



1.0 General Policy

Conditions may be placed on STH connection permits approved under Wis. Stat. § [86.07\(2\)\(a\)](#) and Ch. [Trans 231](#) to assist WisDOT with effective access management of the STH system. Conditions are also known as provisions. A list of general conditions and supplemental provisions is standard on the DT1504 STH connection permit application form.

2.0 Supplemental and Special Provisions

Evaluate the reasons for each proposed new connection, alteration, or relocation along with how WisDOT is managing access within the affected STH corridor. Review the permit application to determine if any of the supplemental provisions should be checked. In addition, develop special provisions as needed to address situations not covered in the general conditions or supplemental provisions. The following are examples of special provision concepts to consider but is not meant to be all-inclusive.

1. **Type of use.** Categorize and correlate a connection to the property it serves and how it functions. This may be critical when:
 - Development is fast approaching an area – especially when it is in a transitional region between urban and rural areas
 - There may be a proposed sale of a property
 - A connection should only be used for hunting or other seasonal activityTypes of use and their definitions are in [09-10-20, 2.0](#).
2. **Covenants.** See [3.0](#).
3. **Maximum number of trips per day.** Use when trying to preserve STH traffic flow (capacity) or provide property access in a substandard location due to geographic or other physical boundary barriers.
4. **Type(s) of vehicles.** Restricting use to cars only, vehicles up to a certain length, etc.
5. **Highway improvements needed.** A specific intersection type, bypass lanes, signals, etc.
6. **Restricted turning movement(s).** Right-in, right-out (with or without medians), or medians that allow left turns into a connection, but do not allow left turns out.
7. **Directional movements.** Entrance only; exit only.
8. **Shared.** Use for access consolidation when two property owners can share a driveway along a common border, or if one owner can obtain a permanent access easement through the other's property to use a driveway.
9. **Temporary.** A STH connection that will not be permanent. Typically, this may be up to six months. Examples include:
 - A road or driveway that will only be used for harvesting timber during a specified time period, and will be removed when that period has expired
 - A driveway used for a special event such as Farm Progress Days
 - A driveway or road used only during construction of a home, business, or other facility
10. **Design features.** Includes side-slopes, gradients, drainage, culvert size, apron end wall bars, etc.
11. **Removal of an existing driveway.** Use for consolidating STH connections, for example, removing horseshoe driveways. Also used for removing illegal connections.

12. **Hours of operation.** Include when connections should be used only for non-peak traffic hours or for a special event.
13. **Emergency use only (gated and non-gated).** Typically used for police, fire, and EMS only. When public access to a connection must be prevented, a locked gate may also be needed. When an emergency access is needed for a subdivision (typically through the end of a cul-de-sac), a special concrete-grid system may be installed under the grass to support heavy fire equipment. If the STH has curb and gutter, a curb-cut is not installed. This emergency connection is hidden to the public.

It is also possible to place conditions on a permit approval that combine various provisions, and/or would go into effect in the future should certain criteria be met. For example, a provision may state that:

The STH 33 median opening will be closed at the permitted connection and the connection restricted to right-in, right-out movements when the left-turn movement into the connection is 500 AADT (Annual Average Daily Traffic) or more, the left-turn movement out of the connection is 500 AADT or more, or STH 33 AADT is 5,000 or more. Construction of the closure and its associated costs shall be the permittee's responsibility. WisDOT may block the median with temporary barriers should the permittee fail to take proper action after receiving written notice from WisDOT. Continued delay may also result in permit revocation.

3.0 Covenants

A covenant is a special provision involving a recorded document that may be used in association with a STH connection permit or other access management action. Within the document itself, a covenant may contain one or more distinct access restrictions. The advantage of a covenant is that it is recorded against the property deed. A future property owner may not make any changes to a connection that has a covenant unless s/he obtains WisDOT approval, and a new covenant is recorded.

3.1 Covenant Usage

Covenants are a critical access management tool when trying to preserve traffic flow, mobility, or safety on a highway corridor. As a pattern of development nears a property, restricting access via a covenant ensures that a change of use will not occur without WisDOT approval. This is critical when there may be an impending land sale. For example, a subdivision covenant should be used on abutting lands that are contiguous to and adjoin a proposed subdivision and also owned by or under option (formal or informal), contract, or lease to the subdivider ([Trans 233.05\(2\)](#) & [233.02\(3\)\(b\)](#)]. Covenants may also be necessary when trying to consolidate or limit access via a shared connection especially when it must be restricted to a specific location along a property frontage because substandard sightlines or other geometrics exist.

When [Table 1](#) criteria are present, consider whether a covenant should be required as a provision of STH connection permit approval. While intending to be as complete as possible, criteria not listed may also be considered if staff feel there are compelling reasons to do so.

3.2 Covenant Language

Covenant language should be as detailed as possible. Typically, it covers the number, location, and type of connection(s) along with other constraints that may be necessary. Requiring a vision triangle on each side of a connection is another type of restriction that may be covered with a covenant. Listed below is a sample of actual language used in a covenant:

No direct vehicular access shall be permitted between the above-described lands and USH 45 except by means of one residential access point in the north 100 feet of said Lot 1 and also by means of one residential access point in the north 100 feet of the south 800 feet of the southeast ¼ of the southeast ¼ of said section 29. Each access point is restricted to one single-family residence only. Any change in use will require application for a new permit and said driveway may be subject to removal at the cost of the property owner.

Never use the words “right of access” or “access rights” in permit or covenant language. A permit does not grant a right but rather grants permission for a STH connection to exist. Do not place setback restrictions within a covenant. WisDOT should be aware of and defer to county and/or local setback restrictions where they exist.

Table 1: Criteria for Pursuing Access Restrictions in a Permit Using a Covenant

Based on region analysis, the presence of any of the bullet points below may require an access covenant.
SAMP = State Access Management Plan

STH Corridor SAMP Type / Functional Classification		
SAMP Tier 1: Principal Arterial	SAMP Tier 2: Minor Arterial	SAMP Tier 3: Major Collector ¹
<ul style="list-style-type: none"> No § 84.25 or § 84.295 controls exist On Corridors 2030 Backbone/ Connector Route 	<ul style="list-style-type: none"> No § 84.25 controls exist Reliever route for freeways and expressways OR if corridor provides service between economic centers AADT exceeds 2,000 vehicles/day³ 	<p><u>RURAL</u></p> <ul style="list-style-type: none"> An adopted Corridor Plan² is in place for the given corridor Local Comprehensive Planning efforts infer the need to protect local interests Safety: if conditions mandate the need for greater control
<p>The following bullets apply to both Tier 1 and 2</p> <ul style="list-style-type: none"> § 84.09 documents (deeds) do not specifically maintain the appropriate level of control relative to the function of the corridor⁴ An adopted Corridor Plan² is in place for the given corridor Local Comprehensive Planning efforts infer the need to protect corridor interests Presence of a Major or reconstruction project in 6-year improvement or long-range plan Where development pressure is increasing, for example, within the extraterritorial jurisdiction of a town through a village or city Pattern of development is approaching subject property (regional development pressure) Long property frontage exists on a STH Safety issue(s) relative to remaining frontage on STH (post land division) 		<p><u>URBAN</u></p> <p>Urban Collectors should receive greater attention only if safety or functional integrity is threatened by large-scale development.</p> <p>Decision should be made based on guidance found in the FDM and/or HMM but use flexibility where regional or site-specific conditions warrant.</p>

Key to notes:

- Highly important. Major RURAL collectors are roads with very low AADT, and do not have a high priority in a region's 6-year program. Do not treat them with the same level of regulatory attention as routes in higher functional classes. URBAN Collectors are different. In most cases, spacing concerns become difficult, if not impossible, to mitigate given past connection approvals. Protect the safety and preservation of the existing corridor especially in light of limited improvement dollars.

Collectors are mostly viewed as roads that WisDOT would rather have local governments own/maintain. WisDOT considers it a long-term goal to release as many of these roads as is practicable. Until that occurs, achieve or maintain balance between the need to preserve functional integrity and safety of these corridors with how access use is actually occurring.
- A corridor plan is generally defined as a plan that:
 - Features a completed EA or FONSI relative to future, programmed relocation or capacity expansion, or
 - Is slated to be included in WisDOT's Improvement Program within the next 10 -15 years, or
 - Has a signed MOU or local agreement in place defining an agreed access management plan. This could be utilized in urban areas where no capacity expansion is scheduled within near future, but long-term growth potential is obvious, or
 - Is initiated by a region. The product of which provides long-term planning between WisDOT and other units of government and a blueprint for development within the context of potential WisDOT corridor improvements -- preferably producing a planning document.
- This is the same threshold set forth in § 84.25 for the promulgation of an access control project. This sets statutory precedent for such a value requiring the need for access restrictions.
- For example, a deed may show that a "private" entrance is allowed but does not clearly identify its use.

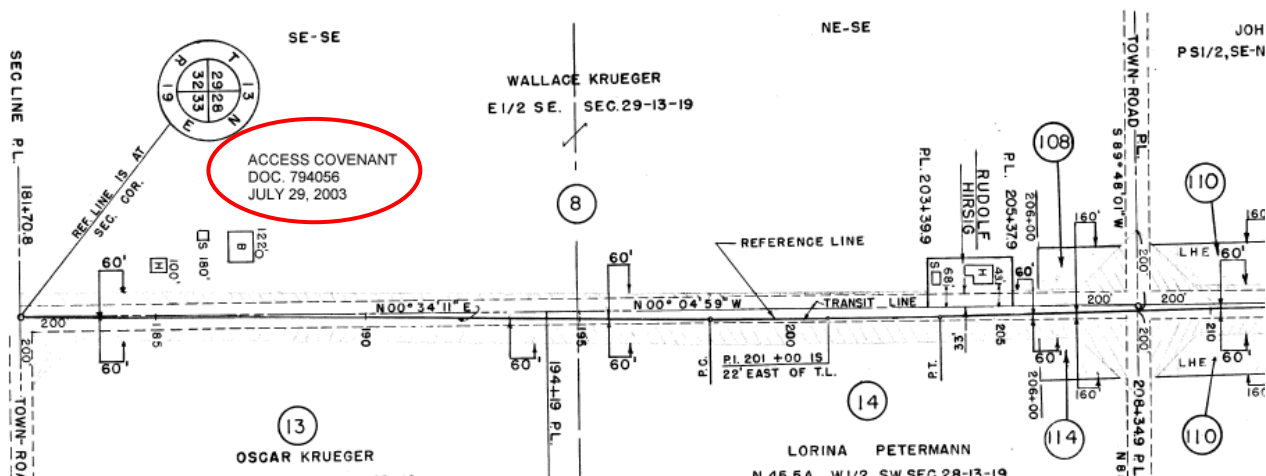
3.3 Covenant Forms & Instruction

Use form [DT1646 Access Covenant \(Permit\)](#) or [DT1669 Access Covenant \(Subdivision\)](#) to document a covenant. The region develops the restriction language that will be placed in the covenant. In addition to filling out the blanks on the official form, the region may add additional language as needed.

The property owner must review the completed form. If agreeable to its content, the owner signs the form in front of a Notary Public, which may be a WisDOT employee. The property owner then has the covenant recorded at the county Register of Deeds office and is responsible for paying the nominal filing fee. WisDOT may record the document instead. When officially recorded, the Register of Deeds will send the completed form back to the region office. Until then, do not issue a permit.

Note that the property description on the form must be correct. If not, the Register of Deeds will return the form to the region. The region would then have to resubmit the form and pay a subsequent filing fee. Before the final draft document is signed, a real estate agent, registered land surveyor or professional engineer should review it.

The covenant is also recorded on a WisDOT plat (example below). The region access management representative sends the completed covenant to the region plat specialist.¹



long as the connection exists. Contractors hired to construct connections should carry sufficient general liability insurance. The recommended amounts are listed in this [document](#). WisDOT may request that insurance be obtained as a condition of the permit, which would be verified with submission of an insurance certificate prior to permit approval. Municipalities and counties are typically self-insured.

4.2 Irrevocable Letter of Credit (ILOC)

Consider using an ILOC when a permittee will be performing his/her own permitted work, and its value is estimated at \$100,000 or more. This enables WisDOT to secure the required funds needed to complete STH infrastructure improvements or make repairs from defects in workmanship/materials. An ILOC is set-up through the permittee's bank and gives WisDOT the authority to draw upon the funds as needed for documented work or repairs that need to be completed. Contact the ROW Permits Unit in BHM to get started with the ILOC. OGC and the Bureau of Business Services will also have to be involved.

4.3 Repairs/Restoration Needed

In situations where STH repairs or restoration must be made and an ILOC is not used as a condition of the permit nor is there sufficient insurance available, three options are available:

1. Work with the permittee to have them make the necessary repairs or restoration under the premise that if the work is not done, the permit may be revoked and/or the connection removed. In addition,

¹ This may be difficult with transportation project plats.

WisDOT staff should include with discussions or correspondence that legal action may be taken against the permittee to recover any WisDOT costs incurred for repairs or restoration, which under Wis. Stat. § [86.02](#) the amount may be tripled.

2. Contact a region maintenance engineer (or supervisor) to have a county highway department (CHD), working under contract to perform WisDOT maintenance, do the necessary work. This may include blocking the connection temporarily to protect highway safety during an appeal or other legal proceedings. Follow the guidance in [HMM 09-10-30, 7.0](#) to set-up a discretionary maintenance agreement (DMA) project to recover WisDOT's costs. **Do not use** a CHD's routine maintenance agreement (RMA) budget to pay for this work.
3. Work with an upcoming WisDOT project to incorporate the necessary improvements into the project design plans, or in the event the project is under construction, have the PDS construction project manager issue a contract change order (CCO). In either case, the cost should be evaluated, documented, and an invoice sent to the permittee (if possible). Recouping costs may require legal action by WisDOT.