

1 **INSERT ANALYSIS A**

(CREP), if the DATCP employees include on any map prepared in connection with ~~the~~ CREP easement a written disclaimer indicating that the map has not been prepared by a professional land surveyor licensed under chapter 443 of the statutes, and ~~had~~ been prepared using protocols established by the Federal Department of Agriculture under the Wetlands Reserve Program, 16 U.S.C. 3837 et seq.

The substitute amendment also exempts from licensure employees of state agencies and local units of government who operate a land information system or geographic information system and who prepare maps on that GIS and LIS if the map shows approximate property boundaries or will be recorded and if the map contains the following or a substantially similar disclaimer:

"This map shows the approximate relative location of property boundaries but was not prepared by a professional land surveyor. This map is provided for informational purposes only and may not be sufficient or appropriate for legal, engineering, or surveying purposes."

2 **INSERT ANALYSIS B**

if both of the following apply:

1. The map includes a disclaimer substantially similar to the disclaimer included on certain maps prepared by employees of state agencies and local units of government who operate LIS and GIS.

2. The map is accompanied by the legal description of the tract or tracts of land or interest or interests in real property.

3 **INSERT 5-7**

4 Ensure that state agencies and local governmental units with land information
5 responsibilities include on any of the maps described in subd. 2. the following or a
6 substantially similar disclaimer:

7 "This map shows the approximate relative location of property boundaries but
8 was not prepared by a professional land surveyor. This map is provided for
9 informational purposes only and may not be sufficient or appropriate for legal,
10 engineering, or surveying purposes."

11 2. a. A map created using a land information system if the map depicts the
12 approximate boundary of an interest in property.

SA ✓
a

system

has

land information systems
and geographic information systems

was prepared using the land information system, but

1.

if the map was not prepared by a professional land surveyor, as defined in 50443.01(7m), engaged in the practice of professional land surveying, as defined in 50443.01(2)(b)

that

The following maps shall include the disclaimer described in subd. 10

in subd. 10

~~substantially similar~~

① b. A map created using a land information system if the map ^{that} may ^{will} be recorded
 ② in the office of one or more county register^s of deeds and was not prepared by a
 ③ professional land surveyor, as defined in s. 443.01 (7m).

INSERT 11-22

SECTION 1. 60.84 (2) of the statutes is amended to read:

60.84 (2) BOND. Before the town board executes a contract under sub. (1), the county surveyor or professional land surveyor shall execute and file with the town board a surety bond or other financial security approved by the town board.

History: 1983 a. 532.

SECTION 2. 60.84 (3) (a) of the statutes is amended to read:

60.84 (3) (a) Monuments shall be set on section and quarter-section corners established by the United States survey. If there is a clerical error or omission in the government field notes or if the bearing trees, mounds, or other location identifier specified in the notes is destroyed or lost, and if there is no other reliable evidence by which a section or quarter-section corner can be identified, the county surveyor or professional land surveyor shall reestablish the corner under the rules adopted by the federal government in the survey of public lands. The county surveyor or professional land surveyor shall set forth his or her actions under this paragraph in the certificate under sub. (4).

History: 1983 a. 532.

SECTION 3. 60.84 (3) (c) (intro.) of the statutes is amended to read:

60.84 (3) (c) (intro.) To establish, relocate or perpetuate a corner, the county surveyor or professional land surveyor shall set in the proper place a monument, as determined by the town board, consisting of:

History: 1983 a. 532.

SECTION 4. 60.84 (4) of the statutes is amended to read:

1 60.84 (4) CERTIFICATE. The county surveyor or professional land surveyor shall
 2 prepare a certificate setting forth a complete and accurate record of any survey under
 3 this section, including the exact bearings and distances of each monument from each
 4 other monument nearest it on any line in the town. The certificate shall be recorded
 5 in the office of the register of deeds of the county in which the surveyed land is
 6 located.

History: 1983 a. 532.

7 **SECTION 5.** 70.27 (5) of the statutes is amended to read:

8 70.27 (5) SURVEYS, RECONCILIATIONS. The surveyor making the plat shall be a
 9 professional land surveyor licensed under ch. 443 who shall survey and lay out the
 10 boundaries of each parcel, street, alley, lane, roadway, or dedication to public or
 11 private use, according to the records of the register of deeds, and whatever evidence
 12 that may be available to show the intent of the buyer and seller, in the chronological
 13 order of their conveyance or dedication, and set temporary monuments to show the
 14 results of such survey which shall be made permanent upon recording of the plat as
 15 provided for in this section. The map shall be at a scale of not more than 100 feet per
 16 inch, unless waived in writing by the department of administration under s. 236.20
 17 (2) (L). The owners of record of lands in the plat shall be notified by certified letter
 18 mailed to their last-known address, in order that they shall have opportunity to
 19 examine the map, view the temporary monuments, and make known any
 20 disagreement with the boundaries as shown by the temporary monuments. It is the
 21 duty of the professional land surveyor making the plat to reconcile any discrepancies
 22 that may be revealed, so that the plat as certified to the governing body is in
 23 conformity with the records of the register of deeds as nearly as is practicable. When
 24 boundary lines between adjacent parcels, as evidenced on the ground, are mutually

and

1 agreed to in writing by the owners of record, such lines shall be the true boundaries
2 for all purposes thereafter, even though they may vary from the metes and bounds
3 descriptions previously of record. Such written agreements shall be recorded in the
4 office of the register of deeds. On every assessor's plat, as certified to the governing
5 body, shall appear the volume, page, and document number of the metes and bounds
6 description of each parcel, as recorded in the office of the register of deeds, which
7 shall be identified with the number by which such parcel is designated on the plat,
8 except that lots which have been conveyed or otherwise acquired but upon which no
9 deed is recorded in the office of register of deeds may be shown on an assessor's plat
10 and when so shown shall contain a full metes and bounds description.

History: 1977 c. 29 s. 1646 (3); 1979 c. 221, 248, 355, 361; 1983 a. 473; 1987 a. 172; 1989 a. 31, 56; 1991 a. 316; 1995 a. 27 ss. 3361, 3362, 9116 (5); 1997 a. 27, 99; 1999 a. 96; 1999 a. 150 s. 672; 2005 a. 41, 254.

11 **SECTION 6.** 70.27 (6) of the statutes is amended to read:

12 **70.27 (6) MONUMENTS, PLAT REQUIREMENTS.** The provisions of s. 236.15 as to
13 monuments, and the provisions of s. 236.20 as to form and procedure, insofar as they
14 are applicable to the purposes of assessors' plats, shall apply. Any stake or
15 monument found and accepted as correct by a professional land surveyor laying out
16 an assessor's plat shall be indicated as "stake found" or "monument found" when
17 mapping the plat and such stake or monument shall not be removed or replaced even
18 though it is inconsistent with the standards of s. 236.15.

History: 1977 c. 29 s. 1646 (3); 1979 c. 221, 248, 355, 361; 1983 a. 473; 1987 a. 172; 1989 a. 31, 56; 1991 a. 316; 1995 a. 27 ss. 3361, 3362, 9116 (5); 1997 a. 27, 99; 1999 a. 96; 1999 a. 150 s. 672; 2005 a. 41, 254.

19 **SECTION 7.** 70.27 (7) (intro.) of the statutes is amended to read:

20 **70.27 (7) CERTIFICATE.** (intro.) When completed, the assessor's plat shall be
21 filed with the clerk of the governing body that ordered the plat. On its title page shall

1 appear the sworn certificate of the professional land surveyor who made the plat,
2 which shall state and contain:

History: 1977 c. 29 s. 1646 (3); 1979 c. 221, 248, 355, 361; 1983 a. 473; 1987 a. 172; 1989 a. 31, 56; 1991 a. 316; 1995 a. 27 ss. 3361, 3362, 9116 (5); 1997 a. 27, 99; 1999 a. 96; 1999 a. 150 s. 672; 2005 a. 41, 254.

3 **SECTION 8.** 70.27 (7) (d) of the statutes is amended to read:

4 70.27 (7) (d) A statement that the professional land surveyor has fully complied
5 with the provisions of this section in filing the same.

History: 1977 c. 29 s. 1646 (3); 1979 c. 221, 248, 355, 361; 1983 a. 473; 1987 a. 172; 1989 a. 31, 56; 1991 a. 316; 1995 a. 27 ss. 3361, 3362, 9116 (5); 1997 a. 27, 99; 1999 a. 96; 1999 a. 150 s. 672; 2005 a. 41, 254.

6 **INSERT 12-22**

7 **SECTION 9.** 93.70 (1^m) of the statutes is created to read: *

8 93.70 (1^m) An employee of the department who is not a professional land
9 surveyor, as defined in s. 443.01 (7^m), and who prepares a map that depicts the
10 boundaries of an easement to be acquired by the department under this section shall
11 include on that map all of the following:

12 (a) A disclaimer substantially similar to the disclaimer under s. 16.967 (3) (f). 1.

13 (b) A statement that the map is to be used only in connection with the program
14 under this section.

15 (c) A statement that the map was prepared using protocols established by the
16 federal department of agriculture under the wetlands reserve program, 16 USC 3837
17 et seq., and that a copy of the protocols may be obtained from the department of
18 agriculture, trade and consumer protection upon request.

****NOTE: Is this section governing maps prepared in connection with CREP easements and associated disclaimers acceptable?

19 **SECTION 10.** 157.061 (13^m) of the statutes is created to read:

20 157.061 (13^m) "Professional land surveyor" means a professional land
21 surveyor licensed under ch. 443.

22 **INSERT 13-9**

1 **SECTION 11.** 157.07 (2) of the statutes is amended to read:

2 **157.07 (2)** The plat or map shall show the exact location of the tract being
3 subdivided with reference to a corner or corners established in the United States
4 public land survey by bearings and distances, and shall show a small scale drawing
5 of the section or government subdivision of the section in which the cemetery plat is
6 situated, with the cemetery plat indicated. The plat or map shall include the
7 certificate of the professional land surveyor containing the name of the cemetery
8 authority, the date of the survey, the professional land surveyor's stamp or seal and
9 signature, and the professional land surveyor's statement that the survey is true to
10 the professional land surveyor's best knowledge and belief.

History: 1983 a. 473; 1989 a. 307 ss. 29, 30, 34; 1993 a. 490; 1995 a. 110; 2005 a. 41.

11 **SECTION 12.** 157.07 (3) of the statutes is amended to read:

12 **157.07 (3)** The plat or map shall be made on a durable white media that is 22
13 inches wide by 30 inches long with a permanent nonfading black image. Seals or
14 signatures that are reproduced on images that comply with this subsection have the
15 force and effect of original seals and signatures. When more than one sheet is used
16 for any one plat or map, they shall be numbered consecutively and each sheet shall
17 contain a notation showing the whole number of sheets in the plat, and its relation
18 to the other sheets. The sheets may be provided by the county through the register
19 of deeds on terms determined by the county board. The professional land surveyor
20 shall leave a binding margin of 1.5 inches on the left side of the 30-inch length and
21 a one-inch margin on all other sides.

History: 1983 a. 473; 1989 a. 307 ss. 29, 30, 34; 1993 a. 490; 1995 a. 110; 2005 a. 41.

22 **INSERT 13-14**

23 **SECTION 13.** 236.02 (9b) of the statutes is created to read:

^

1 236.02 (9b) "Professional land surveyor" means a professional land surveyor
2 licensed under ch. 443.

3 **INSERT 14-3**

4 **SECTION 14.** 236.12 (8) of the statutes is amended to read:

5 236.12 (8) In order to facilitate approval of the final plat where more than one
6 approval is required, the subdivider may file a true copy of the plat with the
7 approving authority or authorities with which the original of the final plat has not
8 been filed. The approval of such authorities may be based on such copy but shall be
9 inscribed on the original of the final plat. Before inscribing its approval, the
10 approving authority shall require the professional land surveyor or the owner to
11 certify the respects in which the original of the final plat differs from the copy. All
12 modifications in the final plat shall be approved before final approval is given.

History: 1973 c. 90; 1977 c. 29 s. 1654 (3), (8) (c); 1979 c. 221; 1979 c. 248 ss. 5, 25 (6); 1979 c. 355; 1985 a. 29; 1995 a. 27; 1997 a. 27.

13 **INSERT 16-1**

14 **SECTION 15.** 236.21 (1) (intro.) of the statutes is amended to read:

15 236.21 (1) ~~SURVEYOR'S~~ PROFESSIONAL LAND SURVEYOR'S CERTIFICATE OF
16 COMPLIANCE WITH STATUTE. (intro.) The certificate of the professional land surveyor
17 who surveyed, divided, and mapped the land giving all of the following information,
18 which shall have the same force and effect as an affidavit:

History: 1971 c. 41 s. 11; 1975 c. 94 s. 91 (3); 1975 c. 199; 1979 c. 248 ss. 18, 25 (3); 1983 a. 473; 1999 a. 85; 2001 a. 16.

19 **SECTION 16.** 236.21 (1) (a) of the statutes is amended to read:

20 236.21 (1) (a) By whose direction the professional land surveyor made the
21 survey, subdivision, and plat of the land described on the plat.

History: 1971 c. 41 s. 11; 1975 c. 94 s. 91 (3); 1975 c. 199; 1979 c. 248 ss. 18, 25 (3); 1983 a. 473; 1999 a. 85; 2001 a. 16.

22 **SECTION 17.** 236.21 (1) (d) of the statutes is amended to read:

1 236.21 (1) (d) A statement that the professional land surveyor has fully
2 complied with the provisions of this chapter in surveying, dividing, and mapping the
3 land.

4 **History:** 1971 c. 41 s. 11; 1975 c. 94 s. 91 (3); 1975 c. 199; 1979 c. 248 ss. 18, 25 (3); 1983 a. 473; 1999 a. 85; 2001 a. 16.

4 **SECTION 18.** 236.32 (1) of the statutes is amended to read:

5 236.32 (1) Any owner, professional land surveyor, or subdivider who fails to
6 place monuments as prescribed in this chapter when subdividing land.

7 **INSERT 16-6**

8 **SECTION 19.** 236.34 (1) (d) (intro.) of the statutes is amended to read:

9 236.34 (1) (d) (intro.) The map shall include a certificate of the professional
10 land surveyor who surveyed, divided, and mapped the land which has the same force
11 and effect as an affidavit and which gives all of the following information:

12 **History:** 1979 c. 248 ss. 22, 25 (3); 1983 a. 189 s. 329 (26); 1983 a. 473; 1987 a. 390; 1997 a. 99; 1999 a. 96; 2001 a. 16; 2005 a. 9, 41.

12 **SECTION 20.** 236.34 (1) (d) 1. of the statutes is amended to read:

13 236.34 (1) (d) 1. By whose direction the professional land surveyor made the
14 survey, division, and map of the land described on the certified survey map.

15 **History:** 1979 c. 248 ss. 22, 25 (3); 1983 a. 189 s. 329 (26); 1983 a. 473; 1987 a. 390; 1997 a. 99; 1999 a. 96; 2001 a. 16; 2005 a. 9, 41.

15 **SECTION 21.** 236.34 (1) (d) 4. of the statutes is amended to read:

16 236.34 (1) (d) 4. A statement that the professional land surveyor has fully
17 complied with the provisions of this section in surveying, dividing, and mapping the
18 land.

19 **History:** 1979 c. 248 ss. 22, 25 (3); 1983 a. 189 s. 329 (26); 1983 a. 473; 1987 a. 390; 1997 a. 99; 1999 a. 96; 2001 a. 16; 2005 a. 9, 41.

19 **INSERT 25-21**

20 (a) A map, other than a map described in s. 443.01 (6s) (a) 5., used in connection
21 with a regulatory program established by or the exercise of police powers by the state
22 or a local governmental unit, as defined in s. 16.97 (7).
in connection with (handwritten note with arrows pointing to "in connection" and "with")
✓ (handwritten checkmark above "the exercise")
✓ (handwritten checkmark above "(7)"),
↑ (handwritten arrow pointing to "the state")

23 **INSERT 26-1**

1 (c) A map that depicts the approximate boundaries or the shape and area of one
2 or more tracts of land or one or more interests in real property if all of the following
3 apply:

4 *under* 1. The map includes a disclaimer substantially similar to the disclaimer *set out*
5 *in* s. 16.967 (3) (f). *1.*

6 2. The map is accompanied by the legal description of the tract or tracts of land
7 or interest or interests in real property. In this *subdivision* *paragraph*, "legal description" has the
8 meaning given in s. 706.01 (7r).

9 **INSERT 29-19 A**
10 **SECTION 22.** 703.02 (*13r*) (*13r*) of the statutes is created to read:
11 703.02 (*13r*) (*13r*) "Professional land surveyor" means a professional land surveyor
12 licensed under ch. 443.
13 **SECTION 23.** 703.02 (6m) of the statutes is amended to read:
14 703.02 (6m) "Correction instrument" means an instrument drafted by a
15 licensed professional land surveyor that complies with the requirements of s. 59.43
16 (2m) and that, upon recording, corrects an error in a condominium plat. "Correction
17 instrument" does not include an instrument of conveyance. *end INSERT 29-19A*

History: 1977 c. 407; 1985 a. 188; 1997 a. 333; 1999 a. 85; 2003 a. 283; 2007 a. 20.

18 **SECTION 24.** 703.11 (4) of the statutes is amended to read:
19 703.11 (4) SURVEYOR'S PROFESSIONAL LAND SURVEYOR'S CERTIFICATE. A
20 condominium plat is sufficient for the purposes of this chapter if there is attached to
21 or included in it a certificate of a licensed professional land surveyor ~~authorized to~~
22 ~~practice that profession in this state~~ that the plat is a correct representation of the

INSERT
29-19C

1 condominium described and the identification and location of each unit and the
2 common elements can be determined from the plat. *end INSERT 29-19 C*

~~INSERT~~
29-19E

History: 1977 c. 407; 1983 a. 497; 1993 a. 463, 465, 491; 1997 a. 300, 333; 2003 a. 283; 2005 a. 9, 41.

3 **SECTION 25.** 703.13 (6) (e) of the statutes is amended to read:

4 703.13 (6) (e) Plats and plans showing the altered boundaries and the
5 dimensions thereof between adjoining units, and their identifying numbers or
6 letters, shall be prepared. The plats and plans shall be certified as to their accuracy
7 in compliance with this subsection by a civil engineer, architect, or licensed
8 professional land surveyor ~~authorized to practice his or her profession in the state.~~

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

9 **SECTION 26.** 703.13 (7) (c) of the statutes is amended to read:

10 703.13 (7) (c) Plats and plans showing the boundaries and dimensions
11 separating the new units together with their other boundaries and their new
12 identifying numbers or letters shall be prepared. The plats and plans shall be
13 certified as to their accuracy and compliance with this subsection by a civil engineer,
14 architect, or licensed professional land surveyor ~~authorized to practice his or her~~
15 ~~profession in the state.~~

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

16 **SECTION 27.** 703.13 (8) (c) of the statutes is amended to read:

17 703.13 (8) (c) Plats and plans showing the boundaries and dimensions of the
18 new unit together with the new identifying number or letter shall be prepared. The
19 plats and plans shall be certified as to their accuracy and compliance with this
20 subsection by a civil engineer, architect, or licensed professional land surveyor
21 ~~authorized to practice in this state.~~

end INSERT 29-19 E

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283.

22 **INSERT 31-12**

not

1 (1) In this section, "professional land surveyor" has the meaning given in s.
2 443.01 (7m).

3 **INSERT 33-4**

4 ~~#~~ (0) The treatment of section 16.967 (3) (f) of the statutes first applies to maps
5 created on the effective date of this subsection.

6 ~~#~~ (1) The treatment of section 26.09 (3) (b) 1. of the statutes first applies to
7 surveys recorded on the effective date of this subsection.

8 (2) The treatment of section 70.27 (5), (6), ^{and} (7) (intro.) and (d) of the statutes first
9 applies to assessor's plats made on the effective date of this subsection. ✓

INVERT X

10 ~~#~~ (3) The treatment of section 93.70 (1m) of the statutes first applies to maps
11 prepared on the effective date of this subsection. ✓

12 ~~#~~ (4) The treatment of section 157.07 (2) and (3) of the statutes first applies to
13 cemetery plats and maps created on the effective date of this subsection.

14 **INSERT 33-9**

15 ~~#~~ (5) The treatment of sections 236.12 (8) and 236.21 (1) (intro.), (a) and (d) of the
16 statutes first applies to plats certified on the effective date of this subsection.

INVERT Y

17 **INSERT 33-18A**

by a professional land surveyor, as defined in section 443.01(7m) of the statutes, as amended by this act, created

18 ~~#~~ (6) The treatment of section 236.34 (1) (d) (intro.), 1., and 4. of the statutes first
19 applies to certified survey maps recorded on the effective date of this subsection.

20 ~~#~~ (7) The treatment of section 703.02 (6m) of the statutes first applies to
21 correction instruments drafted on the effective date of this subsection.

22 ~~#~~ (8) The treatment of section 703.11 (4) of the statutes first applies to
23 condominium plats certified on the effective date of this subsection.

1 #
2 (9) The treatment of section 703.13 (6) (e), (7) (c), and (8) (c) of the statutes first
3 applies to condominium plats and plans certified on the effective date of this
 subsection.

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0085/P1insMG
TKK&MGG:.....

Insert 14-2

1 **(3)** For purposes of this section, all of the following apply:

2 (a) A map, plat, or survey that shows an approximate ordinary high water mark
3 shall state on its face that the mark is shown for reference only and is subject to
4 correction or modification by the department of natural resources or by law.

5 (b) A map, plat, or survey that shows an ordinary high watermark identified
6 by the department of natural resources or otherwise by law shall state on its face the
7 source and date of that identification.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0085/P2dn
MGG:cjs:md

September 14, 2009

1. Under the substitute amendment as drafted, the statement required under s. 236.025 (3) must appear on all surveys, maps, and plats covered by s. 236.025. The statement required under s. 236.20 (6) must appear only on final subdivision plats and certified survey maps to which s. 236.16 (4) applies. OK?
2. As requested, I have added "of a navigable lake or stream" in the statement in s. 236.20 (6). This qualifying phrase does not appear elsewhere in the substitute amendment. OK?
3. I did not change the word "determined" in s. 236.025 (1) (a) as requested because elsewhere the substitute amendment refers to OHWMs being "identified" or "approximated." If you want to use the term "determined" instead of "identified" please look at the other places in the draft where the term "identified" is used to see if they can be changed to "determined." I think using three terms would be confusing and probably unnecessary.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

Gibson-Glass, Mary

From: O'Connor, William [WOConnor@wheelerlaw.com]
Sent: Monday, September 21, 2009 3:01 PM
To: Gibson-Glass, Mary
Cc: Clark, Fred; Kuczenski, Tracy; Francis Thousand
Subject: Surveyor Legislation -- Revised Sub. Am. to AB-271 (LRBs0085/p2dn)

Dear Mary,

At Rep. Clark's request I have reviewed the revised draft Substitute Amendment and your 9/14/2009 drafter's note and offer the following comments on behalf of the Wis. Society of Land Surveyors:

no drafting

- 1. Paragraph 1 of the Drafter's note points out that the statement required in s. 236.20(6) is limited to subdivision plats and CSMs, while the statement under s. 236.025(3) applies to all "surveys, maps and plats" covered by s. 236.025. The maps and plats covered under 236.20 include the most significant survey documents. Although we would not oppose amending language to broaden the scope of the required "public trust information" to include other survey documents, we are satisfied with the present draft since numerous statutes would need to be amended to include the statement on all forms of survey maps.

no drafting

Paragraph 2 of the Drafter's note points out that the phrase "navigable lake or stream" applies only in s. 236.20(6). We believe that is sufficient and no further amendment is necessary.

✓

- 3. Paragraph 3 of the Drafter's note questions whether the term "determination" should be substituted for "identified" in s. 236.025(1). We understand that DNR uses the term "determined" when it conducts field work to locate the OHWM. (I placed a call to Lisa Lehmann to confirm this, but have not yet received a response. For your interest, here is a link to DNR's website relating to the OHWM which uses the term 'determination' <http://dnr.wi.gov/org/water/wm/dsfm/shore/ohwm.htm> Similarly, I understand that the term "determination" is used in court and administrative proceedings in which the OHWM is legally established. For that reason we believe the term "determined" should be used in place of "identified" in s. 236.025(1)(a) and in subsequent references to plats and maps that are governed by that section, including 236.15(1)(a), 236.15(1)(d), 236.20(2)(g). This would clarify that a surveyor may either show an OHWM "determined by DNR" or law or one that he or she has approximated.

Please feel free to contact me if you have any questions. We are hopeful that the final sub can be released soon. Thanks for your fine work on the draft.

Best wishes.

William P. O'Connor

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Kuczenski, Tracy

From: O'Connor, William [WOConnor@wheelerlaw.com]
Sent: Tuesday, September 22, 2009 11:18 AM
To: Kuczenski, Tracy; Clark, Fred
Cc: Francis Thousand
Subject: RE: Surveyor Legislation --- Revised Sub. Am. to AB-271 (LRBs0085/p2dn)

Dear Tracy and Fred,

I do think it makes sense to include the disclaimer in paragraphs (a) and (b) so it is clear that these regulatory and MFL maps do not presume to actually established parcel boundaries.

Sounds like we've got almost everything worked out.

Best wishes.

Bill

William P. O'Connor

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From: Kuczenski, Tracy [mailto:Tracy.Kuczenski@legis.wisconsin.gov]
Sent: Tuesday, September 22, 2009 10:09 AM
To: Clark, Fred; O'Connor, William
Cc: Francis Thousand
Subject: RE: Surveyor Legislation --- Revised Sub. Am. to AB-271 (LRBs0085/p2dn)

Rep. Clark -

9/22/2009

Bill and I just met to discuss s. 443.135 (2) (c) on p. 31, lines 1-8. This provision seems to duplicate the types of maps that would be prepared under s. 443.135 (2) (a) and (b); for that reason, we decided that paragraph (c) could be eliminated. However, we did not discuss whether to add to s. 443.135 (2) (a) and (b), on p. 30, lines 21-25, the requirement that these maps contain the disclaimer described in s. 16.967 (3) (f) 1.

Should the disclaimer language be added to paragraphs (a) and (b)?

And do you wish to make any of the changes proposed in the attachment from WE Energies?

I believe Mary Gibson-Glass also needs to make some changes to the bill; she will be in the office this afternoon. If Mary is in the office before I have heard from you, I will forward the bill to her to complete her changes first.

Tracy

Tracy K. Kuczenski
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Wisconsin Legislative Reference Bureau
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Tracy.Kuczenski@legis.wisconsin.gov

From: Clark, Fred
Sent: Tuesday, September 22, 2009 9:37 AM
To: 'O'Connor, William'; Kuczenski, Tracy
Cc: Francis Thousand
Subject: RE: Surveyor Legislation --- Revised Sub. Am. to AB-271 (LRBs0085/p2dn)

Hi Bill:

- 1). The change you suggest below makes sense to me.
- 2). Have you or will you have a chance to review the OHWM changes with Paul Kent?
- 3). The attached from WE Energies requests changes for public utilities. I am not inclined to accept these changes – but please let me know your thoughts.

Fred

Fred Clark
42nd Assembly District Representative

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(608) 266-7746

From: O'Connor, William [<mailto:WOConnor@wheelerlaw.com>]
Sent: Monday, September 21, 2009 3:02 PM

To: Kuczenski, Tracy
Cc: Francis Thousand; Clark, Fred
Subject: Surveyor Legislation --- Revised Sub. Am. to AB-271 (LRBs0085/p2dn)

Dear Tracy,

At Rep. Clark's request I have reviewed the revised draft Substitute Amendment and Mary Gibson-Glass' 9/14/2009 drafter's note and offer the following comments on behalf of the Wis. Society of Land Surveyors: discussed its contents with the Wis. Society of Land Surveyors.

By a separate email, I am responding to the points raised in Mary's Drafter's note, which I will also copy to you.

Apart from those water related issues, WSLs believes the revised substitute amendment does just what it was supposed to do, with the following minor exception.

Proposed section s. 443.135(2)(c) clarifies that licensure as a professional land surveyor is not required by a person who prepares certain maps that show the approximate boundaries of tracts of land when they include a disclaimer and are accompanied by a legal description. We believe this section should be limited to maps that include a disclaimer and in which the actual tract boundaries are established by the accompanying legal description. Perhaps s.443.135(2)(c) should be amended to read:

(c) A map that depicts the approximate boundaries or the shape and area of one or more tracts of land or one or more interests in real property that are established by a legal description, if the map includes a disclaimer substantially similar to the disclaimer under s. 16.967(3)(f) 1. In this subdivision, "legal description" has the meaning given in s. 706.01(7r).

I also wonder if the objective of these sections might be achieved if s. 443.135(2)(cc) were drafted as you proposed, but amending line 2 on page 31 to delete "all of the following apply: 1." and continuing that sentence with "The map includes a disclaimer . . . s. 16.967(3)(f) 1." and deleting all of lines 6 through 8. This would generally permit the creation of maps showing approximate boundaries with the disclaimer. The perhaps, s. 59.43(8) could be amended to permit the recording of such maps only if they meet the requirements set forth in s. 443.135(2)(cc) as you have drafted it (with both requirements).

I look forward to discussing this with you tomorrow and am hopeful that the final sub can be ready soon.

Best wishes.

Bill O'Connor

William P. O'Connor

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SECTION 42. 443.01 (6s) of the statutes is created to read:

443.01 (6s) (a) Except as provided in par. (b), “practice of professional land surveying” means any of the following:

1. Measuring or analyzing a tract of land to determine the location of its boundaries and boundary corners except for measuring or analyzing a tract of land for the construction and installation by a public utility that is regulated by the public service commission.

2. Designing or coordinating designs for the purpose of platting or subdividing land into smaller tracts.

3. Placing, replacing, restoring, or perpetuating monuments in or on the ground to evidence the location of a point that is necessary to describe the shape, area, and boundaries of one or more tracts of land or the subdivision or consolidation of one or more tracts of land or to describe the boundaries of any of the following interests in real property:

- a. The layout and rights-of-way of roads or streets.
- b. Air or property rights.
- c. Public or private easements.

4. Preparing maps that depict any interest in real property identified in subd. 3. for the purpose of establishing the boundaries of any such interest in real property except for easements of a public utility that is regulated by the public service commission.

PAGE 27 OF LRBs0085/P1

SECTION 74. 443.14 (16) of the statutes is created to read:

443.14 (16) An employee of an agency, as defined in s. 16.967 (1) (a), ~~or~~ a local governmental unit, as defined in s. 16.97 (7), or an employee of a public utility that is regulated by the public service commission who operates a land information system, as defined in s. 16.967 (1) (c), or a geographic information system, if any product hosted on the land information system or geographic information system or created by the employee using the system includes the disclaimer required under s.16.967 (3) (f).

IF THE AUTHORS EXCEPT THE LANGUAGE ABOVE THEY COULD DELETE

TOP OF PAGE 27 OF LRBs0085/P1

SECTION 70. 443.14 (8) (d) of the statutes is deleted:

~~443.14 (8) (d) Employees of public utilities regulated by the public service commission while engaged in the practice of professional land surveying for such utilities. This paragraph does not apply after July 1, 2018.~~

Kuczenski, Tracy

From: O'Connor, William [WOConnor@wheelerlaw.com]
Sent: Tuesday, September 22, 2009 10:08 AM
To: Clark, Fred; Kuczenski, Tracy
Cc: Francis Thousand
Subject: RE: Surveyor Legislation --- Revised Sub. Am. to AB-271 (LRBs0085/p2dn)

Dear Rep. Clark,

I just met with Tracy regarding the sub. We concluded that the four subsections of proposed s. 443.135 should be condensed into three subsections. These would retain the specific references to maps used in connection with regulatory programs, maps used in connection with the MFL program and a third that broadly exempts maps from licensure requirements if they are not of the types listed in s. 443.01(6s)(a) 4 and 5 (which describe in detail the maps for which licensure is required). These changes would not address the recordability of maps not prepared by surveyors. Current law generally requires that recorded maps be prepared by licensed surveyors.

I will call Paul Kent to review the OHWM changes. I sent an email to Mary Gibson-Glass' responding to her drafter's note but have not yet heard back from her.

The Society of Land Surveyors would not support an exemption from licensure requirements for public utilities. We believe landowners are entitled to have utility interest boundaries that have been set by qualified licensed persons.

Bill O'Connor

William P. O'Connor

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From: Clark, Fred [mailto:Fred.Clark@legis.wisconsin.gov]
Sent: Tuesday, September 22, 2009 9:37 AM

9/22/2009

Assembly Substitute Amendment #2
2009 Assembly Bill 271 -DATCP and DNR Concerns
9/23/2009

Section 2, p. 5

16.967(3)(f) This creates a requirement for DOA to “police” all maps created by state agencies and local units of government that are recorded or show an interest in property to ensure that those maps contain the disclaimer language if they weren’t created by a professional land surveyor.

- Will DOA really take on the role of the “map police”?
 - Will DOA submit a huge fiscal estimate to perform this function?
 - Why should non-recorded maps include the disclaimer, especially those for only internal agency use?
 - [We have agreed that recorded maps should include a disclaimer.]
- This provision should be removed. The purpose (use of a disclaimer) could be more properly placed in s. 59.43(8).

Section 8, p. 7

59.43(8) This provision has always required a land surveyor signature/seal for maps, plats and other documents within the definition of land surveying that are to be recorded or filed. (there is an exemption for documents drafted by an attorney and some DOT projects) Since this ASA significantly expands the definition of professional land surveying to include virtually all map making and surveying by any person, this new definition essentially makes a map that is not prepared by a PLS non-recordable.

- This subsection should add an exemption from the signature/seal requirement for any map or other document that is created by a person exempt from licensure in ch. 443.
- This subsection could also include the required disclaimer language if the map etc. was not prepared by a licensed professional LS.
- Without including the persons exempt from licensure under ch. 443 the exemptions referenced in the proposed Wis. Stat. s. 443.14(16) or MFL maps under 443.135(2) would be meaningless, and those references would be in conflict.

Section 30, p. 15

93.70 This creates a requirement that DATCP include, with any map prepared for the CREP program (by other than a PLS), a disclaimer, a statement that the map can only be used with the CREP program, and a statement regarding the protocols used to create the map.

- This should only apply to recorded maps, not those prepared for internal use.
- This is actually a superfluous/excessive provision in that the ASA already allows (in s. 443.135(2)(c)) persons to prepare maps which show approximate boundaries or shapes and areas of tracts of land or interests in real property (even without a PLS license) if the map includes a disclaimer and a legal description. All CREP maps meet those requirements [we have agreed to tweak the current disclaimer as needed].

Not entirely true

An addition, the s. 93.70 provision is excessive because state agencies and local units of government are not required to hold a PLS license if they create maps that are recorded or maps that depict the boundary of an interest in real property and that includes a disclaimer (see s. 443.14(16)). [Please note that these three provisions: 93.70(1m), 443.135(2)(c) and 443.14(16) are not consistent and give very confusing and misleading directives.]

-[We agree that a *recorded map* needs to include a reasonable disclaimer. We would also agree that any recorded map needs to include a legal description meeting 706.01(7r) requirements.]

This provision should be removed. CREP does not require the extra demands placed on recording noted here. CREP can easily fit under the exemptions from licensure in either 443.14(16) or 443.135(2). CREP documents already contains a disclaimer and a legal description.

Section 57 et seq., p. 22 et seq.

Chapter 443 provisions, especially the definitions.

Definitions are all extremely broad and sweep in all GIS and other activities.

-Given 44301(6s)(a)6. in conjunction with (6s)(a)3. and 4., it is clear that GIS personnel activities are swept into the definition of professional land surveying since they would perform the cartographic or geodetic surveying needed in connection with the preparation of maps that depict interests in real property describing the shape, area and boundary of tracts of land (including air or property rights, easements, etc.). So all of what they do is likely included within the definition of professional land surveying. (actually, the only thing exempt from PLS is determination of an OHWM)

-We still argue that only recorded and filed maps, plats, etc. should be swept under the definition of professional land surveying/licensure requirement. The breadth of this provision results in extreme overreaching by the land surveyors. Since the land surveyors appear to refuse to refine their definitions of what they do, we are concentrating our changes on proper exemption language.

Section 60, p. 23 et seq.

443.01(6s)(a)1. provides as part of the definition of the practice of professional land surveying: “[m]easuring or analyzing a tract of land to determine the location of its boundaries and boundary corners”.

-This provision should be removed. There are many instances when measuring or analyzing a tract of land to determine the location of its boundaries or boundary corners does not require a professional surveyor. The definition is overly broad and does not add anything to the definition of professional land surveying.

-In the alternative, make the following modification:

“Measuring or analyzing a tract of land to ~~determine~~ determine monument on the ground the location of its boundaries and boundary corners.”

This modification would narrow the definition to those measurements and analysis that actually result in monuments placed on the ground.

TK
check

✓ Section 64, p. 24

443.02(4) No person may engage in or offer PLS activities or provide consulting services related to PLS for compensation without a license

-Since all GIS activities fall under PLS, is salary from your state or local government employer considered *compensation*? *not w/ exemption under 443.135(1)(2)*

-Recommend eliminating the "consultant" provisions.

✓ Section 86, p. 30

443.135(1) This allows unlicensed persons to perform cartographic, construction and geodetic surveying (GIS stuff) as long as it isn't in connection with the items listed in 443.01(6s)(a)1-5 (which is what GIS personnel actually do).

-So is this really an exemption at all?

443.135(2) This allows unlicensed persons to prepare maps (and would clearly include CREP maps)---thus requiring only the inclusion of a disclaimer and a legal description, obviating the need for the other 93.70(1m) requirements on CREP maps.

-What about local unit of government employees who provide some of the initial mapping in this program? Wouldn't both state and local employees be covered by 443.14(16)? So is this redundant? At a minimum, it creates major confusion.

addressed by eliminating CREP maps from

[It should be noted that the activities described in this section are not exemptions from the definition of professional land surveying, they are apparently the exemptions from the licensure requirement.]

distinction w/out a difference

443.135(2)(a) should be modified as follows:

(a) A map, other than a map described in s. 443.01(6s)(a)5., used in connection with a regulatory program established by or in connection with the exercise of police powers, the public trust doctrine, or any other constitutional authority by, the state or a local governmental unit, as defined in s. 16.97(7).

ok

443.135(2)(b) should be modified as follows:

(b) A map showing the boundaries or the shape and area of one or more tracts of land or interests in real property identified in 443.01(6s)(a)4. subject to an order under s. 77.82(8) or an order under 77.02(3).

ok

✓ This language would clearly include all maps under MFL and FCL, whether created for an entire "tract of land" or other interest in real property.

Section 93, p. 32

443.14(15) This provision creates an exemption from licensure for a DATCP employee engaged in creating CREP easements if the map includes the disclaimer, and the other statements on use and protocol.

-443.135(2)(c) should cover the CREP easements already and this is redundant.

Not any more

-Or is there some reason CREP is specifically given more requirements to meet?
This forces additional standards on that program but not on other state programs which also record maps like MFL.
-This provision should be removed if CREP is included in the other exemptions in 443.135(2)(c) or 443.14(16).

Section 94, p. 32

443.14(16) This creates a general government employee exemption from licensure. It requires that maps created to be recorded or to depict the boundary of an interest in real property include a disclaimer.

-This begs the question: if the map wasn't created for recording or to depict the boundary of an interest in real property (e.g., map of dairy plant locations in the state), does that mean that activity is not exempt from licensure requirements? Would this sweep all "simple" maps into the PLS requirement?

-This must be clarified. We propose a general government employee exemption, with a disclaimer required on recorded documents not prepared by a PLS.

443.14(16)(b)1. should be modified as follows:

1. A map that depicts the boundary of an interest in real property.

This needs to be modified to remain consistent with the usage elsewhere.

Section 113, p. 39

This is the Initial Applicability provision.

Although the ASA purports to allow the state employee exemption from all the provisions of ch. 443 until July 1, 2018, the provision requiring disclaimer, etc. on CREP recordings (93.70) and disclaimers on other supposedly exempt maps (16.967(3)(f)) go into effect on the first day of the 4th month after publication of the act. The DOA policing of maps also goes into effect at the same time.

-Why is the sunset provision in 443.14(8)(c) in there? If the disclaimer requirements kick in right away, and there are exemptions in 443 for government work, what do we get by maintaining the (8)(c) exemption from the chapter until 7/1/18?

Section 112 (sub. 2) p. 38.

26.09(3)(b)1. and Non-statutory language

The non-statutory language treatment under Section 112 should note that any surveys conducted by a registered land surveyor prior to the enactment of this statute shall still be able to be "reasonably relied upon" for the purposes of damages for stumpage values.

In summary, both DATCP and DNR need to see the "bright line" of the "filed and recorded with the register of deeds or county surveyor" language (in addition to any other enumerated documents). Many of the exemptions will only apply if there is a solution found for the infirmity found in 59.43(8).

possibly unnecessary to exempt a

legislation can't if not explicitly addressed in bill, can keep doing it

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To: Rep. Fred Clark
From: Bill O'Connor
Date: September 24, 2009
Re: Assembly Substitute Amendment to AB-271 (LRBs0085/P2)
Wisconsin Society of Land Surveyors' Response
to Quinn Williams' Comments

This memo summarizes my responses to the issues raised by DNR Attorney Quinn Williams. I have hand numbered Mr. William's pages and listed my comments to his headings to facilitate review. I would be glad to discuss any of this in more detail.

Section 2, p 5 (Page 1 of Quinn's list)
Section 94, p 32 (Page 4 of Quinn's list)

Section 94 creates an exemption from licensure for certain GIS staff produced maps that include a disclaimer. Section 2 lists efforts to ensure compliance with the disclaimer requirement among DOA's GIS responsibilities. This is an appropriate way to approach this. The disclaimer mandate applies to public employees and does not warrant an elaborate enforcement system with "disclaimer police" and a penalty system.

- OK -WLSL suggests no change to Section 2.
- WLSL suggests that Section 94 be amended to revise sub (a) to delete the references to maps referenced in sub (b) and delete all of sub (b). As drafted the section seems to grant the exemption only for maps that are to be recorded, but GIS maps are not to be recorded unless they depict documents prepared by surveyors. The exemption should broadly apply to all maps that have disclaimers and should not affect the statutes governing map recording.

✓ **Section 8, page 7 (Page 1 of Quinn's list)**

Current law only allows recording of surveyor produced maps (with exceptions for DOT and lawyers).

ok -We agree that this section should be amended, not to include any map prepared by an exempt person as Quinn suggests, but to permit recording of 2 types of specific maps, as follows: (1) Maps that generally depict lands that are described in a legal description, and (2) Maps prepared under the CREP exception. This will clearly permit DATCP to record their CREP documents and will allow DNR and all others that use a written legal description or a surveyed map to establish the lands subject to a recorded deed, easement, mortgage, etc., but to record an accompanying "sketch" map to illustrate the general areas. Among other maps, these could include MFL and Forest Crop Law maps and maps used to generally illustrate areas described in easements.

✓ **Section 30, page 15 (Page 1 of Quinn's list)**

No change -WSLS is satisfied with the provision establishing DATCP's CREP exemption. The above provision explicitly permitting their recording should be welcomed by the agency.

✓ **Section 57, etc (Page 2 of Quinn's list)**

-WSLS does not support his concept.

✓ **Section 60, page 23 (Page 2 of Quinn's list)**

-WSLS does not understand this concern, but understands that DNR would be comfortable substituting the corresponding language under current law. Thus, the subsection would read something like:

ok
see
proposed
language
"Any service to determine the location of the boundaries or boundary corners of a tract of land."

Perhaps further tweaking is warranted to make clear that this includes "tracts" subject to easements or other interests in real property.

Rep. Fred Clark
September 24, 2009
Page 3

✓ **Section 64, page 24 (Pages 2 and 3 of Quinn's list)**

-WSLS will be comfortable with or without a change in this language.

✓ **Section 86, page 30 (Page 3 of Quinn's list)**

This is not intended to create an exemption, but to provide avoid misinterpretation of the definition of practice and the exemptions. We vetted the language with professionals in this area and are satisfied with the language in the draft.

- WSLs does not think any change to this section is needed. *adds. 93.70(c)(w) to "other than..." language in s. 443.135(1)*

WSLS understands that s. 443.135(2)(c) is being removed (or relocated to s., 59.43(8). *443.135(2)(g)*

✓ -We agree that CREP maps should be recordable even though they are not prepared by surveyors and do aim to actually establish boundaries.

✓ **443.135(2)(a)**

GO w/ DNR version.
-WSLS would not object to this language, but thinks it might be simpler to revise the section to read "regulator program administered by the state or a local governmental unit, as defined in s. 16.97(7)" (eliminating all references to the legal sources of the regulatory powers.

✓ **443.135(2)(b)**

77.02(3) OK
-WSLS would support this modification extending the MFL exemption to include the Forest Crop Law. (This section would be less relevant if our suggestion to amend s. 59.43(8) to permit the recording of "sketch maps" to generally illustrate legal descriptions were accepted.)

✓ **Section 93, page 3 (Page 3 of Quinn's list)**

-We think the CREP language is appropriate and support language to expressly authorize recording of CREP maps in s. 59.43(8).

Section 94, page 3 (Page 4 of Quinn's list)

See above.

-We think this exemption should apply to all public GIS maps with disclaimers, regardless of whether they are recorded. Recording should be addressed in s. 59.43(8).

-We agree that the word "real" should be inserted before "property".

*interest too?
in real property*

✓ **Section 113, page 3 (Page 4 of Quinn's list)**

We believe the bill correctly defers only the sunset of the licensure exemption.

✓ **Section 112, page 3 (Page 4 of Quinn's list)**

We don't think this is a significant issue as current law clearly subjects maps and related MFL orders to the law in effect when they were created. We would not object to a clarification about stumpage values, but it seems like a gnat.

WSLS does not support the concept of eliminating state regulation of all activities within the practice of land surveying, except where these activities will result in the production of a document that is recorded or filed. This would eliminate state oversight of significant subjects affecting consumers and the reliability of the property boundaries and commercial and residential real estate transactions.