



Staff Report

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

9/7/2022 Summary

What is Sewer Service Area (SSA) Planning?

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. Regarding the SSA Plan, the roles of WCWRPC and the Metropolitan Planning Organization (MPO) are advisory to the Wisconsin Department of Natural Resources (WDNR), which has decision-making authority.

The current SSA Plan and SSA boundary was last fully updated in 2005-2006. 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 does not limit the Plan boundary or sanitary sewer to municipal corporate boundaries.

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. The 208 review confirms that the area to be served by a proposed sewer extension is located within the SSA and construction plans are evaluated to determine if an encroachment upon an environmentally sensitive area (ESA) by an intensive land disturbance would occur. If the area is outside the SSA or if an ESA encroachment would occur, an amendment to the SSA Plan is first required.

The SSA Plan amendment process and 208 conformance reviews are two possible steps among many for permitting new sewered development. The approval of a plan amendment or a 208 conformance letter do not constitute approval or indicate compliance with any other local, State, or Federal permits or regulations. Land use decision-making has historically been the responsibility of each individual community.

Overview of the Request

Sanitary sewer extensions beyond the 20-year urban sewer service area (SSA) boundary are not permitted unless the SSA Plan is amended. The City of Eau Claire has submitted a Type I SSA Plan Amendment (or “land swap”) application that would modify the SSA boundary as generally described below and as shown on the map at the end of this summary:

- **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 receiving area is part of the proposed Orchard Hills development, of which two parcels totaling 18.6 acres are already located in the SSA.

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)?* The 8,780 feet of sanitary sewer extension to serve the Orchard Hills development is not the focus of the proposed amendment, since the extension would need to be later evaluated as part of a 208 conformance review, if the boundary amendment is approved.

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WCWRPC Staff Review of the Amendment Request

SSA Plan procedures state that WCWRPC should evaluate an amendment request based on five criteria. Two criteria in particular received the greatest attention in the WCWRPC Staff Report:

Criteria #2. There will be no significant adverse water quality and/or environmental impact associated with providing sewer service to the area. The SSA Plan gives emphasis to environmentally sensitive areas (ESAs) that may impact water quality. To this end, Staff Report findings included:

- The **donor area** is almost entirely 100-year floodplain with adjacent wetlands. Given that fact, it is preferable from an environmental perspective that the 219.8 acres be removed from the SSA and not developed.
- Wetlands and, likely, steep slope ESAs exist within the **receiving area**. 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. Further evaluation regarding the potential encroachment upon ESAs for the receiving area and the related sewer extension, including the Lowes Creek crossing, would take place as part of the 208 conformance review process once more definitive plans are available.

Criteria #3. The proposed amendment is consistent with the policies and goals of the SSA Plan. In addition to the water quality and ESA related findings above, much of WCWRPC's consideration for Criteria #3 focused on whether the SSA Plan amendment is consistent with the goal of creating an orderly and planned pattern of community growth. It is this criteria and goal in particular that were the greatest source of disagreement between the City's application and a 7/27/22 letter from the Town of Washington's attorney regarding the amendment request. Key findings were:

- The Orchard Hills receiving area is immediately contiguous to the SSA boundary. All but 800 feet of the preliminary sanitary sewer extension, as well as 18.6 acres of the Orchard Hills subdivision, is located within the existing SSA.
- The proposed Orchard Hills development is compact with 1,550 residential unit at a density of 6.68 units per acre. The City argues that this will help mitigate future sprawl and includes a comparison of land requirements if a comparable number of homes were developed based on past rural development densities. 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.
- In contrast, the Town of Washington argues that the Orchard Hills development is sprawl given its distance from the pre-annexation city limits and the length of the required municipal sewer extension. The Town also argues that the City's request is being used to promote annexation. 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.
- 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.
- 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 mile between the donor area and the current boundary in places.

Regarding Town of Washington's Request to Delay Action until Outcome of Annexation Lawsuit

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. 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:

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. The Staff Report recommends conditions related to any 208 conformance review application for the sanitary sewer extension.

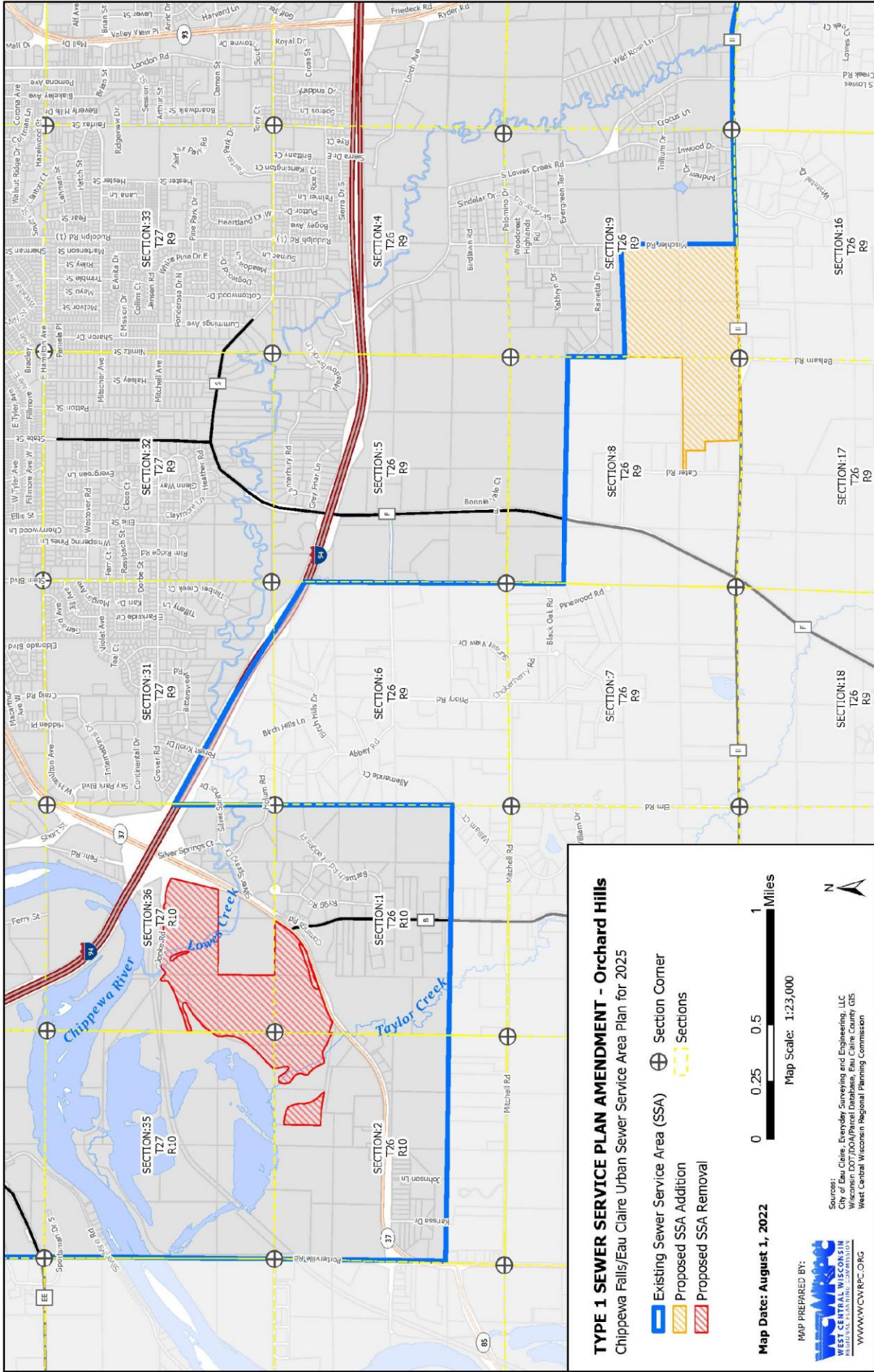
2. Regarding the wetlands and likely steep slope ESAs within the Orchard Hills development area - Prior to any intensive land disturbances within the Orchard Hills development area in its entirety or related to any associated sewer extension, a 208 water quality management conformance review and approval is required. The Staff Report recommends conditions related to any 208 conformance review application involving this development area.

3. Regarding the City's SSA Plan Type I Boundary Amendment Request - The staff 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 recommendations included:

- 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.** This is recommended even though a strict interpretation of Policy 1.1.9 suggests that a boundary amendment shall not create a void within the SSA. 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.
- ii. **It is appropriate to amend the SSA Plan boundary to include the 219.64-acre Orchard Hills receiving area.** 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.

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 sewered 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.

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.



TYPE 1 SEWER SERVICE PLAN AMENDMENT - Orchard Hills

Chippewa Falls/Eau Claire Urban Sewer Service Area Plan for 2025

- Existing Sewer Service Area (SSA)
- Proposed SSA Addition
- Proposed SSA Removal
- Section Corner
- Sections

Map Date: August 1, 2022

Map Scale: 1:23,000



MAP PREPARED BY:
WCWRPC
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 REGIONAL PLANNING COMMISSION
 WWW.WCWRPC.ORG

Sources:
 City of Eau Claire, Everyday Surveying and Engineering, LLC
 Wisconsin DOT/DOT/Parcel Database, Eau Claire County GIS
 West Central Wisconsin Regional Planning Commission