



1.1 Definition

Wisconsin law provides that any lands or interest in lands needed for highway purposes may be acquired by the department in the manner provided in section 84.09 of the Wisconsin Statutes. While access rights alone may be acquired, such rights are normally acquired in conjunction with, and as a part of, the purchase of new or additional highway right-of-way for an improvement project.

There are some distinct differences between purchased acquisition via section 84.09 and the administrative method authorized by section 84.25. Section 84.25 can be applied only in rural areas and where access has negligible value. Section 84.09 can be used anywhere. The purchase price is based on the appraised value of the access. There are two scenarios for purchasing access rights. In the first scenario, all access rights are acquired. Access to the property is from an adjoining property or another public street or road. In the second scenario all access is acquired except at a stated number of points, the number and location of which, are spelled out in the deed. The right of way plat merely shows that access control was purchased and refers to the deed. When access rights are acquired, the number of access points cannot be increased or decreased without additional compensation being paid to the property owner (decrease) or to WisDOT (increase), providing that the change has significant value. An appraisal is required to determine the value of the changes in access. Provision of alternative access may result in no change in value of the property.

Under section 84.25 the control of access is statutorily obtained without compensation to the owner because the property value is not being significantly affected. WisDOT obtains the right to limit the number and location of access points in any manner it chooses. However, control can not extend to removing all access and landlocking the property since to do so would significantly alter the property's value.

1.2 Application Criteria

In the absence of a planned 84.25 project or other access controls, access rights should be purchased when there is an improvement project on a route which is on Tier 1 or Tier 2A of the State Access Management Plan or where there is a specific development issue. Purchase under 84.09 is typically employed when:

- new or additional lands are being acquired; and
- the access rights to a parcel have measurable value.

Section 84.09 allows the department, through negotiations, to alter and eliminate unnecessary or unsafe access points as well as to restrict or prohibit additional accesses. This is done where there is redundant or unneeded access which can be eliminated. WisDOT may also acquire a property or its access rights if no safe alternative access can be provided. Section 86.07 (permitting) also allows the department to alter or eliminate access for safety or operational efficiency reasons as long as alternative access exists.

When purchasing access control on a parcel or tract of land, the entire parcel must be considered as a whole. If there is reasonable access to the access controlled highway, or if there is direct or indirect access to a system of public roads, it is possible that very little damage would occur to the property. Compensable damages would be determined by proper eminent domain procedures set forth in the Real Estate Program Manual.

When right-of-way is purchased, which is typically the case when the highway is reconstructed, it is customary to purchase access controls for the entire project. However, some highway construction projects require right-of-way acquisition in specific areas, but not along the entire corridor. This is common for highway projects in rural areas where the improvement is not continuous, but consists of minor spot reconstruction. In those cases, access rights should also be purchased from those parcels not affected by the purchase of additional right-of-way. Generally, it is better to purchase access controls along a segment of highway rather than just at spot locations, although there are situations where access control at spot locations is all that is needed.

Access controls should not be purchased from any parcel where 84.25 has been established. The one exception is where a parcel must be purchased because it has been landlocked in conjunction with a highway reconstruction project.

1.3 Limiting the Type of Access

See [FDM 7-15-1](#) for a general discussion on limiting the type of access. When use is limited under 84.09, WisDOT must assess the value of the property before and after the restriction to determine if the value has been

reduced, enhanced or remains the same. If the property value has been reduced, WisDOT must compensate the owner accordingly.

FDM 7-20-5 Establishing and Altering Access Controls

March 5, 2012

5.1 Establishing Access Control

All aspects of land acquisition procedures (including the acquisition of access rights) are detailed in the department's Real Estate Program Manual (Chapters 2 and 3).

Section 84.09 also provides for eminent domain proceeding under Chapter 32 of the Wisconsin Statutes which outlines the procedures required for condemnation of lands and interests in lands for highway purposes.

A caution must be emphasized regarding the fee acquisition of access rights under 84.09: Access rights should not be acquired under 84.09 if access control has previously been obtained via 84.25, administrative control. To do so is unnecessary, but more importantly, it complicates control legally, and might incur costs to WisDOT beyond the cost of acquisition.

5.1.1 Relocated Highways

When a highway designated as a freeway or expressway is relocated or a new highway is constructed, owners of adjacent property have no inherent rights of access to the new facility. However, they must receive notification that access between their property and the new facility is prohibited. When property is acquired notification of non access shall be included in the deed. If no property is acquired then a notification form, [DT2051](#), entitled "Notice of Non-Access Highway" (see [Attachment 5.1](#)), must be executed, recorded, and mailed to the affected property owner(s).

5.2 Altering Purchased Access Control

Where access control is implemented under section 84.09, opportunity exists at the time of acquisition to provide for possible future adjustment to allow for full economic use of abutting lands. Where access rights have been acquired by deed or condemnation, access control is permanent and may not be removed except under procedures for the disposition of interests in excess land (as specified in the Real Estate Program Manual Chapter 6).

Often the requests for access modifications occur years after acquisition when large tracts of land are proposed for development. Changes in access to accommodate development will be considered if they are consistent with transportation plans and local land use plans, and are compatible with the traffic and safety concerns of the controlled-access highway. If it is deemed in the public interest, a reclassification or expanded use of the existing access control may be supported by the department. See [FDM 7-15-5](#) for additional discussion on alterations to access controls.

The procedure for reviewing requests for alterations to purchased access control is the same as the procedure described to alter controls obtained under section 84.25. (See [FDM 7-15-5](#).) If it is determined that access controls acquired under 84.09 should be altered, then it becomes necessary to convey those rights by means of deed and proper consideration.

In any situation involving the relinquishing of purchased access rights, it is necessary to:

1. Send materials to the region real estate staff and the BTS Access Management Engineer to determine if the transfer of access rights has value. If it does:
 - The value must be established by "before" and "after" appraisal if it is likely to exceed \$2000; and
 - WisDOT must be reimbursed the amount of the difference in values.
2. Determine whether federal funds were used to purchase the rights. If so:
 - FHWA's written approval to relinquish the rights must be secured; and
 - Reimbursement of the federal funds must be made to FHWA at the same pro rata share as the original purchase. FHWA does not require reimbursement when the current value of the access control to be relinquished is \$1000 or less. However, WisDOT's request and FHWA's concurrence with appraisal and value must be documented in writing.

The procedure to be followed in the transfer or sale of access rights is described below.

5.3 Transfer or Sale of Access Rights

The transfer or sale of access rights should be treated in the same manner as a request for the disposal of excess land. Transfer to an abutting property owner may occur where the access right has minimal value as

determined by an appraisal and consultation with Bureau of Technical Services (BTS) Surplus Lands Officer. Transfer to a local unit of government may occur in conjunction with a jurisdictional transfer.

- The proposal should be reviewed by region staff and the BTS Access Management Engineer and, if acceptable, endorsed.
- The proposal is then submitted to the central office, Bureau of Technical Services Property Management Section, for a similar review. The submittal should contain the reasons for the sale or modification, region comments on the proposal, BTS Director approval of the modification, legal description of the proposed modification, right-of-way plat showing the location of the modification and its dimensional relationship to the other access points, and property ownerships.

An appraisal or value estimate of the added contribution of the access modification to the abutting property should be included. The scope and detail of the appraisal should be commensurate with complexity and value of the adjacent land use, and the real estate market in the area. It may range from the nominal (administrative fee) to a detailed report when additional access adds very significant value to abutting lands that the access point serves.

- The proposal will be reviewed by central office staff in the same fashion as an excess parcel. The same monetary guidelines relating to the Secretary's approval (\$3,000 and over) and Governor's Approval (\$15,000 and over) apply. If federal funds were used to acquire the access restrictions, FHWA approval is also required.
- Access rights may be conveyed or modified by Quit Claim Deed, signed by the Director of the Bureau of Technical Services.

LIST OF ATTACHMENTS

[Attachment 5.1](#) Notice of Nonaccess Highway