



Wisconsin Administrative Code Relating to Land Surveying

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Chapter A-E 1

AUTHORITY

A-E 1.01 Authority.
A-E 1.02 Definitions.

A-E 1.03 Rulemaking.

Note: Chapter A-E 1 as it existed on February 28, 1987 was repealed and a new chapter A-E 1 was created effective March 1, 1987.

A-E 1.01 Authority. The rules in chs. A-E 1 to 15 are adopted under authority in ss. 15.08 (5) (b), 227.11 and ch. 443, Stats.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; correction made under s. 13.93 (2m) (b) 7., Stats., Register, February, 2000, No. 530; CR 11-014: am. Register December 2011 No. 672, eff. 1-1-12; correction made under s. 13.92 (4) (b) 1., Stats., Register May, 2019, No. 761; CR 24-001: am. Register July 2024 No. 823, eff. 8-1-24.

A-E 1.02 Definitions. In chs. A-E 1 to 15:

(1) “Board” or “joint board” means the examining board of architects, landscape architects, professional engineers, designers, professional land surveyors, and registered interior designers.

(2) “Department” means the department of safety and professional services.

(3) “Section of the board” means either the architect section, the landscape architect section, the professional engineer section, the designer section, the land surveyor section, or the registered interior designer section.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (intro.), (1) and

(3), Register, June, 1995, No. 474, eff. 7-1-95; am. (1) and (3), Register, February, 2000, No. 530, eff. 3-1-00; correction in (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, February, 2000, No. 530; CR 11-014: am. (intro.) Register December 2011 No. 672, eff. 1-1-12; correction in sub. (2) made under s. 13.92 (4) (b) 6., Stats., Register December 2011 No. 672; CR 15-036: am. (1) Register January 2016 No. 721, eff. 2-1-16; CR 18-028: am. (1) Register May 2019 No. 761, eff. 6-1-19; CR 24-001: am. (intro.), (1), (3) Register July 2024 No. 823, eff. 8-1-24.

A-E 1.03 Rulemaking. (1) PROCEDURE. The joint board may approve and adopt rules proposed by any section of the board.

(2) RULES COMMITTEE. (a) *Composition.* The rules committee of the board is comprised of one member from each section and 3 public members. The board chair shall appoint the 3 public members from any of the 6 sections of the board.

(b) *Authority and responsibility.* The rules committee may act for the joint board in rulemaking proceedings except for final approval as specified in sub. (1).

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (2) (a), Register, June, 1995, No. 474, eff. 7-1-95; am. (2) (a), Register, February, 2000, No. 530, eff. 3-1-00; CR 18-028: am. (2) (b) Register May 2019 No. 761, eff. 6-1-19; CR 24-001: am. (2) (a) Register July 2024 No. 823, eff. 8-1-24.

Chapter A-E 2

GENERAL REQUIREMENTS AND PROCEDURES

A-E 2.01	Purpose.
A-E 2.02	Registration seals.
A-E 2.03	Branch offices.
A-E 2.04	Change of address.

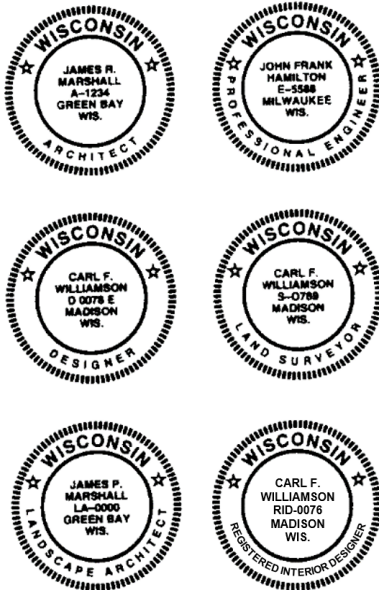
A-E 2.045	Retired credential status.
A-E 2.05	Failure to be registered.
A-E 2.06	Reciprocal credentials for service members, former service members, and their spouses.

A-E 2.01 Purpose. The purpose of the rules in this chapter is to specify general requirements and procedures which apply to persons credentialed by any section of the board. Requirements specific to architects, landscape architects, professional engineers, designers, professional land surveyors, or registered interior designers are specified in chs. [A-E 3](#), [4](#), [5](#), [6](#), [7](#), [9](#), [10](#), [11](#), [12](#), [13](#), [14](#), and [15](#). Rules of professional conduct for all credential holders are specified in ch. [A-E 8](#).

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. Register, June, 1995, No. 474, eff. 7-1-95; am. Register, January, 1999, No. 517, eff. 2-1-99; am. Register, February, 2000, No. 530, eff. 3-1-00; CR 11-014: am. Register December 2011 No. 672, eff. 1-1-12; CR 15-036: am. Register January 2016 No. 721, eff. 2-1-16; CR 24-001: am. Register July 2024 No. 823, eff. 8-1-24.

A-E 2.02 Registration seals. (1) Each architect, landscape architect, professional engineer, designer, professional land surveyor, and registered interior designer shall obtain a seal that complies with board specifications for registration seals. The overall diameter may not be less than 1.58 inches nor more than 2 inches. Each seal shall include the credential holder's name, credential number and city.

(2) The following designs for registration seals have been approved:



(3) A rubber stamp, identical in size, design and content to a board-approved seal, may be used as a substitute for a registration seal.

(4) Each sheet of plans, drawings, documents, specifications, and reports for architectural, landscape architectural, professional engineering, design, professional land surveying, and registered interior design practice shall be signed, sealed, and dated by the

credential holder who prepared, or directed and controlled preparation of, the written material, except as specified in sub. (5).

(5) If more than one sheet is bound together in a volume, the registrant or permit holder who prepared or directed and controlled the preparation of the volume, may sign, seal and date only the title or index sheet if the signed sheet identifies clearly all other sheets comprising the bound volume and if any other sheets which are prepared by or under the direction and control of another registrant or permit holder are signed, sealed and dated by the other registrant or permit holder.

(6) Any addition, deletion or other revision to each sheet of plans, drawings, documents, specifications and reports for architectural, landscape architectural, professional engineering, design, professional land surveying, or registered interior design practice which affects public health and safety or any state or local code requirements may not be made unless signed, sealed and dated by the credential holder who made or directed and controlled the making of the revision.

(7) (a) All seals or stamps affixed to plans, drawings, documents, specifications, and reports to be filed as public documents shall be original. No stickers shall be allowed. Seals or stamps may be applied by crimp type, rubber stamp or by electronic means provided the electronic seal or stamp meets the requirements of ch. 137, Stats., a security procedure is used, and electronic submissions are permitted by the governmental unit that is to receive the plans, drawings, documents, specifications, and reports.

1. The stamp authorized by the Board must be one of crimp type, rubber stamp type, or computer generated.

(b) All seals and stamps on plans, drawings, documents, specifications, and reports to be filed as public documents shall be signed and dated by the registered professional in one of the following manners:

1. In a permanent ink contrasting with the seal and the background.

2. Utilizing an electronic signature, meeting the requirements of ch. 137, Stats., a security procedure is used and if permitted by the governmental unit that is to receive the plans, drawings, documents, specifications, and reports. A scanned image of an original signature shall not be used in lieu of an electronic signature with a security procedure as found in s. 137.11 (13), Stats.

Note: Section 137.11 (13), Stats., of the statutes reads as follows: "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes identifying words or numbers, encryption, callback, or other acknowledging procedures.

(c) If other standards for signatures or seals are prescribed by statute, the statutes shall govern.

(8) Plans, specifications and calculations for buildings and structures not exempt under s. 443.15, Stats., which have been prepared by an architect, professional engineer, or registered inte-

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rior designer other than the Wisconsin registered architect, engineer, or registered interior designer who is submitting the plans, specifications and calculations for filing as public documents, may be submitted if all of the following conditions are satisfied:

(a) The plans, specifications and calculations shall have been prepared by or under the supervision of an architect, professional engineer, or registered interior designer credentialed in some state of the United States, and shall bear the signature and seal or stamp of the architect, professional engineer, or registered interior designer who prepared them or under whose supervision and control they were prepared.

(b) A certificate, dated, signed, and sealed by the Wisconsin registered architect, professional engineer, or registered interior designer who is submitting the plans, specifications, and calculations for filing as public documents, shall be attached to the plans, specifications, and calculations. The certificate shall indicate that the plans, specifications and calculations were prepared by an architect, professional engineer, or registered interior designer other than the submitting registered architect, professional engineer, or registered interior designer; shall describe the work performed by the submitting registered architect, professional engineer, or registered interior designer; and shall include statements to the effect that the plans and specifications have been reviewed and comply with all applicable local and state building codes, and that the reviewing registered architect, professional engineer, or registered interior designer will be responsible for the supervision of construction in accordance with the requirements of the state, and of the county and municipality where the building or structure is to be erected. If the registered architect, professional engineer, or registered interior designer who originally prepared the plans, specifications and calculations was registered in Wisconsin at the time they were prepared, the certificate shall also specify why the original architect, professional engineer, or registered interior designer is not submitting the plans, specifications, and calculations for approval.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; cr. (7), Register, January, 1993, No. 445, eff. 2-1-93; am. (1), (2), (4) and (6), Register, June, 1995, No. 474, eff. 7-1-95; am. (1), (2), (4) and (6), Register, February, 2000, No. 530, eff. 3-1-00; cr. (8), Register, November, 2000, No. 539, eff. 12-1-00; CR 01-034: r. and recr. (7), Register December 2001 No. 552, eff. 1-1-02; CR 13-020: am. (7) (a) (intro.), cr. (7) (a) 1., am. (7) (b) (intro.), 2. Register May 2015 No. 713; CR 15-036: am. (1), (4), (6) Register January 2016 No. 721, eff. 2-1-16; correction in (1) made under s. 35.17, Stats., Register November 2018 No. 755; Register May 2021 No. 785; CR 24-001: am. (1), (2), (4), (6), (8) Register July 2024 No. 823, eff. 8-1-24.

A-E 2.03 Branch offices. (1) DEFINITIONS. In this section,

(a) “Firm” means any sole proprietorship, partnership, corporation, limited liability company, or limited liability partnership located in this state which provides or offers to provide architectural, landscape architectural, professional engineering, design, professional land surveying, or registered interior design services to the public.

(b) “Resident” means a currently-credentialed architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer who spends the majority of his or her working schedule in one firm location and who is in charge of and responsible for the type of services offered or provided from that location.

(2) RESIDENT REQUIRED; RESPONSIBILITIES. Every firm maintaining one or more places of business in Wisconsin shall have:

(a) A resident architect in each separate business location which provides or offers to provide architectural services.

(b) A resident professional engineer in each separate business location which provides or offers to provide professional engineering services.

(c) A resident designer in each separate business location which provides or offers to provide designing services.

(d) A resident professional land surveyor in each separate business location which provides or offers to provide professional land surveying services.

(e) A resident landscape architect in each separate business location which provides or offers to provide landscape architectural services.

(f) A resident registered interior designer in each separate business location which provides or offers to provide registered interior design services.

(3) NOTICE. Upon written request from the board, a firm shall provide notification of at least one resident who is in charge of and responsible for each separate business location.

(4) RESIDENT LIMITATION. A resident may not be in charge of or responsible for services offered or provided from more than one business location.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (1) (a) and (b), cr. (2) (e) and (f), Register, June, 1995, No. 474, eff. 7-1-95; am. (2) (intro.), Register, January, 1999, No. 517, eff. 2-1-99; am. (1) (a) and (b), r. (2) (f), Register, February, 2000, No. 530, eff. 3-1-00; CR 15-036: am. (1) (a), (b), (2) (d) Register January 2016 No. 721, eff. 2-1-16; CR 21-020: am. (1) (a), (3) Register November 2022 No. 803, eff. 12-1-22; CR 24-001: am. (1) (a), (b), cr. (2) (f) Register July 2024 No. 823, eff. 8-1-24.

A-E 2.04 Change of address. Every registrant or permit holder shall notify the board in writing of a change of address within 30 days of the change. The notice shall include the person’s or firm’s former and new addresses and each registration or permit number held.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87.

A-E 2.045 Retired credential status. (1) The holder of a credential under ch. 443, Stats., may apply to the appropriate section of the board to classify the credential as retired status. The section shall classify the credential as retired status if all of the following requirements are met:

(a) The credential holder completes an application on a form provided by the board.

(b) The credential holder meets one of the following requirements:

1. The credential holder is at least 65 years of age.

2. The credential holder has actively maintained the credential issued by the section for at least 20 years, which need not be consecutive.

(c) The credential holder certifies he or she has retired from and no longer engages in any activity in this state that requires a credential issued by the section. The certification under this paragraph is not required to be notarized.

(2) Notwithstanding s. A-E 2.05, an individual who previously held a credential under ch. 443, Stats., and failed to renew the credential prior to the renewal date, may apply to the appropriate section of the board to renew the credential with retired status. A credential shall be renewed with retired status if all of the following requirements are met:

(a) The individual completes an application on a form provided by the board.

(b) The individual pays the fee under s. 443.015 (1m) (d), Stats.

(c) The individual meets one of the following requirements:

1. The individual is at least 65 years of age.

2. The individual had actively maintained the credential issued by the section for at least 20 years, which need not be consecutive.

(d) The individual certifies he or she has retired from and no

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EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS, PROFESSIONAL LAND
SURVEYORS, AND REGISTERED INTERIOR DESIGNERS

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longer engages in any activity in this state that requires a credential issued by the section. The certification under this paragraph is not required to be notarized.

(3) The holder of a credential classified as retired status under sub. (1) or (2) may apply to the appropriate section of the examining board to remove the retired status classification. The section shall remove the retired status classification if the applicant satisfies the reinstatement requirements under s. A-E 2.05 (2).

(4) A credential classified as retired status under sub. (1) or (2) shall be renewed upon payment of the fee under s. 443.015 (1m) (d), Stats.

History: CR 20-064: cr. Register May 2021 No. 785, eff. 6-1-21.

A-E 2.05 Failure to be registered. (1) If an individual who fails to renew a credential by the established renewal date applies for renewal of the credential less than 5 years after its expiration, the credential shall be renewed upon payment of the renewal fee specified in s. 440.08, Stats.

(2) (a) If an individual applies for renewal of a credential more than 5 years after its expiration, the applicable section of the board shall determine whether the applicant is competent to practice under the credential in this state. The inquiry shall include a review of the applicant's practice within the previous 5 years, if any, in other licensing jurisdictions.

(b) After inquiry, the applicable section of the board shall impose any reasonable conditions on reinstatement of the credential as the section deems appropriate, including a requirement that the

applicant complete any current requirement for original licensure.

History: Cr. Register, March, 1996, No. 483, eff. 4-1-96; CR 21-020: am. (1), (2) Register November 2022 No. 803, eff. 12-1-22.

A-E 2.06 Reciprocal credentials for service members, former service members, and their spouses. (1)

In this section, "credential" means any of the following:

- (a) Registration as an architect.
- (b) Registration as a landscape architect.
- (c) Registration as a professional engineer.
- (d) Certification as an engineer-in-training.
- (e) A license to engage in the practice of professional land surveying.
- (f) A permit as a designer of engineering systems.
- (g) Registration as a registered interior designer.

(2) The board shall grant a reciprocal credential to a service member, former service member, or the spouse of a service member or former service member who submits an application provided by the board and who the appropriate section of the board determines meets all of the requirements under s. 440.09 (2), Stats. Subject to s. 440.09 (2m), Stats., the section may request verification necessary to make a determination under this section.

Note: Applications for reciprocal credentials may be obtained from the department of safety and professional services at (608) 266-2112 or from the department's website at <http://dsps.wi.gov>.

History: CR 21-020: cr. Register November 2022 No. 803, eff. 12-1-22; correction in (1) made under s. 35.17, Stats., Register November 2022 No. 803; CR 24-001: cr. (1) (g) Register July 2024 No. 823, eff. 8-1-24.

Chapter A-E 6

PROFESSIONAL LAND SURVEYOR LICENSURE

A-E 6.01	Authority and purpose.	A-E 6.05	Examination.
A-E 6.02	Licensure requirements for professional land surveyors.	A-E 6.06	Application for licensure as a professional land surveyor.
A-E 6.03	Land surveying experience.	A-E 6.07	Application for reciprocity.
A-E 6.04	Educational requirements for professional land surveyors.		

A-E 6.01 Authority and purpose. The rules in this chapter are adopted under authority in ss. 15.08 (5) (b), 227.11, 443.01 (6s), and 443.06, Stats. The purpose of rules in this chapter is to interpret basic education, experience and examination requirements for licensure as a professional land surveyor as specified in s. 443.06, Stats.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; correction in (intro.) made under s. 13.92 (4) (b) 7., Stats., Register May 2015 No. 713; CR 15-036: am. Register January 2016 No. 721, eff. 2-1-16.

A-E 6.02 Licensure requirements for professional land surveyors. (1) Except as provided in s. A-E 2.06 (2), an applicant for professional land surveyor licensure, in accordance with s. 443.06 (2), Stats., shall complete all of the following:

(a) Meet at least one of the following education and experience requirements:

1. Completion of a bachelor's degree in a course in the practice of professional land surveying or a related field that is approved by the professional land surveying section and the completion of at least 2 years of approved practice in professional land surveying.

2. Completion of an associate degree of not less than 2 years duration in a course in the practice of professional land surveying or a related field of study that is approved by the professional land surveying section and the completion of at least 4 years of approved practice in professional land surveying.

(b) Receive a passing score on the fundamentals of land surveying examination.

(c) Receive a passing score on the principles and practice of land surveying examination.

(d) Receive a passing score on the state jurisdictional examination of this state.

(2) An applicant who files an application but who does not comply with a request for information related to the application within one year from the date of the request shall file a new application and fee.

Note: Applications are available on the website at dps.wi.gov or by calling (608) 266 - 2112.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. Register, January, 1999, No. 517, eff. 2-1-99; CR 15-036: am. (title) Register January 2016 No. 721, eff. 2-1-16; CR 15-040: r. and recr. Register May 2016 No. 725, eff. 6-1-16; CR 20-009: r. and recr. (1) Register May 2021 No. 785, eff. 6-1-21; CR 21-020: am. (1) (intro.) Register November 2022 No. 803, eff. 12-1-22.

A-E 6.03 Land surveying experience. (1) To qualify as "practice in professional land surveying work of a satisfactory character which indicates that the applicant is competent to be placed in responsible charge of such work" under s. 443.06, Stats., the experience of an applicant must satisfy all of the following:

(a) At least two-thirds of an applicant's experience shall be acquired in all of the following:

1. Locating land boundaries and land boundary corners including all of the following services:

a. Researching public and private records and interpreting legal descriptions, deeds, and survey maps.

b. Locating lost and obliterated corners and United States public land survey system corners and reestablishing or perpetuating monuments of the corners.

c. Establishing, reestablishing and perpetuating survey monuments.

d. Subdividing sections.

e. Establishing or retracing property lines to determine length and bearing.

f. Reestablishing obliterated property lines.

g. Preparing descriptions of real property from data acquired by field measurements and other evidence of property location.

h. Conducting resurveys.

2. Preparing at least one map from each of the following categories:

a. Maps of sections or portions of sections or townships as established by the original public land survey and subdivisions of those sections in accordance with the statutes of the United States and the rules and regulations made by the secretary of the interior in conformity thereto.

b. Subdivision plats prepared in accordance with the Wisconsin statutes or local ordinances.

c. Certified survey maps prepared in accordance with the Wisconsin statutes or local ordinances.

e. Other plats or maps of land in this state in accordance with ch. A-E 7.

3. Other experience which, in the opinion of the professional land surveyor section, provides the applicant with knowledge of the practice of land surveying at least equivalent to that which is generally acquired by experience in the areas listed in this paragraph.

(b) Not more than one-third of an applicant's experience may be acquired in:

1. Preparing highway and railroad rights-of-way maps.

2. Construction staking for highways, roads, streets or similar projects within the boundaries of established rights-of-way.

3. Performing topographic surveys.

4. Developing control networks for aerial photography unless property lines are used for control.

5. Performing new building layout or construction surveys.

6. Transportation project plats in accordance with s. 84.095, Stats., and ss. Trans 233.03 and 233.04.

7. Condominium plats prepared in accordance with s. 703.11, Stats.

8. Other experience which, in the opinion of the professional land surveyor section, provides the applicant with knowledge of the practice of land surveying at least equivalent to that which is

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generally acquired by experience in the areas listed in this paragraph.

(2) Not more than one year of satisfactory experience credit may be granted for any calendar year.

(3) Academic coursework or teaching and having responsible charge over academic coursework related to the practice of professional land surveying that provides the applicant with knowledge and skills in some areas of practice under sub. (1) may, subject to s. 443.06 (1) (b), Stats., be claimed as equivalent experience.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (1) (a) (intro.) to 1. h., 2. (intro.) to c. and (b) 1. to 4., Register, January, 1999, No. 517, eff. 2-1-99; CR 06-057: am. (1) (a) 1. a., b., c., and g., and 2. e., r. (1) (a) 1. i. and 2. d., cr. (1) (b) 6. and 7., Register May 2007 No. 617, eff. 6-1-07; CR 09-030: am. (1) (a) 2. e. and (b) 7. Register December 2009 No. 648, eff. 1-1-10; CR 15-036: am. (1) (intro.) Register January 2016 No. 721, eff. 2-1-16; CR 20-009: am. (1) (intro.), (a) 2. (intro.), e., cr. (1) (a) 3., (b) 8., (3) Register May 2021 No. 785, eff. 6-1-21.

A-E 6.04 Educational requirements for professional land surveyors. (1) To meet the educational requirements of s. 443.06 (2) (bm), Stats., an applicant for licensure as a land surveyor shall have satisfactorily completed at least 60 semester credits in land surveying curriculum or in a related field as approved by the professional land surveyor section including no less than 12 semester credits in land surveying which shall be in the following categories of study:

(a) No less than 8 of the 12 credits may be in courses concentrating on the legal principles of professional land surveying and the technical aspects of professional land surveying. These courses shall include areas of study such as research of public and private records, principles of evidence and the interpretation of written documents used in boundary determination, the study of the legal elements of professional land surveying including those involving resurveys, boundary disputes, defective descriptions, riparian rights and adverse possession, the study of the professional and judicial functions of a professional land surveyor, the study of surveying methods for measuring distance and angular values, note keeping, computation and writing descriptions and the study of the Wisconsin Statutes and local ordinances relating to the preparation of subdivision maps and plats.

(b) No more than 4 credits may be in courses related to professional land surveying such as “engineering surveying,” “municipal surveying,” “route surveying,” “highway surveying,” “topographic surveying,” “geodetic surveying,” “photogrammetry,” “cartography,” “construction surveying,” “air photo interpretation,” “artillery surveying,” “geographic information systems,” “land information systems” and “remote sensing systems.”

(2) To meet the educational requirements of s. 443.06 (2) (am), Stats., an applicant for licensure as a professional land surveyor shall have done either of the following:

(a) Received a bachelor’s degree in a course of study in professional land surveying from a college or university accredited by a regional accrediting agency approved by the state where the college or university is located.

(b) Received a bachelor’s degree in civil engineering from a college or university accredited by a regional accrediting agency approved by the state where the college or university is located. The curriculum shall include no less than 16 of 24 semester credits in courses concentrating on the legal principles of professional land surveying and the technical aspects of professional land surveying. These courses shall include areas of study such as research of public and private records, principles of evidence and the interpretation of written documents used in boundary determination, the study of the legal elements of professional land surveying including those involving resurveys, boundary disputes, defective descriptions, riparian rights and adverse possession, the

study of the professional and judicial functions of a professional land surveyor, the study of surveying methods for measuring distance and angular values, note keeping, computation and writing descriptions and the study of the Wisconsin statutes and local ordinances relating to the preparation of subdivision maps and plats, other land divisions and real property creation. The applicant may be allowed to receive up to 8 credits in certain other courses relating to surveying. These courses may include “engineering surveying,” “municipal surveying,” “route surveying,” “highway surveying,” “topographic surveying,” “geodetic surveying,” “photogrammetry,” “cartography,” “construction surveying,” “air photo interpretation,” “artillery surveying,” “geographic information systems,” “land information systems” and “remote sensing systems.”

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (intro.), Register, January, 1999, No. 517, eff. 2-1-99; renum. (intro.), (1) and (2) to be (1) (intro.), (a) and (b) and am. (1) (intro.), cr. (2). Register, November, 2000, No. 539, eff. 12-1-00; CR 01-092: am. (2) (b) Register June 2002 No. 558, eff. 7-1-03; CR 06-057: am. (1) (b) and (2) (b). Register May 2007 No. 617, eff. 6-1-07; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register May 2015 No. 713; CR 15-036: am. (title), (1) (intro.), (a), (b), (2) (a), (b) Register January 2016 No. 721, eff. 2-1-16; Correction under s. 35.17, Stats., in (1) (b) Register January 2016 No. 721; CR 15-040: am. (1) Register May 2016 No. 725, eff. 6-1-16; CR 20-009: am. (2) (a), (b) Register May 2021 No. 785, eff. 6-1-21.

A-E 6.05 Examination. (1) LAND SURVEYOR EXAMINATION REQUIRED. Applicants for licensure as a professional land surveyor shall take and pass 3 examinations. The examinations include the national fundamentals of surveying examination, the national principles and practice of surveying examination, and the state jurisdictional examination, which is relative to specific practice in this state. Each of the 3 required examinations is scored separately.

(2) SCOPE OF WRITTEN EXAMINATION. (a) The fundamentals of land surveying examination requires an understanding of mathematics, physics, surveying methods for measuring horizontal, vertical and angular values, topographic and photogrammetric mapping, notekeeping, property surveys, computations, descriptions and plats.

(b) The national principles and practice examination and the state jurisdictional examination require an ability to apply principles and judgment to problems involving the U.S. system of public land surveys, Wisconsin plane coordinate surveys, the relocation of lost and obliterated corners, the legal essentials of resurveys, disputed boundaries, defective deed descriptions, riparian rights, adverse possession, the Wisconsin statutes relating to land surveying including the preparation and filing of plats, the writing and interpreting of land descriptions, the technical essentials of professional land surveying and subdivision of lands including practical problems requiring a knowledge of the basic theory and fundamental concepts of field astronomy, geometry of curves, topography and photogrammetry.

(3) TIME PERIOD FOR EXAMINATION. Applicants for licensure as a land surveyor must take and pass the fundamentals of surveying examination, the national principles and practice surveying examination, and the state jurisdictional examination within 4 years of applying for licensure.

(6) EXAMINATION AND REFUND FEES. The fee for land surveyor examinations and requirements for refund of fees are specified in s. 440.05, Stats., and ch. SPS 4.

(7) EXAMINATION GRADING. The passing scores set by the professional land surveyor section represent the minimum competency required to protect public health and safety. Experience rating may not be weighed as part of the examination grade.

(8) REEXAMINATION PROCEDURE. An applicant for a land surveyor examination who fails an examination, or any part of an examination may retake any part of the examination failed at a

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regularly-scheduled administration of the examination. If an applicant fails to pass on reexamination of the parts failed, or the current examination parts equivalent to the parts failed, within 4 years from the date of receipt of the results of the first failure of the examination or any part of the examination, the applicant is required to take and pass the entire examination. If the applicant retakes the entire examination, the applicant shall pay the original examination fee under s. 440.05 (1), Stats. The professional land surveyor section shall determine which parts of a current examination are equivalent to the examination parts failed by an applicant.

Note: Examination fees are available on the website at dps.wi.gov or by calling (608) 266-2112.

(10) CHEATING. Any applicant for licensure who receives aid or cheats in any other manner in connection with the examination shall be barred from completing the examination or shall not be given a passing grade, or both.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (1) and (6), Register, January, 1993, No. 445, eff. 2-1-93; am. (8), Register, June, 1994, No. 462, eff. 7-1-94; am. (9) (b), Register, March, 1996, No. 483, eff. 4-1-96; am. (9) (a), Register, October, 1996, No. 490, eff. 11-1-96; rn. (7) (a) to be (7) and am., r. (7) (b), cr. (10), Register, January, 1999, No. 517, eff. 2-1-99; am. (1), (3) (a) and (b), cr. (3) (c) and (d), Register, November, 2000, No. 539, eff. 12-1-00; CR 04-118: am. (1) and (2) (b) Register December 2005 No. 600, eff. 1-1-06; correction in (6) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 15-036: am. (1) (intro.), (2) (b), (10) Register January 2016 No. 721, eff. 2-1-16; CR 15-040: r. and recr. (3), r. (4), (5), (9) Register May 2016 No. 725, eff. 6-1-16; CR 20-009: am. (1), (7), (8) Register May 2021 No. 785, eff. 6-1-21.

A-E 6.06 Application for licensure as a professional land surveyor. An application for licensure shall include all of the following:

- (1) Transcripts verifying the applicant's education.
- (1g) Verification of successful completion of all examinations required under s. A-E 6.05.
- (1r) A completed application form.
- (2) References from at least 5 individuals having personal

knowledge of the applicant's experience in land surveying, 3 of whom are professional land surveyors.

(3) A chronological history of the applicant's employment.

(4) Any additional data, exhibits or references indicating the extent and quality of the applicant's experience that the professional land surveyor section may require.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; renum. and am. (2), Register, January, 1993, No. 445, eff. 2-1-93; correction made under s. 13.93, (2m) (b) 1., Stats., Register, March, 1993, No. 447; am. (intro.) to (3), Register, January, 1999, No. 517, eff. 2-1-99; CR 15-036: am. (intro.) Register January 2016 No. 721, eff. 2-1-16; CR 20-009: am. (title), cr. (1g), (1r), am. (2), (4) Register May 2021 No. 785, eff. 6-1-21.

A-E 6.07 Application for reciprocity. (1) An application for licensure by reciprocity shall include all of the following:

- (a) A completed reciprocity application form.
- (b) The fees authorized in s. 440.05 (1), Stats.
- (c) Notice of whether the applicant has been disciplined in any state in which the applicant has held a license and any pending complaints against the applicant or investigations of the applicant relating to the practice of professional land surveying.
- (d) A certified transcript of qualifying coursework completed by the applicant.
- (e) Verification of the applicant's licensure submitted directly to the professional land surveyor section by all states in which the applicant has ever held a license.
- (f) Verification of successful completion of all examinations required under s. A-E 6.05.

(2) Reciprocity may be granted, in accordance with s. 443.06 (2) (d), Stats., to a person who holds an unexpired license issued by the proper authority in any state or territory or possession of the United States or in any country where the requirements for licensure meet or exceed the standards required by the professional land surveyor section.

History: CR 20-009: cr. Register May 2021 No. 785, eff. 6-1-21.

Chapter A-E 7

MINIMUM STANDARDS FOR PROPERTY SURVEYS

A-E 7.01	Scope.	A-E 7.05	Maps.
A-E 7.02	Definitions.	A-E 7.06	Relative positional accuracy measurements.
A-E 7.025	Survey report, requirements.	A-E 7.07	Monuments.
A-E 7.03	Boundary location.	A-E 7.08	U.S. public land survey monument record.
A-E 7.04	Descriptions.		

A-E 7.01 Scope. (1) The minimum standards of this chapter apply to any property survey performed by professional land surveyors in this state, except where otherwise provided in this chapter.

(2) The minimum accuracies in s. A-E 7.06 apply to any property survey performed by professional land surveyors in this state.

(3) If other standards for property surveys are prescribed by statute, administrative rule, or ordinance, and the standards are more restrictive than those in this chapter, the more restrictive standards govern.

(4) Except with regard to a U.S. public land survey monument record or addendum and a map of work performed, the professional land surveyor and client may enter into a written agreement, signed by both parties, to exclude land surveying work from the requirements of ss. A-E 7.03 (2), 7.05 (5) and (7m), and 7.07, where all of the following are performed:

(a) The professional land surveyor certifies on the face of the map the existence of the agreement.

(b) The map includes a note which states that an agreement to exclude work from the requirements of this chapter has been made and a list of those exclusions.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (2), Register, May, 1989, No. 401, eff. 6-1-89; am. (2), cr. (2) (a) to (e), Register, December, 1993, No. 456, eff. 1-1-94; CR 15-036; am. (2) (intro.) Register January 2016 No. 721, eff. 2-1-16; CR 15-039; am. (2) (intro.), (a), (c), r. (2) (d), (e) Register May 2016 No. 725, eff. 6-1-16; CR 19-153; r. and recr. Register May 2021 No. 785, eff. 6-1-21; correction in (4) (a) made under s. 35.17, Stats., Register May 2021 No. 785.

A-E 7.02 Definitions. For the purposes of this chapter:

(1m) “Property survey” means an activity performed in the practice of professional land surveying, as defined in s. 443.01 (6s), Stats., or the result of such activity.

(3) “Survey report” means a property survey that may be prepared in compliance with s. A-E 7.025 when there is an existing map recorded or filed and no new monuments are established in the survey.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; CR 15-039; r. and recr. Register May 2016 No. 725, eff. 6-1-16; CR 19-153; r. (1), cr. (1m), r. (2), am. (3) Register May 2021 No. 785, eff. 6-1-21.

A-E 7.025 Survey report, requirements. A survey report shall include the purpose of the survey, information concerning the documents that were examined for the survey, and the measurements that were made to verify the locations of the monuments found. The survey report shall be in compliance with all sections of this chapter and shall be filed as required under s. 59.45 (1), Stats., on media accepted by the county.

History: CR 15-039; cr. Register May 2016 No. 725, eff. 6-1-16, correction made under s. 35.17, Stats., Register May 2016 No. 725; CR 19-153; am. Register May 2021 No. 785, eff. 6-1-21; correction made under s. 35.17, Stats., Register May 2021 No. 785.

A-E 7.03 Boundary location. (1) Every property sur-

vey shall be made in accordance with the records of the register of deeds as nearly as practicable. The professional land surveyor shall acquire data necessary to retrace record title boundaries such as U.S. Public Land Survey Monument Records, deeds, surveys, maps, certificates of title, highway, and center line or right-of-way lines, and other boundary line locations. The professional land surveyor shall make field measurements necessary for the location of the parcel and shall analyze the data and make a careful determination of the position of the boundaries of the parcel being surveyed.

(2) The professional land surveyor shall set monuments marking the corners of the parcel unless monuments already exist at the corners.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; CR 15-036; am. Register January 2016 No. 721, eff. 2-1-16; CR 15-039; r. and recr. Register May 2016 No. 725, eff. 6-1-16; CR 19-153; renum. A-E 7.03 to (1) and am., cr. (2) Register May 2021 No. 785, eff. 6-1-21.

A-E 7.04 Descriptions. Descriptions defining land boundaries created by a professional land surveyor for conveyance or to more accurately delineate land boundaries, or for other purposes shall be complete, providing unequivocal identification of lines or boundaries. The description shall contain necessary references to adjoining together with data and dimensions sufficient to enable the description to be mapped and retraced and shall describe the land surveyed by government lot, recorded private claim, quarter-quarter section, section, township, range, and county. The forms of descriptions of property shall be one of the following:

(1) By metes and bounds commencing with a monument at a section corner or quarter section corner of the quarter section in which that land is located or a monument established by the U.S. Public Land Survey that it is not the center of the section, or commencing with a monument at the end of a boundary line of a recorded private claim or federal reservation in which the land is located. Descriptions shall meet the requirements in s. A-E 7.06.

(2) By land boundaries being surveyed as a platted lot or outlot in a recorded subdivision or recorded addition to a recorded subdivision, the lots or outlots in that plat shall be described by the name of the plat and the lot or outlot and the block in the plat for all purposes.

(3) By land boundaries being surveyed as an existing lot, outlot or parcel, on a recorded certified survey map, the property survey shall be described by lot, outlot or parcel number and certified map number for all purposes.

(4) By the parcel described as an aliquot part of a section from the U.S. Public Land Survey.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. Register, May, 1989, No. 401, eff. 6-1-89; CR 15-039; r. and recr. Register May 2016 No. 725, eff. 6-1-16; CR 19-153; am. (1), (3), (4) Register May 2021 No. 785, eff. 6-1-21.

A-E 7.05 Maps. A map shall be drawn for every property survey, unless a survey report is filed as provided in s. A-E 7.025,

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showing information developed by the property survey. The map shall satisfy all of the following requirements:

(1) The map shall be drawn on media with the minimum size of 8 1/2 x 11 inches and to a commonly accepted scale which shall be clearly stated and graphically illustrated by a bar scale on each map sheet containing a graphical depiction of the property survey unless otherwise required by law.

(2) The map shall be referenced as provided in s. 59.73 (1), Stats., along with a north arrow and reference to a monumented line.

(3) The map shall show the length and bearing of the boundaries of the parcels surveyed. Bearings, angles, and distances on any property survey map shall be in accordance with s. A-E 7.06 (5). Where the boundary lines show bearings, lengths or locations which vary from those recorded in deeds, abutting plats, or other instruments, there shall be the following note placed along such line, "recorded as (show recorded bearing, length or location)". Curve data shall be shown by at least 3 of the following: central angle, radius, long chord bearing and length, and arc length.

(4) The map shall describe by bearing and distance the corner monuments used in determining the location of the parcel boundary and show by bearing and distance the relationship of at least 2 government monuments, if not previously tied, and all newly established monuments, to the surveyed parcel. All the monuments shown on the map shall indicate whether such monuments were found or set, including a description of the monument with a legend or notes for all symbols and abbreviations used on the map.

(5) The map shall show evidence of possession or use by others in the parcel or across any perimeter line of the property if observed by the professional land surveyor while establishing corners.

(6) The map shall show surveyed parcel bounded by water or inaccessible areas, the part shall be enclosed by a meander line showing complete data along all lines extending beyond the enclosure. The true boundary shall be clearly indicated on the map.

(7) The map shall identify the professional land surveyor's name and address, completion date of the field work, and description of the parcel as provided in s. A-E 7.04.

(7m) The map shall identify the person or entity for whom the property survey was made.

(8) The map shall bear the stamp or seal, name and address and signature of the professional land surveyor under whose direction and control the property survey was made with a statement certifying that the property survey complies with this chapter and is correct to the best of the professional land surveyor's knowledge and belief.

(9) Be filed as required by s. 59.45 (1), Stats., on media, or electronically if acceptable by the county.

(10) The map shall identify boundary lines on the property survey. Boundary lines shall be clearly differentiated from other lines on the map.

(11) When coordinate values are shown on the face of the map, the map shall comply with and be subject to the provisions of s. 236.18, Stats., and include the coordinate system, datum, and adjustment.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (4) and (5), cr. (7), Register, May, 1989, No. 401, eff. 6-1-89; correction in (6) made under s. 13.93 (2m) (b) 5., Stats., Register, March, 1993, No. 447; am. (1) to (5) and (7), Register, January, 1999, No. 517, eff. 2-1-99; CR 15-036: am. (6) Register January 2016 No. 721, eff. 2-1-16; CR 15-039: r. and recr. Register May 2016 No. 725, eff. 6-1-16; correction in (intro.), (9) made under s. 35.17, Stats., Register May 2016 No. 725; CR 19-153: am. (intro.), (1) to (7), cr. (7m), am. (8), (10), (11) Register May 2021 No. 785, eff. 6-1-21; correction in (intro.) made under s. 35.17, Stats., Register May 2021 No. 785.

A-E 7.06 Relative positional accuracy measurements. (1) Measurements shall be made with instruments and methods capable of attaining the relative positional accuracy in accordance with this section.

(1m) Relative positional accuracy shall be the value expressed in feet that represents the uncertainty between points of the boundary of the parcel being surveyed due to random errors in measurements at a 95 percent confidence level.

(3) The maximum allowable deviation in relative positional accuracy between any 2 adjacent property corners may not exceed plus or minus 0.13 foot plus 100 parts per million.

(4) Any closed traverse depicted on a property survey map shall have a latitude and departure closure ratio of less than 1 in 3,000.

(5) Bearings or angles on any property survey map shall be shown to at least the nearest 30 seconds. Distances shall be shown to the nearest 1/100th foot.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (5), Register, May, 1989, No. 401, eff. 6-1-89; CR 15-039: am. (1) to (3), (5) Register May 2016 No. 725, eff. 6-1-16; CR 19-153: am. (title), (1), cr. (1m), r. (2), am. (3) Register May 2021 No. 785, eff. 6-1-21; correction in (3) made under s. 35.17, Stats., Register May 2021 No. 785.

A-E 7.07 Monuments. The type and position of monuments to be set on any property survey shall be according to s. 236.15 (1), Stats., unless determined by the nature of the property survey, the permanency required, the nature of the terrain, the cadastral features involved, and the availability of material. Coordinate values are not acceptable in lieu of monuments.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; CR 15-039: am. Register May 2016 No. 725, eff. 6-1-16; CR 19-153: am. Register May 2021 No. 785, eff. 6-1-21.

A-E 7.08 U.S. public land survey monument record. (1) WHEN MONUMENT RECORD REQUIRED. A U.S. public land survey monument record or U.S. public land survey monument record addendum shall be prepared and filed with the county survey records as part of any land survey within 60 days if a U.S. public land survey corner has been reestablished, perpetuated, or restored and a monument set or reset, and when any of the following situations arise:

(a) There is no U.S. public land survey monument record for the corner on file in the office of the county surveyor or the county office deemed appropriate to receive and retain property survey records.

(b) The professional land surveyor who performs the property survey accepts a location for the U.S. public land survey corner which differs from that shown on a U.S. public land survey monument record filed in the office of the county surveyor or the county office deemed appropriate to receive and retain property survey records.

(c) The U.S. public land survey monument referenced in an existing U.S. public land survey monument record that has been destroyed or disturbed.

(1g) VERIFICATION OF THE MONUMENT. If a U.S. public land survey corner monument of record is recovered in place and holding securely at the previously documented corner location, based on the witness ties, no additional U.S. public land survey monument record or U.S. public land survey monument record addendum shall be required. Where the U.S. public land survey monument referenced in an existing U.S. public land survey monument record has been found and verified, a note stating this shall be placed on the property survey.

(1r) WAIVER OF THE MONUMENT RECORD. The preparation of a U. S. public land survey monument record or U. S. public land survey monument addendum may be waived in writing by

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the county surveyor of the county in which the U.S. public land survey corner is located, if a U.S. public land survey monument record is on file and the county surveyor has an active U.S. public land survey monument maintenance program in place.

(2) FORM REQUIRED. (a) A U.S. public land survey monument record shall be prepared for items (1) (a) and (b) on the approved form or on a form substantially the same as the approved form which includes all the elements required by this section. A form used for this purpose shall be entitled, "U.S. Public Land Survey Monument Record".

(b) A U.S. public land survey monument record addendum shall be prepared for item (1) (c) on the approved form or on a form substantially the same as the approved form. A form used for this purpose shall be entitled, "U.S. Public Land Survey Monument Record Addendum".

Note: Forms are available on the department's website at dspd.wi.gov, or by request from the Department of Safety and Professional Services, P.O. Box 8935, Madison, Wisconsin 53708, or call (608) 266-2112.

(3) MONUMENT RECORD REQUIREMENTS. A U.S. public land survey monument record shall show the location of the corner and shall include all of the following elements:

(a) The identity of the corner, as referenced to the U.S. public land survey system.

(b) A description of any record evidence, monument evidence, occupational evidence, testimonial evidence or any other material evidence considered by the professional land surveyor, and whether the monument was found or placed.

(c) Reference ties to at least 4 witness monuments. Witness monuments shall be concrete, natural stone, iron, bearing trees or other equally durable material, except wood other than bearing trees.

(d) A plan view drawing depicting the relevant monuments and reference ties which is sufficient in detail to enable accurate relocation of the corner monument if the corner monument is disturbed.

(e) A description of any material discrepancy between the lo-

cation of the corner monument as restored and the monument location of that corner as previously established.

(f) Whether the corner was restored through acceptance of an obliterated evidence location or a found perpetuated location.

(g) Whether the corner was determined through lost-corner-proportionate methods.

(h) The directions and distances to other public land survey corners which were used as evidence or used for proportioning in determining the corner location.

(i) The stamp and signature or seal and signature of the professional land surveyor under whose direction and control the corner location was determined and a statement certifying that the U.S. public land survey monument record is correct and complete to the best of the professional land surveyor's knowledge and belief.

(4) MONUMENT RECORD ADDENDUM REQUIREMENTS. A U.S. public land survey monument record addendum shall include all of the following elements:

(a) The monument marking the corner location, or monuments giving reference to a nearby inaccessible corner location, and include the elements found in sub. (3) (a), (b), (d), and (e).

(b) A description of the record evidence used to reset the corner monument back in its prior location.

(c) The stamp and signature or seal and signature of the professional land surveyor under whose direction and control the corner location was determined or witness monument established.

(d) A statement certifying that the U.S. public land survey monument record addendum is correct and complete to the best of the professional land surveyor's knowledge and belief.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (1) and (3) (c), Register, May, 1989, No. 401, eff. 6-1-89; am. (3) (a) to (h), Register, January, 1999, No. 517, eff. 2-1-99; reprinted to restore dropped copy in (1) (intro.) Register November 2007 No. 623; CR 15-036: am. (1) (b), (3) (b), (i) Register January 2016 No. 721, eff. 2-1-16; CR 15-039: am. (1) (intro.), (c), (3) (e), (f) Register May 2016 No. 725, eff. 6-1-16; CR 19-153: am. (1), cr. (1g), (1r), renum. (2) to (2) (a) and am., cr. (2) (b), am. (3) (i), cr. (4) Register May 2021 No. 785, eff. 6-1-21; correction in (1g) made under s. 35.17, Stats., Register June 2021 No. 786.

Chapter A-E 8

PROFESSIONAL CONDUCT

A-E 8.01	Authority.
A-E 8.02	Intent.
A-E 8.03	Definitions.
A-E 8.04	Offers to perform services shall be truthful.
A-E 8.05	Conflicts of interest.
A-E 8.06	Professional obligations.

A-E 8.07	Unauthorized practice.
A-E 8.08	Maintenance of professional standards.
A-E 8.09	Adherence to statutes and rules.
A-E 8.10	Plan stamping.
A-E 8.11	Suspension of registration; effect.

A-E 8.01 Authority. The rules of conduct in this chapter are adopted under authority of ss. 15.08 (5) (b), 227.11 and ch. 443, Stats.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87.

A-E 8.02 Intent. The intent of the examining board in adopting this chapter is to establish rules of professional conduct for the professions of architecture, landscape architecture, professional engineering, designing, professional land surveying, and registered interior design. A violation of any standard specified in this chapter may result in disciplinary action under ss. 443.11 to 443.13, Stats.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. Register, June, 1995, No. 474, eff. 7-1-95; am. Register, February, 2000, No. 530, eff. 3-1-00; CR 15-036: am. Register January 2016 No. 721, eff. 2-1-16; CR 24-001: am. Register July 2024 No. 823, eff. 8-1-24.

A-E 8.03 Definitions. In ch. 443, Stats., and chs. A-E 1 to 9, and 14:

(1) “Gross negligence in the practice of architecture, landscape architecture, professional engineering, designing, professional land surveying, or registered interior design” means the performance of professional services by an architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer which does not comply with an acceptable standard of practice that has a significant relationship to the protection of health, safety or public welfare and is performed in a manner indicating that the professional knew or should have known, but acted with indifference to or disregard of, the accepted standard of practice.

(2) “Incompetency in the practice of architecture, landscape architecture, professional engineering, designing, land surveying, or registered interior design” means conduct which demonstrates any of the following:

(a) Lack of ability or fitness to discharge the duty owed by an architect, landscape architect, professional engineer, designer, land surveyor, or registered interior designer to a client or employer or to the public.

(b) Lack of knowledge of the fundamental principles of the profession or an inability to apply fundamental principles of the profession.

(c) Failure to maintain competency in the current practices and methods applicable to the profession.

(3) “Misconduct in the practice of architecture, landscape architecture, professional engineering, designing, professional land surveying, or registered interior design” means an act performed by an architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer in the course of the profession which jeopardizes the interest of the public, including any of the following:

(a) Violation of federal or state laws, local ordinances or ad-

ministrative rules relating to the practice of architecture, landscape architecture, professional engineering, designing, professional land surveying, or registered interior design.

(b) Preparation of deficient plans, drawings, maps, specifications or reports.

(c) Engaging in conduct which evidences a lack of trustworthiness to transact the business required by the profession.

(d) Misrepresentation of qualifications such as education, specialized training or experience.

(4) “Responsible supervision of construction” is defined in s. 443.01 (8), Stats.

(5) (a) “Supervision,” “direct supervision,” “responsible charge,” and “direction and control,” mean direct, personal, active supervision and control of the preparation of plans, drawings, documents, specifications, reports, maps, plats and charts.

(b) The terms in par. (a) include the following:

1. Selection or development of standards, methods and materials to be used.

2. Selection of alternatives to be investigated and the comparison of alternatives for the professional work.

3. Testing to evaluate materials or completed works, either in new or existing projects.

4. Knowledge of applicable codes and professional standards.

5. Knowledge of the technical capabilities of the personnel they rely upon to perform the professional work.

(c) The terms in par. (a) do not include the following:

1. Indirect or casual supervision.

2. Delegation of any decision requiring professional judgment.

3. Casual review or inspection of prepared plans, drawings, specifications, maps, plats, charts, reports or other documents.

4. Mere assumption by an architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer of responsibility for work without having control of the work.

5. Assuming charge, control, or direct supervision of work in which the architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer does not have technical proficiency.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (intro.), (1), (2) (intro.), (a), (3) (intro.), (a), (5) (d) and (e), Register, June, 1995, No. 474, eff. 7-1-95; am. (2) (intro.) to (b), (3) (intro.) to (c), (5) (intro.) to (d), Register, January, 1999, No. 517, eff. 2-1-99; am. (1), (2) (intro.) and (a), (3) (intro.), (a), (5) (d) and (e), Register, February, 2000, No. 530, eff. 3-1-00; correction in (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register December 2005 No. 600; CR 09-033: r. and recr. (5) Register December 2009 No. 648, eff. 1-1-10; CR 15-036: am. (1), (3) (intro.), (a), (5) (c) 4., 5. Register January 2016 No. 721, eff. 2-1-16; CR 24-001: am. (intro.), (1), (2) (intro.), (a), (3) (intro.), (a), (5) (c) 4., 5. Register July 2024 No. 823, eff. 8-1-24.

A-E 8.04

WISCONSIN ADMINISTRATIVE CODE

2

A-E 8.04 Offers to perform services shall be truthful. When offering to perform professional services, an architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer:

(1) Shall accurately and truthfully represent to a prospective client or employer the capabilities and qualifications which the registrant or licensee has to perform the services to be rendered.

(2) Shall represent the costs and completion times of a proposed project to a client or prospective client as accurately and truthfully as is reasonably possible.

(3) May not offer to perform, nor perform, services which the registrant or licensee is not qualified to perform by education or experience without retaining the services of another who is qualified.

(4) May not use advertising or publicity which is fraudulent or deceptive.

(5) May not misrepresent the extent to which the performance of services will involve a partnership or association with another registrant or licensee or misrepresent the identity of a registrant or licensee with whom a partnership or association will be engaged in for the performance of services.

(6) May not collect a fee for recommending the services of another unless written notice is first given to all parties concerned.

(7) May not practice under a firm name that misrepresents the identity of those practicing in the firm or misrepresents the type of services which the individuals, firm or partnership is authorized and qualified to perform.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (intro.), Register, June, 1995, No. 474, eff. 7-1-95; am. (1) to (6), Register, January, 1999, No. 517, eff. 2-1-99; am. (intro.), Register, February, 2000, No. 530, eff. 3-1-00; CR 15-036: am. (intro.), (1), (3) Register January 2016 No. 721, eff. 2-1-16; CR 21-019: am. (5) Register November 2022 No. 803, eff. 12-1-22; CR 24-001: am. (intro.) Register July 2024 No. 823, eff. 8-1-24.

A-E 8.05 Conflicts of interest. (1) An architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer:

(a) Shall avoid conflicts of interest. If an unavoidable conflict of interest arises, the registrant or licensee shall immediately inform the client or employer of all the circumstances which may interfere with or impair the registrant's or licensee's obligation to provide professional services. Under these circumstances a registrant or licensee may not proceed to provide professional services without the full approval and consent of the client or employer.

(b) Shall notify the employer or client and withdraw from employment at any time if it becomes apparent that it is not possible to faithfully discharge the responsibilities and duties owed to the client or employer.

(c) May not agree to perform professional services for a client or employer if the registrant or licensee has a significant financial or other interest which would impair or interfere with the registrant's or licensee's responsibility to faithfully discharge professional services on behalf of the client or employer.

(d) May not accept payment from any party other than a client or employer for a particular project or may not have any direct or indirect financial interest in a service or phase of a service to be provided as part of a project unless the employer or client approves.

(e) May not solicit or accept anything of value from material or equipment suppliers in return for specifying or endorsing a product.

(f) May not violate the confidences of a client or employer, except as otherwise required by rules in this chapter.

(g) May not perform services for a client or employer while a

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full-time employee of another employer without notifying all parties concerned.

(2) Nothing in these rules limits a registrant's or a licensee's professional responsibility to an owner of a project when the registrant or licensee is employed by a person or firm under contract to construct and furnish design services for that project.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (1) (intro.), Register, June, 1995, No. 474, eff. 7-1-95; am. (1) (a) to (f), Register, January, 1999, No. 517, eff. 2-1-99; am. (1) (intro.), Register, February, 2000, No. 530, eff. 3-1-00; CR 15-036: am. (1) (intro.), (a), (c), (2) Register January 2016 No. 721, eff. 2-1-16; Correction under s. 35.17, Stats., in (1) (a), (c), (2) Register January 2016 No. 721; CR 24-001: am. (1) (intro.) Register July 2024 No. 823, eff. 8-1-24.

A-E 8.06 Professional obligations. An architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer:

(1) Shall use reasonable care and competence in providing professional services.

(2) May not evade the professional or contractual responsibility which the registrant or licensee has to a client or employer.

(3) May not enter into an agreement which provides that a person not legally and actually qualified to perform professional services has control over the registrant's or licensee's judgment as related to public health, safety or welfare.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (intro.), Register, June, 1995, No. 474, eff. 7-1-95; am. (1) and (2), Register, January, 1999, No. 517, eff. 2-1-99; am. (intro.), Register, February, 2000, No. 530, eff. 3-1-00; CR 15-036: am. (intro.), (2), (3) Register January 2016 No. 721, eff. 2-1-16; CR 24-001: am. (intro.) Register July 2024 No. 823, eff. 8-1-24.

A-E 8.07 Unauthorized practice. An architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer:

(1) Shall assist in enforcing laws which prohibit the unlicensed practice of architecture, landscape architecture, professional engineering, designing, professional land surveying, and registered interior design by reporting violations to the board.

(2) May not delegate professional responsibility to unlicensed persons and may not otherwise aid or abet the unlicensed practice of architecture, landscape architecture, professional engineering, designing, professional land surveying, or registered interior design.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. Register, June, 1995, No. 474, eff. 7-1-95; am. (1), Register, January, 1999, No. 517, eff. 2-1-99; am. Register, February, 2000, No. 530, eff. 3-1-00; CR 12-039: am. (intro.), (1), (2) Register June 2014 No. 702, eff. 7-1-14; CR 15-036: am. (intro.), (1), (2) Register January 2016 No. 721, eff. 2-1-16; CR 24-001: am. Register July 2024 No. 823, eff. 8-1-24.

A-E 8.08 Maintenance of professional standards.

An architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer:

(1) Shall furnish the board with information indicating that any person or firm has violated provisions in ch. 443, Stats., rules in this chapter or other legal standards applicable to the profession.

(2) May not discuss with any individual board member any disciplinary matter under investigation or in hearing.

(3) Shall respond in a timely manner to a request by the board, a section of the board or the department for information in conjunction with an investigation of a complaint filed against a registrant or licensee. There is a rebuttable presumption that a registrant or licensee who takes longer than 30 days to respond to a request for information has not acted in a timely manner.

(4) Shall notify the department in writing if the credential holder has been disciplined for unprofessional conduct in other states where the credential holder holds a credential or has violated federal or state laws, local ordinances or administrative rules, not otherwise reportable under s. SPS 4.09 (2), which are

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EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS,
PROFESSIONAL ENGINEERS, DESIGNERS, PROFESSIONAL LAND
SURVEYORS, AND REGISTERED INTERIOR DESIGNERS

related to the practice of an architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer. The notification shall be submitted within 48 hours of the disciplinary finding or violation of law and shall include copies of the findings, judgments, and orders so that the department may determine whether the circumstances are substantially related to the practice of the credential holder.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (intro.), Register, June, 1995, No. 474, eff. 7-1-95; am. (1), Register, January, 1999, No. 517, eff. 2-1-99; am. (intro.), Register, February, 2000, No. 530, eff. 3-1-00; CR 09-034: cr. (3) and (4) Register December 2009 No. 648, eff. 1-1-10; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 15-036: am. (intro.), (3), (4) Register January 2016 No. 721, eff. 2-1-16; CR 24-001: am. (intro.), (4) Register July 2024 No. 823, eff. 8-1-24.

A-E 8.09 Adherence to statutes and rules. An architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer:

(1) Shall comply with the requirements in ch. 443, Stats., rules in this chapter and all other federal, state, and local codes which relate to the practice of architecture, landscape architecture, professional engineering, designing, professional land surveying, and registered interior design.

(2) May not engage in conduct that may adversely affect his or her fitness to practice architecture, landscape architecture, professional engineering, designing, professional land surveying, or registered interior design.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. Register, June, 1995, No. 474, eff. 7-1-95; am. (1), Register, January, 1999, No. 517, eff. 2-1-99; am. Register, February, 2000, No. 530, eff. 3-1-00; CR 15-036: am. (intro.), (1), (2) Register January 2016 No. 721, eff. 2-1-16; CR 24-001: am. Register July 2024 No. 823, eff. 8-1-24.

A-E 8.10 Plan stamping. (1) No architect, landscape architect, professional engineer, designer, or registered interior designer may sign, seal or stamp any plans, drawings, documents, specifications or reports for architectural, landscape architectural, professional engineering, design, or registered interior design practice which are not prepared by the registrant or under his or her personal direction and control.

(2) No professional land surveyor may sign, seal or stamp any maps, plats, charts, or reports for professional land surveying practice which are not prepared by the professional land surveyor or under his or her personal direction and control.

(3) No architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer shall allow work performed by him or her or under his or her personal direction and control to be signed, sealed or stamped by another except that an architect, landscape architect, professional engineer, designer, professional land surveyor, or registered interior designer working under the personal direction and control of another registrant or licensee may allow that registrant or licensee to sign and seal or stamp the work.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (1) and (3), Register, June, 1995, No. 474, eff. 7-1-95; am. (1) and (3), Register, February, 2000, No. 530, eff. 3-1-00; CR 15-036: am. (2), (3) Register January 2016 No. 721, eff. 2-1-16; CR 24-001: am. (1), (3) Register July 2024 No. 823, eff. 8-1-24.

A-E 8.11 Suspension of registration; effect. Any registrant or licensee whose registration or license has been suspended is prohibited during the term of the suspension from engaging in any of the following:

(1) Offering to perform any service which requires registration or licensure.

(2) Performing any professional service which requires registration or licensure.

(3) Signing or sealing plans, specifications, reports, maps, plats, or charts prepared for the practice of architecture, landscape architecture, professional engineering, designing, professional land surveying, or registered interior design.

(4) Entering into contracts the performance of which require registration or licensure.

(5) Engaging in responsible supervision of construction as defined in s. 443.01 (8), Stats.

History: Cr. Register, February, 1987, No. 374, eff. 3-1-87; am. (3), Register, June, 1995, No. 474, eff. 7-1-95; am. (intro.) to (4), Register, January, 1999, No. 517, eff. 2-1-99; am. (3), Register, February, 2000, No. 530, eff. 3-1-00; CR 15-036: am. (intro.), (1), (2), (3), (4) Register January 2016 No. 721, eff. 2-1-16; CR 24-001: am. (3) Register July 2024 No. 823, eff. 8-1-24.

Chapter A-E 10

CONTINUING EDUCATION FOR PROFESSIONAL LAND SURVEYORS

<p>A-E 10.01 Authority and purpose. A-E 10.02 Definitions. A-E 10.03 Continuing education requirements. A-E 10.035 Exemption for retired credential status. A-E 10.04 Standards for approval.</p>	<p>A-E 10.05 Certificate of completion, proof of attendance. A-E 10.06 Recordkeeping. A-E 10.07 Waiver of continuing education. A-E 10.08 Comity.</p>
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A-E 10.01 Authority and purpose. The rules in this chapter are adopted under the authority in ss. 15.08 (5) (b), 227.11 (2) and 443.015, Stats., and govern biennial continuing education of professional land surveyors.

History: CR 09-032: cr. Register December 2009 No. 648, eff. 1-1-10; CR 15-036: am. (intro.) Register January 2016 No. 721, eff. 2-1-16.

A-E 10.02 Definitions. As used in this chapter:

(1) “Biennium” means a 2-year period beginning February 1 of each even-numbered year.

(2) “Continuing education” means the planned, professional development activities designed to contribute to the advancement, extension and enhancement of the professional skills and scientific knowledge of the licensee in the practice of professional land surveying and for improvement of the safety and welfare of the public.

(3) “Professional development activities” means organized educational programs on topics related to the practice or theory of professional land surveying and which foster the enhancement of general or specialized knowledge, practice and values of professional land surveying.

(4) “Professional development hour” or “PDH”, unless specified otherwise, means 50 minutes of instruction or participation spent by the licensee in actual attendance or completion of an approved educational activity.

History: CR 09-032: cr. Register December 2009 No. 648, eff. 1-1-10; CR 15-036: am. (2), (3), (4) Register January 2016 No. 721, eff. 2-1-16.

A-E 10.03 Continuing education requirements. (1)

(a) During each biennial registration period, unless granted a waiver under s. A-E 10.07, every licensee shall complete at least 20 hours of approved professional development hours or equivalent continuing education hours, pertinent to the practice of professional land surveying, except that between initial licensure and the first renewal period, a new licensee shall not be required to comply with the continuing education requirements for the first renewal of licensure.

(b) During each biennial registration period, the licensee shall complete a minimum of 2 professional development hours of the total number required in each of the following categories:

1. Programs, courses or activities in the area of Wisconsin statutes and rules that regulate professional land surveyors and surveys.

2. Programs, courses or activities in the area of professional conduct and ethics.

3. Programs, courses or activities in the area of professional land surveying or related sciences.

(2) Continuing education offered by approved providers shall include the following:

(a) Successful completion of online, correspondence, televised, videotaped, or other short courses or tutorials.

(b) Successful completion of a college or university course in the area of professional land surveying, related sciences or surveying ethics. One semester credit hour of course work is equivalent to 20 professional development hours and one quarter credit hour of course work is equivalent to 13.5 professional development hours.

(c) Successful completion of professional land surveying courses or programs offering professional development hours on professional land surveying topics.

(d) Active participation and successful completion of professional land surveying programs, seminars, tutorials, workshops, short courses or in-house courses.

(e) Attending program presentations at related technical or professional meetings at which at least 50 minutes is spent discussing surveying issues or attending a lecture on survey-related issues, or both. Each qualified meeting will be awarded one professional development hour.

(f) Teaching or instructing courses or programs on a land surveying topic. Teaching credit is counted for teaching a course or seminar for the first time only and does not apply to faculty in the performance of their regularly assigned duties. Two professional development hours will be awarded for every 50 minutes of teaching or presentation.

(g) Authoring professional land surveying related papers or articles that appear in circulated journals or trade magazines. Credit is earned in the biennium of publication. A maximum of 5 professional development hours per renewal will be awarded for this activity.

(3) Continuing education shall be completed within the preceding biennium.

(4) A professional land surveyor who fails to meet the continuing education or professional development hours by the renewal date, as specified in s. 440.08 (2) (a) 39., Stats., may not engage in the practice of professional land surveying until the licensure is renewed based upon proof of compliance with the continuing education requirements.

History: CR 09-032: cr. Register December 2009 No. 648, eff. 1-1-10; CR 15-036: am. (1) (a), (b) (intro.), 3., (2) (b), (c), (d), (g), (4) Register January 2016 No. 721, eff. 2-1-16; CR 20-064: am. (1) (a) Register May 2021 No. 785, eff. 6-1-21.

A-E 10.035 Exemption for retired credential status. Notwithstanding s. A-E 10.03 (1), the continuing education requirements under this chapter do not apply to the renewal of a credential classified as retired status under s. A-E 2.045 (1) or (2).

History: CR 20-064: cr. Register May 2021 No. 785, eff. 6-1-21.

A-E 10.04 Standards for approval. (1) To be approved for credit, a continuing education program shall meet all of the following criteria:

(a) The program includes instruction in an organized method of learning contributing directly to the professional competency

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of the licensee and pertains to subject matters which integrally relate to the practice of the profession.

(b) The program is conducted by individuals who have specialized education, training or experience and are considered qualified concerning the subject matter of the program.

(c) The program provides proof of attendance by the licensee and fulfills pre-established goals and objectives.

(2) The professional land surveyor section may approve providers for continuing education programs including the following:

(a) Wisconsin society of land surveyors.

(b) National council of examiners for engineering and surveying.

(c) National society of professional land surveyors.

(e) Colleges, universities or other educational institutions approved by the professional land surveyor section.

(f) Other technical or professional societies or organizations.

(3) An advisory committee selected by the professional land surveyor section will make recommendations as to approval of courses, credit, PDH value for courses and other methods of earning credit.

(4) Credit for college or technical school courses approved by the professional land surveyor section shall be based upon course credit established by the college or technical school.

History: CR 09-032: cr. Register December 2009 No. 648, eff. 1-1-10; CR 15-036: am. (1) (a), (c), (2) (intro.), r. (2) (d), am. (2) (e), (3), (4) Register January 2016 No. 721, eff. 2-1-16.

A-E 10.05 Certificate of completion, proof of attendance. (1) Each licensee shall certify on the renewal application full compliance with the continuing education requirements set forth in this chapter.

(3) The professional land surveyor section may require additional evidence demonstrating compliance with the continuing education requirements, including a certificate of attendance or documentation of completion or credit for the courses completed.

(4) If there appears to be a lack of compliance with the continuing education or professional development requirements, the professional land surveyor section shall notify a licensee in writing and request submission of evidence of compliance within 30 days of the notice.

(5) The professional land surveyor section may require a licensee to appear for an interview to address any deficiency or lack of compliance with the continuing education or professional development requirements.

History: CR 09-032: cr. Register December 2009 No. 648, eff. 1-1-10; CR 15-036: am. Register January 2016 No. 721, eff. 2-1-16; CR 18-026: r. (2) Register December 2018 No. 756 eff. 1-1-19.

A-E 10.06 Recordkeeping. It shall be the responsibility of the licensee to maintain records of continuing education or professional development hours for at least 2 bienniums from the

date the certificate or statement of attendance is signed. The recordkeeping shall include all of the following:

(1) The name and address of the sponsor or provider.

(2) A brief statement of the subject matter.

(3) Printed program schedules, registration receipts, certificates of attendance, or other proof of participation.

(4) The number of hours attended in each program and the date and place of the program.

History: CR 09-032: cr. Register December 2009 No. 648, eff. 1-1-10; CR 15-036: am. (intro.) Register January 2016 No. 721, eff. 2-1-16.

A-E 10.07 Waiver of continuing education. (1) A renewal applicant seeking renewal of licensure without having fully complied with the continuing education requirements shall file a renewal application along with the required fee, and a statement setting forth the facts concerning non-compliance and requesting a waiver of the requirements. The request for waiver shall be made prior to the renewal date. Extreme hardship shall be determined on an individual basis by the professional land surveyor section. If the professional land surveyor section finds from the affidavit or any other evidence submitted that extreme hardship has been shown, the professional land surveyor section shall waive enforcement of the continuing education requirements for the applicable renewal period.

(2) In this section, extreme hardship means an inability to devote sufficient hours to fulfilling the continuing education requirements during the applicable renewal period because of one of the following:

(a) Full-time service in the uniformed services of the United States of America for a period of one year during the biennium.

(b) An incapacitating illness documented by a statement from a licensed physician.

(c) A physical inability to travel to the sites of approved programs documented by a licensed physician.

(d) A retirement from the occupation of professional land surveying whereby the renewal applicant no longer provides professional land surveying services.

(e) Any other extenuating circumstances.

(3) A renewal applicant who prior to the expiration date of the license submits a request for a waiver, shall be deemed to be in good standing until the final decision on the application by the land surveyor section.

History: CR 09-032: cr. Register December 2009 No. 648, eff. 1-1-10; CR 15-036: am. (1), (2) (d) Register January 2016 No. 721, eff. 2-1-16.

A-E 10.08 Comity. An applicant for registration from another state who applies for registration to practice professional land surveying under s. A-E 6.06, shall submit proof of completion of continuing education obtained in another jurisdiction within the 2 years prior to application.

History: CR 09-032: cr. Register December 2009 No. 648, eff. 1-1-10; CR 15-036: am. Register January 2016 No. 721, eff. 2-1-16.

Chapter NR 115

WISCONSIN'S SHORELAND PROTECTION PROGRAM

NR 115.01 Purpose.
 NR 115.02 Applicability.
 NR 115.03 Definitions.

NR 115.04 Shoreland-wetlands.
 NR 115.05 Minimum zoning standards for shorelands.
 NR 115.06 Department duties.

Note: Chapter NR 115 as it existed on July 31, 1980, was repealed and a new chapter NR 115 was created effective August 1, 1980.

NR 115.01 Purpose. Section 281.31, Stats., provides that shoreland subdivision and zoning regulations shall: “further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.” Section 59.692, Stats., requires counties to effect the purposes of s. 281.31, Stats., and to promote the public health, safety and general welfare by adopting zoning regulations for the protection of all shorelands in unincorporated areas that meet shoreland zoning standards promulgated by the department. The purpose of this chapter is to establish minimum shoreland zoning standards for ordinances enacted under s. 59.692, Stats., for the purposes specified in s. 281.31 (1), Stats., and to limit the direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty. Nothing in this rule shall be construed to limit the authority of a county to enact more restrictive shoreland zoning standards under s. 59.69 or 59.692, Stats., to effect the purposes of s. 281.31, Stats.

Note: Effective April 17, 2012, 2011 Wisconsin Act 170 created s. 59.692 (2m), Stats., which prohibits a county from enacting, and a county, city, or village from enforcing, any provision in a county shoreland or subdivision ordinance that regulates the location, maintenance, expansion, replacement, repair, or relocation of a non-conforming building if the provision is more restrictive than the standards for non-conforming buildings under ch. NR 115; or the construction of a structure or building on a substandard lot if the provision is more restrictive than the standards for substandard lots under ch. NR 115.

2011 Wisconsin Act 170 also created other provisions that affect how a county regulates nonconforming uses and buildings, premises, structures, or fixtures under its general zoning ordinance.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; reprinted to correct error, Register, December, 1980; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 05-058: r. and recr. Register January 2010 No. 649, eff. 2-1-10.

NR 115.02 Applicability. The provisions of this chapter apply to county regulation of the use and development of unincorporated shoreland areas, and to annexed or incorporated areas except as provided in s. 59.692 (7), Stats. Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin department of transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1m), Stats., applies.

Note: Under section 59.692 (7), Stats., areas annexed after May 7, 1982 and areas incorporated after April 30, 1994 were generally subject to the county shoreland zoning ordinances in effect on the date of annexation or incorporation. Effective December 14, 2013, 2013 Wis. Act 80 repealed s. 59.692 (2m) (c) and (7), amended s. 59.692 (6m), and created ss. 61.353 and 62.233. 2013 WI Act 80 is retroactive as well as prospective, and applies to all shorelands areas annexed since May 7, 1982 or incorporated since April 30, 1994.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. Register, October, 1980, No. 298, eff. 11-1-80; CR 05-058: am. Register January 2010 No. 649, eff. 2-1-10; correction made under s. 13.92 (4) (b) 7., Stats., Register January 2010 No. 649; correction made under s. 13.92 (4) (b) 7., Stats., Register January 2017 No. 733.; CR 23-060: am. Register July 2024 No. 823, eff. 8-1-24.

NR 115.03 Definitions. For the purpose of this chapter:

(1d) “Access and viewing corridor” means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

(1h) “Boathouse” means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

(1p) “Building envelope” means the three dimensional space within which a structure is built.

(2) “County zoning agency” means that committee or commission created or designated by the county board under s. 59.69 (2) (a), Stats., to act in all matters pertaining to county planning and zoning.

(3) “Department” means the department of natural resources.

(3m) “Existing development pattern” means that principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline.

(4) “Flood plain” means the land which has been or may be hereafter covered by flood water during the regional flood. The flood plain includes the floodway and the flood fringe as those terms are defined in ch. NR 116.

(4g) “Impervious surface” means an area that releases as runoff all or a majority of the precipitation that falls on it. “Impervious surface” excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious.

(4r) “Mitigation” means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

(5) “Navigable waters” means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31 (2) (d), Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Stats., and this chapter do not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not adjacent to a natural navigable stream or river;

(b) Those parts of such drainage ditches adjacent to such lands were nonnavigable streams before ditching or had no previous stream history; and

(c) Such lands are maintained in nonstructural agricultural use.

Note: In *Muench v. Public Service Commission*, 261 Wis. 492 (1952), the Wisconsin Supreme Court held that a stream is navigable in fact if it is capable of floating any boat, skiff, or canoe, of the shallowest draft used for recreational purposes. In *DeGayner and Co., v. Department of Natural Resources*, 70 Wis. 2d 936 (1975), the court also held that a stream need not be navigable in its normal or natural condition to be navigable in fact. The DeGayner opinion indicates that it is proper to con-

sider artificial conditions, such as beaver dams, where such conditions have existed long enough to make a stream useful as a highway for recreation or commerce, and to consider ordinarily recurring seasonal fluctuations, such as spring floods, in determining the navigability of a stream.

(6) “Ordinary high-water mark” means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

(7) “Regional flood” means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics once in every 100 years.

Note: The regional flood is based upon a statistical analysis of streamflow records available for watershed and/or an analysis of rainfall and runoff characteristics in the general watershed region. The flood frequency of the regional flood is once in every 100 years. In any given year, there is a 1% chance that the regional flood may occur. During a typical 30-year mortgage period, the regional flood has a 26% chance of occurring.

(7m) “Routine maintenance of vegetation” means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.

(8) “Shorelands” means lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the flood plain, whichever distance is greater.

(9) “Shoreland-wetland zoning district” means a zoning district, created as a part of a county shoreland zoning ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin wetland inventory maps prepared by the department.

(10) “Special exception (conditional use)” means a use which is permitted by a shoreland zoning ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the board of adjustment or, where appropriate, the planning and zoning committee or county board.

(11) “Unnecessary hardship” means that circumstance where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the zoning ordinance.

(13) “Wetlands” means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and which have soils indicative of wet conditions.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; renum. (2) to (12) to be (3) to (13), cr. (2), r. and recr. (7), am. (11) and (13), Register, October, 1980, No. 298, eff. 11-1-80; corrections in (2) (a) 1. and (b) 2. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 05-058: am. (intro.), renum. (1) to be (1h), cr. (1d), (1p), (3m), (4g), (4r) and (7m), r. (12) Register January 2010 No. 649, eff. 2-1-10.

NR 115.04 Shoreland-wetlands. (1) ESTABLISHMENT OF SHORELAND-WETLAND ZONING DISTRICTS. Counties shall adopt shoreland ordinances that include zoning regulations for shoreland-wetland zoning districts.

(2) AMENDMENT OF SHORELAND-WETLAND MAPS AND ZONING DISTRICTS. (a) *County review of wetland inventory map*

amendments. After the department amends final Wisconsin wetland inventory maps:

1. The department shall transmit to the county zoning agency designated under s. 59.69 (2) (a), Stats., digital files or paper copies of amended wetland inventory maps for that county.

2. If the county believes that the amended maps are inaccurate, within 30 days of receiving the amended maps the county shall note discrepancies on the maps with an accompanying narrative explaining the amended problem areas and return a copy of the notated map and narrative to the department.

3. The department shall, at department expense, consult available soil survey maps and conduct on-site inspections, if appropriate, in order to evaluate the county recommendations, and shall then prepare final amended Wisconsin wetland inventory maps for that county.

Note: As of 1985 all counties adopted official wetland zoning maps and amendments occur as accuracy increases.

(b) *County amendment of shoreland-wetland maps and zoning districts.* 1. Within 6 months after receipt of final amended Wisconsin wetland inventory maps for that county from the department, a county shall zone all shorelands designated as wetlands on the amended Wisconsin wetland inventory maps in a shoreland-wetland zoning district. If a county fails to zone all shoreland-wetlands within this 6 month period, s. NR 115.06 (3) (b) shall apply.

2. Ordinance text and map amendments creating or amending shoreland-wetland zoning districts shall be referred to the county zoning agency for public hearing as required by s. 59.69 (5) (e) 2., Stats.

Note: Where an apparent discrepancy exists between a shoreland-wetland district shown on an amended map and actual field conditions, the county shall contact the department to determine if the amended map is in error. If the department determines that a particular area was incorrectly mapped as wetland or meets the wetland definition but was not shown as wetland on the map, the county shall have the authority to immediately grant or deny a shoreland zoning permit in accordance with the applicable regulations based on the department determination as to whether the area is wetland. In order to correct wetland mapping errors on the official zoning map, an official map amendment must be initiated within a reasonable period of time, not to exceed one year following the determination.

3. At least 10 days prior to the public hearing, the county shall provide the appropriate regional office of the department with a copy of the proposed text and map amendments and with written notice of the public hearing.

(c) *Amendment of shoreland-wetland zoning districts.* 1. Official ordinance amendments are required for any proposed change in shoreland-wetland zoning. Such amendments shall be made in accordance with provisions of s. 59.69 (5) (e), Stats. Official amendments to the ordinance text shall be made promptly. Provided the ordinance text is promptly amended, a county may amend its official map within a reasonable period of time not to exceed one year following the change in shoreland-wetland zoning.

2. The county clerk shall submit a copy of every proposed amendment to a shoreland-wetland zoning district to the appropriate regional office of the department within 5 days of the filing of such proposed amendment with the clerk.

3. All proposed text and map amendments to shoreland-wetland zoning districts shall be referred to the county zoning agency for a public notice and hearing as required by s. 59.69 (5) (e) 2., Stats. The appropriate regional office of the department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

4. In order to ensure that the shoreland protection objectives found in s. 281.31, Stats., will be accomplished by the county shoreland ordinance, a county shall not rezone a shoreland-wetland zoning district, or portion thereof, if the proposed rezoning

may result in a significant adverse impact upon any of the following:

- a. Storm and flood water storage capacity;
- b. Maintenance of dry season stream flow, or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
- c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- d. Shoreline protection against soil erosion;
- e. Fish spawning, breeding, nursery or feeding grounds;
- f. Wildlife habitat; or
- g. Areas of special recreational, scenic or scientific interest, including scarce wetland types.

5. If the department determines that the proposed rezoning may have a significant adverse impact upon any of the criteria listed in subd. 4., the department shall notify the county zoning agency of its determination either prior to or during the public hearing held on the proposed amendment.

6. As soon as possible after holding a public hearing, the county zoning agency shall submit its written findings and recommendations to the county board. Said findings shall outline the reason for the agency's recommendations. After receipt of the county zoning agency's findings and recommendations, the board may approve or disapprove of the proposed amendment.

7. The appropriate regional office of the department shall be provided with all of the following:

- a. A copy of the county zoning agency's findings and recommendations on the proposed amendment within 10 days after the submission of those findings and recommendations to the county board;

- b. Written notice of the board's decision on the proposed amendment within 10 days after it is issued.

8. If the county board approves of the proposed amendment and the department determines, after review as required by s. NR 115.06 (2) (c), that the county shoreland zoning ordinance if so amended would no longer comply with the requirements of s. 59.692, Stats., and this chapter, the department shall, after notice and hearing, adopt a complying ordinance for the county, under s. 59.692 (6), Stats.

9. If the department has notified the county zoning agency that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subd. 4., that proposed amendment, if approved by the county board, shall not become effective until more than 30 days have elapsed since written notice of the county board's approval was mailed to the department, as required by subd. 7. If within the 30-day period the department notifies the county board that the department intends to adopt a superseding shoreland zoning ordinance for the county under s. 59.692 (6), Stats., the proposed amendment shall not become effective while the ordinance adoption procedure is proceeding, but shall have its effect stayed until the s. 59.692 (6), Stats., procedure is completed or otherwise terminated.

(3) PERMITTED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Within shoreland-wetland zoning districts, counties shall permit the following uses subject to the general requirements of s. NR 115.05, the provisions of chs. 30 and 31, Stats., and other state and federal laws, if applicable:

- (a) Hiking, fishing, trapping, hunting, swimming and boating.

- (b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and

that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

- (c) The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required to construct and maintain roads which are necessary to conduct silviculture activities, which cannot as a practical matter be located outside the wetland, and which are designed and constructed to minimize the adverse impact upon the natural functions of the wetland, or except as required for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected.

Note: Local units of government, in the development and application of ordinances which apply to shoreland areas, must consider other programs of statewide interest and other state regulations affecting the lands to be regulated, i.e. regulations and management practices applicable to state and county forests and lands entered under the forest cropland and managed forest land programs.

- (d) The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

- (e) The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding or artificial drainage of the wetland through ditching, tiling, dredging or excavating except that flooding, dike and dam construction, and ditching shall be allowed for the purpose of growing and harvesting cranberries. The maintenance and repair of existing drainage systems (such as ditching and tiling) shall be permitted. The construction and maintenance of roads shall be permitted if the roads are necessary for agricultural cultivation, cannot as a practical matter be located outside the wetland, and are designed and constructed to minimize the adverse impact upon the natural functions of the wetland.

- (f) The construction and maintenance of duck blinds provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

- (g) The construction and maintenance of nonresidential structures, not to exceed 500 square feet, used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation if the structure cannot as a practical matter be located outside the wetland, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

- (h) The construction and maintenance of piers, docks and walkways, including those built on pilings, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done.

- (i) The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided that no filling is done and that any private wildlife habitat area is used exclusively for that purpose. The owner or operator of a new private recreation or wildlife area to be located in a shoreland-wetland zoning district shall be required to notify the county zoning agency of the proposed project before beginning construction. Ditching, excavating, dredging, dike and dam construction shall be allowed in wildlife refuges, game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

- (j) The construction and maintenance of electric, gas, telephone water and sewer transmission and distribution lines, and related facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light,

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power or water to their members, which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

Note: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

(k) The construction and maintenance of railroad lines which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for the construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

(L) The maintenance, repair, replacement, and reconstruction of existing town and county highways and bridges.

(4) PROHIBITED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Any use not permitted in sub. (3) is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance in accordance with s. 59.69 (5) (e), Stats., and the procedures outlined in sub. (2) (c).

History: CR 05-058: cr. Register January 2010 No. 649, eff. 2-1-10.

NR 115.05 Minimum zoning standards for shorelands. (1) ESTABLISHMENT OF SHORELAND ZONING STANDARDS. The shoreland zoning ordinance adopted by each county shall control use of shorelands to afford the protection of water quality as specified in chs. NR 102 and 103. At a minimum, the ordinance shall include all of the following provisions:

(a) *Minimum lot sizes.* Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

1. 'Sewered lots.' Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet.

2. 'Unsewered lots.' Lots not served by public sanitary sewer shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.

3. 'Substandard lots.' A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

Note: Effective April 17, 2012, 2011 Wisconsin Act 170 created s. 59.692 (2m), Stats., which prohibits a county from enacting, and a county, city, or village from enforcing, any provision in a county shoreland or subdivision ordinance that regulates the construction of a structure or building on a substandard lot if the provision is more restrictive than the standards for substandard lots under ch. NR 115.

a. The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.

b. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.

c. The substandard lot or parcel is developed to comply with all other ordinance requirements.

4. 'Planned unit development.' A non-riparian lot may be created which does not meet the requirements of subd. 1. if the county has approved and recorded a plat or certified survey map including that lot within a planned unit development, if the planned unit development contains at least 2 acres or 200 feet of frontage, and if the reduced non-riparian lot sizes are allowed in exchange for larger shoreland buffers and setbacks on those lots adjacent to navigable waters that are proportional to and offset

the impacts of the reduced lots on habitat, water quality and natural scenic beauty.

(b) *Building setbacks.* Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution.

1. 'Shoreland setback.' Except where exempt under subd. 1m., a setback of 75 feet from the ordinary high-water mark of any navigable waters to the nearest part of a building or structure shall be required for all buildings and structures. Where an existing development pattern exists, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot, but the shoreland setback may not be reduced to less than 35 feet from the ordinary high-water mark of any navigable waters.

Note: A property owner may seek a variance to a dimensional standard of the county ordinance and a county board of adjustment may review the request pursuant to s. 59.694 (7) (c), Stats.

1m. 'Exempt structures.' All of the following structures are exempt from the shoreland setback standards in subd. 1.:

a. Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation.

Note: This chapter does not prohibit repair and maintenance of boathouses located above the ordinary high-water mark.

b. Open sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692 (1v), Stats.

c. Fishing rafts that are authorized on the Wolf river and Mississippi river under s. 30.126, Stats.

d. Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.

e. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. SPS 383, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.

f. Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60-inches in width.

2. 'Floodplain structures.' Buildings and structures to be constructed or placed in a flood plain shall be required to comply with any applicable flood plain zoning ordinance.

3. 'Boathouses.' The use of boathouses for human habitation and the construction or placing of boathouses beyond the ordinary high-water mark of any navigable waters shall be prohibited.

(c) *Vegetation.* To protect natural scenic beauty, fish and wildlife habitat, and water quality, a county shall regulate removal of vegetation in shoreland areas, consistent with the following:

1. The county shall establish ordinance standards that consider sound forestry and soil conservation practices and the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

Note: In developing and applying ordinances which apply to shoreland areas, local units of government must consider other applicable law and programs affecting the lands to be regulated, e.g., law and management practices that apply to state and county forests and lands entered under forest cropland and managed forest land programs, and ss. 59.692 (2) (a) and 59.69 (4) (a), Stats.

2. To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, the county ordinance shall designate land that extends from the ordinary high water mark to a minimum of 35

feet inland as a vegetative buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as follows:

- a. The county may allow routine maintenance of vegetation.
- b. The county may allow removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors, provided that the combined width of all access and viewing corridors on a riparian lot or parcel may not exceed the lesser of 30 percent of the shoreline frontage or 200 feet.
- c. The county may allow removal of trees and shrubs in the vegetative buffer zone on a parcel with 10 or more acres of forested land consistent with “generally accepted forestry management practices” as defined in s. NR 1.25 (2) (b), and described in Department publication “Wisconsin Forest Management Guidelines” (publication FR-226), provided that vegetation removal be consistent with these practices.
- d. The county may allow removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed be replaced by replanting in the same area as soon as practicable.
- e. The county may authorize by permit additional vegetation management activities in the vegetative buffer zone. The permit issued under this subd. par. shall require that all management activities comply with detailed plans approved by the county and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area. The permit also shall require an enforceable restriction to preserve the newly restored area.

(d) *Filling, grading, lagooning, dredging, ditching and excavating.* Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of s. NR 115.04, the requirements of ch. 30, Stats., and other state and federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat and natural scenic beauty.

(e) *Impervious surfaces.* Counties shall establish impervious surface standards to protect water quality and fish and wildlife habitat and protect against pollution of navigable waters. County impervious surface standards shall require all of the following:

1. ‘Application.’ Impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface that is or will be located within 300 feet of the ordinary high water mark of any navigable waterway on any of the following:

- a. A riparian lot or parcel.
- b. A nonriparian lot or parcel that is located entirely within 300 feet of the ordinary high-water mark of any navigable waterway

1m. ‘Calculation.’ Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the lot or parcel by the total surface area of that lot or parcel, and multiplying by 100. For the purposes of this subdivision counties may exclude impervious surfaces described in subd. 3m. If an outlot lies between the ordinary high water mark and the developable lot or parcel described in subd. 1. and both are in common ownership, the lot or parcel and the outlot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surfaces.

2. ‘General standard.’ Except as allowed in subds. 2m. to 4., a county may allow up to 15% impervious surface as calculated under subd. 1m on a lot or parcel described in subd. 1.

2m. ‘Standard for highly developed shorelines.’ At its discretion, a county may adopt an ordinance for highly developed shorelines that allows impervious surface as calculated under subd. 1m on lots or parcels described in subd. 1 as follows: up to 30% for residential land uses or up to 40% for commercial, industrial or business land uses.

a. A “highly developed shoreline” means a shoreline within an area identified as an Urbanized Area or Urban Cluster in the 2010 US Census or a shoreline that has a commercial, industrial or business land use as of January 31, 2013.

b. A county may establish, after conducting a hearing and receiving approval by the department, a map of additional areas of highly developed shorelines not included in subd. 2m. a.

c. An additional area of highly developed shoreline under subd. 2m. b., shall include at least 500 feet of shoreline and as of February 1, 2010, have either a majority of its lots developed with more than 30% impervious surface area as calculated under subd. 1m. or be located on a lake and served by a sewerage system as defined in s. NR 110.03 (30). To obtain approval from the department for an additional area, the county shall provide data to the department that establishes that the additional area meets the criteria under this subd. 2m. c.

3. ‘Maximum impervious surface.’ A county may allow a property owner to exceed the impervious surface standard under subds. 2. and 2m. provided that all of the following requirements are met:

a. For lots or parcels described under subd. 1. that exceed the impervious surface standard under subd. 2. and are not located within a highly developed shoreline as defined in subd. 2m., a county may allow more than 15% impervious surface but not more than 30% impervious surface as calculated under subd. 1m on the lot or parcel.

b. For lots or parcels described under subd. 1. and located within an area defined by county ordinance as a highly developed shoreline under subd. 2m., a county may allow more than 30% impervious surface but not more than 40% impervious surface as calculated under subd. 1m on the lot or parcel for properties that have a residential land use, or more than 40% impervious surface but not more than 60% impervious surface as calculated under subd. 1m. for properties that have a commercial, industrial or business land use.

c. For lots or parcels described under subd. 1 that exceed the impervious surface standard under subds. 2. and 2m., but do not exceed the maximum impervious surface standard under subd. 3. a. or b., the county shall issue a permit that requires a mitigation plan approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines adequate to offset the impacts of the impervious surface on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the impervious surface being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the county register of deeds.

3m. ‘Treated impervious surfaces.’ A county may exclude from the calculation under subdivision 1m., any impervious surface where the property owner can show that runoff from the impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bioswales or other engineered systems, or that the runoff discharges to internally drained pervious area that retains the runoff on the parcel to allow infiltration into the soil.

Note: A property owner may seek a variance to a dimensional standard of the county ordinance, for areas that exceed the maximum impervious surface standard in subd. 3. and do not meet the provisions in subd. 3m. A county board of adjustment must review the request pursuant to s. 59.694 (7) (c), Stats., and applicable case law.

Note: Nothing in this paragraph shall be construed to supersede the setback provisions in par. (b). New structures must meet all setback provisions in the county shoreland ordinance unless the property owner obtains a variance from the County Board of Adjustment.

4. 'Existing impervious surfaces.' For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the standards in subds. 2. and 3., the property owner may do any of the following as long as the property owner does not increase the percentage of impervious surface that existed on the effective date of the county shoreland ordinance:

- a. Maintain and repair all impervious surfaces.
- b. Replace existing impervious surfaces with similar surfaces within the existing building envelope.
- c. Relocate or modify existing impervious surfaces with similar or different impervious surfaces, provided that the relocation or modification meets the applicable setback requirements in par. (b).

Note: For example this provision would allow an existing at-grade patio to be removed and replaced with a new building, if the new building meets the shoreland setback requirements.

Note: Nothing in this paragraph shall be construed to supersede other provisions in county shoreland ordinances.

(f) *Height.* To protect and preserve wildlife habitat and natural scenic beauty, on or after February 1, 2010, a county may not permit any construction that results in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters.

(g) *Nonconforming structures and uses.* 1. 'General rule for nonconforming uses.' Pursuant to ss. 59.69 (10) and 59.692 (2) (a), Stats., an ordinance enacted under those provisions may not prohibit the continuation of the lawful use of a building, structure or property, that exists when an ordinance or ordinance amendment takes effect, which is not in conformity with the provisions of the ordinance or amendment.

2. 'Nonconforming use of temporary structure.' The continuance of the nonconforming use of a temporary structure may be prohibited.

3. 'Discontinued nonconforming use.' If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance.

4. 'Maintenance of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1. may be maintained and repaired within its existing building envelope. Maintenance and repair also includes such activities as interior remodeling, exterior remodeling, and the replacement or enhancement of plumbing or electrical systems, insulation, windows, doors, siding, or roof within the existing building envelope.

5. 'Expansion of nonconforming principal structure within the setback.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1. may be expanded laterally or vertically, provided that all of the following requirements are met:

- a. The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- b. The existing principal structure is at least 35 feet from the ordinary high-water mark.
- c. Vertical expansion is limited to the height allowed in s. NR 115.05 (1) (f) and lateral expansions are limited to a maximum of

200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high-water mark than the closest point of the existing principal structure.

200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high-water mark than the closest point of the existing principal structure.

d. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the expansion being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the county register of deeds.

e. All other provisions of the shoreland ordinance shall be met.

Note: Other provisions include requirements such as impervious surface limitations.

5m. 'Expansion of nonconforming principal structure beyond setback.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1., may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements in par. (b) 1., and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required under par. (e) 3.

6. 'Replacement or relocation of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1. may be replaced or relocated on the property provided all of the following requirements are met:

a. The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.

b. The existing principal structure is at least 35 feet from the ordinary high-water mark.

c. No portion of the replaced or relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.

d. The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement in par. (b) 1.

e. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines are adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the county register of deeds.

g. All other provisions of the shoreland ordinance shall be met.

Note: Other provisions include requirements such as height and impervious surface limitations.

Note: Effective April 17, 2012, 2011 Wisconsin Act 170 created s. 59.692 (2m), Stats., which prohibits a county from enacting, and a county, city, or village from enforcing, any provision in a county shoreland or subdivision ordinance that regulates the location, maintenance, expansion, replacement, repair, or relocation of a non-

conforming building if the provision is more restrictive than the standards for non-conforming buildings under ch. NR 115.

(2) ESTABLISHMENT OF LAND DIVISION REVIEW. Each county shall review, pursuant to s. 236.45, Stats., all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review all of the following factors shall be considered:

- (a) Hazards to the health, safety or welfare of future residents.
- (b) Proper relationship to adjoining areas.
- (c) Public access to navigable waters, as required by law.
- (d) Adequate storm drainage facilities.
- (e) Conformity to state law and administrative code provisions.

(3) ESTABLISHMENT OF SANITARY REGULATIONS. Each county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality.

(a) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812.

(b) Where a public sewage collection and treatment system is not available, design and construction of private sewage disposal systems shall, prior to July 1, 1980, be required to comply with ch. SPS 383, and after June 30, 1980, be governed by a private sewage system ordinance adopted by the county under s. 59.70 (5), Stats.

(4) ADOPTION OF ADMINISTRATIVE AND ENFORCEMENT PROVISIONS. The shoreland ordinance adopted by each county shall require all of the following:

(a) The appointment of an administrator and such additional staff as the workload may require.

(b) The creation of a zoning agency, as authorized by s. 59.69, Stats., a board of adjustment, as authorized by s. 59.694, Stats., and a county planning agency, as defined in s. 236.02 (1), Stats., and required by s. 59.692 (3), Stats.

(c) A system of permits for all new construction, development, reconstruction, structural alteration or moving of buildings and structures. A copy of all applications shall be required to be filed in the office of the county zoning administrator.

(d) Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.

(e) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, as long as the granting of a variance does not have the effect of granting or increasing any use of property which is prohibited in that zoning district by the shoreland zoning ordinance.

(f) A special exception (conditional use) procedure for uses presenting special problems.

(g) The county shall keep a complete record of all proceedings before the board of adjustment, zoning agency and planning agency.

(h) Written notice to the appropriate regional office of the department at least 10 days prior to any hearing on a proposed variance, special exception or conditional use permit, appeal for a map or text interpretation, map or text amendment, and copies of all proposed land divisions submitted to the county for review under sub. (2).

(hm) Submission to the appropriate regional office of the department, within 10 days after grant or denial, copies of any deci-

sion on a variance, special exception or conditional use permit, or appeal for a map or text interpretation, and any decision to amend a map or text of an ordinance.

(i) Mapped zoning districts and the recording, on an official copy of such map, of all district boundary amendments.

(j) The establishment of appropriate penalties for violations of various provisions of the ordinance, including forfeitures. Compliance with the ordinance shall be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.

(k) The prosecution of violations of the shoreland ordinance.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; r. and recr. (2) (a) 3., am. (2) (a) 6., (2) (c) 3., 5., 7., 9., 10., (3) (d), (3) (e) 1. and cr. (2) (c) 11. and 12., Register, October, 1980, No. 298, eff. 11-1-80; correction in (5) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477; corrections in (2) (a) 1., (b) 2., (d), (e) 1. to 4. (intro.), 8. and 9., (3) (e) 1., (5) (b), (6) (b) and (j) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 05-058: am. (title), r. (1) and (2), renum. (3) to (6) to be (1) to (4) and am. (1), (2) (intro.), (4) (intro.) and (h), cr. (4) (hm) Register January 2010 No. 649, eff. 2-1-10; corrections in (1) (b) 1m. e., (5) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; correction in (1) (g) 1. made under s. 13.92 (4) (b) 7., Stats., Register January 2014 No. 697; CR 13-051: am. (1) (c) 2. d., r. and recr. (1) (e), am. (1) (g) 4., 5. (intro.), a., c., 6. a., r. (1) (g) 6. f., 7., am. (4) (h), (hm) Register September 2014 No. 705, eff. 10-1-14; corrections in (1) (e) made under s. 13.92 (4) (b) 7., Stats., Register September 2014 No. 705.

NR 115.06 Department duties. (1) ASSISTANCE TO COUNTIES. To the full extent of its available resources, the department shall provide advice and assistance to counties in the development, adoption, administration and enforcement of their shoreland zoning and land division ordinances, seeking the highest practicable degree of uniformity consistent with the shoreland protection objectives found in s. 281.31, Stats. As a part of this effort, the department shall prepare a model shoreland zoning ordinance which counties may use in meeting the requirements of s. 59.692, Stats., and this chapter.

(2) REVIEW AND APPROVAL OF SHORELAND ZONING AND LAND DIVISION ORDINANCES. When determining whether a shoreland zoning or subdivision ordinance or any subsequent amendment enacted by a county complies with s. 59.692, Stats., the department shall compare the ordinance and amendments with the minimum standards and requirements for shoreland regulation in this chapter.

(a) *Initial ordinance.* The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with s. 59.692, Stats., and this chapter.

(b) *Amendments to ordinance.* The department and each county shall assure that the county shoreland ordinance continues to comply with this chapter by doing the following:

1. 'County duties.' A county shall keep its shoreland zoning and subdivision ordinances in compliance with s. 59.692, Stats., and this chapter by doing all of the following:

a. A county shall amend its shoreland and subdivision ordinances to meet the minimum standards in this chapter within two years after October 1, 2014.

Note: On September 12, 2010, the Secretary of the Department of Natural Resources signed an executive order extending the date by which a county must adopt or amend shoreland and subdivision ordinances to meet the revised standards in ch. NR 115. The date was extended to February 1, 2014.

b. Pursuant to s. NR 115.05 (4) (h) and (hm), a county shall provide the department notice of hearing on any proposed ordinance amendment and a copy of any decision denying or enacting an amendment.

2. 'Department duties.' a. The department may periodically reevaluate county shoreland zoning and subdivision ordinances for continuing compliance with s. 59.692, Stats., and this chapter.

b. The department shall review any ordinance amendment enacted pursuant to subd. 1. a. and shall issue a certificate of

compliance when the amended ordinance, in the opinion of the department, complies with s. 59.692, Stats., and this chapter.

(c) *Proposed amendments to shoreland-wetland districts.* The department shall review all proposed amendments to shoreland-wetland zoning districts pursuant to s. NR 115.04 (2) to determine whether an ordinance which is amended as proposed will comply with s. 59.692, Stats., and this chapter.

(3) DETERMINATION OF NONCOMPLIANCE. (a) *Failure to enact initial ordinance or amendments.* A county that does not have a shoreland zoning ordinance and subdivision ordinance in effect or that fails to amend its ordinance as required by sub. (2) (b) 1. shall be deemed to be in noncompliance with s. 59.692, Stats., and this chapter. Pursuant to s. 59.692 (6), Stats., and after notice and hearing, the department shall adopt an ordinance if a county fails to do one of the following:

1. Draft and enact shoreland and subdivision ordinances or required amendments within a time period specified by the department.

2. Contract with a consultant to draft the shoreland and subdivision ordinances or required amendments and enact the ordinances within a time period specified by the department.

3. Cooperate with department staff to draft shoreland and subdivision ordinances or required amendments to be enacted by the county within a time period specified by the department not to exceed 180 days.

(b) *Failure to meet minimum standards in initial ordinance or amendments.* Counties which have shoreland zoning and subdivision ordinances or amendments that the department has reviewed under sub. (2) and found do not meet the minimum standards in this chapter shall be deemed to be in noncompliance

with the requirements of s. 59.692, Stats., and this chapter, and the procedures in par. (a) shall apply. If a county fails to modify its ordinance to meet the minimum standards within 6 months after receipt of final amended Wisconsin wetland inventory maps for that county as required by s. NR 115.04 (2) (b), the department shall adopt an ordinance for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats.

(c) *Extension of time.* The department may extend the time periods specified in pars. (a) and (b) if it determines an extension is in the public interest.

(d) *Costs.* Pursuant to ss. 59.692 (6) and 87.30 (1) (c), Stats., the costs of any actions by the department under this subsection to adopt an ordinance or amendments shall be assessed against the county concerned and collected in substantially the same manner as other taxes levied by the state.

(4) MONITORING. It is the responsibility of the department, to aid in the fulfillment of the state's role as trustee of its navigable waters, to monitor the administration and enforcement of shoreland zoning and land division ordinances. In so doing, the department:

(a) Shall review decisions granting special exceptions (conditional uses), variances and appeals to ensure compliance with the applicable shoreland zoning ordinances and this chapter;

(b) May appeal the actions of county zoning officials to county boards of adjustment, under s. 59.694 (4), Stats.; and

(c) May seek court review of the decisions of boards of adjustment, under s. 59.694 (10), Stats.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. (3) (b), Register, October, 1980, No. 298, eff. 11-1-80; corrections in (1), (2) (a) and (c), (3) (a) (intro.) and (b), (4) (b) and (c) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 05-058: am. (2) and (3) Register January 2010 No. 649, eff. 2-1-10; CR 13-051: am. (2) (b) 1. a. Register September 2014 No. 705, eff. 10-1-14.

Chapter NR 117

WISCONSIN'S CITY AND VILLAGE SHORELAND-WETLAND PROTECTION PROGRAM

NR 117.01 Purpose.
NR 117.02 Applicability.
NR 117.03 Definitions.

NR 117.05 Shoreland-wetland protection standards.
NR 117.06 Department duties.

NR 117.01 Purpose. The purpose of this chapter is to establish minimum standards for city and village shoreland-wetland zoning ordinances to accomplish the shoreland protection objectives of s. 281.31, Stats. Cities and villages are required by ss. 62.231 and 61.351, Stats., to adopt shoreland-wetland zoning ordinances within 6 months after receipt of final wetland inventory maps, which have been prepared by the department under s. 23.32, Stats.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526.

NR 117.02 Applicability. (1) The provisions of this chapter are applicable to the adoption, administration and enforcement of city and village shoreland-wetland zoning ordinances adopted under ss. 62.231 and 61.351, Stats. Unless specifically exempted by law, all cities and villages, towns, counties and, when s. 13.48 (13), Stats., applies, state agencies are required to comply with, and obtain all necessary permits, under local shoreland-wetland zoning ordinances.

(2) If a city or village ordinance adopted under s. 62.23, 61.35 or 87.30, Stats., affecting wetlands in a shoreland area is more restrictive than an ordinance enacted under s. 62.231 or 61.351, Stats., affecting the same lands, it continues to be effective in all respects to the extent of the greater restrictions, but not otherwise.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83.

NR 117.03 Definitions. For the purpose of this chapter:

(1) "City planning agency" means a city plan commission created under s. 62.23 (1), Stats., a board of public land commissioners created under s. 27.11, Stats., or a committee of the city council which acts on matters pertaining to city planning.

(2) "Department" means the department of natural resources.

(3) "Environmental control facility" means any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.

(4) "Farm drainage ditch" means any artificial channel which drains water from lands which are currently used for agricultural purposes.

(5) "Floodplain" means the land which has been or may be covered by flood water during the "regional flood," as that term is defined in s. NR 116.03. The floodplain includes the floodway and the flood fringe.

(6) "High-water mark" means the mark left by water at its highest level.

(7) "Navigable water" or "navigable waters," as defined in s. 281.31 (2) (d), Stats., means Lake Superior, Lake Michigan, all

natural inland lakes within this state and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Notwithstanding any other provision of law or administrative rule, a shoreland zoning ordinance required under s. 59.692, Stats., and this chapter or a wetland zoning ordinance required under s. 61.351 or 62.231, Stats., and this chapter does not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not adjacent to a natural navigable stream or river;

(b) Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching; and

(c) Such lands are maintained in nonstructural agricultural use.

Note: In *Muench v. Public Service Commission*, 261 Wis. 492 (1952), the Wisconsin Supreme Court held that a stream is navigable in fact if it is capable of floating any boat, skiff or canoe of the shallowest draft used for recreational purposes. In *DeGayner and Co., Inc. v. Department of Natural Resources*, 70 Wis.2d 936 (1975), the court also held that a stream need not be navigable in its normal or natural condition to be navigable in fact. The DeGayner opinion indicates that it is proper to consider artificial conditions, such as beaver dams, where such conditions have existed long enough to make a stream useful as a highway for recreation or commerce, and to consider ordinarily recurring seasonal fluctuations, such as spring floods, in determining the navigability of a stream.

(8) "Ordinary high-water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics.

Note: Where the bank or shore of any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

(9) "Shorelands", as defined in s. 59.692 (1) (b), Stats., means the area within the following distances from the ordinary high-water mark of navigable waters, as defined in s. 281.31 (2) (d), Stats.:

(a) One thousand feet from a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.

Note: The water level in a glacial pothole lake may remain above the "ordinary high-water mark" several years after flooding, resulting in a "high-water mark" which is above the "ordinary high-water mark." However, there would be no practical difference between the "high-water mark" of a glacial pothole lake and the "ordinary high-water mark" of a glacial pothole lake where the effects of such flooding are no longer evident.

(b) Three hundred feet from a river or a stream or to the landward side of the floodplain, whichever distance is greater.

(10) "Special exception (conditional use)" means a use which is permitted by a zoning ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the board of appeals or, where appropriate, the city or village planning agency or governing body.

(11) "Village planning agency" means a village planning commission created under ss. 61.35 and 62.23 (1), Stats., or a

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committee of the village board which acts on matters pertaining to village planning.

(12) “Wetland”, as defined in s. 23.32 (1), Stats., means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83; correction in (9) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477; corrections in (7) and (9) made under s. 13.93 (2m) (b) 1. and 7., Stats., Register, October, 1999, No. 526.

NR 117.05 Shoreland-wetland protection standards. (1) ESTABLISHMENT OF SHORELAND-WETLAND ZONING REGULATIONS. (a) *City and village review of preliminary wetland inventory maps.* Before the department prepares final Wisconsin wetlands inventory maps:

1. The department shall transmit to the appropriate city or village officials copies of preliminary wetland inventory maps for that city or village.

2. The city or village shall have 90 days to review the preliminary maps unless the review period is extended by written approval of the department, but in no case shall the review period extend for more than 180 days.

3. The city or village may hold a public hearing to solicit public comments on the preliminary maps. Notice of the time and place of the hearing shall be published as a class I notice under ch. 985, Stats.

4. On or before the last day of the review period, the city or village shall return the preliminary maps to the department. If city or village officials believe that the preliminary maps are inaccurate, discrepancies shall be noted on the maps with an accompanying narrative explaining the problem areas.

5. The department shall schedule a meeting with city or village officials within 30 days of the return of the preliminary maps if the city or village has indicated that it believes that there are inaccuracies on the preliminary maps.

6. After meeting with city or village officials to discuss apparent map inaccuracies, the department shall, at department expense, consult available soil survey maps and conduct on-site inspections, if appropriate, in order to evaluate the city or village recommendations, and shall then prepare, adopt and deliver to the city or village the final wetland inventory maps for that city or village.

7. The adoption of a final wetland inventory map is a final decision of the department and may be reviewed as provided in ch. 227, Stats.

(b) *City and village adoption of shoreland-wetland zoning regulations.* 1. Except as provided in subd. 2. or 3., each city and village shall adopt an ordinance or an amendment to an existing ordinance or zoning code which creates a shoreland-wetland zoning district for all wetlands of 5 acres or more, and all portions of wetlands of 5 acres or more, which are shown on the final wetland inventory maps and which are located in shorelands within the incorporated area of the city or village. Such ordinance or amendment shall be adopted within 6 months after receipt of the final wetland inventory maps prepared by the department which cover that city or village. Cities and villages have the option of zoning any wetlands within their incorporated area, including wetlands which are less than 5 acres in size, except those wetlands described in subd. 2.

2. Subdivision 1. is not applicable to:

a. Any wetlands which are filled, prior to the date on which the city or village receives applicable final wetland inventory maps, in a manner that affects their wetland characteristics to the

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extent that the area would no longer meet the definition of wetland in s. NR 117.03; or

b. Any wetlands between the ordinary high-water mark and a bulkhead line established prior to May 7, 1982, under s. 30.11, Stats., that are located on the landward side of the bulkhead line.

3. Subdivision 1. is not applicable to any wetlands which the city or village rezones at the time that shoreland-wetland zoning regulations are initially adopted, if the city or village and the department have determined that such rezoning will have no significant adverse impact upon the wetland functions listed in sub. (4) (d). The provisions of sub. (4) (d) to (h) are applicable to such rezoning. In order to rezone certain mapped wetlands at the time that shoreland-wetland zoning regulations are initially adopted, the city or village shall publish a separate class II notice and hold a separate public hearing on the proposed rezoning in conjunction with the public hearing on the adoption of the shoreland-wetland zoning ordinance, or amendment to an existing ordinance or zoning code, which is required by subd. 1.

4. A public hearing shall be held on the ordinance or amendment to an existing ordinance or zoning code, which creates a shoreland-wetland zoning district, as required by s. 62.23 (7) (d) 2., Stats. The appropriate district office of the department shall be provided with a copy of the proposed shoreland-wetland ordinance or amendment, and with written notice of the public hearing, at least 10 days prior to such hearing.

(2) PERMITTED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Within shoreland-wetland zoning districts, cities and villages may permit, prohibit, or authorize as a special exception (conditional use) the following uses subject to the provisions of chs. 30 and 31, Stats., and other local ordinances and state and federal laws, if applicable:

(a) Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating.

(b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

(c) The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required for:

1. Temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected; or

2. The construction and maintenance of roads necessary to conduct silvicultural activities, as permitted under par. (k).

Note: Local units of government, in the development and application of ordinances which apply to shoreland areas, must consider other programs of statewide interest and other state regulations affecting the lands to be regulated, e.g., regulations and management practices applicable to state and county forests and lands entered under the forest cropland and woodland tax law programs.

(d) The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done, except limited filling and excavating necessary for the construction and maintenance of fences.

(e) The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding, or artificial drainage of the wetland through ditching, tiling, dredging or excavating except for:

1. Flooding, dike and dam construction, and ditching for the purpose of growing and harvesting cranberries;

2. The maintenance and repair of existing farm drainage

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planning agency, and a public hearing shall be held as required by s. 62.23 (7) (d) 2., Stats. The appropriate district office of the department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

(d) In order to ensure that the shoreland protection objectives in s. 281.31, Stats., will be accomplished by the city or village shoreland-wetland zoning ordinance or amendment, a city or village may not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, if the proposed rezoning may result in a significant adverse impact upon any of the following:

1. Storm and floodwater storage capacity;
2. Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;
3. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
4. Shoreline protection against soil erosion;
5. Fish spawning, breeding, nursery or feeding grounds;
6. Wildlife habitat; or
7. Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.

(e) If the department determines that the proposed rezoning may have a significant adverse impact upon any of the criteria listed in par. (d), the department shall notify city or village officials of its determination either prior to or during the public hearing held on the proposed amendment.

(f) The appropriate district office of the department shall be provided with:

1. A copy of the recommendations and report, if any, of the city or village planning agency on the proposed text or map amendment within 10 days after the submission of those recommendations to the city council or village board; and
2. Written notice of the city council's or village board's action on the proposed text or map amendment within 10 days after the action is taken.

(g) If the city council or village board approves the proposed amendment and the department determines, after review as required by s. NR 117.06 (2) (b), that the city or village shoreland-wetland zoning ordinance if so amended will no longer comply with requirements of s. 62.231 or 61.351, Stats., and this chapter, the department shall, after notice and hearing, adopt a complying ordinance for the city or village under s. 62.231 (6) or 61.351 (6), Stats.

(h) If the department has notified the city or village planning agency that a proposed amendment may have a significant adverse impact upon any of the criteria listed in par. (d), that proposed amendment, if approved by the city council or village board, may not become effective until more than 30 days have elapsed since written notice of the city council or village board approval was mailed to the department, as required by par. (f). If within the 30 day period, the department notifies the city council or village board that the department intends to adopt a superseding shoreland-wetland zoning ordinance for the city or village under s. 62.231 (6) or 61.351 (6), Stats., the proposed amendment may not become effective until the ordinance adoption procedure under s. 62.231 (6) or 61.351 (6), Stats., is completed or otherwise terminated.

(5) NONCONFORMING STRUCTURES AND USES. (a) Notwithstanding s. 62.23 (7) (h), Stats., an ordinance or amendment adopted under s. 61.351, Stats., may not prohibit the repair, reconstruction, renovation, remodeling or expansion of a legal non-

conforming structure, or environmental control facility related to a legal nonconforming structure, in existence on the effective date of the shoreland-wetland zoning ordinance or amendment.

(b) Notwithstanding s. 62.23 (7) (h), Stats., an ordinance or amendment adopted under s. 62.231, Stats., may not prohibit the repair, reconstruction, renovation, remodeling or expansion of a legal nonconforming structure in existence on the effective date of the shoreland-wetland zoning ordinance or amendment, or of any environmental control facility in existence on May 7, 1982 related to that structure. Section 62.23 (7) (h), Stats., shall apply to any environmental control facility that was not in existence on May 7, 1982, but which was in existence on the effective date of the shoreland-wetland zoning ordinance or amendment.

(c) Every shoreland-wetland ordinance or amendment adopted under s. 62.231 or 61.351, Stats., and this chapter shall provide that:

1. If a nonconforming use or the use of a nonconforming structure is discontinued for a period of 12 months, any future use of the property or structure shall conform to the requirements of the ordinance or amendment; and
2. Any legal nonconforming use of property which does not involve the use of a structure and which exists at the time of the adoption or amendment of an ordinance adopted under s. 62.231 or 61.351, Stats., and this chapter may be continued although such use does not conform with the provisions of the ordinance. However, such nonconforming use may not be extended.

(d) The maintenance and repair of nonconforming boathouses which extend beyond the ordinary high-water mark of any navigable waters shall be required to comply with s. 30.121, Stats.

(6) ADOPTION OF ADMINISTRATIVE AND ENFORCEMENT PROVISIONS. Every shoreland-wetland zoning ordinance or zoning code containing shoreland-wetland zoning regulations adopted under s. 62.231 or 61.351, Stats., shall provide for:

- (a) The appointment of a new administrator, or the designation of an existing official, and such additional staff as the workload may require, to administer the shoreland-wetland zoning regulations.
- (b) The creation of a board of appeals under s. 62.23 (7) (e), Stats.
- (c) A system for the issuance of land use or building permits for all new construction, reconstruction, structural alteration or moving of buildings and structures, and for other types of development, including the construction and reconstruction of roads. A copy of all applications shall be required to be filed in the office of the zoning administrator.

(d) Regular inspection of permitted work in progress to insure conformity of the finished building, structure or other development with the terms of the ordinance or zoning code.

(e) Maintenance of a record of all proceedings before the board of appeals and the city or village planning agency, including, at a minimum, minutes of the proceedings, copies of all exhibits and records of all official actions.

(f) Written notice to the appropriate district office of the department at least 10 days prior to hearings on proposed special exception (conditional use) permits which are required by the city or village under sub. (2) in a shoreland-wetland zoning district, appeals for map or text interpretations of shoreland-wetland zoning provisions, and map or text amendments to the shoreland-wetland zoning regulations.

(g) Submission to the appropriate district office of the department of copies of decisions on special exception (conditional use) permits in a shoreland-wetland district, appeals for map or text interpretations of shoreland-wetland zoning provisions, and

map or text amendments to the shoreland-wetland zoning regulations within 10 days after the decision is made.

(h) Mapped zoning district boundaries and the recording, on an official copy of such map, of all district boundary amendments.

(i) The establishment of appropriate penalties for violations of various provisions of the shoreland-wetland zoning ordinance or amendment to an existing ordinance or zoning code, including forfeitures. The shoreland-wetland zoning ordinance or amendment to an existing ordinance or zoning code shall be enforceable by the city or village, or any adjacent or neighboring property owner who is or would be specially damaged by the violation, by the use of injunctions to prevent or abate violations, as provided for in s. 62.23 (7) (f) 2., Stats.

(j) The prosecution of violations of the shoreland-wetland zoning ordinance or amendment to an existing ordinance or zoning code.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83; correction in (4) (d) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526.

NR 117.06 Department duties. (1) ASSISTANCE TO CITIES AND VILLAGES. To the full extent of its available resources, the department shall provide advice and assistance to cities and villages in the development, adoption, administration and enforcement of shoreland-wetland zoning ordinances and amendments to existing ordinances or zoning codes, seeking the highest practicable degree of uniformity consistent with the shoreland protection objectives in s. 281.31, Stats. As a part of this effort, the department shall prepare model shoreland-wetland zoning ordinances which cities and villages may use in meeting the requirements of ss. 62.231 and 61.351, Stats., and this chapter.

(2) REVIEW AND APPROVAL OF SHORELAND-WETLAND ZONING ORDINANCES. (a) Compliance with requirements of s. 62.231 or 61.351, Stats., will be determined by the department by comparing the shoreland-wetland zoning regulations which have been adopted by a city or village with the minimum standards for shoreland-wetland zoning regulations contained in s. NR 117.05. The department shall issue a certificate of compliance when a

city or village has, in the opinion of the department, complied with s. 62.231 or 61.351, Stats., and this chapter.

(b) The department shall review all proposed amendments to shoreland-wetland zoning regulations under s. NR 117.05 (4) (e), to ensure that an ordinance or zoning code which is amended as proposed will retain its status of compliance with s. 62.231 or 61.351, Stats., and this chapter.

(3) DETERMINATION OF NONCOMPLIANCE. Cities and villages which do not have shoreland-wetland zoning regulations in effect within 6 months after receipt of final wetland inventory maps for that city or village shall be deemed to be in noncompliance with s. 62.231 or 61.351, Stats., and this chapter. Cities and villages which have shoreland-wetland zoning regulations that do not meet the minimum standards contained in s. NR 117.05 shall also be deemed to be in noncompliance with the requirements of s. 62.231 or 61.351, Stats., and this chapter. If a city or village fails to adopt an ordinance or modify its existing ordinance or zoning code to meet the minimum standards in s. NR 117.05 within 6 months after receipt of final wetland inventory maps for that city or village, the department shall adopt an ordinance or amendment to an existing ordinance or zoning code for the city or village after notice and hearing under s. 62.231 or 61.351, Stats. All costs for such action by the department shall be borne by the noncomplying city or village.

(4) MONITORING. (a) It is the responsibility of the department to:

1. Monitor the administration and enforcement of city and village shoreland-wetland zoning regulations in order to fulfill the state's role as trustee of navigable waters.

2. The department shall periodically reevaluate city and village shoreland-wetland zoning regulations to ascertain continuing compliance with s. NR 117.05. Every city and village shall keep its shoreland-wetland zoning regulations current, effective and enforceable to retain its status of compliance.

(b) The department may initiate enforcement under s. 87.30 (2), Stats., if it finds that a city or village has not adequately enforced its shoreland-wetland zoning regulations.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526.

Chapter Trans 233

DIVISION OF LAND ABUTTING A STATE TRUNK HIGHWAY OR CONNECTING HIGHWAY

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

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

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.

Note: On April 16, 2009, in Dane County Circuit Court Case No. 06-CV-4294, Madison Area Builders Association, et al. v. Wisconsin Department of Transportation; et al., it was ordered and adjudged that the 1999 and 2001 amendments to Chapter Trans 233 were declared to be invalid and unenforceable, but that that order had no effect on the legal validity or enforceability of Chapter Trans 233 as it existed prior to the adoption of the 1999 amendments on February 1, 1999.

Chapter Trans 233 as it existed prior to the adoption of the 1999 amendments on February 1, 1999, is printed as a note following section Trans 233.13.

Trans 233.01 Purpose. Dividing or developing lands, or both, affects highways by generating traffic, increasing parking requirements, reducing sight distances, increasing the need for driveways and other highway access points and, in general, impairing highway safety and impeding traffic movements. The ability of state trunk highways and connecting highways to serve as an efficient part of an integrated intermodal transportation system meeting interstate, statewide, regional and local needs is jeopardized by failure to consider and accommodate long-range transportation plans and needs during land division processes. This chapter specifies the department's minimum standards for the division of land that abuts a state trunk highway or connecting highway, in order to provide for the safety of entrance upon and departure from those highways, to preserve the public interest and investment in those highways, to help maintain speed limits, and to provide for the development and implementation of an intermodal transportation system to serve the mobility needs of people and freight and foster economic growth and development, while minimizing transportation-related fuel consumption, air pollution, and adverse effects on the environment and on land owners and users. Preserving the public investment in an integrated transportation system also assures that no person, on the grounds of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any transportation program or activity. The authority to impose minimum standards for subdivisions is s. 236.13 (1) (e), Stats. The authority to impose minimum standards for land divisions under ss. 236.34, 236.45 and 703.11, Stats., is s. 86.07 (2), Stats. The authority to impose minimum standards for land divisions to consider and accommodate long-range transportation plans and needs is ss. 1.11 (1), 1.12 (2), 1.13 (3), 20.395 (9) (qx), 66.1001 (2) (c), 84.01 (2), (15), and (17), 84.015, 84.03 (1), 85.02, 85.025, 85.05, 85.16 (1), 86.31 (6), 88.87 (3), and 114.31 (1), Stats.

Note: The Department is authorized and required by ss. 84.01 (15), 84.015, 84.03 (1) and 20.395 (9) (qx), to plan, select, lay out, add to, decrease, revise, construct, reconstruct, improve and maintain highways and related projects, as required

by federal law, Title 23, USC and all acts of Congress amendatory or supplementary thereto, and the federal regulations issued under the federal code; and to expend funds in accordance with the requirements of acts of Congress making such funds available. Among these federal laws that the Department is authorized and required to follow are 23 USC 109 establishing highway design standards; 23 USC 134, requiring development and compliance with long-range (minimum of 20 years) metropolitan area transportation plans; and 23 USC 135, requiring development and compliance with long-range (minimum of 20 years) statewide transportation plans. Similarly, the Department is authorized and required by the state statutes cited and other federal law to assure that it does not unintentionally exclude or deny persons equal benefits or participation in transportation programs or activities on the basis of race, color, national origin and other factors, and to give appropriate consideration to the effects of transportation facilities on the environment and communities. A "state trunk highway" is a highway that is part of the State Trunk Highway System. It includes State numbered routes, federal numbered highways, the Great River Road and the Interstate System. A listing of state trunk highways with geographic end points is available in the Department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31. The County Maps published by the Wisconsin Department of Transportation also show the breakdown county by county. As of January 1, 1997, there were 11,813 miles of state trunk highways and 520 center-line miles of connecting highways. Of at least 116 municipalities in which there are connecting highways, 112 are cities and 4 or more are villages.

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

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

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. Register, January, 2001, No. 541, eff. 2-1-01; corrections made under s. 13.93 (2m) (b) 7., Stats., Register January 2004 No. 577.

Trans 233.012 Applicability. (1) In accordance with ss. 86.07 (2), 236.12, 236.34 and 236.45, Stats., this chapter applies to all land division maps reviewed by a city, village, town or county, the department of administration and the department of transportation. This chapter applies to any land division that is created by plat or map under s. 236.12 or 236.45, Stats., by certified survey map under s. 236.34, Stats., or by condominium plat under s. 703.11, Stats., or other means not provided by statute, and that abuts a state trunk highway, connecting highway or service road.

(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 stan-

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dards 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 February 1, 2001 are subject to ch. [Trans 233](#) as it existed February 1, 1999.

(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.

History: Cr. [Register, January, 1999, No. 517](#), eff. 2-1-99; renum. [Trans 233.012](#) to be (1), cr. (2) and (3), [Register, January, 2001, No. 541](#), eff. 2-1-01; correction made under s. 13.93 (2m) (b) 7., Stats., [Register January 2004 No. 577](#).

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

(1) “Certified survey map” or “CSM” means a map that complies with the requirements of s. [236.34](#), Stats.

(1m) “Desirable traffic access pattern” means traffic access that is consistent with the technical and professional guidance provided in the department’s facilities development manual.

Note: Guidelines established in the Department’s Facilities Development Manual are not considered “rules,” as defined in s. [227.01 \(13\)](#), Stats., and so are not subject to the requirements under s. [227.10](#), Stats.

(1r) “District office” means an office of the division of transportation districts of the department.

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

(2m) “In-ground swimming pool” includes a swimming pool that is designed or used as part of a business or open to use by the general public or members of a group or association. “In-ground swimming pool” does not include any above-ground swimming pools without decks.

(3) “Land divider” means the owner of land that is the subject of a land division or the land owner’s agent for purposes of creating a land division.

(4) “Land division” means a division under s. [236.12](#), [236.34](#), [236.45](#) or [703.11](#), Stats., or other means not provided by statute, of a lot, parcel or tract of land by the owner or the owner’s agent for the purposes of sale or of building development.

(5) “Land division map” means an official map of a land division, including all certificates required as a condition of recording the map.

(5m) “Major intersection” means the area within one-half mile of the intersection or interchange of any state trunk highway or connecting highway with a designated expressway, or freeway, under s. [84.295](#), Stats., or a designated interstate highway under s. [84.29](#), Stats.

(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.

(6m) “Reviewing municipality” means a city or village to which the department has delegated authority to review and object to land divisions under s. [Trans 233.03 \(7\)](#).

(6r) “Secretary” means the secretary of the department of transportation.

(7) “Structure” includes a temporary or non-permanent addition to or betterment of real property that is portable in nature, but that adversely affects the safety of entrance upon or departure from state trunk or connecting highways or the preservation of public interest and investment in those highways, as determined by the department. “Structure” does not include portable swing sets, movable lawn sheds without pads or footings, and above ground swimming pools without decks.

(7m) “Technical land division” means a land division involving a structure or improvement that has been situated on the real property for at least 5 years, does not result in any change to the use of existing structures and improvements and does not negatively affect traffic. “Technical land division” includes the conversion of an apartment building that has been in existence for at least 5 years to condominium ownership, the conversion of leased commercial spaces in a shopping mall that has been in existence for at least 5 years to owned spaces, and the exchange of deeds by adjacent owners to resolve mutual encroachments.

(8) “Unplatted” means not legally described by a plat, land division map, certified survey map or condominium plat.

(8m) “User” means a person entitled to use a majority of the property to the exclusion of others.

(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.

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

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

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

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

History: Cr. [Register, January, 1999, No. 517](#), eff. 2-1-99.

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

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

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

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

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

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

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

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

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

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

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

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (intro.), Register, January, 2001, No. 541, eff. 2-1-01.

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

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

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

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

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

(3) **PRELIMINARY AND FINAL REVIEW FOR LAND DIVISIONS OCCURRING UNDER S. 236.45 AND S. 703.11, STATS.** The department shall review preliminary and final land division maps under ss. [236.45](#) and [703.11](#), Stats., when the approving authority, or the land divider, when there is no approving authority, submits a formal request for departmental review for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the

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departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register of deeds, any approving agency, the land division map preparer and the land divider. This information is to be submitted to the district office.

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

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

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

(5) **TIME LIMIT FOR REVIEW.** (a) Except as provided in pars. (b) to (d), not more than 20 calendar days after receiving a completed request to review a land division map, the department, district office or reviewing municipality shall do one of the following:

1. Determine that the land division is a technical land division. Upon determining that a land division is a technical land division, the department, district office or reviewing municipality shall certify that it has no objection to the land division map and shall refund all fees paid for review of that land division map.

2. Provide written notice to the land divider either objecting to or certifying that it has no objection to the land division.

Note: The 20-day time limit for action on a review without any special exception or variance is also established by statute for subdivision plat reviews in sec. [236.12\(3\)](#) and (6), Stats.

(b) The department and district offices are not required to complete conceptual reviews under sub. (1) within a specified time, but shall endeavor to complete a conceptual review under sub. (1) within 30 calendar days after receiving the completed request.

(c) If a special exception is requested under s. [Trans 233.11](#), the department, district office or reviewing municipality shall complete its review of the land division map within the time limit provided in s. [Trans 233.11 \(6\)](#).

(d) A request is considered complete under this subsection unless, within 5 working days after receiving the request, the department, district office or reviewing municipality provides written notice to the land divider stating that the request is incomplete and specifying the information needed to complete the request. On the date that additional information is requested under this subdivision, the time period for review ceases to run, but resumes running upon receipt of the requested information.

(e) If the department, district office or reviewing municipality fails to act within the time limit provided in this section or s. [Trans 233.11 \(6\)](#), the department, district office or reviewing municipality shall be considered to have no objection to the land division map or special exception.

(6) **DISTRICT AUTHORITY TO REVIEW LAND DIVISION MAPS.** Beginning on February 1, 2001, each district office may review land division maps under this chapter. The department shall develop implementing procedures to assure consistency and uniform

mity of such reviews among district offices and shall provide uniform guidance in figure 3 of procedure 7-50-5 of the department's facilities development manual dated December 1, 2000.

Note: Guidelines established under this subsection are not considered "rules", as defined in s. 227.01 (13), Stats., and so are not subject to the requirements under s. 227.10, Stats. However, this rule references uniform guidance by date so that future revisions to that uniform guidance will become effective only if ch. Trans 233 is amended.

(7) MUNICIPAL AUTHORITY TO REVIEW LAND DIVISION MAPS. The department may, upon request, delegate to a city or village authority to review and object to any proposed land division that abuts a state trunk highway or connecting highway lying within the city or village. The department shall develop a uniform written delegation agreement in cooperation with cities and villages. The delegation agreement may authorize a city or village to grant special exceptions under s. Trans 233.11. Any decision of a reviewing municipality relating to a land division map or special exception is subject to the appeal procedure applicable to such decisions made by the department or a district office, except that the department may unilaterally review any such decision of a reviewing municipality to ensure conformity with the delegation agreement and this chapter and may reverse or modify the municipality's decision as appropriate. No reviewing municipality may change its setback policy after executing a delegation agreement under this section, except by written amendment to the delegation agreement approved by the department.

(8) APPEALS. (a) *Department review.* Except as provided in this paragraph and par. (b), a land divider, governmental officer or entity, or member of the general public may appeal a final decision of a district office or reviewing municipality regarding a land division map, special exception, or consequence of a failure to act to the secretary or the secretary's designee. Appeals may be made not more than 20 calendar days after that final decision or failure to act. The secretary or the secretary's designee may reverse, modify or affirm the decision. Not more than 60 calendar days after receiving the appeal, the secretary or secretary's designee shall notify the appealing party and the land divider in writing of the decision on appeal. If the secretary or secretary's designee does not provide written notice of his or her decision within the 60-day limit, the department is considered to have no objection to the final decision of the district office or reviewing municipality. The department may not unilaterally initiate a review of a decision of a district office certifying non-objection to a land division map, with or without a special exception. The department may unilaterally review any decision of a reviewing municipality relating to a land division map to ensure conformity with the delegation agreement and this chapter, and may reverse or modify the municipality's decision as appropriate. No person may appeal a conceptual review under sub. (1).

(b) *Judicial review.* 1. 'Chapter 236 land divisions.' Judicial review of any final decision of the department, district office or reviewing municipality relating to a land division that is subject to ch. 236, Stats., shall follow appeal procedures specified in that chapter.

Note: Land divisions subject to plat approval under s. 236.10, Stats., shall follow the procedures specified in s. 236.13(5), Stats.

2. 'All other land divisions.' Judicial review of any final decision of the department, district office or reviewing municipality relating to a land division that is not subject to ch. 236, Stats., shall follow the procedures specified in ch. 227, Stats., for judicial review of agency decisions.

Note: Final administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to judicial review as provided in ch. 227, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (intro.), (2), (3) and (4), r. and recr. (5), cr. (6) to (8), Register, January, 2001, No. 541, eff. 2-1-01; Reprinted to correct printing error in (3) Register January 2004 No. 577.

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

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

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

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

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

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

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

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

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

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

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

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

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

"All lots and blocks are hereby restricted so that no owner, possessor, user, licensee or other person may have any right of direct vehicular ingress from or egress to any highway lying within the right-of-way of (U.S.H.)(S.T.H.)

or
Street; it is expressly intended that this restriction constitute a restriction for the benefit of the public as provided in s. 236.293, Stats., and shall be enforceable by the department or its assigns. Any access shall be allowed only by special exception. Any access allowed by special exception shall be confirmed and granted only through the driveway permitting process and all permits are revocable."

Note: The denial of a special exception for access or connection purposes is not the functional equivalent of the denial of a permit under s. 86.07 (2), Stats. Appeal of disapproval of a plat (and thus disapproval of a special exception) is available only by certiorari under s. 236.13 (5), Stats. There is no right to a contested case hearing under ss. 227.42 or 227.51 (1), Stats., for the denial of a special exception.

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

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

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

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

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

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (1), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.06 Frequency of connections with a state trunk highway or connecting highway. (1) The land division shall be laid out with the least practicable number of highways and private roads or driveways connecting with abutting state trunk highways or connecting highways.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) At least once every 2 years, the department shall produce general reference maps that generally identify major intersections and the highways specified in subs. 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 1½ 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.

Trans 233.08

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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.

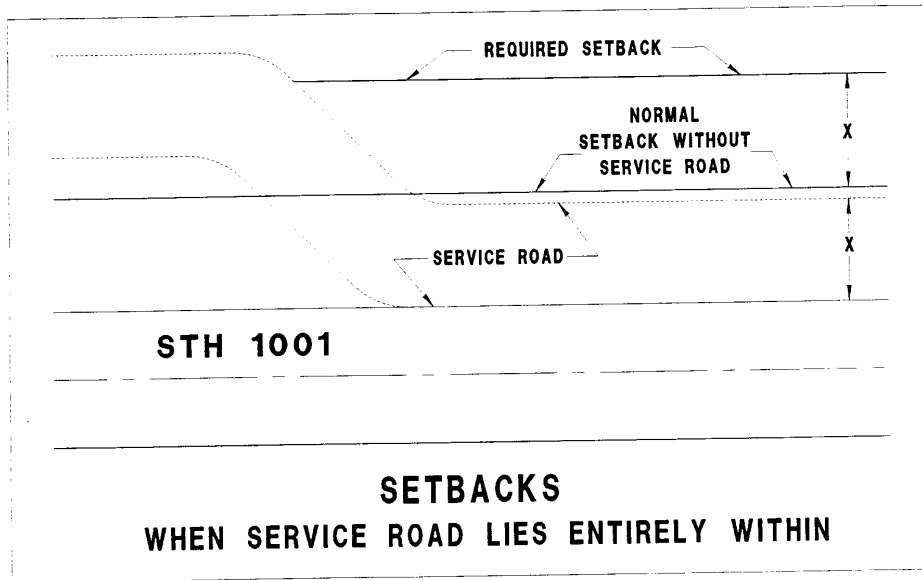
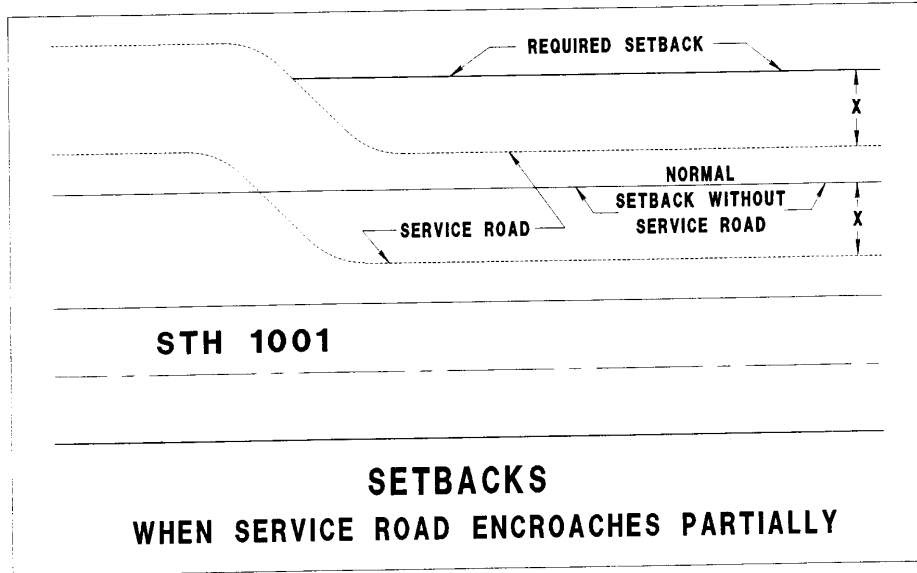
(d) In addition to producing general reference maps at least once every 2 years that identify highways and intersections under par. (c), at least every 2 years the department shall also produce more detailed reference maps suitable for use in the geographic area of each district office.

(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.



(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 agree-

ment 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 233.105 Noise, vision corners and drainage.

(1) NOISE. When noise barriers are warranted under the criteria specified in ch. Trans 405, the 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 addi-

tion, 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 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.

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

“No structure or improvement of any kind is permitted within the vision corner. No vegetation within the vision corner may exceed 30 inches in height.”

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

(3) DRAINAGE. The owner of land that directly or indirectly discharges stormwater upon a state trunk highway or connecting highway shall submit to the department a drainage analysis and drainage plan that assures to a reasonable degree, appropriate to the circumstances, that the anticipated discharge of stormwater upon a state trunk highway or connecting highway following the development of the land is less than or equal to the discharge preceding the development and that the anticipated discharge will not endanger or harm the traveling public, downstream properties or transportation facilities. Various methods of hydrologic and hydraulic analysis consistent with sound engineering judgment and experience and suitably tailored to the extent of the possible drainage problem are acceptable. Land dividers are not required by this subsection to accept legal responsibility for unforeseen acts of nature or forces beyond their control. Nothing in this subsection relieves owners or users of land from their obligations under s. 88.87 (3) (b), Stats.

Note: In sec. 88.87 (1), Stats., the Legislature has recognized that development of private land adjacent to highways frequently changes the direction and volume of flow of surface waters. The Legislature found that it is necessary to control and regulate the construction and drainage of all highways in order to protect property owners from damage to lands caused by unreasonable diversion or retention of surface waters caused by a highway and to impose correlative duties upon owners and users of land for the purpose of protecting highways from flooding or water damage. Wisconsin law, sec. 88.87 (3), Stats., imposes duties on every owner or user of land to provide and maintain a sufficient drainage system to protect downstream and upstream highways. Wisconsin law, sec. 88.87 (3) (b), Stats., provides that whoever fails or neglects to comply with this duty is liable for all damages to the highway caused by such failure or neglect. The authority in charge of maintenance of the highway may bring an action to recover such damages, but must commence the action within 90 days after the alleged damage occurred. Section 893.59, Stats. Additional guidance regarding drainage may be found in Chapter 13 and Procedure 13-1-1 of the Department’s Facilities Development Manual.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (1), (2) (intro.) and (3), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.11 Special exceptions. (1) DEPARTMENT CONSENT. No municipality or county may issue a variance or special exception from this chapter without the prior written consent of the department.

(3) (a) Special exceptions for setbacks allowed. The department, district office or, if authorized by a delegation agreement under sub. (7), reviewing municipality may authorize special exceptions from this chapter only in appropriate cases when warranted by specific analysis of the setback needs, as determined by the department, district office or reviewing municipality. A special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter. The department, district office or reviewing municipality may grant a special exception that adjusts the setback area or authorizes the erection or installation of any structure or improvement within a setback area only as provided in this subsection. The department, district office or reviewing municipality may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

Note: The phrase “practical difficulty or unnecessary hardship” has been eliminated from the rule that was effective February 1, 1999, to avoid the adverse legal consequences that could result from the existing use of the word “variance.” The Wisconsin Supreme Court has interpreted “variance” and this phrase to make it extremely difficult to grant “variances” and in so doing has eased the way for third party legal challenges to many “variances” reasonably granted. See *State v. Kenosha County Bd. of Adjust.*, 218 Wis. 2d 396, 577 N.W.2d 813 (1998). The Supreme Court defined “unnecessary hardship” in this context as an owner having “no reasonable use of the property without a variance.” Id. at 413. The “special exception” provision in this rule is not intended to be so restrictive and has not been administered in so restrictive a fashion. In the first year following revisions of ch. Trans 233, effective February 1, 1999, the Department granted the vast majority of “variances” requested, using a site and neighborhood-sensitive context based on specific analysis.

(b) Specific analysis for special exceptions for setbacks. Upon request for a special exception from a setback requirement of this chapter, the department, district office or reviewing municipality shall specifically analyze the setback needs. The analysis may consider all of the following:

1. The structure or improvement proposed and its location.
2. The vicinity of the proposed land division and its existing development pattern.
3. Land use and transportation plans and the effect on orderly overall development plans of local units of government.
4. Whether the current and forecasted congestion of the abutting highway is projected to be worse than level of service “C,” as determined under s. Trans 210.05 (1), within the following 20 years.
5. The objectives of the community, developer and owner.
6. The effect of the proposed structure or improvement on other property or improvements in the area.
7. The impact of potential highway or other transportation improvements on the continued existence of the proposed structure or improvement.
8. The impact of removal of all or part of the structure or improvement on the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement.
9. Transportation safety.
10. Preservation of the public interest and investment in the highway.
11. Other criteria to promote public purposes consistent with local ordinances or plans for provision for light and air, providing fire protection, solving drainage problems, protecting the appearance and character of a neighborhood, conserving property values, and, in particular cases, to promote aesthetic and psychological values as well as ecological and environmental interests.

(c) Adjust setback. If the department, district office or reviewing municipality grants a special exception by adjusting the setback area, the department shall pay just compensation for any subsequent department-required removal of any structure or improvement that the department has allowed outside of the ap-

proved, reduced setback area on land that the department acquires for a transportation improvement. The department may not decrease the 15 foot setback distance established under s. [Trans 233.08 \(3n\)](#), except in conformity with a comprehensive local setback ordinance, generally applicable to the vicinity of the land division, that expressly establishes a closer setback line.

(d) *Allow in setback – removal does not affect viability.* The department, district office or reviewing municipality may authorize the erection of a structure or improvement within a setback area only if the department, district office or reviewing municipality determines that any required removal of the structure or improvement, in whole or in part, will not affect the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement, and will not adversely affect the community in which it is located. Any owner or user who erects a structure or improvement under a special exception granted under this paragraph assumes the risk of future department-required removal of the structure or improvement and waives any right to compensation, relocation assistance or damages associated with the department's acquisition of that land for a transportation improvement, including any damage to property outside the setback caused by removal of the structure or improvement in the setback that was allowed by special exception. The department, district office or reviewing municipality may not grant a special exception within an existing setback area, unless the owner executes an agreement or other appropriate document required by the department, binding on successors and assigns of the property, providing that, should the department need to acquire lands within the setback area, the department is not required to pay compensation, relocation costs or damages relating to any structure or improvement authorized by the special exception. The department, district office or reviewing municipality may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter. The department, district office or reviewing municipality shall require the executed agreement or other appropriate document to be recorded with the register of deeds under sub. (7) as part of the special exception.

(e) *Blanket or area special exceptions for setbacks.* Based on its experience granting special exceptions on similar land divisions, similar structures or improvements, or the same area and development pattern, the department may grant blanket or area special exceptions from setback requirements of this chapter that are generally applicable. The department shall record blanket or area special exceptions with the register of deeds in the areas affected or shall provide public notice of the blanket or area special exceptions by other means that the department determines to be appropriate to inform the public.

(f) *Horizon of setback analysis.* For purposes of its specific analysis, the department, district office or reviewing municipality shall consider the period 20 years after the date of analysis.

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

(4) SPECIAL EXCEPTIONS FOR PROVISIONS OF THIS CHAPTER OTHER THAN SETBACKS. Except as provided in sub. (3), the department may not authorize special exceptions from this chapter, except in appropriate cases in which the literal application of this chapter would result in practical difficulty or unnecessary hardship, or would defeat an orderly overall development plan of a local unit of government. A special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. [236](#), Stats., and of this chapter. The department may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

Note: This subsection uses the phrase "practical difficulty or unnecessary hardship" to indicate a higher standard for special exceptions from provisions of this

chapter other than setbacks. However, the phrase "special exception" has been used rather than the word "variance." The Supreme Court defined "unnecessary hardship" in a variance context as an owner having "no reasonable use of the property without a variance." See *State v. Kenosha County Bd. of Adjust.*, [218 Wis. 2d 396](#), [413, 577 N.W.2d 813](#) (1998). The department intends the "special exception" provision in this rule to be administered in a somewhat less restrictive fashion than "no reasonable use of the property" without a "variance."

(5) MUNICIPAL SPECIAL EXCEPTIONS. A delegation agreement under s. [Trans 233.03 \(8\)](#) may authorize a reviewing municipality to grant special exceptions. No municipality may grant special exceptions to any requirement of this chapter, except in conformity with a delegation agreement under this subsection. Any decision of a reviewing municipality relating to a special exception is subject to the appeal procedure applicable to such decisions made by the department or a district office, except that the department may unilaterally review any such decision of a reviewing municipality only for the purposes of ensuring conformity with the delegation agreement and this chapter.

(6) TIME LIMIT FOR REVIEW. Not more than 60 calendar days after receiving a completed request for a special exception under s. [Trans 233.11](#), the department, district office or reviewing municipality shall provide to the land divider written notice of its decision granting or denying a special exception. The 60-day time limit may be extended only by written consent of the land divider.

Note: The Department intends that decisions concerning special exceptions be made in the shortest practicable period of time. The Department intends the 60-day time limit applicable to special exceptions to allow sufficient time for a land divider and the Department, district office or municipality to explore alternative locations or plans to avoid and minimize conflicts and to facilitate mutually acceptable resolutions to conflicts.

(7) RECORDING REQUIRED. A special exception granted under this section is effective only when the special exception is recorded in the office of the register of deeds. Any structure or improvement erected under authority of a special exception granted under this section is presumed to have been first erected on the date the special exception is recorded.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; renum. (2) to be (3) (a) and am., cr. (3) (b) to (f) and (4) to (7), Register, January, 2001, No. 541, eff. 2-1-01.

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

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

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

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

Note: Chapter [Trans 233](#) as it existed prior to the adoption of the 1999 amendments on February 1, 1999, is printed below.

Chapter [Trans 233](#)

LAND SUBDIVISION PLATS ABUTTING STATE TRUNK HIGHWAYS AND CONNECTING STREETS

Trans 233.01 Purpose. (1) **PURPOSE OF CH. 236, STATS.** The purpose of ch. [236](#), Stats., is "to regulate the subdivision of land to promote public health, safety and general welfare; to further the orderly layout and use of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, and other public requirements; to provide for proper ingress and egress; and to

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promote proper monumenting of land subdivided and conveyancing by accurate legal description. The approvals to be obtained by the subdivider as required in this chapter shall be based on requirements designed to accomplish the aforesaid purposes."

(2) **PURPOSE OF RULES.** Accordingly, the purpose of these rules is to specify minimum standards necessary to meet the requirements of state highway commission review of land subdivision plats abutting the state trunk highway system as provided under s. 236.13 (1) (e), Stats., as follows:

"(e) *The rules of the state highway commission relating to provision for the safety of entrance upon and departure from the abutting state trunk highways or connecting streets and for the preservation of the public interest and investment in such highways or streets.*"

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.02 Basic principles. Land subdivision tends to affect highways by generating traffic, increasing vehicular parking requirements, reducing sight distance, increasing driveways and other access points and, in general, impairing safety and impeding traffic movements. To control these tendencies and to carry out the purposes of ch. 236, Stats., the commission promulgates the following basic requirements in this section and the specific rules of subsequent sections of these rules and regulations:

(1) Local traffic generated in subdivisions abutting on a state trunk highway shall be served by an internal street system of adequate capacity, intersecting and connecting with state trunk highways at a minimum number of points and in a manner which is safe, convenient, and economical to maintain and regulate.

(2) Subdivisions shall be so laid out that the individual lots or parcels do not require direct vehicular access to the highway.

(3) To accomplish reasonable functional integration and coordination of roadways and private driveways:

(a) The commission, particularly in the absence of a local comprehensive general or master plan or official map, will consider not only the immediate plat before it, but also its relationship to the access requirements of adjacent and contiguous subdivisions and unplatted lands;

(b) These rules and regulations shall be applicable not only to the lands proposed to be subdivided but also to all lands owned by, or under option (formal or informal), contract or lease to the subdivider and which are contiguous to and adjoin the land being subdivided.

(4) Setbacks from the highway shall be provided as hereinafter specified.

(5) The subdivision layout shall include provision for surface drainage in such a manner that the existing highway drainage system is not adversely affected.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.03 Definitions. (1) "State trunk highway" includes connecting streets as defined in s. 84.02 (11), Stats.

(2) "Subdivision" is as defined in s. 236.02 (7), Stats.; provided, however; that where the local unit of government, under s. 236.45 (2), Stats., has adopted an ordinance governing the subdivision or other division of land which is more restrictive than the provisions of ch. 236, Stats., and has provided for commission review, these rules and regulations shall also apply to those subdivisions or other divisions of land as specified in the ordinance.

(3) "Subdivision abutting a state trunk highway" means:

(a) A subdivision some part of which adjoins or abuts a state trunk highway; or

(b) A subdivision which includes streets one or more of which is to be laid out or dedicated as part of the subdivision, and which is to connect with a state trunk highway; or

(c) A subdivision which is separated from a state trunk highway by unplatted lands which abut the highway and the subdivision and are owned by, or under option (formal or informal), contract or lease to the subdivider.

(4) "Frontage street" or "frontage road" means a local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

(5) "Street" or "road" includes alleys.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.04 Required information. The subdivider shall show on the face of the preliminary plat or on a separate sketch at a scale of not more than 1,000 feet to the inch, the approximate distances and relationships for the following:

(1) The geographic relationship to the proposed subdivision of any unplatted lands which abut any state trunk highway and are contiguous to the proposed subdivision, and the ownership rights in and the subdivider's interest, if any, in these lands.

(2) All existing, proposed, authorized or approved points of access to any state trunk highway from said unplatted lands which abut any state trunk highway and are contiguous to the proposed subdivision.

(3) The classification of each point of access as a public road, private road or other entrance, and whether existing, proposed, authorized or approved.

(4) The principal use of each point of access (other than a public road) as agricultural, commercial, industrial or residential, and as existing under commission permit or otherwise.

(5) The location of the nearest public highway or street on every side of the proposed subdivision.

(6) The location of public highway or street intersections with the state trunk highway on that side of the state trunk highway opposite the subdivision and within 300 feet on each side of the subdivision.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.05 Direct access to state trunk highway. (1) There shall be no direct vehicular access between the state trunk highway and the individual lots or parcels in the subdivision without the express consent of the commission. The following restriction shall be appropriately placed on the face of the plat and shall be executed as a conveyance is executed. (It may be made a part of the owner's certificate required by s. 236.21 (2) (a), Stats.):

As owner I hereby restrict all lots and blocks (except Lot ___ Block ___), in that no owner, possessor, user, nor licensee, nor other person shall have any right of direct vehicular ingress or egress with (U.S.H.) (S.T.H.) _____ or _____ Street, as shown on the plat; it being expressly intended that this restriction shall constitute a restriction for the benefit of the public according to s. 236.293, Stats., and shall be enforceable by the state highway commission.

(2) In accordance with the objectives and purposes of these rules and regulations, the commission may require a desirable pattern of access between a state trunk highway and abutting lands which are contiguous to and adjoin the proposed subdivision and which are owned by or under option (formal or informal), contract or lease to the subdivider. A recordable covenant running with the land may be required with respect thereto.

(3) When deemed feasible, frontage roads or a satisfactory alternative will be required.

(4) Before street connections to state trunk highways, as indicated on an approved plat can be constructed, a permit must be obtained as required under s. 86.07, Stats. These permits for street connections will be issued only to the local unit of government and will not be issued prior to favorable commission review of the preliminary or final plat.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.06 Frequency of street or road connections. (1) The subdivision shall be laid out with a minimum number of street connections with abutting state trunk highways.

(2) Dependent upon the character of the state trunk highway abutting the subdivision, the commission will determine a minimum allowable distance between connections with the state trunk highway, 2 subdivision streets or between a subdivision street and an existing or planned street or road. In general, a distance of at least 1,000 feet will be required.

(3) In appropriate cases where existing streets provide access to the state trunk highway deemed reasonable and adequate by the commission, the streets in the subdivision shall not be opened directly into the state trunk highway.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.07 Temporary street connections. (1) The commission may issue temporary street permits for street connections in the case of:

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

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

(2) The commission may require that such temporary street connections be altered or closed by the appropriate parties or authorities at a later date in order to achieve a desirable access pattern. The street connection shall be prominently labeled "Temporary Street Connection" on the plat, and the following restriction shall be lettered on the plat:

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

(3) When such a temporary street connection is granted, the subdivider shall dedicate a frontage road or a satisfactory alternative, to provide for a present or future pattern of access in accordance with the requirements of s. Trans 233.06 (2).

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56; corrections in (1) and (3) made under s. 13.93 (2m) (b) 4., Stats., Register, June, 1989, No. 402; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1996, No. 488.

Trans 233.08 Setback requirements. (1) There shall be a minimum building setback 110 feet from the centerline of the state trunk highway or 50 feet outside the nearer right-of-way line, whichever is more restrictive. However, if the local unit of government has a uniform setback ordinance which requires a minimum building setback for state trunk highways equal to or greater than 100 feet from the centerline or 42 feet from the nearer right-of-way line, whichever is more restrictive, the local ordinance shall govern for the sake of consistency; provided that the local unit of government shall allow no variances or exceptions for platted areas abutting state trunk highways without prior approval of the commission. There shall be no improvements or structures placed between the highway and the set back line.

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

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

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

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Trans 233.09 Physical requirements of access. Rules governing construction requirements of driveways and street openings will be found in ch. **Trans 231**. Detailed specifications may be obtained at the district offices of the commission.

History: Cr. [Register, September, 1956, No. 9](#), eff. 10-1-56; corrections made under s. 13.93 (2m) (b) 7., Stats., [Register, August, 1996, No. 488](#).

Trans 233.10 Recommended procedure. In accordance with s. 236.12 (2) (a), Stats., the commission recommends the following procedure:

(1) Before the lots are surveyed and staked out, the subdivider or his agent should submit a sketch to the district office of the district in which the land lies. The sketch should indicate roughly the layout of lots and the approximate location of streets, and should include other information required in these rules and regulations.

(2) The subdivider should confer with district office representatives throughout development of the plat.

(3) Prior to the formal submittal of a preliminary or final plat pursuant to s. 236.12 (2) (a), Stats., the subdivider should have the district office review the plat.

History: Cr. [Register, September, 1956, No. 9](#), eff. 10-1-56.

Trans 233.11 Variances. The commission may, in appropriate cases and subject to appropriate conditions and safeguards, authorize variances to the terms of these rules and regulations in special cases where the literal application of these rules and regulations will result in practical difficulty or unnecessary hardship, or will defeat an orderly over-all development plan of a local unit of government; provided that such variance shall not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and these rules and regulations.

History: Cr. [Register, September, 1956, No. 9](#), eff. 10-1-56.

Trans 233.12 Performance bond. The commission may, in appropriate cases, require that a performance bond be posted to ensure the construction of any improvements in connection with the subdivision which may affect a state trunk highway.

History: Cr. [Register, September, 1956, No. 9](#), eff. 10-1-56.