

State of Wisconsin  
DEPARTMENT OF NATURAL  
RESOURCES  
101 S. Webster Street  
Box 7921  
Madison WI 53707-7921

Tony Evers, Governor  
Adam N. Payne, Secretary  
Telephone 608-266-2621  
Toll Free 1-888-936-7463  
TTY Access via relay - 711



August 4, 2023

DNR No. WC0014

Mr. Chris Straight, Senior Planner  
West Central Wisconsin Regional Planning Commission (WCWRPC)  
800 Wisconsin St. Mailbox 9  
Eau Claire, WI 54703-3606

*Subject: [Amendment Request for Chippewa Falls/Eau Claire Urban Sewer Service Area Plan for 2025](#)*

Dear Mr. Straight:

On May 17, 2023, the Wisconsin Department of Natural Resources (WDNR or department) received an updated request from the West Central Wisconsin Regional Planning Commission (WCWRPC) to review a sewer service area amendment for the Chippewa Falls/Eau Claire Urban Sewer Service Area Plan for 2025. The proposed Type 1 SSA amendment (or “land swap”), which was originally requested by the City of Eau Claire (City) in August of 2022, would not significantly change the overall acreage of the Sewer Service Area (SSA). The updated request includes a modification to the donor area (Map 1) proposed by the City in January of 2023.

This request was submitted to the department following the SSA Plan amendment process, including Chippewa-Eau Claire Metropolitan Planning Organization (MPO) review and recommendation.

#### Description of Amendment Area

The proposed amendment would add 219.64 acres to the SSA (the ‘receiving’ area), located within Sections 8 and 9, T26N, R9W within the City of Eau Claire (Map 2 & 3). The receiving area is contiguous to the SSA boundary on two sides. The proposed receiving area is part of the planned Orchard Hills development, of which 18.6 acres are located within the current SSA. This proposed development is compact, with 1,550 residential units at a density of 6.68 units per acre.

The proposed amendment would remove 221.0 acres from the current SSA (the ‘donor’ area). The donor area is located within Sections 1, 2, 35, and 36, T27N, R10W within the Town of Brunswick (Map 2). The donor area has a small inlet connection with the current SSA boundary. 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.

#### Environmentally Sensitive Areas

Environmentally sensitive areas, as defined in the SSA Plan, were identified as part of developing the SSA amendment request. The proposed receiving area contains WDNR-mapped wetlands and wetland indicator soils (Map 4). A wetland delineation report completed in 2020 for the Orchard Hills development area identified three fresh (wet) meadow wetlands totaling 11.81 acres. There is no 100-

year floodplain within the proposed receiving area. There are no parks or trout streams within or immediately adjacent to the proposed receiving area. Lowes Creek, which is a Class 2 trout stream, is located about 0.67 miles to the northeast.

The proposed Orchard Hills receiving area also does not include any community or municipal wells within its boundaries. No designated wellhead protection or groundwater recharge areas intersect the proposed receiving area. About 25 percent of the receiving area has naturally-occurring steep slopes, 16% of the area with 12 – 20% slopes, 9% of area with 20+% slope. SSA Plan policies require best management practices for erosion control on all slopes of 12% or greater. Further evaluation by WCWRPC and/or other appropriate agencies regarding potential encroachment upon ESAs will take place during next steps in the process, including the 208 conformance review, as more definitive plans develop.

All of the revised donor area is an environmentally sensitive area (Map 5). It includes areas of WDNR-mapped wetlands and wetland indicator soils, and it is almost entirely within the 100-year floodplain. Ponds and open waters exist in the donor area.

#### Wastewater Conveyance & Treatment

The proposed Orchard Hills development would require construction of a lift station and an 8,780-foot long sanitary sewer extension (of which 800 ft would extend beyond the current SSA) to connect and discharge into the City of Eau Claire's sewer system.

The City's wastewater treatment plant (WWTP) would not need any upgrades or improvements to serve the proposed receiving area. The WWTP has a design capacity of 12 million gallons per day (MGD) and is sized to meet community needs for at least the next 30 years. Average influent flows to the WWTP are approximately 8 MGD. Approximately 0.5 MGD of wastewater treatment capacity is needed to serve 5,000 people; as such, the WWTP's available capacity (4 to 4.5 MDG) is more than sufficient to accommodate the proposed receiving area development.

#### Local Review & Public Involvement

The WCWRPC's original [Staff Report dated September 7, 2022](#) recommended to the MPO approval of the SSA amendment. WCWRPC evaluated the original amendment request based on five criteria as outlined in the staff report and SSA Plan procedures. WCWRPC review of the original amendment request concluded that the proposed amendment met all criteria and was consistent with the policies and goals of the SSA Plan with one 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." Even though the donor area was near the SSA boundary (approximately 0.5 miles), its removal would have created a void (Map 3). However, to further the SSA Plan's overall goals, the WCWRPC staff recommended the MPO approve the Type 1 SSA Plan amendment.

On September 14, 2022, the Technical Advisory Committee (TAC) of the MPO held a meeting. Following review of the draft [Staff Report](#) the MPO-TAC voted against an advisory motion to approve the amendment application. WCWRPC issued the finalized Staff Report on September 18, 2022, with the

addition of a brief [amendment](#) dated September 16, 2022, and letters on behalf of the development company and the Town of Washington.

The MPO Policy Council conducted a public hearing regarding this SSA amendment request on September 28, 2022. At the conclusion of the public hearing, the MPO Policy Council acted on a resolution recommending to the department that the amendment application be denied.

On October 4, 2022, the department received a request from WCWRPC to review a sewer service area amendment for the Chippewa Falls/Eau Claire Urban Sewer Service Area Plan for 2025.

The department sent a [letter to WCWRPC](#) dated November 28, 2022, stating a final determination on the request could not be made at the time because the request contradicted Policy 1.1.9 of the Chippewa Falls/Eau Claire Urban Sewer Service Area Plan for 2025 (SSA Plan or Plan).

The department stated in the letter, “For the Department to make a final determination on this amendment request, the City would either need to submit an amendment to the application proposing a new donor area that follows the SSA Plan’s policies or withdraw its request and resubmit its application”.

The City submitted supplemental information on the amendment request to WCWRPC on January 20, 2023, modifying the donor area of the amendment application (Map 1). It was WCWRPC’s interpretation of the SSA Plan procedures that the City’s proposed amendment remained on Step 7 of the amendment process requiring department action. On January 30, 2023, WCWRPC received an administrative appeal from the Town of Washington appealing WCWRPC’s action in not bringing the City’s modified application back to the MPO Policy Council. The Town’s appeal was not received in time to be added to the 2/1/23 agenda of the MPO Policy Council meeting, so it would have had to have been heard at the Council’s following meeting on 5/3/23.

On April 5, 2023, the department and WCWRPC received confirmation from the City of Eau Claire that the City was requesting that the SSA Plan amendment application review move forward with the modified donor area, given that the receiving property is within the City limits and there had been no other substantial changes to the original application. On April 7, 2023, the department and WCWRPC conferred regarding the review process moving forward. Given the circumstances and procedural uncertainty under the Plan’s amendment process, it was agreed, for clarity and transparency, that the review process should return to Step 2 with WCWRPC preparing the supplemental staff report focused on the donor area. The department also took the position that this proposed approach would “remedy” the request by the Town of Washington for a rehearing in front of the MPO, as raised in their 1/30/23 administrative appeal.

WCWRPC’s review of the supplemental information to the amendment request concluded that the proposed amendment was consistent with the policies and goals of the SSA Plan. The change to the donor area in the City’s amended application appeared to bring the amendment request into conformance with SSA Plan Policy 1.1.9. In furtherance of the SSA Plan’s goals, WCWRPC recommended to the MPO the approval of the Type 1 SSA Plan amendment with conditions described in the [staff report](#)

(Pg. 16-20). On April 19, 2023, the TAC of the MPO held a meeting. Concluding review of the draft Staff Report, the MPO-TAC voted in favor of an advisory motion to approve the modified amendment application, and this advisory motion was provided to the MPO Policy Council.

The MPO Policy Council conducted a public hearing on May 3, 2023, which was noticed in accordance with MPO public noticing policies. It was also published in the Eau Claire Leader Telegram and the Chippewa Herald. During the public hearing, WCWRPC presented the Staff Report, then the City of Eau Claire, Town of Brunswick, and Town of Washington were each provided time to present their positions. Following these presentations, written public comments were recognized, and members of the public were allowed time to speak. At the conclusion of the public hearing, the MPO Policy Council acted on a resolution recommending to the department that the amendment application be denied.

The department received 44 written comments during the two 30-day public comment periods regarding the original and modified SSA amendment requests. These comment periods ran from [September 28, 2022 through October 28, 2022](#), and [May 3, 2023 through June 3, 2023](#) following the MPO's advisory decisions, dated September 28, 2022 and May 3, 2023, respectively. Public comments concerned the impact of development on Lowes Creek County Park and the Lowes Creek trout stream, environmentally sensitive areas, traffic hazards, cost-effectiveness, annexation, density and urban sprawl, and consistency with Plan policies and goals. Comments were also received on behalf of the Town of Washington, the City of Eau Claire, and the development team. All comments were reviewed and considered by the department. A summary of comments and department responses can be found [here](#).

#### Administrative Decision

Following the department's review of all WCWRPC submittals, comments received during the public comment periods, and the SSA amendment criteria, the department finds the proposed amendment is consistent with adopted policies and procedures of the Areawide Water Quality Management Plan under chapter NR 121, Wis. Adm. Code and section 283.83, Wis. Stats., and is hereby conditionally approved. The department approves the City's proposed SSA amendment request with conditions listed in the [staff report](#) (Pg. 16-20), as modified below, and with additional conditions from the department:

1. Regarding the sanitary sewer extension and anticipated crossing of Lowes Creek: the following conditions are required for this 208 conformance review in addition to any pertinent requirements identified in the SSA Plan. 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 as defined in the SSA Plan
  - 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
  - documentation that appropriate agency(ies) and programs were consulted in determining an appropriate design and related mitigation measures within the water body (Lowes Creek) and the adjacent riparian zone to prevent any degradation to the fishery as a result of the sewer extension

- 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
  - documentation that the County has been consulted in regard to the timing and scheduling of the construction in order to mitigate potential conflicts with County Park activities to the extent reasonably possible
2. Regarding the wetlands and likely steep slope ESAs within the Orchard Hills development area: the following conditions are required for this 208 conformance review in addition to any pertinent requirements identified in the SSA Plan. The 208 conformance review application must include:
- documentation that the Orchard Hills development area is appropriately zoned for the proposed use
  - a subdivision plat for the Orchard Hills development area has been approved by the City of Eau Claire or local regulating entity(ies)
  - a site plan with building footprints and any other areas of proposed intensive land disturbances
  - an existing conditions map of the ESAs and buffers as defined in the SSA Plan, these must be provided at the same scale of the site plan to allow ease of comparison
  - documentation that 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
3. Regarding the sanitary sewer extension and anticipated crossing of Lowes Creek and the wetlands and likely steep slope ESAs within the Orchard Hills development receiving area: the following conditions are required for this 208 conformance review in addition to any pertinent requirements identified in the SSA Plan. The 208 conformance review application must include:
- a description, map, and acreage of any ESAs that would be encroached upon, temporarily or permanently, by any intensive land disturbances associated with the sanitary sewer extension and within the Orchard Hills development area, as defined in the SSA Plan
  - sufficient documentation that utilities and/or streets, driveways or private access roads have been routed or located to minimize or avoid impacts on any ESA as required by SSA Plan Policies 2.1. and that no reasonable alternative exists, as determined by the municipality providing service.
4. Documentation that any other ESA encroachment by an intensive land disturbance has been avoided to an extent that is reasonably possible. If encroachment is proposed, it is recommended that the 208 conformance review application include documentation that the municipality providing service has determined that the encroachment is unavoidable and no reasonable alternative exists.

5. The final housing density of the Orchard Hills Development must be similar to and not significantly less than proposed (1,550 residential units at the density of 6.68 units per acre) in order to satisfy the cost-effectiveness criteria of the SSA Plan.
6. Documentation of any intergovernmental agreements or other arrangements for wastewater conveyance and stormwater management, if not being provided by the City of Eau Claire.

Failure to provide sufficient documentation regarding the above could result in WCWRPC recommending to WDNR the denial of the 208-conformance review application, due to lack of conformance with the SSA Plan. Documentation in the 208 conformance review application must demonstrate sewer extension plan conformance with the SSA Plan in order to receive approval.

The department strongly recommends that the City of Eau Claire, surrounding communities, and WCWRPC begin collaborating on a SSA Plan Update within the next year. Goals, objectives, policies, and procedures should be decided on collaboratively to satisfy all parties to the most reasonable extent. The plan update process should consider including definitions for words such as 'void,' 'swap,' 'urban sprawl,' etc. The department may not entertain another plan amendment until the entire plan is updated and approved.

#### Rationale/Justification for Decision

An amendment approval is a formal update to the state's Areawide Water Quality Management Plan and as such, is an integrated analysis action under s. NR 150.20(2)(a)3. The amendment is reviewed for consistency with the SSA Plan policies, goal, objectives, and procedures. This decision does not supersede the 208 conformance review process. The administrative decision in this letter is based on regional water quality planning considerations and should not be construed as the department promoting or opposing annexation proceedings or proposed developments. The focus of the amendment request is on the donor and receiving areas. The sanitary sewer extension, including the possible Lowes Creek and County Park crossing, will be addressed as part of other required approvals, including the 208 conformance review.

Sewer service area plans are water quality management plans, and the department agrees with WCWRPC's conclusion that there will be no significant adverse water quality and/or environmental impacts, as long as all conditions of approval are met as part of the 208 conformance review process, as well as any necessary local and state ordinances and permits have been obtained.

WCWRPC's review of the amendment request 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). The proposed receiving area may be considered appropriate for inclusion in the SSA boundary. 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.

The proposed donor area may be considered appropriate for removal from the SSA boundary. The SSA Plan (on page 77) and Appendix 5 of the Supplemental Staff Report describe that at least part of the donor area was planned for development in the last Plan update but is no longer expected to be

developed at urban densities in the near future. Given the extensive 100-year floodplain area, the importance of flood storage, and the proximity to wetlands, the removal of the donor area acreage from the SSA is a possible recognition that the donor area is not appropriate for sewer development at urban densities. WCWRPC concludes this change would be consistent with Goal 2 of the SSA Plan. 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 intersect with or span the border of the SSA.

When considering the urban area as a whole in terms of water quality planning, connecting compact, higher-density development to municipal water and sanitary sewer generally affords a higher level of water quality protection than low-density development on private wells and septic systems.

The department recognizes the public's concern with the Orchard Hills development and would like to highlight the following points:

1. The approval of this sewer service area amendment does not constitute approval of potential impacts the development and the proposed sewer extension will have on ESAs and Lowes Creek. The department shares the strong concerns expressed during the two public comment periods on this topic. The 208 conformance review, which is the next step in the review process for this potential development and the proposed sewer extension, will explicitly consider these issues; as such, the 208 conformance review application will include much more extensive documentation with regard to ESAs and development than submitted for this amendment application.
2. The approval of this sewer service area amendment does not constitute approval of any other local, state, or federal permit that may be required for sewer construction or associated land development activities. The City of Eau Claire, consultants, and contractor should be aware of potential regulations and jurisdictional activities related to department program permitting, including but not limited to, waterways, wetlands, and stormwater programs.
3. The existing ESAs in the Orchard Hills development area have the potential to limit the development density subdivision plat, and final site design. In addition, if the number of proposed housing units decreases substantially, the results of the cost-effectiveness analysis could also change. At a lower density, septic or other individual onsite systems may be more cost-effective than sanitary sewers. Any change in density for the Orchard Hills Development area which is less than the proposed density in this amendment request may not be in conformance with the SSA Plan.
4. The Chippewa Falls/Eau Claire Urban Sewer Service Area Plan for 2025 is nearing the end of the planning period and the goals, objectives, policies, and procedures need refinement. The department is able to support this plan update by providing funding and staff assistance through the Bipartisan Infrastructure Law, which allocates increased funding for water quality planning through 2026.

This amendment is a formal update to the state's Areawide Water Quality Management Plan and the Chippewa Falls/Eau Claire Urban Sewer Service Area Plan for 2025 and will be forwarded to the US Environmental Protection Agency to meet the requirements of the Clean Water Act of 1987 (Public Law 92-500 as amended by Public Law 95-217) and outlined in the federal regulations 40 CFR, Part 35. This review is an integrated analysis action under s. NR 150.20(2)(a)3., Wis. Adm. Code. By means of this review, the department has complied with ch. NR 150, Wis. Adm. Code, and with s. 1.11, Wis. Stats. The approval of this sewer service area amendment does not constitute approval of any other local, state, or federal permit that may be required for sewer construction or associated land development activities.

Appeal Rights:

Wisconsin statutes and administrative rules establish time periods within which requests to review department decisions must be filed. For judicial review of a decision pursuant to ss. 227.52 and 227.53, Wis. Stats., a party has 30 days after the decision is mailed, or otherwise served by the department, to file a petition with the appropriate circuit court and serve the petition on the department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to section 227.42, Wis. Stats., a party has 30 days after the decision is mailed, or otherwise served by the department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. All requests for contested case hearings must be made in accordance with section NR 2.05(5), Wis. Adm. Code, and served on the Secretary in accordance with section NR 2.03, Wis. Adm. Code. The filing of a request for a contested case hearing does not extend the 30-day period for filing a petition for judicial review.

Sincerely,



Tim Asplund  
Monitoring Section Chief  
Bureau of Water Quality



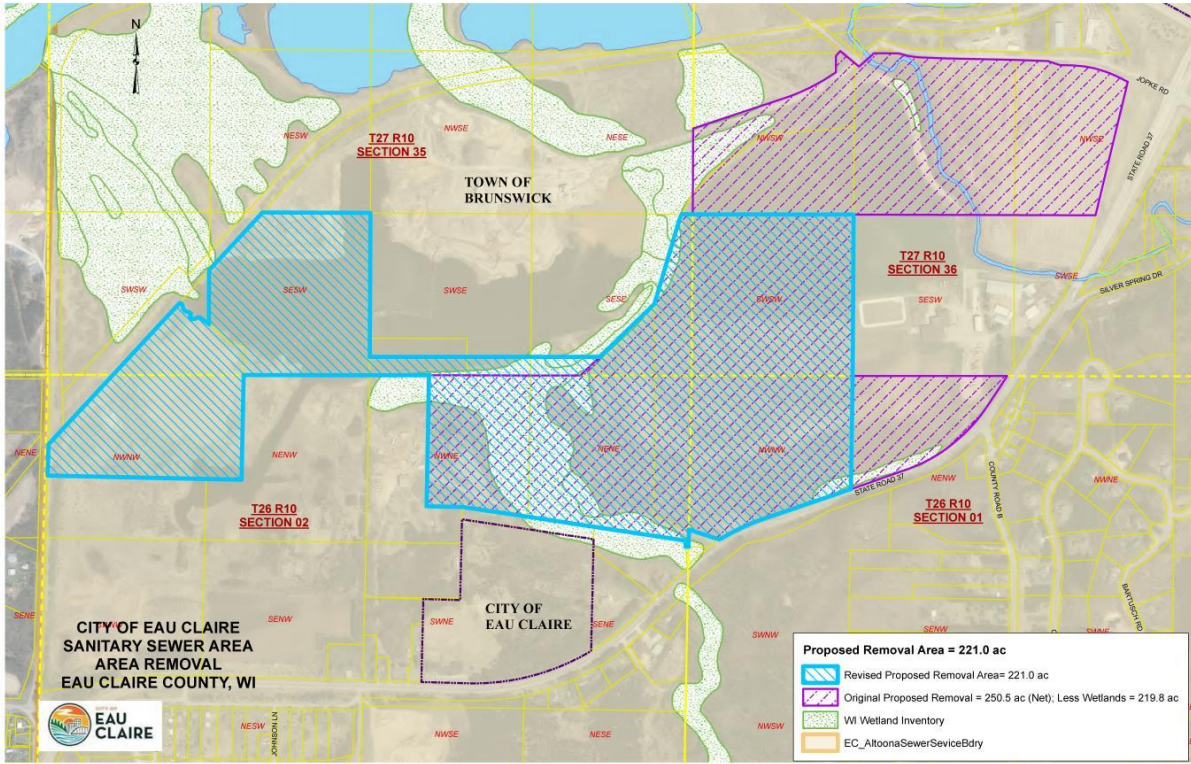
Jason Knutson, P.E.  
Wastewater Section Chief  
Bureau of Water Quality

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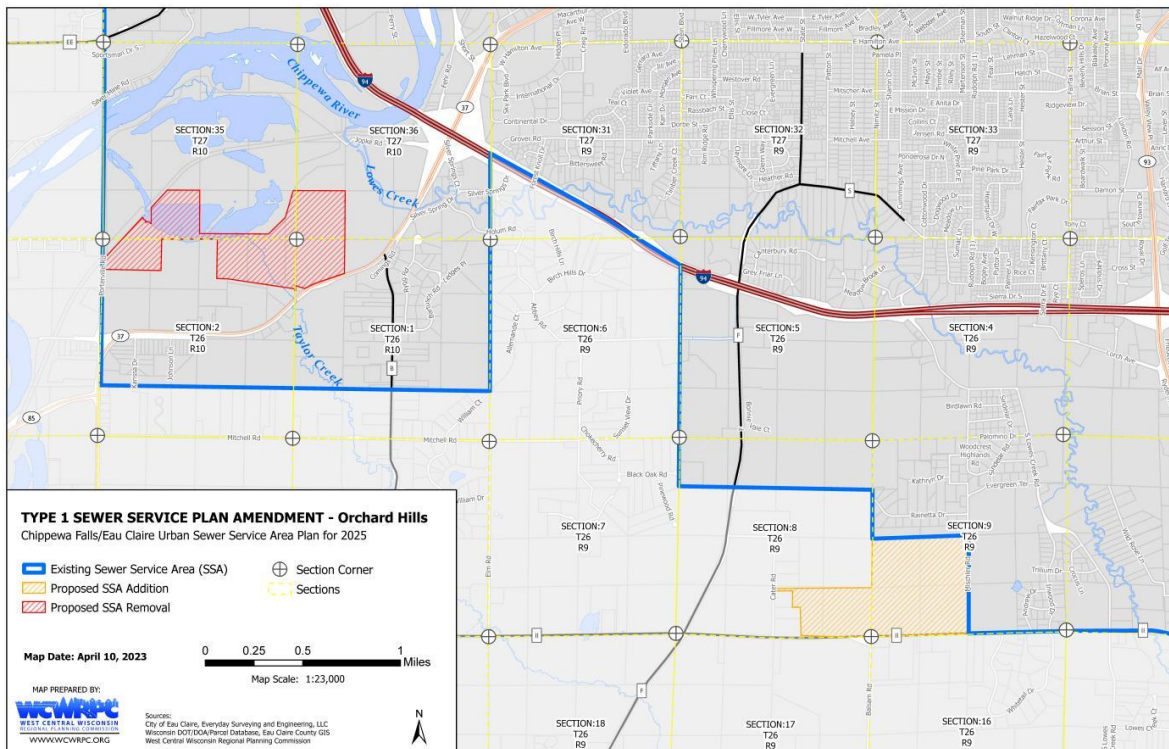
Mark Hazuga – Water Resources Field Supervisor, DNR Eau Claire  
Geisa Thielen, P.E. – Wastewater Field Supervisor, DNR Eau Claire  
Chris Willger – Water Resource Management Specialist, DNR Eau Claire  
BetsyJo Howe – Water Resources Management Specialist, DNR Madison  
Gunilla Goulding, P.E. – Wastewater Engineer, DNR Madison  
Alixandra Burke – Staff Attorney, DNR Madison



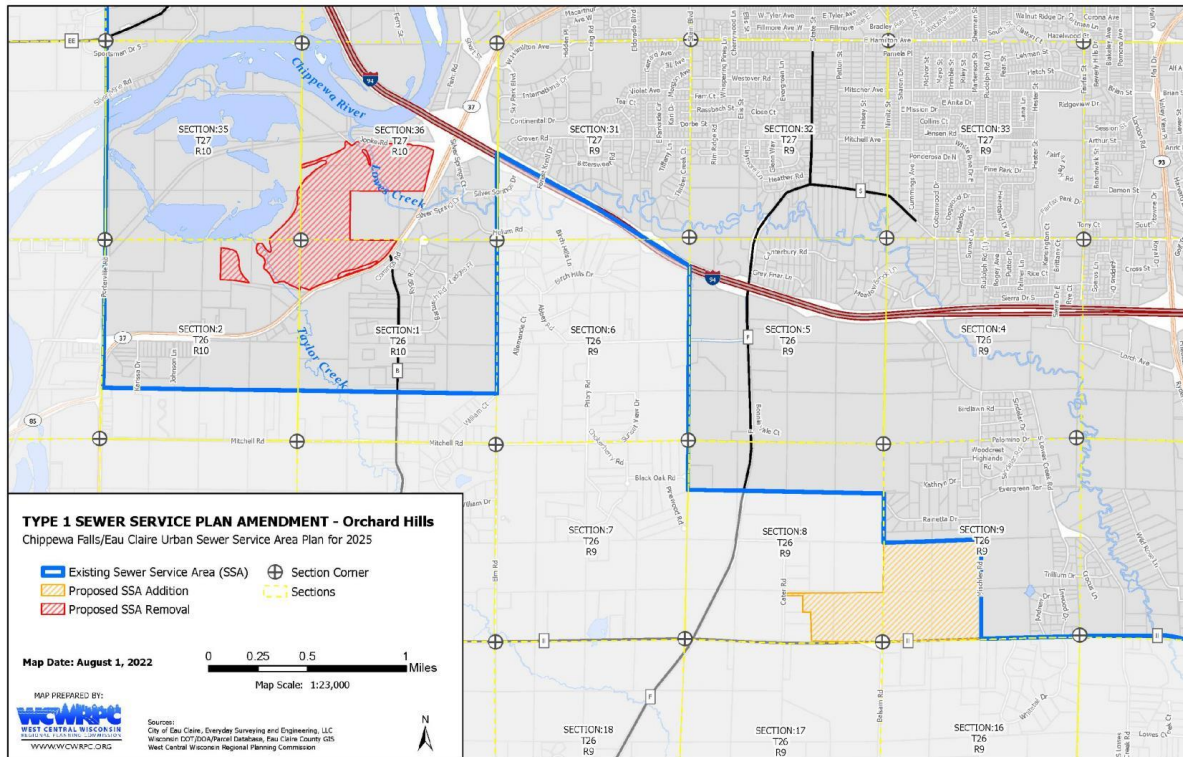
Map 1: Donor area map comparison provided in WCWRPC Supplemental Staff Report submitted to the department May 17, 2023



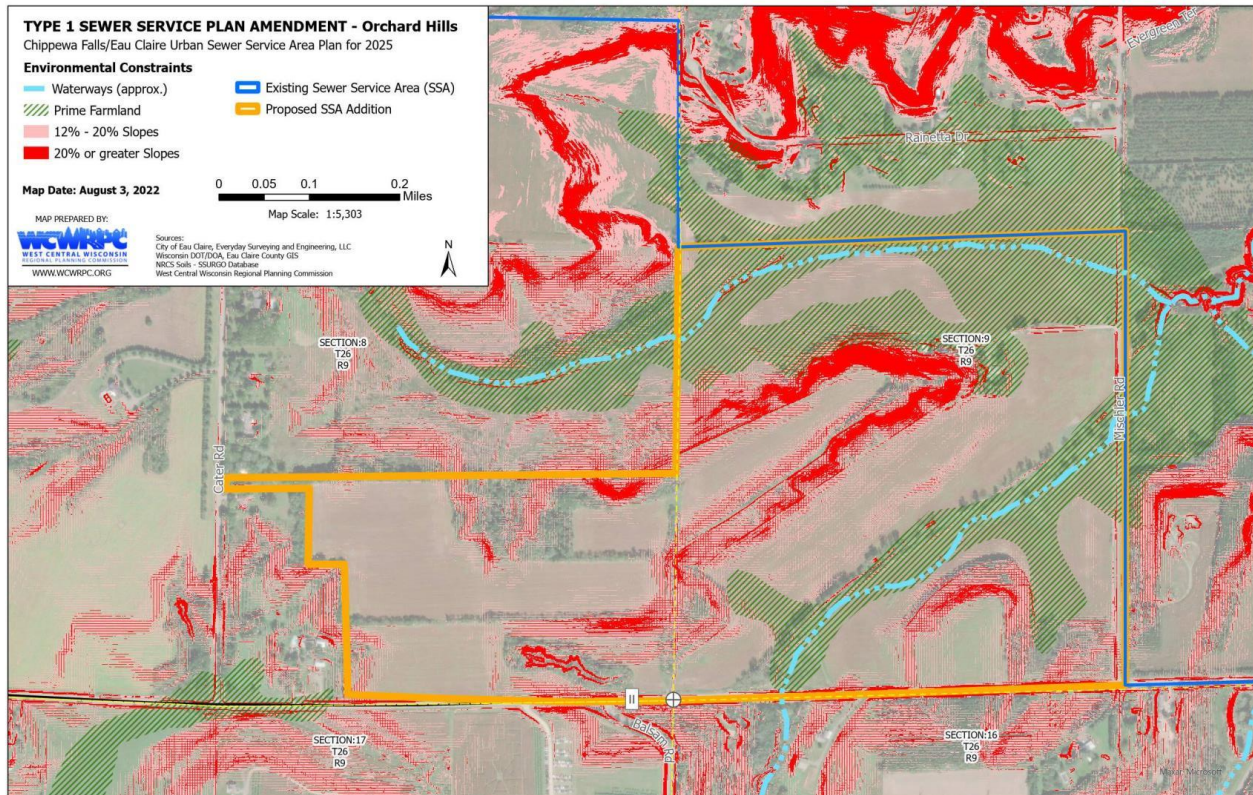
Map 2: Provided in WCWRPC Supplemental Staff Report submitted to the department May 17, 2023



Map 3: Provided in WCWRPC Staff Report submitted to the department October 4, 2022



Map 4: ESAs map (receiving area) in WCWRPC Staff Report submitted to the department October 4, 2022



Map 5: ESAs map (donor area) in the Supplemental Staff Report submitted to the department May 17, 2023

