

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE  
3

4 )  
5 In the Matter of the )  
6 2021 Redistricting Plan. )  
7 )  
8 \_\_\_\_\_ )

Case No. 3AN-21-08869CI

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10 **ALASKA REDISTRICTING BOARD'S**  
11 **OPENING BRIEF ON GIRDWOOD CHALLENGE**  
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1 In accordance with this Court's Orders, the Alaska Redistricting Board  
2 ("Board") hereby submits its opening brief on the merits of the Girdwood Plaintiffs'  
3 challenges to the Board's April 2022 Amended Redistricting Plan, as follows:  
4

## 5 I. INTRODUCTION

6 Legally, this case is about whether Senate District E of the Board's April 2022  
7 Amended Redistricting Plan is constitutional. But, practically, this case is about  
8 whether the Girdwood Plaintiffs can successfully force Eagle River/Chugiak/Eklutna  
9 residents into one senate district so that JBER must be paired with downtown  
10 Anchorage. If JBER is paired with downtown Anchorage, JBER's ability to elect a  
11 senator of its choosing will be usurped by downtown Anchorage, which prefers the  
12 same candidates as Girdwood. This Court should reject the Girdwood Plaintiffs' claims  
13 and affirm the Alaska Supreme Court's repeated holdings that all areas within a  
14 borough or municipality are socio-economically integrated and neighborhood  
15 boundaries are of no constitutional import.  
16  
17

18 Senate District E is comprised of two contiguous house districts and therefore  
19 complies with Article VI, Section 6. As to equal protection, Girdwood's placement in  
20 House District 9 forecloses their claims. The Anchorage neighborhood of Girdwood  
21 has a voting-age population of 1,722, which is 12.34% of the voting-age population of  
22 House District 9 (voting-age population 13,957). In other words, Girdwood has the  
23 population to effect 12.34% control over who is elected to represent it in the Alaska  
24 House of Representatives in House District 9. When it comes to senate districts, which  
25  
26

1 are comprised to two house districts, Girdwood's control drops to 6.33%. Simply put,  
2 absent evidence that the Board invidiously discriminated against Girdwood, its equal  
3 protection rights cannot be infringed by Senate District E because the small  
4 neighborhood lacks the ability to elect a candidate of choice for even a house district.  
5 Girdwood's ability to choose a candidate for the house or senate is foreclosed by its  
6 inclusion in House District 9, which strongly prefers (and elects) Republican  
7 candidates.  
8

9  
10 As the data shows, Girdwood's small population is overridden in statewide  
11 elections by their fellow House District 9 members in South Anchorage who strongly  
12 favor Republican candidates. Because there is no Senate pairing scenario under which  
13 Girdwood's political preferences will change the outcome of a legislative race, this  
14 lawsuit is not about Girdwood at all. It is about attempting to force Eagle  
15 River/Chugiak/Eklutna voters into a single senate district and thus submerge the voice  
16 of JBER under a majority of Downtown Anchorage voters who strongly favor opposing  
17 candidates. This Court should reject the Girdwood Plaintiffs' redistricting and equal-  
18 protection claims. This process is not about giving any particular political party or  
19 labor union exactly what it wants, but instead about adopting a constitutional plan and  
20 obtaining finality for all Alaskans.  
21

22  
23 Because of the lack of legal support for their claims, the Girdwood Plaintiffs are  
24 likely to argue there are *better* house districts with which to pair House District 9. But,  
25 the wisdom or sagacity of the Board's Senate District E is not judicially reviewable.  
26

As the Alaska Supreme Court confirmed in affirming the Skagway house district, Senate District E’s constitutionality is the end of the inquiry.<sup>1</sup>

## II. FACTUAL AND PROCEDURAL BACKGROUND

### A. **The Board Adopted Its Original Redistricting Plan, Challenges Were Filed, and Ultimately the Courts Ordered the Board to Fix the “Cantwell Appendage” and Senate District K**

On November 10, 2021, the Board adopted its 2021 Redistricting Plan.<sup>2</sup> Multiple legal challenges were filed against the 2021 Redistricting Plan,<sup>3</sup> and after a trial on those challenges, on February 15, 2022, this Court issued its Findings of Fact and Conclusions of Law, upholding all but two house districts (House Districts 3 and 4) and one senate district (Senate District K).<sup>4</sup>

On March 25, 2022, the Alaska Supreme Court reversed this Court’s invalidation of House Districts 3 and 4, and upheld this Court’s invalidation of Senate District K.<sup>5</sup> The Alaska Supreme Court also ruled unconstitutional House District 36 because the “Cantwell Appendage” made that district “non-compact without adequate

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<sup>1</sup> See Order on Petitions for Review, Supreme Court No. S-18332, at 2-3 (Mar. 25, 2022) (“House Districts 3 and 4 are the subject of two petitions, one by the Board and one by the Municipality of Skagway Borough. We AFFIRM the superior court’s determination that the house districts comply with article VI, section 6 of the Alaska Constitution and should not otherwise be vacated due to procedural aspects of the Board’s work. We REVERSE the superior court’s remand to the Board for further proceedings under the superior court’s ‘hard look’ analysis relating to public comments on the house districts. There is no constitutional infirmity with House Districts 3 and 4 and no need for further work by the Board.”).

<sup>2</sup> Findings of Fact and Conclusions of Law, at 21 (Feb. 15, 2022).

<sup>3</sup> *Id.*, at Appendix D.

<sup>4</sup> *Id.*, at 169-170.

<sup>5</sup> Order on Petitions for Review, S-18332 (Mar. 25, 2022).

1 justification.”<sup>6</sup> But, the Supreme Court offered an easy fix: move Cantwell from House  
2 District 36 to House District 30, where the remainder of the Denali Borough was  
3 placed.<sup>7</sup> The Supreme Court noted that if the Board made that move, the resulting  
4 populations of House Districts 30 and 36 would be “well within constitutionally  
5 allowable parameters under our case law.”<sup>8</sup>

7 After the Supreme Court remanded the case to the superior court, on March 30,  
8 2022, this Court ordered the Board:

10 1) To correct the Constitutional errors identified by this Court and the  
11 Supreme Court in Senate District K; 2) To redraw House District 36 to  
12 remove the “Cantwell Appendage”; and 3) To make other revisions to the  
proclamation plan resulting or related to these changes.<sup>9</sup>

13 It is with this guidance that the Board undertook its remand actions.

14 **B. On Remand, the Board Fixed the “Cantwell Appendage” and Senate  
District K in an Amended Redistricting Plan**

15 The Board met between April 2 and April 13, 2022, to fulfill the remand orders.

16 On April 2, 2022, the Board met and reviewed the Alaska Supreme Court’s decision  
17 and this Court’s remand order.<sup>10</sup> The Board also took public testimony at this April 2  
18 meeting.<sup>11</sup>

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21 <sup>6</sup> *Id.*, at 3.

22 <sup>7</sup> *Id.*, at 4.

23 <sup>8</sup> *Id.*, at 4.

24 <sup>9</sup> Order Following Remand From the Alaska Supreme Court (Mar. 30, 2022).

25 <sup>10</sup> ARB2000076 (April 2 Meeting Agenda); *see also* ARB2000084-000177 (April 2  
Meeting Transcript).

26 <sup>11</sup> ARB2000076 (April 2 Meeting Agenda); *see also* ARB2000084-000177 (April 2  
Meeting Transcript).

1 On April 4, the Board met to discuss and adopt the process by which it would  
2 take public testimony and adopt revisions to the 2021 Redistricting Plan that complied  
3 with the courts' orders.<sup>12</sup> The Board took public testimony at this April 4 meeting.<sup>13</sup>  
4

5 On April 5, the Board met and took public testimony on the best way to  
6 accomplish the court-ordered revisions.<sup>14</sup>  
7

8 On April 6, the Board again met and took public testimony on changes to House  
9 Districts 29, 30, and 36 to fix the "Cantwell Appendage."<sup>15</sup> The Board also discussed  
10 different Anchorage senate pairings proposals.<sup>16</sup> The Board originally planned to  
11 adopt three proposed plans for Anchorage senate pairings: "Option 1," "Option 2,"  
12 and "Option 3B."<sup>17</sup> But, after considering that Option 1 broadly re-paired senate  
13 districts in Anchorage unrelated to and not resulting from fixing Senate District K, the  
14 Board unanimously voted to withdraw Option 1 from its consideration.<sup>18</sup> This left the  
15  
16  
17

18 <sup>12</sup> ARB2000077 (April 4 Meeting Agenda); *see also* ARB2000178-000284 (April 4  
19 Meeting Transcript).

20 <sup>13</sup> ARB2000077 (April 4 Meeting Agenda); *see also* ARB2000178-000284 (April 4  
21 Meeting Transcript).

22 <sup>14</sup> ARB2000078 (April 5 Meeting Agenda); *see also* ARB2000285-000445 (April 5  
23 Meeting Transcript).

24 <sup>15</sup> ARB2000079 (April 6 Meeting Agenda); *see also* ARB2000446-000599 (April 6  
25 Meeting Transcript).

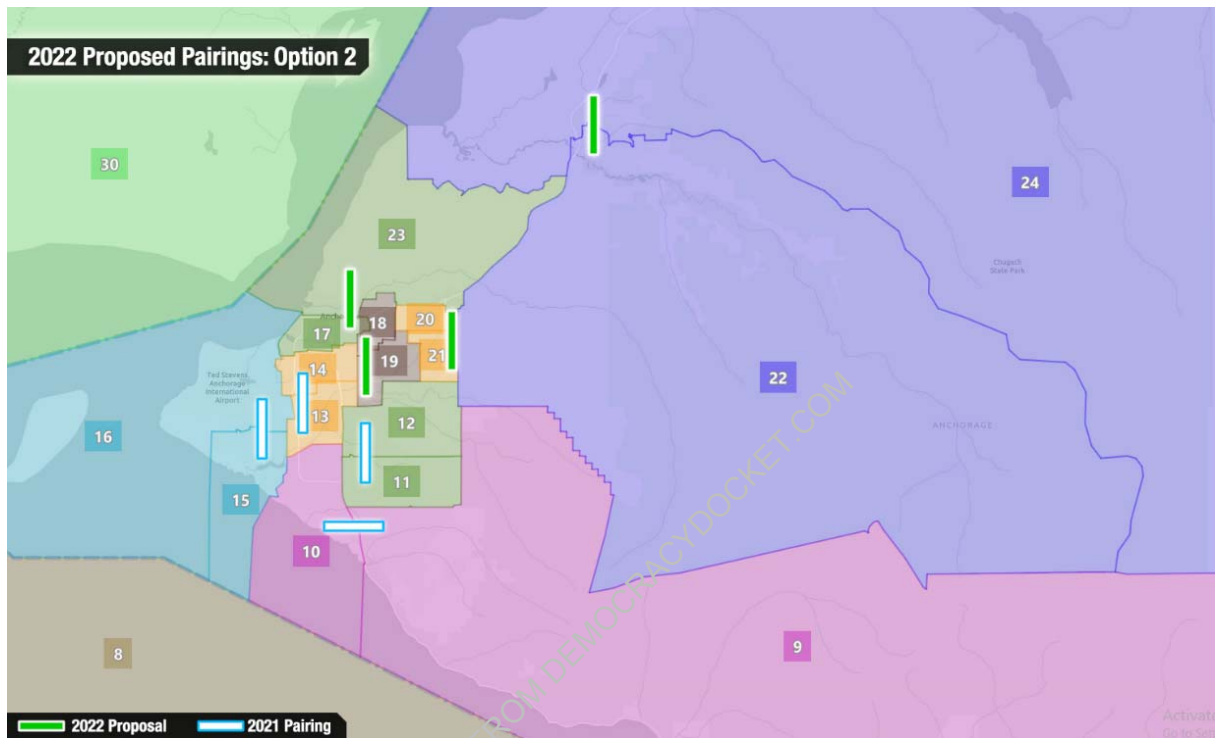
26 <sup>16</sup> ARB2000079 (April 6 Meeting Agenda); *see also* ARB2000446-000599 (April 6  
Meeting Minutes).

<sup>17</sup> ARB2000533 (April 6 Meeting Transcript).

<sup>18</sup> ARB2000559-ARB2000560 (April 6 Meeting Transcript) (Chairman Binkley: "If  
there's no objection to the motion, the motion is adopted, and we now have before us two  
plans, option 2 and option 3 bravo.").

Board considering Option 2 and Option 3B as the Board’s proposed plans for Anchorage Senate Pairings.<sup>19</sup>

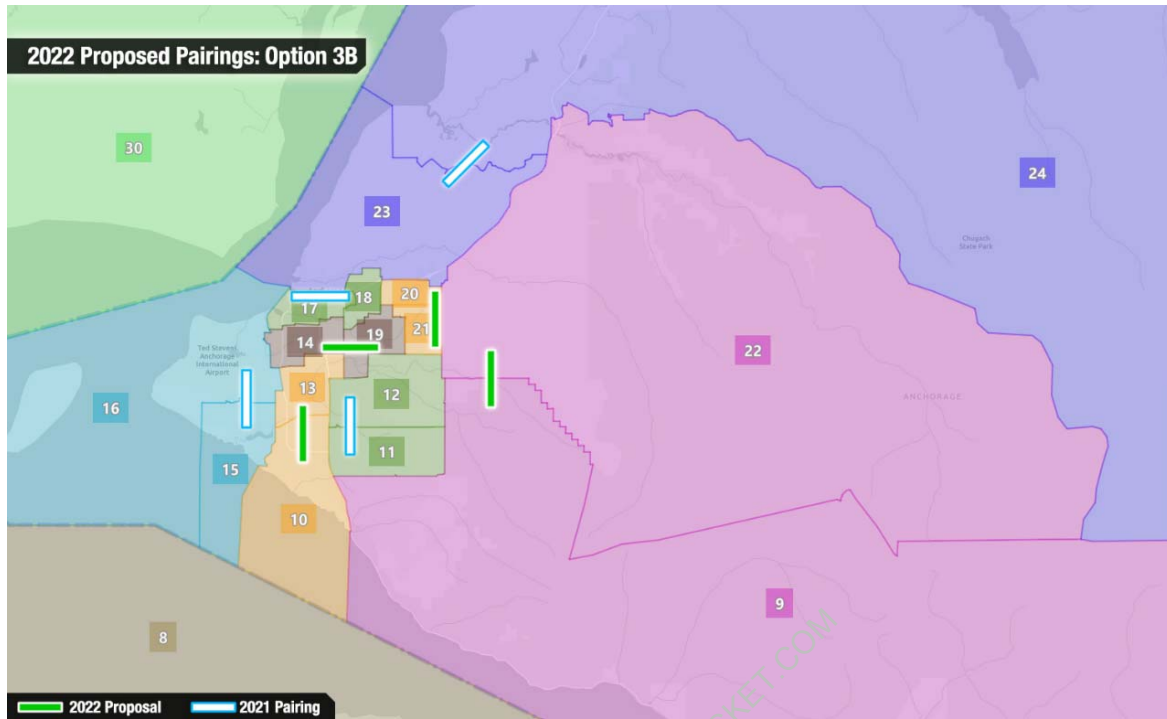
Proposed plans Option 2 and Option 3B are shown below:<sup>20</sup>



<sup>19</sup> ARB2000559-ARB2000560 (April 6 Meeting Transcript) (Chairman Binkley: “If there’s no objection to the motion, the motion is adopted, and we now have before us two plans, option 2 and option 3 bravo.”).

<sup>20</sup> ARB20001828 (ARB Website Showing Options 2 and 3B).





Both proposed plans suggested changing Senate District K from the 2021 Redistricting Plan by pairing North Muldoon (House District 20) and South Muldoon (House District 21) in a new senate district.<sup>21</sup> Both options resulted in three new senate districts stemming from the revision to Senate District K, but they differed in composition.<sup>22</sup>

On April 7, 8 and 9, the Board met and took additional public testimony on Options 2 and 3B.<sup>23</sup> There was public testimony in favor of and against both proposals.<sup>24</sup>

<sup>21</sup> ARB20001828 (ARB Website Showing Options 2 and 3B).

<sup>22</sup> ARB20001828 (ARB Website Showing Options 2 and 3B).

<sup>23</sup> ARB2000080 (April 7 Meeting Agenda); *see also* ARB2000600-000696 (April 7 Meeting Transcript); ARB2000081 (April 8 Meeting Agenda); *see also* ARB2000697-000813 (April 8 Meeting Transcript); ARB2000082 (April 9 Meeting Agenda); *see also* ARB2000814-000946 (April 9 Meeting Transcript).

<sup>24</sup> *See generally* ARB2001094-001226.

1 On April 13, the Board met and discussed the competing proposals for  
2 Anchorage senate pairings.<sup>25</sup> The Board voted to adopt proposed plan “Option 3B” as  
3 its new Anchorage senate pairings.<sup>26</sup> Members Binkley, Marcum and Simpson voted  
4 in favor of Option 3B, and Members Bahnke and Borromeo voted against it.<sup>27</sup> Each  
5 member stated their rationale for their vote on the record.<sup>28</sup>

7 The Board issued its Amended Proclamation of Redistricting the same day.  
8 Attached as **Appendix A** to this brief are the proclamation maps for all of the  
9 Anchorage house districts (House Districts 9 through 24), which show the four new  
10 Anchorage senate districts that are changed from the 2021 Redistricting Plan: Senate  
11 Districts E, G, I, and K.<sup>29</sup>

13 The Board adopted, deliberated and approved its revised Anchorage senate  
14 districts during open public meetings. During its meetings to adopt the Amended  
15 Redistricting Plan—between April 2 and April 13, 2022—the Board never entered  
16 executive session.<sup>30</sup>

19 <sup>25</sup> ARB2000083 (April 13 Meeting Agenda); *see also* ARB2000947-001083 (April 13  
20 Meeting Transcript).

21 <sup>26</sup> ARB2001015-001016 (April 13 Meeting Transcript).

22 <sup>27</sup> ARB2001015-001016 (April 13 Meeting Transcript).

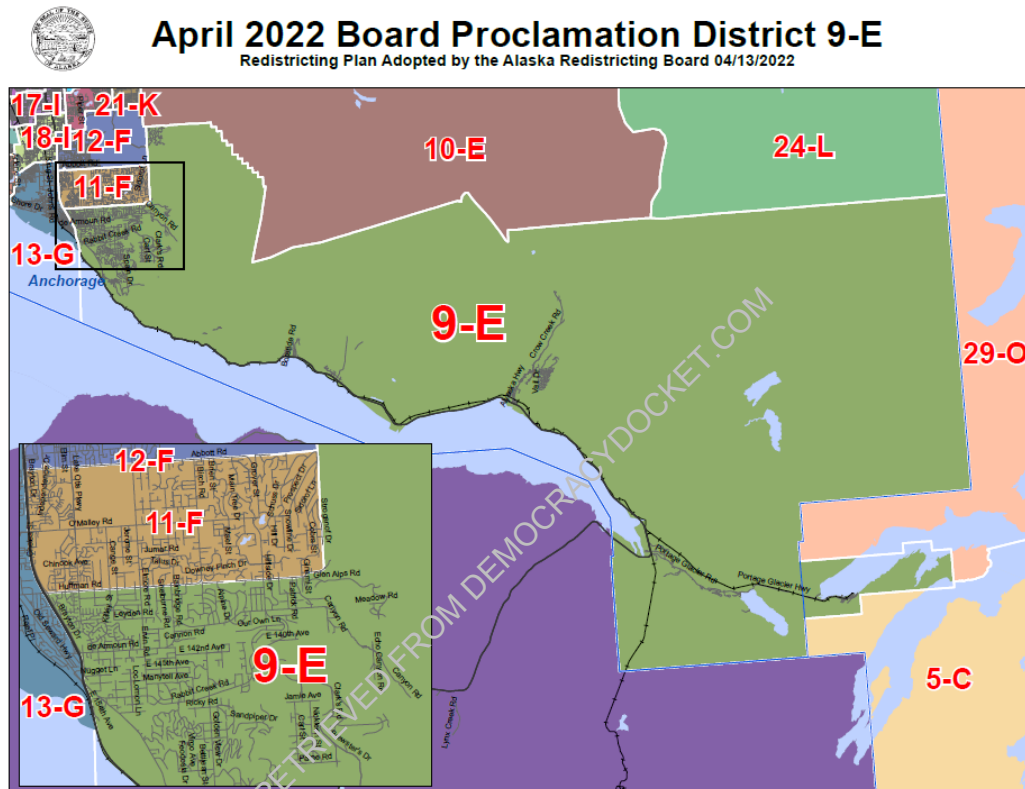
23 <sup>28</sup> *See* ARB2000954-000960 (Member Bahnke); ARB2000962-000974 (Member  
Simpson); ARB2000975-000980 (Member Borromeo); ARB2000980-000981 (Member  
Marcum); ARB2000981-000991 (Member Binkley).

24 <sup>29</sup> *See* ARB2000007-000008; 2000011 (maps of election districts within the Municipality  
of Anchorage) (attached as **Appendix A**).

25 <sup>30</sup> *See* Affidavit of Peter Torkelson, ¶ 15 (May 4, 2022); *see also* ARB2000084-000177  
26 (April 2 Meeting Transcript); ARB20000178-000284 (April 4 Meeting Transcript);  
ARB20000285-000445 (April 5 Meeting Transcript); ARB20000446-000599 (April 6  
Meeting Minutes); ARB2000600-000696 (April 7 Meeting Transcript); ARB2000697-000813

C. Girdwood's Challenge to Senate District E

On April 25, 2022, Plaintiffs Louis Theiss, Ken Waugh, and Jennifer Wingard (collectively the "Girdwood Plaintiffs") filed a complaint challenging Senate District E, which is comprised of House Districts 9 and 10, as shown below.<sup>31</sup>



ARB2000022

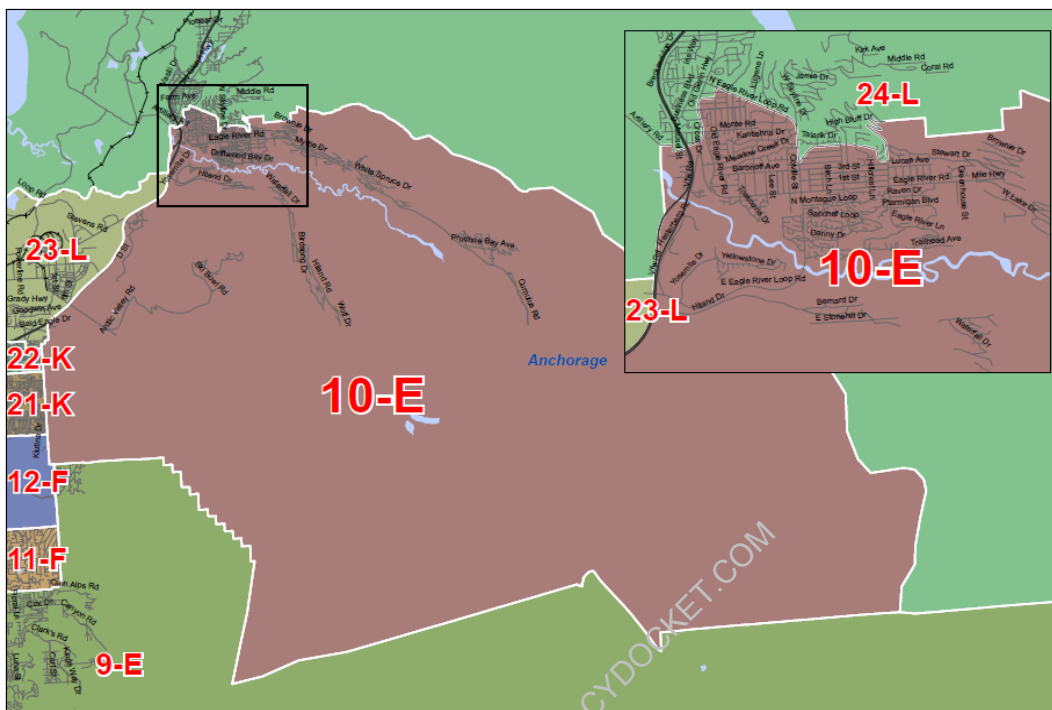
(April 8 Meeting Transcript); ARB2000814-000946 (April 9 Meeting Transcript); and ARB2000947-001083 (April 13 Meeting Transcript).

<sup>31</sup> Complaint and Expedited Application to Compel Correction of Errors in Redistricting (Apr. 25, 2022).



## April 2022 Board Proclamation District 10-E

Redistricting Plan Adopted by the Alaska Redistricting Board 04/13/2022



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: [www.akredistrict.org/maps](http://www.akredistrict.org/maps)

ARB2000023

The Girdwood Plaintiffs assert that Senate District E in the Amended Redistricting Plan violates their equal protection rights under the Alaska Constitution by denying them “an equally powerful and geographically effective vote and ignor[ing] the demographic, economic, political and geographic differences between the Eagle River and Girdwood communities.”<sup>32</sup> They also claim that Senate District E violates the substantive criteria for senate districts in Alaska because it is non-compact, is “falsely contiguous,” and ignores geographic features.<sup>33</sup>

<sup>32</sup> Compl. at 9, ¶ 30.

<sup>33</sup> Compl. at 9.

### III. STANDARD OF REVIEW

Judicial review of the Board's redistricting plan is deferential, in recognition of the authority delegated to the Board under the Alaska Constitution.<sup>34</sup> The courts "review redistricting plans 'in the same light as [they] would a regulation adopted under a delegation of authority from the legislature to an administrative agency to formulate policy and promulgate regulations.'"<sup>35</sup> This means courts "review the plan to ensure that the Board did not exceed its delegated authority and to determine if the plan is 'reasonable and not arbitrary.'"<sup>36</sup> The examination of a reviewing court is to assess whether the Board has "engaged in reasoned decision making."<sup>37</sup>

This Court "may not substitute its judgment as to the sagacity of a [redistricting plan] for that of the [Board; the] wisdom of [the plan] is not a subject for review."<sup>38</sup> "The court cannot pick a plan it likes, nor can it impose a plan it prefers. Rather, the court's role is to measure the plan against constitutional standards; the choice among alternative plans that are otherwise constitutional is for the Board, not the Court."<sup>39</sup>

<sup>34</sup> Alaska Const. art. VI, §§ 8, 10.

<sup>35</sup> *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1037 (Alaska 2012) (quoting *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1357 (Alaska 1987)).

<sup>36</sup> *Id.* (quoting *Kenai Peninsula Borough*, 743 P.2d at 1357).

<sup>37</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 18 (Alaska Super. Ct. Feb. 1, 2002) (citing *Interior Alaska Airboat Assoc., Inc. v. State*, 18 P.3d 686, 690 (Alaska 2001)).

<sup>38</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 17 (citing *Carpenter v. Hammond*, 667 P.2d 1204, 1214 (Alaska 1983)).

<sup>39</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 18 (citing *Gaffney v. Cummings*, 412 U.S. 735, 750-51 (1973)).

#### IV. ARGUMENT

The Girdwood Plaintiffs’ equal protection and Article VI, Section 6 claims are meritless. The house districts that comprise Senate District E are undeniably contiguous, as defined by this Court in the last round of litigation and as upheld by the Alaska Supreme Court as to House District 29.<sup>40</sup> Under Article IV, Section 6, contiguity does not mean a resident can reach all parts of the district via automobile without entering other districts. Rather, the contiguity requirement is a visual test that merely requires areas are physically connected by census blocks. Moreover, as this Court recognized, Article VI, Section 6’s language that “[d]rainage and other geographic features shall be used in describing boundaries wherever possible” means simply that: in *describing* boundaries the Board shall use drainage and other geographic features.<sup>41</sup> The Girdwood Plaintiffs do not allege that the Board failed to adequately *describe* Senate District E. Instead, they argue that Section 6 required the Board to create districts within Anchorage based on “geographic features.” This

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<sup>40</sup> Findings of Fact and Conclusions of Law, at 74-75 (House District 29 contiguous despite intervening mountain range and connecting roadway leaving the district); Order on Petitions for Review, dated Mar. 25, 2022, S-18332, at 3 (affirming District 29 is compact and contiguous); Findings of Fact and Conclusions of Law, at 42 (holding Senate District K to be contiguous because no more than the fact that the boundaries are touching is required).

<sup>41</sup> Findings of Fact and Conclusions of Law, at 42 (“Instead, the plain language of section six indicates such geographic features shall be used where possible in *describing boundaries*.”) (emphasis in original).

1 geography argument warps the actual language of Section 6 in a manner that this Court  
2 has already rejected.

3  
4 As to equal protection, the Girdwood Plaintiffs' claims fail because their small  
5 population is incapable of swaying, let alone controlling, its steadfastly Republican  
6 neighbors, and they did not challenge their placement in House District 9. There is no  
7 material difference in the effectiveness or strength of Girdwood's voice regardless of  
8 whether it is in Senate District E paired with Oceanview (HD 13), or O'Malley (HD  
9 11), because Girdwood lacks the population to control the election of a house  
10 representative, let alone to control the election of a senator. As discussed below,  
11 Girdwood's inclusion in Senate District E enhances, not diminishes, Girdwood's voting  
12 power.  
13  
14

15 **A. Senate District E Complies with Article IV, Section 6 because it is**  
16 **Comprised of Two Contiguous House Districts and the Girdwood Plaintiffs**  
17 **Do Not Challenge the Board's Description of Its Boundaries as Inadequate**

18 The Girdwood Plaintiffs' claim that Senate District E is not comprised of  
19 contiguous house districts is meritless and seeks to revive an argument that every  
20 Alaska judge who has looked at this issue has rejected—including this Court during the  
21 last round of litigation. Indeed, binding precedent from the Alaska Supreme Court and  
22 this Court's own Findings of Facts and Conclusions of Law concerning the previous  
23 2021 Redistricting Plan establish that Senate District E is contiguous. Because Senate  
24 District K and House District 29 from the 2021 Redistricting Plan were contiguous,  
25 Senate District E is also contiguous.  
26

1           The Alaska Constitution provides that “[e]ach senate district shall be composed  
2 as near as practicable of two contiguous house districts.”<sup>42</sup> “Contiguous territory is  
3 territory which is bordering or touching.”<sup>43</sup> Thus, “[a] district may be defined as  
4 contiguous if every part of the district is reachable from every other part without  
5 crossing the district boundary (i.e., the district is not divided into two or more discrete  
6 pieces).”<sup>44</sup> Contiguity is a visual concept.<sup>45</sup> In application, a district that comprises a  
7 single land mass on a map connected by census blocks is contiguous for constitutional  
8 purposes, even if transportation barriers such as mountains or waterways physically  
9 separate portions of the district.<sup>46</sup> As this Court held in rejecting the “transportation  
10 contiguity” urged by the Matanuska-Susitna Borough and Valdez in litigation over  
11 House District 29: “The fact that the road connection between Mat-Su and Valdez  
12 meanders in and out of two districts as it traverses around the Chugach mountains does  
13 not take away from the fact that every part of the district is physically connected.  
14 District 29 is contiguous.”<sup>47</sup> The Alaska Supreme Court’s affirmance of this prior  
15 ruling<sup>48</sup> ends the inquiry because every part of Senate District E is physically connected.

21           <sup>42</sup> Alaska Const. art. VI, § 6.

22           <sup>43</sup> *Hickel v. Southwest Conference*, 846 P.2d 38, 45 (Alaska 1992).

23           <sup>44</sup> *Id.* (citation omitted).

24           <sup>45</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 36 (Alaska Super. Ct. Feb. 1, 2002).

25           <sup>46</sup> Findings of Fact and Conclusions of Law, at 74-75 (“This Court agrees with Judge Rindner’s analysis.”).

26           <sup>47</sup> *Id.*, at 74-75.

<sup>48</sup> Order on Petitions for Review, S-18332, at 3.



1 Likewise, this Court rejected East Anchorage Plaintiffs' contiguity challenge to  
2 Senate District K (from the 2021 Redistricting Plan). Like Mat-Su and Valdez, the East  
3 Anchorage Plaintiffs argued that Senate District K was not *truly* contiguous or  
4 contiguous "as nearly as practicable" because "one cannot travel between [the house  
5 districts] without leaving the Senate district and [the house districts] are separated by a  
6 mountain range."<sup>49</sup> East Anchorage also urged "that South Muldoon and Eagle River  
7 Valley are located in separate drainages, and are even separated by a drainage."<sup>50</sup> Each  
8 of these arguments were properly rejected when this Court determined that the district  
9 "boundaries are in fact physically touching. No more is required,"<sup>51</sup> and that "the  
10 reference to 'drainage and other geographic features' is not a constitutional limitation  
11 on contiguity."<sup>52</sup>

12  
13  
14  
15 The Court should expect the Girdwood Plaintiffs to use selective quoting of  
16 Article VI, Section 6 in an attempt to re-arrange the Constitution's actual wording.  
17 Specifically, the Board expects the Girdwood Plaintiffs to attempt to re-arrange the  
18 words of Article VI, Section 6's sentence "Each senate district shall be composed as  
19 near as practicable of two contiguous house districts" to something requiring *maximum*  
20 contiguity. Of course, as this Court held in the last round of litigation the Alaska  
21 Constitution's contiguity requirement merely requires that "the boundaries are in fact  
22  
23

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24 <sup>49</sup> Findings of Fact and Conclusions of Law, at 39.

25 <sup>50</sup> *Id.*, at 41.

26 <sup>51</sup> *Id.*, at 42.

<sup>52</sup> *Id.*, at 42.

1 physically touching. No more is required.”<sup>53</sup> There is no need to determine whether it  
2 was *practicable* for the Board to adopt a contiguous senate district, because Senate  
3 District E *is* comprised of two contiguous house districts.<sup>54</sup>  
4

5 And even if “as near as practicable” were read to qualify contiguity, House  
6 Districts 9 and 10 of the April 2022 Amended Redistricting Plan, which make up Senate  
7 District E, share over 35 miles of border linking them.<sup>55</sup> The expansive shared border  
8 between House Districts 9 and 10 confirms Senate District E’s satisfaction of the  
9 contiguity requirement.  
10

11 The Girdwood Plaintiffs’ complaint also challenges the senate district based on  
12 a strained application of Article VI compactness to senate districts,<sup>56</sup> which ignores the  
13 language of Article VI, Section 6 itself and the guidance from the 2001 redistricting  
14 cycle.<sup>57</sup> Article VI of the Alaska Constitution only requires senate districts to be  
15 composed of two contiguous house districts, not that the ensuing senate district be  
16 compact.<sup>58</sup> Unlike the language regarding house districts, the sentence concerning  
17 senate districts found within the Constitution includes no mention of compactness.  
18  
19

20 Given Alaska’s unique geography and relatively low population, which is spread  
21

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22 <sup>53</sup> *Id.*, at 42.

23 <sup>54</sup> ARB2000007, ARB2000022-000023.

24 <sup>55</sup> Aff. of P. Torkelson, ¶ 14; ARB2001206.

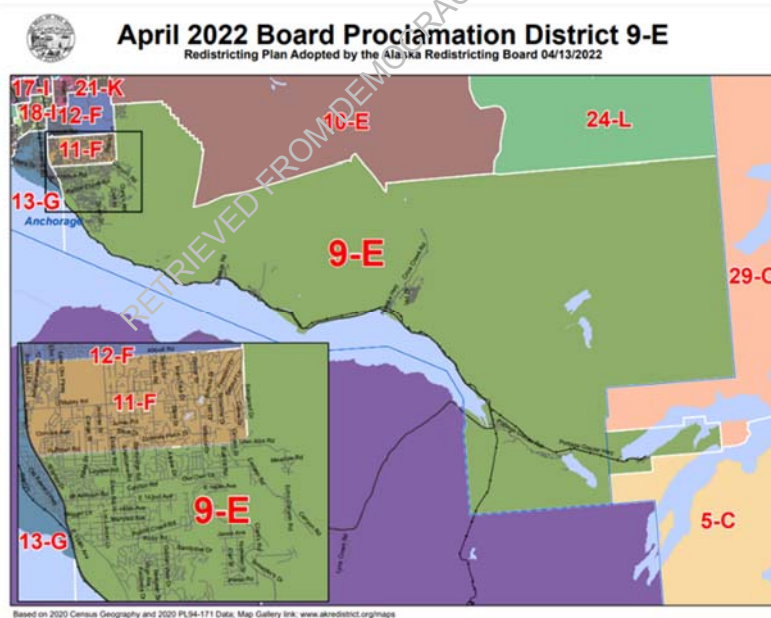
25 <sup>56</sup> Compl. ¶¶ 26-27.

26 <sup>57</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, \*15 (J. Rindner) (Alaska Super.  
Ct. Feb. 1, 2002); *see also Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1365 (Alaska  
1987).

<sup>58</sup> Alaska Const. art. VI, § 6; *In re 2001 Redistricting Cases*, 2002 WL 34119573, \*15.

1 unevenly across a state that is larger than most countries in the world, “neither size nor  
2 lack of direct road access makes a district unconstitutionally non-compact.”<sup>59</sup> Such  
3 expanses are inherent in Alaska redistricting, and they do not make a district  
4 unconstitutional. And the current Proclamation has numerous senate districts that span  
5 far greater distances and have not been struck down by this Court or the Supreme Court  
6 during the first round of litigation. If Adak and Bethel can properly be in one senate  
7 district, and Kotzebue and Kaktovik in another, then surely two neighborhoods within  
8 the same municipality can also be combined without constitutional concern.  
9

10  
11 The undisputed material facts demonstrate that Senate District E is comprised  
12 of two visually contiguous house districts, House Districts 9 and 10.  
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23 No more is required to satisfy Article IV, Section 6’s requirements for senate districts.<sup>60</sup>

24  
25 <sup>59</sup> *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1092 (Alaska 2002).

26 <sup>60</sup> Findings of Fact and Conclusions of Law, at 42.

1           The Girdwood Plaintiffs’ argument that Senate District E is unconstitutional  
2 because it splits Eagle River into multiple senate districts<sup>61</sup> is foreclosed by controlling  
3 precedent which recognizes that Eagle River/Chugiak/Eklutna residents are part of the  
4 Municipality of Anchorage that should not be segregated from all other election  
5 districts in the municipality.  
6

7           Twenty years ago, the Alaska Supreme Court affirmed the Board’s splitting of  
8 the Chugiak-Eagle River area into multiple election districts. In *In re 2001*  
9 *Redistricting Cases*, Anchorage residents<sup>62</sup> complained “that Eagle River is a distinct  
10 neighborhood that should not be joined with other neighborhoods in Anchorage.”<sup>63</sup>  
11 Judge Rindner pointed out that these residents were asking the Court to segregate  
12 Anchorage in a manner that the Alaska Supreme Court had explicitly rejected: “The  
13 Alaska Supreme Court also rejected the notions that communities within the Anchorage  
14 area are socially and economically distinct.”<sup>64</sup>  
15

16           On appeal, the Alaska Supreme Court affirmed the legality of dividing Eagle  
17 River into multiple election districts: “While the Eagle River-Chugiak area is socio-  
18 economically integrated, its residents have no constitutional right to be placed in a  
19  
20

21  
22 <sup>61</sup> See Compl., ¶ 31 (“The Board’s creation of two separate Eagle River Senate districts  
constitutes unlawful political gerrymandering.”).

23 <sup>62</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119574, \*1 (Alaska Super. Ct. May 9,  
24 2002) (“Most of these letters are from residents of Chugiak or Eagle River who complain about  
the manner in which these areas were placed into house and/or senate districts.”).

25 <sup>63</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119574, \*2 (“Others complain that Eagle  
River is a distinct neighborhood that should not be joined with other neighborhoods in  
26 Anchorage.”).

<sup>64</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119574, \*2.

1 single district.”<sup>65</sup> The Supreme Court also adopted Judge Rindner’s reasoning that the  
2 neighborhood boundaries of Eagle River-Chugiak were of no constitutional import:

3  
4 The Luper appellants also argue that the natural and local government  
5 boundaries of the Eagle River-Chugiak area should have been  
6 “recognized.” But the plain language of the Alaska Constitution indicates  
7 that respecting local government boundaries is discretionary. Further, the  
8 appellants have not demonstrated that any failure by the board to follow  
9 natural boundaries violates article VI, section 6. As Judge Rindner  
10 observed, “respect for neighborhood boundaries is an admirable goal,”  
11 but “it is not constitutionally required and must give way to other legal  
12 requirements.” Therefore, the districts containing the Eagle River area  
13 are not unconstitutional in any respect.<sup>66</sup>

14 A focal point of *In re 2001 Redistricting Cases* was House District 32. House District  
15 32 covered portions of Eagle River (Eagle River Valley) and portions of the Anchorage  
16 Hillside (De Armoun Road and Rabbit Creek Road).<sup>67</sup> The district split the Eagle River  
17 neighborhood into multiple house districts. The Alaska Supreme Court broadly ruled:  
18 “[T]he districts containing the Eagle River area are not unconstitutional *in any*  
19 *respect*.”<sup>68</sup>

20 The same is true of Senate District E. It combines different areas within the  
21 Municipality of Anchorage (Eagle River Valley, the Anchorage Hillside, Girdwood,  
22 and Portage) into a senate district. Respect for the neighborhood boundaries of Eagle  
23 River, Hillside, and Girdwood within the Municipality “is not constitutionally

24 <sup>65</sup> *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1091 (Alaska 2002).

25 <sup>66</sup> *Id.* at 1091.

26 <sup>67</sup> *Id.* at 1091; *see also* ARB010414 and ARB010416 (Alaska Redistricting Board Amended Final Redistricting Plan dated April 18, 2002) (House District 32P).

<sup>68</sup> *In re 2001 Redistricting Cases*, 47 P.3d at 1091 (emphasis added).

required.”<sup>69</sup> Combining these areas of the Municipality of Anchorage is not unconstitutional “in any respect.”<sup>70</sup> This should be the end of the inquiry.

**B. Senate District E Does Not Violate Equal Protection**

The Girdwood Plaintiffs ask this Court to discriminate against Eagle River residents. Specifically, the Girdwood Plaintiffs seek a ruling that Eagle River residents are too dissimilar from other Municipality of Anchorage residents to be in election districts with them. To the Girdwood Plaintiffs, Eagle River residents must be confined in election districts that do not include other areas of the Municipality, which is contrary to decades of senate pairings.<sup>71</sup> The Court should reject this attempt to segregate certain Municipality of Anchorage voters in different election districts from their neighbors.

In adjudicating equal protection claims to redistricting plans, Alaska courts employ the “neutral factors” test. This Court employed the neutral factors test from *Kenai Peninsula Borough v. State* in adjudicating equal protection claims in the last round of litigation:

The Court employs a neutral factors test to assess the legitimacy of the Board’s purpose in creating a Senate district. The Board’s purpose would be illegitimate if it diluted the power of certain voters “systematically by reducing their senate representation below their relative strength in the state’s population.” In making this assessment, the Court looks to the Board’s process in making its decision as well as the substance of the decision. The Court will find suggestive of illegitimate purpose any secretive procedures employed by the Board, evidence of regional partisanship, and the existence of district boundaries which “meander and

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> ARB2001120; ARB2001172; ARB2001698.

1 selectively ignore political subdivisions and communities of interest.”<sup>72</sup>

2 And even where a purpose is determined illegitimate under the first half of the test set  
3 out above, as stated in *Kenai Peninsula Borough*, “the Board’s ‘purpose in redistricting  
4 will be held illegitimate unless that redistricting effects a *greater* proportionality of  
5 representation.”<sup>73</sup>

7 Senate District E provides greater proportionality of representation to Girdwood  
8 voters and also easily passes the neutral factors test. The record is devoid of any  
9 evidence that the neutral factors indicate the Board intentionally sought to dilute  
10 Girdwood voters’ voting power by adopting Senate District E. Quite the opposite. The  
11 Board held open meetings without a single executive session, engaged in reasoned  
12 decision making during public meetings, articulated the evidence and testimony that  
13 support their senate map selection, and adopted a senate map for Anchorage that  
14 happens to optimize the Girdwood vote. The record does not support a finding of an  
15 illegitimate Board purpose or equal protection violation.

18 **1. There is No Equal Protection Violation because Senate District E**  
19 **Optimizes Girdwood Residents’ Voting Strength**

20 Article I, Section 1 of the Alaska Constitution provides “that all persons are  
21 equal and entitled to equal rights, opportunities, and protection under the law.”<sup>74</sup> “In  
22 the context of voting rights in redistricting and reapportionment litigation, there are two  
23

24 <sup>72</sup> Findings of Fact and Conclusions of Law, at 54 (quoting *Kenai Peninsula Borough v.*  
25 *State*, 743 P.2d 1352, 1372 (Alaska 1987)).

26 <sup>73</sup> *Id.*, at 54 (quoting *Kenai Peninsula Borough*, 743 P.2d at 1372) (emphasis added).

<sup>74</sup> Alaska Const. art. I, § 1.

1 basic principles of equal protection, namely that of ‘one person, one vote’—the right to  
2 an equally weighted vote—and of ‘fair and effective representation’—the right to group  
3 effectiveness or an equally powerful vote.”<sup>75</sup> The Girdwood Plaintiffs cannot show,  
4 nor do they allege, that their right to one person, one vote has been abridged.  
5

6 The Girdwood Plaintiffs’ allegation that Senate District E violates their right to  
7 fair and equal representation does not withstand scrutiny. U.S. Census data  
8 demonstrates that residents of the Girdwood area of the Municipality of Anchorage do  
9 not have their vote diluted in any way by Senate District E. In fact, the opposite is true:  
10 Senate District E maximizes Girdwood’s voice in the Alaska Senate beyond any other  
11 legal pairing. There is no other house district within the Municipality of Anchorage  
12 that House District 9 could be paired with to give Girdwood more influence than it  
13 currently has with Senate District E.  
14  
15

16 The U.S. Supreme Court and the Alaska Supreme Court look at the “voting age  
17 population” (VAP) of an area to determine whether dilution of voter power has  
18 occurred.<sup>76</sup> This makes sense because just as the U.S. Supreme Court has noted that  
19  
20  
21  
22

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23 <sup>75</sup> *Kenai Peninsula Borough*, 743 P.2d at 1366.

24 <sup>76</sup> *See Thornburg v. Gingles*, 478 U.S. 30, 46-51 (1986) (discussing how multi-member  
25 districts may operate to “minimize or cancel out the voting strength of racial minorities in the  
26 *voting population*.”) (emphasis added). *See also In re 2011 Redistricting Cases*, 294 P.3d  
1032, 1042-43 & n.36 (Alaska 2012) (looking to the voting age population of “VAP” of  
districts when assessing majority-minority house districts under the Voting Rights Act of 1965  
for potential retrogression of minority voting strength); *see also Hickel v. Southeast  
Conference*, 846 P.2d 38, 49 (Alaska 1992).



1 “people, not land or trees or pastures, vote,”<sup>77</sup> it is also true that voters who have not  
2 reached the age of majority do not vote.

3  
4 According to the 2020 U.S. Census, the Girdwood area of the Municipality of  
5 Anchorage has a total population of 2,144 residents and a voting age population of  
6 1,722.<sup>78</sup> Because Girdwood is not incorporated as a separate political unit—it is part  
7 of the Municipality of Anchorage—the Board defines the “Girdwood Area” as the area  
8 encompassed by the Girdwood Community Council (aka the Girdwood Board of  
9 Supervisors).<sup>79</sup>

10  
11 Below is a chart of the relevant populations contained in Senate District E. It  
12 demonstrates that under Senate District E, House District 9 in which Girdwood is  
13 located has the greater influence over who is elected senator at 51.3% of the VAP, and  
14 Girdwood voters have the most influence over who is elected senator at 6.33% of the  
15 VAP.<sup>80</sup>

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20 <sup>77</sup> *Reynolds v. Sims*, 377 U.S. 533, 580 (1964).

21 <sup>78</sup> Aff. of P. Torkelson, ¶ 5.

22 <sup>79</sup> See Girdwood Community Council Map (available at: [http://www.communitycouncils.org/servlet/content/girdwood\\_cc\\_map.html](http://www.communitycouncils.org/servlet/content/girdwood_cc_map.html)). As the Girdwood Plaintiffs explain in  
23 their Complaint, the Girdwood Valley Service Area Board of Supervisors (GBOS) is the  
24 Girdwood Community Council for the Girdwood area of the Municipality of Anchorage.  
25 Compl. at Exhibit 4 (“Whereas, the Girdwood Board of Supervisors (GBOS) is the duly elected  
26 Anchorage municipal board representing the residents and tax payers of Girdwood Valley  
Service Area in the provision of multiple local services, and is also recognized under AMC  
22.40.035 as representing the Girdwood community in an equivalent capacity to a Community  
Council.” (emphasis added)). Girdwood is not a “political subdivision” of its own. *Kenai  
Peninsula Borough v. State*, 743 P.2d 1352, 1363 (Alaska 1987).

<sup>80</sup> Aff. of P. Torkelson, ¶¶ 6-7.

April 2022 Amended Redistricting Plan – Senate District E				
House District	Total Population	Voting Age Population	VAP Population of Senate District	VAP Percentage of Senate District
9	18,284	13,957	27,198	51.3%
10	18,205	13,241		48.7%
Girdwood	2,144	1,722		6.33%

The Girdwood Plaintiffs ask the Court to order the Board to pair House District 9 with either House Districts 13 (Board proposed plan “Option 2”) or 11 (Board withdrawn proposed plan “Option 1”). Below is a chart showing Girdwood voters’ percentage control of the Girdwood Plaintiffs’ preferred senate districts:

Board Proposed Plan “Option 2”				
House District	Total Population	Voting Age Population	VAP Population of Senate District	VAP Percentage of Senate District
9	18,284	13,957	27,943	49.9%
13	18,523	13,986		50.1%
Girdwood	2,144	1,722		6.16%

Pairing House District 9 with House District 13, as contemplated by Board proposed plan “Option 2,” reduces Girdwood’s control of who is elected as its senator from 6.33% to 6.16%.<sup>81</sup>

Board Proposed Plan “Option 1” (Unanimously Withdrawn)				
House District	Total Population	Voting Age Population	VAP Population of Senate District	VAP Percentage of Senate District
9	18,284	13,957	27,658	50.5%
11	18,103	13,701		49.5%
Girdwood	2,144	1,722		6.23%

<sup>81</sup> Aff. of P. Torkelson, ¶ 8.

Pairing House District 9 with House District 11, as contemplated by unanimously withdrawn Board proposed plan “Option 1,” reduces Girdwood’s control of who is elected as its senator from 6.33% to 6.23%.<sup>82</sup>

Indeed, out of *all* of Alaska’s forty house districts, House District 9 (VAP 13,957) could only be paired with five other house districts to give Girdwood residents (VAP 1,722) more influence over who is elected as their senator than pairing House District 9 with House District 10.<sup>83</sup> In other words, only five house districts have smaller VAPs than House District 10’s VAP of 13,241.<sup>84</sup>

House District	VAP	VAP of Senate District if Combined with HD 9 <sup>85</sup>	Girdwood’s VAP Percentage <sup>86</sup>
20 (Mountain View)	13,076	27,033	6.37%
26 (Mat-Su Borough)	12,876	26,833	6.42%
38 (Bethel)	11,522	25,479	6.76%
39 (Nome)	11,120	25,077	6.87%
40 (NS & and NW Arctic Boroughs)	13,165	27,122	6.35%

However, these pairings are not constitutional senate district alternatives. None of the house districts with smaller VAPs than House District 10 are contiguous with House District 9. Because Article VI, Section 6 requires senate districts to be comprised “as

<sup>82</sup> Aff. of P. Torkelson, ¶ 8.

<sup>83</sup> **Exhibit A** to Aff. of P. Torkelson.

<sup>84</sup> *Id.*

<sup>85</sup> These Senate VAPs are calculated by adding House District 9’s VAP of 13,957 to the VAPs of each of HDs 20, 26, 38, 39, and 40.

<sup>86</sup> These percentages are calculated by taking Girdwood’s VAP of 1,722 and dividing it by the total senate VAP from the prior column.

1 near as practicable of two contiguous house districts,”<sup>87</sup> pairing House District 9 with  
2 a house district in Mountain View, Mat-Su, Bethel, Nome or the North Slope would be  
3 unconstitutional because there are practicable Senate pairing options that result in  
4 House District 9 being contiguous with its paired house district.  
5

6 Simple math dictates that Senate District E maximizes, not usurps, the influence  
7 of the Girdwood area of Anchorage over who is elected to represent them in the Alaska  
8 Senate. This maximization of the minority interest in the area (Girdwood) also  
9 disproves that improper intent was responsible for its creation.  
10

11 **2. Senate District E Does Not Discriminate Against Any Politically**  
12 **Salient Class of Voter because House District 9 Selects the Same**  
13 **Candidates as House District 10**

14 Senate District E does not usurp the voting strength of any “politically salient  
15 class” of voters.<sup>88</sup> To adjudicate an equal protection vote dilution claim, this Court  
16 must “make findings on the elements of a voter dilution claim, including whether a  
17 politically salient class of voters existed and whether the Board intentionally  
18 discriminated against that class.”<sup>89</sup> Senate District E does not dilute the voting power  
19  
20

21 <sup>87</sup> Alaska Const. art. VI, § 6 (“Each senate district shall be composed as near as  
practicable of two contiguous house districts.”).

22 <sup>88</sup> *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1094 (Alaska 2002) (rejecting partisan  
23 gerrymandering claim because “there is no evidence that the Amended Final Plan invidiously  
24 minimizes the right of any politically salient class to an equal effective vote.”); *see also In re*  
25 *2011 Redistricting Cases*, 274 P.3d 466, 469 (Alaska 2012) (holding that to adjudicate an  
equal-protection vote-dilution claim “the superior court will need to make findings on the  
element of a voter dilution claim, including whether a politically salient class of voters existed  
and whether the Board intentionally discriminated against that class.”).

26 <sup>89</sup> *In re 2011 Redistricting Cases*, 274 P.3d at 469 (quoting *In re 2001 Redistricting*  
*Cases*, 44 P.3d 141, 144 (Alaska 2002)).

1 of any politically salient class of voters because Girdwood lacks sufficient population  
2 to control even who is elected to represent its house district let alone a senate district.

3  
4 Girdwood lacks the population to control *any* state election. Girdwood has a  
5 VAP of 1,722, which means it has 12.33% control over the election of the candidate  
6 who will represent House District 9 (VAP 13,957) in the Alaska House of  
7 Representatives.<sup>90</sup> Girdwood has only minimal say in who is elected to represent it in  
8 the House. And as shown above, Senate District E maximizes, as compared to the other  
9 contiguous options of pairing House District 9 with House Districts 11 or 13,  
10 Girdwood's influence over who is elected to represent it in the Alaska Senate by giving  
11 it 6.33% control of that election.  
12

13  
14 Senate District E does not dilute the group voting power of House District 9  
15 because that district votes similarly to House District 10.<sup>91</sup> Election return data from  
16

17 <sup>90</sup> Challenges to House District 9, of which Girdwood is a part, and that was a district in  
18 the Board's 2021 Redistricting Plan that was not challenged for error, are time-barred. *See In*  
19 *re 2001 Redistricting Cases*, 47 P.3d 1089, 1091–92, n.16 (Alaska 2002) (holding that the  
20 challenge to the amended proclamation was not timely when the challenged appendages  
21 existed in the original proclamation). All house districts, with the exception of House Districts  
22 29, 30 and 36, remain unchanged from the 2021 Redistricting Plan to the April 2022 Amended  
23 Redistricting Plan. The Board changed House Districts 29, 30 and 36 in the April 2022  
24 Amended Redistricting Plan to comply with the Alaska Supreme Court's ruling that the  
25 "Cantwell Appendage" in House District 36 of the 2021 Redistricting Plan rendered that  
26 district unconstitutionally non-compact without adequate justification.

27 <sup>91</sup> The Board remains uncomfortable with analyzing election return results, and its  
28 members did not consider election results in adopting its four new Anchorage senate districts  
29 in its April 2022 Amended Redistricting Plan. However, because this Court credited the East  
30 Anchorage Plaintiffs' expert witness Dr. Chase Hensel's testimony comparing the election  
31 results between the house districts that comprised Senate District K in the 2021 Redistricting  
32 Plan, *see* Findings of Fact and Conclusions of Law, at 68-69 ("Dr. Hensel testified that South  
33 Muldoon is a swing district, though it does lean Republican, while Eagle River is firmly  
34 Republican. This usurps South Muldoon's voting strength in the event it chooses to elect a  
35 Democratic senator."), the Board's executive director reviewed that election return data at the  
36 request of counsel to file this motion. *See* Aff. of P. Torkelson, ¶¶ 3, 10.

1 2018 was used to conduct this analysis because the coronavirus pandemic caused a  
2 massive shift to mail-in ballots in 2020 which skew the most-recent statewide precinct-  
3 level election data.<sup>92</sup>

4  
5 Girdwood's voting preference for Democratic candidates is an outlier in House  
6 District 9. In 2018, the Girdwood voting precinct voted 75.41% versus 24.34% in favor  
7 of Democratic candidate for U.S. Congress Alyse Galvin who ran against Republican  
8 Don Young.<sup>93</sup> For governor, Girdwood voters preferred Democrat Mark Begich  
9 73.54% versus 23.16% to Republican Mike Dunleavy.<sup>94</sup> Seven other precincts in  
10 House District 9 voted overwhelmingly for Republican Don Young over Democrat  
11 Alyse Galvin (57.28% versus 42.63%)<sup>95</sup> and Republican Mike Dunleavy over  
12 Democrat Mark Begich (55.95% versus 41.55%).<sup>96</sup>

13  
14  
15 Voters in the 2022 Proclamation House District 10 have similar candidate  
16 preferences to the Anchorage Hillside. They voted in favor of Don Young (R) to Alyse  
17 Galvin (D) on a 60.66%-38.76% basis, and in favor of Mike Dunleavy (R) to Mark  
18 Begich (D) on a 61.57%-35.17% basis.<sup>97</sup> Like the voters of House District 9, the voters  
19

20  
21 <sup>92</sup> Aff. of P. Torkelson, ¶ 10 n.1.

22 <sup>93</sup> **Exhibit B** to Aff. of P. Torkelson. 598 Girdwood residents voted for Alyse Galvin and  
193 voted for Don Young. A total of 793 Girdwood residents voted at the Girdwood precinct.

23 <sup>94</sup> **Exhibit B** to Aff. of P. Torkelson. 581 Girdwood residents voted for Begich and 183  
voted for Dunleavy.

24 <sup>95</sup> **Exhibit B** to Aff. of P. Torkelson. The remainder of House District 9 cast 3,002 votes  
for Don Young and only 2,234 for Alyse Galvin.

25 <sup>96</sup> **Exhibit B** to Aff. of P. Torkelson. The remainder of House District 9 cast 2,932 votes  
for Mike Dunleavy and only 2,177 votes for Mark Begich.

26 <sup>97</sup> **Exhibit B** to Aff. of P. Torkelson.

1 in House District 10 strongly preferred Republican candidates.

2 Pairing House District 9 with either House District 11 or 13, as the Girdwood  
3 Plaintiffs ask this Court to compel, will not help elect the Democratic candidates that  
4 Girdwood prefers. Voters in House District 13 (Oceanview) voted in favor of Don  
5 Young on a 54.97%-44.71% basis.<sup>98</sup> They voted in favor of Mike Dunleavy on a  
6 53.57%-43.93% basis.<sup>99</sup>

7  
8 Similarly, voters in House District 11 (O'Malley/Abbott) voted in favor of  
9 Young on a 57.06%-42.65% basis.<sup>100</sup> They voted in favor of Mike Dunleavy on a  
10 55.32%-42.24% basis.<sup>101</sup>

11  
12 To the extent that this Court reads Alaska's equal protection clause to require  
13 the Board to create senate districts out of house districts that vote similarly, Senate  
14 District E does that.

15  
16 **3. The Board's Process Easily Passes the Neutral Factors Test Under**  
17 **the Equal Protection Analysis: the Board Deliberated and Adopted**  
18 **Senate District E in Public Meetings, Considered Alternatives, and**  
19 **Identified the Support Upon which Each Members' Rational**  
20 **Decision was Made**

21 On remand, the Board performed its duties transparently. All eight meetings of  
22 the Board were properly noticed and publicly held.<sup>102</sup> Not a single executive session

23 <sup>98</sup> *Id.*

24 <sup>99</sup> *Id.*

25 <sup>100</sup> *Id.*

26 <sup>101</sup> *Id.*

<sup>102</sup> ARB2000076 (April 2 Meeting Agenda); *see also* ARB2000084-000177 (April 2 Meeting Transcript); ARB2000077 (April 4 Meeting Agenda); *see also* ARB20000178-000284 (April 4 Meeting Transcript); ARB2000078 (April 5 Meeting Agenda); *see also*

1 was held on remand.<sup>103</sup> All deliberations of the Board occurred in public,<sup>104</sup> and the  
2 public was able to view and provide comment to the Board on the plans considered by  
3 the Board.<sup>105</sup> There is no evidence in the record of any secret meetings outside of the  
4 public eye or prearranged decisions relating to adoption of senate districts that occurred  
5 off the record.<sup>106</sup> Given the accusations made against the Board previously, the Board  
6 did not want to leave room for assumptions or speculation. The record reveals no  
7 secretive procedures that could be suggestive of an illegitimate Board purpose under  
8 the neutral factors analysis.  
9  
10

11 **i. The Board took a hard look at available alternatives and made**  
12 **rational decisions.**

13 More than one decision can be a rational decision. In such an instance, it is  
14

15 

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ARB2000285-000445 (April 5 Meeting Transcript); ARB2000079 (April 6 Meeting Agenda);  
16 *see also* ARB2000446-000599 (April 6 Meeting Transcript); ARB2000080 (April 7 Meeting  
17 Agenda); *see also* ARB2000600-000696 (April 7 Meeting Transcript); ARB2000081 (April 8  
18 Meeting Agenda); *see also* ARB2000697-000813 (April 8 Meeting Transcript); ARB2000082  
(April 9 Meeting Agenda); *see also* ARB2000814-000946 (April 9 Meeting Transcript);  
ARB2000083 (April 13 Meeting Agenda); *see also* ARB2000947-001083 (April 13 Meeting  
Transcript).

19 <sup>103</sup> Aff. of P. Torkelson, ¶ 15.

20 <sup>104</sup> *See supra* n. 102.

21 <sup>105</sup> ARB2000076 (April 2 Meeting Agenda); *see also* ARB20000084-000177 (April 2  
22 Meeting Transcript); ARB2000077 (April 4 Meeting Agenda); *see also* ARB20000178-  
000284 (April 4 Meeting Transcript); ARB2000078 (April 5 Meeting Agenda); *see also*  
23 ARB20000285-000445 (April 5 Meeting Transcript); ARB2000079 (April 6 Meeting  
Agenda); *see also* ARB20000446-000599 (April 6 Meeting Transcript); ARB2000080 (April  
24 7 Meeting Agenda); *see also* ARB2000600-000696 (April 7 Meeting Transcript);  
ARB2000081 (April 8 Meeting Agenda); *see also* ARB2000697-000813 (April 8 Meeting  
25 Transcript); ARB2000082 (April 9 Meeting Agenda); *see also* ARB2000814-000946 (April  
9 Meeting Transcript).

26 <sup>106</sup> ARB2000961-ARB2000962 (Member Borromeo during motion to adopt Option 2 at  
April 13 meeting: “I’m not sure where Budd lies at this point, so I’ll welcome everybody into  
the discussion.”).



1 within the Board's discretion and purview to, by majority vote, select from rational  
2 alternatives.<sup>107</sup> The Board *unanimously* withdrew Option 1 from consideration because  
3 it would make changes to Anchorage senate districts in excess of those necessary to  
4 comply with the remand orders.<sup>108</sup> Consequently, the Board had two alternatives before  
5 it.  
6

7 The Board considered and weighed the testimony received from the public as to  
8 both options.<sup>109</sup> There was persuasive public testimony that the Hillside (HD 9) and  
9 Eagle River Valley (HD 10) shared common characteristics and interests. Below the  
10 Board cites to much of that testimony,<sup>110</sup> but a few examples are illustrative. Dan  
11 Saddler of Eagle River testified:  
12

13 Residents of these districts of -- their lives are characterized by  
14 their life on the foothills and the upper slopes of the Chugach mountains.  
15 That means they share a lot of common interests. While lots of the rest  
16 of Anchorage residents rely on local or state road maintenance, people in  
17 these districts rely on their local road service boards to provide for  
18 maintenance of their roads.

19 . . .

20 <sup>107</sup> *In re 2001 Redistricting Cases*, 2002 WL 34119573, at 18 (Alaska Super. Ct. Feb. 1,  
2002) (citing *Gaffney v. Cummings*, 412 U.S. 735, 750-51 (1973) ("The choice among  
alternative plans that are otherwise constitutional is for the Board, not the Court.")).

21 <sup>108</sup> ARB2000559-ARB2000560 (April 6 Meeting Transcript) (Chairman Binkley: "If  
22 there's no objection to the motion, the motion is adopted, and we now have before us two  
plans, option 2 and option 3 bravo."); ARB2000964-000965 (Member Simpson discussing that  
Option 1 would have changed all eight districts in Anchorage).

23 <sup>109</sup> *See generally* ARB2001094-001798; ARB2000962 (Member Simpson at April 13  
24 meeting: "I'm sure, like the rest of you, I've gone through and read the written testimony and  
the transcripts of the oral testimony and have tried my best to keep up to speed on all of that  
25 and to take into consideration what -- what everybody said. . . . so I just want to let the people  
that submitted written testimony know that I consider that as important as somebody who came  
26 in person.").

<sup>110</sup> *See infra* n.115.

1           You know, residents of Districts 9 and [10] face a lot of similar  
2 living conditions and hazards. They live on the urban one at the interface.  
3 It means they face the risk of wildfires and of bears getting into their  
4 houses and threatening their household and their families. They face the  
5 challenge of less reliable utility service, extremes of weather, wind, and  
6 snow, as the recent avalanche on the Hiland Road dramatically  
7 demonstrates.

8           Again, it should go without saying these two districts are socially,  
9 economically integrated simply by virtue of being within the  
10 Municipality of Anchorage. And they are also contiguous. And they are  
11 joined in the uplands of the Chugach mountains.<sup>111</sup>

12 Others voiced concern that the Board's proposed plan "Option 2" would usurp the  
13 ability of JBER residents to elect a senator of their choosing by not pairing it with an  
14 Eagle River district and instead pairing it with downtown Anchorage. For example,  
15 Anchorage resident Lance Pruitt testified:

16           What I'm not hearing is I'm not hearing a lot of dialogue about  
17 JBER and the -- our military personnel. And I think they've been left out  
18 of the conversation that I've heard. That's what's compelled me to come  
19 in. They do not have enough for their own Senate district, but they are  
20 more closely tied to Eagle River and East Anchorage than any other part  
21 of Anchorage.

22           As East Anchorage at this point is no longer on the table, based on  
23 both of the maps, based on the conversation that we've heard related to  
24 trying to pair that District 20 [North Muldoon] and 21 [South Muldoon],  
25 I believe the two are left with the only option to make sure that our  
26 military personnel are taken care of, to make sure that the people that are  
not -- not going to -- they're not going to be as engaged in this process,  
is you're going to have to keep them in the Senate district paired with  
Eagle River.

          Eagle River High School would not exist -- this is a fact. It would  
not exist if it were not for our military. It wouldn't be there. There are  
whole hallways at Chugiak High School that are empty. If we did not

---

<sup>111</sup> ARB2000306-000366 (April 5 Board Meeting Transcript).

1 have the military, Eagle River High School could fit in Chugiak High  
2 School. You have to tie those two together [JBER and North Eagle River]  
3 because they have the closest socioeconomic situation.

4 So I think it's important to -- as you're looking at these maps, to  
5 go back and consider our military. And then when you do that, the only  
6 one that you can pair it with, because you've taken East Anchorage off  
7 the table with all of the process, is Eagle River. And then the dominoes  
8 start to fall.<sup>112</sup>

9 Suzanne Fischetti testified:

10 But I do support a Chugach Mountain district as laid out in Map  
11 3B. When you look at the map, it's clear that the rest of Anchorage is cut  
12 into little blocks, but Districts 22 [HD 10] and 9 are the two large districts  
13 with thousands of acres of parks and mountains. There are none others  
14 like these.

15 The Upper Hillside of Anchorage has been combined with Eagle  
16 River Valley in the past, both as a House and a Senate pairing. That's  
17 because there are legitimate, logical reasons to do so. That is just as true  
18 today as it was in the past, maybe even more so because parts of  
19 Anchorage have become even more urbanized. Those in the outer areas,  
20 like Eagle River Valley and Hillside, have chosen for -- a more suburban  
21 experience, surrounded by mountains and wildlife instead of the city life.  
22 That's why bringing together Districts 22 [HD 10] and 9 makes sense,  
23 and I urge you to choose Map 3 which does this.

24 Maps that carve away portions of the military base from its  
25 primary district would also be a mistake. JBER belongs with JBER. That  
26 means Districts 23 [JBER] and 24 [North Eagle River/Chugiak/Eklutna]  
belong together, as shown in the map called 3B. That's the one to support  
if you care about our military. You've already broken up JBER into  
separate House districts. We owe it to the military to put the base back  
together by pairing Districts 23 and 24, which makes the base whole  
again.

<sup>112</sup> ARB2000879-000882 (Lance Pruitt Testimony); *see also* ARB2000624-000626 (Suzanne Fischetti Testimony).

1 All Board members explained their rationale on the record during the April 13  
2 Board meeting. The majority of the Board selected Option 3B, which included Senate  
3 District E, because Option 2 resulted in pairing JBER with downtown Anchorage,  
4 which they believed was a poor pairing.  
5

6 Member Simpson articulated the considerations that went into his decision to  
7 select Option 3B that included Senate District E:  
8

9 So on the -- as far as the motion before us on option No. 2, I  
10 personally find the pairing of 23 and 24, being the military with Chugiak,  
11 to be the more compelling version or solution.

12 I think pairing the military bases with downtown overlooks JBER  
13 as a significant community of interest, and I think that, in itself, could  
14 expose us to a constitutional challenge from that constituency.

15 We heard a lot of testimony about interactions between Eagle  
16 River, Chugiak, and JBER, that that area has essentially developed as a  
17 bedroom community for -- for the military families. They send their kids  
18 to middle school and high school there.

19 ...

20 And there's nothing wrong with the pairing of 9 and 22. They have  
21 -- they are contiguous. You look at the map, they have a lengthy, maybe  
22 35-mile, border that is shared. They consist of two districts that are, I  
23 think, socioeconomically and demographically similar in many ways.  
24 And of course, they are -- like the other House districts, they are included  
25 in the Municipality of Anchorage, and therefore are legally  
26 socioeconomically integrated based on precedent.

...

27 To kind of wrap up, I want to briefly address the charges of  
28 partisan gerrymandering that have been tossed around with some  
29 frequency throughout this process.

30 The final day of testimony, on Saturday, two Republican senators  
31 and a member from Governor Dunleavy's administration spoke out  
32 against option 3B.

1 And I can note here that I am an appointee of the governor's and  
2 yet I find myself kind of lining up in favor of option 3, even though  
3 somebody from that office apparently has -- thinks the other one is a  
4 better idea.

5 If the board's option 3 is some kind of naked partisan attempt to  
6 gerrymander the map to protect Republicans, as some have claimed, then  
7 why is it that Republican Senators Lora Reinbold and Roger Holland  
8 have testified so vehemently against it? Apparently they feel that  
9 something in option 3 harms them in some way. But if it does, that fact  
10 obviously clearly goes against the argument that any of the drafters of  
11 option 3 made any effort to protect or enhance Republican seats of  
12 interests.

13 So having considered all of that, I have -- I believe that if there's  
14 anything partisan in either of these two maps, the most partisan is the  
15 proposed pairing of JBER and downtown. I believe this would diminish  
16 the voice of our valued Alaska military personnel. I can't support that,  
17 and I am, just to be clear, going to be voting for option 3B.<sup>113</sup>

18 Member Marcum similarly voiced her support for Option 3B, which arose at  
19 least in part, out of the concerns raised by the senate pairings in Option 2:

20 So I'm very uncomfortable with proposal 2, and that's primarily  
21 because it moves District 23, JBER, from its current pairing with District  
22 24 by linking it with downtown, which is District 17. Downtown has  
23 almost nothing in common with the military base. It absolutely makes the  
24 least sense of any possible pairing for District 23, JBER. Downtown is  
25 the arts, right? It's tourism, it's lots of professional services, and that is  
26 not what makes up JBER. So I really fear that a District 17 and District  
27 23 pairing could be viewed -- could be viewed as, like, an intentional  
28 action to break up the military community.<sup>114</sup>

29 Chairman Binkley also articulated the reasons he felt Option 3B had the more  
30 appropriate pairings, and which were supported by the public comments received<sup>115</sup>:

31 <sup>113</sup> ARB2000968-000974.

32 <sup>114</sup> ARB2000980-000981.

33 <sup>115</sup> ARB2000624-000626 (Suzanne Fischetti Testimony); ARB2000879-000882 (Lance

1 [W]e've already heard that there are significant similarities  
2 between District 22, Eagle River, and District 9, the Hillside. And we  
3 heard many, many people testify that both Eagle River and the Upper  
4 Hillside in Anchorage are generally more rural parts of the municipality.  
They have larger lots sizes, mostly single-family homes.

5 Many of these areas, it was indicated in testimony, are served by  
6 road service districts, which is different than the other more core areas of  
7 the municipality. They share the Chugach Mountains and the Chugach  
State Park, which are really defining geographic features.

8 And these people, it was also testified that they're close to the  
9 mountains. They deal with wildlife closer to their homes. There are  
10 higher snow loads that they deal with in the mountains, and also wildfire  
dangers, as well, that they share.

11 So I can also appreciate that these similarities really could be  
12 important to a senator[.]

13 . . .

14 And I think District 22 and District 9 are both those large, more  
15 rural, and share a really long, physical border. And that, to me, makes  
them contiguous, as pointed out by everybody, that's required by our  
constitution.<sup>116</sup>

16 Chairman Binkley also described his extensive experience with downtown  
17  
18

19 Pruitt Testimony); ARB2000479-000481 (discussing preference for Option 3B, communities  
20 both maintain their own roads, economic similarities, neighborhood settings, and snow  
21 management); ARB2000483-000488 (fire management and firefighting limitations, as well as  
22 shared Bicentennial Park); ARB2000624-000626 (discussing that Districts 22 and 9 are the  
23 only two large districts with several acres of parks and mountains within Anchorage, have been  
24 paired previously, offer suburban lifestyle, and challenges with wildlife); ARB2000635-  
25 000636 (supporting option 3B as more rural districts and indicating she believes pairing JBER  
26 with downtown would diminish the voting strength of JBER); ARB2000844-000846  
(discussing JBER residents sending children to school in Eagle River, sharing a 35 mile border  
between the districts, and similar demographics); ARB2000914-000918 (both districts semi-  
rural areas with people living on the Chugach Mountains, and also discussing disagreement  
with pairing JBER with downtown); ARB2001593 (zoning similarities); ARB2001556 (fire,  
water systems, lot size, roads and lack of roads, recreation); ARB2001658 (Girdwood resident  
in support); ARB2001698 (discussing long history of shared senate representation with  
Anchorage or Mat-Su); ARB2001700 (Eagle River resident supporting option 3B).

<sup>116</sup> ARB2000984-000986.

1 Anchorage and the dissimilarities between it and JBER.<sup>117</sup> Sharing concerns expressed  
2 by two other board members, Chairman Binkley reiterated: “We’ve also heard  
3 concerns that putting the more conservative or swing district of the military base with  
4 downtown would drown out the military voters. That really echoes a concern that the  
5 Superior Court, I think, had in its decision about regional partisanship.”<sup>118</sup>

7 Even though Member Bahnke preferred proposed plan “Option 2,” she  
8 acknowledged the similarities between House Districts 9 and 10: “I don’t disagree that  
9 there are things in common between Eagle River and Hillside and Eagle River and  
10 JBER. We heard from a lot of folks that there are actually a lot of things in common.”<sup>119</sup>  
11 The other Board member that voted in favor of Option 2, Member Borromeo, also noted  
12 commonalities between District 22 and 9.<sup>120</sup>

15 In selecting a map that is consistent with binding legal authority, acknowledges  
16 similarities between the paired districts, and seeks to maintain a military community of  
17 interest, the Board acted rationally. It would have been irrational for the Board to reject  
18 Option 3B because it lacks “transportation” or “drainage” contiguity when this Court  
19 has already instructed that the Constitution requires no such thing.<sup>121</sup>

22 <sup>117</sup> ARB2000987-000988.

23 <sup>118</sup> ARB2000989.

24 <sup>119</sup> ARB2000956; ARB2000955.

25 <sup>120</sup> ARB2000486 (stating in response to testimony in support of Option 3B: “Fantastic.  
You offered some specific examples, and I appreciate it because I’m learning a lot more about  
the commonalities between 22 and 9.”).

26 <sup>121</sup> ARB2000959.

1 **C. Challenges to Senate District L are Untimely**

2 Article VI, Section 11 provides that any challenge to the Board’s redistricting  
3 plan must be filed within 30 days of the Board’s adoption of that plan. And in the 2001  
4 redistricting cycle, the Alaska Supreme Court indicated the 30-day timeline ran from  
5 the time the first proclamation to contain the challenged district was issued.<sup>122</sup> The  
6 Girdwood Plaintiffs made no challenge to Senate District L within 30 days of the  
7 Board’s issuance of the original proclamation, and thus, to the degree they now pursue  
8 a backdoor challenge to Senate District L, such a challenge is time barred under the  
9 Constitution.  
10  
11

12 Further, Senate District L was expressly and unsuccessfully challenged in the  
13 first round of litigation. The East Anchorage Plaintiffs sought a ruling striking down  
14 as unconstitutional Senate District L, arguing that the Court should invalidate both  
15 “Eagle River senate districts.” This Court did not grant the East Anchorage Plaintiffs  
16 this relief, instead issuing a narrower order focused on the equal protection implications  
17 for Muldoon voters of pairing then-House District 22 (Eagle River Valley) with then-  
18 House District 21 (South Muldoon). This Court did not strike down Senate District L  
19 and acknowledged that the Board had articulated justification for pairing the North  
20 Eagle River-Chugiak and JBER districts together.<sup>123</sup> This Court declined to invalidate  
21  
22  
23

24 <sup>122</sup> See *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1091–92, n.16 (Alaska 2002)  
25 (holding that the challenge to the amended proclamation was not timely when the challenged  
26 appendages existed in the original proclamation).

<sup>123</sup> Findings of Fact and Conclusions of Law, at 67 (“While justification for pairing North  
Eagle River and JBER was strongly contested by other Board members, there was some



Senate District L,<sup>124</sup> and should not now reconsider the same issue in a challenge time-barred under Article VI, Section 11.

## V. CONCLUSION

For the foregoing reasons, this Court should rule that Senate District E complies with Article I, Section 1 and Article VI, Section 6 of the Alaska Constitution.

DATED at Anchorage, Alaska, this 5th day of May, 2022.

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justification provided for uniting Districts 24 and 23.”).

<sup>124</sup> See Findings of Fact and Conclusions of Law, at 67.

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 5<sup>th</sup> day of May, 2022,  
3 a true and correct copy of ALASKA REDISTRICTING  
4 BOARD'S OPENING BRIEF ON GIRDWOOD CHALLENGE  
5 WITH APPENDIX A (45 pages) was served upon the  
6 following by:

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9 Gregory Stein  
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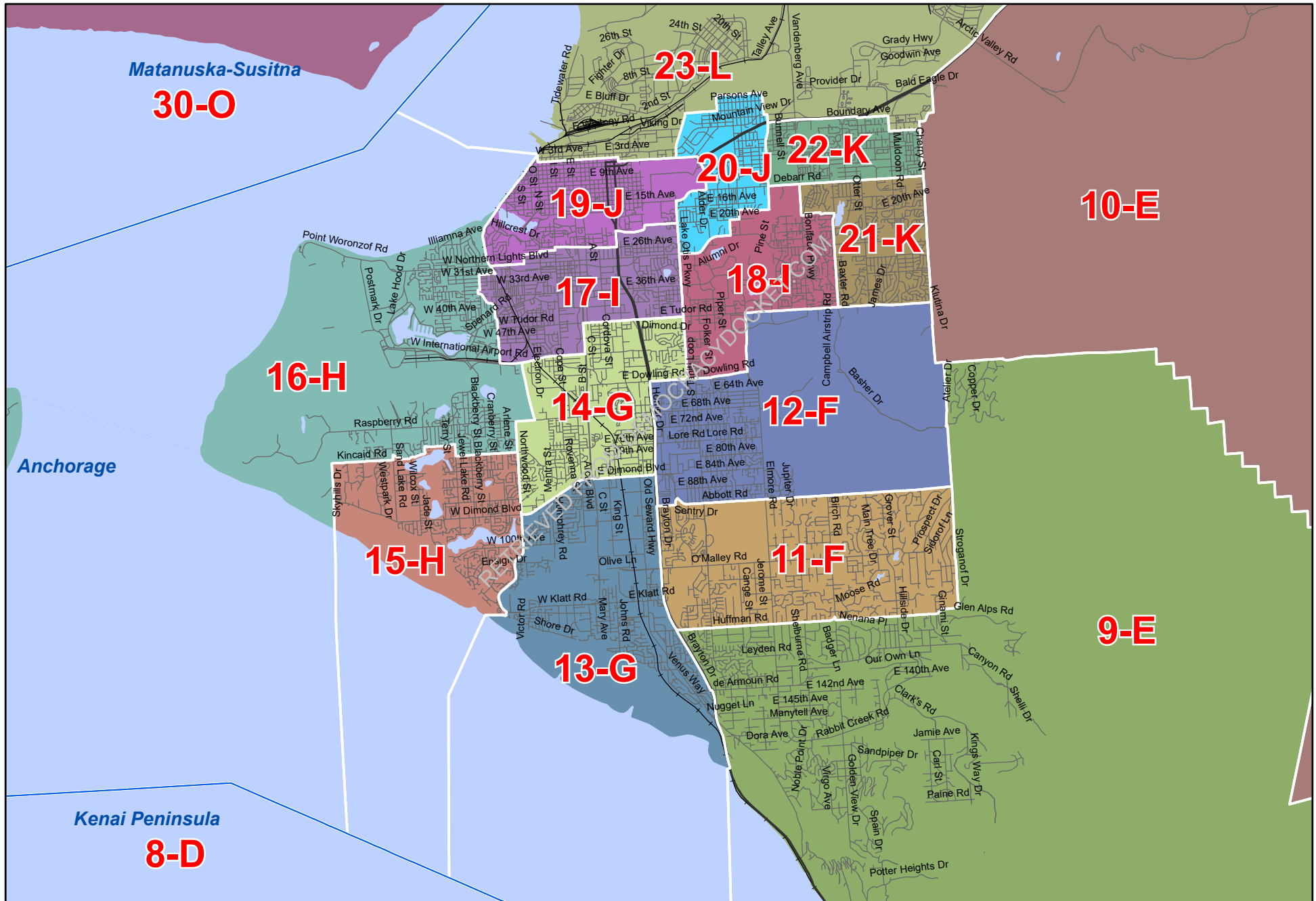
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# April 2022 Board Proclamation Anchorage

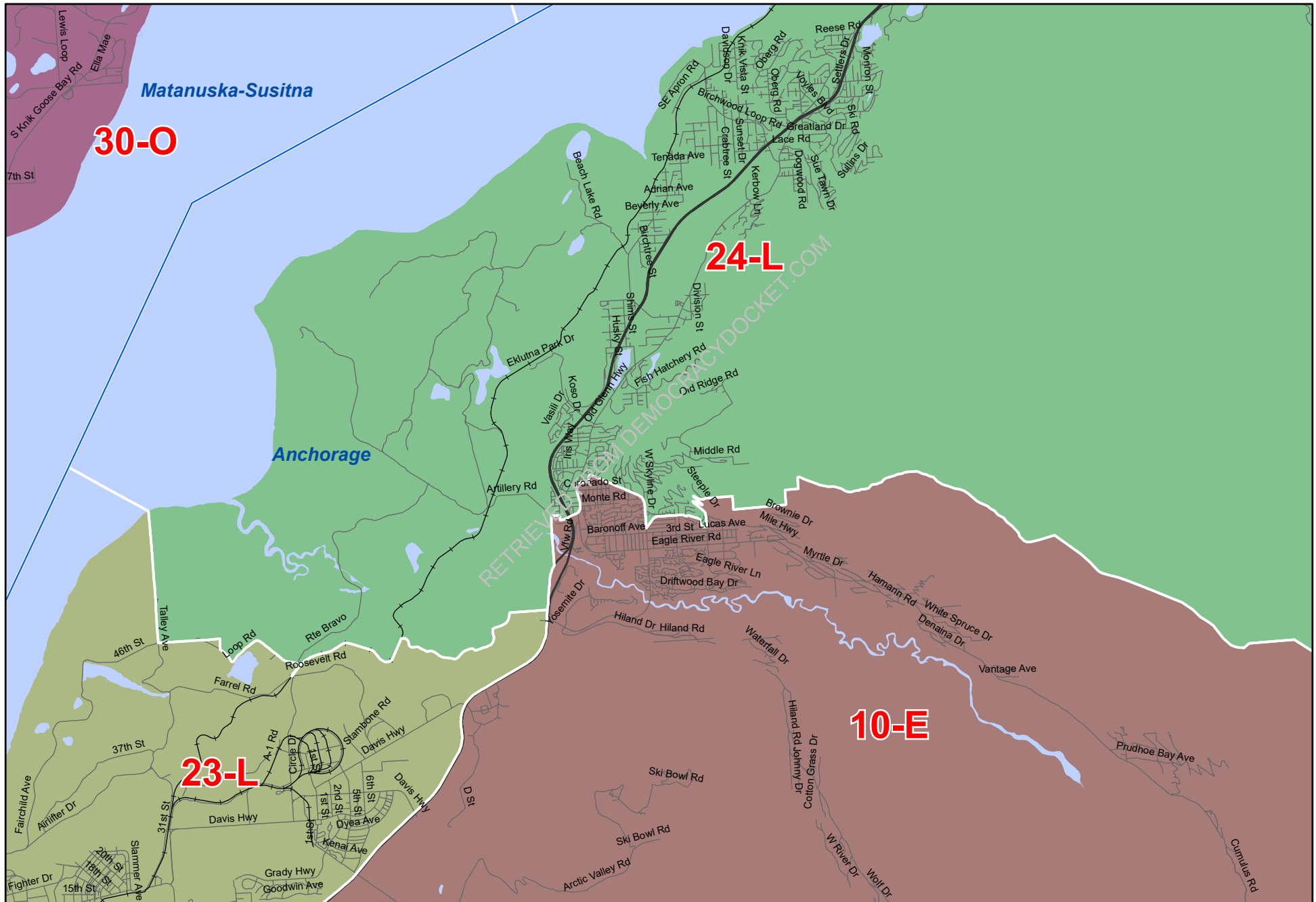
Redistricting Plan Adopted by the Alaska Redistricting Board 04/13/2022





# April 2022 Board Proclamation Eagle River

Redistricting Plan Adopted by the Alaska Redistricting Board 04/13/2022



Based on 2020 Census Geography and 2020 PL94-171 Data; Map Gallery link: [www.akredistrict.org/maps](http://www.akredistrict.org/maps)



# April 2022 Board Proclamation Kenai Peninsula

Redistricting Plan Adopted by the Alaska Redistricting Board 04/13/2022

