

DAVID BRANDEMUEHL

*State Representative
49th Assembly District*

TO: Members, Assembly Transportation Committee

FROM: Rep. David Brandemuehl, Chair

DATE: August 31, 2000

RE: Clearinghouse Rule

The following clearinghouse rule has been referred to the Assembly Transportation Committee:

Clearinghouse Rule 00-109: relating to division of land abutting a state trunk highway or connecting highway.

You will be receiving a copy of Clearinghouse Rule 00-109, which you will recognize as the proposed Administrative Rule TRANS 233. The Department and dozens of interested individuals and organizations have spent many hours producing this new version of TRANS 233. Since the rule has been so controversial, I will hold a hearing on September 19th, 20th, or 21st. Please contact Martin Machtan of my office at Martin.Machtan@legis.state.wi.us as soon as possible to give your date preference(s).

I know that this is a difficult time of year to meet, thus I apologize for any inconvenience. Nonetheless, it is important that we have a quorum and convene on TRANS 233.

Any questions may be directed to Bill Ford, Legislative Council Attorney for the committee, at 266-0680. The deadline for committee action on this rule is **September 29, 2000**.

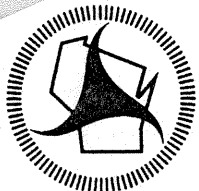
Committee Memberships:

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

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

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

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



Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson
Governor

Terrence D. Mulcahy, P.E.
Secretary

Office of the Secretary
4802 Sheboygan Ave., Rm. 120B
P.O. Box 7910
Madison, WI 53707-7910

Telephone: 608-266-1113
FAX: 608-266-9912
E-Mail: sec.exec@dot.state.wi.us

September 28, 2000

Representative David Brandemuehl
Chair, Assembly Transportation Committee
Room 317 North, State Capitol
Madison, WI

Senator Roger Breske
Chair, Senate Transportation Committee
Room 18 South, State Capitol
Madison, WI

Re: **Proposed Administrative Rule**
Chapter Trans 233, Wisconsin Administrative Code
Clearinghouse Rule No. 00-109

Gentlemen:

At the Committee hearing on September 20, 2000, the Department agreed to modify parts of CR 00-109 relating to Items 6 and 7 of Legislative Council Attorney William Ford's memo dated September 15, 2000. Pursuant to sec. 227.19(4)(b)3., Stats., I therefore submit the following germane modifications to the rule:

ITEM 6. On page 29, amend TRANS 233.105(2)(intro.) as follows:

TRANS 233.105(2)(intro.) VISION CORNERS. The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection by approaching vehicles. The owner shall have the choice of providing the vision corner by permanent easement or by dedication. If the department requires such a dedication or grant, the owner shall include the following notation on the land division map:

ITEM 7. On page 28, amend TRANS 233.105(1) as follows:

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

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

highways, in the absence of any increase by the department to the highway's through-lane capacity."

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

ITEM 5 of Mr. Ford's memo deals with "grandfather" rights and initial applicability of the original 1956 rule, the February 1, 1999 rule, and this rule revision. The Department has proposed to create s. Trans 233.012(2) on page 18 of the rule to clarify applicability as follows:

Trans 233.012(2). **Structures and improvements lawfully placed in a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed in a setback area before a land division, are explicitly allowed to continue to exist.** Plats that have received preliminary approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, if there is no substantial change between the preliminary and final plat, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Plats that have received final approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Land divisions on which the department acted between February 1, 1999 and the effective date of this chapter...[revisor insert date] are subject to ch. Trans 233 as it existed February 1, 1999. **[The above sentence is shown in bold in this letter for emphasis.]**

If WISDOT did not object to the preliminary plat; it cannot object to the final plat. Statutory law, sec. 236.11(1)(b), Stats., reads in part:

"If the final plat conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to local plans and ordinances adopted as authorized by law, it is entitled to approval."

The language in Trans 233.012 is consistent with the statute and the changes previously agreed to and documented in the Legislative Council Memorandum by Mr. Ford.

In addition to the above changes requested at the hearing, the Department has agreed to other requests submitted by members to the Committee Chair. Pursuant to sec. 227.19(4)(b)3., Stats., I therefore submit the following additional germane modifications to the rule:

On page 18, insert SECTION 11M as follows:

SECTION 11M. TRANS 233.012(3) is created to read:

September 28, 2000

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On page 27, insert SECTION 21M as follows:

SECTION 21M. TRANS 233.08(2)(d) is created to read:

Trans 233.08(2)(d). In addition to producing general reference maps at least once every 2 years that identify highways and intersections under par. (c), at least every 2 years the department shall also produce more detailed reference maps suitable for use in the geographic area of each district office.

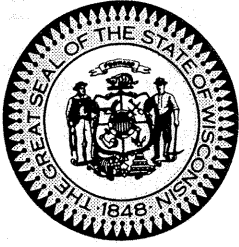
NOTE: The Department will make the general and detailed maps readily available to the public on the internet and through other effective means of distribution.

Thank you for your consideration of this proposal.

Sincerely,

Terrence D. Mulcahy, P.E.
Secretary

cc: Senator Judy Robson
Representative Glenn Grothman
Gary Poulson
John Haverberg
Ron Nohr
Ernie Peterson
Bonnie Tripoli



DAVID BRANDEMUEHL

State Representative
49th Assembly District

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON TRANSPORTATION

FROM: Representative David Brandemuehl, Chairperson, Assembly Committee on Transportation

RE: Clearinghouse Rule 00-109

DATE: September 29, 2000

The purpose of this memorandum is to inform you of the agreements reached with the Department of Transportation (DOT) with respect to Clearinghouse Rule 00-109 (CR 109) and to explain my decision not to hold an executive session of the Assembly Committee on Transportation on the rule. In response to concerns expressed at the Committee's September 20, 2000 meeting on CR 109, and concerns expressed by some members of the Transportation Committee in letters to my office, the DOT has agreed to make the following amendments to CR 109:

1. Prohibit the DOT from requiring an owner of land to *dedicate land* for vision corners at the intersection of a highway with a state trunk or connecting highway. Under the amended rule, an owner of land would have a right to provide for vision corners by means of granting an *easement*, rather than dedication of land, at the owner's option.
2. Address the concerns expressed by businesses that *users* of land should not be held responsible for installing noise barriers. This would be done by *deleting* the language in s. Trans 233.105 (1) that owners or users of land adjacent to a state trunk highway are responsible for any noise abatement measures warranted under ch. Trans 405 unless the noise

Committee Memberships:

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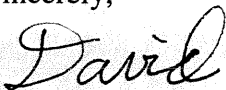
3. Allow structures or improvements lawfully placed within a setback area under ch. Trans 233 prior to February 1, 1999 or lawfully placed within a setback area prior to a land division to be maintained or, if unintentionally or tortiously destroyed, to be substantially replaced in kind.
4. Require DOT to produce, at least once every two years, detailed reference maps to be used in DOT district offices identifying state trunk and connecting highways subject to the setback requirements (generally 50' or 110') of s. Trans 233.08 (2) (c). In a note to s. Trans 233.08 (2) (d), DOT also states its intent to make these maps, as well as the more general maps identifying the highways subject to s. Trans 233.08 (2) (c), "readily available to the public through the internet and through other effective means of distribution."

In deciding not to hold an executive session on CR 109, I am fully aware that there are other issues some legislators think should be addressed in the rule. However, a great deal of time and effort has been put into the revisions contained in CR 109 that substantially improve ch. Trans 233 from the standpoint of persons who own land adjacent to highways. As you know, CR 109 contains 10 revisions to ch. Trans 233 that were worked out in extensive negotiations between the subcommittee I established to review ch. Trans 233, the Coalition to Reform Chapter Trans 233, and the DOT. In addition, the DOT has agreed to adopt the four amendments to CR 109 explained above, all of which improve ch. Trans 233 from the standpoint of landowners.

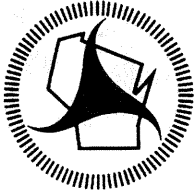
The position of the DOT is that they would not agree to other amendments to CR 109 suggested at our September 20 meeting and by individual members of this committee. Therefore, if we were to hold an executive session on this rule, our only option would be to vote to object to CR 109 in whole or in part. This would have the effect of referring CR 109 to the Joint Committee for Review of Administrative Rules. In turn, this would have the effect of either delaying or killing all of the concessions favorable to landowners that we have worked so hard to include in CR 109. I think the changes we negotiated provide a good balance between the needs of landowners and the needs of the state and I do not want to risk losing them.

Instead, I suggest that members of the committee who remain dissatisfied with ch. Trans 233 attempt to address their concerns through legislation introduced next session or through continued negotiations with the DOT.

Sincerely,



David A. Brandemuehl
State Representative
49th Assembly District



Wisconsin Department of Transportation

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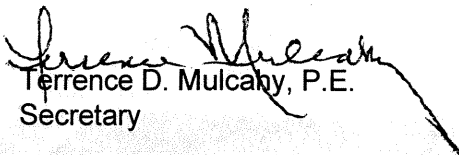
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Thank you for your consideration of this proposal.

Sincerely,


Terrence D. Mulcahy, P.E.
Secretary

cc: Senator Judy Robson
Representative Glenn Grothman
Gary Poulson
John Haverberg
Ron Nohr
Ernie Peterson
Bonnie Tripoli

TO: Chris
FROM: Marti
DATE: September 29, 2000
RE: Bill Ford's Letter

Chris, when you get Bill Ford's letter on Monday (October 2nd), please call Dave. He will then give you the James Construction Fax # and you are to fax the letter to him. After Dave signs off on the letter (he may accept the version you send him or suggest revisions), you are to send it, along with the September 28th WisDOT memo entitled "Proposed Administrative Rule Chapter Trans 233, Wisconsin Administrative Code Clearinghouse Rule No. 00-109," to the attached list. Please note that I have added Sen. Breske to the list. The above referenced WisDOT memo is the one that you sent to Bill Ford on Thursday.

I hope the above is clear and complete. Dave will likely tell you the same information when you talk with him on Monday. Thank you for your time and help.

~~The letter is on your chair, face down. Dave already has a copy of it. Still, you should call him.~~

Chris,
I have taken care of
Three Copies
everything. ~~A copy~~ of the material
I sent out is on your chair, in case
anybody requests one. ~~RRR~~

Post-It® Fax Note	7671	Date	# of pages ▶
To	REP BRANDMUEHL	From	STILLFORD
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

Trans 233
file

09/29/2000

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON TRANSPORTATION
 FROM: Representative David Brandemuehl, Chairperson, Assembly Committee on Transportation
 RE: Clearinghouse Rule 00-109
 DATE: September 29, 2000

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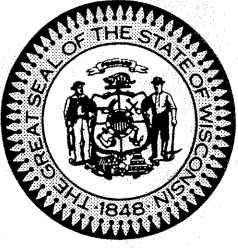
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- 3 -

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Instead, I suggest that members of the committee who remain dissatisfied with ch. Trans 233 attempt to address their concerns through legislation introduced next session or through continued negotiations with the DOT.



DAVID BRANDEMUEHL

State Representative
49th Assembly District

October 18, 2000

Senator Dale Schultz
100 North Hamilton, Room 303
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Schultz:

I received your October 4th letter inviting me to join you in amending Clearinghouse Rule 00-109 (CR 109). I am hopeful that CR 109 will go ahead as is, and thus cannot support any amendment. Additionally, I do not believe the amendment you propose is germane to Clearinghouse Rule 00-109.

I am aware of only two ways to amend TRANS 233 through the committee process. First, the Department of Transportation could agree to make the changes you suggest. This is not likely. Alternatively, the Senate Committee on Insurance, Tourism, Transportation & Corrections could vote to object to CR 109 in whole or in part. This would refer CR 109 to the Joint Committee on Administrative Rules, thus either delaying or eliminating all of the concessions favorable to landowners that we have worked so hard to include in CR 109. That means that Trans 233 as it presently exists would remain law in Wisconsin for some time to come. The current ch. Trans 233 is onerous and few would argue that keeping it on the books is desirable.

The revised rule should go into effect, even though it does not completely satisfy everybody. We have made great progress in balancing the needs of landowners with public safety and I fear that any modification would result in regression.

Sincerely,

A handwritten signature in cursive script that reads "David".

David A. Brandemuehl
State Representative
49th Assembly District

Committee Memberships:

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

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Dave,
Please Review
J. Marti

October 16, 2000

Senator Dale Schultz
100 North Hamilton, Room 303
P.O. Box 7882
Madison, WI 53707-7882

dc

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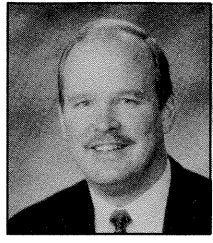
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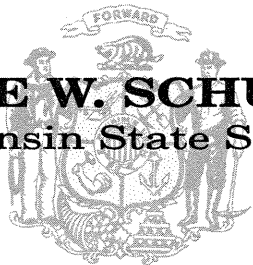
Sincerely,

David A. Brandemuehl
State Representative
49th Assembly District

*monty
talk to me*



DALE W. SCHULTZ
Wisconsin State Senator



October 4, 2000

Representative David Brandemuehl
Assembly Committee on Transportation
317 North, Capitol

Dave

Dear Representative Brandemuehl,

I invite you to consider joining me in supporting amending the proposed Administrative Rule related to Trans 233 to include the provision set forth in the enclosed memo.

When I met with Bob Cook and Jim Thiel of WisDOT, they acknowledged that the DOT already has several ways to force private transactions between private parties. In light of that fact, protection of public interests does not warrant giving the DOT yet another means in Trans 233 to force such transactions. If a case arose in which none of the existing strategies were applicable, the DOT can, and should, use the condemnation process, in which property owners have established rights of due process and compensation.

I would welcome the opportunity to discuss this issue with you further. Please contact Tom Jackson or me in my office to indicate your willingness to support and assistance in amending Trans 233 to include this provision.

Thank you,
Dale

Dale W. Schultz
State Senator
17th Senate District



*** ACTIVITY REPORT ***

TRANSMISSION OK

TX/RX NO. 0163
CONNECTION TEL 92669912p49
CONNECTION ID
START TIME 10/17 10:39
USAGE TIME 01'03
PAGES 2
RESULT OK



DAVID BRANDEMUEHL

*State Representative
49th Assembly District*

FACSIMILE COVER SHEET

Number of pages attached, including cover page: 2

If pages are not all received or are illegible, please call : (608) 266 - 1170

PLEASE DELIVER TO:

Bob Cook

FAX NUMBER OF ADDRESSEE: 266-9912

FROM: Rep. Brandemuehl

MESSAGE:

... to have a copy



DAVID BRANDEMUEHL

State Representative
49th Assembly District

FACSIMILE COVER SHEET

Number of pages attached, including cover page: 2

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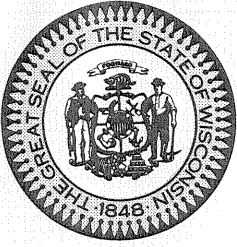
Bob Cook

FAX NUMBER OF ADDRESSEE: 266-9912

FROM: Rep. Brandemuehl

MESSAGE:

Dave wanted you to have a copy
of this.



DAVID BRANDEMUEHL

State Representative
49th Assembly District

TO: Members, Assembly Transportation Committee
FROM: Rep. David Brandemuehl, Chair *DB*
DATE: October 17, 2000
RE: Clearinghouse Rule 00-109 (CR 109)

It is my understanding that Tom Liebe, as lobbyist for the Coalition to Reform Chapter Trans 233 (the Coalition), is asking you to work with the Coalition outside of the Assembly Committee on Transportation review process to further alter CR 109. I respectfully ask that committee members not get involved because the Department will not voluntarily agree to any more changes and objecting to CR 109 would have the negative impact of leaving Trans 233 as it currently exists in effect.

More specifically, I am aware of only two ways to amend TRANS 233 through the committee process. First, the Department of Transportation could agree to make changes. This is not likely. I believe that the Department has conceded all that it can.

Senator Breske, Chair of the Senate Committee on Insurance, Tourism, Transportation & Corrections has extended its review period of CR 109. During this extended period, the Senate Committee could work to amend the rule in the second way. That is, they could vote to object to CR 109 in whole or in part. This would refer CR 109 to the Joint Committee on Administrative Rules, thus either delaying or eliminating all of the concessions favorable to landowners that we have worked so hard to include in CR 109. That means that Trans 233 as it presently exists would remain law in Wisconsin for some time to come. The current ch. Trans 233 is onerous and few would argue that keeping it on the books is desirable.

I am aware that a number of you still have reservations about the rule, but I nonetheless think that CR 109 should go into effect as it currently is written. As indicated above, the Department will not voluntarily concede any more and objecting to CR 109 would likely have disastrous consequences. Also, the Assembly Committee on Transportation's review period has ended and the Assembly Committee's job is thus done. Moreover, the Department has bent over backwards to accommodate members of the Coalition. If there are problems once the rule becomes law, the Legislature will be able to solve them.

Again, I hope that members think long and hard before they get further involved with CR 109. I would be happy to answer any of your questions or concerns. Thank you for your consideration.

Committee Memberships:

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

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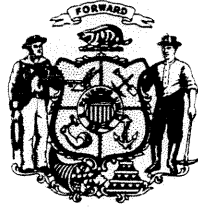
ROGER BRESKE

STATE SENATOR

12th District

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Home Address:
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Eland, WI 54427
(715) 454-6575

E-Mail Address:
Sen.Breske@legis.state.wi.us

October 5, 2000

Secretary Terrence D. Mulcahy
Department of Transportation
4802 Sheboygan Avenue
HAND DELIVERED

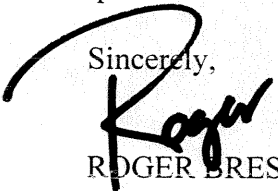
RE: Clearinghouse Rule 00-109
Relating to: division of land abutting a state trunk or connecting highway

Dear Secretary Mulcahy:

At the request of a majority of the members of the Senate Committee on Insurance, Tourism, Transportation and Corrections and pursuant to § 227.19(4)(a) and (b) Wis. Stats., I write to extend the Committee's review of this proposed rule. I anticipate holding a committee hearing in the next two weeks. A hearing notice and request for agency personnel will be forthcoming under separate cover.

Thank you for your assistance. As always, please feel free to give me a call should you have any questions or concerns regarding this matter.

Sincerely,


ROGER BRESKE, CHAIR
Senate Committee on Insurance, Tourism,
Transportation & Corrections

RB/vlv

cc: Joe Maasen, Department of Transportation
Bob Cook, Department of Transportation
Donald J. Schneider, Senate Chief Clerk
Representative Brandemuehl, Assembly Transportation Committee
Don Salm, Office of Legislative Council
Members, Senate Committee on Insurance, Tourism, Transportation & Corrections

Machtan, Martin

From: Sen.Breske
Sent: Thursday, October 05, 2000 4:05 PM
To: Cook, Robert; Maassen, Joe; Sen.Baumgart; Sen.Grobschmidt; Sen.Lasee; Sen.Schultz; Sen.Shibilski; Sen.Zien; Eskeitz, Anne; Henderson, Patrick; Sumi, John; Harris, Kenlyn; Lord, Shari; Coakley, Allison; OBrien, John; Gumz, Mark; Seitz, Robert; Hanson, Peter; Piliouras, Elizabeth; Salm, Don; Doyle, Donna; Rep.Brandemuehl; 'walker.t@midplains.net'; 'bartlett@inxpress.net'
Subject: Clearinghouse Rule 00-109 - With attachment

October 5, 2000

Given the request by a majority of the members of the Senate Committee on Insurance, Tourism, Transportation & Corrections to consider modifications to the above rule, I have issued the attached letter extending our review for an additional thirty day period. Hard copies should be distributed to you by day's end.

It is my intention to meet with all affected parties to discuss the modifications which have been brought to my attention, prior to scheduling any hearing. I will be sure to keep you posted of the Committee's action. In the meantime, please let me know of any additional concerns that you may have with respect to this rule.

ROGER BRESKE, CHAIRMAN
Senate Committee on Transportation



Mulcahy_Rule
Review_CR00-109.d...

October 5, 2000

Secretary Terrence D. Mulcahy
Department of Transportation
4802 Sheboygan Avenue
HAND DELIVERED

RE: Clearinghouse Rule 00-109
Relating to: division of land abutting a state trunk or connecting highway

Dear Secretary Mulcahy:

At the request of a majority of the members of the Senate Committee on Insurance, Tourism, Transportation and Corrections and pursuant to § 227.19(4)(a) and (b) Wis. Stats., I write to extend the Committee's review of this proposed rule. I anticipate holding a committee hearing in the next two weeks. A hearing notice and request for agency personnel will be forthcoming under separate cover.

Thank you for your assistance. As always, please feel free to give me a call should you have any questions or concerns regarding this matter.

Sincerely,

ROGER BRESKE, CHAIR
Senate Committee on Insurance, Tourism,
Transportation & Corrections

RB/vlv

cc: Joe Maasen, Department of Transportation
Bob Cook, Department of Transportation
Donald J. Schneider, Senate Chief Clerk
Representative Brandemuehl, Assembly Transportation Committee
Don Salm, Office of Legislative Council
Members, Senate Committee on Insurance, Tourism, Transportation & Corrections



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

TO: SENATOR DALE SCHULTZ

FROM: William Ford, Senior Staff Attorney *WJ*

RE: Your Requested Amendment to Chapter Trans 233

DATE: September 5, 2000

This memorandum contains the amendment you requested to ch. Trans 233. The purpose of your amendment is to prohibit the Department of Transportation (DOT) from requiring, as a condition of certifying nonobjection to a proposed land division under ch. Trans 233, the land divider to allow access to other persons to a private road or driveway that is a part of the land division and that is owned by the land divider. The following language would accomplish this:

Trans 233.02 (8) The department may not require, as a condition of certifying nonobjection to a land division under this chapter, that the land divider allow other persons to use a private road or driveway that is owned by the land divider and that is within the land division for the purpose of vehicular access to or from a state trunk or connecting highway. This subsection does not apply to a land division if the land divider consents to such use.

Note that under the proposed language, the DOT would maintain its discretion to object to a proposed land division. Presumably, the department could disapprove a proposed land division in instances where it felt that highway safety or vehicular traffic flow might require a land divider to share access to a state trunk or connecting highway with other persons. The practical effect of the department doing this would be to place pressure on the land divider to *consent* to the use of the road or a driveway by other persons, even though the department could not require such consent as a condition of approving the land division. I do not know of a way to draft language that would eliminate this problem if the DOT is to retain discretion to approve or disapprove land divisions adjacent to state trunk highways.

In addition, note that ch. Trans 231 authorizes the department to require permits for persons who want to connect private roads or driveways to state trunk or connecting highways. Because the department could use this authority to require a land divider to allow other persons to use his or her

private road or driveway as a condition of receiving a permit under ch. Trans 231, I would also suggest that you request the department to add the following language to ch. Trans 231:

Trans 231.01 (10) The department may not require, as a condition of approving a permit for construction of a private road or driveway that connects directly with a state trunk or connecting highway, that the permittee allow other persons to use the permittee's private road or driveway for the purpose of the vehicular access to or from the state trunk or connecting highway. This subsection does not apply to a permit applicant who consents to such use.

Please contact me if you have any questions.



Wisconsin Transportation Builders Association

1 South Pinckney Street, Suite 818
Madison, WI 53703

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

WTBA Position on Revising Trans 233

♦ **President**

Tim Peterson
J. Peterson Sons, Inc.

♦ **1st Vice President**

Bill Kennedy
Rock Road Companies, Inc.

♦ **2nd Vice President**

Jim Hoffman
Hoffman Const. Co.

♦ **Secretary**

Larry Haldeman
Trierweiler Construction

♦ **Treasurer**

David Bechthold
Zenith Tech Inc.

♦ **Board Members**

Mike Hoff
Earth Tech, Inc.

Merle Leifker
Edw. Kraemer & Sons, Inc.

Dick Mann
Mann Brothers, Inc.

Cliff Mashuda, Jr.
Mashuda Contractors

Scott Mathy
Mathy Construction Co.

Paul Nortman
Lunda Const. Co.

Dennis Pagel
Pagel Construction Co.

Kent Pitlik
Pitlik & Wick, Inc.

Ed Reesman
Payne & Dolan, Inc.

Joe Ruetz
Vinton Const. Co.

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

Bill Timme
Timme, Inc.

Gene Vandemark
MCC, Inc.

♦ **Executive Director**

Tom Walker

♦ **Deputy Executive Director**

Jack Arseneau



American Road &
Transportation Builders
Association

Background:

For more than a year, the Coalition to Reform Trans 233 has raised a continuing series of new objections to the rule promulgated by DOT in 1999, without objection.

The Department has responded by fully incorporating numerous agreements in CR-109, including:

- The list of changes negotiated by the Subcommittee on Review of Chapter Trans 233 of the Assembly Committee on Transportation (2/18/2000 memorandum).
- A substantial narrowing of required setbacks, both in distance and scope, as recommended by the Joint Committee for the Review of Administrative Rules at its June 21, 2000 hearing.

The Department also promised to incorporate in CR-109 several new agreements, reached at the Assembly Committee on Transportation hearing on September 20, 2000.

WTBA Position:

WTBA fully supports the promulgation of CR-109, including all changes noted above.

WTBA believes that these changes appropriately balance the rights of property owners with the taxpayer's right to protect the public investment in the integrity of transportation corridors.

WTBA opposes any further compromise on key issues.

WTBA explicitly and strenuously opposes the key recommendation by the Coalition in its August 11th, 2000 letter to DOT, arguing on p.4 that landowners should be permitted to construct improvements in a setback at their risk, by waiving their right to future compensation.

WTBA Rationale:

Setbacks are a clearly established public policy option under Wisconsin law, and have been utilized by DOT since 1956.

Setbacks are an increasingly important planning and zoning tool. Setbacks assure that new buildings and other improvements that generate traffic should be laid out to provide sufficient room for needed future transportation capacity, along existing public rights-of-way.

This policy minimizes the need to establish new corridors that are increasingly difficult and costly to cite, while allowing highway system expansion that accommodates a healthy economy and resulting travel growth.

The Wisconsin Land Council is encouraging all state agencies to integrate their policies with "Smart Growth" goals, including providing infrastructure support for existing communities and avoiding investments that might induce sprawl. WTBA is surprised and dismayed to see some of the core organizations supporting "smart growth" in one forum then turn around and try to undermine the best tool available to DOT to manage growth without crossing prime environmental corridors or using prime agricultural land.

WTBA believes that development has a responsibility to incorporate accommodations for the traffic it generates. In return, businesses receive their economic viability from the roads along which they locate. Setbacks assure future right-of-way to serve those very businesses, rather than having to move the highway and their potential customers to a new corridor.

Allowing development within setbacks, providing compensation is waived, is a sham and of questionable legality. The only thing it will guarantee is that businesses who make that decision will fight to the end to oppose any future highway project that needs the setback, to protect their investment. This proposal is worse than no setbacks, and a dramatic retreat from current practice.

WTBA also opposes the Coalition's proposal to eliminate full setbacks in the territory immediately adjacent to cities and villages. This is precisely the area where state highways are facing huge new traffic demands from development, and new lanes will be needed to serve the very businesses objecting to setbacks.

WTBA also opposes the Coalition's proposal to remove from the criteria for evaluating special exceptions that a highway is forecasted to exceed safe travel capacity (Level of Service "C") over the next 20 years. This is the standard time horizon and measure of highway capacity required by federal transportation planning rules and best practices, to which DOT and Metropolitan Planning Agencies (MPO's) in Wisconsin must comply.

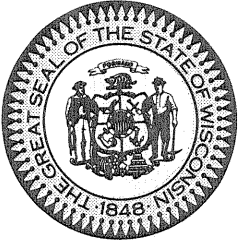
Failure to protect corridors where congestion problems have been clearly identified would be a dramatic public policy failure and waste of limited taxpayer resources.

Hy 33, Trans 233 (original and new) comparison - July 7, 2000

Issue	Hy 33 (effective September, 1956)	Trans 233 (effective February 1, 1999)	Trans 233 (effective December 1, 2000)
Purpose	safe entrance and exit plus preserve public investment	unchanged	unchanged
Applicability	subdivisions only	all land divisions	unchanged
Access	no direct access for individual lots - street access preferred	unchanged	unchanged
Setbacks - distances	110' from C/L or 50' from R/W (or less when local setback is in place)	unchanged	<ul style="list-style-type: none"> unchanged for a subsystem of STH's (Section 8) ("specific analysis" will be used when reduced setback is requested); 15' for the remainder
Setbacks - structures	structures not allowed in the setback	unchanged	unchanged
Setbacks - improvements	improvements not allowed in the setback (improvements not defined)	improvements not allowed in the setback (improvements defined)	unchanged (swimming pools redefined)
Setbacks - "grandfathering" existing structures and improvements	Chap 236: "the final plat shall show all existing buildings" but doesn't say why Hy 33: not mentioned	Chap 236: "the final plat shall show all existing buildings" but doesn't say why Trans 233: not mentioned	specific language added about existing structures and improvements allowed to remain in the setback
Vision Corners	vision corners not mentioned, although internal streets were expected to be connected with the STH "in a manner which is safe"; vision corners are a logical safety feature	"department may require the owner to dedicate land or grant an easement for vision corners"	unchanged (more specific language added to clarify permanent easement option)
Noise	noise requirements not mentioned	reiterates ch. Trans 405 requirements	unchanged (more specific language added to clarify responsibilities)
Drainage	surface drainage to be handled so "existing highway drainage system is not adversely affected"	unchanged (more specific language added)	unchanged (more specific language added to clarify "drainage analysis")
Condominium plats	not mentioned	condominium plat defined as a land division subject to review	condominium plat on existing developments (in place for 5 years), where the traffic impacts are not changed, will be exempt from the new Rule.
Process - reviews	"Recommended procedure" an early review of proposal, added reviews throughout plat development, and other reviews prior to preliminary and final plat	"Procedures for review" -conceptual review (no fee) -preliminary plat review and final plat review (fee)	unchanged (may delegate to local unit of government)
Process - timing	Chap 236: "within 20 days of the date of receiving copies" Hy 33: not mentioned	Trans 233: "within 20 calendar days from the date that a complete request is received"	adds that incomplete requests must be determined within 5 days also adds that 60 days is needed for special exceptions

Variances	may be granted; recommended by district, approved by central office	unchanged	variances now called "special exceptions"; approved by district, or delegate approval to local unit of government may be appealed to central office
Traffic access pattern	traffic access pattern not mentioned, although internal streets were expected to be connected with the STH "in a manner which is safe"; traffic impact analyses are sometimes needed to verify safety	unchanged	specific language added about "desirable traffic access pattern"
Fee	not required	required	unchanged

W:/Bhd/design_serv/TRANS 233 comparison.doc



DAVID BRANDEMUEHL

State Representative
49th Assembly District

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON TRANSPORTATION

FROM: Representative David Brandemuehl, Chairperson, Assembly Committee on Transportation

RE: Clearinghouse Rule 00-109

DATE: September 29, 2000

The purpose of this memorandum is to inform you of the agreements reached with the Department of Transportation (DOT) with respect to Clearinghouse Rule 00-109 (CR 109) and to explain my decision not to hold an executive session of the Assembly Committee on Transportation on the rule. In response to concerns expressed at the Committee's September 20, 2000 meeting on CR 109, and concerns expressed by some members of the Transportation Committee in letters to my office, the DOT has agreed to make the following amendments to CR 109:

1. Prohibit the DOT from requiring an owner of land to *dedicate land* for vision corners at the intersection of a highway with a state trunk or connecting highway. Under the amended rule, an owner of land would have a right to provide for vision corners by means of granting an *easement*, rather than dedication of land, at the owner's option.
2. Address the concerns expressed by businesses that *users* of land should not be held responsible for installing noise barriers. This would be done by *deleting* the language in s. Trans 233.105 (1) that owners or users of land adjacent to a state trunk highway are responsible for any noise abatement measures warranted under ch. Trans 405 unless the noise

Committee Memberships:

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

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results from geographic expansion of the through lane capacity of a highway. The amended rule will only state that the DOT is not responsible for noise abatement measures unless the noise results from geographic expansion of the through lane capacity of a highway.

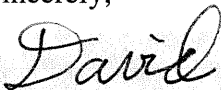
3. Allow structures or improvements lawfully placed within a setback area under ch. Trans 233 prior to February 1, 1999 or lawfully placed within a setback area prior to a land division to be maintained or, if unintentionally or tortiously destroyed, to be substantially replaced in kind.
4. Require DOT to produce, at least once every two years, detailed reference maps to be used in DOT district offices identifying state trunk and connecting highways subject to the setback requirements (generally 50' or 110') of s. Trans 233.08 (2) (c). In a note to s. Trans 233.08 (2) (d), DOT also states its intent to make these maps, as well as the more general maps identifying the highways subject to s. Trans 233.08 (2) (c), "readily available to the public through the internet and through other effective means of distribution."

In deciding not to hold an executive session on CR 109, I am fully aware that there are other issues some legislators think should be addressed in the rule. However, a great deal of time and effort has been put into the revisions contained in CR 109 that substantially improve ch. Trans 233 from the standpoint of persons who own land adjacent to highways. As you know, CR 109 contains 10 revisions to ch. Trans 233 that were worked out in extensive negotiations between the subcommittee I established to review ch. Trans 233, the Coalition to Reform Chapter Trans 233, and the DOT. In addition, the DOT has agreed to adopt the four amendments to CR 109 explained above, all of which improve ch. Trans 233 from the standpoint of landowners.

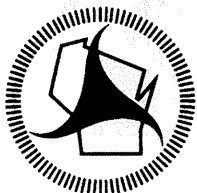
The position of the DOT is that they would not agree to other amendments to CR 109 suggested at our September 20 meeting and by individual members of this committee. Therefore, if we were to hold an executive session on this rule, our only option would be to vote to object to CR 109 in whole or in part. This would have the effect of referring CR 109 to the Joint Committee for Review of Administrative Rules. In turn, this would have the effect of either delaying or killing all of the concessions favorable to landowners that we have worked so hard to include in CR 109. I think the changes we negotiated provide a good balance between the needs of landowners and the needs of the state and I do not want to risk losing them.

Instead, I suggest that members of the committee who remain dissatisfied with ch. Trans 233 attempt to address their concerns through legislation introduced next session or through continued negotiations with the DOT.

Sincerely,



David A. Brandemuehl
State Representative
49th Assembly District



Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson
Governor

Terrence D. Mulcahy, P.E.
Secretary

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E-Mail: sec.exec@dot.state.wi.us

September 28, 2000

Representative David Brandemuehl
Chair, Assembly Transportation Committee
Room 317 North, State Capitol
Madison, WI

Senator Roger Breske
Chair, Senate Transportation Committee
Room 18 South, State Capitol
Madison, WI

Re: **Proposed Administrative Rule
Chapter Trans 233, Wisconsin Administrative Code
Clearinghouse Rule No. 00-109**

Gentlemen:

At the Committee hearing on September 20, 2000, the Department agreed to modify parts of CR 00-109 relating to Items 6 and 7 of Legislative Council Attorney William Ford's memo dated September 15, 2000. Pursuant to sec. 227.19(4)(b)3., Stats., I therefore submit the following germane modifications to the rule:

ITEM 6. On page 29, amend TRANS 233.105(2)(intro.) as follows:

TRANS 233.105(2)(intro.) VISION CORNERS. The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection by approaching vehicles. The owner shall have the choice of providing the vision corner by permanent easement or by dedication. If the department requires such a dedication or grant, the owner shall include the following notation on the land division map:

ITEM 7. On page 28, amend TRANS 233.105(1) as follows:

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

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

highways, in the absence of any increase by the department to the highway's through-lane capacity."

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

ITEM 5 of Mr. Ford's memo deals with "grandfather" rights and initial applicability of the original 1956 rule, the February 1, 1999 rule, and this rule revision. The Department has proposed to create s. Trans 233.012(2) on page 18 of the rule to clarify applicability as follows:

Trans 233.012(2). **Structures and improvements lawfully placed in a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed in a setback area before a land division, are explicitly allowed to continue to exist.** Plats that have received preliminary approval prior to February 1, 1999; are not subject to the standards under this chapter as first promulgated effective February 1, 1999, if there is no substantial change between the preliminary and final plat, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Plats that have received final approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Land divisions on which the department acted between February 1, 1999 and the effective date of this chapter...[revisor insert date] are subject to ch. Trans 233 as it existed February 1, 1999. **[The above sentence is shown in bold in this letter for emphasis.]**

If WISDOT did not object to the preliminary plat; it cannot object to the final plat. Statutory law, sec. 236.11(1)(b), Stats., reads in part:

"If the final plat conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to local plans and ordinances adopted as authorized by law, it is entitled to approval."

The language in Trans 233.012 is consistent with the statute and the changes previously agreed to and documented in the Legislative Council Memorandum by Mr. Ford.

In addition to the above changes requested at the hearing, the Department has agreed to other requests submitted by members to the Committee Chair. Pursuant to sec. 227.19(4)(b)3., Stats., I therefore submit the following additional germane modifications to the rule:

On page 18, insert SECTION 11M as follows:

SECTION 11M. TRANS 233.012(3) is created to read:

Trans 233.012(3). Any structure or improvement lawfully placed within a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed within a setback area before a land division, may be kept in a state of repair, efficiency or validity in order to preserve from failure or decline, and if unintentionally or tortiously destroyed, may be replaced substantially in kind.

On page 27, insert SECTION 21M as follows:

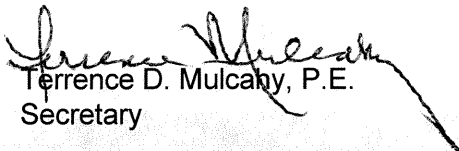
SECTION 21M. TRANS 233.08(2)(d) is created to read:

Trans 233.08(2)(d). In addition to producing general reference maps at least once every 2 years that identify highways and intersections under par. (c), at least every 2 years the department shall also produce more detailed reference maps suitable for use in the geographic area of each district office.

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

Thank you for your consideration of this proposal.

Sincerely,


Terrence D. Mulcahy, P.E.
Secretary

cc: Senator Judy Robson
Representative Glenn Grothman
Gary Poulson
John Haverberg
Ron Nohr
Ernie Peterson
Bonnie Tripoli



DAVID BRANDEMUEHL

State Representative
49th Assembly District

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON TRANSPORTATION

FROM: Representative David Brandemuehl, Chairperson, Assembly Committee on Transportation

RE: Clearinghouse Rule 00-109

DATE: September 29, 2000

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Committee Memberships:

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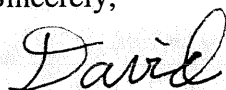
3. Allow structures or improvements lawfully placed within a setback area under ch. Trans 233 prior to February 1, 1999 or lawfully placed within a setback area prior to a land division to be maintained or, if unintentionally or tortiously destroyed, to be substantially replaced in kind.
4. Require DOT to produce, at least once every two years, detailed reference maps to be used in DOT district offices identifying state trunk and connecting highways subject to the setback requirements (generally 50' or 110') of s. Trans 233.08 (2) (c). In a note to s. Trans 233.08 (2) (d), DOT also states its intent to make these maps, as well as the more general maps identifying the highways subject to s. Trans 233.08 (2) (c), "readily available to the public through the internet and through other effective means of distribution."

In deciding not to hold an executive session on CR 109, I am fully aware that there are other issues some legislators think should be addressed in the rule. However, a great deal of time and effort has been put into the revisions contained in CR 109 that substantially improve ch. Trans 233 from the standpoint of persons who own land adjacent to highways. As you know, CR 109 contains 10 revisions to ch. Trans 233 that were worked out in extensive negotiations between the subcommittee I established to review ch. Trans 233, the Coalition to Reform Chapter Trans 233, and the DOT. In addition, the DOT has agreed to adopt the four amendments to CR 109 explained above, all of which improve ch. Trans 233 from the standpoint of landowners.

The position of the DOT is that they would not agree to other amendments to CR 109 suggested at our September 20 meeting and by individual members of this committee. Therefore, if we were to hold an executive session on this rule, our only option would be to vote to object to CR 109 in whole or in part. This would have the effect of referring CR 109 to the Joint Committee for Review of Administrative Rules. In turn, this would have the effect of either delaying or killing all of the concessions favorable to landowners that we have worked so hard to include in CR 109. I think the changes we negotiated provide a good balance between the needs of landowners and the needs of the state and I do not want to risk losing them.

Instead, I suggest that members of the committee who remain dissatisfied with ch. Trans 233 attempt to address their concerns through legislation introduced next session or through continued negotiations with the DOT.

Sincerely,



David A. Brandemuehl
State Representative
49th Assembly District



Wisconsin Department of Transportation

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September 28, 2000

Representative David Brandemuehl
Chair, Assembly Transportation Committee
Room 317 North, State Capitol
Madison, WI

Senator Roger Breske
Chair, Senate Transportation Committee
Room 18 South, State Capitol
Madison, WI

Re: **Proposed Administrative Rule
Chapter Trans 233, Wisconsin Administrative Code
Clearinghouse Rule No. 00-109**

Gentlemen:

At the Committee hearing on September 20, 2000, the Department agreed to modify parts of CR 00-109 relating to Items 6 and 7 of Legislative Council Attorney William Ford's memo dated September 15, 2000. Pursuant to sec. 227.19(4)(b)3., Stats., I therefore submit the following germane modifications to the rule:

ITEM 6. On page 29, amend TRANS 233.105(2)(intro.) as follows:

TRANS 233.105(2)(intro.) VISION CORNERS. The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection by approaching vehicles. The owner shall have the choice of providing the vision corner by permanent easement or by dedication. If the department requires such a dedication or grant, the owner shall include the following notation on the land division map:

ITEM 7. On page 28, amend TRANS 233.105(1) as follows:

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

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

highways, in the absence of any increase by the department to the highway's through-lane capacity."

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

ITEM 5 of Mr. Ford's memo deals with "grandfather" rights and initial applicability of the original 1956 rule, the February 1, 1999 rule, and this rule revision. The Department has proposed to create s. Trans 233.012(2) on page 18 of the rule to clarify applicability as follows:

Trans 233.012(2). **Structures and improvements lawfully placed in a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed in a setback area before a land division, are explicitly allowed to continue to exist.** Plats that have received preliminary approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, if there is no substantial change between the preliminary and final plat, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Plats that have received final approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Land divisions on which the department acted between February 1, 1999 and the effective date of this chapter....[revisor insert date] are subject to ch. Trans 233 as it existed February 1, 1999. **[The above sentence is shown in bold in this letter for emphasis.]**

If WISDOT did not object to the preliminary plat; it cannot object to the final plat. Statutory law, sec. 236.11(1)(b), Stats., reads in part:

"If the final plat conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to local plans and ordinances adopted as authorized by law, it is entitled to approval."

The language in Trans 233.012 is consistent with the statute and the changes previously agreed to and documented in the Legislative Council Memorandum by Mr. Ford.

In addition to the above changes requested at the hearing, the Department has agreed to other requests submitted by members to the Committee Chair. Pursuant to sec. 227.19(4)(b)3., Stats., I therefore submit the following additional germane modifications to the rule:

On page 18, insert SECTION 11M as follows:

SECTION 11M. TRANS 233.012(3) is created to read:

Trans 233.012(3). Any structure or improvement lawfully placed within a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed within a setback area before a land division, may be kept in a state of repair, efficiency or validity in order to preserve from failure or decline, and if unintentionally or tortiously destroyed, may be replaced substantially in kind.

On page 27, insert SECTION 21M as follows:

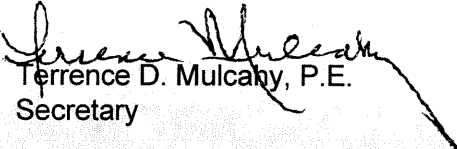
SECTION 21M. TRANS 233.08(2)(d) is created to read:

Trans 233.08(2)(d). In addition to producing general reference maps at least once every 2 years that identify highways and intersections under par. (c), at least every 2 years the department shall also produce more detailed reference maps suitable for use in the geographic area of each district office.

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

Thank you for your consideration of this proposal.

Sincerely,


Terrence D. Mulcahy, P.E.
Secretary

cc: Senator Judy Robson
Representative Glenn Grothman
Gary Poulson
John Haverberg
Ron Nohr
Ernie Peterson
Bonnie Tripoli