

West Central Wisconsin Regional Planning Commission (WCWRPC) Staff Report

Chippewa Falls/Eau Claire Urban Sewer Service Area Plan Request for Type I (“Land Swap”) Amendment

Project Name: Orchard Hills SSA Plan Boundary Amendment Request
Locations: Removing 219.8 acres in the T. of Brunswick (donor area)
Adding 219.64 acres in the City of Eau Claire (receiving area)
Requesting Entity: City of Eau Claire
Request Received: 8/4/22
Staff Report Date: 9/7/22

Overview of the Amendment Request

Policy 1.1.8 on page 83 of the Sewer Service Area (SSA) Plan states that:

“Sewer extensions will not be made beyond the 20-year urban sewer service area, unless the plan is amended.”

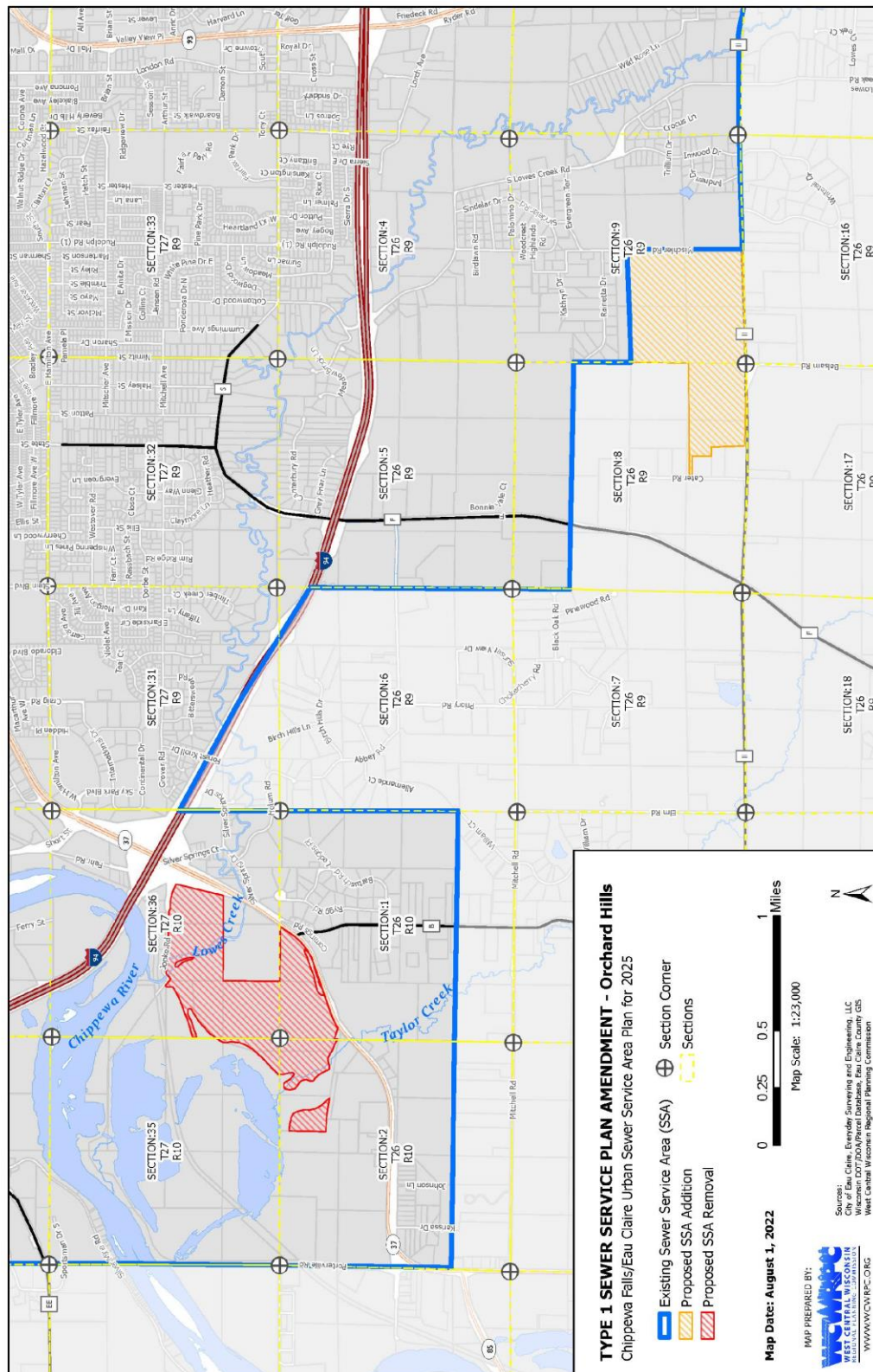
The City of Eau Claire has submitted an application to WCWRPC requesting that the SSA Plan be amended to modify the urban sewer service boundary to allow for a potential sanitary sewer extension for the proposed Orchard Hills development. The City has requested a Type I SSA Plan Amendment (or “land swap” amendment) that will not significantly change the overall acreage of the SSA. The City proposes that the SSA boundary be modified (or swapped) as generally described below and shown on the map on the following page:

- **Remove** 219.8 acres from the Sewer Service Area located within Sections 2, 35, and 36, T27N, R10W within the Town of Brunswick (*the “donor” area*).
- **Add** 219.64 acres to the Sewer Service Area located within Sections 8 and 9, T26N, R9W, within the City of Eau Claire (*the Orchard Hills “receiving” area*).

The cover letter and justification from the City’s request are included as **Appendix A** for reference. The full version of the City’s request is available for download at the WCWRPC’s website. **Attachment B** includes a letter dated 6/10/22 (received 8/4/22) from William Wallo, Bakke Norman, on behalf of the development company. Attachment B also includes a letter dated 7/27/22 (received 8/4/22) from Rick Manthe, on behalf of the Town of Washington, in opposition to the amendment.

For a boundary swap amendment, the core question being asked is: ***Is it planned and appropriate to provide municipal sanitary sewer service to the receiving area (and vice-versa for the donor area)?*** This WCWRPC staff report is solely limited to an evaluation of the consistency of the proposed SSA Plan amendment request with the SSA Plan’s policies and procedures. This report does not offer any opinions on related annexation or the goals, objectives, or policies found within respective municipal plans or ordinances. The report is an advisory opinion of WCWRPC staff and does not constitute a legal opinion or legal advice. Further, after consideration of the City’s request, this report, and any public comment received, the Metropolitan Planning Organization (MPO) makes an advisory

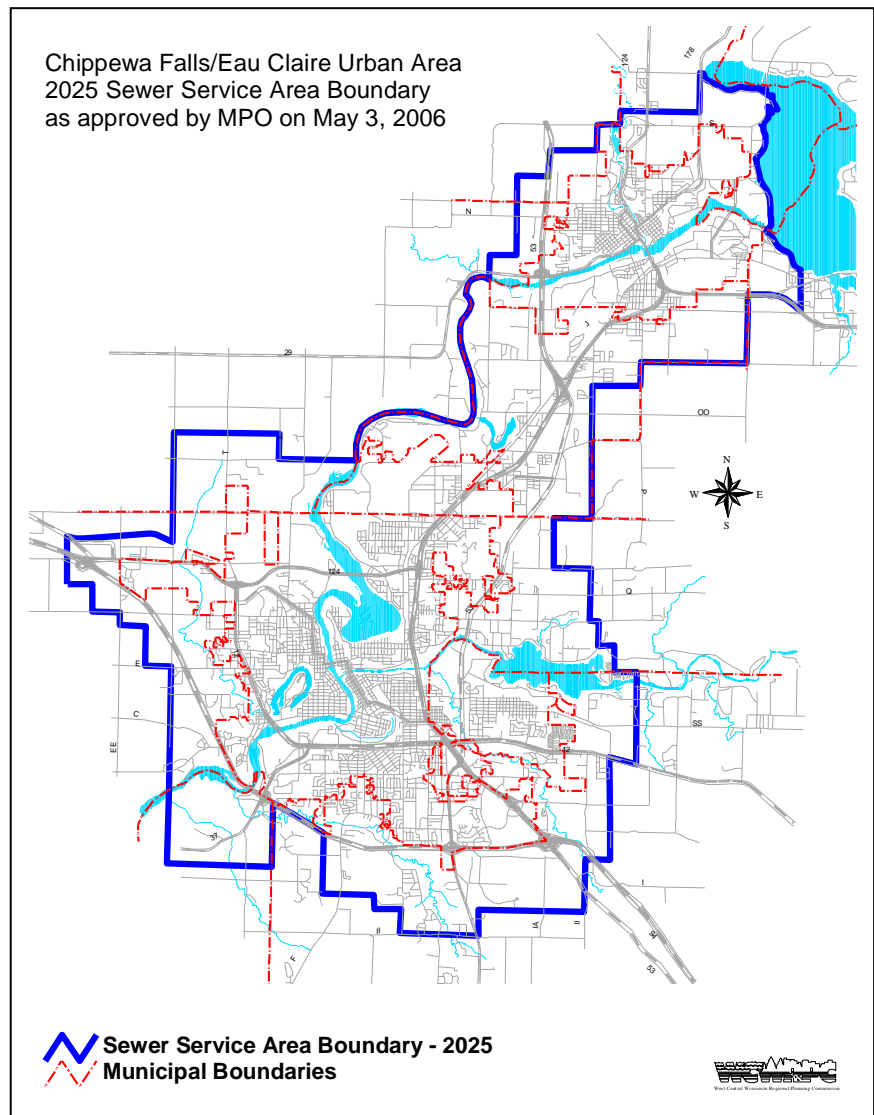
recommendation to Wisconsin Department of Natural Resources (WDNR) regarding the proposed SSA Plan amendment that agrees or differs, in whole or part, from the findings and opinion of WCWRPC. Ultimately, WDNR has final approval authority regarding the proposed SSA Plan amendment.



Sewer Service Area (SSA) Planning

Appendix C includes an overview of Sewer Service Area (SSA) Planning. Some key takeaways from Appendix C are:

- SSA Plans are, at their core, water quality plans driven by Section 208 of the Federal Clean Water Act and Chapters NR 110 & 121 of the Wisconsin Administrative Code. SSA Plans are used by local, State, and Federal agencies when considering municipal wastewater facility plans, permitting for sanitary sewer extensions, and certain grant applications for urban areas.
- The roles of WCWRPC and the MPO are advisory to the WDNR, which has decision-making authority.
- The Chippewa Falls-Eau Claire Urban Area SSA Plan was last fully updated in 2005-2006 largely based on data from the 2000 Census.
- The SSA boundary is the area presently served and anticipated (or likely) to be served by municipal sanitary sewer by the end of the Plan's 20-year planning horizon in 2025. The boundary delineates areas with a potential for future sewered development by 2025, but does not determine or guarantee that these lands will be developed, sewered, or annexed by 2025.
- The SSA Plan also defines and identifies environmentally sensitive areas (ESAs) important to water quality where sewered development should not occur.
- A SSA Plan amendment is one step among many for permitting new sewered development. The approval of a plan amendment does not constitute approval or compliance with any other local, State, or Federal permits or regulations. Land use decision-making has historically been the responsibility of each individual community. It is not the intent of the SSA Plan to duplicate such other reviews or approvals.



- Before a sewer extension is permitted for an area within the SSA boundary, a 208 water quality management conformance review is required. The exact route of the sewer extension and development plans are required for a 208 conformance review in order to prevent or mitigate impacts to any ESAs. The 208 conformance review would be requested after any SSA Plan amendments and requires more detailed, definitive utility and development plans compared to a SSA Plan amendment application.
- This advisory report is focused on the proposed boundary amendment; it is not a 208 conformance review. More specifically, is the proposed boundary change appropriate and is it expected for the area to be served by municipal sanitary sewer in the future (and vice versa for the donor area)? Even after an amendment is approved and the SSA boundary changed, sewer development to the area is not guaranteed. A separate 208 conformance review will still be later required that will evaluate whether the proposed sewer development will encroach upon ESAs, subject to the definitions and policies in the SSA Plan.
- A Type I SSA Plan amendment changes the SSA boundary without altering the total acreage within the sewer service area.
- The SSA Plan identifies specific steps for the standard amendment process and recognizes that the level of detail in an amendment application can vary. WCWRPC reviews a proposed amendment based on five criteria and provides a staff report to the MPO for an advisory recommendation to the WDNR. The SSA Plan identifies an appeal process.

What is a 208 Review?

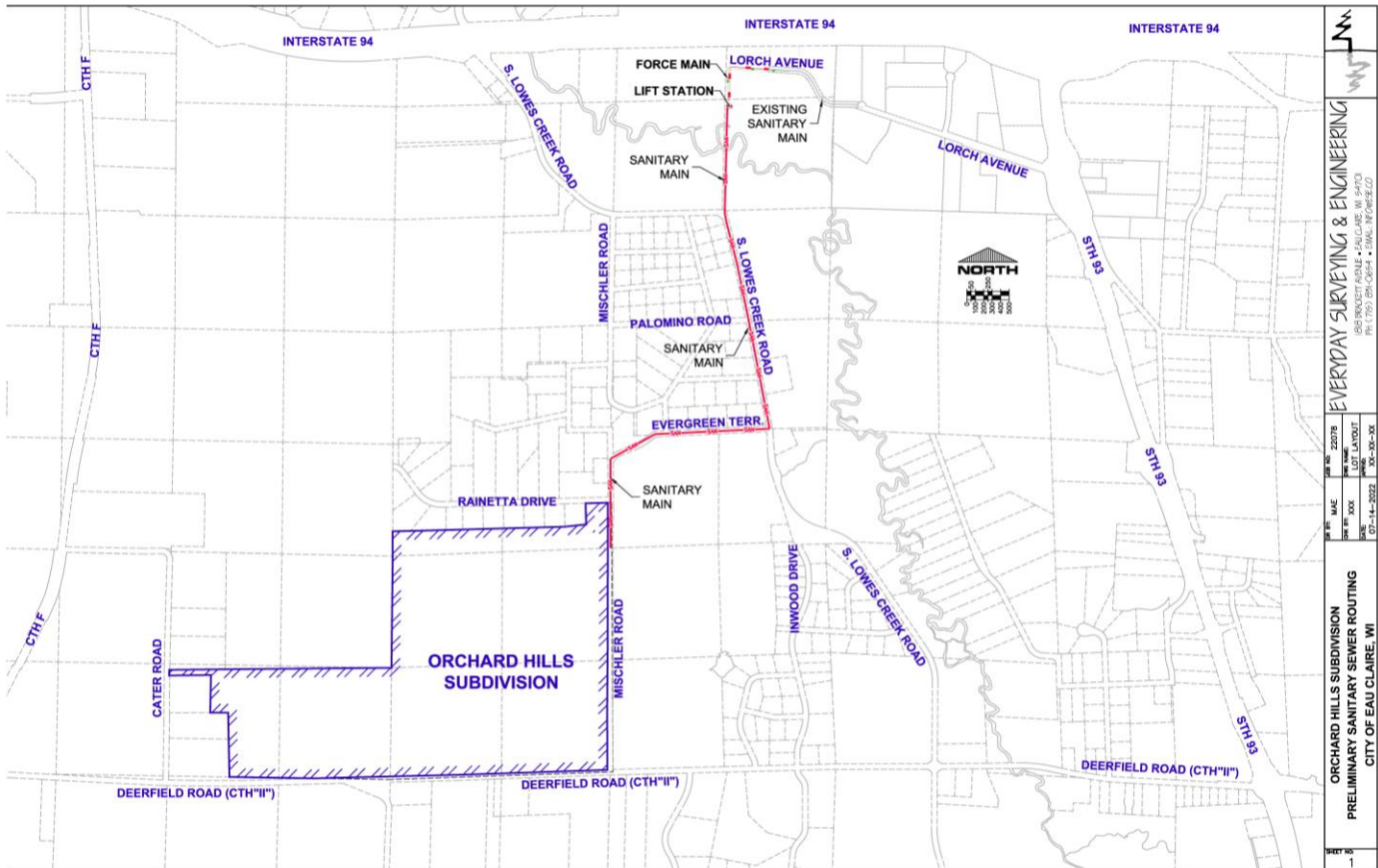
Named for Section 208 of the Federal Clean Water Act, a 208 conformance review is required prior to WDNR approval of a proposed municipal sewer extension and any intensive land disturbances associated with the sewered development.

When a sewer extension is proposed, the developer or municipality submits a 208 conformance review application to WCWRPC with construction/engineering plans and locations of any known ESAs. WCWRPC will review the 208 application to: confirm that the proposed area to be served by the sewer extension is located within the SSA and evaluate whether an encroachment upon an ESA would occur. WCWRPC will issue an advisory 208 conformance letter to WDNR based on its findings. The WDNR may deny a proposed sewer extension that does not conform with the SSA Plan, unless changes to the project are made or the SSA Plan is amended.

Since the area to be provided sewer must be located within the SSA, a SSA boundary amendment may be first required prior to a 208 conformance review request. Further, compared to a SSA Plan amendment, the 208 review application requires a higher level of detail to evaluate whether ESAs are encroached upon. Submittal of a 208 review application will typically occur after the local municipality has approved the certified survey map, subdivision plat, and/or development agreement.

Proposed Sanitary Sewer Extension

The map below shows the preliminary routing of the proposed sanitary sewer extension and is included as Attachment K in the City's amendment request. It also shows the full extent of the Orchard Hills subdivision or development area, which includes six parcels constituting the 219.64-acre receiving area as well as two parcels totaling 18.6 acres on the north side of the receiving area, which are already located within the SSA.¹



At the request of WCWRPC, the City has clarified that the proposed sewer extension would include approximately 7,980 feet of PVC sanitary sewer main and one lift station from the western edge of Lorich Avenue to the southern boundary of the current SSA. This 7,980 feet of sewer extension is located within the SSA boundary and is represented by the red line above. An additional roughly 800 feet of sewer extension would be located outside the current SSA boundary, being extended from the south end of the red line above along Mischler Road to an entrance street into the subdivision. In total, the sewer extension would be approximately 8,780 feet.

The proposed sewer extension would cross Lowes Creek as well as the 100-year floodplain and wetlands bordering the Creek. This utility crossing would include property owned by Eau Claire County located within the Lowes Creek County Park. In all, approximately 700 feet of the sewer extension would occur within the County Park.

¹ Note: There are some relatively small differences in receiving area acreages between the City's request and the acreages in various GIS databases. The acreages and legal descriptions from Attachment A of the City's request are used.

The City's application suggests that the sanitary sewer extension has the potential to serve a much larger area, including roughly an additional 1,141 acres within the SSA as well as roughly an additional 859 acres outside the SSA in the future, not including the Orchard Hills subdivision (Attachments L & M of the City's application). The City estimates that there are over 150 existing private septic systems within the SSA that could be served by the proposed sewer extension. The extension also has the potential to provide sanitary sewer to Lowes Creek County Park. Additional improvements (e.g., sewer mains, lift station) would be required to serve all of these additional areas.

The roughly 8,780 feet of sanitary sewer extension itself is not a focus of this staff report and proposed amendment. It is only considered generally in its relationship to the proposed amendment area (e.g., Is it cost-effective and efficient to provide sanitary sewer service to the receiving area?). It is important to keep the following in mind:

- As noted previously, any sanitary sewer extension within the SSA will require a 208 conformance review prior to construction.
- The proposed path of the sanitary sewer extension is preliminary. A final route or specific engineered plans are not required for the boundary amendment request. When the SSA boundary is determined, detailed sewer extension plans are not created and they are typically unavailable at that time.
- Any issues or concerns related to the sanitary sewer extension's crossing of Lowes Creek, the County Park, and any environmentally sensitive areas along its route would also be addressed as part of the 208 conformance review once specific plans for the sewer extension are proposed. It is recognized that the sewer extension would cross environmentally sensitive areas (ESAs) as defined in the SSA Plan (e.g., Lowes Creek, floodplain, wetlands). To this end, there are two key points:
 1. As mentioned previously, the SSA Plan does not duplicate other permitting or approvals.
 2. The SSA Plan policies allow utility and street crossings to encroach upon surface waters, floodplains, and wetlands ESAs without a SSA Plan amendment if they "are routed to minimize or avoid impacts on an ESA or extend across an ESA to serve sewered development not located within the ESA or ESA setback" and "if all other required permits and approvals are received and mitigation plans have been approved by regulating entities for any potential adverse water quality-related impacts."
- As preliminarily proposed, the majority of the sanitary sewer extension is located within the Sewer Service Area. Under the SSA Plan, the City could pursue approval for most of the sanitary sewer extension (208 water quality management conformance review), in whole or in part, to serve areas within the SSA without a SSA boundary change.

The Sewer Service Area Plan and Annexations

As recognized in the City's request, the proposed boundary amendment would add property to the sewer service area (the "receiving" area) that was recently annexed to the City of Eau Claire. The annexation included the Orchard Hills development area in its entirety (i.e., the 219.64-acre receiving area and the 18.6 acres already in the SSA).

The development and related annexation have not been without controversy; on July 15, 2022, the Town of Washington filed a lawsuit against the City of Eau Claire regarding the legality of the annexation. According to the Wisconsin Department of Administration, the annexation has been officially executed.

When updating the SSA Plan in 2005-2006, the MPO-designated Water Quality Management Technical Advisory Committee spent significant time discussing how the SSA Plan relates to growth and potential annexations. The October 20, 2005, minutes of the Advisory Committee meeting recognize that the SSA boundary can be perceived as an annexation boundary:

“County and town officials expressed concern that the SSA boundary is often used for more than a water quality protection mechanism and is often perceived by landowners and developers as areas “pre-approved” for development...

When asked, the City [of Eau Claire] tends to view the SSA boundary as areas which can and may be efficiently served by wastewater services, with the market determining if it actually occurs. On the other hand, the Towns and Town residents tend to view the SSA boundary as areas which will be provided sewer service in the next 20 years and will likely be annexed. It was pointed out that annexation has not occurred in all areas under the SSA boundary identified in 1990, though this boundary was made purposely large at that time.”

To address this perception, statements such as the following on page 107 can be found in multiple sections of the SSA Plan:

“Inclusion of lands within the sewer service area does not imply they will be developed and sewered by 2025. And though the sewer service boundary is sometimes discussed in the context of proposed annexations, the Urban Sewer Service Area Plan and boundary should not be used to promote nor hinder annexation petitions or urban density development.”

In fact, the WDNR website specifically states:

“Sewer service area planning is not intended to restrict a community's growth, obligate wastewater treatment plants to provide sewer throughout the planning boundary or affect community annexation policy.”

SSA Plan Policy 1.1.7 on page 83 states:

“Generally, the Cities of Altoona, Chippewa Falls, and Eau Claire will not extend sanitary sewer service beyond their corporate limits unless there is a negotiated agreement between the involved governmental entities. Furthermore, the Sewer Service Area Plan (SSA Plan) and boundary should not be used to promote nor hinder annexation petitions or urban density development. The SSA Plan is in addition to and not superseded by any other municipal or intergovernmental plans, boundary agreements, development agreements, or similar plans and agreements.”

In short, there is no SSA Plan policy or requirement that limits or otherwise constrains the SSA Plan boundary or the provision of sanitary sewer to municipal corporate boundaries. The SSA Plan boundary is related to, though treated separately from, annexation petitions. Characteristics of an annexation or whether there is disagreement between municipalities (or their respective comprehensive plans) are not directly considered as part of the SSA Plan’s policies and amendment procedures.

WCWRPC Staff Review of the Amendment Request

Section 6.4.1. of the Chippewa Falls-Eau Claire Urban Sewer Service Area Plan states that WCWRPC staff will review a proposed Type I amendment based on the following five criteria:

CRITERIA 1. Such sewerage service can be provided in a cost-effective manner.

WCWRPC is not staffed with a licensed engineer, so we rely on the applicant municipality, the MPO Technical Advisory Committee, and, ultimately, the Wisconsin Department of Natural Resources for the review of the technical or engineering aspects of amendment requests. Further, as mentioned previously, determining whether proposed services or development is efficient or cost-effective has historically been the responsibility of the municipality providing the sanitary sewer service.

The City and developer have determined that sanitary service can be provided in a cost-effective manner. Key considerations from the City's amendment request:

- According to the City, the sewerage project would require a lift station and a sanitary sewer extension of 8,780 feet at an estimated cost of \$1,850,000 for the sanitary portion of the expansion project. The draft concept plan for Orchard Hills (Attachment J of the City's application) envisions 1,550 residential units. This yields a cost of \$1,195 per residential unit for the sanitary sewer project, which is much more cost effective than constructing individual, private wastewater systems.
- On May 10, 2022, the Eau Claire City Council authorized the submittal of a Type I SSA Plan amendment request for Orchard Hills, suggesting that the City has performed due diligence regarding the cost-effectiveness of providing municipal services to the area. The City has also indicated that it has adequate funds approved and budgeted for the sanitary sewer extension.
- The City's wastewater treatment plant has adequate capacity for the proposed receiving area. No upgrades or improvements to the plant are needed to serve the area. See Criteria #4.
- The City states that sanitary services would be provided at a reasonable cost to residents of Orchard Hills. The City's 2022 sewer charge is estimated at \$5.00 per CCF (100 cubic feet). In the City, an average residential home uses 15 CCF per quarter for sewer, plus a \$9 flat rate, which averages \$84 a quarter for sewer charge for a residential home.
- Within the development, the sanitary sewer system would be constructed through a development agreement with the developer, then turned over to the City for maintenance and repair.

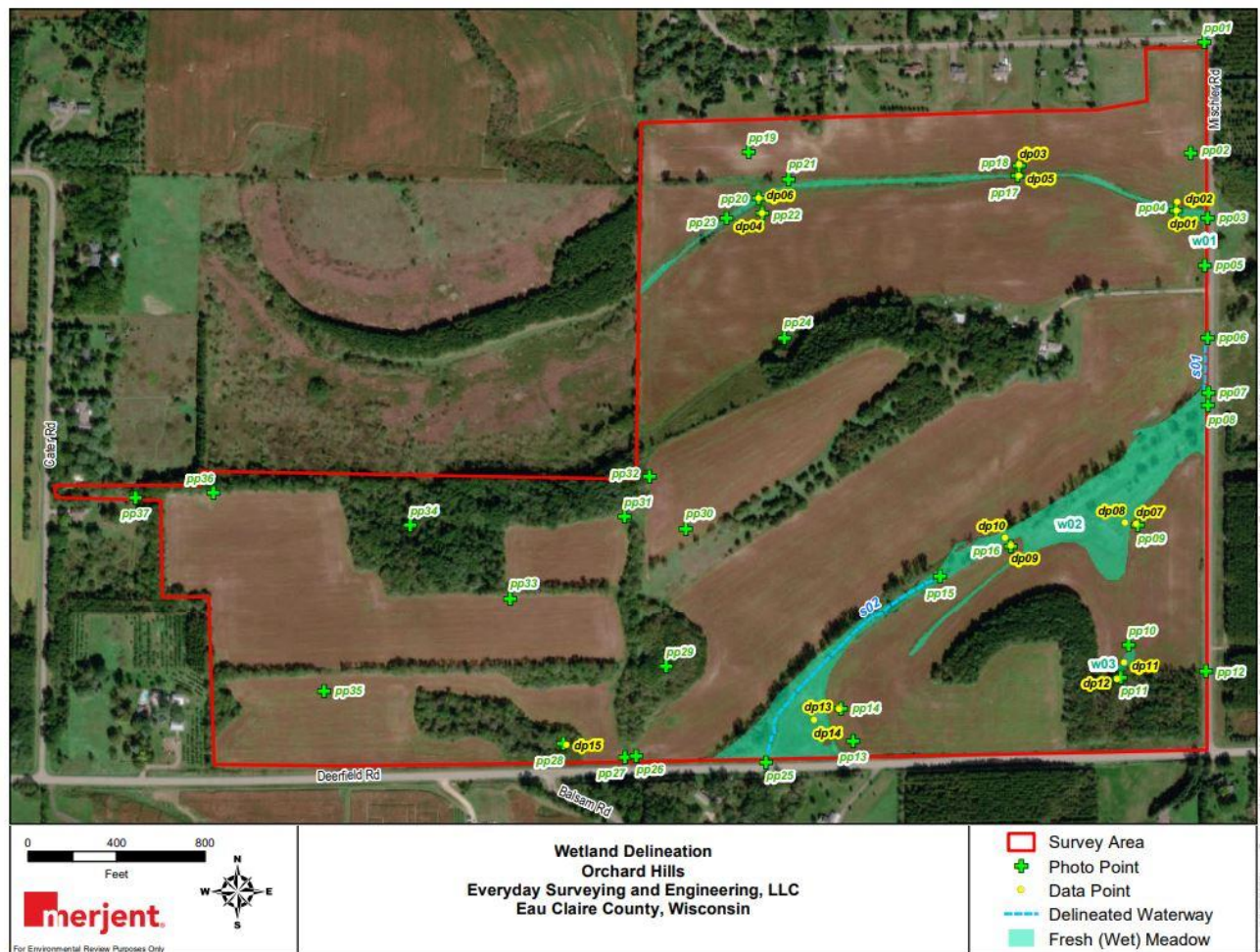
The compact nature of the proposed Orchard Hills development increases the cost-effectiveness of providing municipal services. However, a lengthy sewer extension (about 8,780 feet) would be required to serve the Orchard Hills amendment receiving area. When considering this, Criteria 1 asks if the sewer service project, as proposed and as a whole, is cost-effective; it does not ask for an evaluation of the cost-effectiveness of providing sewer service to this subdivision in comparison to other areas that may be closer to existing sanitary sewer services.

CRITERIA 2. There will be no significant adverse water quality and/or environmental impact associated with providing sewer service to the area.

Sewer service area plans are water quality management plans. Wisconsin NR 121.05(g)(2)(c) identifies certain areas that should "be considered for exclusion from the sewer service area because of the

potential for adverse impacts on the quality of the waters of the State from both point and nonpoint sources of pollution.” Further, environmentally sensitive areas (ESAs) are evaluated in greater detail during the 208 conformance review process once more definitive utility and development plans are available. As such, staff review of Criteria 2 is limited to this context and the following environmental constraints and ESAs identified in Section 3.2.1 of the SSA Plan for the proposed donor and receiving areas. Evaluation of this criteria does not include the preliminary route of the sanitary sewer extension nor does it consider the impacts on other public infrastructure, such as increased user demand on transportation systems or recreational facilities. Note: While the SSA Plan identifies all of the following as types of environmental constraints, not all of the following are ESAs, which are afforded a higher level of scrutiny in the SSA Plan policies.

- **Wetlands** – As shown in the City’s application, mapped wetlands exist immediately adjacent to the proposed donor area in the Town of Brunswick, but are not known to be located within the donor area itself. Areas of WDNR-mapped wetlands and wetland indicator soils exist within the receiving area. WCWRPC obtained from Eau Claire County Planning & Development a wetland delineation report completed in 2020 for the Orchard Hills development area. As shown on the map below, three fresh (wet) meadow wetlands totaling 11.81 acres were identified during the wetland delineation—1.29 acres along the north drainageway, 10.42 acres along the south drainageway, and a 0.10-acres wet meadow in the southeast of the area.



- **100-Year Floodplains** – There are no 100-year floodplains in the Orchard Hills receiving area. Given that the donor area in the Town of Brunswick is almost entirely 100-year floodplain, removing the donor area from the SSA boundary suggests that the donor area is not expected to be developed at urban densities in the near future.
- **Surface Waters & Shorelands** – No shorelands or navigable waters exist within the Orchard Hills receiving area. As shown on the map on the following page, two stretches of intermittent, unnamed drainageways are located, in part, within the area, which drains to Lowes Creek about 0.67 miles to the northeast of the area. In 2021, WDNR staff confirmed that these drainageways are not navigable surface waters as part of an email exchange with Eau Claire County. In the past, the landowner worked with County Land Conservation and the Natural Resources Conservation Service (NRCS) to install grassed waterway conservation practices within the project area.
- **Steep Slopes** – As shown on the map on the following page, about 25% of the Orchard Hills receiving area has naturally occurring steep slopes—16% of the area with 12% up to 20% slope and 9% of the area with 20+% slope. SSA Plan policies require best management practices for erosion control on all steep slopes of 12% or greater. The SSA Plan has additional definitions regarding what constitutes a 20+% steep slope environmentally sensitive area (ESA) based on the slope's characteristics, such as size and proximity to other ESAs. Intensive land disturbances as defined within Chapter 3.4.2 shall not encroach upon an ESA without a Type IV SSA Plan Amendment, subject to the policies and exceptions within the SSA Plan.
- **Endangered or Threatened Species and Natural Communities** – WCWRPC is not aware of any endangered resources located within the Orchard Hills receiving area. The SSA Plan policies do not require a endangered species or other biological/habitat assessment.

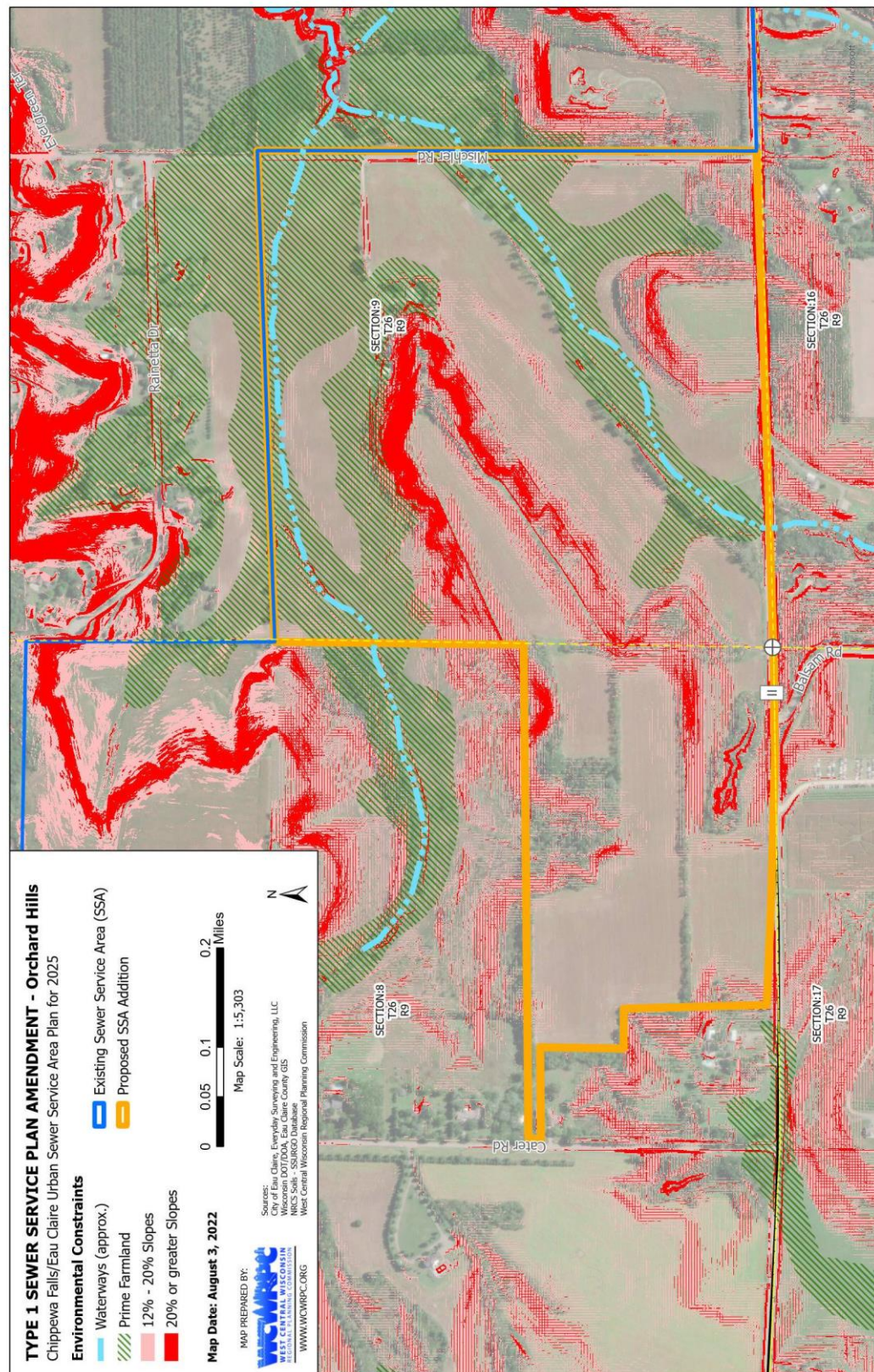
When are ESAs considered?

In most cases, the presence of environmentally sensitive areas (ESAs) does not prohibit area's inclusion within the sewer service area (SSA). For example, there are already large areas of ESAs within the existing SSA boundary.

For a SSA boundary amendment, the focus is on whether a property or area, as a whole, could or should support sewered development. The existence of ESAs is just one factor in this decision, but is more generally considered (e.g., Is it likely that sewered development can occur in the area even though some ESAs exist?).

As mentioned previously, a 208 conformance review is later required once a sewer extension is proposed. It is during the 208 conformance review that the ESAs are considered more closely and the applicant must demonstrate and/or assure that any known ESAs will not be encroached upon by intensive land disturbances, subject to SSA Plan policies. It is not uncommon for 208 conformance letters to include conditions regarding water quality and ESA protection. If an encroachment, as defined in the SSA Plan, cannot be avoided, a separate Type IV SSA Plan amendment must first be approved prior to any intensive land disturbance or construction.

Note: The environmental constraints identified on the following map are preliminary. Additional study may later be needed as part of required development approvals and the 208 conformance review to determine the extent of any environmentally sensitive areas (ESAs) under the SSA Plan.



- **Parks & Recreation Areas** – The receiving area does not include and is not immediately adjacent to an existing public park or recreation area. Lowes Creek County Park is located approximately 0.45 miles to the northeast.
- **Trout Streams** – There are no trout streams within or immediately adjacent to the Orchard Hills area. Lowes Creek, about 0.67 miles to the northeast, is a Class 2 trout stream.
- **Prime Farmlands** – As shown on the previous map, about 47% of the Orchard Hills receiving area has Prime Farmland soils. The SSA Plan recognizes that “prime farmlands are often also very suitable for residential construction and other development” and states that “any developments requesting sewer hookups or extensions should consult the appropriate farmland preservation instruments to determine if the proposals are in accordance with current regulations and consistent with the visions of the local communities as expressed through their respective comprehensive plans.” Further, Policy 1.2.4 states that “development into areas identified as prime agricultural land will be discouraged consistent with county farmland preservation plans.”

However, the SSA Plan does not require the preservation of prime farmlands. Further, local units of government have recognized that the Orchard Hills receiving area is a transition area likely to be developed over time. For example, the *Town of Washington Comprehensive Plan* identifies the desired future land use of the area as “Rural Transition,” which anticipates “that over time these lands may be transitioned to more intensive residential development.” And the City of Eau Claire approved the annexation of the receiving area with the understanding that development would occur. As such, the receiving area has not been eligible for Farmland Preservation Program tax credits and is not located in an Agricultural Enterprise Area. The urban density of the proposed development, regardless of its specific location, does have the potential to lessen the conversion of prime farmland for new housing lots elsewhere in the Eau Claire area when compared to larger lot development.

- **Wellhead Protection & Groundwater Recharge Areas** – There are no community or municipal wells within the Orchard Hills receiving area. No designated wellhead protection or groundwater recharge areas have been adopted that intersect the area. In Mr. Wallo’s 6/10/22 letter, he notes that “when the property was being considered for Town [of Washington] development, neighbors voiced concerns about potential failure of septic systems and the impact of a substantial number of new wells.” If new development at the property were to occur, the provision of municipal water and sanitary sewer service, instead of private wells and onsite wastewater treatment systems, would enhance groundwater quality protection.
- **Historical Resources** – WCWRPC is unaware of any historical or archeological resources within or adjacent to the Orchard Hills receiving area and no such sites are identified in the Wisconsin Architectural & Historical Inventory. To our knowledge, a formal historical or archeological assessment has not been performed. The SSA Plan policies do not require a historical or archeological assessment.

Regarding potential impacts to ESAs, the City’s application includes the following statements:

- “In general, development will try to minimize impact to the greatest degree feasible.”
- “The development of the land will need to follow appropriate agency policies regarding ESAs, [including] the City’s storm water management ordinance.”

- “At this time the developer is hoping to not impact the ESA areas.” The 6/10/22 letter from Mr. Wallo further notes that the development will “take advantage of the existing topography to the extent feasible” and that “any concerns about the environmental effect of the extension of city services on Lowes Creek County Park would be considered and resolved during the ultimate development process itself.”

CRITERIA 3. The proposed amendment is consistent with the policies and goals of the SSA Plan.

The SSA Plan has three primary goals, with related objectives and policies under each. Many of these goals, objectives, and policies are related to other criteria. It is important to note that the SSA Plan includes a mix of prescriptive and more aspirational goals, objectives, and policies. Page 82 notes that many of the policies “are advisory and serve as guides, reflecting a common vision of the communities within the planning area” and makes a clear distinction from those policies that shall be considered mandatory.

Goal 1. Create an orderly and planned pattern of community growth

The SSA boundary, established in 2006, is based on 20-year growth projections and planned density standards. The SSA Plan projected that the incorporated municipalities (Altoona, Chippewa Falls, Eau Claire & Lake Hallie) would grow by 14.8% between 2005 and 2025. Population estimates suggest that these communities, combined, have grown by 14.1% through 2022. This suggests that these communities may be “pushing the limits” of the existing SSA boundary. However, this Type 1 “land swap” amendment proposal does not change the total acreage within the SSA.

As stated previously, municipal sewer would be extended approximately 8,780 feet (1.67 miles) of which 800 feet (0.15 miles) would be extended beyond the existing SSA boundary. The proposed Orchard Hills subdivision is immediately adjacent to existing residential development to the north, which has significantly lower densities (most with 1.5-acre or larger lots). **Multiple residential subdivisions on larger lots are located about a quarter-mile to the east and along Lowes Creek.**

The City of Eau Claire suggests that the proposed amendment is orderly and planned, including:

- The Orchard Hills receiving area is immediately contiguous to the SSA boundary on its north and east sides, and all but 800 feet of the preliminary sanitary sewer extension is located within the SSA. And, as noted previously, part of the Orchard Hills subdivision is also currently located within the SSA.
- According to the City of Eau Claire’s request, the proposal is consistent with the City of Eau Claire’s Comprehensive Plan, Wastewater Treatment Plant Facilities Plan (as amended), and budget; and sewer service can be provided in a cost-effective manner. The developer still needs to go through the City’s zoning approval and development process, including the execution of a development agreement with the City, subdivision plat review, and stormwater management planning. The City has scheduled Comprehensive Plan Update meetings in September to address zoning changes.
- The proposed development is compact and multi-use, with an overall density of 6.68 units per acre. The 6/10/22 letter from William Wallo suggests that the project would be constructed in phases and this is a maximum potential density. As a comparison, the City notes that it was previously proposed (pre-annexation) that the Orchard Hills development would consist of 107 homes on private septic systems and wells given Town and County maximum density

standards. Now that the area has been annexed, the City's rural density standard (1-acre minimum lot size) would allow "around 230 units" on private septic. The provision of municipal sewer would allow for higher development densities.

- As part of Attachment C of the City's request, the City provides a comparison of the land requirements for the Orchard Hills subdivision (1,550 residential units) vs. 1,300 homes based on past rural development densities. The City argues that the compact nature of the Orchard Hills development will allow these homes to be located closer to City businesses, services, etc., than many residences at a lower development density, thus preventing sprawl.

In contrast, the letter from Rick Manthe, representing the Town of Washington, argues that the proposed boundary amendment is a "prime example of urban sprawl" and is inconsistent with the goals and policies of the SSA Plan, including:

- The SSA boundary amendment is approximately 2.2 miles from the City's border and that any City utilities would be extended a significant distance from the City's [pre-annexation] boundary. WCWRPC estimates that the closest point between the SSA receiving area and pre-annexation City limits is just under one mile (about 0.92 miles). Even so, the 1.67-mile sewer extension would be lengthy.
- The SSA Plan requires that "[s]ewer extensions that reflect the contiguous and compact pattern of development should receive priority over extensions that will contribute to sprawl." And that "[f]uture residential development should occur adjacent to existing development to contain the costs of public service provisions, and reflect compact and orderly development."
- Lowes Creek County Park and farmland would separate the Orchard Hills area from the City. And a nearby residential subdivision already has private onsite septic and wells, and will not connect to City utilities.
- The Town also argues that the City's request is being used to promote annexation and that the amendment request does not comply with SSA Plan Policy 1.1.7:
"[t]his amendment is only brought because the City is attempting to annex the territory. If the City truly felt the need to include the territory within the SSA, it would have made the request long ago. Instead, the annexation petition motivated the City to request the SSA amendment. There is no doubt the City is using the SSA amendment process to promote annexation."

The City and Town have conflicting interpretations on whether the proposed boundary change is consistent with Goal 1 (and its objectives and policies). The City makes the argument that the compact nature of the development enabled by the provision of municipal services has the potential to reduce low-density, urban sprawl. And from a water quality perspective, providing municipal sewer and water to 1,500+ homes on a smaller footprint affords a higher level of water quality protection overall. However, the Town makes a case that the proposed Orchard Hills development could be interpreted as sprawl, albeit at urban densities, and, when placed in the context of the larger area, would not be a compact pattern of development given the distance from existing municipal services. It could be further suggested that the high density of this mixed-use development is very different than the general neighborhood context of the surrounding area.

Again, it has not been the role of WCWRPC or the MPO to interpret individual, community plans or what makes good or efficient development when administering or applying the SSA Plan. To this end, nearly all of the policies within Goal #1 are advisory guidance (e.g., "should", not "will" or "shall").

The City's boundary amendment request does not conflict with any mandatory policy requirements under Goal 1, with one possible exception. Policy 1.1.9 states that a "[p]roposed plan amendment shall be located within or have a common boundary with the current sewer service area and shall not create a void within the service area." The proposed Town of Brunswick donor area would result in a hole or void in the SSA albeit near the perimeter of the SSA boundary, being less than 0.5 miles between the donor area and the current boundary in places.

Goal 2. Protect water quality, natural resources, and sensitive natural areas.

This is largely addressed as part of Criteria 2 previously. Key points include:

- Nearly all of the donor area within the Town of Brunswick is designated as 100-year floodplain. Even though the SSA Plan strongly discourages the encroachment upon environmental sensitive areas, the donor area was added to the sewer service area boundary in 2005-2006 based on proposed development plans for the area at that time. Given that the donor area is nearly all 100-year floodplain with adjacent wetlands, it is preferable from an environmental perspective that the 219.8 acres be removed from the SSA and not developed. Should this "land swap" amendment be approved, the donor area could potentially be added back into the SSA in the future through a SSA Plan update or amendment.
- The City's request states that a May 2021 soil analysis was completed for the Orchard Hills development area and indicated that the soils were not conducive to conventional septic systems. The installation of a municipal sanitary sewer system will provide a higher level of monitoring compliance with the potential to reduce the risks of surface and groundwater contamination. SSA Policy 2.1.9 discourages rural development in areas unsuitable for conventional on-site septic systems.
- While the Orchard Hills properties include prime farmland, all local comprehensive plans envision that the area would be developed. Developing this area at a higher density potentially reduces the development demand or encroachment on farmlands (and ESAs) elsewhere in the larger urban area.
- The Orchard Hills receiving area includes wetland and steep slope ESAs, but appears to have sufficient non-ESA land available for sewered development. As defined in the SSA Plan policies, encroachment upon ESAs by an intensive land disturbance is not allowed unless a Type IV SSA Plan amendment is approved. Further evaluation regarding the encroachment upon ESAs will take place as part of the 208 conformance review process once more definitive plans for the sewer extension and subdivision are available. It is during the 208 conformance review that the City and/or developer must demonstrate that the proposed development would not encroach upon ESAs.

Goal 3. Provide facilities and services in an efficient and environmentally sound manner.

This is addressed as part of Criteria 1 & 2 previously as well as Goals 1 & 2 above.

CRTIERIA 4. Existing or planned sewerage systems have sufficient capacity to treat projected flows.

The wastewater treatment system has more than adequate capacity to serve the Orchard Hills receiving area proposed to be added to the SSA. According to the City's application, the City's average influent flows at the wastewater treatment plant are 7.5 to 8 MGD (millions of gallons per day). The plant has a design capacity of 12 MGD and is designed to meet the community's needs for the next 30+ years. The City estimates that 0.5 MGD would be needed for every 5,000 people. The plant's available

design capacity (4 to 4.5 MGD) is more than sufficient to accommodate development of the proposed Orchard Hills receiving area.

CRTIERIA 5. The areas to be swapped are of the same acreage.

This criteria is met. As identified in the City's application, the size difference between the areas to be swapped is less than 0.16 acres.

Regarding the Town of Washington's Request to Delay Action

As discussed previously, the SSA Plan is intended to be treated separate from annexation and municipal boundary determinations. And a request to amend the SSA boundary to include Orchard Hills can be made at any time, regardless of whether the annexation occurs or not. In contrast, the 7/27/22 letter from Mr. Manthe, on behalf of the Town, suggests that the City is using this boundary amendment to promote annexation and has requested that the MPO delay consideration of the City's SSA Plan amendment application.

The SSA Plan does not require that either the donor or receiving areas be located within the jurisdiction of the applicant. Therefore, the outcome of any legal actions deciding whether the annexation process was valid does not change the validity of the City of Eau Claire's application. And SSA Plan policies and procedures do not provide a mechanism whereby WCWRPC may delay the completion of its staff report. In view of this, the WCWRPC is moving forward with the application review process as outlined in the SSA Plan.

WCWRPC Staff Recommendations

WCWRPC's recommendations are advisory for consideration by the MPO and WDNR. This report and its recommendations do not, and are not intended to, constitute legal advice. When considering this SSA boundary amendment request, we suggest that the MPO keep in mind that:

- The SSA Plan and its boundary are intended to be treated separately from annexations, and the SSA Plan does not limit a municipality from providing utilities beyond their corporate boundary.
- The focus of the amendment request is on the donor and receiving areas. The sanitary sewer extension, including the Lowes Creek and County Park crossing, will be addressed later as part of other required approvals, including the 208 conformance review.
- The SSA Plan is, at its core, a water quality plan; and WDNR has the final approval authority.

In furtherance of the SSA Plan's goals as a whole, WCWRPC recommends to the MPO the approval of the Type I SSA Plan amendment for Orchard Hills with conditions as described below:

1. Regarding the Sanitary Sewer Extension and anticipated crossing of Lowes Creek - Prior to construction of the sanitary sewer extension and any related intensive land disturbances, clearing, construction access improvements, etc., a 208 water quality management conformance review and

approval is required. It is WCWRPC's recommendation that the following conditions be required for this 208 conformance review in addition to any pertinent requirements identified in the SSA Plan:

- i. The 208 conformance review application must include documentation that any required permit approvals have been obtained for the construction of the sanitary sewer crossing of Lowes Creek and any ESAs (e.g., wetlands, 100-year floodplain, 20+% steep slopes) as defined in the SSA plan.
- ii. The 208 conformance review application must include documentation that stormwater and erosion control plans related to the sanitary sewer extension and associated land disturbances have been created and approved by the pertinent regulating entities. This is particularly important given the proximity to Lowes Creek.
- iii. The importance of protecting the water quality of Lowes Creek, including temperature, is heightened due to its status as a Class II trout stream. The 208 conformance review application must include documentation that the WDNR Fisheries Biologist for the Eau Claire region was consulted in determining an appropriate design and related mitigation measures within the water body and the adjacent riparian zone to prevent any degradation to the fishery as a result of the sewer extension.
- iv. The 208 conformance review application must include documentation that an easement or other approval(s) has been obtained from Eau Claire County to allow for the extension of any municipal utilities across County-owned land (e.g., Lowes Creek County Park).
- v. The 208 conformance review application must include a description, map, and acreages of any ESAs that would be encroached upon, temporarily or permanently, by any intensive land disturbances associated with the sanitary sewer extension, as defined in the SSA Plan.

Given that an encroachment by utilities is anticipated, the application must provide sufficient documentation that the utilities have been routed or located to minimize or avoid impacts on any ESA as required by SSA Plan Policy 2.1.3. Otherwise, the 208 conformance review will recommend denial of the application and a Type IV SSA Plan amendment would first be required. A determination by the municipal Plan Commission that the utilities have been located to minimize or avoid ESA impacts and that no reasonable alternative exists is recommended.

- vi. The 208 conformance review application must include documentation that the County has been consulted in regard to the timing and scheduling of the construction of the sanitary sewer extension in order to mitigate potential conflicts with County Park activities to the extent reasonably possible.

Note that according to SSA Plan Policy 2.1.3, only utility and public street crossings shall be permitted to encroach upon surface waters, floodplains, and wetlands without a Type IV (ESA) sewer service area plan amendment. However, a 208 conformance review is still required for the extension of sanitary sewer within the SSA.

2. Regarding the wetlands and likely steep slope ESAs within the Orchard Hills development area - Prior to any intensive land disturbances within the Orchard Hills development area and any associated sewer extension, a 208 water quality management conformance review and approval is required. It is anticipated that this 208 conformance review would likely be part of the same application for the sanitary sewer extension in #1 above. It is WCWRPC's recommendation that the following conditions be required for this 208 conformance review in addition to any pertinent requirements identified in the SSA Plan:

- i. The 208 conformance review application must include documentation that any legal challenges or litigation involving the annexation that includes the Orchard Hills receiving area have been resolved.
- ii. The 208 conformance review application must include documentation that the Orchard Hills development area is appropriately zoned for the proposed use.
- iii. The 208 conformance review application must include a subdivision plat for the Orchard Hills development area that has been approved by the City of Eau Claire or local regulating entity(ies).
- iv. The 208 conformance review application must include a site plan with building footprints, and any other areas of proposed intensive land disturbances must be included as part of the 208 review application. The existing ESAs in the Orchard Hills development area have the potential to limit the development density, subdivision plat, and final site design.
- v. The 208 conformance review application must include an existing conditions map of the ESA areas of wetlands and steep slopes as well as related buffers, as defined in the SSA Plan. These must be provided at the same scale of the site plan to allow ease of comparison.
- vi. The 208 conformance review application must include a description, map, and acreages of any ESAs that would be encroached upon, temporarily or permanently, by any intensive land disturbances within the Orchard Hills development area, as defined in the SSA Plan. Together, the documentation described above shall be sufficient to allow for a determination of whether any intensive land disturbance as part of the construction or improvement of the Orchard Hills development will encroach upon an ESA, subject to the definitions and policies within the SSA Plan.
- vii. Any temporary or permanent intensive land disturbances within the Orchard Hills development area shall avoid encroachment upon any ESAs without a Type IV Sewer Service Area Plan amendment, subject to the definitions, policies, and exceptions within the SSA Plan.
 - a. If an encroachment by utilities is anticipated, the 208 conformance review application must provide sufficient documentation that any utilities have been routed or located to minimize or avoid impacts on any ESA.
 - b. If an encroachment by streets, driveways, or private access roads is anticipated, the 208 conformance review application must provide sufficient documentation that such facilities cannot fit or function elsewhere as part of the development.
 - c. Regarding (a.) and (b.) immediately above, it is recommended that the 208 conformance review application include documentation that the municipal Plan Commission has determined that the utilities and/or streets have been located to minimize or avoid ESA impacts and that no reasonable alternative exists.
 - d. Any other ESA encroachment by an intensive land disturbance shall be avoided to an extent that is reasonable possible. If an encroachment is proposed, it is recommended that the 208 conformance review application include documentation that the municipal Plan Commission has determined that the encroachment is unavoidable and no reasonable alternative exists.
 - e. Failure to provide sufficient documentation regarding the above would result in WCWRPC recommending to WDNR the denial of the 208 conformance review application and a recommendation that a Type IV SSA Plan amendment would first be required.

3. Regarding the City's SSA Plan Type I Boundary Amendment Request – In general, it is not surprising that a Sewer Service Area (SSA) Plan boundary amendment may be needed. The existing plan was finalized in 2006 and largely based on 2000 Census data. The data, growth projections, and community plans used to determine the SSA Plan boundary are 16+ years old. The SSA Plan is nearing the end of its maximum 20-year planning horizon, while NR 121 suggests that SSA Plans should be reviewed and updated every 5 years. It is understandable that there could now be demand in sewer growth for an area sooner than expected when the boundary was established. Perhaps more surprising is that this is the first SSA Plan boundary amendment request for the Chippewa Falls-Eau Claire urban area since at least 1990.

As stated earlier in this report, this review is focused on whether it is planned and appropriate to provide municipal sanitary sewer service to the receiving area (and vice-versa for the donor area). WCWRPC recommends that:

- i. Given the extensive 100-year floodplain area and the lack of known plans to provide sanitary sewer service to the 219.8-acre donor area within the Town of Brunswick, it is agreed that the donor area is an environmentally desirable candidate to be removed from the Sewer Service Area. However, a strict interpretation of Policy 1.1.9 states that a boundary amendment shall not create a void within the SSA. In this case, the removal of the donor area acreage from the SSA is a recognition that the area is not appropriate for sewer development given the preponderance of 100-year floodplain and wetlands. Given that the SSA Plan is a water quality plan and that the donor area is in fairly close proximity to the boundary, it is our opinion that the removal of the acreage and its ESAs from the SSA outweighs the strict adherence to Policy 1.1.9 when considering the goals and objectives of the SSA Plan overall. During the next SSA Plan update, it is recommended that large, continuous environmentally sensitive areas be removed from the SSA if such ESAs would otherwise span the border of the SSA; this has the potential to result in the donor area no longer being a void given other substantial areas of ESAs between the donor area and the current SSA boundary.
- ii. It is appropriate to amend the SSA Plan boundary to include the 219.64-acre Orchard Hills receiving area given that:
 - a) The receiving area is immediately adjacent to the current SSA boundary on two sides and part of the proposed Orchard Hills development area is already located in the SSA boundary. Community and County plans/zoning have anticipated that this area would transition to more intensive residential development over time and residential development has occurred nearby, including immediately adjacent to the proposed Orchard Hills subdivision to the north. It is reasonable and appropriate to believe that the Orchard Hills receiving area would eventually be developed, potentially with municipal sanitary sewer.
 - b) The City has determined it is cost-effective and has the capacity to provide municipal sanitary sewer to the Orchard Hills development area. The City has planned for such sewer extensions.
 - c) The SSA Plan is a water quality plan. When considering the urban area as a whole, connecting compact, higher-density development to municipal water and sanitary sewer generally affords a higher level of water quality monitoring and protection than low-density development on private wells and septic systems. Any concerns related to the environmentally sensitive areas (ESAs) and the final siting of the sanitary sewer extension must be addressed as part of the 208 conformance review process.

- d) The scope and authority of the SSA Plan is limited, and it is just one step in the permitting process when sewer development is proposed. WCWRPC recognizes the differences in interpretation of whether the proposed Orchard Hills development prevents or constitutes sprawl, largely due to its distance from current municipal sewer and water services. We also recognize that the proposed density and mixed-use nature of the development is arguably different than the context of the surrounding lower-density neighborhood. However, these are community-planning decisions. Most SSA policies related to the orderly and planned development goal are primarily aspirational and advisory (e.g., “should, not shall”); they are not mandates since they are determined, implemented, and enforced by the individual communities and regulating entities through other tools (e.g., comprehensive plans, zoning, subdivision ordinances).

WCWRPC recognizes that the MPO Advisory Council and, ultimately, the WDNR may come to a different conclusion regarding the consistency of the proposed development with SSA Plan’s goals, objectives, and policies as well as whether certain policies are advisory vs. mandates and to what extent such factors should be considered when making a determination on whether to modify the SSA boundary.

APPENDIX A:

City of Eau Claire Amendment Request Cover Letter & Justification



CITY OF
**EAU
CLAIRE**
Engineering

Phone: (715) 839-4934
Fax: (715) 552-7288
engineering@eauclairewi.gov

August 4, 2022

Ms. Lynn Nelson, Executive Director
WEST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSION
800 Wisconsin Street, Suite D2-401
Mail Box 9
Eau Claire, WI 54703-3606

RE: Type I Sewer Service Plan Amendment – Orchard Hills
Chippewa Falls/Eau Claire Urban Sewer Service Area Plan for 2025

Dear Ms. Nelson:

On Tuesday, May 10, 2022, the Eau Claire City Council authorized the City to request WCWRPC's consideration and approval of a Type I – Sewer Service Plan Amendment for Orchard Hills, which would amend the acreage of the service area plan by adding to the service area while removing the corresponding number of acres from the identified service area. The City understands that the WCWRPC will coordinate with WisDNR for review of this amendment as part of the approval process.

On March 25, 2022, Everyday Surveying and Engineering, LLC, submitted a request to amend the Sewer Service Area (SSA) on behalf of Mr. LaVern Stewart (see attachment). He is the owner of eight (8) contiguous parcels totaling approximately 238.2 acres, which at the time were located in the Town of Washington with Mischler Road being the eastern boundary, Deerfield Road/CTH II on the southern boundary and access also onto Cater Road on the western limits. This property is currently bounded by the City of Eau Claire's SSA along the whole east side and on the eastern half of the northern limits. Of the eight parcels, there are two (2) existing parcels on the northern limits that are currently in the City's SSA. Therefore, the request is for the remaining six (6) parcels of this property to be brought into the City's SSA.

The City proposes removal of parcels located west of State Road 37 and south of Jopke Road with the amendment submittal. The proposed addition and removed lands are both identified as "Low Density Housing" by the Planned Land Use map in the City of Eau Claire Comprehensive Plan. Property owners were notified of the Type I Amendment prior to the City Council vote on May 10, 2022. The City will plan to bring forward a boundary amendment to the City's Comprehensive Plan similar to the SSA amendment, which will include Plan Commission and City Council presentations. The City's Comprehensive Plan can be found at the following link: <https://www.eauclairewi.gov/government/our-divisions/planning/comprehensive-plan>

The added lands do include environmentally sensitive areas, which will be further identified and addressed during the development's design process in accordance with the appropriate agencies' policies and/or requirements.

In continuing to move this process forward, the Eau Claire City Council passed a resolution on June 14, 2022, annexing land to the City of Eau Claire located at Lowes Creek Road, Town of Washington, Eau Claire County, as shown on Planning Drawing No. 22-3A (Stewart/Hauge Annexation). The related City Council packet material and approved resolution has been attached for reference. The City will require the developer of the land to go through zoning approval and the City's development process, resulting in a development agreement with the City including but not limited to street and utility improvements.

The City of Eau Claire Wastewater Treatment Plant (WWTP) was fully upgraded to an activated sludge treatment system in 2015 and is designed to meet the community's needs for the next 30+ years. It has more than adequate capacity to approximately double the amount of wastewater treated per day above current flow rates. The Eau Claire WWTP facility serves the City of Eau Claire as well as the City of Altoona with Altoona falling under the Eau Claire WPDES municipal permit. The City of Eau Claire maintains a Wastewater Treatment Plant Plan which outlines timelines for improvement. This is provided, a separate document due to size, for reference.

It should be noted that the Chippewa Falls/Eau Claire Urban Sewer Service Area Plan is nearing the end of its planning timeframe; the most recent adopted policy update occurred in 2017-2018. A link to this document can be found at:

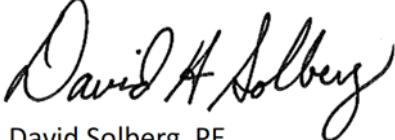
http://wccwrpc.org/Documents/ChippEC%20Sewer%20Service%20Area%20Plan_2018%20Update.pdf

The proposed amendment to the SSA Plan is to address a demand in sewer growth in an area not included when the current boundary was set in 2006/2007. The City of Eau Claire's population has increased 8% in the time the boundary was established, and the City's new growth is approaching the limits of the sewer service boundary in several locations of the City. The City of Eau Claire is also now one of the fastest growing cities in Wisconsin. We believe a request for an amendment is justifiable as we near the end of the 2025 growth projections, which is well beyond the 5-year NR121 plan review timeframe.

Please contact me at 715-839-4934 if you would like to discuss these issues further or if you would like additional information. The City understands that the Metropolitan Planning Organization or Wisconsin DNR may request that the City provide additional studies or data needed to fully consider the potential impacts of the proposed amendment.

Sincerely,

CITY OF EAU CLAIRE



David Solberg, PE

Deputy City Manager | Engineering Director & City Engineer

mlb

Enclosures

c: Scott Allen, Community Development Director (w/enc)
Leah Ness, Deputy City Engineer (w/enc)
Mark Erickson, Engineer, Everyday Surveying and Engineering, LLC (w/enc)

**UPDATED REQUEST FOR A TYPE I PLAN AMENDMENT TO THE
CHIPPEWA FALLS/EAU CLAIRE URBAN SEWER SERVICE PLAN**

**ADDITION OF ORCHARD HILLS
REMOVAL OF LANDS SOUTH OF JOPKE ROAD, WEST OF STH 37
AUGUST 4, 2022**

- 1) Type of amendment being requested;
 - a) *Type I Plan Amendment.*
- 2) Location description or map, including section, township, range, community and county;
 - a) *See Attachment A – SSA Sewer Service Amendment Narrative & Supporting Documents.*
 - b) *See Attachment B – Proposed Removal Area.*
- 3) Existing and proposed land use, development density and intensive land disturbances within the area, including map(s) if available;
 - a) *See Attachment A – SSA Sewer Service Amendment Narrative & Supporting Documents narrative and Attachment #3.*
 - b) *See Attachment C – Land Use.*
 - i) *Included in Attachment C is a map showing “Sustainability: Higher density reduces sprawl.” This is a map outlining approximate areas of current rural development density for 1,300 homes. One outlined in red along CTH F and one outlined in blue along STH 93. Both areas are approximately 4.75 miles in length from the City’s legal limits. Additionally, shown in the picture is the annexed property proposed for the Orchard Hills development, highlighted in yellow, north of Deerfield Road (CTH II). The development is proposing approximately 1,550 residential homes, a higher density that will be located closer to City businesses, utilities, services, employment, and other amenities. The density of the development will reduce the sprawl development which has occurred in the past.*
 - c) *See Attachment J – Concept Land Use Exhibit Map. The developer is planning a mixed-use development which will include the following land uses Single-Family Residential, One- and Two-Family Residential, Low-Rise Multiple-Family Residential, and Community*

Shopping District – Mixed Use Development. The density of the proposed Orchard Hills is 6.68 units per acre, which falls between the maximum density of R-1 and R-2 Districts, both which are considered low density residential.

- i) *Low density development within the City differs from rural density development of the town. A rural home is defined as a 1-acre minimum lot size with on-site wastewater treatment and a private well. If this were the case for Orchard Hills, the maximum number of units would be around 230 units. The Single-Family Residential zoning district of the City, allows from a maximum density of 5 units per acre, and a One- and Two-family residential zoned district allows for a maximum density of 8 units per acre. The Orchard Hills Development is proposing a density of 6.68 units per acre which is more compact growth within the City limits than which would happen should the area have been developed with the rural residential density of the Town.*
- 4) A justification of why the amendment is needed and reasonable;
- a) *Land bordering the property to the east, and on the eastern half of the northern limits, is included in the current SSA Area. The current SSA can be found at the following link: [http://wcwrpc.org/Documents/ChippEC%20Sewer%20Service%20Area%20Plan 2018%20Update.pdf](http://wcwrpc.org/Documents/ChippEC%20Sewer%20Service%20Area%20Plan%202018%20Update.pdf)*
 - b) *Currently 2 of 8 contiguous parcels are in the City's SSA; the remaining 6 are being requested to be included in the SSA.*
 - c) *The City's Comprehensive Plan, and also the West Central Wisconsin Regional Planning Commission's SSA Plan, acknowledge and plan for the expansion of City's utilities to accommodate smart growth.*
 - i) *The City has planned and budgeted for utility trunk line expansion in newly annexed areas to help facilitate compact growth.*
 - (1) *Funding for City extensions for sewer and water are reoccurring and are outlined beginning in 2010 within the City's Capital Improvement Plans.*
 - (2) *Funding for City expansions for sewer and water are outlined beginning in 2010 within the City's Capital Improvement Plans.*
 - ii) *Smart growth reduces the pressure to continue converting rural/agricultural land to residential by reducing urban sprawl.*
 - iii) *Sustainable growth provides the following benefits:*
 - (1) *Eliminates potential construction of 107 private septic systems and wells, or a private communal collection system that would be installed by development of the annexed area should the SSA Type I Amendment not be approved for the proposed*

area. The City of Eau Claire ordinance allows development with the construction of a private well and septic system if City utilities are not available and the property is within City limits (Chapter 15.08.050). However, should the SSA Type I amendment be approved, the City would construct sanitary and water utilities to service the properties within the City. Properties within the City are required to connect within one year of construction of the utility (Chapter 15.08.040) which would be service for the proposed 1,551 units within the Orchard Hills development.

Additionally, extension of City sanitary would provide the ability and opportunity to over 150 properties within the current SSA area to connect to the City provided utilities and services. Therefore, there is the potential to remove 150 private septic systems.

(a) By not installing private wells, the installation of a sanitary system maintained and operated by the City provides a higher level of monitoring compliance. This has the potential to, reduce surface and groundwater contamination.

(b) In May 2021, soil analysis was completed for the area of development. The results indicated the soils were not conducive to conventional septic systems but would be able to construct mound systems and shallow conventional systems within the developable area.

(2) Reduces carbon footprint with more compact growth closer to jobs and commerce, reducing travel distances and providing access to public transit.

(3) Creates more housing to relieve demand for housing.

(4) Adds to tax base being created for multiple entities including CVTC, Eau Claire County, and the Eau Claire Area School District.

d) The Chippewa Falls-Eau Claire Urban Sewer Service Area Plan for 2025 is an approved document from 2007 which had a partial update in 2018. The 2018 updated states "This was not a full plan update and many sections of the plan were not modified or updated, including: (i) the demographics, economic, and land use data, plans, and maps in Chapter 2; (ii) the analysis of wastewater treatment systems and development areas in Chapter 3.5; (iii) the forecast of urban growth in Chapter 3.6; and (iv) the sewer service area (SSA) boundary in Chapter 3.7." The proposed amendment is to adjust the boundary of the SSA to incorporate an annexed portion of land from the City, adjacent to the existing SSA.

i) The NR 121 calls for sewer service area plan status review and a possible plan update requirement every five years. It is the City's understanding that a plan update will occur in the future but the current amendment is a boundary impact that hasn't been addressed within the plan since 2007. Given that we are 8 years past the regular review and update of the SSA boundaries amendments such as this one should be

- expected and approved as a necessary interim step prior to a full review and expansion of the SSA to recognize community growth and update capacity of the City's WWTP to serve that growth in an environmentally sound manner for protection of public health and preservation of ground water utility.*
- e) *The City of Eau Claire has completed multiple Wastewater Treatment projects since 2007 when the original SSA plan was adopted. Most recently, in 2009 and 2017, the Wastewater Treatment Plant was renovated to increase efficiency and available capacity. The additional capacity will assist in meeting future demand with the City planning for expansion of services. The City's annual DNR review of the WPDES results in service quality for the WWTP facility graded at a 4.0 since the plant upgrades has been completed. As shown in Attachment L, the expansion of sewer services to the southern City limits in this location provides service not only to Orchard Hills but to other areas within the existing SSA boundary and has potential to service future areas as well.*
- 5) Existing and proposed services for the area including the cost-effectiveness wastewater treatment solution and an assurance that adequate wastewater treatment capacity is available for the proposed development;
- a) *City storm water, sanitary, and water utilities will be extended to the annexed properties as outlined in plans and ordinances.*
 - b) *The City's average influent flows at the Wastewater Treatment Plan are 7.5-8 MGD with a plant design of 12 MGD. Capacity is available for additional service areas. When estimating the impact of an approximate 5,000-person development being added to the Wastewater Treatment system, we looked at the current population of Eau Claire being approximately 70,000 and the average current service of 7.5 to 8 MGD, which includes all of the industrial waste. Knowing this addition will not have industrial waste, the following calculations show the impact of the development being an approximate demand of 0.5 MGD capacity at the WWTP.*
 - i) *70,000 population = 7 MGD; Therefore, 5,000 people = 0.5 MGD*
 - c) *The cost to customers for treatment is \$5.00 per CCF (100 cubic feet), which equates to \$0.0067/gallon or 2/3 cent per gallon.*
 - d) *See Attachment K & Attachment L – The expansion of sewer services within the SSA and to the amendments added area would provide sanitary services at a reasonable cost to residents of Orchard Hills.*
 - i) *The proposed extension of the sanitary would include 1 lift station and 7,200 feet of PVC sanitary Sewer which will be paid through the City's Capital Improvement Program as budgeted through the Sewer-Sanitary System Expansion. The related estimate for the total expansion is approximately \$3,100,000, with approximately \$1,850,000 of the costs related to the sanitary portion of the expansion project.*

- ii) *The sanitary sewer system within the Development would be constructed through a development agreement with the Developer which is then turned over to the City's ownership for maintenance and repair.*
 - e) *Attached as a separate document to this submittal is the, The City of Eau Claire's Wastewater Treatment Plant Facilities Plan Amendment, which was completed in January of 2007 by Donohue Associates in association with Ayres Associates. This study provided:*
 - i) *Characterization of current and projection of future wastewater flows and loadings for the planning period, which was through 2030.*
 - ii) *An assessment of facility needs based on evaluation of the condition, capacity and function of the existing facilities and their ability to meet the City's current and future needs for reliable and effective performance.*
 - iii) *Development and evaluation of alternatives to address the identified needs.*
 - iv) *Development of recommended improvements and a plan for their implementation.*
 - f) *The City's Budget, shows the continues efforts to follow improvement recommendations of the WWTP Facilities Plan. This information can be found at the following link: <https://www.eauclairewi.gov/government/budget>*
 - i) *The City has a planned project update to the WWTP Facilities Plan included in the Capital Improvement Program for 2023.*
 - ii) *The City has adequate funds approved within the budget for Sanitary Sewer System Expansion to complete the proposed expansion.*
 - g) *The City's wellhead Protection is outlined in Chapter 14.10 of the City's Code of Ordinances, which can be referenced at the following link: <https://www.eauclairewi.gov/home/showpublisheddocument/36144/637606405875670000>*
 - i) *The City's wellhead project area is generally located east of the Chippewa River, north of STH 312 to the City limits and just east of North Hastings Way/BUS 53. The proposed Orchard Hills development would not impact this area.*
- 6) A map showing the geographic extent of the project area that will be served by a sanitary sewer extension or hook-up, if any;
- a) *See Attachment A – SSA Sewer Service Amendment Narrative & Supporting Documents – Attachment #2.*
 - b) *See Attachment K – Orchard Hills Preliminary Sanitary Sewer Routing*
 - c) *See Attachment L – Orchard Hills Preliminary Sanitary Sewer – Additional areas to be*

Serviced

- d) *See Attachment M – Orchard Hills Preliminary Sanitary Sewer –Areas Serviced within the SSA by Proposed Extension*
- 7) Maps and acreages of any known ESAs within the project area, if available, as well as any potential disturbances of an ESA or any water quality impacts if known;
- a) *See Attachment D – Wetland Inventory.*
 - b) *As the plan develops in more detail, there will be more known data on impacts to ESAs. In general, development will try to minimize impact to the greatest degree feasible. Additionally, it is understood that tracking will occur related to all ESA impacts, if needed, due to disturbance.*
- 8) How any potential impact to existing ESAs are mitigated, including storm water management plans and any best management practices being required for encroachments upon a steep slope of 12+%;
- a) *The development of the land will need to follow appropriate agency policies regarding ESAs, the City's storm water management ordinance. There are identified steep slopes – see Attachment E and ESA's as previously mentioned.*
- 9) The consistency of the project with the municipality's comprehensive plan;
- a) *The City's Comprehensive Plan and its recently adopted 5-year review update (February 2022) can be found at the following link: <https://www.eauclairewi.gov/government/our-divisions/planning/comprehensive-plan>*
 - b) *The City of Eau Claire's Comprehensive Plan has the following goals within the Land Use & Growth Management Plan:*
 - i) *Objective 1 – Sustainable Growth, Policy #10: Jurisdictional Changes, use boundary agreements and annexation to help create a compact, attractive, and sustainable urban area distinct from the rural areas of adjacent Towns. Consider future expansion areas with the surrounding area.*
 - ii) *Objective 3 – Perimeter & Regional Growth, Policy #5: Environmental Protection, on land annexed to the City, protect or restore sensitive or unique natural resources such as flood plains, steep slopes, major wooded areas, streams, wetlands, water quality, shorelines, and riverbanks through regulation and/or City investment.*
 - iii) *Residential Strategies: R1. Increase prevalence of energy-efficient, low-emissions affordable housing. Work with partners and developers to increase awareness of and access to resources for low-carbon-footprint development.*
 - iv) *The Orchard Hills Development will need to go through zoning, site plan and development agreement process with the City of Eau Claire to develop the annexed*

- land. As a part of this process, boards and commissions review and providing feedback on how and if the development is meeting the City's Comprehensive plan goals.*
- c) The Sustainable Development & Design through the Town of Washington Comprehensive Plan states the following Goal 2.3 – Energy, Utilities & Community Facilities:*
- i) Policies 1&2 – Sanitary Sewer & Water Supply – The County/Town may require preparation of a groundwater impact analysis from an independent soil scientist or other related professional prior to approving new development.*
 - ii) Policy 2 – The County/Town encouraged development of multi-family apartment buildings, senior housing, and special needs facilities within the Town in appropriate locations in proximity to the City of Eau Claire and Altoona. These types of housing development should be located where residents can safely walk or bike to community services and neighborhood retail and service establishments.*
 - (1) The developer of Orchard Hills has proposed a variety of land uses over the 232 acres and is working with the City of Eau Claire related to roadway improvements, amenities within the development and having multi-use development in this area with an appropriate density. The variety of zoning proposed will allow multi-use development in the southeast quadrant of the proposed development consistent with City plans.*
 - (2) Other successful developments that have occurred within the periphery of the City, following the City's ordinance-based process. Some examples of this are:*
 - (a) Southside of Eau Claire*
 - (i) Oakwood Hills (Golf Road Area),*
 - (ii) Timber Bluff (Graff Road and Old Town Hall Road Area)*
 - (iii) Prairie Park (USH 53 south I-94)*
 - (b) Westside of Eau Claire*
 - (i) Mill Meadows and Mill Meadows West (North Town Hall Road/CTH EE south of STH 312)*
 - (ii) Hoyem Acres (South of Est Folsom Street, West of Preston Road)*
 - (iii) SCS Eau Claire (West of Kane Road, south of STH 312)*
 - (c) Northside of Eau Claire*
 - (i) Shorewood (Jeffers Road north of STH 312)*
 - (ii) Woodlands (Jeffers Road/CTH F north of County Line Road)*
 - (d) Eastside of Eau Claire*
 - (i) Hidden Meadows (East of Business 53, north of East Hamilton Avenue)*

10) The City of Eau Claire continues to be one of the fastest growing communities in the State of Wisconsin. The demand for housing has reached the periphery of the City to the extent of the current SSA boundary. The City has planned for services to address the additional wastewater treatment needs of the future demand in a cost-effective manner as outlined in #5 above. Any known physical, regulatory, or intergovernmental barriers or issues related to the proposed amendment; and,

- a) *Wisconsin Department of Administration provided Municipal Boundary Review on May 3, 2022.*
- b) *There are existing ESA's, which may need further study. At this time the developer is hoping to not impact the ESA areas.*

11) What approvals for the project have been granted by the municipality.

- a) *On Tuesday, May 10, 2022, the Eau Claire City Council authorized the City to request WCWRPC's consideration and approval of a Type I – Sewer Service Plan Amendment for Orchard Hills, to amend the acreage of the service area plan by adding to the service area while removing the corresponding number of acres from the identified service area.*
- b) *On May 16, 2022, the Eau Claire City Plan Commission made a motion to approve annexing land located at Lowes Creek Road, Town of Washington, Eau Claire County, as shown on Planning Drawing No. 22-3A (Stewart/Hauge Annexation) Attachment F.*
- c) *The Eau Claire City Council passed a resolution on June 14, 2022, annexing land to the City of Eau Claire located at Lowes Creek Road, Town of Washington, Eau Claire County, as shown on Planning Drawing No. 22-3A (Stewart/Hauge Annexation) Attachment G.*
- d) *The City has the following Comprehensive Plan Update meetings scheduled to address the zoning and areas changes being proposed by the Stewart/Hauge Annexation. The City recently also brought forward a Comprehensive Plan change related to land annexed to the City along CTH T on the northwest side of the City.*
 - i) *September 19, 2022 Plan Commission*
 - ii) *September 26 & 27, 2022 City Council*

Upon the submittal of a preliminary plat by the developer, the plat will be taken to Plan Commission and City Council according to outlined planning processes.

12) Acreages, maps, and legal descriptions for the areas to be added or deleted, along with names and mailing addresses of all landowners within the areas to be added or deleted.

- a) *See Attachment A – SSA Sewer Service Amendment Narrative & Supporting Documents.*
- b) *See Attachment B – Proposed Removal Area the City understands the need to track ESA's separately within the SSA. The swapped acreage of the removed land from the Town of Brunswick is based on the developable acreage and accommodates for the ESA's within that area.*

c) *See Attachment H – mailing addresses.*

13) Documentation that all property owners in any areas proposed to be deleted (swapped) from the sewer service area were notified of the application request, including contact information for each landowner.

a) *See Attachment H – mailing addresses.*

b) *See Attachment I – Notice.*

14) Set of construction/engineering plans showing utility connections and locations, including the planned footprint of any buildings or other intensive land disturbance.

a) *See Attachment J – Concept Land Use Exhibit Map. The developer is planning a mixed-use development which will include the following land uses, as identified by their corresponding City of Eau Claire zoning district designations. The “P” suffix stands for Planned Development, which is associated with each of the residential zoning districts. An established Plan may allow for reduced front yard setback in the R-1 and R-2 districts, as well as in the R-3 district look at private driveways servicing multiple units.*

i) *C-3-MX (Community Shopping District – Mixed Use Development) This land is shown in the southeastern portion of the new annexation, abutting Deerfield Road (CTH II) and Mischler Road. The concept is to be a mix of commercial on the extreme southeast corner with a combination of either multi-family buildings and / or senior living facilities surrounding the commercial.*

ii) *R-2P (One- and Two-Family Planned District) This land is just west and north of the C-3MX proposed area. This is proposed to be a variety of sizes of twin homes.*

iii) *R-1P (One-Family Planned District) This land is located adjacent to Deerfield Road (CTH II) and next to the other three proposed land uses. The proposed developer is planning this area for a variety of sizes of single-family homes.*

iv) *R-3P (Low-Rise Multiple-Family District) This land is located in the northeastern portion of the annexed land, adjacent to Mischler Road. The proposed land would include a variety of residential buildings with 4, 8, 12 and 16 units, including an assortment of options such as: energy efficient, senior living, affordable housing and market rate housing.*

v) *The overall development density as proposed is 6.68 units per acre which is just above the Maximum Density of an R-1 Single-Family zoned district of 5 units per acre and below an R-2 Multi-family zoned district which has a maximum of 8 units per acre.*

b) *See Attachment K – Orchard Hills Concept Sanitary Sewer Routing*

APPENDIX B:

Additional Letters

Includes:

- a letter dated 6/10/22 (received 8/4/22) from William Wallo, Bakke Norman, on behalf of the development company
- a letter dated 7/27/22 (received 8/4/22) from Rick Manthe, on behalf of the Town of Washington.

WILLIAM E. WALLO

ATTORNEY

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Bakke Norman, S.C.
7 South Dewey Street
Suite 220
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June 10, 2022

VIA EMAIL – lnelson@wcwrpc.org

Lynn Nelson, Executive Director
West Central Wisconsin Regional Planning Commission
800 Wisconsin Street
Building D2, Room 401
Mail Box 9
Eau Claire WI 54703

Re: City of Eau Claire – Sewer Service Area Amendment Application

Dear Ms. Nelson:

Our firm represents CDPG Developers LLC (“CDPG”), the company seeking to create the Orchard Hills development (the “Orchard Hills Development”) on the south side of Eau Claire. LaVerne Stewart is the current owner of the property proposed for the Orchard Hills Development (the “Stewart Property”), and CDPG holds an option to acquire the Stewart Property for purposes of development. Earlier this year, Mr. Stewart and another neighboring landowner, Todd Hauge, filed a unanimous petition for annexation into the City of Eau Claire (the “Annexation Petition”). The Annexation Petition was approved by the Eau Claire City Council and a corresponding annexation ordinance has been adopted.

As part of the process, Everyday Surveying and Engineering, LLC also submitted a request on Mr. Stewart’s behalf to amend the Sewer Service Area (the “SSA”). The City Council subsequently authorized the City to request WCWRPC’s consideration and approval of a Type I – Sewer Service Plan Amendment for the Orchard Hills Development. The application to amend the SSA has been presented to WCWRPC for consideration. This amendment would essentially assure that the annexed area is added to the service area to facilitate the Orchard Hills Development. CDPG wishes to voice its support for the proposed amendment and requests that WCWRPC approve it.

About the Development Group

CDPG consists of four principal members, each of whom has a longstanding connection to Eau Claire and real estate development in some capacity. **Holzinger Homes** is located in Altoona, Wisconsin, and constructs custom homes and related activities such as cabinetry and flooring installation. The owner, Paul Holzinger, was the 2020 president of the Chippewa Valley Home Builders Association. **Chippewa Valley Excavating** is a family-owned business located in Bloomer, Wisconsin, and has been in business for almost twenty years performing excavation,

grading, septic installation and maintenance, and trucking services throughout the Chippewa Valley. **Trend Stone Surfaces** is located in Eau Claire, Wisconsin, and provides high-quality stone products for construction purposes. **C&E Wurzer Builders** is located in Eau Claire, Wisconsin, and has been designing and developing new homes throughout the Chippewa Valley for many years.

Collectively, CDPG is a local group of builders who are determined to see the Orchard Hills Development have a lasting positive impact (and legacy) in the overall Eau Claire community.

The Development Commitment

For the past several years, CDPG has looked at ways to develop the Stewart Property. During those prior efforts, the primary focus was on a development that would remain within the confines of the Town of Washington. However, there were repeated concerns raised about such a development, especially as to environmental matters and traffic safety.

After substantial assessment and discussion, the CDPG team realized that many of these concerns would be solved through annexation of the Stewart Property into the City of Eau Claire and the resulting provision of city services to any ultimate development. It also became clear to the development group that Eau Claire needed additional large-scale housing developments that offered a greater array of housing choices than might be afforded if the property remained located in the Town of Washington.

The SSA amendment is a critical component of this development process. As is reflected in the application, CDPG has prepared a number of preliminary documents, including projections of the maximum potential unit density of the development. CDPG does not anticipate the actual development will actually match the potential maximum density. It is clear, however, that meaningful development of the Stewart Property that matches the City's goals of "smart growth" and provides the necessary housing options for area residents will require City services including sewer and water. It is also evident the City is prepared to provide those resources to facilitate the development of Orchard Hills.

CDPG is committed to building a quality project that will have a lasting effect on Eau Claire's future growth. Any development will be sensitive to the needs of the neighbors, the Town of Washington, the local environment, and the larger Eau Claire community. The development group anticipates construction of a diverse mix of housing types, all of which would be well built and take advantage of the existing topography to the extent feasible. Construction will account for the different socio-economic needs of the Eau Claire community and will integrate options such as trails and bike paths that increase accessibility and walkability throughout the development, as well as exploring options to integrate or connect its project into the Lowes Creek trail system. Street and utility development will occur with input from the City and the Town of Washington to assure that they are safe and efficient for all residents of the area.

CDPG hopes this project will shape the future development of Eau Claire's south side for years to come, similar to prior developments around Meadowview school and other areas around Golf Road and Lowes Creek. Quality development of the Stewart Property will not take place overnight but will take years to properly plan and implement in various phases. City oversight and input from

the Town of Washington and the neighbors will be integral to the ultimate development. But before any of those activities can proceed in any meaningful way, the SSA needs to be amended to include the annexed area.

The Need for the SSA Amendment

As the City has noted in its application, the proposed SSA amendment reflects the evolving demographics and housing demand in the Eau Claire community. The annexation of the Stewart Property reflects the City's commitment to "smart growth" as it looks to see a substantial housing development on Eau Claire's south side located on a relatively small geographic footprint. The SSA amendment is another step in furthering those goals.

When the property was being considered for Town development, neighbors voiced concerns about potential failure of septic systems and the impact of a substantial number of new wells on existing properties. The provision of City services (water and sewer) to the development addresses these concerns. Likewise, any concerns about the potential environmental effect of the extension of city services on Lowes Creek County Park would be considered and resolved during the ultimate development process itself. As noted in the application, the City will require CDPG to go through zoning approval and the City's development process.

Development of the Stewart Property in conformity with the City's development requirements will result in a housing project that is efficient and sustainable for both current and future City residents. Amending the SSA to permit the City to extend necessary services to the Stewart Property (and ultimately, residents of the Orchard Hills Development) will support and facilitate Eau Claire's "smart growth" for years to come.

In sum, my client believes the SSA amendment helps resolve environmental concerns related to the project because it will allow the Orchard Hills Development to connect to City sewer and water service. This project provides the City with the ability to manage housing growth and provide a substantial number of housing options in a relatively compact property footprint. The City has a unique opportunity to supervise development to assure that it occurs in a "smart" way that maximizes use of the available real estate, provides a broader array of pricing options, and is consistent with the City's vision for compact, sustainable development.

Based on the foregoing, our client requests that the SSA Amendment be approved.

Please let me know if you have any questions.

Lynn Nelson
August 3, 2022
Page 4

Sincerely,

BAKKE NORMAN, S.C.

A handwritten signature in blue ink, appearing to read "Wallo", with a stylized, flowing script.

William E. Wallo

WEW

cc: Eau Claire City Attorney
CDPG Developers LLC

Rick Manthe
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
RManthe@staffordlaw.com
608.259.2684

July 27, 2022

Technical Advisory Committee
Chippewa-Eau Claire Metropolitan Planning Organization
800 Wisconsin Street
Eau Claire, WI 54703

RE: Objection to City of Eau Claire's Request to Amend Sewer Area

Dear Technical Advisory Committee Members:

The Town of Washington objects to the City of Eau Claire's request to amend its sewer service area ("SSA") because the request does not comply with the Chippewa-Eau Claire Metropolitan Planning Organization's ("Organization") stated policies for SSA amendments. Consequently, the Technical Committee and the Organization should deny the City's request, or postpone its decision pending the outcome of the Town of Washington's lawsuit challenging the validity of the City's annexation.

The City's request for an SSA amendment is linked with a petition for annexation it received in May of 2022. Prior to filing the annexation petition, a developer working with the annexation petitioners proposed a residential development within the Town that would not need City utilities. Only after the developer was unable to secure a zoning amendment from Eau Claire County did the annexation petition come forth. The Town has since challenged that annexation in court, because it does not comply with Wisconsin law.

The area proposed by the City in the SSA amendment application is approximately 2.2 miles from the City's border. Any residential development that occurs will require installation of utilities a significant distance from the City's current boundary. Not only that, but there is a residential subdivision directly bordering the area that utilizes private onsite wastewater treatment systems.

All SSA amendments must comply with the goals and policies of the Chippewa Falls/Eau Claire Urban Sewer Service Area Plan-2025 ("Plan"). Plan at 103-104. This amendment does not.

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The Plan requires that “[s]ewer extensions that reflect the contiguous and compact pattern of development should receive priority over extensions that will contribute to urban sprawl.” *Id.* at 82. Similarly, the Plan requires that “[f]uture residential development should occur adjacent to existing development to contain costs of public service provisions, and reflect compact and orderly development.” Plan at 83. This amendment is a prime example of urban sprawl. Residential development would occur miles from the City’s border. Lowes Creek Park and farmland would separate the area from the City. A residential development 2.2 miles away from the City is not a compact pattern of development. The City will need to extend miles of infrastructure just to reach the area. A nearby residential subdivision already has private onsite water systems and will not hook up to City utilities.

Finally, the Plan mandates that “the Sewer Service Area Plan (SSA Plan) and boundary should not be used to promote nor hinder annexation petitions...” *Id.* This amendment is only brought because the City is attempting to annex the territory. If the City truly felt the need to include the territory in its SSA, it would have made the request long ago. Instead, the annexation petition motivated the City to request the SSA amendment. There is no doubt the City is using the SSA amendment process to promote annexation.

Since the SSA amendment violates these clear Organization policies, the Technical Committee and the Organization must deny the request. At the very least, the Organization should delay its recommendation pending the outcome of the Town’s lawsuit challenging the annexation. That is the only way to ensure the SSA amendment application does not promote the annexation petition.

Very truly yours,

STAFFORD ROSENBAUM LLP

A handwritten signature in black ink, appearing to read "Rick Manthe", with a long horizontal flourish extending to the right.

Rick Manthe

RAM:mai

APPENDIX C:

Overview of Sewer Service Area Planning & the Amendment Process

Sewer Service Area (SSA) Planning Background

At their core, sewer service area plans (SSA Plans) are water quality plans. SSA Plans anticipate future wastewater needs, identify areas suitable for sewer development, and help protect environmentally sensitive areas (ESAs) where development could have an adverse impact upon water quality. Under Federal and State rules (i.e., Clean Water Act Sections 201 & 208, Wisconsin NR 121), SSA Plans are required for larger urban areas and become part of Wisconsin Department of Natural Resources (WDNR) areawide water quality management plans. SSA Plans are considered by Federal and/or State agencies when reviewing plans and grant applications for wastewater improvements. Further, for sanitary sewer extensions and certain private sewer laterals and interceptor mains within the urban area, State agencies require a water quality management review letter (also known as a 208 conformance letter) stating that the proposed extension, lateral, or interceptor main is consistent with the SSA Plan.

West Central Wisconsin Regional Planning Commission (WCWRPC) completed the initial SSA Plan for the Chippewa Falls-Eau Claire urban area in 1981 through a contract with Wisconsin Department of Natural Resources (WDNR). Since this initial plan, WCWRPC has functioned as the area's sewer service area planning agency, which includes the review of proposed sewer extensions and issuing the 208 conformance letters, working closely with the local units of government within the sewer service area. The Chippewa-Eau Claire Metropolitan Planning Organization (MPO) Policy Council has been designated as the local advisory body to assist and advise the Wisconsin Department of Natural Resources in the creation, maintenance, and implementation of the SSA Plan.

WCWRPC facilitated updates to the SSA Plan in 1990 and 2006-2007. The current SSA Plan was approved by the MPO in 2006, with WDNR approval in 2007, and has not been fully updated in over sixteen years. In 2017-2018, a partial policy update was completed that was limited to clarifying ESA definitions and some policies as well as streamlining some procedures.

One Step in the Overall Review Process

The 208 review and plan amendment processes identified in the SSA Plan are one step in the planning, review, and approval process when sewer development is proposed.

It is not the intent of the SSA Plan to duplicate or supersede other plans and decision-making authority. Policy 2.1.1. and Policy 2.1.6 of the SSA Plan explain that such land use planning and regulatory responsibilities lie with the municipality and local regulating jurisdiction, not the MPO or WCWRPC. Page 82 strongly encourages area communities to incorporate and affect the SSA Plan policies through their own plans and regulatory tools. And Policy 3.1.10 states that:

“The issuance of a 208 Review Letter or approval of a plan amendment does not constitute approval or compliance with any other local, state, or federal permits or regulations that may be required for sewer construction or associated land development activities.”

Unlike zoning or land division ordinances, the SSA Plan does not regulate the types or layout of land uses. The possible exception is the protection of environmentally sensitive areas (ESAs), as defined within the plan, from encroachment. And while the primary focus of the SSA Plan policies is to provide surface water quality protections, especially when a 208 conformance letter is required, other stormwater management, erosion controls, and land use decision-making has historically been the responsibility of each individual community. This includes the interpretation of what is consistent with one’s own comprehensive plan, overall site suitability, whether reasonable alternatives exist, and what constitutes efficient and economically sound services and development. WCWRPC does not have engineering staff, and our role in such reviews are, in large, part administrative. When reviewing a 208 conformance or amendment request, WCWRPC relies on the applicant to provide accurate and complete information as part of their application and will obtain the assistance of municipal engineers and/or WDNR staff when needed.

Further, this report is limited to the proposed amendment (i.e., is the boundary change appropriate?). If this amendment is approved, a separate 208 conformance review and letter would be required prior to the extension of sanitary sewer to the property. While a boundary amendment looks at the bigger picture (i.e., is it appropriate and expected for this area to be served by sanitary sewer in the future?), the 208 conformance review requires consideration of a higher level of detail regarding the project, such as:

- Do any ESAs (as defined in the SSA Plan) exist in the area to be served?
- A site plan demonstrating that intensive land disturbances will not encroach upon the ESAs, subject to the exceptions in the SSA Plan.
- Demonstrating that the project has obtained or will obtain zoning, subdivision, or other regulatory approvals.
- An assurance or condition that the development will comply with applicable stormwater management and erosion control requirements.

What is a Type I (“Land Swap”) SSA Plan Amendment?

SSA Plan amendments are used to modify the SSA Plan and its boundary without fully reconsidering and updating the Plan and its growth projections, which is a time-intensive and lengthy process. A Type I amendment changes the SSA boundary without alternating the total acreage within the sewer service area. With this amendment, acreage can only be added to the service area if a corresponding number of acres is subtracted. This type of amendment may allow for sewer growth in an area that was not expected at the time that the SSA Plan boundary was last updated, while still accommodating such growth within the population and growth projection totals of the SSA Plan (i.e., growth is occurring as projected, but in a different area).

Process for Type I Plan Amendments

According to the SSA Plan (pages 99-104), the standard and typical amendment process includes the following steps:

Step 1: Application Submittal. The municipality in which the project is located or the municipality that owns the sanitary sewer lines being connected to (City of Eau Claire) submits a complete amendment application to WCWRPC after authorization by the appropriate municipal decision-making body. Type I amendment requests (applications) should be very clear in defining the areas being swapped. Pages 102-103 of the SSA Plan identifies what must be included in an application.

Step 2: WCWRPC Staff Report. WCWRPC reviews the application for completeness and requests additional information from the applicant if needed. WCWRPC will also contact WDNR to discuss the proposed amendment. WCWRPC will then prepare a staff report with any recommendations or suggestions for MPO consideration.

Step 3: MPO TAC Review. The MPO Policy Council Technical Advisory Committee will review the application and draft WCWRPC staff report, and then make an advisory recommendation to the MPO Policy Council. The applicant is encouraged to be present at this meeting to address any questions. WCWRPC may need to collect additional information or revise its staff report as a result of this step.

Step 4: Public Meeting or Hearing. The MPO Policy Council will conduct a public meeting during which WCWRPC staff will present its report, the applicant will have an opportunity to present their request and answer questions, and an opportunity for public comment is provided. Page 101 of the SSA Plan identifies related public noticing requirements, including notification to all landowners within the areas being swapped. This may or may not be a more formal public hearing as described on page 101.

Step 5: MPO Policy Council Advisory Action. After consideration of the reports and any public comments, the MPO Policy Council shall act upon the amendment request by resolution during a public meeting. The Council may approve, approve with conditions, or deny the application. The Council's action is

Role of the MPO

NR 121 requires that a “local policy advisory committee made up of representatives of the various local units of government in the [sewer service] planning area shall be established...**to act in an advisory role to [WDNR]** in matters concerning the implementation of the [sewer service area] plan.”

Given that the planning area boundaries for the MPO and sewer service area are very similar as well as the close relationships between transportation, sewer infrastructure, and urban growth, the MPO Policy Council has long functioned as the Chippewa Falls- Eau Claire urban area's Water Quality Advisory Committee under NR 121. Article VI, Section 5, of the MPO's bylaws describe the Policy Council's voting rules regarding water quality management (sewer service) activities.

Further, since the urban area's last full sewer service area plan update in 2006, the MPO's Technical Advisory Committee has also served as a Water Quality Management Technical Advisory Committee (WQM-TAC) to advise the MPO Policy Council on sewer service plan-related matters.

advisory to WDNR. WCWRPC will forward all pertinent materials, public comments, meeting minutes, etc. to WDNR for a final decision on the amendment request.

Step 6: Comments or Appeals to WDNR. Any person, organization, or governmental body in favor of, objecting to, or providing information on the decision of the MPO may submit written comments to WDNR within 30 days after the MPO's advisory decision in Step 5. This includes appeals as described in Chapter 6.6. (pages 106-107) of the SSA Plan.

Step 7: WDNR Decision. WDNR will make the final and official determination on all plan amendments based on consideration of public comments, written comments, official action taken by the MPO, standards, policies and procedures of the Sewer Service Area Plan, and NR 121 of the Wisconsin Administrative Code. WDNR will inform the applicant and WCWRPC of its decision on amendment requests within 60 days of the MPO's decision. Page 107 identifies the process for an appeal of a WDNR decision (current as of 2006).

During Step 2, WCWRPC staff will review the proposed amendment based on the following five criteria on pages 103-104 of the SSA Plan:

1. Such sewerage service can be provided in a cost-effective manner.
2. There will be no significant adverse water quality and/or environmental impact associated with providing sewer service to the area.
3. The proposed amendment is consistent with the policies and goals of this plan.
4. Existing or planned sewerage systems have sufficient capacity to treat projected flows.
5. The areas to be swapped are of the same acreage.

The SSA Plan does not suggest that WCWRPC staff can or should consider other criteria when evaluating a complete application. The SSA Plan does not explicitly limit the MPO TAC, MPO Advisory Council, or WDNR from considering specific or additional criteria.