Section 15 Administrative Access Control (Control by Section 84.25)

FDM 7-15-1 General December 5, 2017

1.1 Definition

Section 84.25 of the Wisconsin Statutes, the Controlled Access Highway law, authorizes the Secretary to designate as "controlled access highways" up to 1,500 miles of the rural state trunk highway system on which the ADT potential exceeds 2,000 vehicles. This statute authorizes WisDOT to allow the number of access points it deems appropriate, providing that all parcels are given reasonable access. Removal of access under 84.25 does not require compensation because it is an application of police power by the State. (Counties have similar powers for imposing access control on county roads under section 83.027 of the statutes.)

Administrative regulation under section 84.25 has universally been held valid as a proper means of access control. The universal test has required that such controls be reasonable. Under 84.25, access is typically frozen. However, the control imposed may not limit, restrict or otherwise reduce access below a point where such access is considered reasonably necessary and adaptable to serve the owners' lands. Beyond this point, section 84.25 may not ordinarily be used, and it then becomes a matter of acquiring private property rights for a public use. This is done by paying just compensation as provided for under section 84.09.

1.2 Application Criteria

Highways included in Tiers 1, 2A and 2B of the State Access Management Plan (refer to FDM 7-5) are WisDOT's priority corridors for the implementation of access controls. Administrative access control should be used where there is a priority for access control but there is no project with general right-of-way acquisition in the Six Year Improvement Program, and where abutting lands may be expected to change from agricultural and low density residential use to a more traffic-intensive use. This type of access control is best used when it is not necessary to eliminate driveways, but simply to freeze the existing access and control any future changes in access. Section 84.25 should be utilized in areas where access has negligible value, and, therefore, requires no compensation (such as in rural areas where there is very little or no development at the time). Do not place section 84.25 controls on a Connecting Highway. If project limits are difficult to determine, contact the Access Management Engineer in the Bureau of Technical Services for assistance.

It is important that this tool not be used in a given geographic area at the same time that access is being purchased under statute 84.09 (refer to FDM 7-20 for a discussion of purchased access control). Conversely, on highway segments where section 84.25 is being or has previously been implemented, access rights should not be purchased, even if right-of-way is being acquired, unless all access is being removed and the parcel will be landlocked. It is important to avoid purchasing controls that have already been acquired.

The WisDOT region office should contact all property owners along the route to assure that there is a mutual understanding regarding the access points and driveways before the controlled access project is completed. There should be concurrence of the local units of government and an acceptance on the part of the property owners. Public involvement is a key phase that informs local officials and citizens of the need for continued access management on the state highway system.

1.3 Restricting the Type Of Access

On a controlled access highway, the use of particular access points can be restricted through special crossing authorizations or by tying driveway authorization to specific driveway uses.

Section 84.25(7) of the statutes provides for granting special crossing authorizations on controlled access highways. Special crossings allow access to land held under one ownership that has been severed by a controlled access highway. Their use is restricted to travel across, rather than onto, the highway and they are to be terminated when the parcels pass into separate ownership.

A special crossing access should be located as nearly opposite a private driveway, another special crossing, or public highway as conditions permit. Special crossings should be provided where the need is substantiated and justified by present land ownership and use. They shall not be used as a substitute for private driveways that are required due to extensive frontage, natural barriers or land use operations.

A specific type of use can be assigned to a particular connection or driveway to make it possible to restrict the use of the access point to the current use. The driveway use has a direct relationship to the amount of traffic that can be expected to access the highway from the driveway. If the use changes and there is potential for an increase or decrease in the amount of traffic using the access point, WisDOT can judge the access

inappropriate and order that it be modified or removed. Often an alternate means of access to the highway could be achieved through negotiation or compromise with the landowner or prospective developer. Local land use/zoning definitions are an excellent source for describing an existing use or restriction.

For example, a residential driveway has fewer trips per day than a commercial driveway such as a convenience store. The number of trips generated per day by each specific use directly impacts the safety, operation, and mobility of the highway. A residential driveway may be appropriate in a location where a commercial driveway would not be acceptable because of the difference in the impact on the highway. Any change in the use of a driveway requires review by WisDOT.

Local governmental units frequently re-zone lands without knowledge of, or in spite of, such a restriction. They generally fail to inform WisDOT of proposed zoning changes even though the state is an abutting landowner and, by law, should be notified.¹ Once the zoning has been changed and development has occurred, it is difficult for WisDOT to alter the access.

1.4 Access Control Along Intersecting Streets And Highways

When planning a controlled access project, it is also important to consider access along intersecting streets and highways. Access points along side streets generate turning movements which cause conflicts with through traffic at or approaching the intersection. Left turns are the most critical to control since that movement usually involves yielding to other traffic which may need to proceed to clear the intersection.

The extent of access control to be applied along these intersecting roadways (i.e., throat distance) depends on: intersection design; traffic volumes on the intersecting roads; predicted intensity of land use of adjoining properties; traffic speeds and projected traffic volumes on side roads.

A distance of 250 feet (minimum) to 500 feet (desirable) can be used as a guide but the appropriate standards for a particular set of circumstances should be determined through consultation with the maintenance, planning and traffic areas.

Decisions should be coordinated with the local governmental units and where possible formalized with a "Resolution Agreeing to Control of Access Along Local Street or Highway", form DT2049 (see Attachment 1.1). This resolution, upon adoption by the local governmental unit and upon acceptance and ratification by WisDOT, creates a binding bilateral agreement, the terms or conditions of which may not be varied without mutual consent of both parties. This process affords critical intersections with additional protection beyond the ordinary limits of WisDOT control. The resolution form is sent to the Town for approval and signature and then returned to the Region for notarized signature. The Town signatures do not require a notary.

LIST OF ATTACHMENTS

Attachment 1.1

Sample Form DT2049, Resolution- Controlled Access Project

FDM 7-15-5 Establishing and Altering Access Controls

December 5, 2017

5.1 Establishing An 84.25 Access Control Project

To implement section 84.25, an Access Control Map must be developed using the records obtained from the last construction project and supplemented with additional information on those parcels that were not affected by the purchase of right-of-way. Attachment 5.1 outlines the steps that should be followed to establish an access control project. Refer to Attachment 5.9, WisDOT Statewide Guidelines for §84.25 Controlled Access Map and Authorizations, for additional detailed guidance on developing the access map and authorizations.

The project limits should be logical termini, preferably at intersections or other well defined geographic points. The end points must be tied to the Public Land Survey System in the Finding, Determination, and Declaration because corporate limits and highway or street names change over time, and highways are sometimes relocated. Segments of highway with more than 20 driveways per mile are not beneficial when applying 84.25 access control to that segment. A project exception should be used to exempt that portion of the highway from the 84.25 access control project. Exceptions should be at least 1/4-mile-long; if a segment is less than that, do not create an exception; just include it as part of the project. Project termini may be within the corporate limits of a city or village, such as highway segments in areas that are transitioning from rural to urban development with a limited number of driveways.

See subsection 5.5 below for information on 84.25 Controlled Access Project Unique Identifiers. A separate

¹ This situation points out the need for increased coordination and cooperation between the state and local units of government. (See FDM 7-35-10 for discussion related to this point.)

identifier is required for each county if a project is in more than one county.

Contact the BTS Access Management Engineer for detailed information on the specifications of data collection and project deliverables for the access control project. Project data will be incorporated into the WisDOT Highway Access Management System (HAMS) upon completion of the project.

During the project review identify any driveways that have potential to be moved to a safer location, or to be removed completely. Discuss with the property owner the desire to make changes. Often the owner is aware of safety issues and might welcome the opportunity to provide safer access. Highway maintenance funds can be used to have County forces make driveway adjustments.

After a Finding, Determination and Declaration is recorded, every connection to the 84.25 access controlled highway shall be authorized by a Controlled Access Highway Authorization (Form DT2048). One form shall be completed per parcel or road. An authorization can include multiple driveways if they are on the same map parcel. Attachment 5.3 has four sample authorization forms. Authorizations can be general in nature, allowing a driveway anywhere on the parcel that meets department standards, or the Authorization can be more restrictive regarding the location and use of the driveway. The number and types of vehicles using a driveway can affect highway safety. In some locations a residential driveway may be acceptable while a commercial driveway would create safety problems. On parcels with larger frontage on the highway it may be desirable to limit the location of the driveway to a specific point that has the best sight distance or because of other geometric constraints. A restriction requires the property owner to contact WisDOT before changing the use or location of the driveway. WisDOT may or may not allow the requested change, subject to the impact on the safety and operation of the highway. An authorization for a joint driveway should list the location of the driveway and the parcels that share the joint driveway. Refer to Attachment 5.6 for suggested wording for authorization.

Abutting parcels that have alternative access can be issued a Notice of Non-Access to or Across a Controlled Access Highway (Form DT2047). Refer to <u>Attachment 5.8</u> for a sample filled-out form. Each parcel abutting the project within the access control limits shall have either an authorization or a notice of non-access. Authorizations are also issued for each local road or county road that connects to the highway.

As conditions change over time, a driveway authorized previously may become unsafe. If adequate changes cannot be made to the driveway, the authorization may be revoked. If alternative access exists, the parcel may be issued a notice of non-access.

5.2 Altering Access On Controlled Highways

After the establishment of the controlled access highway, WisDOT may consider adjustment or reclassification of the existing access. This is generally done in situations where there is an indication of orderly land use change such as planned residential or commercial developments, a proposed system of service roads, or the development of subdivision plats. In such cases an existing or previously authorized point of access for private use, for example, may be authorized for public use as a platted street or as a service road connection with a controlled access highway. When provision is made for additional public access, other private access points may become unnecessary and, thus, the revocation of the authorizations and removal of the access points could be warranted. However, any modification of, or removal of, existing authorized access must be approved by the Director of the Bureau of Technical Services, and proper notification must be given to the landowner prior to any removal. (See Attachment 5.2, "Revocation of Authorization for Access to or Across a Controlled-Access Highway".)

On some existing controlled access maps there may be access points designated as special crossings which allow travel between severed or adjacent parcels of land under one ownership and which are needed to provide access across the highway. Requests by landowners to change these authorized points of access should be analyzed with an objective of bringing any revised access designation into conformance with current standards for access spacing as outlined in <u>FDM 11-5-5</u>. Special crossings cease to exist when the land is no longer under a single owner.

Public interest and highway safety are major factors when evaluating requests for new or modified access. This is particularly important when considering the type of access to be authorized (public highway versus private driveway) and the spacing of such access. When long-range anticipated land development will support a request for modified or new access, appropriate dedications for vision or clear zone purposes will ordinarily be required to protect the intersection and the safety of the travelling public. Such dedications may be accomplished preferably by a Certified Survey Map (CSM), a subdivision plat, or a highway right of way plat. Another option is via a Warranty Deed transferring ownership from the property owner to the highway authority. There should be documentation by the highway authority accepting the dedication of the new highway right of way. Subdivision plats and highway right of way plats need no additional documentation. For CSMs or Warranty Deeds, notes from a meeting of the highway authority stating that the CSM or deed was presented and accepted (for a new access on a segment that is now a connecting highway) or a letter from the WisDOT

Regional Director or their designee (for access to a State Trunk Highway and side roads within the access control limits) will document acceptance of the dedication.

Requests for new access must be in the public interest. Section 84.25(4) states "no street or highway or private driveway, shall be opened into or connected with any controlled-access highway without the previous consent and approval of WisDOT in writing, which shall be given only if the public interest shall be served thereby and shall specify the terms and conditions on which such consent and approval is given". This public interest should be documented in the form of an "84.25 Controlled Access Public Interest Statement" such as the one shown in Attachment 5.10.

The Public Interest Statement should address the following criteria:

- 1. Operational benefits to STH
 - Eases congestion at other locations and thus mitigates needs for improvements at other locations
- 2. Safety benefits to STH
 - Removes identified safety issues at other locations on STH system.
- 3. Serves to improve local system continuity
 - Part of future local transportation plan that was reviewed and accepted by WisDOT.
 - This includes not just plans of the requesting authority, but any affected adjoining units of government. This is especially important if the request is for an access on the east side of a highway that is inside Village boundaries, but the west side of the highway is in Town boundaries.
- 4. Meets traffic volume criteria and system connectivity that defines a public road purpose rather than access to isolated private homes or businesses.
- 5. System connectivity created by proposed addition clearly eliminates or minimizes the potential for further public road requests at other locations.
 - Not a cul-de-sac
 - Needs connectivity to other existing functionally classed collectors and/or arterials.
 - Roadway which comes off of requested public access must have associated connectivity to
 other large undeveloped nearby properties. If access request is for an undeveloped parcel, and
 adjoining parcel(s) are likewise undeveloped with no access to STH, the request needs to show
 how the road to the requested new public access will also include mapped connections to
 adjoining properties.
- 6. Protection of statewide taxpayers' interest by insuring the standards required for the proposed access construction are determined by the same design year horizon used by WisDOT on STIP projects. A land developer could propose a connection only designed to handle the traffic from one development, whereas future adjacent developments will require a higher volume of traffic. Any connection should be designed to handle the design year traffic for the nearby area.

Requests for alteration to authorized access that has been established along a controlled access highway are subject to administrative review. All requested alterations to authorized access must pass the test as to whether the change is in the public interest. Orderly planned development compatible with the controlled access highway facility will ordinarily receive favorable consideration. If it is deemed in the public interest, a reclassification or expanded use of existing authorized access, or authorization of additional access via public streets will be supported by WisDOT.

5.3 Reviewing Requests and Altering Access

WisDOT follows the same procedure for reviewing requests to alter access on all access controlled highways, whether access is controlled administratively (under section 84.25) or purchased (under section 84.09). This procedure is described below.

Procedure for reviewing requests:

- The Region requires a letter of request with a site plan attached before reviewing any request for access changes. The developer/owner must provide traffic-generation projections, if available, to justify the requested access change. The request must also state specifically why each access is necessary for operation of the development, and the site plan must include drainage plans, internal traffic circulation patterns, and parking layouts. If a public road connection is requested, specify how that road connects into the existing local public road system,

- All requests for access revisions on a controlled highway must be reviewed by the appropriate functional areas within the Region. Comments should be obtained from the Systems Planning and Operations and Technical Services Sections. The Project Development Section should be consulted if there is an improvement project scheduled for the area or if there are design related concerns.

Procedure for altering access:

- If the Region review is favorable, copies of all pertinent materials should be sent to the BTS Access Management Engineer who will review them and then forward them to the BTS Director and the Access Modification Committee for review and final determination. The Region should submit an Access Modification Request Decision Document, in the format of <u>Attachment 5.11</u>. The request should also include any additional information that will help the committee make an informed decision. Changes to access must be in the public interest and not just for the benefit of a property owner. On new access requests, the Region must prepare an "84.25 Controlled Access Public Interest Statement" that documents why the proposed additional access is in the public interest. Refer to <u>Attachment 5.10</u> for a sample Public Interest Statement.
- The Access Modification Committee will review the request and all of the relevant information to determine if the modification will be approved. They must determine that the modification is in the public interest and the safety of the travelling public is being preserved or enhanced. When a decision has been made, the BTS Director and the Access Modification Committee will document their decision and the Region and the property owner will be notified.
- Approved changes should be noted on a copy of the map. When an access control project is formally updated, these changes are transferred from the paper copy to the new map original. (See <u>FDM 7-15</u> <u>Attachment 10.2</u>). The appropriate authorization documents shall be completed and recorded for the land parcels affected by the change. The approved changes and related documents must be added to the Highway Access Management System (HAMS). The original recorded authorization documents are to be sent to the BTS Access Management Engineer for permanent filing.
- If the request is denied, a letter explaining the nature of the access controls and the reason for the denial should be sent to the applicant. Those requesting the access have no right of appeal when additional access to an access-controlled facility is denied.

5.4 Class 3 Notices

Section 84.25 of the state statutes requires a Class 3 notice be placed in a paper that is published in the county of the project. If another paper published outside the county is more widely read, then publish the notice in both papers to fulfill both the letter and the intent of the law.

A Class 3 notice requires three publication dates occurring in consecutive weeks. The last notice must be published no less than 7 days before the date of the hearing. It is suggested that four (4) publications be made to create a safety net to assure that at least three (3) of the publications meet the legal requirements, in case one of the publications is later than requested.

Two months prior to the scheduled date of the hearing the notice should be prepared and submitted in accordance with <u>FDM 6-15-20</u>. This will allow for adequate time if the publication date is a weekly newspaper and the day of publication does not correspond to the hearing day. For example, if the hearing is scheduled for a Tuesday, but the paper is published only on Thursdays, you need to publish it so that the last publication date is a week and a half before the hearing, or two Thursdays before the hearing. It is always safest to submit the notice to the paper two weeks before the first publication date to assure that all the paper's questions are answered before the publication deadline.

When an environmental document is prepared as part of the 84.25 action, the public hearings required for each action can be combined into one public hearing. See <u>FDM 6-15-25</u> for additional guidance on combined public hearings.

5.5 84.25 Controlled Access Project Unique Identifier

Controlled access projects require unique identifiers for the many documents that are related to the project. There is an environmental document; Finding, Determination and Declaration; access control maps; documents that are recorded against land parcels; local government resolutions, etc. that use a project number to tie all of the documents together for a project on a segment of highway. Access control projects are not highway improvement projects, so a typical project number is not loaded into FOS or FIIPS. All project costs are charged to a work program SPR FOS Project ID number that is set up for each region and changes with the Federal Fiscal Year. The WisDOT Program Management Manual Document 06-10-50 explains how a Controlled Access Project Unique Identifier is set up, so that the number is not reused for something else. If a project is in two or more counties, a separate Controlled Access Project Unique Identifier must be created for each county, with separate maps, hearings, and documents for each county.

LIST OF ATTACHMENTS

Attachment 5.1	Procedure for Establishing Access Control Projects
Attachment 5.2	Sample Form DT2050 Revocation - Highway Authorization
Attachment 5.3	Samples of Form DT2048, Controlled Access Highway Authorization
Attachment 5.4	Sample Access Control Map
Attachment 5.5	Sample Notice of Public Hearing for Designating as a Controlled Access Highway
Attachment 5.6	Suggested Wording for Authorization
Attachment 5.7	Sample DT2243 - Finding, Determination and Declaration
Attachment 5.8	Sample Form DT2047 Notice on Nonaccess
Attachment 5.9	WisDOT Statewide Guidelines for 84.25 Controlled Access Map and Authorizations
Attachment 5.10	Sample 84.25 Controlled Access Public Interest Statement
Attachment 5.11	Sample Access Modification Request Decision Document
Attachment 5.12	Sample Format for Post Hearing Report

FDM 7-15-10 Miscellaneous Provisions

December 5, 2017

10.1 Vacating Controlled Access

The Secretary may order the vacation of a controlled access highway (i.e., the relinquishing of access controls), as provided in section 84.25 (13), if it is determined that vacation is in the public interest. A public hearing is required (if access controls are vacated and not transferred or replaced with other controls) and a formal notice of vacation is recorded with the Register of Deeds in the county where the highway is located. (See <u>Attachment 10.1</u>.)

If the vacation is due to the transfer of the roadway from state to county jurisdiction, the county board may request, by resolution filed with WisDOT, that the controlled access highway be continued pursuant to section 83.027. The access control will then be transferred to the county and WisDOT will be relieved of any further authority or obligation for the controlled access highway. Since access controls still remain in place, there is no change to the public interest and a public hearing is not required.

Statutory access control may also be transferred to cities or villages under Home Rule, provided they have an established access control ordinance similar to section 84.25.

The relevant legislative history of Wis. Stat. § 84.25(13) identifies two procedures for vacating the controlled access that was established on a state trunk highway (STH) pursuant to Wis. Stat. § 84.25.

The first of the two procedures under Wis. Stat. § 84.25(13) applies where WisDOT is vacating the controlled access while continuing all STH routings over the highway established as a controlled-access highway. This procedure requires WisDOT to issue an order vacating the Wis. Stat. § 84.25 controlled-access highway status. WisDOT shall record formal notice of the vacation of a controlled-access highway with the register of deeds of the county wherein such highway lies, as required by Wis. Stat. § 84.25(13). This also applies when access along the segment of highway is controlled under Stat. § 84.295.

The second of the two procedures under Wis. Stat. § 84.25(13) applies where WisDOT is discontinuing all state trunk highway routings over a highway established as a controlled-access highway, which summarily vacate the controlled-access status of such section of highway only after a traffic engineer survey investigation and study finds, determines and declares that the vacating of the controlled-access status is in the public interest. Such vacating shall not be effected until after a public hearing is held in the county courthouse or other convenient place within the county, following notice by publication under Wis. Stat. § 84.25(1). WisDOT shall record formal notice of the vacation of a controlled-access highway with the register of deeds of the county wherein such highway lies, as required by Wis. Stat. § 84.25(13).

This second procedure would apply where a connecting highway with Wis. Stat. § 84.25 controlled-access status is being changed under Wis. Stat. § 86.32(1). Specifically, this second procedure is triggered if such change results in the discontinuance of the STH routing over such highway. Prior to changing the STH routing, WisDOT may want to explore with the local unit of government that would have ultimate jurisdiction over the highway whether it could and would be interested in continuing the controlled access. As previously noted, subject to certain requirements under Wis. Stat. § 84.25(13), a county may request that the controlled-access status on a highway be continued under Wis. Stat. § 83.027, enforceable thereafter by the county. A

municipality may also have authority to assume continued enforcement of the controlled access under its home rule powers or through an agreement with WisDOT pursuant to Wis. Stat. § 84.25(9). That subsection reads:

"To facilitate the purposes of this section [Wis. Stat. § 84.25], the department and the governing bodies of a city, county, town or village are authorized to enter into agreements with each other or with the federal government respecting the financing, planning, establishment, improvement, maintenance, use, regulation or vacation of controlled-access highways or other public ways in their respective jurisdictions".

This second procedure would also apply where WisDOT makes a deletion to the STH system through a jurisdictional transfer agreement with any local unit of government, pursuant to Wis. Stat. § 84.02(8). A jurisdictional transfer agreement may contain any terms and conditions that WisDOT and the local unit of government may deem necessary regarding maintenance or rehabilitation of any highway transferred. Wis. Stat. § 84.02(8)(c). Together with this authority and the authority set out in Wis. Stat. § 84.25, in particular subs. (9) and (13), continuing the controlled access on a highway by a local unit of government either independently or as WisDOT's agent is achievable.

It is important to note that the best option for continuing the controlled access on a highway after the STH routing is discontinued is to have the local unit of government enforce the controls under its own local authority and jurisdiction. Tying the local unit of government's continued enforcement of the controlled access to Wis. Stat. § 84.25 may preclude WisDOT from banking the controlled-access miles for future use elsewhere.

A Village or City would have to enact an access control ordinance similar to Wis. Stat. § 84.25 and Wis. Stat. § 83.027, combined with Wis. Stat. § 86.07. Once the ordinance is in place, the municipality would pass a resolution declaring the street or highway a Controlled Access route. The municipality would then request transfer of access control from WisDOT to the municipality. WisDOT will then by letter agreement accept or reject this request and if accepted WisDOT could then vacate the access controls placed under Wis. Stat. § 84.25

No matter how the vacation is accomplished, if access rights have been purchased under Wis. Stat. § 84.09, the vacation will not have an impact on those purchased access controls and abutting properties would still have no right of access to the continued STH routing. However, if no access rights have been purchased and the highway had been designated a freeway or expressway and upgraded and classified a freeway or expressway in accordance with Wis. Stat. § 84.295, WisDOT will need to ensure that all right of access issues have been resolved in accordance with Wis. Stat. § 84.295(5) and (9) before implementing the vacation.

Vacation Orders are prepared by the Regions, reviewed by the BTS Access Management Engineer, and signed by the Director of the Bureau of Technical Services. Prior to starting the vacation process, discuss the idea with the BTS Access Management Engineer. The wording of the Vacation Order varies with the type of situation. While similar, a vacation because of a jurisdictional transfer is different than one for a discontinued STH or a vacation because the highway is now access controlled under Wis. Stat. § 84.295. Central Office has Vacation Order templates for each situation.

10.2 Updating Controlled Access Projects

Regions and the central office should periodically review access control projects to determine if the plan warrants an update. An update is required if:

- 1. Accesses in the field do not correspond to the existing project (i.e., there are illegal driveways or intersections).
- 2. Special restricted driveways (e.g., special crossings, agricultural PDs) no longer meet the criteria for which they were authorized.
- 3. There are existing accesses that can be removed because new roadways have been developed to provide alternate access.
- 4. There have been new land divisions (subdivisions, CSMs) along the roadway.

Attachment 10.2 details the procedure to be followed when updating access control projects.

LIST OF ATTACHMENTS

Attachment 10.1 Example Orders to Vacate a Portion of Controlled-Access Highway

Attachment 10.2 Procedure for Updating Access Control Projects