



FDM 7-40-1 General

November 30, 2018

1.1 Introduction

Wis. Stat. 84.295 provides the Department a legislative directive to develop and maintain a modernized highway system where in Wis. Stat. 84.295 (1) it states:

(1) Legislative intent. In the interest of promoting public safety and convenience and the general welfare, the legislature of the state of Wisconsin declares that the intent of this section is to provide for the development of a well-balanced and integrated state trunk highway system further modernized and improved to adequate standards to provide needed increased traffic capacity, relieve the congestion on overtaxed existing highways, and otherwise more adequately serve the present and anticipated future needs of highway travel, and toward that end to prevent conflicting costly economic development on areas of lands to be available as right-of-way when needed for future highway construction.

Wis. Stat. 84.295 (2) thru (9) proceed to grant the Department significant authorities to change the physical aspects, jurisdictional authority, and maintenance responsibility of the local highway system when constructing or doing improvements on a state highway so designated as a freeway or expressway. (See [FDM 4-5-15](#) for more details on the use of those authorities).

Wis. Stat. 84.295(10) furthermore grants the Department authority to map the right-of-way needed for future designated freeways or expressways, or improvements to existing designated freeways or expressways where it states:

(10) Establishing locations and right-of-way widths for future freeways or expressways.

84.295(10)(a) Where, as the result of its investigations and studies, the department finds that there will be a need in the future for the development and construction of segments of a state trunk highway as a freeway or expressway, and where the department determines that in order to prevent conflicting costly economic development on areas of lands to be available as rights-of-way when needed for such future development, there is need to establish, and to inform the public of, the approximate location and widths of rights-of-way needed, it may proceed to establish such location and the approximate widths of rights-of-way

Simply constructing a state highway to freeway or expressway standards does not convey the authorities granted under Wis. Stat. 84.295. Wis. Stat. 84.295 identifies specific criteria and procedures which must be followed in order for the statutory designation to occur and its associated authorities be granted. The purpose of FDM 7-40 is to describe the requisite criteria to be met, and procedures to be followed to properly implement authorities granted to the Department in Wis. Stat. 84.295.

Finally, it is emphasized that attempting to apply any portion of Wis. Stat. 84.295 outside of the specific criteria, processes, and procedures herein contained in FDM 7-40 has significant risk of violating a number of state statutes and federal rules governing allowable environmental and planning studies, and the legislative intent of the Wis. Stat. 84.295 itself.

1.2 Definitions

Controlled Access Highway:

Wis. Stat. 990.01(5r) states, "Controlled access highway. "Controlled access highway" means a highway on which abutting property owners have no right or only a limited right of direct access and on which the type and location of all access connections are determined and controlled by the highway authorities."

Expressway

Wis. Stat. 990.01(7a) states, "Express highway or expressway. An express highway or expressway is a divided arterial highway for through traffic with "full" or "partial" control of access and generally with grade separations at intersections. "Full" control of access means that the authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or direct private driveway connections. "Partial" control of access means that the authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections."

Freeway

Wis. Stat. 990.01(9a) states, "Freeway. "Freeway" means a highway with full control of access and with all crossroads separated in grade from the pavements for through traffic.

1.3 Relationship to Other Statues

The terms freeway and expressway occur in a number of different locations within Wisconsin statutes, and the question can be posed as to whether a highway needs to be 'designated' a freeway or expressway under Wis. Stat. 84.295 before any of these other statutory references to freeway or expressway can apply. The answer to that question is 'no'.

Wis. Stat. 84.295 defines actions and authorities granted specific to a highway which is so designated as a freeway or expressway under that statute. Any highway which meets the general definitions provided under Wis. Stat. 990.01(7a) and (9a) are respectively considered expressways or freeways. Under the assumption that all Wis. Stat. 84.295 designated highways meet either Wis. Stat. 990.01(7a) or (9a), there is value in briefly mentioning a few of other key statutes referencing freeways or expressways.

1.3.1 Controlled Access Highways, Wis. Stat. 84.25

Designation of a highway under Wis. Stat. 84.25 as a 'controlled-access highway' is neither removed nor superseded by the Wis. Stat. 84.295 designation as either a freeway or expressway. Wis. Stat. 84.25 designation can only be removed by following the official vacating procedure as described in [FDM 7-15-10](#).

1.3.2 Use of Controlled-Access Highways, Expressways and Freeways, Wis. Stat. 346.16

Restricts entry to authorized locations and restricts certain types of travel on that highway. Designation or lack thereof has no impact on this statute.

1.3.3 Authority to Prohibit Certain Traffic on Expressways or Freeways, Wis. Stat. 349.105

Allows the department or the authority in charge of maintenance of an expressway or freeway to prohibit pedestrians, mopeds, motor bicycles, bicycles or other non-motorized traffic. Designation or lack thereof has no impact on this statute.

1.3.4 Regulation of Outdoor Advertising, Wis. Stat. 84.30

Establishes criteria for the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to the national system of interstate and federal-aid primary highways. Designation or lack thereof has no impact on this statute.

1.4 Wis. Stat. 84.295 - Understanding the Difference Between Designation Action and Mapping Action

A designation action (hereinafter referred to as 'designation') does not require a mapping action. A mapping action (hereinafter referred to as 'mapping') does not require any approved improvement project action.

Designation is the action that creates a Wis. Stat. 84.295 freeway or expressway. Mapping is the recording of documents that identifies additional rights-of-way needed for future improvements on a highway designated as a Wis. Stat. 84.295 freeway or expressway.

FDM 7-40-5 Wisconsin Statutes 84.295 Designation Action

November 30, 2018

5.1 Introduction

Designation grants the Department additional authorities to make changes to the state and local highway systems when constructing or improving a state highway so designated. [FDM 4-5-15](#) describes the extent and use of these authorities in detail, and the reader is referred there for that information. It is the purpose of FDM 7-40 to focus only on the following aspects of designation:

1. The statutory and Department criteria which determine a candidate highway's eligibility for designation.
2. The statutory and Department policy procedures to enact designation.

5.2 Statutory Criteria for Candidate Eligibility for Wis. Stat. 84.295 Designation

Wis. Stat. 84.295 identifies the following candidate eligibility criteria for designation:

1. The volume and character of traffic is, or will be, sufficient to warrant the ultimate construction of a

highway to accommodate four or more lanes of traffic. Ref: s. 84.295(3)

2. The current AADT on the highway segment must exceed 4000. Ref: s. 84.295(3)

If candidate eligibility for designation was determined solely on these statutory criteria, the candidate list would be quite large. However, since designation as a freeway or expressway can generate a number of internal, interagency, public, local government, and political considerations; the Department has developed additional policy criteria to further screen which state highways should be considered candidates for designation.

5.3 Department Criteria for Candidate Eligibility for Wis. Stat. 84.295 Designation

Department criteria for determining eligibility of a candidate highway for designation fall under three categories.

1. Overall Highway System Logic
2. As-built standards of existing highway or approved projects in Department Improvement Program.
3. Enumerated Major Project Studies and Major Project Construction

5.3.1 Overall Highway System Logic

The Department has historically used the word 'system' to describe the network of state and local highways in Wisconsin. The term 'system' by definition means there is a rational interconnectivity between the highway segments. Designation should be reserved for those highways or highway segments that fit the statewide system concept of freeways and expressways.

The freeway and expressway system in Wisconsin is closely identified with the Department Backbone System. The Backbone System traverses long segments of the state highway system in a continuous fashion, connects large urban areas within the state, provides connectivity to or is one of the Interstate routes in Wisconsin, and carries the highest percentage of daily traffic and freight commerce. Designation should be reserved for purposes that help solidify and enhance that type of system concept.

Designation is also appropriate on urban bypass projects where a state highway is being relocated and constructed on new location to freeway or expressway standards due to severely degraded level of service and mobility on the existing state highway route. Because of the large financial and time investments required for urban bypass projects, the Department has a long-standing system policy that strives to build them to freeway standards. Freeway standards limit direct private or public access which helps maintain the highest level of mobility for the longest possible period of time.

5.3.2 As-Built Standards of Existing Highways or Approved Projects in Department Improvement Program

It is Department policy that designation shall match the design standard of the highway it is being placed on. Wis. Stat. 84.295 often uses the terms expressway and freeway interchangeably, and a casual reader could assume the statute is referring to them as essentially one and the same. Expressways and freeways are two different design concepts where designation is governed as follows:

Designation as a freeway shall only occur under either of the following circumstances:

- To an existing highway already built to freeway standards.
- To a highway with an approved project in the state highway improvement program where the approved project concept is construction to a freeway standard. Designation would occur as part of the delivery process once there is an approved environmental document identifying freeway construction standards.

Designation as an expressway should only occur under either of the following circumstances:

- To an existing highway already built to expressway standards.
- The highway has an approved project in the state highway improvement program where the approved project concept is construction to an expressway standard. Designation would occur as part of the delivery process once there is an approved environmental document identifying expressway construction standards.

Department policy and this criteria have evolved over the years, so there may be existing segments on our system where designation does not match the above current criteria.

5.3.3 Enumerated Major Project Studies and Major Project Construction

Special mention needs to be made regarding Major Projects. Major Projects can occur as reconstruction/expansion projects of existing highways on their existing location, or as new highways on new location. Appropriate application of designation depends on which situation is occurring.

If the Major Project Study preferred alternative is for a new highway on new location being built to freeway or expressway standards, the Major Project Study should not include designation of that proposed alignment as one of its study deliverables. Separate legislative action is required to enumerate the Major Project Study recommended alternative for actual construction. Until that occurs, the new highway on new location does not exist as an approved project and thus by Department policy is not eligible for designation. It would however be appropriate and perhaps desirable in this case for the Major Project Study to include reference to its intent to apply designation to the preferred alternative should enumeration for construction be granted.

On the other hand, if the Major Project Study preferred alternative is reconstruction/expansion of an existing highway on existing location, AND the existing highway is already constructed to freeway or expressway standards, designation can be considered for one of the Major Project Study deliverables. This is acceptable because the Department policy criteria allows designation to be applied to an existing highway currently built to expressway or freeway standards.

5.4 How Access Rights and Public Involvement Can Affect When and How Wis. Stat. 84.295 Designation Can Be Applied

Wis. Stat. 84.295 (3) & (5) states the following:

Designating highways as freeways or expressways. “[The Department] may by order designate... freeways or expressways segments of state trunk highways... The findings, determinations and orders of the department under this subsection shall be recorded... The action of the department relative to designation, layout, location or relocation of any part of a freeway or expressway shall be conclusive.”

A literal interpretation of this singular section of Wis. Stat. 84.295 suggests the Department can unilaterally apply designation by simply issuing a Finding, Determination, and Order (FD&O). However, what a statute says is allowable authority and what the Departments deems as appropriate use of authority are two different things. Access rights and public involvement requirements are two issues that can dictate when designation is appropriate, what designation should be applied (i.e. expressway or freeway), and how the designation process should occur.

The following two sections of FDM 7-40 will take a closer look at how designation decisions and procedures may be affected by:

- Access rights on lands abutting a highway being designated.
- Level of public involvement certain designation scenarios may require.

5.4.1 Access Rights on Lands Abutting a Highway Being Designated

Wis. Stat. 84.295(5) and (9) speak to the issue of how designation does or does not affect private lands or access rights to the highway being designated. The key points are very clear and important to understand.

- If a new highway being built on new location is designated under Wis. Stat. 84.295, it statutorily prevents any access rights from accruing on any property which abuts that highway. This is referenced as follows:

(5) DESIGNATING HIGHWAYS AS FREEWAYS OR EXPRESSWAYS. Where a state trunk highway is established on a new location which is not on or along an existing public highway, and the state trunk highway is designated as a freeway or expressway no right of access to the highway shall accrue to or vest in any abutting property owner.
- If designation is placed on an existing state highway, any pre-existing access rights on lands abutting that highway remain in place. If the Department desires to remove any existing access points or access rights to that highway from abutting lands, the statutes require the Department to either provide alternative access to those properties or acquire those rights from the landowner of record. This is referenced as follows:

(5) DESIGNATING HIGHWAYS AS FREEWAYS OR EXPRESSWAYS.... Where a state trunk highway is on or along any highway which is open and used for travel and is designated as a freeway or expressway, reasonable provision for public highway traffic service or access to abutting property shall be provided by means of frontage roads as a part of the freeway or expressway development, or the right of access to or crossing of the public highway shall be acquired on behalf of the state as a part of the freeway or expressway improvement project.
- Wis. Stat. 84.295(9) re-affirms that designation does not affect existing private property rights of access to pre-existing highways. Should the Department require any property rights for the development of the freeway or expressway design; it must acquire them as prescribed by law. This is referenced as follows.

(9) ESTABLISHING FREEWAY STATUS... Such [designations] shall not affect private property rights

of access to preexisting public highways, and any property rights to be taken shall be acquired in the manner provided by law. No previously existing public highway shall be developed as a freeway or expressway without acquiring by donation, purchase or condemnation the right of access thereto of the owners of abutting land.

Acquisition of property rights of access to pre-existing highways is not required for the designation action itself to occur. Acquisition of such pre-existing rights is only required at the time the Department is seeking to physically remove the access points from the designated highway.

These statutory delineations provide the basis for the following Department policy statements on designation:

1. If there are existing direct, at-grade public or private access points to a highway being designated, designation shall be limited to expressway pursuant to the definition under Wis. Stat. 990.01(7).
2. Designation as a freeway, pursuant to the definition under Wis. Stat. 990.01(9), shall only occur when the designated highway meets the criteria identified in [FDM 7-40-5.2](#).

5.4.2 Level of Public Involvement for Wis. Stat. 84.295 Designation

Wis. Stat. 84.295 contains no specific public involvement requirements for designation. However, it is recognized there are other federal rules, state statutes, and Departmental policies that trigger suggested or required levels of public involvement depending on the Department action being considered. These triggers typically occur when the Department is either proposing to physically change some aspect of the state highway system, or intending to apply statutory authorities it has been granted.

Because designation does grant the Department additional authorities for altering local roads, public access, and private access, it may change the authoritative relationship between the Department, local units of governments, and private landowners, and may require some level of public involvement before designation should occur. The operative word here is 'may' since not all designation actions change the existing authoritative relationship between the Department, local authorities, and private landowners.

Examples where designation would by all intents not change this authoritative relationship are where freeway designation is being applied to a highway already built to freeway standards, or expressway designation is being applied to a highway where no private access currently exists. The point here is that if there are no elements left on the highway that designation authority can alter, it is a logical conclusion that designation doesn't change the authoritative relationship between the Department and lands abutting the designated highway. Thus, the need for any expanded public involvement is limited to the publication of the Notice of Intent to Designate (NOITD) which is discussed in further detail in [FDM 7-40-5.4](#) (item 4).

The matrix below provides general guidance on the level of public involvement depending on the combination of current conditions of the existing highway and type of designation being considered. You will note the matrix options fall into one of two situations.

1. Designation is occurring as part of an approved design and construction project to construct or reconstruct a highway to freeway or expressway standards. A public involvement process will be required for design and construction approval of such a project, and any intent to designate shall be included in the public involvement plan for that improvement project.
2. Designation is occurring as a standalone action on an existing highway, absent of any scheduled freeway or expressway improvements. Because designation alone does not impact the existing access or access rights the only public involvement necessary is the publication of the Notice of Intent to Designate as described in [FDM 7-40-5.4](#) (item 4).

Description of highway where Wis. Stat. 84.295 designation is being placed	Public Involvement Required	Designation Type
Approved projects in the state highway improvement program (including Major Projects that have been enumerated for construction) with approved concept of a new highway on new location being built to freeway or expressway standards.	A highway relocation requires approved WEPA/NEPA documentation for design/construction approval. That process includes significant public involvement. A designation action would be included in, and referenced as part of that public involvement process.	Freeway if no at-grade intersections. Otherwise Expressway.
Existing 2-lane highway being reconstructed to freeway standards	A reconstruction expansion project of this type requires approved WEPA/NEPA documentation and associated public involvement. Designation action would be included in, and referenced as part of that public involvement process.	Freeway
Existing 2-lane highway being reconstructed to expressway standards	A reconstruction project of this type would require specific WEPA/NEPA documentation and associated public involvement. Designation action would be included in, and referenced as part of the project public involvement procedures.	Expressway
Existing highway already built to freeway standards. All abutting access rights already in Department possession.	Since all access rights are already in Department ownership, designation does not impact any abutting private land. Publication of the NOITD only	Freeway
Existing highway already built to freeway standards. Some abutting access rights are not currently in Department possession. No private or public access connections to highway since it was built to freeway standards.	As described, the facility already meets freeway definition prior to designation so designation does not impact any abutting private land. Publication of the NOITD only	Freeway
Existing highway already built to expressway standards. All abutting access rights already in Department possession. No existing private access connections to highway. May have at-grade local road connections.	As described, the facility already meets expressway definition prior to designation so designation does not impact any abutting private land. Publication of the NOITD only	Expressway
Existing highway already built to expressway standards. Some abutting access rights not currently in Department possession. No private access currently attached to highway.	As described, the facility already meets expressway definition prior to designation so designation does not impact any abutting private land. Publication of the NOITD only	Expressway
Existing highway already built to expressway standards. Some abutting access rights not currently in Department possession. Some private access still connects to highway.	As described, the facility already meets expressway definition prior to designation so designation does not impact any abutting private land. Publication of the NOITD only	Expressway

5.5 Designation Action Approval and Implementation Process

1. Complete a study or investigation report that provides the basis for taking the designation action.
 - If designation is occurring as part of an approved project in the state highway improvement program, the action will be included in the improvement project documents and referenced in the improvement project's Design Study Report.
 - If designation is being placed on an existing freeway or expressway without any associated improvement project, a standalone report should be developed. There is no prescriptive format for this report but it should at minimum contain data to show it meets the statutory criteria for designation. Additional information of value would be how the designation enhances or fits within Department policies for statewide freeway and expressway system or construction of

urban bypasses.

2. Complete any required public involvement, consider the input received, and then decide whether to proceed with designation as proposed. If the determination is to move forward, proceed with the following steps to complete designation action.
3. Prepare the final Finding, Determination, and Order (FD&O) for the designation action. The designation FD&O is prepared by using Form DT2169 which is shown as [Attachment 10.1](#). The proposed FD&O is developed by the Region office, routed to the DTSD Bureau of Technical Services, Utility and Access Unit for review and assignment of a sequential freeway/expressway designation number from the Bureau of Project Development Publications, Construction Standards, and Technology Unit.

The FD&O shall list all sections, towns, and quarter-quarters that the designated highway abuts. If the new highway ROW abuts but does not occupy the 40 - don't put that quarter-quarter on the FDD.

4. Post a Notice of Intent to Designate (NOITD). The NOITD is shown as [Attachment 10.8](#). A copy of the proposed FD&O for designation is attached as part of the NOITD.

A NOTID shall posted as a Class 1 Legal Notice. If there is public comment as a result of the NOTID, the Department must consider those comments before proceeding to execute an FD&O for designation. Public comments received from the NOTID should be included in the project records for the designation action.

5. If upon consideration of the comments received from the NOITD, the Department determines that designation should proceed as proposed, a final form FD&O document is prepared by DTSD Bureau of Technical Services, Utility and Access Unit and forwarded to the DTSD Division Administrator for signatory approval.
6. The signed, approved FD&O is then returned to the Region office, and pursuant to requirements of Wis. Stat. 84.295(3), shall be recorded in the office of the Register of Deeds in each county where the designated segment of highway is located. A separate FDO will be drafted and recorded for each county.
7. The original recorded FD&O document shall then be sent to the DTSD State Access Management Engineer who is responsible for filing the document in the appropriate Departmental record systems.

FDM 7-40-10 Wisconsin Statutes 84.295(10) Mapping of Future Right-of-Way Widths on Designated Freeways or Expressways

November 30, 2018

10.1 Introduction

Wis. Stat. 84.295(10) provides the Department the authority to establish the location and record a map of the rights-of-way needed for the future development and construction of a state trunk highway as a freeway or expressway. This is referred to as an '84.295 mapping action', hereinafter referred to as 'mapping'.

Mapping as defined in Wis. Stat. 84.295(10) has the following statutory tenets:

- Mapping is a recorded action that runs with the title of the property until such time the Department acquires the property as right-of-way, or removes the recorded mapping action from the property.
- Only the lands specifically identified as possible future right-of-way are mapped. For example, if only one (1) acre on a forty (40) acre parcel is identified as future right-of-way, then only that one (1) acre within that forty (40) acre parcel is mapped. The remainder of the parent parcel is left entirely unaffected by the mapping action.
- No acquisition of private property as right-of-way occurs as part of the mapping. Acquisition is a separate process and follows the standard procedures for Department acquisition of private lands for public rights-of-way. Acquisition of mapped property can occur at Department discretion.
- The underlying property owner of a mapped parcel is required to give the Department 60 days advance notice by registered mail before adding new structures or, rebuilding or altering existing structures within that mapped area. Failure to provide such notice removes any obligation of the Department to compensate the owner for the items if and when the mapped property is acquired as right-of-way. If the Department determines it wishes to pursue acquisition of the mapped parcel, the notification also starts the 60-day timeframe in which the Department has to notify the land owner they intend to start the acquisition process of the mapped parcel. Only notification of intent to purchase needs to occur within that 60-days, and the advised procedure for doing this is to record a lis pendens against that property.

- If a property owner of a mapped parcel has properly submitted a request to add a new structure or alter an existing structure within the mapped area, the Department's only option to prevent that from occurring is to advance acquire the mapped parcel. If advance acquisition is pursued, WisDOT has 60 days to notify the property owner and start the acquisition process. If advance acquisition is not pursued, the property owner retains full use of the mapped property and can proceed with the proposed alterations. The Department is then obligated to provide full compensation for those items if and when the mapped property is acquired as right-of-way.

The Department has also established the following policy rules:

- *No 84.295(10) recorded map shall identify a highway as being mapped to a future freeway unless the recorded map shows, details, or explains all the improvements or alterations necessary to achieve a freeway standard.* Sometimes, WisDOT does not know how the details will play out and how a property might access their land in the future. There are times that WisDOT will simply place an "X" on the driveway and this indicates that the parcel will have to achieve alternative access. This can be done through the property owner purchasing an easement from a neighbor, or a subdivision creates an access from the back, or some other means. (See [FDM 7-40-10.4](#), item 3).
- *No 84.295(10) recorded map shall identify a highway as being mapped to a future expressway unless that recorded map shows, details, or explains all the improvement or alterations necessary to achieve an expressway standard.* (See note above for the freeway standard. Same logic is that sometimes WisDOT doesn't know exactly how the parcel will look at the time we construct.). Also, see [FDM 7-40-10.4](#), item 3.

10.2 Appropriate Scenarios for Use of Wis. Stat. 84.295(10) Mapping

There are primarily two scenarios under which the Department may consider using its mapping authority.

1. The Department has performed a study that identifies what future improvement options resolve an identified system problem on a Wis. Stat. 84.295 designated highway, and where said improvement options require additional right-of-way to construct.
 - The study is the 'planning action' which identifies reasonable design alternatives to resolve identified system needs.
 - The map is the 'preservation action' where pursuant to Wis. Stat. 84.295(10) is intended to help "...prevent conflicting costly economic development on areas of lands to be available as rights-of-way when needed..." or other activity that would prevent those lands from being used as right-of-way.
2. The Department has an approved improvement project on a Wis. Stat. 84.295 designated highway to construct or reconstruct a project to freeway or expressway standards. During the delivery process, financial or other issues occur that cause the Department to defer portions of that project to a later date. For example, the deferred item could be construction of a new interchange that required new right-of-way. The Department could decide to still acquire the new right-of-way as part of the improvement project and defer just the construction element; or, it could simply map that new right-of-way with intent to acquire it at a later date.
 - The design process and associated environmental document are the 'planning action'.
 - The map would be the same 'preservation action' as described in item 1 above.

Regardless of how one arrives at the decision point to map the lands needed for future right-of-way, the milestone process to complete that mapping is the same.

10.3 Other Considerations with Mapping

Other considerations with mapping include:

- When is it appropriate to consider not mapping future right-of-way?
- Has the mapping included considerations of local planning?

10.3.1 When Is It Appropriate to Consider Not Mapping Future Right-of-Way?

It would be incorrect to assume that all identified future right-of-way needs resulting from a Wis. Stat. 84.295 Study are automatically mapped. Mapping is a preservation action and therefore there should be some reasonable preservation value in the property being mapped. If the area needed for future right-of-way is already developed to the highest reasonable type of development for that parcel, then mapping it would arguably no longer "prevent conflicting costly economic development" from occurring on it since it's already developed.

Also, mapping does record an interest on the underlying property upon which the mapped area is located. Some

may suggest that recording of a mapping interest by the Department places a 'cloud' on the title of that property. If one is defining a 'cloud' as being any recorded interest, then that would be true. However, most legal definitions for 'cloud' on a title include reference to it being a 'defect' such that it creates confusion of ownership or places restrictions on assumed free use of the property. Wis. Stat. 84.295(10) mapping does not place any portion of the land under WisDOT ownership, nor does it restrict any use of that property by the underlying owner. That would suggest that such mapping does not cloud the underlying title.

Regardless, past use of mapping by the Department has led to perceptions and statements that it places a 'cloud' on the title. The Department should be aware of, and respect the fact that such perceptions do exist and thus avoid or minimize the opportunity for them to be created. Not mapping parcels that are already fully developed can minimize the basis for those lands to suggest they have a 'cloud' and that the Department has an obligation to advance acquire them. (See [FDM 7-40-10.5](#) for more details on advance acquisition of mapped lands). If there is nothing to preserve because it's already developed, then one should strongly consider whether mapping is appropriate.

Similarly, it is appropriate to consider not mapping lands currently under ownership of other public agencies who already have development use restrictions on those lands. Examples would be wildlife areas owned by WisDNR, US Fish and Wildlife, and Corp of Engineers.

10.3.2 Has Mapping Included Considerations of Local Planning?

The Wis. Stat. 84.295 Study should be working closely with local units of government when any of the reasonable alternatives are suggesting a need to alter the existing local road system, or necessitating the addition of local service or frontage roads. The degree to which the Department can make their identified local system alterations fit into, or enhance the existing local system; the easier it will be to achieve public consensus on the alternatives proposed.

When harmonization of the future local plans and Department plans can occur, the Department should encourage the local units to apply their official mapping authorities on the Department's mapped land as well. Local official mapping can be more restrictive than Department mapping authorities and provide a much stronger first line of defense in preserving lands for future right-of-way.

10.4 Mapping Action Approval and Implementation Process

1. Complete a Wis. Stat. 84.295 Planning Study

As indicated in [FDM 7-40-10.2](#) and [FDM 7-40-10.3](#), mapping is a preservation action which follows a planning action. The planning action is the study that identifies what future improvement options resolve an identified system problem on a Wis. Stat. 84.295 designated highway. If those study options require new right-of-way, the Department may then decide to pursue a preservation action to map those lands.

The "Purpose and Need" of this study shall clearly state that it is for planning and preservation. Mapping actions should not be misused or misunderstood as a tool to generate public appetite for new construction. Transition from a preservation action to an improvement project can only occur if the roadway meets established Department program needs criteria for that specific roadway classification.

If the scenario described in [FDM 7-40-10.2](#) occurs where a decision is made to only map rather than purchase right-of-way identified for a portion of an approved improvement project on a designed Wis. Stat. 84.295 roadway, a separate Wis. Stat. 84.295 Planning Study or Report shall be developed to document and identify that mapping as a preservation action separate from the other improvement 'design and construction' actions on that project. This documents the fact that the mapping is being done under Wis. Stat. 84.295(10) as a preservation-only action rather than under the 'design and construction' actions of the original NEPA and WEPA.

The "Purpose and Need" section of a Wis. Stat. 84.295 Planning Study should use verbiage as follows:

Pursuant to Wis. Stat. 84.2951 (1) thru (3), the purpose of this planning study on <hwy> in <county name> County between <begin point and end point locations> is to develop a plan for future improvements to reduce or eliminate existing and emerging crash issues and enhance operational performance. If additional right-of-way is necessary for those improvements, the Wisconsin Department of Transportation (WisDOT) may preserve the future right-of-way through authorities and rules granted under Wis. Stat. 84.295 (10).

This Wis. Stat. 84.295 planning alternative analysis is primarily focused on at-grade intersections within the study segment to address existing and emerging operational and safety concerns by:

- *Developing a plan for future improvement options that reduce or eliminate the safety and operational concerns.*
- *Ensuring consistent land use for any planned improvements requiring new rights-of-way, and that said future rights of-way can be preserved for when needed.*

A Wis. Stat. 84.295 planning study examines future improvement concepts in the context of assumptive construction in order to appropriately determine their respective level of impacts and validity as a reasonable alternative to address the safety or operational issues identified. However, the construction of any improvements identified in the Wis. Stat. 84.295 planning study would require approval of additional environmental evaluation documentation pursuant to Wisconsin Administrative Code Trans 400, and whose Purpose and Need was specifically identified as that of "Design and Construction."

2. Design Detail of Improvement Options

There must be sufficient engineering to clearly articulate the need for the future right-of-way being identified for mapping. It is strongly suggested that this would be at or near the same level of engineering detail required for plat development on an improvement project. The engineering detail must be able to identify any obstacle that could alter or preclude construction of the proposed study alternatives.

3. Complete Draft Map of Future Right-of-Way Needed

Since the intention of the map is to define right-of-way, it uses the same basic format and graphic templates as a WisDOT Transportation Project Plan (TPP). (See [Attachment 10.4](#)). This allows for easy modification of the map to a TPP should there be a desire to advance acquire the mapped parcels. The map shall show the existing highways, property lines, existing owners of record, and the future interests or right-of-way being mapped.

If the study is proposing to make improvements that would upgrade an expressway to a freeway, and where the existing expressway has at-grade private or public access points, the map must show or state how those private or public access points will be removed in order to achieve a freeway standard when all mapped improvements are completed.

- For private access points, this could be identifying an alternate access to the public road system, or statement of intent to acquire those access rights in lieu of alternate access being provided.
- For public roads, it would be showing how any of the alteration authorities granted in Wis. Stat. 84.295 are being applied to state and local road systems in order to achieve a freeway standard.

As indicated earlier in FDM 7-40 "...No study or recorded map shall identify a highway as being mapped to a future freeway unless the recorded map shows all the improvement or alterations necessary to meet a freeway standard."

4. Hold a Public Hearing

The department shall hold a public hearing on the matter in a courthouse or other convenient public place in or near the region to be affected. The reader is referred to [FDM 6-15](#) for guidance on the current, appropriate public hearing process for Wis. Stat. 84.295(10) mapping. Unlike Wis. Stat. 84.25, Controlled Access Highways, Wis.Stat. 84.295(10) does not require separate public hearings in each county where the mapping is occurring. It only requires a public hearing (i.e. singular) to be, "...in or near the region to be affected by the proposed change."

The following documents shall be made available at the public hearing, and then entered into the public record by the Department as part of its testimony at the public hearing.

- The map of right-of-way needed for future improvements, hereafter refer to as Map.
- The Wis. Stat. 84.295 Planning Study.
- The Class 3 Legal Notice that was posted for the Public Hearing.

Both the proposed 'Notice and Order Establishing Locations and Right-of-Way Widths' (DT 1536) and proposed Map should be submitted to the DTSD Bureau of Technical Service Utility and Access Unit for review prior to the public hearing.

5. Signatory Approval of the Map and 'Notice and Order Establishing Locations and Right-of-Way Widths'

(DT 1536).

The Department shall consider all public comment received as part of the public hearing and comment period. If after consideration the Department determines to proceed with the mapping action as proposed, the final Map and the 'Notice and Order Establishing Locations and Right-of-Way Widths' (DT 1536) are both signed by the Region.

The DT 1536 shall be reviewed and approved by the DTSD BTS Access Engineer before it is signed by the Region.

6. Record the Wis. Stat. 84.295(10) Map in the appropriate County Register of Deeds Office(s).
Upon signatory approval by the Region the Map shall be recorded by the Region in the office of the Register of Deeds of each county identified in the Map. Form [DT2203](#) shall be used when recording the Map.
Wis. Stat. 84.295(10) requires that the notice of mapping action and recording of the Map shall be published as a Class 1 Legal Notice as described in Wis. Stat. 985 in each of the counties where the recorded mapping is occurring.
A copy of the recorded Map shall then be forwarded to BTS Access Engineer for filing within the appropriate Departmental corporate record system for such MAPS.
7. Record Form [DT1536](#), *Notice and Order Establishing Locations and Right of Way Widths for Future Freeways or Expressways*
Since Form DT1536 must include the recording information of the Map (i.e. Volume, Page, and Document), it is recorded right after the Map is recorded. It is critical that the DT1536 references sufficient CSM, Plat, and metes and bounds descriptions to accurately identify the properties being mapped.
As noted earlier, the DT1536 shall be reviewed and approved by the DTSD BTS Access Engineer before it is signed by the Region and then recorded.
8. Notify current owners within 60 days of recording of the Map.
Wis. Stat. 84.295(10) requires that any owner of record upon whose property the Department has mapped future right-of-way must be notified by the Department of that mapping action. Within 60 days of the recording of the Map, the Department must notify all such owners of record by registered mail or certified mail (See Statute 990.001(13) Registered and Certified Mail) that the Map has been recorded in the County Register of Deeds office. This mailed notice to property owners shall include a copy of the executed form [DT1536](#) and a copy of the recorded Map page(s) that includes their affected property. See [Attachment 10.3](#), [Attachment 10.4](#) and [Attachment 10.6](#).

10.4.1 Revising Previously Recorded Maps

The Department is authorized to make changes to a Map pursuant to Wis. Stat. 84.295(10) (a) where it states, *"With like approval, notice and publications, and notice to the affected record owners, the department may from time to time supplement or change the map."*

Revisions could occur with just the minimal requirement of following Step 2) thru Step 8) of procedure described in [FDM 7-40-10.4](#). However, a new or updated Wis. Stat. 84.295 Planning and Preservation Study may be necessary if any of the following are also occurring with or causal to the Map revision:

- The Map revisions are a result of significant changes to the design concepts in the original study that led to creation of original Map. Examples of this would be changing a proposed overpass to an interchange or proposed at-grade to an overpass.
- The revised mapping impacts landowners not previously impacted by the original Map.
- If the lands added under the revised Map were eventually purchased as right-of-way, it would have a significantly different impact on the underlying property than that of the original Map. An example would be if purchase of the revised mapped lands would result in relocation, but where the original mapping would not have.

Department discretion is required as to when a revised or updated Wis. Stat. 84.295 Planning and Preservation Study should occur when revising an existing Map. It is strongly suggested that some type of study documentation should accompany and support any Departmental action to add mapping. The only exception would be if the revision is a Department action to rescind a previous mapping action. No study would be required in that situation.

10.5 Advanced Acquisitions of Wisconsin Statute 84.295(10) Mapped Future Right-of-Way

Advance acquisition of highway right-of-way is when the Department acquires private lands as highway right-of-way 'in advance' of constructing the actual improvement for which that right-of-way is needed. Wis. Stat. 84.295(10)(c) provides authority to the Department, county, or municipality to advance acquire mapped lands as right-of-way where it states:

"Without limiting any authority otherwise existing, any of the rights-of-way needed may be acquired at any time by the state or by the county or municipality in which such freeway or expressway is located."

If this portion of the statute is read in isolation and applied in literal fashion, there would appear to be few, if any, limitations on when the Department could advance acquire mapped lands as highway right-of-way. But it is important to make a distinction here between the level of statutory authority granted and the prudent application of those authorities.

Previous sections of FDM 7-40 emphasize that Wis. Stat. 84.295 designation and mapping are 'planning and preservation' actions. Wis. Stat. 84.295(10)(a) clearly has a preservation perspective when it describes the purpose of mapping as being,

"...to prevent conflicting costly economic development on areas of lands to be available as rights-of-way when needed for such future [highway improvements]..."

Advance acquisition of mapped lands for these preservation purposes would be defined as a protective purchase, since it 'protects' the ability to acquire and use the land for highway right-of-way. Protective purchases are a preservation action and are readily supportable under the planning and preservation intentions of Wis. Stat. 84.295. This does not mean that purchasing mapped lands is statutorily constrained to only those situations that meeting a definition of protective purchase. It simply means it is always in the Department's policy and statutory interests to be within a planning and preservation focus when applying any aspect of Wis. Stat. 84.295. Straying too far or too often from that focus invites the risk of legislative revocation of these authorities.

This provides an appropriate segue to the topic of hardship acquisition of mapped parcels.

Hardship acquisition is another type of advanced acquisition. The criteria for hardship acquisition were originally developed for right-of-way acquisition on approved improvement projects. It occurs when a landowner identifies certain extenuating circumstances to support a request to have that right-of-way acquired from his lands earlier than the Department's improvement project had scheduled. Once the Department files a relocation order, lands identified therein for right-of-way acquisition go into a limbo state that precludes compensation for additional improvements made to them. Depending on circumstances, that state of limbo until the improvement project's scheduled acquisition occurs may constitute a hardship and justify advance acquisition of those lands ahead of schedule.

Mapped parcels are different since they do not restrict the owner's use of their property, and full compensation can be provided for any improvements made to their property between the time it is mapped and ultimately purchased as highway right-of-way. This absence of prohibitive restrictions on landowner use of a mapped parcel makes it quite difficult to establish a hardship claim on a mapped parcel. However, while quite difficult, it is not entirely impossible either.

It is recognized that extensive mapping on a singular parcel may give cause to consider possible hardship implications to that owner. For example, if acquisition of the mapped lands would require a relocation or prevent the current use of the property from occurring on the remainder property, there may be cause for the Department to consider advanced acquisition if the landowner approached them suggesting hardship.

But this brings us back to consideration of [FDM 7-40-10.3.1](#). If the lands within the proposed mapped area are developed to the point where relocations would occur if required, one must consider whether mapping is necessary or appropriate. Relocation indicates significant development has already occurred on the parcel resulting in minimal or no preservation value to protect. If so, mapping is not warranted.

LIST OF ATTACHMENTS

Attachment 10.1	Sample Finding Determination and Order, DT2169
Attachment 10.2	Sample Notice of Non-Access Highway, DT2051
Attachment 10.3	Sample Notice and Order Establishing Locations and Right of Way Widths, DT1536 and Attachment

Attachment 10.4	Sample Map
Attachment 10.5	Cover Document for Recording Map, DT2203
Attachment 10.6	Sample Cover Letter to Property Owners
Attachment 10.7	Partial Release from Order Establishing Locations and Right-of-Way Widths-Future Freeways (Sample)
Attachment 10.8	Notice of Intent to Designate (NOITD)