



### 22.1 General

Ch. Trans 233 Wis. Adm. Code (Trans 233) is an administrative rule that places certain requirements on land divisions that abut the State Trunk Highway (STH) system. It was first adopted in 1956, and at that time it only applied to subdivisions adjacent to a STH. The rule required that a highway setback be shown on all affected subdivisions, and it stated that no structures or improvements could be placed in the setback area. The rule also restricted the access from individual lots to the STH.

In order to avoid the Trans 233 requirements, some people were dividing land by other methods. In 1998, the rule was revised to include all land divisions adjacent to a STH or a connecting highway. The revised rule also included additional restrictions regarding the reimbursement of utility facilities placed in the setback area. **Note: In the case of Wisconsin Builders Association, et al. v. Wisconsin Department of Transportation 2005 WI App 160, the Court of Appeals ruled that the rules in Ch. Trans 233 were invalid to the extent that they apply to land divisions other than subdivisions.** Therefore, Trans 233 now only applies to subdivisions as defined in State Statute 236.02(12):

- (12) "Subdivision" is a division of a lot, parcel or tract of land by the owner thereof or the owner's agent for the purpose of sale or of building development, where:
- (a) The act of division creates 5 or more parcels or building sites of 1 1/2 acres each or less in area; or
  - (b) Five or more parcels or building sites of 1 1/2 acres each or less in area are created by successive divisions within a period of 5 years.

The rule has not been revised, so it still contains the 1998 language stating that it applies to all land divisions. However, because of the lawsuit mentioned above, WisDOT can only enforce the requirements on subdivisions.

[Attachment 22.1.1](#) is a memo sent in 1999 that explains the impact of Trans 233 on utility companies and WisDOT offices. The memo is still applicable except that the rule only applies to "subdivisions".

Ch. Trans 233.08 Wis. Adm. Code Setback Requirements and Restrictions are reproduced in [Attachment 22.1.2](#). Please note that there are two types of highway setback, a "normal" setback and a "reduced" setback. Both types of setbacks are subject to a variance procedure that allows the WisDOT to consider a request from a land divider to grant a special exception for a lesser setback depending upon the specific situation.

The "normal setback" is 110 feet from highway centerline or 50 feet from highway right of way line whichever is more restrictive. This "normal setback" can be automatically reduced to 100 feet from highway centerline or 42 feet from the highway right of way line whichever is more restrictive when there is a local ordinance that allows a setback that is less than the 110 feet or 50 feet. This "normal setback" applies to all major intersections and highways that are listed in ch. Trans 233.08(2)(c) Wis. Adm. Code.

The "reduced" setback is 15 feet from the highway right of way line and applies to all highways not listed in ch. Trans 233.08(2)(c) Wis. Adm. Code. These highways are low volume highways that are not expected to need expansion improvements within the next 20 years or more.

### 22.2 Compensation in Setback Area

Utility facilities located in the setback area are compensable if:

1. They were placed prior to the land division being recorded. **OR**
2. They are in an easement that was acquired prior to February 1, 1999. **OR**
3. They were placed after the land division map is recorded but with prior notice, in writing, to the WisDOT. **OR**
4. They were erected or installed prior to the land division map being recorded, but modified after that time in a manner that increases the cost to remove or relocate the facility. In this case, only the costs of replacing the original facility will be reimbursed, unless the upgraded facility was placed with prior notice to WisDOT. If notice was given, the entire facility is eligible for reimbursement.

**There is one possible exception to the above. On connecting highways, the utility facility is only compensable if it qualifies under the applicable local setback rules and ordinances.** This was done because local units of government participate in the costs of connecting highway projects. It was felt unfair to require a local government to pay for utility relocation costs when the costs would not be eligible if the same work was done on a local street.

A connecting highway is a marked route of a State Trunk Highway system over the streets and highways in municipalities that WisDOT has designated as connecting highways. Municipalities have jurisdiction over the connecting highways and are responsible for their maintenance and traffic control. A listing of connecting highways and geographic end points is available in WisDOT's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31.

### 22.3 Prior Notice

The prior notice referred to in number 3 and 4 above has certain requirements. The notice shall contain a plan showing the nature of the work and the distance of the work from the nearest right of way line. The notice shall be sent to the appropriate Transportation office.

Form [DT1733](#) "Trans 233 Notification to Construct and Operate Utility Facilities Adjacent to Highway Right of Way" (see [Attachment 22.3.1](#)), along with appropriate sketches, may be used by the utility company to provide all of the basic information needed to process a request to locate utility facilities in the highway setback area.

The notice shall be sent at least 30 days prior to construction for normal utility work. The timeframe shall be at least 5 days prior to construction for any routine minor utility erection or installation work. For any major utility projects, the notice shall be sent at least 60 days prior to construction.

Major utility projects include, but are not limited to, work involving transmission towers, communication towers, water towers, pumping stations, lift stations, regulator pits, remote switching cabinets, pipelines, electrical substations, wells, gas substations, antennae, satellite dishes, treatment facilities, electrical transmission lines, and facilities of similar magnitude.

Routine minor utility erection or installation work refers to single residential distribution facilities and similar inexpensive work of less magnitude. This includes work that would qualify for the Annual Service Connection Permit under the "WisDOT Utility Accommodation Policy."

The notice and plan requirement does not apply to maintenance work on existing facilities.

After WisDOT receives the notice, WisDOT shall determine whether a planned highway project in the 6-year improvement program or a planned major highway project will conflict with the proposed utility work. If WisDOT determines a conflict exists, it will notify the utility in writing within a timeframe similar to the submittal timeframe (5, 30 or 60 days, depending on the nature of the work) and request that the utility consider alternative locations that do not conflict with the planned highway work. WisDOT will work with the utility to find a route that does not conflict.

If WisDOT and the utility are unable to find a suitable location, the utility may proceed with its work, but WisDOT may not compensate the utility for damages or relocation with respect to the planned highway project. In order to avoid payment of compensation or other damages to the utility, WisDOT is required to record a copy of its written notice to the utility of the conflict, that adequately describes the property and utility work involved, with the register of deeds in the county in which the utility work or any part of it is located. A recordable form (Notice of Non-Reimbursement) will be developed for such use. It is the hope of WisDOT that this form is never used, but rather a suitable location is found for the utility work.

The Trans 233 coordinator, the Utility Coordinator, the Project Development section and the planning unit must work together to receive the prior notice, determine whether there are any proposed projects, avoid conflicts with any such projects, and document the entire process.

Sample letters to utilities for both the approval and objection situations are shown in [Attachment 22.3.2](#) and [22.3.3](#). These letters must be kept forever in the files. They should be referenced so that they can be easily retrieved when future highway projects require them.

### 22.4 Facilities Installed Prior to Land Division

What if a utility installs a facility in a setback on a proposed land division before the land division is recorded? There is not much that can be done about it; it is not improper since the setback area is created when the land division is recorded. However, if there is a utility permit application for work on the right of way that is also associated with the work off of the right of way, look for potential conflicts not only within the existing right of way

but also for conflicts within the proposed new right of way. Alert the utility to any potential conflicts so that they may avoid adjustments to its facilities in the future. The utility cannot be legally required to make adjustments off of the existing right of way, but it is good business practice for it to do so. If there is no utility permit required, there may not be any knowledge of the installation. There is nothing that can be done about that.

### **22.5 Showing Utility Easements on Land Divisions**

Sometimes, utility companies require land dividers to put utility easements on land divisions at the time of the creation of the land division. This establishes the easement when the land division is recorded, but no other documents are needed (there is no easement recorded separately). Some counties send all land divisions to the utility companies serving the area. Some utility companies require the developer to put a utility easement on the land division prior to recording. Also, some counties require subdivisions to have utility easements. WisDOT has not objected to utility easements on subdivisions because the thinking was that the easements were needed to serve the subdivision.

It should be clear on the land division map how and when the easements were obtained. If the easement was obtained prior to the land division, there should be recording information shown on the map. There are unrecorded utility easements, which were common in the earlier part of the last century (1900's) when landowners did not like to sign documents related to their land. However, in those cases, the utility has obtained prescriptive rights by now, and that should be stated on the map. A note saying something like "Placed in 1957, prescriptive rights established per Wis. Stat. s. 893.28(2)." WisDOT recognizes a utilities' prescriptive right after 10 years without the utility filing any documents. (That is not technically correct, but that is our practice.)

It should be noted that the surveyor of a land division will not always know when facilities were placed, and therefore may not be able to determine prescriptive rights, however, for WisDOT right of way plats this information will have to be ascertained.

Existing easement information can be difficult to track down. The original easement may have covered 160 acres or more without any specific location. This type of easement was not always brought forward properly in subsequent land divisions. However, the utility company can usually produce the original easement, or can provide the date of installation that indicates a prescriptive right. If the easement is being created as part of the land division, there will be some wording on the map stating the name of the utility company and what the conditions of the easement are. This will document that the easement does not pre-date the land division. If the easement is shown simply as "Utility Easement" without any company name or specific restrictions stated, it is probably created at the time of the land division. If that is incorrect, the utility will have to prove the easement existed prior to the land division.

Any existing facilities in the easement must be shown to document that they existed prior to the land division. (If the surveyor neglects to show the existing utilities, the utility company will bear the burden of proving the facility existed prior to the land division should they seek compensation in the future.) Any facilities placed after the land division is created are subject to our requirement of prior notification, unless the easement was recorded prior to February 1, 1999. The utility easement recording information will help us identify this situation.

### **22.6 Utility Permits and Trans 233**

Ch. Trans 233.05(3) Wis. Adm. Code states: "The department may not issue any permit under s. 86.07, Stats., prior to favorable department review of the preliminary or final land division map or, for a subdivision plat, prior to the department's certification of no objection."

Utility permits are issued under Wis. Stat. s. 86.07(2), and therefore no utility or annual service connection permit can be issued for a land division until WisDOT has certified the land division. This means that the Utility Permit Coordinator must determine whether the permit or service connection being applied for involves property that is subject to Trans 233, and whether or not the land division has been certified by WisDOT. If the land division has not been certified, the permit cannot be issued.

Lands are not subject to Trans 233 until a land division has been submitted to WisDOT for either a conceptual, preliminary or final review, OR if a land division has been recorded without WisDOT certification, in which case it would be an illegal land division. See Trans 233.03, "Procedures for Review" for more information on conceptual, preliminary and final reviews. Of course, it is important to remember that Trans 233 only applies to land divisions adjacent to a STH, but usually there would also be no permit involved in land divisions that are not adjacent to the STH.

If the utility company states that a permit application is for a new land division but the department has not received any submittal from the land divider more research should be done. It is possible that a land division was recorded without going through the required Trans 233 review. However, if we discover that a land division has not been recorded, there is nothing that we can do. We cannot deny a permit. The fact that the utility company has knowledge of a proposed land division is not sufficient cause to deny a permit. A property owner can make improvements to ~~his/her~~their property at any time without WisDOT's approval unless there are existing restrictions on the property. The property owner can build improvements on ~~his/her~~their property and then divide it; in this case the improvements would exist at the time of the land division and they would be "grand fathered." In some cases, a proposed land division never takes place for various reasons unrelated to WisDOT actions. A land division may just be proposed but may never occur, or it may occur after the utility facilities are built.

If the Utility Permit Coordinator is suspicious that an illegal land division is or may be taking place, ~~he/she~~they should notify the Trans 233 coordinator as soon as possible. The Trans 233 coordinator would then inform the landowner of ~~his/her~~their legal obligation to acquire WisDOT approval before the land division is recorded.

**CORRESPONDENCE MEMO \_\_\_\_\_ WisDOT Bureau of Highway Development****DATE:** January 28, 1999**TO:** District Utility Coordinators, District Land Division Reviewers**FROM:** Ernest J. Peterson, Utility/Access Management Engineer**SUBJECT : TRANS. 233 & Utilities**

Revised TRANS. 233 becomes effective on Monday, February 1, 1999. It affects utility facilities, and the district Utility Coordinators will be involved in the new requirements/process.

**TRANS. 233 creates a setback area in every land division (CSM, subdivision, county plat, condominium plat, or any other land division).** The setback is 50 from the R/W line, or 110 feet from the centerline of the R/W, whichever is the most restrictive. **Utilities may occupy the setback, but they are only compensable under the following scenarios:**

1. Utility facility is erected or installed before the land division map is recorded.
2. Utility facility is erected or installed on a recorded utility easement that was acquired prior to February 1, 1999.
3. Utility facility is erected or installed after the land division map is recorded, but with prior notice in writing to the DOT.
4. Utility facility is erected or installed before the land division map is created, but modified after that date in a manner that increases the cost to remove or relocate the facility. In this case, the DOT pays the cost for the original facility only, unless the modification was made with prior notice in writing to DOT.

Compensation is further restricted by the following:

1. On connecting highways, the utility facility is only compensable if it is compensable under the applicable local setbacks.
2. The DOT will review the notice of a proposed utility facility and determine whether it conflicts with a planned highway project within the 6-year improvement program or a major highway project. **If the DOT determines that a conflict exists, the DOT will notify the utility in writing and request the utility to consider alternative locations that will not conflict with the planned highway work.** If the DOT and utility are not able to avoid or mitigate the conflict, the utility may proceed with the work but the DOT may not pay compensation or other damages relating to the utility facility if it conflicts with the planned highway project. **In order to avoid payment of compensation the DOT is required to record a copy of its written notice of non-reimbursement with the county register of deeds.**

**Trans. 233 only applies to land divisions created after Feb 1, 1999.** Any CSM, subdivision, or other land division will have to have a setback from a STH (or IH, or USH). If a utility wants to locate in that setback, we want the utilities to come to us with their plans. We should be looking at the plans with an eye toward future highway projects (6 year plan and majors). If their plans present a possible conflict with our plans, we ask them to change their plan. If we can't agree on a location that would not interfere with our future plans, then we would issue a notice of non-reimbursement.

When they (utilities) bring in a plan, we will have to check to see if it crosses any land divisions created after Feb. 1, 1999. If it does, we will have to look at the plan in the land division area. Does that conflict with our future plans? If not, we approve, sending a letter stating so. If it does conflict with our plan, we should work with them to find a location that doesn't conflict. If we can't find a mutually agreeable location, we issue the notice of non-reimbursement.

**Each district will have to keep track of land divisions created after February 1, 1999.**

District 6 has developed a database and a SDS GIS application that they have offered to share with all districts. It is a good method of keeping track of this information. Copies of the database were distributed to the land division reviewers in each district. Contact your district's land division reviewer for more information (see list below), ~~or contact Ray Drake (715-836-7279) of Dist. 6~~ if you have questions or would like more information on the system they use.

**We should also keep track of reviewed utility plans.** Each district will have to develop a way of tracking these reviewed plans. A spreadsheet or database with geographic information (such as quarter/quarter/section/town/range) should be included in the data so that it can be tied to a GIS system in the future. If you want to keep copies of the plans you approve, you must consider the storage space requirements and the retention period.

I don't know how many utility plans we can anticipate. Initially, probably not many, since it only applies to land divisions created after Feb. 1. However, since many land divisions are in growing areas, we could see some utility expansions into these areas in the near future. When someone creates a spreadsheet or database for tracking the utility plans, please let me know and I will share it with the other districts so that we avoid duplication of efforts. We can also discuss at our annual meeting in September.

**The utility plan review process will have to be a joint effort of Planning and the utility coordinator.** The utilities will probably bring things to the utility coordinator. The coordinator is the person most familiar with utility plans, jargon, etc., so the coordinator should work with Planning on this. Each district will have to develop a procedure for reviewing proposed utility installation plans.

There are timeframes established in the law. Utilities have to give us the following minimum notification:

**Normal utility work 30 days** prior to starting work  
**Routine work 5 days** prior (single residential distribution facilities and similar inexpensive work. Would include all annual service connection permit-type of work)

**Major utility work 60 days prior** (includes transmission towers, communication towers, water towers, pumping stations, lift stations, regulator pits, remote switching cabinets, pipelines, electrical substations, wells, gas substations, antennae, satellite dishes, treatment facilities, electrical transmission lines and facilities of similar magnitude.)

Obviously we have to reply prior to construction, and the sooner the better if we have problems with their plans.

**We don't anticipate many notices of non-reimbursement.** We hope that we can work with the utilities to find locations that don't pose a future conflict. If you do run into a situation where you need a notice of non-reimbursement, let me know. I am responsible for working with the Office of General Counsel to develop a form to use for that. However, I am not actively pursuing that at this time. (There are other legal issues that are more important, such as Cooperative Acquisition.) When we need the form, let me know and I will work on that if I have not already done so. Remember, for something to be non-compensable, we have to file a notice of non-reimbursement. If the notice is not filed, the facility will be compensable.

This topic is something you should discuss with the land division reviewer in your district. Here is a list of who they are:

- 1 Tammy Williamson & Lori Hornbeck (4/01)
- 2 Sue Voight & Charlie Gilbertson (4/01)
- 3 Dave Andre & Jackie Eisch (4/01)
- 4 Donna Yanda
- 5 Mike Lenz (4/01)
- 6 Diane Schermann (4/01)
- 7 Bob Winat (4/01)
- 8 Kathy Nault (4/01)

If you have any more questions about this, let me know. I've tried to cover everything, but I may have missed something. It's new and we haven't thought of everything I'm sure.

**Ch. Trans 233.015 Wis. Adm. Code Definitions.**

(6) "Public utility" means any corporation, company, individual or association that furnishes products or services to the public, and that is regulated under ch. 195 or 196, Stats., including railroads, telecommunications or telegraph companies, and any company furnishing or producing heat, light, power, cable television service or water, or a rural electrical cooperative, as described in s. 32.02 (10), Stats.

(9) "Utility facility" means any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment or other structure used for transmission or distribution of electrical power or light or for the transmission, distribution or delivery of heat, water, gas, sewer, telegraph or telecommunication service, cable television service or broadcast service, as defined in s. 196.01 (1m), Stats.

**History:** Cr. Register, January, 1999, No. 517, eff. 2-1-99; cr. (1m), (1r), (2m), (5m), (6m), (6r), (7m) and (8m), Register, January, 2001, No. 541, eff. 2-1-01.

**Ch. Trans 233.08 Wis. Adm. Code Setback requirements and restrictions.**

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

- (2) (a) Except as provided in par. (b), the setback area is the area within 110 feet of the centerline of a state trunk highway or connecting highway or within 50 feet of the nearer right-of-way line of a state trunk highway or connecting highway, whichever is furthest from the centerline.
- (b) If an applicable ordinance allows structures or improvements to be located closer to the right-of-way of a state trunk highway or connecting highway than is provided under par. (a), the setback area is the area between the right-of-way and the more restrictive of the following:
1. The distance allowed under the ordinance.
  2. 42 feet from the nearer right-of-way line.
  3. 100 feet from the centerline.
- (c) At least once every 2 years, the department shall produce general reference maps that generally identify major intersections and the highways specified in subds. 1. to 5. The department may reduce or extend, by not more than 3 miles along the highway, the area subject to a setback established under par. (a) or (b) to establish logical continuity of a setback area or to terminate the setback area at a readily identifiable physical feature or legal boundary, including a highway or property boundary. Persons may seek special exceptions to the setback requirement applicable to these major intersections and highways, as provided in s. Trans 233.11(3). The setback area established under par. (a) or (b) applies only to major intersections and to highways identified as:
1. State trunk highways and connecting highways that are part of the national highway system and approved by the federal government in accordance with 23 USC 103(b) and 23 CFR 470.107(b).
  2. State trunk highways and connecting highways that are functionally classified as principal arterials in accordance with procedure 4-1-15 of the department's facilities development manual dated July 2, 1979.
  3. State trunk highways and connecting highways within incorporated areas, within an unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or within an unincorporated area within 1\_ miles of a fourth class city or a village.
  4. State trunk highways and connecting highways with average daily traffic of 5,000 or more.
  5. State trunk highways and connecting highways with current and forecasted congestion projected to be worse than level of service "C," as determined under s. Trans 210.05 (1), within the following 20 years.

**Note:** The National Highway System (NHS) includes the Interstate System, Wisconsin's Corridors 2020 routes, and other important routes. Highways on the NHS base system were designated by the Secretary of USDOT and approved by Congress in the National Highway System Designation Act of 1995. NHS Intermodal Connector routes were added in 1998 with the enactment of the Transportation Equity Act for the 21st Century. Modifications to the NHS must be approved by the Secretary of USDOT. Guidance criteria and procedures for the functional classification of highways are provided in (1) the Federal Highway Administration (FHWA) publication "Highway Functional Classification--Concepts, Criteria and Procedures" revised in March 1989, and (2) former ch. Trans 76. The federal publication is available on request from the FHWA, Office of Environment and Planning, HEP-10, 400 Seventh Street, SW., Washington, DC 20590. Former ch. Trans 76 is available from the Wisconsin Department of Transportation, Division of Transportation Investment Management, Bureau of Planning. The results of the functional classification are mapped and submitted to the Federal Highway Administration (FHWA) for approval and when approved serve as the official record for Federal-aid highways and one basis for designation of the National Highway System. In general, the highway functional classifications are rural or urban: Principal Arterials, Minor Arterials, Major Collectors, Minor Collectors, and Local Roads. The definition of "level of service" used for this paragraph is the same as in ss. Trans 210.03(4) and 210.05(1) for purposes of the MAJOR HIGHWAY PROJECT NUMERICAL EVALUATION PROCESS. In general, the "level of service" refers to the ability of the facility to satisfy both existing and future travel demand. Six levels of service are defined for each type of highway facility ranging from A to F, with level of service A representing the best operating conditions and level of service F the worst. Department engineers will use the procedures outlined in the general design consideration guidelines in Chapter 11, Section 5 of the Wisconsin Department of Transportation's Facilities Development Manual to determine the level of highway service. Under the rule as effective February 1, 1999, s. Trans 233.08(1) provides 4 ways to erect something in a setback area (1) for utilities, follow the procedures set forth in the rule, (2) obtain a variance (now "special exception"), (3) for utilities, get local approval for utilities on or adjacent to connecting highways, or for utilities within the right of way of state trunk highways, get department approval (a mere "technical" exception), and (4) erect something that doesn't fall within the definition of "structure" or within the definition of "improvement." The provision below now adds a fifth "exception," (5) be 15 feet or more outside the right of way line of a defined and mapped set of highways.

- (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.

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

- (a) The width of the service road right-of-way, if the entire service road right-of-way lies within the setback area. Any increase under this paragraph shall be measured from the boundary of the setback area determined under sub. (2).
- (b) The distance by which the service road right-of-way lies within the setback area, if the entire service road right-of-way does not lie within the setback area. Any increase under this paragraph shall be measured from the nearer right-of-way line of the service road.

**Note:** For example, if a service road ROW extends 15 feet (measured perpendicularly to the setback) into the setback determined under sub. (2), and runs for a distance of 100 feet, the setback determined under sub. (2) shall be pushed 15 feet further from the centerline, running for a distance of 100 feet. See Graphic.

### See Graphic on Page 4 of Figure 22-1

- (3m)**
- (a) Notwithstanding sub. (1), a public utility may erect, install or maintain a utility facility within a setback area.
  - (b) If the department acquires land that is within a setback area for a state trunk highway, as provided by this chapter, and on which a utility facility is located, the department is not required to pay compensation or other damages relating to the utility facility, unless the utility facility is any of the following:
    1. Erected or installed before the land division map is recorded.
    2. Erected or installed on a recorded utility easement that was acquired prior to February 1, 1999.
    3. Erected or installed after the land division map is recorded but with prior notice in writing, with a plan showing the nature and distance of the work from the nearest right-of-way line of the highway, to the department's appropriate district office within a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, nor less than 60 days, before any major utility erection or installation work commences, if any utility work is within the setback.

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

4. Erected or installed before the land division map is recorded but modified after that date in a manner that increases the cost to remove or relocate the utility facility. In such a case, the department shall pay compensation or other damages related to the utility facility as it existed on the date the land division map was recorded, except that if the modification was made with prior notice in writing, with a plan showing the nature and distance of the work from the nearest right-of-way line of the highway, to the department's appropriate district office within a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, nor less than 60 days, before any major utility erection or installation work commences, if any utility work is within the setback, then the department shall pay compensation or other damages related to the utility facility as modified.
- (c) If a local unit of government or the department acquires land that is within a setback area for a connecting highway as provided by this chapter and on which a utility facility is located, the department is not required to pay compensation or other damages relating to the utility facility, unless the utility facility is compensable under the applicable local setbacks and the utility facility is in any of the categories described in par. (b) 1. to 4.

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

- (d) The department shall review the notice and plan to determine whether a planned highway project within a 6-year improvement program under s. 84.01 (17), Stats., or a planned major highway project enumerated under s. 84.013 (3), Stats., will conflict with the planned utility facility work. If the department determines a conflict exists, it will notify the utility in writing within a normal time of 30 days, but no more than 5 days, after receiving the written notice and plan for any routine, minor utility erection or installation work, nor more than 60 days, after receiving the written notice and plan for any major utility erection or installation work, and request the utility to consider alternative locations that will not conflict with the planned highway work. The department and utility may also enter into a cooperative agreement to jointly acquire, develop and maintain rights of way to be used jointly by WISDOT and the public utility in the future as authorized by s. 84.093, Stats. If the department and utility are not able to make arrangements to avoid or mitigate the conflict, the utility may proceed with the utility work, but notwithstanding pars. (b) and (c), the department may not pay compensation or other damages relating to the utility facility if it conflicts with the planned highway project. In order to avoid payment of compensation or other damages to the utility, the department is required to record a copy of its written notice to the utility of the conflict, that adequately describes the property and utility work involved, with the register of deeds in the county in which the utility work or any part of it is located.

**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.

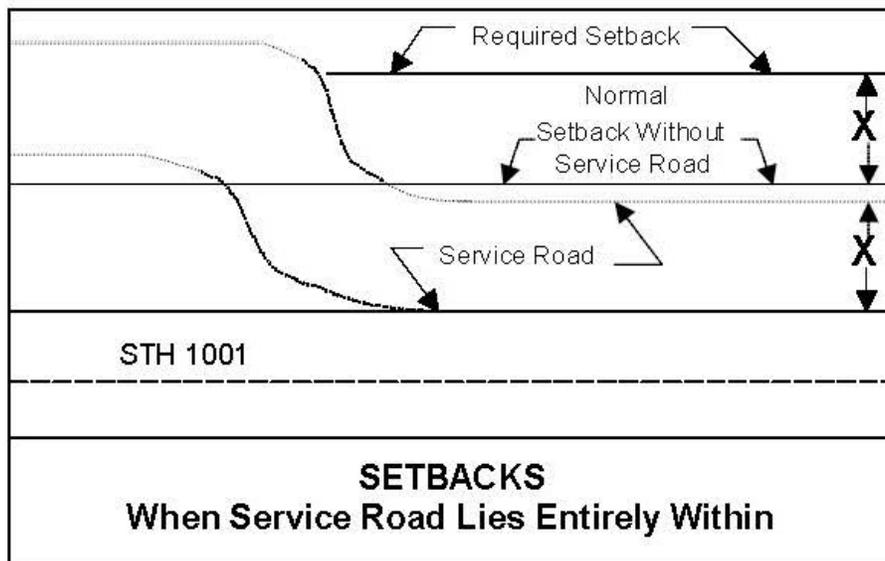
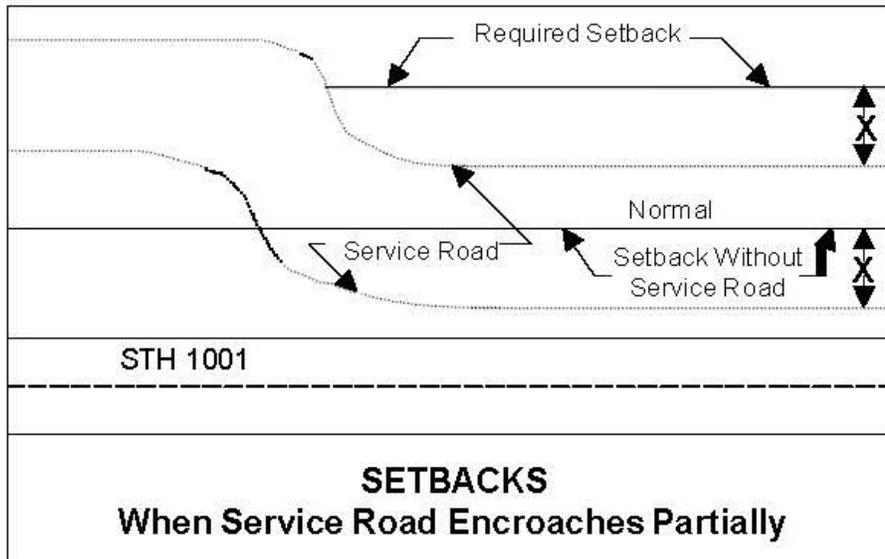
**(3n)** Any person may erect, install or maintain any structure or improvement at 15 feet and beyond from the nearer right-of-way line of any state trunk highway or connecting highway not identified in s. Trans 233.08 (2) (c). Any person may request a special exception to the setback requirement established under this subsection, as provided in s. Trans 233.11 (3). This subsection does not apply to major intersections or within the desirable stopping sight distance, as determined under procedure 11-10-5 of the department's facilities development manual dated June 10, 1998, of the intersection of any state trunk highway or connecting highway with another state trunk highway or connecting highway. This subsection does not supersede more restrictive requirements imposed by valid applicable local ordinances.

**Note:** Technical figures 2, 3, 3m, 4, 4m, 5, 6 and 6m within Procedure 11-10-5 have various dates other than June 10, 1998 or are undated.

**(4)** The land division map shall show the boundary of a setback area on the face of the land division map and shall clearly label the boundary as a highway setback line and shall clearly show existing structures and improvements lying within the setback area.

**(5)** The owner shall place the following restriction upon the same sheet of the land division map that shows the highway setback line: "No improvements or structures are allowed between the right-of-way line and the highway setback line. Improvements and structures include, but are not limited to, signs, parking areas, driveways, wells, septic systems, drainage facilities, buildings and retaining walls. It is expressly intended that this restriction is for the benefit of the public as provided in section 236.293, Wisconsin Statutes, and shall be enforceable by the Wisconsin Department of Transportation or its assigns. Contact the Wisconsin Department of Transportation for more information. The phone number may be obtained by contacting the County Highway Department." If on a CSM there is limited space for the above restriction on the same sheet that shows the setback line, then the following abbreviated restriction may be used with the standard restriction placed on a subsequent page: "Caution - Highway Setback Restrictions Prohibit Improvements. See sheet \_\_\_\_\_."

**History:** Cr. Register, January, 1999, No. 517, eff. 2-1-99; cr. (2) (c), (d) and (3n), Register, January, 2001, No. 541, eff. 2-1-01



**TRANS 233 NOTIFICATION TO CONSTRUCT AND OPERATE UTILITY FACILITIES ADJACENT TO HIGHWAY RIGHT-OF-WAY**

Wisconsin Department of Transportation

DT1733 9/2005 (Trans. 220 WI Admin. Code)

Location Description – Quarter section, section, township, range, etc. To each copy of the application, attach one copy of the sketch showing location T20N R24E Section 16 NE Quarter	Proposed Work Location <input checked="" type="checkbox"/> Town <input type="checkbox"/> Village <input type="checkbox"/> City  of Wolf River  County Winnebago
Applicant Name and Address ABC Power Company 789 Easy Street Black Wolf, WI 58899	Anticipated Construction Starting Date July 1, 2005  Applicant Work Order (If any) EZ4556  Date of Trans. 233 Notification Submitted January 1, 2005

Highway	Utility Facility/Work Type	Line Orientation
<input type="checkbox"/> STH <input checked="" type="checkbox"/> USH 10 <input type="checkbox"/> Interstate	<input checked="" type="checkbox"/> Electric <input type="checkbox"/> Communications <input type="checkbox"/> Water	<input checked="" type="checkbox"/> Gas/Petroleum <input type="checkbox"/> Sanitary Sewer <input type="checkbox"/> Overhead <input type="checkbox"/> Underground

**Note:** The Wisconsin Department of Transportation (DOT) has a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, or less than 60 days before any major utility erection or installation work commences, to respond to the utility regarding the utility project. If the DOT's response is not made within these time frames, this utility project is eligible for future compensation in accordance with the DOT's utility reimbursement policy.

Name of Utility Person Responsible for Notification	Area Code - Telephone Number
Bob Builder	920-555-2121

The proposed utility installation, as identified above and shown on the attached drawings is not in conflict with the Six-Year Highway Improvement Program or Major Projects and is in compliance with the "Wisconsin Department of Transportation's Utility Accommodation Policy", current edition, and Wisconsin Administrative Code, Trans. 233. Future relocation is reimbursable to the utility in conformance with the Department's utility reimbursement policy.

Yes, this project is compatible with known DOT projects       No, a conflict exists

\_\_\_\_\_  
(For Wisconsin Department of Transportation)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Area Code - Telephone Number)

**Wisconsin Department of Transportation**

Date

Name

Utility Company

Street

City

Dear Mr/Ms \_\_\_:

**RE: Proposed Utility Location in Highway Setback****WisDOT Trans 233 Review Approval**

Name or Identifier of Subdivision

MUNICIPALITY

¼ ¼ Section, Town, Range *(may be multiple sections on a long project)*

COUNTY

STH

We have reviewed the proposed utility installation at the above location and have found no conflict with planned WisDOT highway improvement projects.

Any facilities placed in easements within the “highway setback” as shown on the proposed plan will be compensable in the event they must be adjusted to accommodate a future highway project.

I have signed and returned the “**Trans 233 Notification To Construct And Operate Utility Facilities Adjacent To Highway Right of way**” form which you submitted to our office. *Optional, use only if they submitted Form DT1733.*

Sincerely,

Name

Region Trans 233 Review Coordinator or Utility Coordinator

Telephone Number

## Wisconsin Department of Transportation

Date

Name

Utility Company

Street

City

Dear Mr/Ms \_\_\_:

**RE: Proposed Utility Location in Highway Setback**

**WisDOT Trans 233 Review Objection**

Name or Identifier of Subdivision

MUNICIPALITY

¼ ¼ Section, Town, Range *(may be multiple sections on a long project)*

COUNTY

STH

We have reviewed the proposed utility installation at the above location and have found potential conflicts with a planned highway improvement project. We request that you make the following changes:

*Provide details as to what they must do to avoid conflicts. Include highway plan sheets, cross sections, and construction details if available. The required depths of the utility facility should also be provided, if relevant.*

If you have any questions regarding our planned project, please contact \_\_\_, the project manager on this project, at (XXX) XXX-XXXX.

Thank you for your cooperation in this matter. These changes will reduce the possibility that your facilities will have to be adjusted in conjunction with our proposed project. In the event that our plans change, and you do have to make adjustments, you will be compensated for that work, provided you abide by the above request.

If you do not make the requested changes, any facilities placed in easements within the “highway setback” as shown on the proposed plan will **NOT** be compensable in the event they must be adjusted to accommodate a future highway project.

I have signed and returned the “**Trans 233 Notification To Construct And Operate Utility Facilities Adjacent To Highway Right of way**” form which you submitted to our office noting that there are conflicts with our proposed plans. If you resubmit the form after making the above requested changes to your plans, I will check the “Yes” box on this form and you will be eligible for future compensation. *Optional, use only if they submitted Form DT1733.*

Sincerely,

Name

Region Trans 233 Review Coordinator or Utility Coordinator

Telephone Number