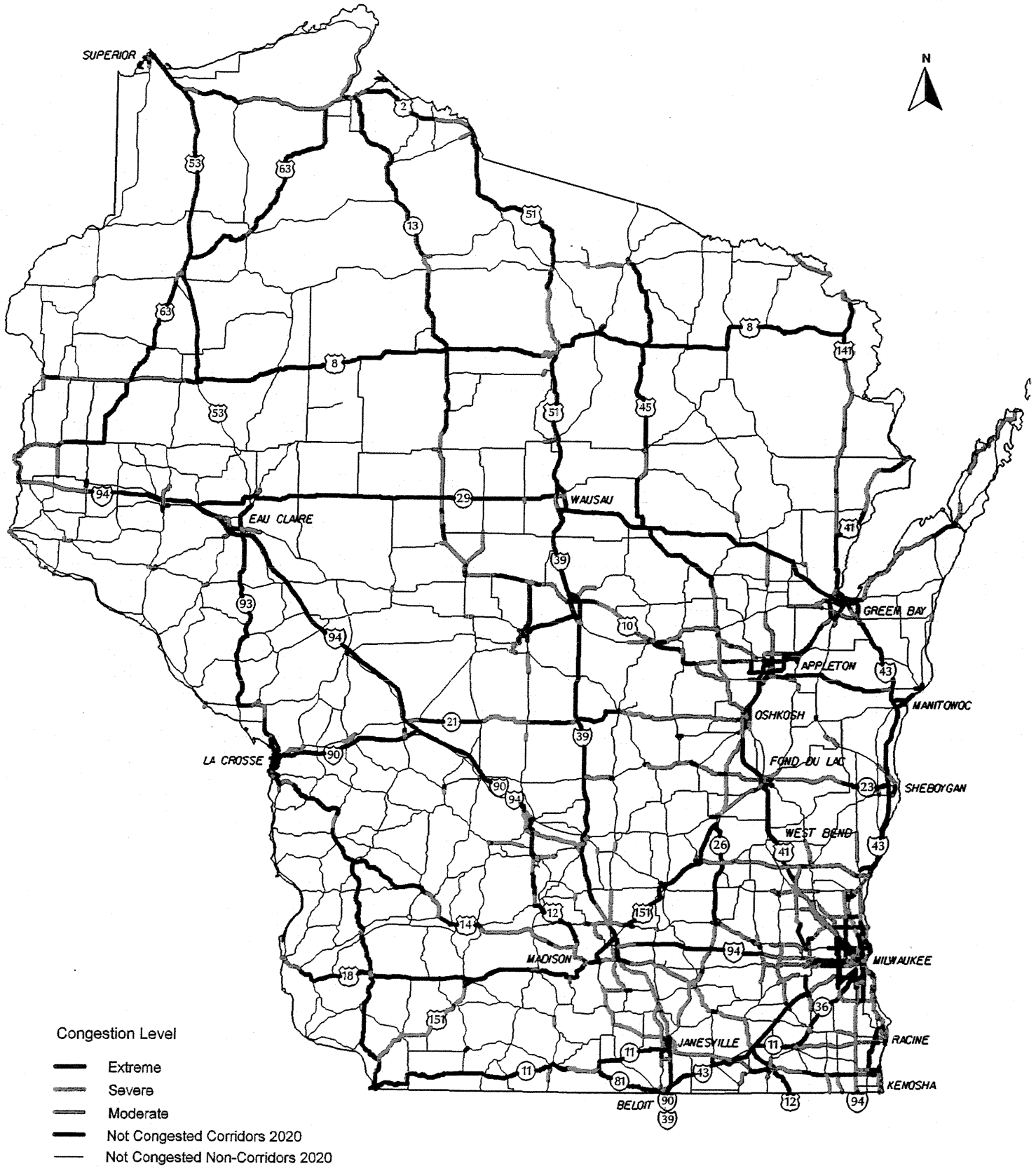
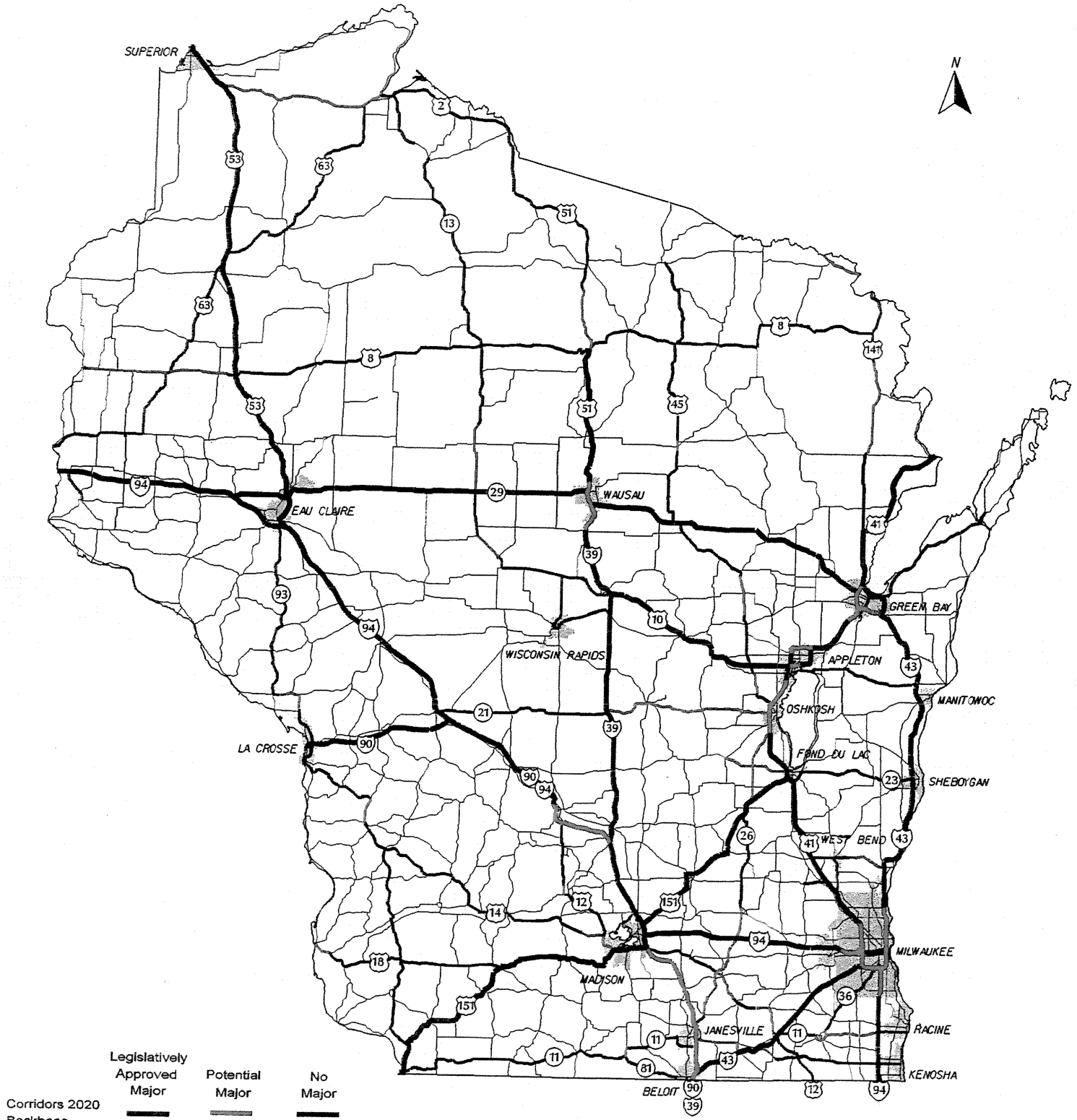


Map 1. Traffic congestion in year 2020
(assuming no capacity expansion)



Map 2. Legislatively approved and potential Major Projects



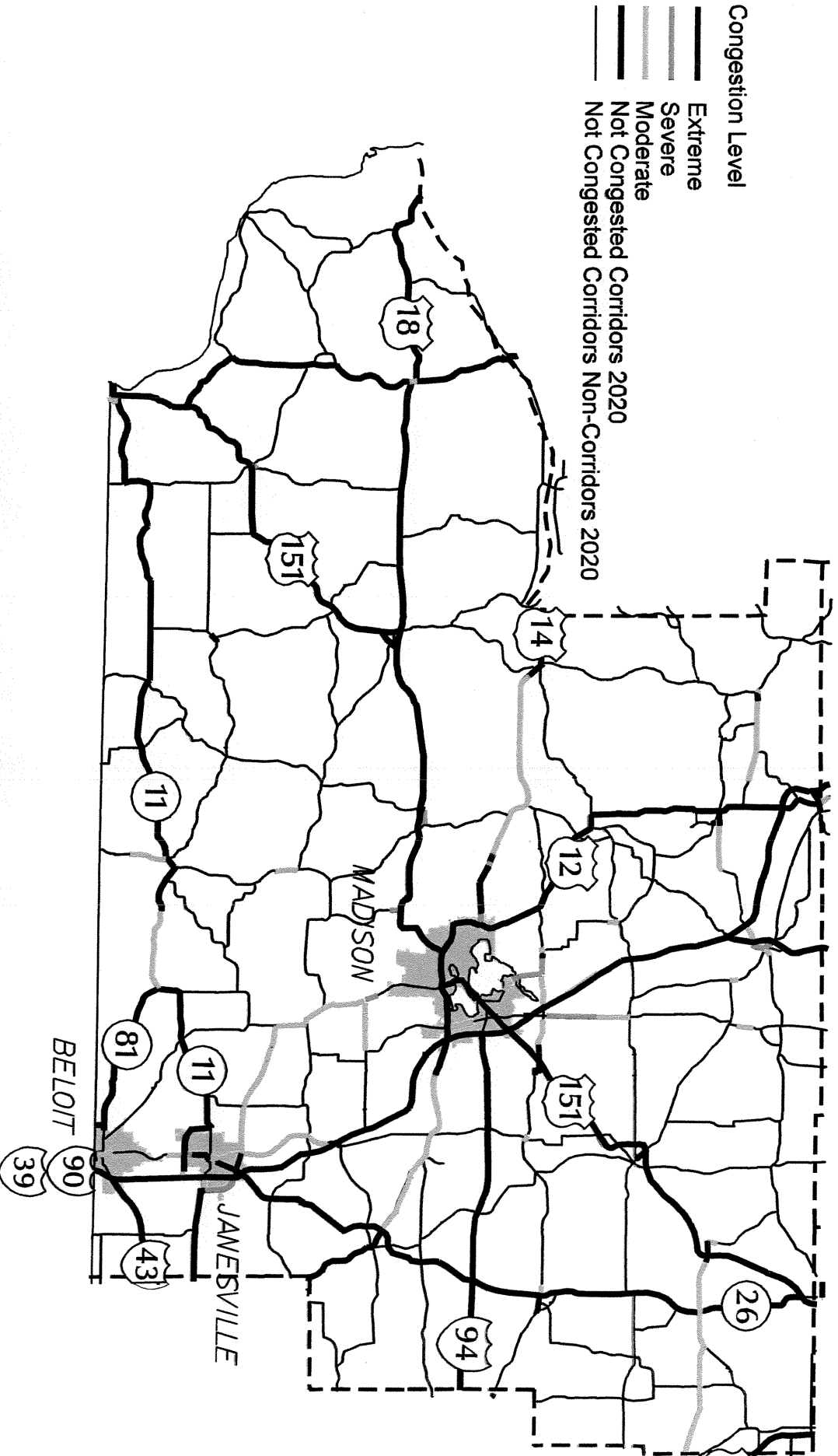
	Legislatively Approved Major	Potential Major	No Major
Corridors 2020 Backbone			
Corridors 2020 Connectors			
Other State Trunk Highways			

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

TRAFFIC CONGESTION IN YEAR 2020

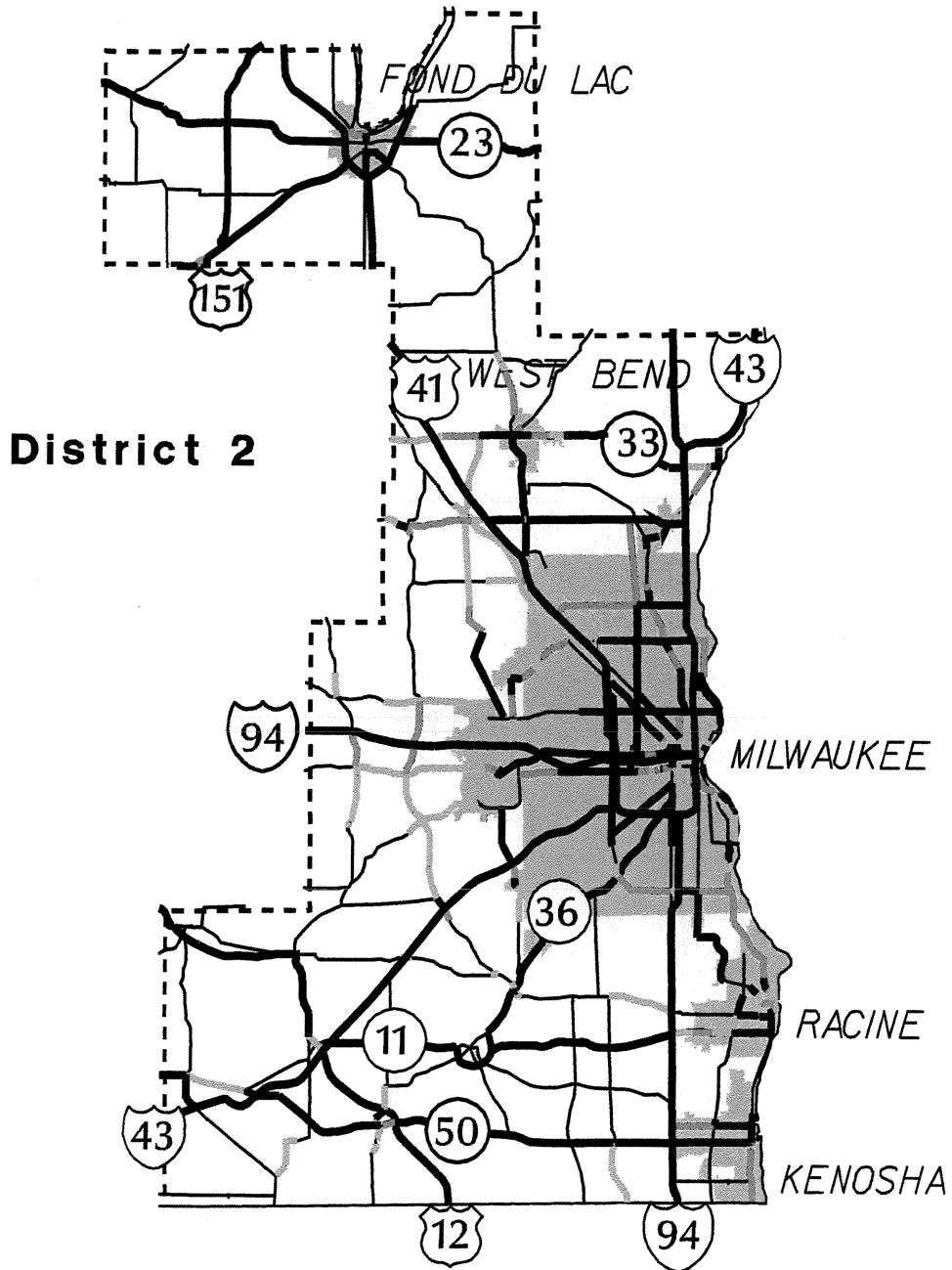
(EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)

District 1








TRAFFIC CONGESTION IN YEAR 2020

(EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)

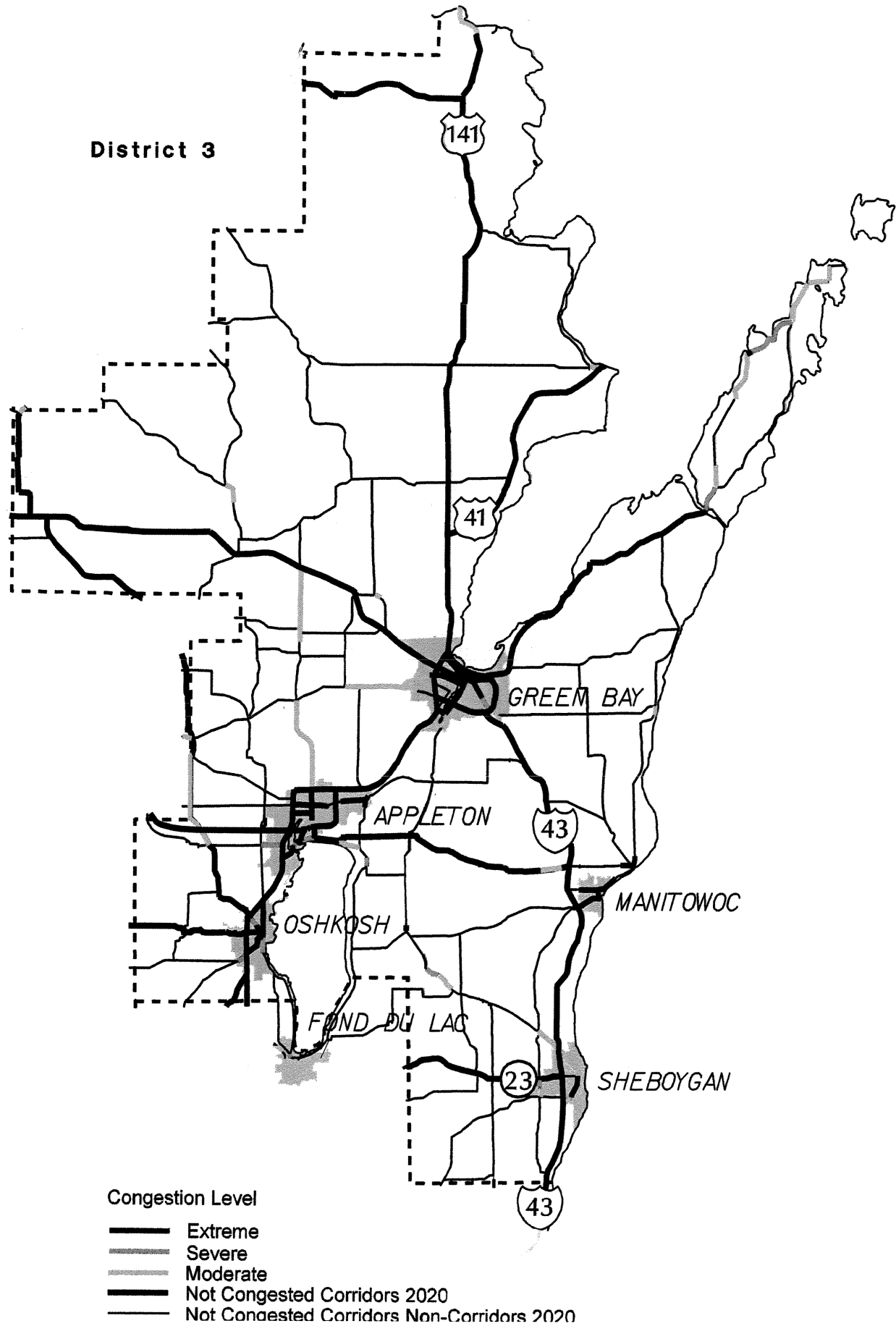


Congestion Level

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

TRAFFIC CONGESTION IN YEAR 2020

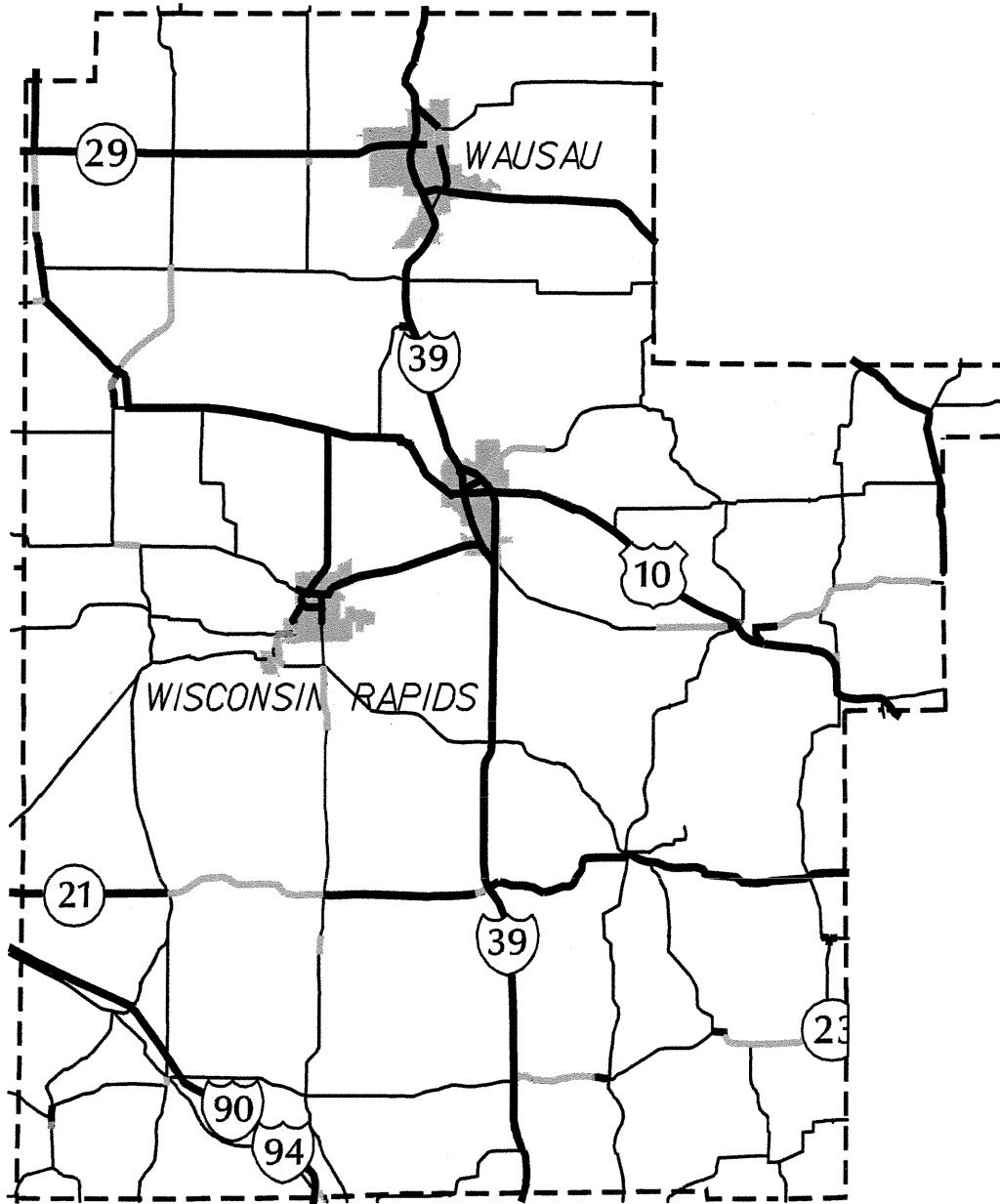
(EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)



TRAFFIC CONGESTION IN YEAR 2020

(EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)

District 4

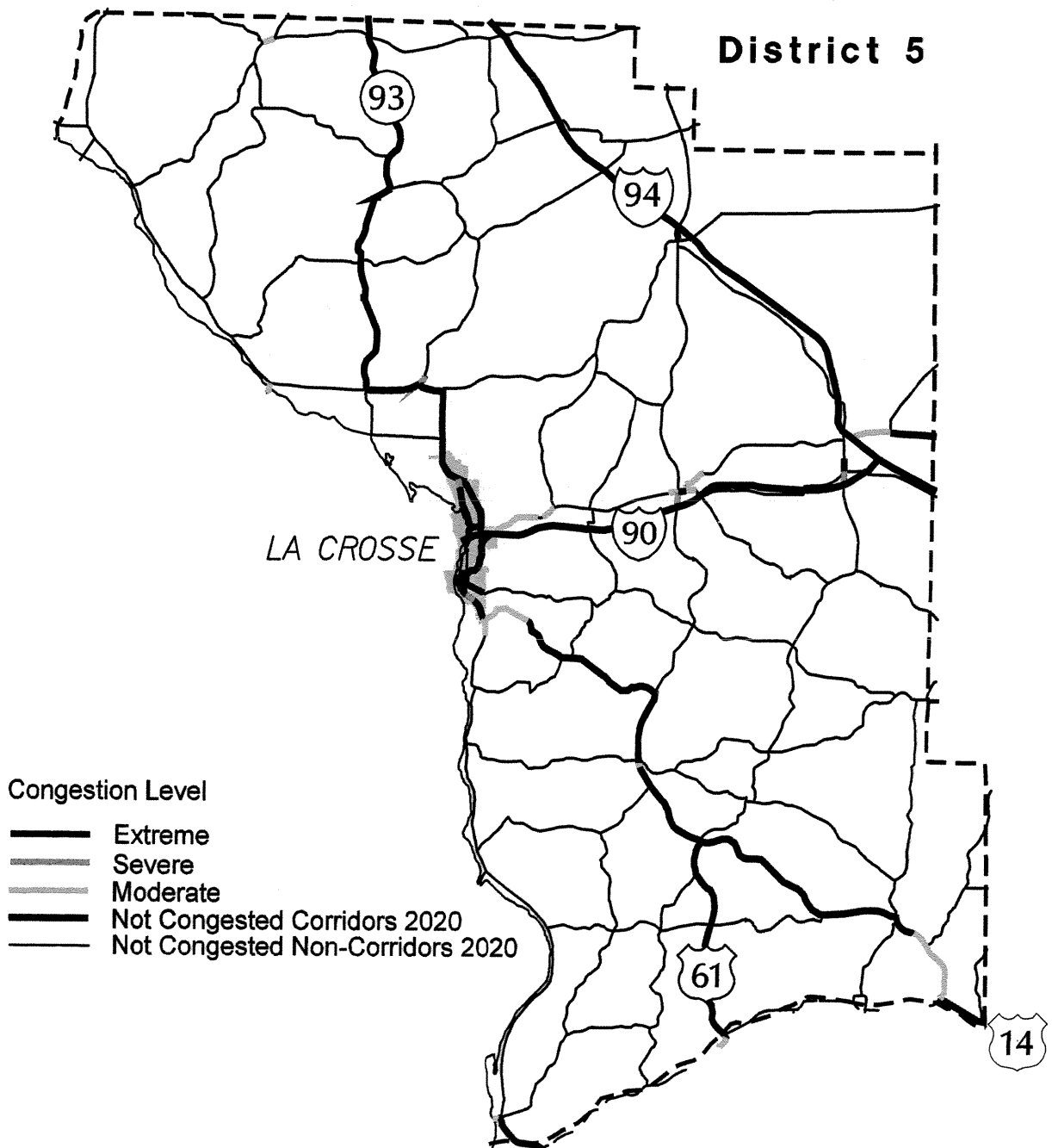


Congestion Level

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

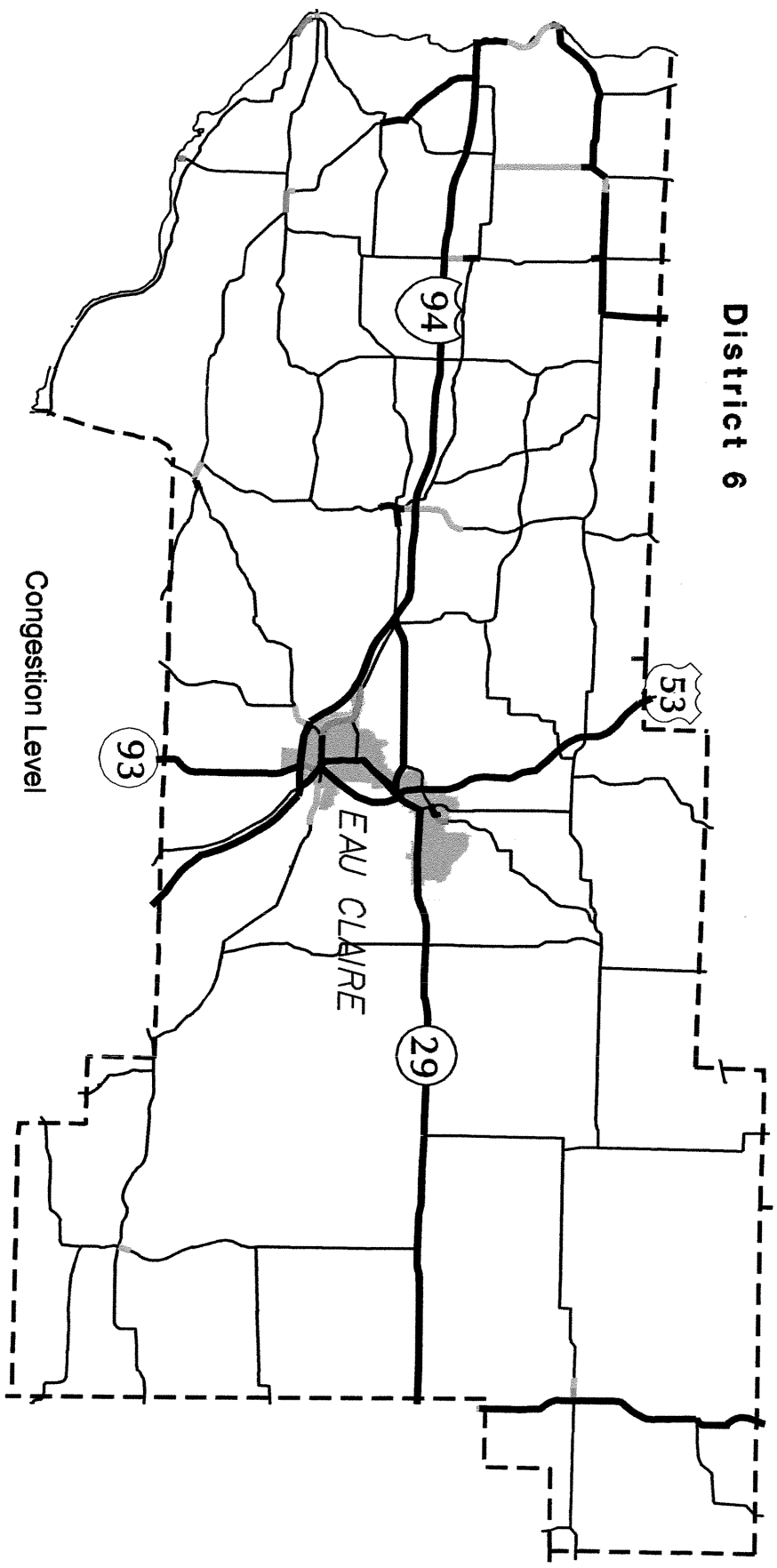
TRAFFIC CONGESTION IN YEAR 2020

(EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)



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

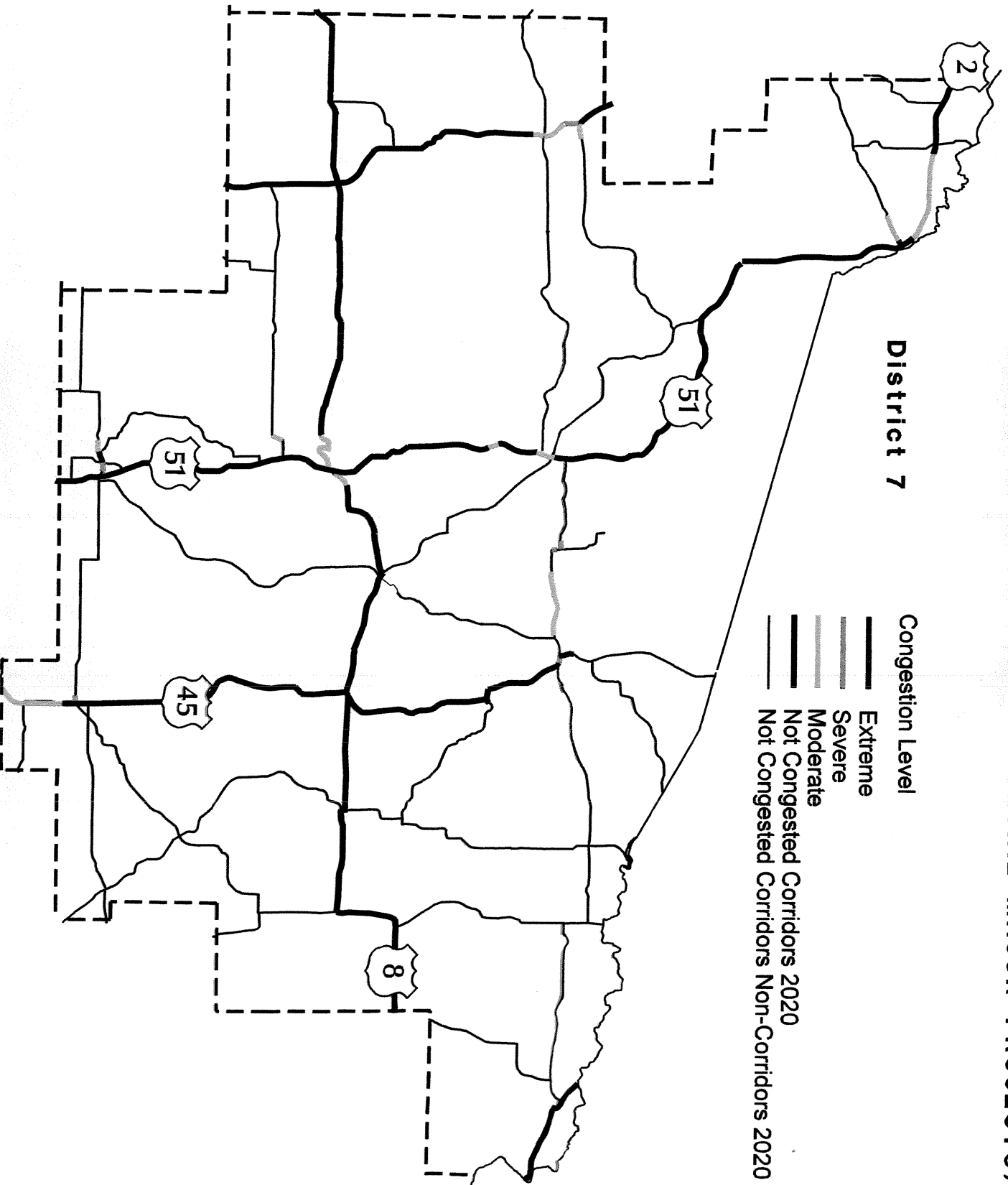
District 6



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

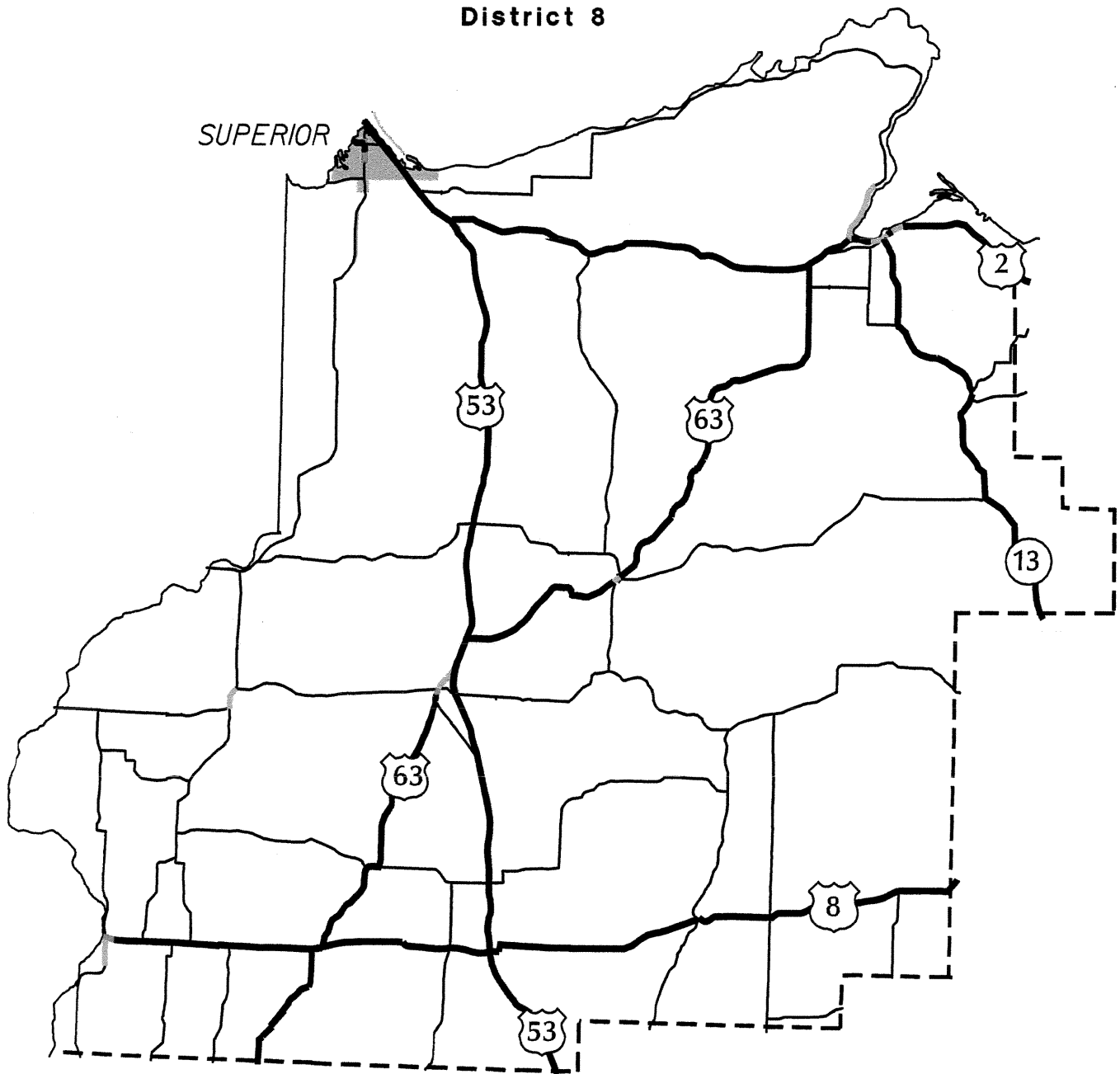
TRAFFIC CONGESTION IN YEAR 2020

(EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)








TRAFFIC CONGESTION IN YEAR 2020

(EXCLUDING APPROVED AND POTENTIAL MAJOR PROJECTS)



Congestion Level

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



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: February 18, 2000
TO: REPRESENTATIVE DAVID BRANDEMUEHL
FROM: William Ford, Senior Staff Attorney
SUBJECT: Agreements Reached to Amend Ch. Trans 233

1. Introduction

This memorandum describes agreements to amend Wis. Adm. Code ch. Trans 233 reached between the Coalition to Reform Trans Ch. 233 ("the Coalition") and the Department of Transportation (DOT) at the February 17, 2000 meeting of the Subcommittee on Review of Ch. Trans 233 of the Assembly Committee on Transportation. It is the intent of the subcommittee that the DOT, the Coalition and other interested parties will cooperate in developing draft administrative rules to implement the agreements described in this memorandum and that DOT will promulgate these as amendments to ch. Trans 233. It is also the intent of the subcommittee that the DOT, the Coalition and other interested parties will continue to work together to develop amendments to s. Trans 233.08, relating to setback requirements and restrictions.

A more detailed description of the issues discussed by the subcommittee is contained in a memorandum I provided to you, dated January 1, 2000, entitled *Issues Raised With Respect to Chapter Trans 233*.

2. Process for Approving Land Divisions

a. DOT will transfer the authority to review land divisions under ch. Trans 233 from the state office to its district offices by a date that is no later than February 14, 2001.

b. DOT will provide an appeal process under which persons not satisfied with a district decision with respect to a land division may appeal to DOT's central office.

c. DOT will develop implementing procedures at the district level to assure consistency and will provide uniform guidance in DOT's facility development manuals and in other manuals specified and cross-referenced in ch. Trans 233.

d. A request for review of a land division will receive an automatic certificate of nonobjection if DOT does not act on the request within 20 days of its submission, unless an extension of the 20-day time period is mutually agreed to.

e. DOT shall request any additional information it determines is necessary to review a proposed land division within five working days after receiving a request for a review. Upon receipt of the additional information, the 20-day time period will again begin running. The 20-day review procedure shall be specified in ch. Trans 233.

f. DOT's central office will not, on its own initiative, reverse a certificate of nonobjection provided by a DOT district office with respect to a proposed land division. However, if an affected third party objects to a certificate of nonobjection provided by a DOT district office, DOT's central office may reverse the district office's decision if it finds the objection by a third party to be meritorious.

3. Explicit Approval of Plats Approved Prior to the Effective Date of Ch. Trans 233 and of Improvements and Structures Placed Prior to the Effective Date of Ch. Trans 233

a. DOT will revise ch. Trans 233 to give explicit approval to structures and improvements legally placed in a setback area prior to February 1, 1999. (Chapter Trans 233 took effect on February 1, 1999.)

b. DOT will revise ch. Trans 233 to explicitly state that plats that have received preliminary or final approval prior to February 1, 1999 will not be subject to the new standards under ch. Trans 233 as promulgated effective February 1, 1999.

4. Exclude Condominium Developments From Ch. Trans 233

DOT agrees to revise ch. Trans 233 to state that condominium conversion plats on existing developed property are exempt from ch. Trans 233 and are not subject to fees under s. Trans 233.13 if the existing development has been in existence five years and if the condominium development has traffic impacts similar to the existing development.

5. DOT Guidelines for Administering Ch. Trans 233

DOT agrees that its drafted guidelines for interpreting ch. Trans 233 will be incorporated by reference into ch. Trans 233. Furthermore, DOT states that these incorporated guidelines will be referenced by date such that future revisions to the guidelines will only become effective if ch. Trans 233 is amended, which requires legislative review.

Please contact me at the Legislative Council Staff offices if I can be of further assistance.

WF:jal:wu;ksm;rv

MEMORANDUM

TO: Charles H. Thompson, Secretary

FROM: James S. Thiel, General Counsel, State Bar #1012582
John Haverberg, Director, Bureau of Highway Development

DATE: February 14, 2000

RE: Trans 233 Agreement with Wisconsin Realtors, Coalition and Others

BACKGROUND. On July 13, 1999, you responded to the initial concerns of the Wisconsin Realtors Association (Realtors) with revised Trans 233, Wis. Admin. Code, regarding land divisions abutting state trunk and connecting highways. The Realtors expressed a number of initial concerns shortly after these revisions went into effect on February 1, 1999. Your July 13, 1999 letter expressed your gratitude for the Realtors' willingness to cooperatively refine the implementation of the new provisions of Trans 233 for mutual private and public benefit. You also pledged a four step approach to address the Wisconsin Realtors' concerns on a continuing basis. In brief:

1. Education, Training, and Meetings with Interested Groups.
2. Specific Responses to Specific Questions.
3. Uniform Implementation.
4. Then, Refine Rule As Necessary.

Your letter also included a memorandum from WISDOT responding to specific legal and operational concerns expressed by the Realtors in Tom Larson's 12-page memo of February 19, 1999. William Malkasian, Executive Vice President of the Realtors, sent us a copy of this memo on March 30, 1999. A copy of your letter with the accompanying memorandum is attached.

On January 24, 2000, as a follow-up to this continuing cooperative process, you reached further agreement with the Realtors. Tom Larson of the Realtors has summarized our progress, discussions and the Realtors' understanding of our mutual conceptual solutions. The purpose of this memorandum to you is to confirm this agreement with the Realtors, with comments and corrections for clarification, as requested by the Realtors. This memorandum also represents what WISDOT agreed at committee and subcommittee meetings, e.g. January 27, 2000, and discussions with Legislators, the Coalition and other interested groups participating in this process. It also serves as a response to the Coalition's memo of November 22, 1999 and the Realtors' memo by Tom Larson of November 24, 1999. The following page summarizes all the agreements in principle on all the general issues to date:

February 14, 2000

Agreement in Principle on TRANS 233 Issues
General issues

Following is the “agreement in principle” on a list of issues reached by the Department, the Realtors, and several organizations/groups:

Issue	“Agreement in Principle”
Lack of certainty provided by conceptual review process	<ul style="list-style-type: none">• The department will develop implementing procedures at District level to assure the desired consistency, while still providing for an appeal process to the department’s central office.• Uniform guidance will be published in the department’s Facilities Development Manual and other manuals as appropriate and expressly cross-referenced in the Rule.
Inclusion of “condominium plats” in definition of “land division”	<ul style="list-style-type: none">• Rule will be clarified to say that condominium plats on existing developed properties are exempt from the Rule, with set minimum period of existence and similar traffic impact.
Noise barrier requirements place excessive burden on land dividers	<ul style="list-style-type: none">• Rule will be clarified to say that responsibility to construct or finance needed noise barriers for new land divisions next to existing highways applies to owner rather than land divider.• Rule will also be clarified to say that that noise resulting from expansion of the highway (more lanes) is not responsibility of the land divider or owner.
Land dedication requirements for vision corners are unreasonable	<ul style="list-style-type: none">• Rule will be clarified to say that permanent easements for vision corners may be allowed in lieu of dedication if the dedication creates a problem for the land divider in complying with local ordinances.
Drainage provisions expose land dividers to excessive liability	<ul style="list-style-type: none">• The Rule will be revised to make it clear that land dividers are not required to accept legal responsibility for all unforeseen acts of nature or forces beyond their control.• The Rule will be clarified to inform land dividers of their responsibilities for providing the drainage computations and information under state statutes. Various methods may be used for estimating runoff.
Lack of criteria for determining “desirable traffic access pattern”	<ul style="list-style-type: none">• Technical guidance is available in the department’s Facilities Development Manual and other manuals and will be expressly cross-referenced in the Rule. For any given site, several patterns may work.
Variance process is too restrictive	<ul style="list-style-type: none">• Rule will be changed to allow exceptions in some instances based on defined criteria, e.g. existing community ordinances and development patterns.• Rule will be changed to provide a different name (“special exception”?) and criteria for variances to avoid the strict legal standards applied by courts when reviewing the granting of variances.

The following is a specific response to each point in the Realtors' (Tom Larson's) summary of agreements of January 24, 2000:

SETBACK REQUIREMENT

In addition to the agreements outlined above [i.e. variance name, criteria and legal standard, conceptual review, uniform guidelines, and the appeal process], WISDOT is continuing negotiations regarding various options and criteria relating to the scope and applicability of setbacks to various highway situations.

CONCEPTUAL REVIEW PROCESS

WISDOT Agreement in bold:

1. Transferring the authority to review land divisions from the state office to its district offices by a yet-to-be-determined date (not to exceed 12 months from the date of this memo). This will allow the entire review process to occur at the local level by those who are most familiar with the specific land-division proposal [**WISDOT AGREES**].

EXISTING IMPROVEMENTS AND PLATS

WISDOT Agreement in bold:

1. Grandfather existing improvements and structures [**WISDOT AGREES**], and clarify that WISDOT may not request the removal or movement of these items as part of the land-division process [**DIFFICULT TO GENERALIZE**];
2. Modify current variance process to avoid the strict legal standard for variances [**WISDOT AGREES**]; and
3. Clarify that existing plats (plats that have received either preliminary or final approval prior to February 1, 1999) will not be subject to the standards under the new rule [**WISDOT AGREES, CAVEAT – NO SUBSTANTIAL CHANGE BETWEEN PRELIMINARY AND FINAL**].

CONDOMINIUM PLATS

WISDOT Agreement in bold:

1. Exempt from Trans. 233 existing buildings that are later converted into condominiums [**WISDOT AGREES, BUT BUILDING MUST EXIST FOR SPECIFIED PERIOD OF TIME AND HAVE TRAFFIC IMPACT CHARACTERISTICS SIMILAR TO CONDOMINIUM**]; and
2. As discussed above, grandfather condominium plats in existence prior to February 1, 1999 [**WISDOT AGREES**].

20-DAY REVIEW PERIOD

WISDOT Agreement in bold:

1. State that a request for review will be entitled to a certificate of non objection if WISDOT fails to act within the 20-day time period for reviewing land divisions [**WISDOT AGREES UNLESS EXTENSION MUTUALLY AGREED**].

NOISE BARRIERS

WISDOT Agreement in bold:

1. Revising the section to state that WISDOT is not responsible (rather than making the land divider responsible) for any noise barriers to abate excessive noise from existing state trunk highways or connecting highways [**WISDOT AGREES - OWNER RESPONSIBILITY**]; and
2. Clarifying that WISDOT is responsible, not the land divider, for abatement of excessive noise resulting from WISDOT's expansion of an existing highway, in accordance with Wis. Admin. Code sec. Trans. 405 (?) [**WISDOT AGREES – TRANS 405 IS CORRECT**].

VISION CORNERS

WISDOT Agreement in bold:

1. Deleting the dedication requirement from the rule (WISDOT is able to achieve the same level of public safety through easements) [**WISDOT AGREES THAT ALTERNATIVES ACHIEVE SAME PURPOSE.**]

DRAINAGE PROVISIONS

WISDOT Agreement in bold:

1. Clarifying that the land divider will NOT be asked to guarantee that anticipated discharge (“estimate”) is correct. (The intent is to eliminate any liability resulting from an incorrect estimate that was made in good faith.) [**WISDOT AGREES THAT “GUARANTEE” IS WRONG WORD.**]

“DESIRABLE TRAFFIC ACCESS PATTERN”

WISDOT Agreement in bold:

1. Reference to the multi-volume set of standards WISDOT uses to determine whether a particular traffic access pattern is “desirable.” [**WISDOT AGREES.**]

Attachments:

July 13, 1999 Letter and Memorandum from Secretary to Realtors
January 24, 2000 Memorandum from Tom Larson of Realtors

June 6, 2000

Mr. James S. Thiel, General Counsel
Wisconsin Department of Transportation
P.O. Box 7910
Madison, WI 53707-7910

RE: Trans 233

Dear Mr. Thiel:

Thank you for continuing to work with our coalition on the setback provisions of Trans 233 and providing us with the opportunity to respond to the May 26 revision of these provisions. While it is clear the Department has put a significant amount of thought and hard work into the development of a more balanced Trans 233, we feel that our concerns have not been adequately addressed by the proposed changes. In hopes of developing a rule the Coalition, the Department and other interested parties can all support, we offer the following comments and suggested changes for your review.

General Comments

As we have repeatedly expressed to the Department of Transportation for the past 9 months, the setback provisions in the current version of Trans. 233 need to be amended to strike a more even balance between the interests of the Department in protecting the state's investment in current and future infrastructure and the interests of landowners to enjoy the reasonable use of their property. The current rules, which allow the Department to reserve a 50-foot buffer area along all existing state trunk and connecting highways for possible future expansion of such highways, effectively denies landowners almost all economic use of this property without providing them any compensation. Accordingly, we believe that the setback provisions in current version of Trans. 233 considers only the interests of the Department for possible future expansion of highways without considering the economic impacts on affected landowners.

To better strike a balance between these interests, the Coalition provided the Department with a written proposal last November (this proposal was again presented to the Department in letter dated April 11, 2000) that contained several specific proposals that we believed would address the concerns of both the Department and affected landowners. Rather than prohibiting structures and improvements in setbacks of every highway into perpetuity as mandated by the current version of Trans. 233, the objective of this proposal was to restrict improvements and structures within the setback of those highways that would likely be expanded within a reasonable amount of time. Accordingly, our proposal requested that the Department revise the setback provisions to parallel the process created for improvements of utility companies. We believed that this proposal would provide both landowners and the Department with reasonable certainty as to when it was proper to place improvements within the setback area. To date, the Department has not responded in writing to our proposal.

Despite our requests, the Department's proposed revision (dated May 26) again fails to adequately consider the interests of landowners or provide landowners with reasonable certainty as to when they may utilize their property. Until the Department amends the rule to adequately address these concerns, we will be unable to support Trans 233 in its current form or the changes to the setback provisions as currently proposed by the Department.

Specific Comments

The remainder of this letter addresses specific points within the May 26 redraft. These comments are listed in the order they occur in the draft.

Introduction

The introduction of the May 26 redraft indicates that it is the product of comments received at our May 23 meeting. It should be noted, however, that the proposed changes to the rule were presented to the Coalition for the first time at this meeting and, thus, any comments were, for the most part, simply reactions to rule in concept.

Trans 200.08(4)

Rather than require someone to infer what is meant by this provision, the text should specifically state that existing structures and improvements are grandfathered and therefore not subject to Trans 233. Contrary to your related note, our coalition does not believe the language is "sufficiently clear."

Trans 233.11 [bracketed note]

The Coalition disagrees with the statement that the "following changes to this procedure (to) address the concerns of the Coalition." First, as we previously indicated, the concerns raised at the May 23rd meeting were preliminary in nature due to the fact that we did not have time to adequately review the rule. Additionally, many of the changes address concerns raised by the representative of the Transportation Builders Association or the Citizens for a Better Environment. These two organizations are not members of the "Coalition," and their concerns cannot be construed as concerns of the Coalition.

Trans 233.11 (2)

We are unclear as to what may be addressed in a "uniform delegation agreement." For example, does this agreement provide cities and villages with the authority to develop their own, more restrictive criteria for evaluation land-division applications? We would like to see the "uniform delegation agreement" that will govern municipal delegation to assure that it conforms with agreements between the department and the Coalition.

Trans 233.11(3)

What is the meaning and purpose of the phrase "... and shall be in harmony with the general purposes and intent of ch. 236?"

Trans 233.11(3)(a)

To provide landowners with greater certainty as to what they must demonstrate in order to receive a special exception, the Coalition requested (and the Department appeared to agree) that the Department include within the rule the specific criteria that it uses in granting special exceptions. Due to the ambiguous nature of the criteria, this list fails to provide landowners with any reasonable certainty as to what they must demonstrate in order to receive a special exception. For example, what is the meaning of "emerging congestion and level of service projection?" What are the SPECIFIC standards used to determine this? How does this criterion differ from "existing and future traffic volumes, any traffic impact analysis, access issues, and engineering guidelines as published in the department's Facilities Development Manual, Chapter 11, Design, as amended through March 13, 2000?" What is the "Facilities Development Manual" and what does it say? What do criteria #1 and #7 mean and how do they differ? What about #4 and #9? What exactly is NOT included under criteria #10 (transportation safety), #11 (preservation of the public interest and investment in the highway), and #12 (other criteria deemed appropriate by the Department)?

As an alternative to the list of ambiguous criteria, we, again, suggest that this list of criteria be replaced with the following language:

If a land divider wishes to erect, install or maintain any improvement within a setback area determined under Trans. 233.08(2) or (3), the land divider shall provide written notice and a plat map showing the nature and the distance of the proposed improvement from the nearest right-of-way line of the highway to the department's district office in which the land division or any part of it is located. The department's district office shall receive this notice and plat map at least 30 days prior to any work related to the erection, installation, or maintenance of such proposed improvement.

The department's district office shall review the notice and plat map to determine whether a planned highway project within a 6-year improvement program under s. 84.01(17), Stats. will conflict with the proposed improvement. If the department's district office determines a conflict exists, it will notify the land divider in writing within 30 days after receiving the written notice and plat map for the proposed improvement, and request that the land divider consider alternative locations that will not conflict with the planned highway work. If the department's district office and the land divider are unable to agree upon an alternative location to avoid or minimize the conflict, the land divider may erect, install, or maintain the improvement, but, notwithstanding pars. (b) and (c), the department may not pay compensation or other damages relating to the improvement that conflicts with the planned highway project. In order to avoid payment of compensation or other damages to the land divider or subsequent owner of the improvement, the department is required to record a copy of its written notice to the land divider of the conflict, that adequately describes the property, with the register of deeds in the county in which the improvement or any part of it is located.

[The 6-year plan seems to be a more reasonable "measuring stick" than the 20-year plan under the following rationale. The 6 year plan is referenced in the statutes under the powers and duties of the department at s. 84.01 (17). Every two years, (odd numbered years) DOT compiles a comprehensive 6 year program for major highway development and rehabilitation. The 6 year plan provides a listing of all anticipated projects, the type of project, location, estimated cost and scheduled construction date. First two years are based on funding levels provided in the most recent budget --- other years assume cost to continue. Statutes require DOT to notify county clerks, DNR and DATCP of the improvements anticipated under the plan. All major highway projects must be enumerated in the statutes prior to beginning construction.]

Trans 233.11(3)(b)

To facilitate the language proposed above, we request that the first sentence of this subparagraph be revised as follows: "If the department determines that there is a conflict between the proposed land division and a planned highway project as indicated in its 6-year improvement program under s. 84.01(17), Stats., it may grant the special exception by adjusting the setback area..."

Trans 233.11(3)(c)

To facilitate the language proposed in (3)(a), we proposed that this provision be revised as follows: "(c) Allow in setback ~~removal does not affect viability~~. If the department determines that there is a conflict between the proposed land division and a planned highway project as indicated in its 6-year improvement program under s. 84.01(17), Stats., it may grant the special exception within the existing setback area and ~~future removal of the structure or improvement in whole or in part, will not:~~

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

~~then the land divider, provided that the land divider assumes the risk of future department-required removal~~

Trans 233.11(3)(d)

Because the determination of whether to grant a blanket or area special exception should be based on the physical characteristics of the area surrounding the subject property irrespective of whether the Department granted a special exception in those cases, we suggest replacing the proposed provision with the following: If the Department determines that the request for a blanket or area special exception is consistent with similar land divisions, similar structures or improvements, or the same area and development patterns, the Department shall grant the blanket or area special exceptions that are generally applicable.

Trans 233.11(4)

See comments to Trans: 233.11(3)(a)

Trans 233.11(5)

In the first two sentences, change the term "approvals" to "certified non objections." In the last sentence, add "of" after "The department will not unilaterally initiate a review. ..."

Trans 233.11(5)(b)

Does the failure to act in the provision apply only to applications for a special exception? Your note suggests this, but we would like clarification.

Trans 233.11(7)

These provisions should apply whether the change in ownership has existed for 5 years or not. Accordingly, we request that the phrase "that existed for 5 years" be deleted.

(End)

Citizens for a Better Environment (CBE)

Comments:

6.26.00 WisDOT Revision to Trans 233 Setback Proposal

06.08.00

General:

In general, CBE's primary concerns regarding this rule are to:

- Ensure adequate setbacks and access controls in rural areas;
- Provide for locally planned traditional streetscapes and setbacks in existing and planned urban areas;
- Ensure the maximum use of existing highway facilities and rights of way to minimize the need for new alignments and the expansion of lower function highway facilities.

May 26 Revisions:

WisDOT has made a good faith attempt to reconcile competing points of view. After reviewing both the revisions and the comments from TBA and the Coalition, we would add the following:

- *Procedure with utilities:* It would certainly be ideal to provide all land owners with a procedure for approving setback issues identical to that provided to the utilities. However, we understand that it would probably be unworkable and inappropriate. In simple terms, the utilities wish to stay as far away from road construction and right-of-way conflicts as possible, while land owners—reasonably—wish to build as close as possible. Moreover, in practice, the utilities look to 20-year plans where available, especially when making major investments. Finally, the information provided the utilities is often not as precise or as final as—nor can it be-- that desired by the landowners and others in the coalition. In practice, their questions would often not be answered by the information provided to utilities and they might very well remain frustrated. Moreover, since there are many more of them, demands on WisDOT's time would be considerable.
- *Grandfathering language:* We support more explicit language.
- *Plat map review by Districts:* Again, it would be ideal if the Department could look at the plat map for each and every land division and setback issue encountered on a state right of way. However, we imagine that this would greatly increase the District workload and require additional funding. More importantly, we are concerned about the pressure potentially generated this process for granting more and more exceptions resulting in a lack of standard

practice and significant regional differences. If this change were adopted it would require monitoring and greater specificity to guide district personnel.

- *6-year vs. 20-year vs. "emerging congestion"*: Clearly the Department is proposing a compromise regarding the basis for deciding that congestion and future plans require more right of way and greater setback distances. The 6-year plan is not a good representation of what the Department knows about congestion and right-of-way issues in the future. It is primarily a short/mid-term device for guiding investment and planning decisions and its own workplan. The 20-year planning horizon is the accepted practice in these issues and represents the state's best, deliberate attempt to forecast traffic volume and capacity trends.

Finally, CBE understands the TBA's concern to ensure that setback decisions are not constrained by the 20-year plan and FDM's language about congestion when the Department knows that congestion trends could easily outstrip its efforts to respond to them with current expansion plans and programming. On the other hand, it would appear that the Department's inclusion of both the reference to existing and future traffic volumes as published in the FDM *as well as* "emerging congestion" projections would ensure that this concern is addressed. If not, we would hope that language could be found to overcome any confusion about this point, in part, perhaps, through a reference to information included in the SHP.

- *Local special exception approval*: We agree with TBA that the language regarding Departmental review of local community requests for special exceptions could be made more explicit.

Thank you for the chance to comment on these revisions. Please keep us informed about any further developments regarding Trans 233.

Contact Rob Kennedy, 608/251-9164 for further information.

WTBA Comments on WisDOT May 26th Proposed Revision

The following comments are provided by the Wisconsin Transportation Builders Association:

1. We are concerned with the language in proposed Trans 233.11 Special Exceptions (2). The concern is that the language should clearly state that the Department will review and approve each applicant city and village's request. This will assure that the Department agrees with the proposed policy for setbacks which the municipality is proposing to follow. The language should also clearly state that the city or village may not change its policy on setbacks and/or special exceptions, without the prior review and approval of the Department. This will assure that a municipality may not change its setback policy in ways contrary to the Department's interests, once the authority has been delegated.
2. WTBA **cannot** accept and will **oppose** the proposed revision on p. 4 to (a) specific analysis.

We request that the phrase "existing and future traffic volumes" be struck from sub-4, because it is tied to the FDM definition of congestion, that currently defines when the Department will address congestion, given limited resources and the need to set priorities, rather than the existence of emerging congestion.

And concurrently, we request that sub-9 be re-drafted as follows: "The presence or projected emergence of congestion during the 20-year planning horizon. Congestion is defined as travel conditions projected in LOS D,E or F ranges."

In addition, we suggest the creation of a new #13: "The need for additional capacity identified in an adopted local comprehensive plan".

We very much appreciate the opportunity to provide comments.

Setback

Trans 233

May 23, 2000 Meeting Attendance - Rm 144B HFSTB

<u>Name</u>	<u>Organization</u>	<u>Phone</u>
John Haverberg	Wis DOT - BHD	608-266-0075
Ron Nohr	Wis DOT - BHD	608-266-2186
BONNIE TRIPOLI	Wis DOT - BHD	608-266-2372
Gary E. Sherman	74th A.D.	608-266-7690
Mike Cass	Wis DOT	608-266-6555
JIM Thiel	Wis DOT - Legal	608-266-8928
Bob Cook	Wis DOT	608-266-1114
<small>alter.tb@midplains.net</small> Tom Walker	WI Transp. Builders	608-266-6891
<small>tlarson@wra.org</small> TOM LARSON	WI Reactors Assoc.	608-241-2047
<small>Robkennedy@igc.org</small> Rob Kennedy	Citizens For a Better Environment	608-257-9164
<small>cdodge@boardman-lawfirm.com</small> Chris Dodge	Midwest Equip Dealers	608-283-1777
John Steinbrink	65th Dist.	262-6945863
<small>tliebe@inpress.net</small> Tom Libe	Broadrick's Assoc. For PMAW	255-0566
<small>bbarthlette@inpress.net</small> BOB BARTLETT	Petroleum Marketers Assn.	256-7555
<small>osborne@hfomadisen.com</small> Pat Osborne	HFD	(608)258-9506
Julie Lasa	State Assembly	267-9649
Janet Sivandby	Outdoor Advertising Assoc.	286-0764
<small>jdeschane@wisbuild.org</small> Jerry Deschane	Wisc. Builders Assoc.	242-5155

WISDOT MAY 26 TRANS 233 SETBACK PROPOSAL

This is the revision to the May 23 draft that resulted from our meeting in Madison with interested persons the afternoon of May 23. I am sending this on Friday, May 26 to all the persons who were in attendance at that meeting. It is my understanding that I will receive any comments or suggestions back [by E-Mail would be my preference] by no later than Monday, **June 5**. We have to stick to this deadline to keep the rulemaking process on track for a draft rule to be submitted to Legislative Council about June 12, for public hearing in July, and the other steps thereafter for the final rule to be effective late this year [November 1 earliest – December 1 more likely.]

Trans 233.08 (1) Setback requirements and restrictions.

[The following is the current general restriction within the setback area and my statement of the current ways to be relieved from the restriction.]

“(1) Except as provided in this section¹ or in s. Trans 233.11² or, with respect to connecting highways, as provided in s. 86.16 (1)³, Stats., no person may erect, install or maintain any structure⁴ or improvement⁵ within a setback area determined under sub. (2) or (3). “

¹ Trans 233.08(3m) – This refers to the special procedure in this section, i.e. Trans 233.08, for utilities.

² Trans 233.11 – This is the procedure for granting variances – to be renamed Special Exceptions.

³ Section 86.16(1), Stats. – This is the state law that allows utilities within highway right of way subject to written approval of WISDOT with respect to State Trunk Highway and local authorities with respect to connecting highways.

“(1) Any person, firm or corporation, including any foreign corporation authorized to transact business in this state may, subject to ss. 30.44 (3m), 30.45 and 196.491 (3) (d) 3m., **with the written consent** of the department with respect to state trunk highways, and with the written consent of local authorities with respect to highways under their jurisdiction, including connecting highways, construct and operate **telegraph, telephone or electric lines, or pipes or pipelines for the purpose of transmitting messages, water, heat, light or power along, across or within the limits of the highway.**”

⁴ Trans 233.015 (7) defines “structure” as follows:

“(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.”

[So this sentence means there are four ways to erect something within a setback area.

1. For utilities, follow the procedures set forth.
2. Obtain a variance.
3. For utilities within highway, get local approval on connecting highways or WISDOT approval on state trunk highways. [This is a "technical" exception.]
4. Don't fall within definition of "structure" or within definition of "improvement."

[The following sentence in the current rule means that existing structures or improvements within a setback at the time of a land division are grandfathered and allowed to continue to exist.]

Trans 200.08 (4)

"(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.**"

[It is my understanding from our May 23 meeting that this is sufficiently clear and no changes are needed to address the concern for clarify that existing structures or improvements within a setback at the time of a land division are grandfathered and allowed to continue to exist.]

Trans 233.11 Variances.

[This is the ordinary means by which WISDOT currently allows **new** structures or **new** improvements to be placed within the setback area in conjunction with a **new** land division. WISDOT proposes the following changes to this procedure to address the concerns of the Coalition and other interested persons at the May 23 meeting:]

⁵ Trans 233.015 (2) defines "improvement" as follows:

"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."

Trans 233.11 (title) and 233.11 are amended to read as follows:

Trans 233.11 (title) ~~Variiances~~ Special Exceptions.

(1) Department consent. No municipality or county may issue a variance or special exception from this chapter without the prior written consent of the department.

(2) Municipal delegation. At the request of a city or village the department may delegate review and approval of land divisions abutting state trunk highways or connecting highways to cities and villages within which the highways lie. The department shall develop a uniform delegation agreement in cooperation with cities and villages. The delegation agreement may also grant a city or village authority to grant special exceptions. Land division approvals and special exceptions granted by cities or village that have been delegated this authority by the department are subject to the internal appeal procedure applicable to land division approvals or special exceptions granted by the department.

~~(2)~~ (3) Special exceptions allowed. The department may ~~not~~ authorize ~~variances~~ special exceptions from this chapter ~~except in appropriate cases in which the literal application of this chapter would result in practical difficulty or unnecessary hardship, or would when warranted by specific analysis of the setback needs as determined by the department defeat an orderly overall development plan of a local unit of government.~~ A variance special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter. The department may ~~not~~ grant a variance special exception that adjusts the setback area or authorizes ~~authorizing~~ the erection or installation of any structure or improvement within a setback area as follows:

[NOTE: I eliminated the phrase "impractical difficulty or unnecessary hardship" to avoid the same adverse legal consequences that could result from the existing use of the word "variance." The Wisconsin Supreme Court has interpreted "variance" and this seemingly innocuous phrase to make it extremely difficult, if not impossible, to grant variances and in so doing has invited third party legal challenges to any "variances" reasonably granted. See **State v. Kenosha County Bd. of Adjust.**, 218 Wis.2d 396, 577 N.W.2d 813 (1998). Our Supreme Court defined "unnecessary hardship" in as an owner having "no reasonable use of the property without a variance." **Id.** at 413. The WISDOT rule is **not** intended to be so restrictive and has **not** been administered in so restrictive a fashion. In its first year of operation, WISDOT granted the vast majority of variances requested in a site and neighborhood-sensitive context based on specific analysis. I moved the phrase "defeat an orderly overall development plan of a local unit of government" to the specific analysis criteria in paragraph (a) below.]

(a) Specific analysis. Upon request for a special exception, the department shall make a specific analysis of the setback needs. The analysis of the department may consider:

1. The structure or improvement proposed and its location,
2. The area in the vicinity of the proposed land division and its existing development pattern,
3. Land use and transportation plans and the effect on orderly overall development plans of local units of government,
4. Existing and future traffic volumes, any traffic impact analysis, access issues, and engineering guidelines as published in the department's Facilities Development Manual, Chapter 11, Design, as amended through March 13, 2000,
5. The objectives of the community, developer and owner,
6. The effect on other property or improvements in the area,
7. The impact of potential highway or other transportation improvements on the continued existence of the proposed structure or improvement,
8. The impact of removal of all or part of the structure or improvement on the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement,
9. Emerging congestion and level of service projections,
10. Transportation safety,
11. Preservation of the public interest and investment in the highway,
12. Other criteria deemed appropriate by the department.

"Level of service" as used in this paragraph means the ability of the facility to satisfy both existing and future travel demand. Six levels of service are defined for each type of highway facility ranging from A to F, with level of service A representing the best operating conditions and level of service F the worst.

[NOTE: I have restructured this paragraph to make it more readable by breaking out and grouping related criteria for consideration. I have inserted a reference to the specific Chapter of the Facilities Development Manual and its date. I have included here the language that used to be in the preamble to this section relating to the "orderly overall development plan of a local unit of government." I've inserted the phrase "existing development pattern" to clarify an exiting criteria and as suggested in our meeting of May 23. I've new criteria: "The effect on other property or improvements in the area," "Preservation of the public interest and investment in the highway," and "Emerging congestion and level of service projections." I believe it is important to retain the express flexibility to consider "other criteria deemed appropriate by the department." The department needs to be able to consider other impacts its special exception decisions may have without giving them undue weight in this list of criteria. For example, will special exceptions reduce the availability of land for pedestrian and bicycle facilities or to accommodate other modes of transportation, have a disproportionate adverse and prohibited disparate effect on low income and minority populations, or have an adverse effect on the environment by requiring future expansions in sensitive areas? I believe the list of criteria should

be illustrative and not prescriptive or excessively legalistic. What we are seeking is a reasoned decision based on sound judgment based on facts developed through a specific analysis. I have also included the definition of "level of service" that is used by WISDOT and that is already contained in TRANS 210.03(4), Wis. Admin. Code.]

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

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

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

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

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

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

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

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

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

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

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

(6) Time limits.

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

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

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

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

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

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

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

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

There will always a clash between
Landowners RTS. & The good of the state
Land owners RTS should be fairly compensated
Trans 233 not any other rule is going to eliminate
Totally that problem.

Reads barq Rep + Senator.

Dept & Stake holders -

Whatever the committee does with Trans 233
I would strongly urge you not to repeat the existing
rule.

Proping may be a possibility but if we go that
route then money needs to be there to do it.

TRANS 233

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

What is the Purpose of Trans 233?

- ◆ “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.”

- ◆ Trans 233 addresses the department’s minimum standards for the division of lands that abut these highways.
- ◆ This is 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 History of Trans 233

- ◆ Trans 233 has been in effect since 1956.
- ◆ Only change until this year was to renumber it from Hy 33 to Trans 233 in 1996.
- ◆ It was originally created to regulate Subdivisions only.
- ◆ It has always applied to connecting highways.

To whom does Trans 233 apply?

- ◆ Any property abutting a state trunk highway that is undergoing a change to its boundary.
 - *This means that an existing parcel who’s owner wants to split into more parcels or add to another parcel must comply with the rule.

What gives DOT the authority to impose these regulations?

- ◆ The authority to impose these regulations for subdivisions comes from s.236.13(1)(e), Wisc. Stats.
- ◆ The authority for the rest of the land divisions comes from s. 86.07(2), Wisc. Stats.

Why was it revised?

- ◆ It contained language relating to the old highway commission.
- ◆ Because of the numerous methods of dividing land, it was not able to fulfill its purpose.
- ◆ There were also many areas that were unclear, misunderstood or being ignored.
- ◆ It was felt that substantive changes needed to be made.

What were the major NEW provisions to the rule?

- ◆ It now pertains to ALL land divisions. Including:
 - * Subdivisions
 - * County Plats
 - * Certified Survey Maps (CSM's)
 - * Condo Plats
 - * Any other form of land division, such as deeds
- ◆ There is now a fee charged to cover DOT's costs in reviewing the land division.

Clarifications to the Rule

- ◆ More definitions were added to clarify many aspects of the rule.
- ◆ Encouragement of developers to approach the DOT early through a conceptual review process.
- ◆ Setbacks.
- ◆ Noise, vision corners and drainage.
- ◆ Variances.

Basic Principles of Trans 233

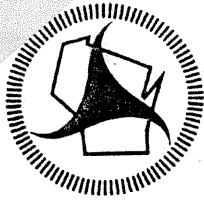
- ◆ Local traffic from a land division be served by an internal highway system.
- ◆ Minimize the number of points intersecting with the state trunk highway.
- ◆ No direct access from individual lots to the State Trunk Highway or connecting highway.
- ◆ Consider local land use plans.

Basic Principles (cont'd.)

- ◆ Consider the property's relationship to adjacent lands.
- ◆ Apply rule to all lands owned by the land divider that are adjacent and contiguous.
- ◆ Apply setbacks.
- ◆ Apply drainage requirements.
- ◆ Apply vision corner requirements.

Procedures for Review

- ◆ Encourage conceptual review by charging no fee for such review.
- ◆ Preliminary and final review must be reviewed by the department within a 20 day period.



Wisconsin Department of Transportation

www.dot.state.wi.us

TRANS 233
File

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
P.O. Box 7910
Madison, WI 53707-7910

February 12, 1999

Telephone: 608-266-8810
FAX: 608-267-6734
E-Mail: ogc.exec@dot.state.wi.us

Mariano A. Schifalacqua, City Engineer
Room 612 Zeidler Municipal Building
841 N. Broadway
Milwaukee, WI 53202

Dear Mr. Schifalacqua:

Mark Mansfield of WISDOT informs me that you expressed very strong surprise and displeasure with Trans 233, Wis. Admin. Code, on February 3, 1999, at a meeting of the Local Roads and Streets Council. I want to respond to the City's concerns as soon as possible because I believe there is a fundamental misunderstanding as to the applicability of the new rule in the City of Milwaukee. In summary, there is no change in setback requirements. The setback distances from state trunk and connecting highways are the same as they have been since 1956. The new rule does not require WISDOT to approve any new building in the City of Milwaukee due to new setback requirements and access control. There is no change to WISDOT's authority to grant, deny or condition permits for new or changed access to state trunk highways in the City of Milwaukee. The misunderstanding is probably in the details as follows:

CITY CONCERN REGARDING SETBACKS.

There is no change in setback requirements. The setback distances from state trunk and connecting highways are the same as they have been since 1956. The setback requirements went into effect in September 1956, as Ch. Hy 33, Wis. Admin. Code, renumbered without change to Trans 233 in 1996. The impetus for the original 1956 rule was Ch. 570, Laws of 1955. The 1956 law created Ch. 236, Stats., regarding subdivision plat approvals. It created in pertinent part sec. 236.12(2)(a), Stats. (1955) that said if the proposed subdivision plat "abuts or adjoins a state trunk highway or connecting street," copies had to be sent to the "state highway commission" for review based upon rules of the "state highway commission relating to provision for the safety of entrance upon and departure from the abutting state trunk highways or connecting streets and for the preservation of the public interest and investment in such highways or streets." Section 236.13(1)(e), Stats. (1955). As promulgated in 1956, the Highway Commission's (WISDOT's) rule referred to the statutory purpose of Chapter 236 and established the following setback requirements from 1956 up through the time of the change that went into effect February 1, 1999:

"Hy 33/Trans 233.08 Setback requirements. (1) There shall be a minimum building setback **110 feet from the centerline of the state trunk highway or 50 feet outside the nearer right-of-way line, whichever is more restrictive.** However, if the local unit of government has a uniform setback ordinance which requires a minimum building setback for state trunk highways equal to or greater than **100 feet from the centerline or 42 feet from the nearer right-of-way**

line, whichever is more restrictive, the local ordinance shall govern for the sake of consistency; provided that the local unit of government shall allow no variances or exceptions for platted areas abutting state trunk highways without prior approval of the [state highway] commission. There shall be no improvements or structures placed between the highway and the set back line.

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

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

Section 236.12(2)(a), Stats., (1997-98) is the same as in 1956. It says if the proposed subdivision plat "abuts or adjoins a state trunk highway or connecting highway," copies have to be sent to the state "department of transportation" for review based upon rules of the state "department of transportation relating to provision for the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways." Section 236.13(1)(e), Stats. (1997-98). The new rule now recreates the same setback requirements as Trans 233.08 and reads as follows:

"Trans 233.08 Setback requirements and restrictions. (1) Except as provided in this section or in s. Trans 233.11 [Variances] or, with respect to connecting highways, as provided in s. 86.16(1), Stats. [utilities subject to WISDOT approval on state trunk highways and subject to local approval with respect to connecting highways], 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 with **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.**" (Emphasis added.)

The setback distances from state trunk and connecting highways are the same as they have been since 1956.

CITY CONCERN REGARDING WISDOT APPROVAL OF NEW BUILDINGS.

The new rule does not require WISDOT to approve any new building in the City of Milwaukee due to new setback requirements and access control. New buildings in the City of Milwaukee are not subject to WISDOT approval. Subdivision plats abutting on state trunk highways and connecting highways in the City of Milwaukee are not now and never have been subject to WISDOT approval. Section 236.12(1)(a), Stats. (1955) and (1997-98), both read as follows:

1955: "236.12 **Procedure for Approval of Plats.** (1) This section shall not apply to cities of the first class nor to land outside of municipalities in a county having a population of 500,000 or more." (Note: "Municipality" means an incorporated city or village. 236.02(1), Stats. (1955))

1997-98 "236.12 **Procedure for Approval of Plats.** (1) This section shall not apply to cities of the first class nor to unincorporated land in a county having a population of 500,000 or more."

The statutory State plat approval procedures do not apply to the City of Milwaukee.

The statutes and Trans 233 do apply in full to all state trunk highways and connecting highways in all 72 counties, except in Milwaukee County, they apply to all other incorporated municipalities, except the City of Milwaukee, and they apply to any unincorporated lands in that County. For convenience I have attached a listing and map that shows and distinguishes all state trunk highways and connecting highways in Milwaukee County. **Attachments A and B.**

In the City of Milwaukee itself, other restrictions do apply now and have applied in the same way in the past. For example, the City of Milwaukee is now and has been responsible for allowing utilities within connecting highways under sec. 86.16(1), Stats. and for allowing other work within connecting highways by City permits under sec. 86.07(2), Stats. The reason is that connecting highways are not part of the state trunk highway system. Section 84.02(11), Stats., provides as follows:

"Connecting highways. The state trunk highway system shall not include the marked routes thereof over the streets or highways in municipalities which the department has designated as being connecting highways. Those municipal streets or highways so excluded as state trunk highways but marked as such and designated as connecting highways are further described and the aids determined therefor under s. 86.32."

Similarly, section 86.32(1), Stats., gives responsibility for maintenance of connecting highways to the City. It reads in part as follows:

"The department may designate, or rescind the designation of, certain marked routes of the state trunk highway system over the streets or highways in any municipality for which the municipality will be responsible for maintenance and traffic control and the maintenance and operation of any swing or lift bridge. Such maintenance, operation and traffic control of the connecting highways and swing and lift bridges shall be subject to review and approval by the department."

However, as in the past, if any land division or, for that matter, any other development in the City of Milwaukee that abuts a state trunk highway contemplates or affects direct access to or work in a state trunk highway, then a permit must be obtained from WISDOT. For that reason, as a matter of common sense, all land dividers in the City of Milwaukee that are creating new land divisions in the City of Milwaukee of land that abuts state trunk highways would be wise to submit their land divisions to WISDOT for conceptual review.

The location or conditions necessary for safety of entrance or departure from the state trunk highway that WISDOT would need to impose as a condition to granting its permits for access to the state trunk highway or work in the state trunk highway under sec. 86.07(2), Stats., could be taken into account by the land divider at that time. This avoids incurring unnecessary additional surveying, monumenting, mapping or design expenses for any layout changes that may be

needed without this review. There is no charge for this conceptual review. Section Trans 231.01(9), Wis. Admin. Code, reads as follows:

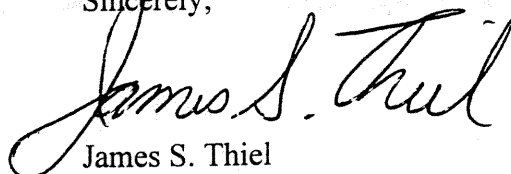
"No permit may be issued under this chapter for construction of a highway or a private road or driveway that connects directly with a state trunk highway and that provides vehicular access to a land division, as defined in s. Trans 233.015(4), unless the land division was created before the effective date of this section (February 1, 1999) or the department determines that the land division meets the requirements of ch. Trans 233."

Although WISDOT is not directly involved in issuance of permits for access to connecting highways, the City's maintenance, operation and traffic control of connecting highways is subject to WISDOT review and approval. As a matter of policy and for all practical purposes, however, the authority and responsibility with regard to connecting highways reside with the City.

The new rule, Trans 233, does not require WISDOT to approve any new building in the City of Milwaukee due to new setback requirements and access control. New buildings in the City of Milwaukee are not subject to WISDOT approval. However, for highways under its jurisdiction, WISDOT does retain authority to provide for the safety of entrance upon and departure from the state trunk highways and to preserve the public interest and investment in such highways in the City of Milwaukee, just as the City does as to its highways. WISDOT believes these rules are necessary and proper for the preservation of highways, and for the safety of the public.

Perhaps I have overreacted or missed the point of this second hand report of your comments, or need additional information from you. Please feel free to contact me if this letter does not adequately address your concerns.

Sincerely,



James S. Thiel
General Counsel

Attachments: A. List of Connecting and State Trunk Highways in Milwaukee County
B. Map of Connecting and State Trunk Highways in Milwaukee County

cc: Les Fafard, District Director
Jim Gruendler
Dan Pritchard
Ed Friede
Bob Bovy
Bonnie Tripoli
Mark Mansfield
Sandy Beaupre
Tanace Matthiesen

Milwaukee County

CONNECTING HIGHWAY LIMITS AND STATE TRUNK HIGHWAY LIMITS

WISDOT District 2

<u>City</u>	<u>Highway</u>	<u>Location</u>
Milwaukee & Suburbs	18 (W)	West City Limits of Wauwatosa (0.22 mile west of North 121st St.
	24 (SW)	45th St. and West Forest Home Ave.
Milwaukee & Suburbs	32 (N)	North Village Limits of Fox Point (233 feet north of Dear Rd.)
	32 (S)	South City Limits of South Milwaukee (Forest Hill Ave.)
	36 (SW)	0.30 mile west of USH 41 in Milwaukee (end of median)
	38 (S)	Grange Ave. and S. Howell Ave.
	41 (S)	Howard Ave. in Milwaukee and S. 27th St.
	41 (NW)	North 76th St. (STH 181) and W. Appleton Ave. (see notes)
	41	Jct. Stadium Freeway and W. National Ave.
	41	Stadium Freeway and N. 47th St.
	45	All STH
	57 (N)	West Marne Ave. in Glendale
	59 (W)	100th St. extended in West Allis
	62	All connecting street
	94	All STH
	100, *119 43 & Park Freeway	All STH
	145 (NW)	0.11 mile northwest of Hampton Ave. in Milwaukee
	145 (W)	South curb of W. Walnut St.
	145 (E) NB	North curb of E. Ogden St. at N. Milwaukee
145 (E) SB	North curb of E. Knapp St. at N. Broadway	
175	All STH	
181 (N)	Grantosa Dr. and N. 76th St.	
190 (W)	W. Capitol Dr. and N. 108th St.	
894 & 794	All STH	

MILWAUKEE

OSWEGO COUNTY

57

32

43

Boyside

Brown Deer

River Hills

Fox Point

Glendale

White Fish Bay

Shorewood

Milwaukee

West Allis

West Milwaukee

Greenfield

Greendale

Franklin

Oak Creek

South Milwaukee

Milwaukee

South Milwaukee

South Milwaukee

South Milwaukee

South Milwaukee

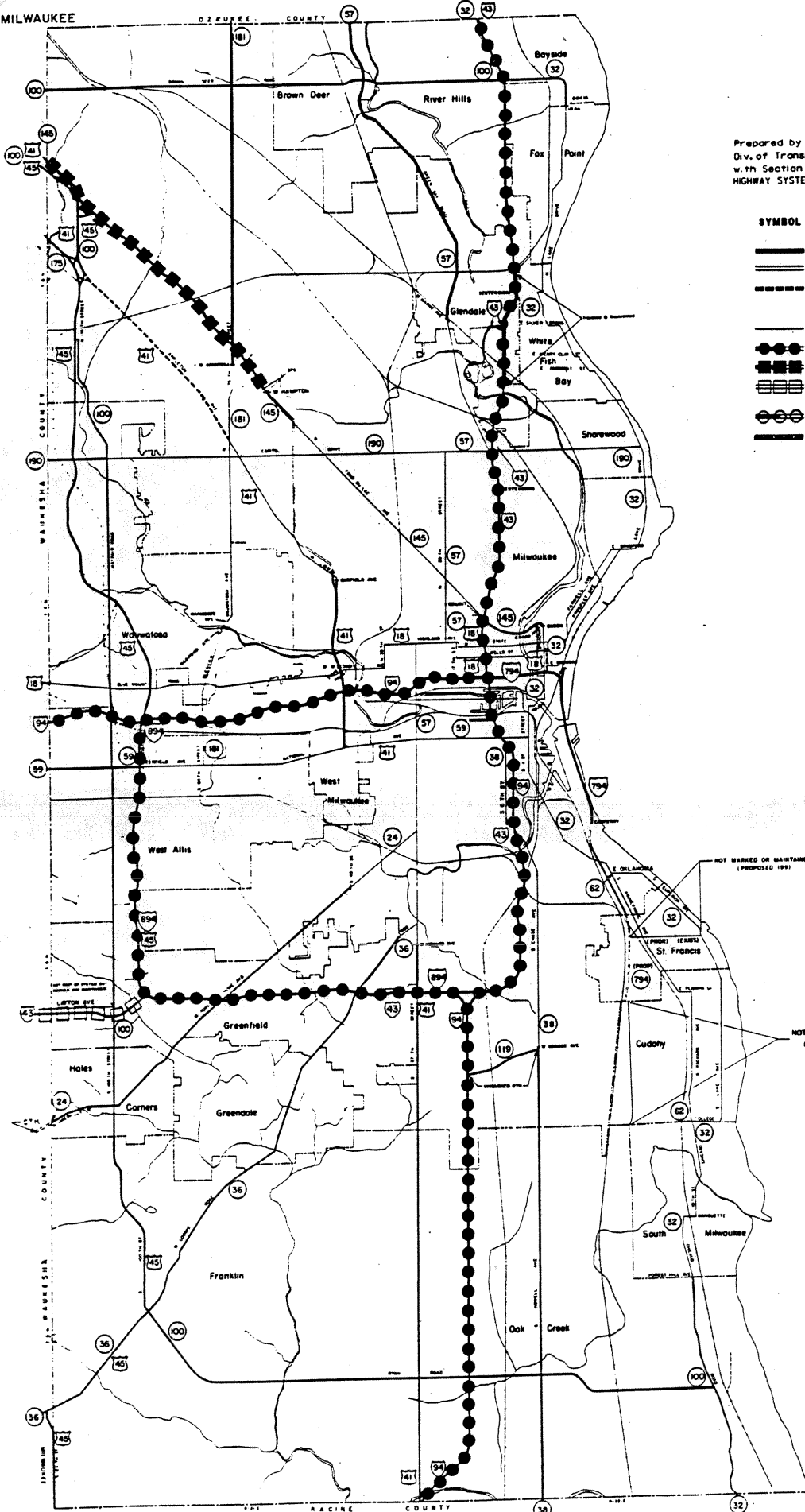
South Milwaukee

MILWAUKEE COUNTY

Prepared by the State of Wisconsin, Department of Transportation
Div. of Transportation Infrastructure Development in accordance
with Section 84.02(12) showing the official layout of the STATE TRUNK
HIGHWAY SYSTEM as of December 31, 1997

LEGEND

SYMBOL	HIGHWAY DESIGNATION	WI. STATE STATUTES
	STATE TRUNK HIGHWAY (Maintained & Traveled)	84.02
	STATE TRUNK HIGHWAY (Not Maintained & Traveled)	84.02
	STATE TRUNK HIGHWAY (To be removed from the Official STH System upon opening to traffic the highway segment shown as symbol)	84.02
	CONNECTING HIGHWAYS	84.02(1)
	DESIGNATED FREEWAY (INTERSTATE HIGHWAY)	84.29 & 84.295
	DESIGNATED FREEWAY	84.295
	DESIGNATED FREEWAY	84.295
	DESIGNATED INTERSTATE	23 U.S.C.-159(a)
	DESIGNATED EXPRESSWAY	84.295
	TEMPORARY ROUTES	84.02(1)(a)



NOT MARKED OR MAINTAINED
(PROPOSED 1991)

NOT MARKED OR MAINTAINED
(PROPOSED B.T.H. 784)

MILWAUKEE

Attachment B

Analysis Prepared by the Wisconsin Department of Transportation

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

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

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

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

The statutes and this rule apply to state trunk highways and connecting highways.

Under existing law, 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. As of January 1, 1997, there were 11,813 miles of state trunk highways.

Under existing law, 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. As of January 1, 1997, there were 520 miles of connecting highways.

The statutes and this rule do not apply to "business routes." Under existing law, a "business route" is an alternate highway route marked to guide motorists to the central or business portion of a city, village or town. The word "BUSINESS" appears at the top of the highway numbering marker. A business route branches off from the regular numbered route, passes through the business portion of a city and rejoins the regularly numbered route beyond that area. 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.

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

Development around the state has evolved in such a manner that departmental review of subdivisions alone is not providing sufficient protection of state trunk and connecting highways. Section 236.34, Stats., allows for land divisions to occur through the preparation of certified survey maps. Section 703.11, Stats., also allows for the creation of condominium plats. These two statutes, along with the above-mentioned s. 236.45, Stats., create land divisions or developments which occur outside of the Department of Administration subdivision review process, but which have similar impacts upon the state trunk highways and connecting highways. There are also other means of dividing land not specified by statute. In the past, the Department has not had the opportunity to review these maps or development in terms of the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways. Section 86.07(2), Stats., requires that any person making an alteration in a highway such as constructing or modifying a driveway must obtain a permit. The Department, by revision of this rule, would now require that it review land divisions by any of these methods for compliance with this rule. Any access permit requested for a future land division which does not conform to these requirements will be denied.

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

The setback provision has always contained language limiting improvements and now these limitations are clarified. Utilities have always used the setback for some of their facilities and that continued use will be allowed. However, utilities will now be required to provide notice of new utility erection or installation work in setback areas and the Department will be required to notify the utility if the proposed utility work conflicts with

a planned highway project within a 6-year highway improvement program under sec. 84.01(17), Stats., or a major highway project enumerated under sec. 84.013, Stats. The Department and utility will then try to work out alternatives to mitigate or avoid the conflict. In the event of any unavoidable conflict, the utility may still erect or install a new facility in the setback area, but if the conflict does come to pass and requires the movement of the utility for the planned highway improvement in the future, then the utility will not be entitled to reimbursement for the cost of the utility move if the Department has recorded a copy of the Department's notice to the utility of the conflict that adequately describes the property and the utility work involved with the county register of deeds. This new provision applies only to new utility erections or installations that arise in the setback area of new land division maps recorded after the effective date of this rule. It does not apply to existing utility installations. It does not apply to existing utility easements recorded prior to the effective date of this rule. It does not apply to utility maintenance activities on existing utilities. The Wisconsin Courts have approved such setback provisions relating to utilities imposed by local units of government. **Town of Portland v. WEPCO**, 198 Wis. 2d 775, 543 N.W.2d 559 (1996). The Department will apply local ordinance setback rules relating to utility facilities only with respect to connecting highways within the geographic boundaries of municipalities where municipalities participate in the cost of improvements to the connecting highways. Also related to setbacks, when variances for allowing improvements in the setback are requested, the variance procedure established in this rule will allow the Department to consider entering into an agreement to allow the variance as long as the owner understands that the improvement and any related damages will not be compensable if the Department ever has the need to acquire additional right-of-way within the setback.

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

Several of the Department's transportation districts may use existing personnel to review more land divisions than in the past. Any costs associated with these additional reviews will be offset by the funds received through the new fee. It is estimated that a total of about 50% of one person's time per district would be involved in the review. Several of the districts review all these documents now as a courtesy to the county governments so, in those districts, no additional costs would be incurred. It is expected that some of these costs will be defrayed by the Department delegating the review for some developments of land abutting connecting highways to the local municipality as allowed in s. 236.12(2)(a), Stats. Since, in general, local officials do review these documents now, there would be no additional costs to any reviewing authority.

Preparation and Copies of Rule. This proposed rule was drafted by Paul E. Nilsen, Legislative Attorney, and James S. Thiel. The analysis was prepared by Bonnie Tripoli and James S. Thiel, Wisconsin Department of Transportation, (608) 266-8928. Copies of the proposed rule may be obtained upon request from Bonnie Tripoli, Division

of Infrastructure Development, 4802 Sheboygan Avenue, Room 651, P.O. Box 7916, Madison, WI, 53707-7916, or by calling (608) 266-2372.

PART 4 REPORT

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

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

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

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

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

downstream. Under existing law, sec. 88.87(3), Stats., private property owners and users of land are required to protect upstream and downstream highway property from water damage or flooding caused by private improvements. Likewise, the Department is required to protect private property owners from damage caused by unreasonable diversion or retention of surface waters by highways under sec. 88.87(1), Stats. Both can be held responsible for water passing through their property if other properties are damaged. Thus the Department is not asking the developer to analyze the impact upon downstream properties but rather to ensure there will be no impact by asking that the character of the runoff from new developments be equal to or less than that of the before development condition. The Department is not dictating the methods to be used, but is only looking at the result. This allows the designer more flexibility in how to handle runoff and places less liability upon the property owner and the Department.

4. If this revision is passed it should include all land divisions within the state. **The rule has been revised to include all land divisions, statutorily regulated or otherwise.**
5. On certified survey maps (CSM's) which are 8½" x 14" there is not enough room to place the setback note on the sheet containing the graphic. **Revised the rule to allow a shorter note on the graphic sheet directing reader to the longer note on a following sheet, if there is no room on the graphic sheet to place the longer note.**
6. Opposition to the setback requirement because it limits owner's use of property. The Department should consider a fee purchase of future lands rather than reservations with numerous restrictions. **Setbacks are universally used by local and state governments and have been upheld many times in Wisconsin courts. This particular one will enhance safety and preserve the Department's investment in the highway should a larger facility be needed in the future mainly due to new development causing congestion and safety problems with the existing facility, as well as protecting the property owner from possible relocation of the highway to another location or the relocation of the development on the property. The setback can also protect the community from the disruption that can be caused when a highway is relocated or businesses are relocated. Limited improvements will be permitted within the setback area.**
7. A procedure needs to be established to enable the review of all submittals within a reasonable time frame. **The rule was revised incorporating a procedure for review of all submittals within 20 days. Speakers at the hearing indicated that 20 days seemed reasonable.**
8. There are some concerns over whether or not review fees should be charged. **No substantive reasons were given to cause the Department to rethink this portion of the rule. The fees are expressly authorized by statute.**
9. There was concern over who would be doing the reviews, particularly for land divisions other than subdivisions. **Except for connecting highways where the Department may allow the review to be done by the municipality with**

jurisdiction, through written agreement, the reviews will be done by Departmental staff.

Responses to Utility Comments on Trans 233

1. Utility companies and organizations objected to the requirement that the Department "approve" a utility installation within the setback before they could be compensated for moving it for a future highway project. They proposed that the utility company only needed to "notify" the Department to retain compensability. They felt there would be no incentive for the Department to approve any such installations and also felt it could eventually lead to requiring a permit and a fee. They saw the approval as unnecessary except where a highway project was planned. **The revised rule uses an approach worked out jointly with the Wisconsin Utilities Association and the Department. The utility company will notify the Department when it plans to install facilities within a setback. The Department will notify the utility whether a project is planned and will work with it to find a location within the setback where the facility will not need to be relocated. If the two organizations cannot avoid or mitigate the conflict with the planned highway project and the utility company decides to proceed, the Department may determine that if the anticipated conflict develops that requires the new installation to move due to the planned highway project, the Department will not be required to pay the cost of the utility move. The Department must record a document with the county register of deeds describing the property and its written notice to the utility if the Department wants to perfect this outcome.**

2. Utility companies wanted a reasonable time period before utility project commencement in which to submit notices and plans to the Department for utility work within the setback, and utilities wanted a set reasonable time for the Department to respond to the notice and plans in order for the Department to notify the utilities whether any conflict existed with planned highway projects. **A flexible 30 calendar day time normal frame was developed, with no less than 5 days for routine utility work review, and 60 days for major utility work review. The Department believes the flexible normal approach, 5, 30 and 60 days, will be most reasonable for all concerned and the utilities have concurred.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The following persons **registered for information**:

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

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

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

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