<u>Terrebonne Sanitary District Formation</u> **Key Clarification Points**

By: Terrebonne Sewer Advisory Group Date: 10/26/2022

- The proposed District Boundary is just a starting point for formation of the District and can be adjusted in the future through annexation petitions.
- Michael Walker owns large development properties at the NW corner of Terrebonne that are currently outside the initial District boundary, but will have the opportunity to join the District later via annexation (please see attached memo).
- All future sewer system customers will be equally responsible for paying SDC fees, onsite upgrade costs, and monthly service rates – whether in the initial District Boundary or outside areas annexed in later.
- TSAG agreed to start with Phase A as the initial district boundary, where the urgency need and support for sewer is well established at this time. Commercial properties in Phase A are generally more willing and able to support initial sewer system costs, compared to residents.
- All public input received before the first BOCC hearing indicated that residents outside Phase A were not as interested in sewer and were generally opposed to sharing in the financial burden of a public sewer system.
- Below is a summary of the Public Involvement Activities to-date:
 - Deschutes County sent out postcards to all Terrebonne property owners notifying them of the upcoming Terrebonne Feasibility Study.
 - o Hosted an online open house and public survey during Sep & Oct 2020.
 - Placed flyers and sandwich boards around the community notifying the community about the feasibility study, how to access the Deschutes County feasibility website, and how to contact project team members.
 - Assembled a group of interested residents, property owners and commercial lessees who had expressed interest in exploring sewer solutions for Terrebonne.
 - Terrebonne Sewer Advisory Group (TSAG) held monthly meetings for approximately a year and a half (open to anyone interested).
 - TSAG members went door to door to obtain feedback about the district boundary and signatures.
 - TSAG held an open house for all of Terrebonne in December 2021. Post cards were sent to all property owners.
 - News releases, sandwich boards, flyers placed around the community announcing feasibility study and open house.
 - o Distributed public update flyer about the Sanitary District Formation process to residents within proposed boundary by door-knocking. (see attached flyer)



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LEGAL MEMORANDUM

TO: Ryan Rudnick, Parametrix

Terrebonne Sewer Advisory Group

FROM: Marika E. Sitz

DATE: October 25, 2022

RE: Sanitary District Annexation Options

File No. 55843-79847

I. INTRODUCTION

We were asked to outline the options for annexing a parcel of land into a sanitary district organized under ORS Chapter 450. This memorandum summarizes the four main options available to annex territory into a sanitary district. This memorandum also clarifies statutory guidance related to annexation of contiguous versus non-contiguous parcels.

II. EXECUTIVE SUMMARY

The special district annexation procedure is outlined in ORS Chapter 198. Although ORS Chapter 450 contains some annexation provisions, those only address annexation when the territory proposed to be annexed is within the boundaries of another sanitary district. That situation is not at issue here and, as such, the guidance in ORS Chapter 198 is the appropriate statutory roadmap for annexation.

There are three main vehicles by which annexation can occur: (1) a petition by electors in the area proposed to be annexed; (2) a petition by an individual landowner; and (3) a resolution by the special district board (in this case, the Terrebonne Sanitary District board) or the Deschutes County Board of County Commissioners ("BOCC"). An election may be necessary if a petition by electors does not contain enough signatures to meet the statutory threshold. Additionally, ORS Chapter 198 allows for an annexation action in the event Deschutes County and the Oregon Health Authority ("OHA") find a public health emergency related to sewage discharge.

Based on our review of ORS Chapters 198 and 450, it does not appear that an area needs to be contiguous to the existing district to be annexed. Under ORS 198.720(1), a district may consist of contiguous or noncontiguous territory. However, this statute does not grant an unlimited scope of annexation authority. The boundary of a special district, including the portion to be annexed, may only include "territory as may in reason be served by the facilities or services of the district." ORS 198.720(3).



III. ANNEXATION OPTIONS

Under ORS 198.705(3), annexation means "the attachment or addition of territory to, or inclusion of territory in, an existing district." Annexation actions by special districts are governed by ORS 198.850 to ORS 198.869. ORS Chapter 198 contemplates three general pathways to annex property, along with a fourth pathway in the case of a public health emergency, each outlined below.

A. Electors in the area to be annexed file an annexation petition.

ORS Chapter 198 allows electors in the area proposed to be annexed to submit an annexation petition to the BOCC. The following steps must be completed by the electors:

1. The electors must secure approval and indorsement of the annexation petition by the district board. ORS 198.850(1). The petition submitted under this statute is subject to the form and content requirements of ORS 198.750 and ORS 198.900. ORS 198.850(1), outlined below.

A petition for a "change of organization" (which includes annexation) must do the following: (a) state that the petition is filed pursuant to ORS 198.705 to 198.955; (b) state the names of all affected districts and all affected counties; (c) designate the principal Act of each affected district; (d) state the nature of the proposal; (e) state whether the territory subject to the petition is inhabited or uninhabited; (f) set forth any proposed terms and conditions, if any, to which the proposed annexation is to be subject; (g) state, or indicate opposite each signature, whether the signers of the petition are landowners within the area to be annexed or electors registered in the area to be annexed, or both; (h) request that proceedings be taken on annexation; and (i) describe the boundaries of the territory to be annexed. As with a formation petition, the signature sheet must be signed by the circulator. Per ORS 198.900, the annexation petition may include a debt distribution plan to be voted upon as a part of the proposal.

A petition for annexation must be signed by fifteen percent of the electors or 100 electors, whichever is the lesser, that are registered in the area proposed to be annexed or by fifteen owners of land or the owners of ten percent of the acreage, whichever is the greater number of signers, within the area proposed to be annexed. ORS 198.755(2). Note that these signature requirements must be met to submit the petition, but the signature requirements that determine whether or not an election must be held, described in numbers 4 and 5 below, differ from these standards.

- 2. The electors must file the indorsed annexation petition that meets the requirements above with the BOCC. ORS 198.850(1).
- 3. The BOCC will conduct a proceeding pursuant to ORS 198.800 to 198.820. ORS 198.850(2). ORS 198.800 outlines the process the BOCC must adhere to set a date a date for the hearing and prepare a notice. ORS 198.805 outlines the criteria for the BOCC to evaluate when considering whether the land would be benefitted by inclusion in the district. However, under ORS 198.850(2), when considering an annexation petition, the BOCC should instead consider the local comprehensive plan for the area and any service agreement executed between a



location government and the affected district, rather than the criteria in ORS 198.805(1). ORS 198.850(2). The remainder of the process outlined in ORS 198.800 to 198.820 mirrors the process for a formation petition.

4. Option 1: Election necessary. If the annexation petition is not signed by either: (1) all the owners of all lands in the area proposed to be annexed; or (2) a majority¹ of the electors registered in the area proposed to be annexed *and* by the owners of more than half the land in the area, BOCC may order an election in the area proposed to be annexed under ORS 198.815.²

Under this pathway, the BOCC will order two elections to be held on the same day: one in the area proposed to be annexed and one in the affected district, both for the purpose of putting the annexation question to the electors. ORS 198.855(1). The district board is responsible for certifying election results to the BOCC. ORS 198.855(1). The BOCC will enter an order to approve annexation if a majority in both elections approves annexation. ORS 198.855(1). Note that a district can vote for annexation of multiple areas at once, so long as they are stated separately on a ballot. ORS 198.855(2).

5. Option 2: Election not necessary. If the annexation petition is signed by either: (1) all owners of land in the area proposed to be annexed; or (2) a majority of electors registered in the area proposed to be annexed *and* by the owners of more than half of the land in the territory, no election is necessary. ORS 198.855(3).

Under this pathway, the BOCC must still hold a hearing on the petition. ORS 198.855(3). The county board may approve the petition or modify it at the hearing. ORS 198.855(3). Despite indicating that an election is not necessary under the circumstances described above, ORS 198.855(3) still notes that the BOCC may approve the annexation "if an election is held, if the electors approve the annexation." We presume the statute is presenting this as an option in the event the petition does not meet the signature requirements (see number 4, above). It also appears that electors may have the option to petition for an election after the first hearing of the BOCC pursuant to ORS 198.815.

B. Individual landowner petition.

Under ORS 198.857, a landowner may file an annexation petition directly with the BOCC. Unlike the petition by electors described in section A above, the petition requirements under ORS 198.755, ORS 198.760, ORS 198.775 do not apply. ORS 198.857(1). The following steps must be completed by the landowner wishing to annex landowner's property:

¹ The statute does not provide any further guidance as to what constitutes the threshold for a "majority." Without further statutory parameters, we read "majority" to mean a simple majority greater than 50 percent.

² Although the language of ORS 198.855 appears to indicate if the two criteria are not met *and* an election is ordered, and election must be held. It does not outline a path if the criteria are not met and the required number of written requests for an election under ORS 198.815 are not submitted.



- **1.** The landowner must first get an approval and indorsement of the petition by the district board. ORS 198.857(2).
- 2. The landowner must file a petition with the BOCC that: (a) declares that the petition is filed pursuant to this section; (b) states the name of the affected district and all affected counties; (c) indicates the principal Act of the affected district; and (d) is signed by the owner of the parcel of land. ORS 198.857(2).
- 3. If the petition meets the requirements under ORS Chapters 198 and 450, the BOCC will hold a public hearing on the petition no sooner than 20 days and not later than 50 days after the date the petition is filed.
- 4. The BOCC must consider the local comprehensive plan for the area and any service agreement executed between a location government and the affected district. ORS 198.857(4). The BOCC may approve the petition and enter an order to that effect. ORS 198.857(4).

C. Annexation by resolution of the district board or county board.

The annexation process may also be initiated by resolution of the district board or the BOCC. ORS 198.850(3). If the district board initiates the annexation process, it will file a resolution with the BOCC addressing criteria described in ORS 198.835.3 The BOCC will proceed under ORS 198.835 to ORS 198.845, which contemplate the same hearing process as the process for formation under ORS 198.800 to 198.825. This includes the opportunity for those in the affected area to petition for an election. Under ORS 198.845, the county must bear the cost of an attempted formation (here, annexation under ORS 198.850 rather than formation), but if the district is annexed, the district must reimburse the county for the expenses the county incurred for engineering studies or surveys.

D. Annexation due to a public health emergency.

If the Director of the OHA files a set of findings with the BOCC pursuant to ORS 431.705 to 431.760 (Health Hazard Annexations or District Formation), the findings will be considered an annexation petition for purposes of ORS 198.705 to 198.955. ORS 198.792(2). The BOCC must conduct the proceedings according to the OHA findings and the provisions of ORS 198.705 to 198.955.

Under ORS 431.705(4), a danger to public health is defined as "a condition which is conducive to the propagation of communicable or contagious disease-producing organisms and which presents a reasonably clear possibility that the public generally is being exposed to disease-caused physical suffering or illness." ORS 431.705(4)(b) notes that one specific condition could include "inadequate installations for the disposal or treatment of sewage."

Under ORS 431.715, a county court or a local public health authority that has jurisdiction over the territory where the public health condition exists must adopt a resolution requesting OHA to initiate

³ ORS 198.835 specifically contemplates a *formation* resolution, but we presume ORS 198.850(3) authorizes the use of the form prescribed in ORS 198.835 to apply to an annexation resolution.



proceedings for annexation to an existing district without vote or consent of the affected territory. If OHA finds a danger to public health exists, it will initiate proceedings for an annexation under ORS 198.792. Once it receives this petition, the BOCC will determine whether the affected territory should be annexed, and it may not adjust the boundaries. ORS 198.792(3). ORS 198.805-198.815, including the statutes pertaining to a request for an election, do not apply to a proceeding under this statutory process. ORS 198.792(3).

As a final note, ORS 198.747 provides that an annexation contemplated by any statutory pathway in ORS 198.747 cannot become effective during the 90 days before a primary and general election until the day after the election or between the deadline for filing notice of an election for annexation and the day after the election.

IV. CONTIGUOUS AND NON-CONTINGUOUS LAND

ORS 198.720(1) provides that district may consist of contiguous *or* noncontiguous territory. ORS 450 (the principal Act for sanitary districts) does not contain a provision that contradicts this provision. As such, it appears that a sanitary district organized under ORS Chapter 450 has the statutory authority to annex contiguous or noncontiguous territory in the absence of more specific guidance in the principal Act.

However, ORS 198.720(1) does not provide the unlimited authority to annex non-contiguous parcels. The annexation of any parcel, contiguous or non-contiguous, is limited by the *reasonableness* of the annexation when ORS 198.720(1) is read together with ORS 198.720(3).

ORS 198.720(3) states that territory may only be annexed to the extent it is "in reason be served by the facilities or services of the district." Unfortunately, neither the statute nor case law provides additional guidance as to how a district can assess what "reasonable" means. From a practical perspective, if the Terrebonne Sanitary District proposes to annex noncontiguous property, it will need to be prepared to clearly demonstrate why and how that service is "reasonable" given the District's facilities and scope of service. Should this question continue to arise, we recommend contacting the Small Districts Association of Oregon to identify whether any member districts have addressed the question of reasonableness put forward by ORS 198.720(3) and, if so, how the question was resolved.

Deschutes County

REQUIREMENTS FOR PETITION TO ANNEX PROPERTY INTO SPECIAL DISTRICT

NOTE: Prior to submitting the petition to Deschutes County, Petitioner(s) must obtain approval and signature of the proposed petition from the District.

<u>Please check the Petition. Signature Page and Security Deposit form to ensure the following information is completed:</u>

A. Petition and Signature Page:

Complete all sections of the petition. Petitioner and District both must sign and date the petition. If land is within a city limits, approval and signature is required from the city.

NOTE ON SIGNATURE PAGE:

Attach signature pages with appropriate signatures (landowners or voters) either: (a) 15 percent of the electors or 100 electors, whichever is the lesser, registered in the area proposed to be annexed; or (b) 15 owners of land or the owners of 10 percent of the acreage, whichever is the greater number of signers, within the area proposed to be annexed. If single property being annexed only owner(s) signature(s) needed.

If the person signing is a landowner, check "yes" and enter number of acres owned (column to the right) [to avoid an election, you must have signatures of all landowners, including spouses] OR

If the person signing is a voter, check "yes" (column to the right).

Date of last signature must have been secured within six months of date first signature was affixed.

B. Security Deposit form:

Complete each section and attach check for \$100. (refundable if annexation approved).

<u>C.</u> <u>Legal Description (sample included in packet)</u>

- (1) It is advisable to work with an attorney, engineer or professional surveyor to ensure the legal description is acceptable and accurate.
- (2) Mark the legal description as "Exhibit A."
- (3) If annexing more than one property under the same Petition, the legal description must coincide with the **outer boundaries** of the entire portion being annexed and coincide with the map (this type of legal description generally requires a professional surveyor).
- (4) **Do not** include separate legal descriptions for each property if more than one is included in one petition.
- (5) If annexing more than one property, it is an option to file a separate Petition for each property.

D. Map (See Sample Map included in packet)

- (1) Attach map depicting the territory proposed to be annexed and the closest current boundary line of the appropriate special district [see attached sample map]. It is advisable to have the map prepared by an engineer or professional surveyor to ensure the map is acceptable and accurate.
- (2) Map must be **Assessor's map**; to scale; with all Assessor markings legible, and the related survey map. See sample.
- (3) Denote closest current district boundary with dark line.
- (4) Denote proposed territory with hash marks, shading or something similar to designate territory.
- (5) Include a legend describing the purpose of the markings.
- (6) Mark each page of the map as "Exhibit B Page X of Y. " E.g. "Exhibit B Page 1 of 3."

Check all blank lines and boxes for completion before submitting the Petition.

PLEASE RETURN COMPLETED FORMS AND DEPOSIT TO DESCHUTES COUNTY LEGAL COUNSEL, 1300 NW WALL STREET, STE. 205, BEND, OR 97703 or email tolegal.counsel@deschutes.org. Call 541-388-6622 with questions.

PETITION TO ANNEX PROPERTY INTO

(Name of District)

To: The Board of County Commissioners, Deschutes County, Oregon

The undersigned, in support of this Petition, state as follows:

1.	<i>(date)</i> and described l	Petitioners reque	st the Boa	ard c	t to ORS 198.850 to 198 commence proceedings	to annex the territory		
2.	This Petition limits.	n for Annexation af	fects only [Desc	hutes County and is not i	in any incorporated city		
3.	The Board approved th	of e petition pursuant	to ORS 198	3.850	on	(name of district		
4.	The principa	ıl act for			(nam	e of district) is ORS		
	(Proper statutory	reference required, see C	ORS 198.010 for	listing	of appropriate principal act)	·		
5.	<i>one</i>). This բ annexed a։	etition is signed by	/ land owne e their resp	rs an ectiv	xation is primarily inhabi d/or registered voters in t e signature, and all signa 0	the area proposed to be		
6.	The property street address(es) of land for annexation (if known) is/are							
	isattached he	. A dereto as Exhibit "A	escription o	of the	e boundaries of the terr on the map attached as E	itory to be annexed is		
7.	number is	lesser, registered	in the area	prop	ercent of the electors, or cosed to be annexed; or ver is greater) within the	at least 15 owners o		
8.	A security of	leposit form and pa	yment is at	tache	ed to this petition.			
Sig	gned this	_ day of	, 20	_ by _		, Chief Petitioner(s).		
Sig	gnature			Add	ress, City, State, ZIP			
DA	TED this	_day of	,20		DATED this day of	,20		
Ар	proved by the	e Board of			(if applicable) Approved by	City of		
Na	me of District							
	trict Signature				City Signature			
Ву:	(Print Name)			By:(Print Name)				
					(Print Name) Title:			

NAME OF DISTRICT: _	☐ Withdrawal ☐ Annexation	ı

PRINT NAME	DATE SIGNED	PROPERTY ADDRESS/ RESIDENCE ADDRESS (If Different)	LANDOWNER IN THE PROPOSED TERRITORY/ REGISTERED VOTER IN THE PROPOSED	tition did so	
Print Name Signature	Date	PROPERTY ADDRESS RESIDENCE ADDRESS (If Different)	TERRITORY Landowner Yes Acreage Registered Voter Yes No Pre	certify that I circulated this petition, and every person who signed this petition did so	., 20 Commission Expires:
Print Name Signature	Date	PROPERTY ADDRESS RESIDENCE ADDRESS (If Different)	Landowner Yes No Registered Voter Yes No Pre Head of the content of the conten	is petition, and every po	My Commiss (affix notary stamp)
Print Name Signature	Date	PROPERTY ADDRESS RESIDENCE ADDRESS (If Different)	Landowner Yes No Registered Voter Yes No Pre	rtify that I circulated th	State of day of
Print Name Signature	Date	PROPERTY ADDRESS RESIDENCE ADDRESS (If Different)	Landowner Yes No Acreage Registered Voter Yes No Pre	Signature:	AND SWORN before me this_c for Oregon
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Security Deposit

SEL 704

Special District Formation or Reorganization

rev 01/18 ORS 198.775

Formation		Annexation	Withdrawal		Dissolution		
District and Precinct Information							
Name of District							
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Number of Fredincts in District		Amount of Dep	osit per r reciliet	Total Deposit (III	iax oi 910	,000)	
Chief Petitioners							
I/We hereby declare if the costs of the	attemp	ted formation ann	nexation, withdrawal o	r dissolution of			
					dictric	t exceeds the	
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deposit, I/we will pay to the county tre	easurer th	ne amount of the	excess cost (ORS 198.7	75)			
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Person/Organizations Providing Any Part of Cash/Security Deposit							
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Residence		Mailing Address if different					
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Amount of Contribution/Value of Sec	ured Dep	osit	Kind of Contribution*				
			Cash	☐ Bond	☐ Ot	ther Security Deposit	
Additional Description							
*Provide additional description of security deposit below, on the back of this form or on separate sheets. Additional contributors may be listed on separate sheets and attached.							

EXHIBIT A

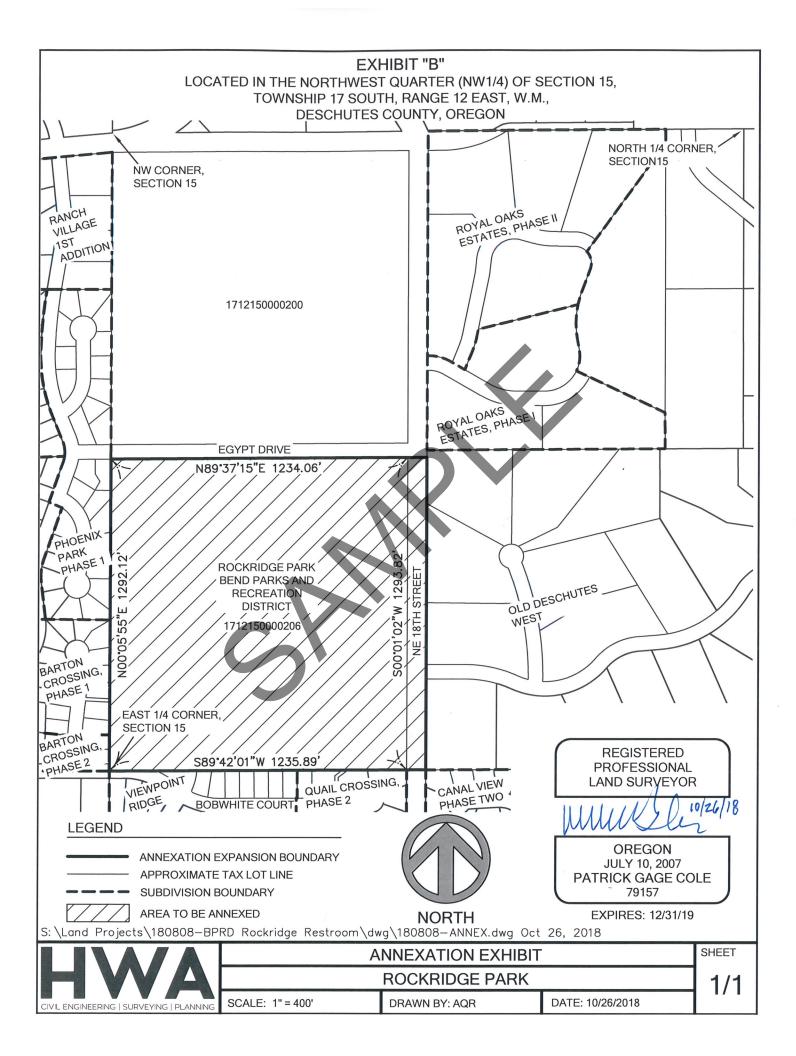
The Southwest Quarter of the Northwest Quarter (SW1/4 NW1/4) of Section 15, Township 17 South, Range 12 East, Willamette Meridian, Deschutes County, Oregon.

EXCEPTING THEREFROM the northerly 30.00 feet of said SW1/4 NW1/4.

Subject to: All easements, restrictions and right-of-ways of record and those common and apparent on the land.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 10, 2007
PATRICK GAGE COLE
79157



<u>Terrebonne Sewer Advisory Group – Public Update</u> <u>10/20/2022</u>

- Throughout this process, the public has been informed and listened to through postcards, online surveys, open houses, press releases, and monthly Terrebonne Sewer Advisory Group (TSAG) meetings (open to anyone interested).
 - After a lengthy public involvement process was conducted, the TSAG committee recommended a three-phase approach to sewering Terrebonne. System phasing is very common for public infrastructure.

· The phased approach does the following:

- Starts District and sewer system in area of greatest need, voluntary connections, and ability to pay SDC/Hook-up fees/Monthly rates.
- Expressed written interest in being included in Phase A and connecting to future sewer system.
- The district is financially dependent upon a high percentage of Phase A property owners agreeing to hook-up as soon as sewer is made available to them.
- Establishes a central sewer system "backbone" that can be expanded to other areas.
- To secure funding for a wastewater system, a Sanitary District must be formed first.
- The TSAG submitted a petition to establish a Sanitary District.
- On October 5, 2022, Deschutes County Commissioners approved the proposed Terrebonne Sanitary District boundary.
- The initial District Boundary can later be expanded to properties that want to be included.
- On November 2, 2022, County Commissioners will say yes or no to formation of the Terrebonne Sanitary District.
- Once the District is formed, the Board members can then explore sewer system funding options at no cost to Terrebonne residents or property owners.
- Formation of the Sanitary District does not guarantee that a sewer system will happen in Terrebonne.
- Connection costs, monthly rates, and other financial impacts can be confirmed after financing options are explored by the Sanitary District.
- At this time, the formation of the Terrebonne Sanitary District poses no financial impacts to Terrebonne residents.

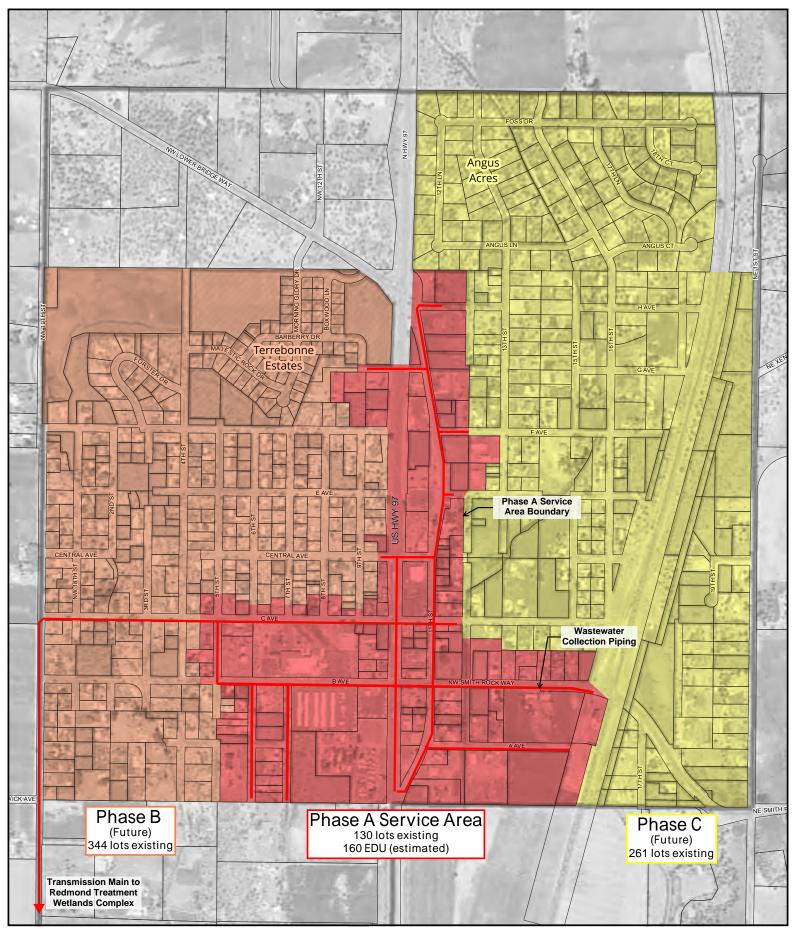
For more Information, please contact Linda Swearingen at 541-350-6012.

TSAG Member Contacts:

Tim Brown: trbrown541@msn.com 541-848-1239 Kristin Yurdin: kristinyurdin@icloud.com 541-815-4900

Guy Vernon: guyvernon@me.com 541-948-1508

Parker Vernon: parkerevernon@gmail.com 541-815-4136



Parametrix

DATE: 4/26/2022



Terrebonne Sanitary District