculture, Trade and Consumer Protection (DATCP) to Spot Check Retail Scanner Pricing Systems in January**—Bill Oemichen, administrator of DATCP's Division of Trade and Consumer Protection, advised WFC in a December 21 letter that the department intends to spot check retail scanner pricing systems for correct performance during the month of January.

"Industry experts brought to our attention a concern about the Y2K readiness of retail price scanners in Wisconsin," Oemichen wrote.

He suggested that the potential problem is limited to scanning equipment manufactured before 1997 that has not been brought into Y2K readiness. Oemichen promised to work with any retail store experiencing scanning accuracy problems.

■ **Motor Fuel Sales Rule Compromise Reached**—The DATCP board on December 14 approved final draft rules relating to retail sales of motor fuel. These rules interpret the state's Unfair Sales Act.

The issue dealt with in the amendment to ATCP 105 is that of credit card discounts offered by credit card companies to those buying a certain brand of motor fuel.

The rule clarifies that, under certain conditions, a motor fuel retailer may meet a competing credit card promotion without violating the Unfair Sales Act. However, the retailer can only offer a promotion to "meet but not beat" a credit card promotion. The retailer must also give DATCP written notice of the promotion.

This rule draft replaces one advanced earlier by DATCP that attempted to describe the retail "selling price" of motor vehicle fuel. That earlier proposal received some significant opposition at public hearings. The current version was agreed to by the organizations opposed to the earlier draft.

The rule approved by the DATCP board will now advance to legislative committees for review.

■ **Council on Recycling Reports Recommendations**—The Subcommittee on Used Oil Filter Recycling presented the Council on Recycling a list of options late last year upon finishing its year-long work on the topic. WFC has been a participant on the subcommittee.

In mid-December, the recommendations of the Council, which were somewhat different from those of the subcommittee, were distributed to the Legislature, in keeping with requirements of 1997 Wisconsin Act 243.

The Council asked the Legislature to establish a Task Force or similar body attached to the Department of Commerce, and charge it with several duties to accomplish within a year.

Among those duties would be the establishment of a public/private partnership to develop and execute a plan of action for used oil filter recycling. Goals would be required to be met within two years. A statewide ban on disposal of used oil filters by the generators will be required if the goals of the Task Force are not met.

In addition, the Council recommended: establishment of an indemnification fund to pay the cost of disposal for a used oil filter that is contaminated in such a way as to make the used oil filter unfit for recycling. The fund is to be used to repay any used oil filter collector who unintentionally receives

contaminated filters. The public/private partnership should also be charged with developing, planning and executing an education program aimed at all generators of used oil filters.

■ **DATCP to Work on Commercial Weighing and Measuring Device Rule**—At its December 14 meeting, the DATCP board approved work on the establishment of inspection standards for commercial weighing and measuring devices to improve statewide consistency.

The work on ATCP 92 is intended to establish uniform procedures for inspecting the devices, including: uniform test procedures for commercial weighing and measuring devices; uniform sealing requirements and standards for inspection frequency; uniform standards for equipment used to test weighing and measuring devices; and uniform record keeping and reporting requirements.

DATCP intends to establish training program standards, including voluntary training and certification of weights and measures technicians, including technicians employed by municipalities and the 311 licensed private service companies. □

## WFC Supply Notes

WFC Supply Notes is produced by the Wisconsin Federation of Cooperatives for its farm supply members. The newsletter is edited by WFC Government Affairs Specialist Bridget McCann-Horn. For more information, please contact WFC at 608/258-4400.

# Land Divisions Along State Highways

Trans 233 is part of the Wisconsin Administrative Code requiring that all land divisions that abut a state highway meet certain requirements. If you intend to divide land that abuts a state highway you will need to be aware of these requirements.

## What is Trans 233?

Trans 233 establishes requirements for land divisions occurring along a state highway and defines restrictions that must be followed when developing lands.

## Who does it affect?

If you own land adjacent to a state highway and are considering dividing it, you will be affected by the rule. If the portion you are dividing is away from the highway and does not require access to a highway, you still need to follow the provisions of this rule. The rule impacts land divisions occurring on or after February 1, 1999. If your property was divided prior to this date provisions of this rule do not apply.

## When do I have to contact the Department of Transportation (WisDOT)?

The rule has provisions for WisDOT to work with property owners as soon as they have an idea on how they want to divide their property. This is called a conceptual review. There is no charge for this review and only informal response is required by the district office. Conceptual review enables a developer to seek aid on how and where the safest location is for property to access a highway before expending funds for engineering. The final map will be used to create the new lots and is reviewed

for conformance by WisDOT. Any time WisDOT provides a formal review, a fee will be required. This is required for formal approval on a preliminary or a final map.

**How long is the DOT review process?**  
WisDOT has 20 days to review a land division. The period begins when WisDOT receives a complete submittal. If the division conforms to Trans 233, WisDOT issues a letter of certification. If the map is a final, it will be given an approval number which is placed on the graphic sheet of the map. If the land division does not meet requirements of the rule, an objection letter is issued explaining what parts of the rule are not being met.

## What are the major provisions of this rule?

The rule is designed to provide evaluation of a land division and its impacts upon a highway to protect the safety of the traveling public and its investment in the highway.

▶ **Review.** All land divisions must be reviewed by WisDOT for conformance including subdivision plats, county plats, condominium plats, certified survey maps, plats of survey or a plain legal description with no survey. Any methods used to divide land that is adjacent to a state highway must conform. A state highway is any numbered highway such as Interstate 90 or USH 51 or STH 73. The rule also includes connecting highways that are extensions of the rural highway through a village or city.

▶ **Access.** Direct access is generally not permitted from the newly created lots. The owner should determine alternative ways to provide access to the property. The preferred option is for the property to take access off of an alternative street. New public streets created by the land division are the second preferred alternative. Joint driveways may be allowed provided a

variance from the rule is requested and approved.

▶ **Drainage to the Highway.** Drainage from the development to the highway is closely evaluated by WisDOT. This is to ensure storm drainage coming from the new development does not negatively impact the highway. To minimize work required, discuss this item with the district office before submitting the land division for review.

▶ **Setback.** A highway setback is required only along the frontage of the property that abuts the **state** highway. (It does not apply to county highways or town roads. You will need to contact those authorities for their restrictions.) The setback must be 110' from the centerline of the highway or 50' from the right-of-way line, which ever is greater. Within this setback, structures and improvements are prohibited. These items include parking lots, septic systems, buildings, wells, retaining walls and detention ponds. The setback enables WisDOT to improve facilities in the current highway corridor without having to relocate the highway elsewhere or disrupt businesses and residences.

▶ Items that may be allowed in the setback are landscaping, fences, noise berms and movable items. Structures or improvements lawfully located in the setback area prior to the land being divided may remain if shown on the land division map.

▶ **Noise.** WisDOT will not provide noise mitigation for developments choosing to locate next to a busy highway.

▶ **Vision Corners.** Vision corners may be needed at street and driveway intersections in order to provide a clear view of oncoming traffic. If so, the land divider will be expected to dedicate land for them.

▶ **Fee.** The final major provision of the rule is the fee the department will charge for formal reviews. It is \$110.

# WisDOT District Land Division Reviewers

## DISTRICT 8

David Lamont  
System Planning Dist 8  
Dept of Transportation  
1701 N. 4th St.  
Superior, WI 54880  
(715)392-7961  
FAX: (715)392-7863

## DISTRICT 7

Corinne Durkin  
Dept of Transportation  
500 Hanson Lake Road  
P.O. Box 777  
Rhineland, WI 54501-0777  
(715)365-5766  
FAX: (715)365-5760

## DISTRICT 4

Donna Yanda  
Systems Planning  
Dept of Transportation  
2610 Industrial St  
P.O. Box 8021  
Wisconsin Rapids, WI 54494-8021  
(715)421-8341  
FAX: (715) 715-423-0334

## DISTRICT 3

David Andre  
Systems Planning  
Dept of Transportation  
944 Vanderperren Way  
P.O. Box 28080  
Green Bay, WI 54304-008  
(920)492-5681  
FAX: (920)492-5640

## DISTRICT 6

Ray Drake  
System Planning Dist  
Dept of Transportation  
718 W. Clairemont Ave.  
Eau Claire, WI 54701  
(715)836-7279  
FAX: (715)836-2807

## DISTRICT 5

Systems Planning  
Dept of Transportation  
3550 Mormon Coulee Rd.  
La Crosse, WI 54601-6767  
(608)785-9071  
FAX: (608)785-9969

## DISTRICT 2

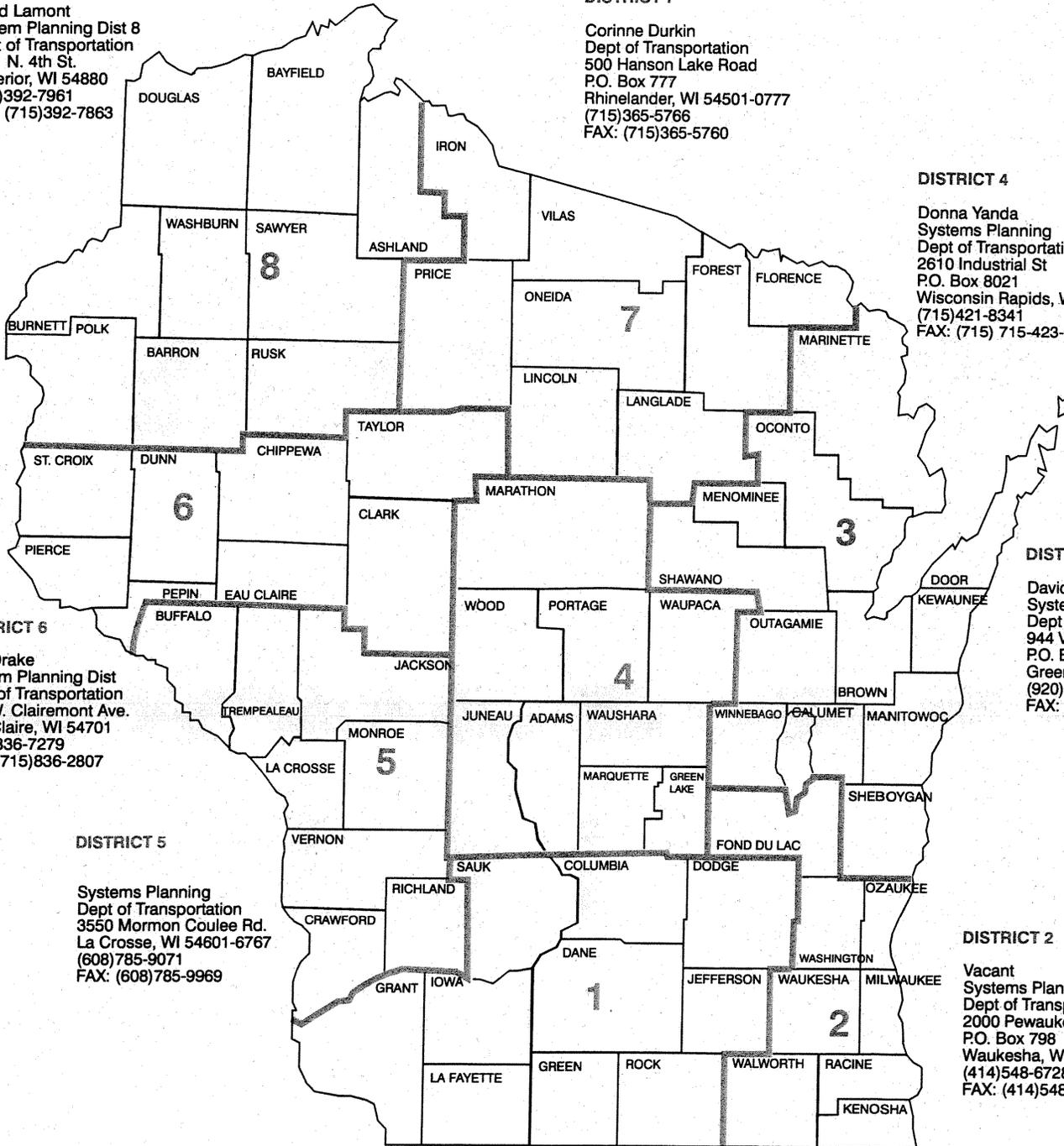
Vacant  
Systems Planning  
Dept of Transportation  
2000 Pewaukee Rd. Ste. A  
P.O. Box 798  
Waukesha, WI 53187-0789  
(414)548-6728  
FAX: (414)548-8655

## DISTRICT 1

Manojoy Nag  
Systems Planning  
Dept of Transportation  
2101 Wright Street  
Madison, WI 53704  
(608)243-3366  
FAX: (608)246-3819

## CENTRAL OFFICE

Bonnie Tripoli  
Dept of Transportation  
4802 Sheboygan Ave. Rm. 651  
P.O. Box 7916  
Madison, WI 53707-7916  
(608)266-2372  
FAX: (608)267-1862



**Request for Wisconsin Department of Transportation  
Land Division Review**  
DT1636 99

Wisconsin Department of Transportation

**See Back for Name and Address of DOT Reviewer**

Land Division Name: \_\_\_\_\_

County: \_\_\_\_\_

Submitter Name, Company & Address

Land Division Type: (Send to Office Noted in Parentheses)

- Preliminary  Final
- Subdivision (Plat Review, DOA)
- County plat (C/O)
- Condominium Plat (C/O)
- Certified Survey Map (C/O or District)
- Other (C/O or District)

Telephone: \_\_\_\_\_

FAX: \_\_\_\_\_

Explain: \_\_\_\_\_

Land Divider Name, Address and Telephone:

(C/O - Central Office, DOA - Dept. Of Administration)

**Required Information**

Register of Deeds Name, Address and Telephone:

Approving Agency (if any) Name, Address and Telephone:

**ENCLOSURES:**

- Map, Number of Sheets \_\_\_\_\_
- Document, Number of Sheets \_\_\_\_\_
- Drainage Plans and Calculations
- Fee: \$110.00 check attached, payable to Wisconsin Department of Transportation

Submitter's Receipt & Transmittal Record		Shaded Area for Office Use Only
Date Received	Date Time Limit Expires	Receipt #
Date Copies Sent		DOT Approval Number
District/Central Office		
By:	DOT Reviewer	

## Who do I contact at the department

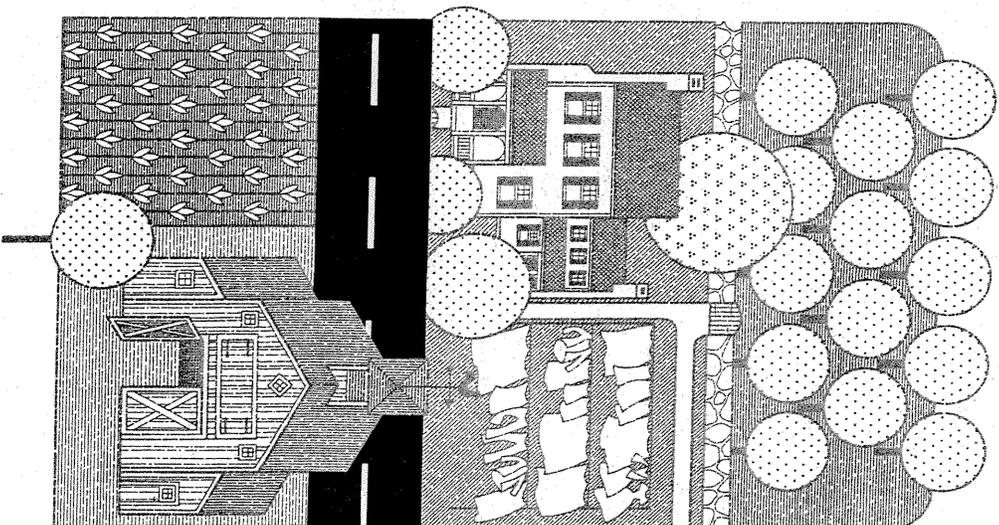
When creating a land division the contact person may vary. A district plat reviewer may provide you assistance in determining where to send the submittal. A subdivision plat must be reviewed by the Department of Administration. It routes to WisDOT all required information. County plats and condominium plats are sent to WisDOT. They are then sent to appropriate district offices for review with a formal response coming from the central office. Certified survey maps or other methods used to create minor land divisions should go directly to the district office for review. Included in this brochure is a map that indicates local district boundaries, names, addresses and phone numbers of district contact persons.

## What happens if I don't have the WisDOT review my land division?

If a land division is not reviewed by WisDOT and recorded, you will not receive a driveway or any other permit relating to the highway. The land division and property must comply with the rule before a permit is issued. At the time of a highway improvement project, WisDOT and other units of government may determine if the land division occurred on or after 2/1/99. If it did not conform to the requirements of the rule, the owner will be ineligible for compensation for any structures or improvements located within the setback area and acquired by WisDOT. The amount of compensation for other property acquired may be lower than expected. The owner may be exposed to liability for drainage damage to the highway or damage to the owner's own property from unanticipated diversion or retention of surface water. There also can be other adverse consequences relating to financing, inadequate provisions for noise, the value of the property, the safety of entrance upon and departure from the highway, and the public interest and investment in the highway.

# Land Divisions and the State Highway System

An overview of the impacts of  
Trans 233 on a land division  
you may be proposing



**Committee**

Sub-Committee on Review of Trans 233

Chair / Co-Chairs  
Brandemuehl

Committee Clerk

Leg. Council

Stone

Lassa

Huebsch

Steinbrink

Leibham

Sherman

\_\_\_\_\_

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Public Speakers

Messenger



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## DAVID BRANDEMUEHL

State Representative  
49th Assembly District

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January 14, 2000

Rep. Scott Jensen, Speaker  
Wisconsin State Assembly  
211 West, State Capitol  
Madison, WI 53708

Dear Speaker Jensen:

As chair of the Assembly Transportation Committee, it has come to my attention that there have been a number of problems associated with the current implementation of Trans 233 of the Wisconsin Administrative Code. Trans 233 relates to the division of land abutting a state trunk highway or connecting highway. Originally created in 1956 to regulate subdivisions only, as of February 1, 1999, Trans 233 now regulates all land divisions adjacent to state highways.

Due to the concerns that have been brought to my attention by both fellow legislators and the Coalition to Reform Trans 233, which consists of 20 different associations, I held a briefing on Trans 233 for the benefit of the Assembly Transportation Committee. At that briefing, a number of additional concerns were raised by the committee members. Thus, I have appointed a sub-committee to specifically review Trans 233 and offer recommendations for modifications to the Joint Committee on Review of Administrative Rules.

Members of the sub-committee include Representatives Jeff Stone, Mike Huebsch, Joe Leibham, Julie Lassa, John Steinbrink and Gary Sherman. I will serve as chair. I intend to call the first meeting of the Sub-committee on Review of Trans 233 for Thursday, January 27.

If you have any questions regarding the sub-committee or the concerns associated with Trans 233, please let me know.

Sincerely,

David A. Brandemuehl  
State Representative  
49<sup>th</sup> Assembly District

DAB:slk

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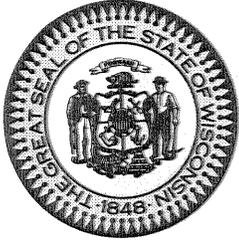
**Committee Memberships:**

Transportation (Chair); Education; Highway Safety; Natural Resources; Urban & Local Affairs; Rustic Roads Board; Transportation Projects Commission

**Office:** P.O. Box 8952 • Madison, Wisconsin 53708-8952 • (608) 266-1170 • Rep.Brandemuehl@legis.state.wi.us

**Home:** 13081 Pine Road • Fennimore, Wisconsin 53809 • (608) 822-3776

**Toll-Free:** (888) 872-0049 • **Fax:** (608) 282-3649



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## DAVID BRANDEMUEHL

State Representative  
49th Assembly District

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TO: Members, Assembly Transportation Committee

FROM: Rep. David Brandemuehl, Chair *David*

DATE: January 12, 2000

RE: Trans 233 Briefing

As you are aware, the Assembly Transportation Committee will be holding a briefing tomorrow on Trans 233 of the Wisconsin Administrative Code. I have called for this briefing due to a number of concerns that have been brought to my attention regarding the implementation of this rule. Attached is a memo I received from the Coalition to Reform Trans 233 outlining some of these concerns. If you have any additional questions, please let me know.

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#### Committee Memberships:

Transportation (Chair); Education; Highway Safety; Natural Resources; Urban & Local Affairs; Rustic Roads Board; Transportation Projects Commission

Office: P.O. Box 8952 • Madison, Wisconsin 53708-8952 • (608) 266-1170 • Rep.Brandemuehl@legis.state.wi.us

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Toll-Free: (888) 872-0049 • Fax: (608) 282-3649

*TO: Tom Lieke*  
*JB*

**To:** Secretary Charles Thompson  
**CC:** Governor Tommy Thompson  
 Senator Robson, Co-Chair Joint Committee on Administrative Rules  
 Representative Grothman, Co-Chair Joint Committee on Administrative Rules  
 Senator Breske, Chair Senate Transportation Committee  
 Representative Brandemuehl, Chair Assembly Transportation Committee

**From:** Coalition to Reform Trans 233  
 Contact: Jennifer Badeau

*Joint Committee on Admin Rules*  
*Rep Grothman Sen Robson*

**Date:** November 22, 1999

**Re:** Trans 233

We, the undersigned, are concerned with recent changes to Trans 233. These changes have dramatically impacted the division and development of land along state trunk highways. Already, the rule has led to situations where large, valuable parcels of property have been rendered unusable. More of these situations will arise as additional land divisions and developments fall under the new Trans 233. As a result, we predict the state will receive more and more complaints that the state of Wisconsin is effectively taking property without compensation.

The expansion of the rule has come in two ways. First, although some version of Trans 233 has been on the books since 1956, definitions within the rule have recently been changed which dramatically limit how property owners can use their land. For example, many more things have been defined as "buildings or improvements" and thus banned within the setback area of property. Prior to Feb. 1, 1999 the concept of building or improvement was far more limited.

The second expansion of the rule is the result of stricter enforcement. Trans 233 is now being rigorously carried out by the central office of DOT as opposed to the local areas, local governments and local DOT district offices. As such, the words of Trans 233 are all that is important. No longer do local development plans come into play nor is due consideration given to what neighboring properties look like.

This strict enforcement of the rule leads us to believe DOT has an unstated goal of "land banking." In other words, DOT wants to keep property values low in the event of later condemnation for highway expansions. We object to this inappropriate goal on the part of the department and its use of Trans 233 to achieve it.

For these reasons we strongly oppose the recent changes to Trans 233. We ask the department to amend the rule, in the following areas.

*Coalition to Reform Trans 233*

*November 22, 1999*

*Page 2*

### **Narrow The Definition of Structures and Improvements**

As of February 1, 1999, Trans 233 severely limited what can be placed in the setback area. Since 1956 the rule has required that "There shall be no improvements or structures placed between the highway and the setback line." But, that requirement was never understood to prohibit parking lots, signs or retaining walls. Now, the new Trans 233, specifically defines these as unacceptable, prohibited "improvements."

Again, we can't understand the purpose of so broadly defining "structures" and "improvements" except to keep the value of property within the setback area low. These listed improvements do not limit the sight lines or otherwise decrease the safety of the abutting lands. Nor are these improvements particularly permanent or costly in value. In other words, property owners should be allowed to put these in the setback area, as long as they do not compromise the safety of highway drivers. Further, owners should be compensated for condemnation of these items in the event of a highway expansion. Specifically, the following should be allowed within setbacks: air pumps, catch ponds, drainage facilities, driveways, parking lots, pay phones, septic systems, signs, storm water systems, retaining walls, and vacuum stations.

### **Clarify the Conceptual Review Process**

From reviewing DOT's brochures on Trans 233, and from discussions with the Wisconsin Realtors Association, we understand that property owners are encouraged to discuss plans for divisions and developments with the local DOT offices. Yet, there is no guarantee that the feedback provided by these district offices will subsequently be approved by the main DOT office during the final review. In other words, property owners are being asked to undergo lengthy and possibly expensive meetings with district DOT offices when there is no guarantee that the plans developed will then receive final approval from the main DOT office.

We join the Wisconsin Realtors Association in asking that the conceptual review process be formalized. Specifically, if a property owner meets with the DOT district office and submits a preliminary plat to the central DOT office that adequately addresses the concerns raised by the district office, the property owner is entitled to a certification of non-objection from the central office. Conversely, property owners should be allowed to go directly to the central office for conceptual reviews. Further, we'd like Trans 233.03(5) amended to clarify that if the department does not complete a review within 20-days of submission, the division is deemed non-objectionable by the department.

### **Grandfather Prior Approved Plats and Existing Improvements**

There are many property owners and land dividers who received plat approval prior to February 1, 1999 and prior to the new Trans 233. These property owners/dividers now risk having to go through the approval process again. That means they risk being denied approval or being required to change the plat at this later date. Likewise many, many property owners received permission to place improvements within their setback area prior to February 1, 1999 and the new Trans 233. These improvements might now have to be removed as violating Trans 233. In

*Coalition to Reform Trans 233*  
*November 22, 1999*  
*Page 3*

the interest of fairness, DOT must explicitly state that plats or improvements approved prior to February 1, 1999 are grandfathered and deemed approved under the new rule.

**Exclude Condominium Plats from the Rule**

Finally, we agree with the Wisconsin Realtors Association that the new rule improperly includes condominium plats within the definition of "land division." Condominiums are merely a form of legal ownership, not a form of land division, and therefore should not automatically fall under the jurisdiction of the DOT.

**Per Wisconsin Statutes 227.12, Amend Trans 233**

We, the below listed associations, represent many business groups. Under Wisconsin Statutes 227.12, we ask the DOT to promulgate a new Trans 233. We ask the department to use the suggestions we've made in this letter to amend the rule. And, we ask the department to do this as soon as possible. Unfortunately, every day property divisions and developments are being impacted by this rule. Therefore, we hope that our concerns can be quickly resolved. If the department does not respond to our concerns or refuses to amend the rule, please be advised that this coalition is prepared to pursue a legislative remedy. We are already considering legislation that would repeal the recent changes in Trans 233 and that would prevent the department from prohibiting certain "improvements or structures" within setback areas.

Thank you for your consideration of this matter. We look forward to your reply. You can direct your response to Jennifer Badeau, Director of Government Affairs, Petroleum Marketers Association of Wisconsin, 121 S. Pinckney Street, Suite 210, Madison, WI 53703, phone (608)256-7555, fax (608)256-7666.

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**COALITION TO AMEND TRANS 233**

*LSLA — Lake States Lumber Association • MEDA — Midwest Equipment Dealers Association •  
 NFIB — National Federation of Independent Businesses • OAAW — Outdoor Advertising  
 Association of Wisconsin • PMAW — Petroleum Marketers Association of Wisconsin •  
 TLW — Tavern League of Wisconsin • TPA — Timber Producers Association of Michigan &  
 Wisconsin • WACS — Wisconsin Association of Convenience Stores • WACTAL — Wisconsin  
 Auto Collision Technicians Association • WATA — Wisconsin Automotive Trades Association  
 • WATDA — Wisconsin Automobile & Truck Dealers Association • WATSO — Wisconsin  
 Association of Truck Stop Operators • WBA — Wisconsin Builders Association •  
 WEDA — Wisconsin Economic Development Association • WFA — Wisconsin Fireworks  
 Association • WFC — Wisconsin Federation of Cooperatives • WGA — Wisconsin Grocers  
 Association • WMC — Wisconsin Manufacturers & Commerce • WMF — Wisconsin  
 Merchants Federation • WRA — Wisconsin Restaurant*

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

## Chapter Trans 233

### DIVISION OF LAND ABUTTING A STATE TRUNK HIGHWAY OR CONNECTING HIGHWAY

Trans 233.01	Purpose.	Trans 233.06	Frequency of connections with a state trunk highway or connecting highway.
Trans 233.012	Applicability.	Trans 233.07	Temporary connections.
Trans 233.015	Definitions.	Trans 233.08	Setback requirements and restrictions.
Trans 233.017	Other abutments.	Trans 233.105	Noise, vision corners and drainage.
Trans 233.02	Basic principles.	Trans 233.11	Variances.
Trans 233.03	Procedures for review.	Trans 233.12	Performance bond.
Trans 233.04	Required information.	Trans 233.13	Fees.
Trans 233.05	Direct access to state trunk highway or connecting highway.		

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

**Trans 233.01 Purpose.** Dividing or developing lands, or both, affects highways by generating traffic, increasing parking requirements, reducing sight distances, increasing the need for driveways and other highway access points and, in general, impairing highway safety and impeding traffic movements. 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. The authority to impose minimum standards for subdivisions is s. 236.13(1) (e), Stats. The authority to impose minimum standards for land divisions under ss. 236.34, 236.45 and 703.11, Stats., is s. 86.07 (2), Stats.

Note: A "state trunk highway" is a highway that is part of the State Trunk Highway System. It includes State numbered routes, federal numbered highways, the Great River Road and the Interstate System. A listing of state trunk highways with geographic end points is available in the Department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31. The County Maps published by the Wisconsin Department of Transportation also show the breakdown county by county. As of January 1, 1997, there were 11,813 miles of state trunk highways.

A "connecting highway" is not a state trunk highway. It is a marked route of the State Trunk Highway System over the streets and highways in municipalities which the Department has designated as connecting highways. Municipalities are responsible for their maintenance and traffic control. The Department is generally responsible for construction and reconstruction of the through lanes of connecting highways, but costs for parking lanes and related municipal facilities and other desired local improvements are local responsibilities. The Department reimburses municipalities for the maintenance of connecting highways in accordance with a lane mile formula. See ss. 84.02 (11), 84.03 (10), 86.32 (1) and (4), and 340.01 (60), Stats. A listing of connecting highways with geographic end points is also available in the Department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31. As of January 1, 1997, there were 520 miles of connecting highways.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Trans 233.03 Procedures for review.** The following procedures apply to review by the department of proposed certified survey maps, condominium plats and other land divisions:

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

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

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

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

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

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

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

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

(5) **TIME TO COMPLETE REVIEW.** The department shall complete the review by either objecting or certifying non-objection to the land division map within 20 calendar days from the date that a complete request is submitted to the required office of the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"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 for the benefit of the public as provided in s. 236.293, Stats., and shall be enforceable by the department or its assigns."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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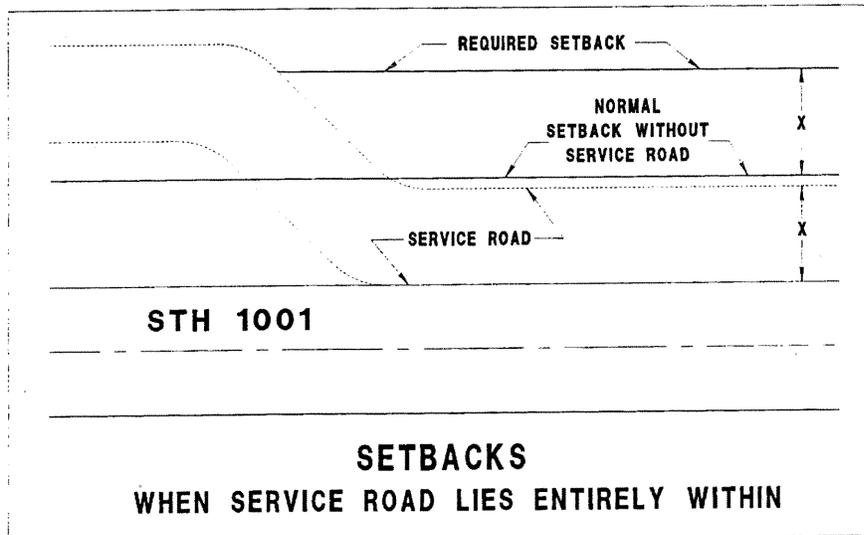
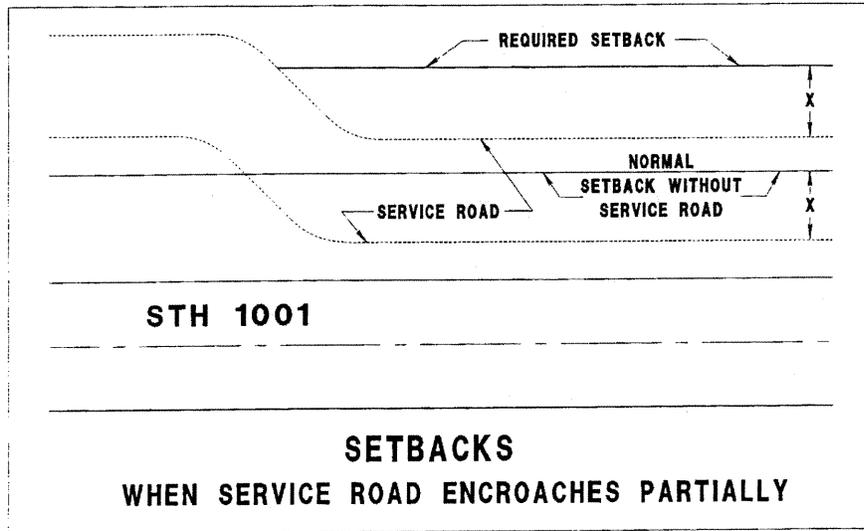
(3) If any portion of a service road right-of-way lies within the setback area determined under sub. (2), the setback area shall be increased by the lesser of the following:

(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.



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

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

1. Erected or installed before the land division map is recorded.
2. Erected or installed on a recorded utility easement that was acquired prior to February 1, 1999.
3. Erected or installed after the land division map is recorded but with prior notice in writing, with a plan showing the nature and distance of the work from the nearest right-of-way line of the highway, to the department's appropriate district office within a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, nor less than 60 days, before any major utility erection or installation work commences, if any utility work is within the setback.

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

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

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

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

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

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

**(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."

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

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

**Trans 233.105 Noise, vision corners and drainage.**

**(1) NOISE.** When noise barriers are warranted under the criteria specified in ch. Trans 405, the land divider shall be responsible for any noise barriers for noise abatement from existing state trunk highways or connecting highways. In addition, the owner shall include the following notation on the land division map:

"The lots of this land division may experience noise at levels exceeding the levels in s. Trans 405.04, Table I. These levels are based on federal standards. Owners of these lots are responsible for abating noise sufficient to protect these lots."

**Note:** Noise barriers are designed to provide noise protection only to the ground floor of abutting buildings and not other parts of the building. Noise levels may increase over time. Therefore, it is important to have the caution placed on the land division map to warn owners that they are responsible for further noise abatement.

**(2) VISION CORNERS.** The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection

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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."

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

**(3) DRAINAGE.** The owner of land that directly or indirectly discharges stormwater upon a state trunk highway or connecting highway shall submit to the department a drainage analysis and drainage plan that 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 traveling public, downstream properties or transportation facilities.

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

**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.

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

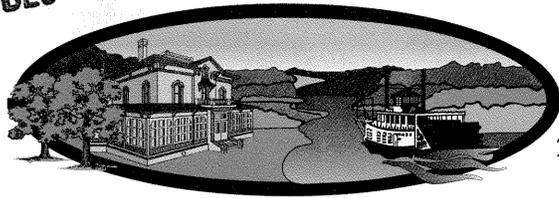
**Trans 233.12 Performance bond.** The department may, in appropriate cases, require that a performance bond be posted, or that other financial assurance be provided, to ensure the construction of any improvements in connection with the land division which may affect a state trunk highway.

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

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

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

DEC 09 1999



# City of Prairie du Chien

207 West Blackhawk Avenue • P. O. Box 324 • Prairie du Chien, WI 53821  
Phone: (608) 326-6406 • FAX: (608) 326-8182

December 1, 1999

Representative David Brandenmuehl  
State Capitol, 317 N,  
P.O. Box 8952  
Madison, WI 53708

Dear Representative Brandenmuehl:

Re: Administrative Rule, Transportation 233

The City Plan Commission of the City of Prairie du Chien has gone on record opposing the requirements of Transportation 233.

Our community is divided by the main line of the Burlington Northern railroad and U.S. Hwy 18, WI 35, WI 60. Vacant land on both sides of this highway could be adversely affected by the requirement of this Administrative Code if land splits are done by any developer.

Because of space constraints between the highway and the railroad mainline, the setbacks of Trans. 233 could not be met, which then would require any development in that area subject to review and variance from the Wisconsin Department of Transportation and that the owner complete agreements with the department for any improvements in the front 50 feet of the property. Also, in those few cases where the 50 foot setback could be maintained, any new construction (if a land split is enacted) would be set back substantially farther than properties adjacent that are already developed or new construction that would be placed on a lot that is not divided. We also did not find any time line in the Administrative rule as to variances, or if there are any public hearings or additional fees involved for a variance.

Our feeling is that the rule may be appropriate for rural areas and areas with large and deeper properties, but it seems to be very limiting and an unfair restriction on properties located in developed areas within the municipal boundaries.

Thank you for reviewing our concerns.

Karl K. Steiner  
Chairman, City Plan Commission



Briefing on Trans 233

Jim Hill (mtg place)

✓ Bill Ford (mtg. place)

✓ Sen. Brewster (mtg place)

✓ Sen. Gobschmidt. (won't be there)

Rep. Lassa (mtg. place)

Rep. Stone (mtg. place) July 28

~~Room~~ 415 NW / 11th

Lassa bringing DOT

~~Center~~ Dist. 4 Manager - Bob

~~Wagner~~ & Village of

~~Florer~~ admin. Dan

~~McMahon~~ developed model

~~for~~ for stake

Bob Cook DOT

1) Trans 233 effect all roads local & state trunk?

2) expansion?

3) Commerce Street gas station

4) Define a set-back.

5) what is there before expansion remains

6) How does team 233 fit with local zoning.

7) expanding in set-back

8) how there been an expansion at Union Corner.

Dave -

This is a copy of Trans 233 (the rule that Rep. Cassa had some concerns about). I've also attached some additional info from DOT. Since this rule has gone through committee, I've had a number of calls about it. But, of everyone I've referred to DOT, no one has called back to say they still have some problems.

I think there has been a lot of misinformation circulated about this rule, and that is causing a lot of confusion.

I have a call in to Rep. Cassa's office, to find out whether she's had her problems addressed

Talk to people (DOT) re  
Trans 233 coalition & others listed  
on memo  
Jennifer Badeau - any response?  
Jim Thiel - working w/ them?  
Have a meeting.

Jim Thiel -

Mtg scheduled Dec. 21.

internal DOT to discuss  
response

- still developing guidelines
- answering specific questions
- working w/ Ed Huck to develop  
model delegation agreement  
for local communities. - then  
not have to submit to DOT as well
- want to go through these steps  
before changing rules.

Realtors not joining coalition  
because full rule is ok, want  
to go through process +  
work w/ DOT. Realtors believe  
this group just doesn't  
completely understand the  
rule.

Municipalities - ok

Trans. Bldgs - ok

### Why 20 Days?

- ◆ 20 days is the requirement for subdivision review in Chapter 236 of Stats.
- ◆ Why does it take so long?
  - \* Multiple area review of each submittal
    - ▼ Maintenance - for field review
    - ▼ Traffic - for traffic control concerns
    - ▼ Planning - for access concerns
    - ▼ Tech. Services - for right-of-way review
    - ▼ Project development - for review if in area of proposed project

### Direct Access

- ◆ Only street connections allowed without a variance.
- ◆ Review of all adjacent land owned by divider - May require an access covenant.
- ◆ Desirable internal access pattern to adjacent properties.
- ◆ Review of existing connections. Some may be closed if no longer needed.

### Setbacks

- ◆ No Structures or Improvements allowed in the setback.
- ◆ Highways are designed to provide for existing and projected future needs.
- ◆ The department cannot foresee all future development.
- ◆ Development away from the highway impacts the highway. DOT does not review or need to review. But it does create the need for improvements or expansion.

### Setbacks (cont'd.)

- ◆ Setbacks are necessary to provide the department with the ability to improve the highway system in its current corridor in the future due to impacts from general development of an area.
- ◆ Bypasses impact a community.
- ◆ Bypasses are not always an option due to widespread development or physical features of an area.

### Setbacks (cont'd.)

- ◆ Setbacks provide for adequate light and air.
- ◆ Alternatives if no setbacks.
  - \*Relocation and disruption to an entire community.
  - \*Bypass.
  - \*Living with a substandard highway system.
- ◆ Communities have setbacks. If Trans 233's negatively impact a community they may be varied. (Blanket Variance.)

### Setback (cont'd.)

- ◆ 110' From Centerline or 50' from Right-of-way line, whichever is more restrictive.
- ◆ If a community has a smaller setback it can be reduced to the larger of; 100' from Centerline ; 42' from Right-of-way line or community's setback without variance.
- ◆ Variances may be permitted but mostly in redeveloping areas.



## Fees

- ◆ Based upon costs evaluated by a district which was at the time evaluating all forms of land divisions.
  - ◆ \$110.00
- 



## Questions???

- ◆ Please contact Bonnie Tripoli at
    - \*Telephone: 608-266-2372
    - \*FAX: 608-267-1862
    - \*E-Mail: [bonnie.tripoli@dot.state.wi.us](mailto:bonnie.tripoli@dot.state.wi.us)
- 

connecting Wisconsin to the world



# Wisconsin Transportation Builders Association

1 South Pinckney Street, Suite 818  
Madison, WI 53703

Phone: 608.256.6891 ♦ Fax: 608.256.1670  
e-mail: wtba@midplains.net ♦ www.wtba.org

## WTBA Testimony on Trans 233

### Joint Committee for Review of Administrative Rules

♦ **President**

*Tim Peterson*  
J. Peterson Sons, Inc.

♦ **1<sup>st</sup> Vice President**

*Bill Kennedy*  
Rock Road Companies, Inc.

♦ **2<sup>nd</sup> Vice President**

*Jim Hoffman*  
Hoffman Const. Co.

♦ **Secretary**

*Larry Haldeman*  
Trierweiler Construction

♦ **Treasurer**

*David Bechthold*  
Zenith Tech Inc.

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*Pat Klampe*  
CH2M Hill

*Merle Leifker*  
Edw. Kraemer & Sons, Inc.

*Dick Mann*  
Mann Brothers, Inc.

*Cliff Mashuda, Jr.*  
Mashuda Contractors

*Scott Mathy*  
Mathy Construction Co.

*Paul Nortman*  
Lunda Const. Co.

*Dennis Pagel*  
Pagel Construction Co.

*Kent Pitlik*  
Pitlik & Wick, Inc.

*Ed Reesman*  
Payne & Dolan, Inc.

*Joe Ruetz*  
Vinton Const. Co.

*Mike Soley, Jr.*  
Miller-Bradford & Risberg, Inc.

*Bill Timme*  
Timme, Inc.

*Gene Vandemark*  
MCC, Inc.

♦ **Executive Director**

*Tom Walker*

♦ **Deputy Executive Director**

*Jack Arseneau*



American Road &  
Transportation Builders  
Association

Tom Walker  
Executive Director  
June 21, 2000



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This is surely illogical.

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

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

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