

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

In the Matter of the)
)

2021 REDISTRICTING PLAN.)
)

Case No.: 3AN-21-08869 CI

**COMPLAINT AND EXPEDITED APPLICATION TO COMPEL
CORRECTION OF ERRORS IN REDISTRICTING**

Plaintiffs Louis Theiss, Ken Waugh, and Jennifer Wingard (“Girdwood Plaintiffs”) allege the following:

PARTIES

1. Plaintiff Louis Theiss is a resident of House District 9 and Senate District E, as designated by the April 13, 2022, proclamation of the Board, and a qualified voter of the State of Alaska.

2. Plaintiff Ken Waugh is a resident of House District 9 and Senate District E, as designated by the April 13, 2022, proclamation of the Board, and a qualified voter of the State of Alaska.

3. Plaintiff Jennifer Wingard is a resident of House District 9 and Senate District E, as designated by the April 13, 2022, proclamation of the Board, and a qualified voter of the State of Alaska.

4. Defendant Alaska Redistricting Board is an entity established by article VI, section 8 of the Alaska Constitution.

5. This is a civil action concerning the establishment, protection, or enforcement of a right under the Alaska Constitution or United States Constitution within the meaning of AS 09.60.010(c).

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to article VI, section 11 of the Alaska Constitution.

7. Venue is proper in the Third Judicial District under Civil Rule 3 because Plaintiffs reside, and Defendant is headquartered, in this district.

GENERAL ALLEGATIONS

8. The Board is responsible for periodically redistricting the Alaska House of Representatives and the Alaska Senate, following the completion of the decennial United States Census. The Board adopts a proposed plan or plans, considers public testimony, and then adopts a final plan in accordance with the requirements of article VI of the Alaska Constitution, Title 15 of the Alaska Statutes, and precedent from the Alaska Supreme Court. Among other criteria, Senate districts must be “composed as near as practicable of two contiguous house districts.” Additionally, “[c]onsideration may be given to local government boundaries[,]” and “[d]rainage and other geographic features shall be used in describing boundaries wherever possible.”

9. On November 10, 2021, the Board issued a Final Proclamation of Redistricting (“2021 Proclamation”) that adopted a final redistricting plan (“2021 Plan”).

The 2021 Plan included a Statewide Map and, among others, a map of the Anchorage area that included the Senate pairings for the Anchorage house districts.

10. The 2021 Proclamation was challenged by several plaintiff groups, and those challenges were consolidated into 3AN-21-08869 CI. The plaintiff group known as the “East Anchorage Plaintiffs” challenged Senate District K, which was composed of the South Muldoon and Eagle River Valley House Districts. The East Anchorage Plaintiffs alleged, among other defects, that the pairing of South Muldoon with Eagle River Valley was an unconstitutional gerrymander because it split two communities of interest (Muldoon and Eagle River), each of which could have supported its own Senate district, with the goal of increasing Eagle River’s representation.

11. This Court took evidence on all challenges at trial and issued *Findings of Fact and Conclusions of Law* on February 16, 2022. As relevant to this Complaint, it concluded that the Senate District K pairing was an unconstitutional gerrymander. It found that Eagle River and Muldoon were each “communities of interest,” and that there was no reason to split them and pair an Eagle River district with a Muldoon district—except as a means to enhance the influence of Eagle River in the senate by giving it de facto control over two senate seats. The Court’s finding was supported by the statement of Board Member Bethany Marcum that pairing the two Eagle River house districts with urban districts in Anchorage would give Eagle River “more representation.” The Court found that districting to benefit a particular geographic area, at the expense of the fair representation of other areas, was an unconstitutional gerrymander. The Court ordered a

remand to the Board, directing it to “craft a pairing that complies with Alaska’s Equal Protection Clause.”

12. The Alaska Redistricting Board and four of the plaintiff groups in this action sought review of this Court’s ruling in the Alaska Supreme Court. On March 18, 2022, the Alaska Supreme Court held oral argument and on March 25, 2022, it issued an interim order regarding the five petitions with a formal opinion to follow. As relevant to this Complaint, the Court affirmed the “superior court’s determination that the Board’s Senate K pairing of house districts constituted an unconstitutional political gerrymander violating equal protection under the Alaska Constitution,” and affirmed the superior court’s remand order to correct that constitutional error. The Alaska Supreme Court remanded the matter to this Court to effectuate its ruling, and this Court remanded to the Board, retaining jurisdiction to address any further issues.

13. On remand, the Board set an extensive schedule of public meetings, insisting that it could not merely implement the courts’ directives, but instead had to listen to additional public testimony before taking action.

14. Early in the remand proceedings, there was a motion to adopt the Anchorage senate pairings that had been proposed by Board Member Bahnke, which were the only other pairings that the Board had formally considered before it adopted the pairing that was ultimately held to be an unconstitutional gerrymander, and which had effectively received this Court’s stamp of approval. The motion failed, with certain Board members stating they now wished to consider other alternatives and hear from the public.

15. The Board subsequently considered three pairings. While all of the pairings preserved Muldoon in one senate district, they did not all keep Eagle River in one Senate district. Plan 1 represented the pairings proposed by Member Bahnke before the unconstitutional pairings were adopted. Plan 2 consolidated the Eagle River community of interest into one senate district and kept neighboring communities through the Municipality of Anchorage such as Girdwood and South Anchorage together. Plan 3B again split the Eagle River community of interest, pairing South Eagle River (House District 24) with Ship Creek/Government Hill/JBER/Northeast Anchorage (House District 23) into Senate District L, and pairing South Eagle River (now House District 10) with South Anchorage/Girdwood/Whittier (House District 9) into Senate District E. True and correct copies of these plans are attached as Exhibit 1 (Plan 1), Exhibit 2 (Plan 2), and Exhibit 3 (Plan 3B).

16. On April 6, 2022, the Board rejected Plan 1 and adopted Plans 2 and 3B for consideration. The Board incorrectly interpreted the Court’s order as holding only the fracturing of the Muldoon community to be unconstitutional, and disregarded this Court’s express ruling that it was unconstitutional for the Board to “split Eagle River districts to give Eagle River the opportunity for more representation[.]”

17. The Board received extensive public testimony regarding the two plans. The weight of the testimony favored Plan 2. There was also substantial testimony in favor of Plan 1 by members of the public who may not have fully understood the Board’s process on remand but advocated for a single Eagle River Senate district. Many

individuals testified that the Board should follow the directives from the Court on remand and pair the two Eagle River districts together.

18. There was substantial public testimony against 3B’s proposed pairing of Eagle River with South Anchorage, Girdwood, and Whittier. Some of the testimony emphasized the geography, explaining that the areas are separated by a mountain range and hundreds of square miles of uninhabited territory in Chugach State Park. Many testifiers pointed out that the Board would be creating a senate district out of two house districts that were, for all practical purposes, separated by several other intervening Senate districts.

19. Other members of the public, including Girdwood residents, emphasized the inappropriateness of pairing Girdwood with an Eagle River district. They testified that the pairing made no sense, was untenable, that the two areas were politically, culturally, and economically different, and that the pairing would benefit Eagle River only while depriving Girdwood of its voice. They also testified Girdwood was naturally connected to South Anchorage—that residents of those areas lived, shopped, and recreated together in a way that Girdwood and Eagle River did not. While the Board received a handful of comments advocating for a Girdwood-Eagle River pairing, those comments were cursory, providing little to no factual rationale for their support; where factual detail was provided, it relied on vague similarities such as “fire danger” and “bears.”

20. On April 5, 2022, the Girdwood Board of Supervisors (“GBOS”) passed a resolution in support of Plan 1 and Plan 2, and against Plan 3. The resolution explained

that the pairing of Girdwood with Eagle River in Plan 3 “does not combine communities of similar interests, nor in any meaningful sense are the house districts contiguous, requiring traversing the width of the roadless Chugach Mountain Range to get from the northern to southern communities.” A true and correct copy of the resolution, which was submitted to the Board, is attached as Exhibit 4.

21. On April 12, the Anchorage Assembly passed a resolution in support of Plan 2 and against Plan 3, stating that Plan 2 involved “highly contiguous pairings that maintain communities of interest, keeping neighbors with neighbors,” and noting that during the recent municipal reapportionment process, “residents from Eagle River, South Anchorage and Girdwood spoke out overwhelmingly against proposals that would combine these communities with scores of comments opposing the combination[.]” The resolution further commented that “Option 3B offers pairings with only second-class contiguity that connects Chugiak with Government Hill and Downtown, Eagle River with Girdwood, Portage, and Whittier which all have substantial geographic barriers including the Chugach Front Range Mountains, the federally secured borders of JBER, and in some cases hours of highway time[.]” A true and correct copy of this resolution, which was provided to the Board, is attached as Exhibit 5.

22. On April 13, after public testimony had concluded, the Board discussed the plans. The alleged justification for again giving Eagle River two Senate districts in Plan 3B, in spite of the Court’s ruling that Eagle River was a community of interest that should be kept together, was that because some members of the military lived in Eagle River,

House District 24 needed to be paired with House District 23, which the pro-3B Board members newly termed the “Military District.” The pro-3B Board members attempted to draw tenuous connections between House District 9 and 10, such as their size and somewhat more rural character. Members Nicole Borromeo and Melanie Bahnke strenuously objected to Plan 3B as yet another partisan gerrymander designed to give Eagle River two senators, to the detriment of other communities of interest and contrary to the weight of the public testimony. Over their objections, the Board voted to adopt Plan 3B, with Members Budd Simpson, John Binkley, and Bethany Marcum voting in favor and Members Borromeo and Bahnke against.

23. The Board subsequently issued an Amended Proclamation of Redistricting (“2022 Proclamation”), which paired House District 10 (Eagle River) with House District 9 (South Girdwood/Whittier/South Anchorage), and House District 23 (Ship Creek/Government Hill/JBER/Northeast Anchorage) with House District 24 (Eagle River). The Board submitted a copy of the 2022 Proclamation to the Court together with its status report on April 15, 2022. True and correct copies of the Proclamation’s Anchorage and Eagle River Senate pairing maps are attached as Exhibit 6.

COUNT I VIOLATION OF REDISTRICTING CRITERIA

24. Plaintiffs incorporate all preceding allegations into this Count.

25. Article VI, section 6 of the Alaska Constitution provides that “[e]ach senate district shall be composed as near as practicable of two contiguous house districts.

Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.”

26. Senate districts are also required to incorporate a measure of compactness.

27. By pairing Eagle River with South Anchorage, Girdwood, and Whittier, the Board ignored geographic features, compactness, and true contiguity, instead favoring a “false contiguity” and a sprawling district over other pairings that would have been more practicably contiguous and compact, in violation of article VI, section 6.

COUNT II VIOLATION OF EQUAL PROTECTION

28. Plaintiffs incorporate all preceding allegations into this Count.

29. Article I, section 1 of the Alaska Constitution provides that all persons are equal and entitled to equal rights, opportunities, and protection under the law.

30. Senate District E in the 2022 Proclamation denies Girdwood voters, and other voters in their House district, their right to an equally powerful and geographically effective vote and ignores the demographic, economic, political, and geographic differences between the Eagle River and Girdwood communities. In addition, Senate District E is not relatively compact, incorporating disparate communities of interest by stretching across hundreds of square miles of uninhabited state park. This violates the equal protection clause of the Alaska Constitution.

31. The Board's creation of two separate Eagle River Senate districts constitutes unlawful political gerrymandering. It intentionally increases majority Senate districts while reducing the voting power of residents in House Districts 9 (South Anchorage/Girdwood/Whittier) and 23 (Ship Creek/Government Hill/JBER/Northeast Anchorage), and the Anchorage districts with which these districts would have been paired but for irrational decision-making and the resulting unlawful gerrymandering.

REQUEST FOR RELIEF

Plaintiffs accordingly request that the Court enter an order:

1. Declaring that Senate District E of the 2022 Proclamation violates the Alaska Constitution and is invalid;
2. Compelling the Board to adopt Plan 2, pairing House District 9 with House District 13 and House District 10 with House District 24; or, alternatively, Plan 1, pairing House District 9 with House District 11 and House District 10 with House District 24;
3. Awarding Plaintiffs their costs and reasonable attorney's fees; and
4. Providing any other relief that justice may require.

ASHBURN & MASON, P.C.
Attorneys for Louis Theiss, Ken Waugh, and
Jennifer Wingard

DATED: April 25, 2022

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Michael S. Schechter
Alaska Bar No. 1405044
Ben J. Farkash
Alaska Bar No. 1911095

CERTIFICATE OF SERVICE

On April 25, 2022, a copy of the foregoing was served by e-mail on:

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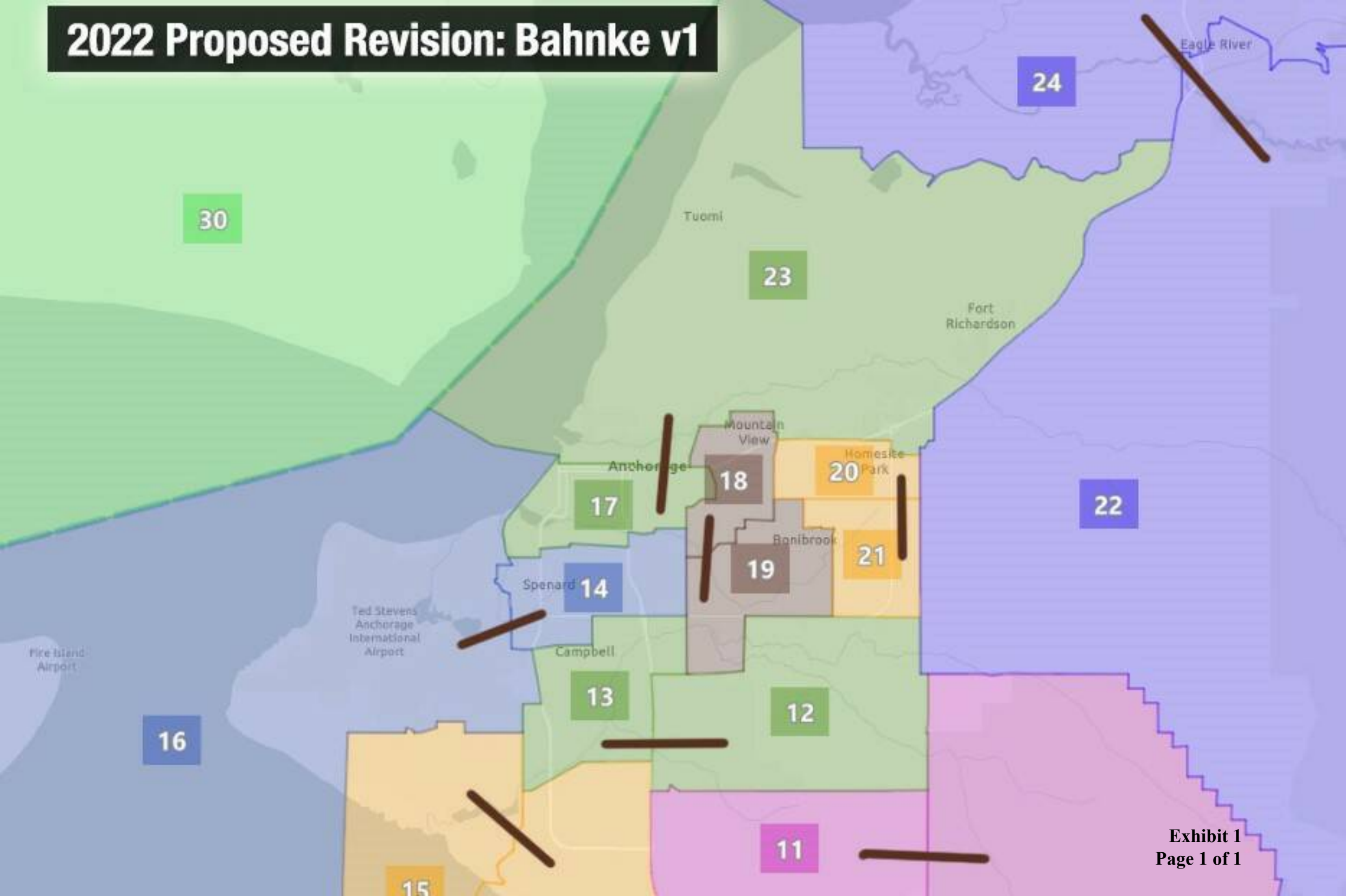
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COMPLAINT AND EXPEDITED APPLICATION TO COMPEL CORRECTION OF ERRORS IN
REDISTRICTING

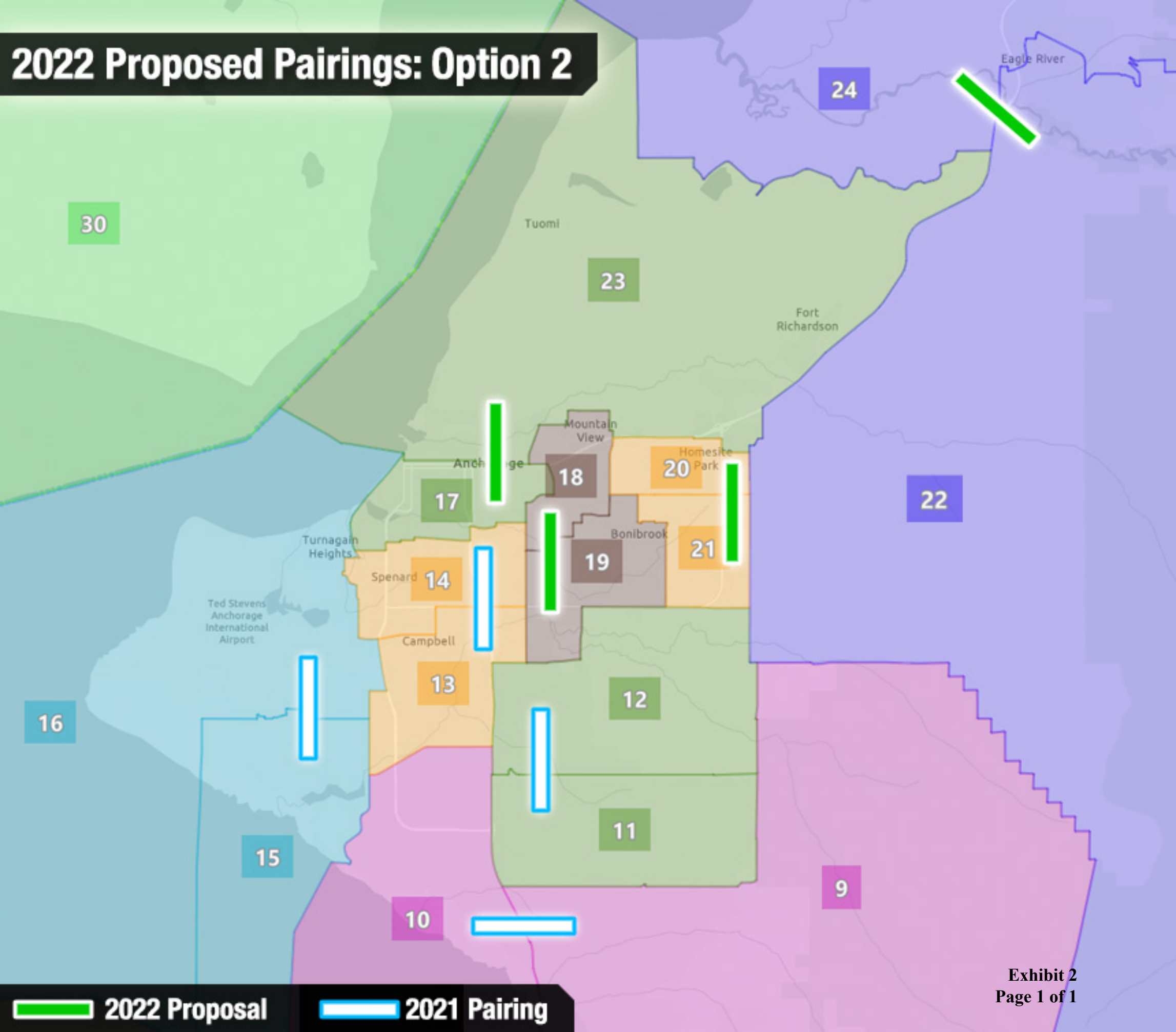
ITMO 2021 Redistricting Plan, Case No. 3AN-21-08869 CI

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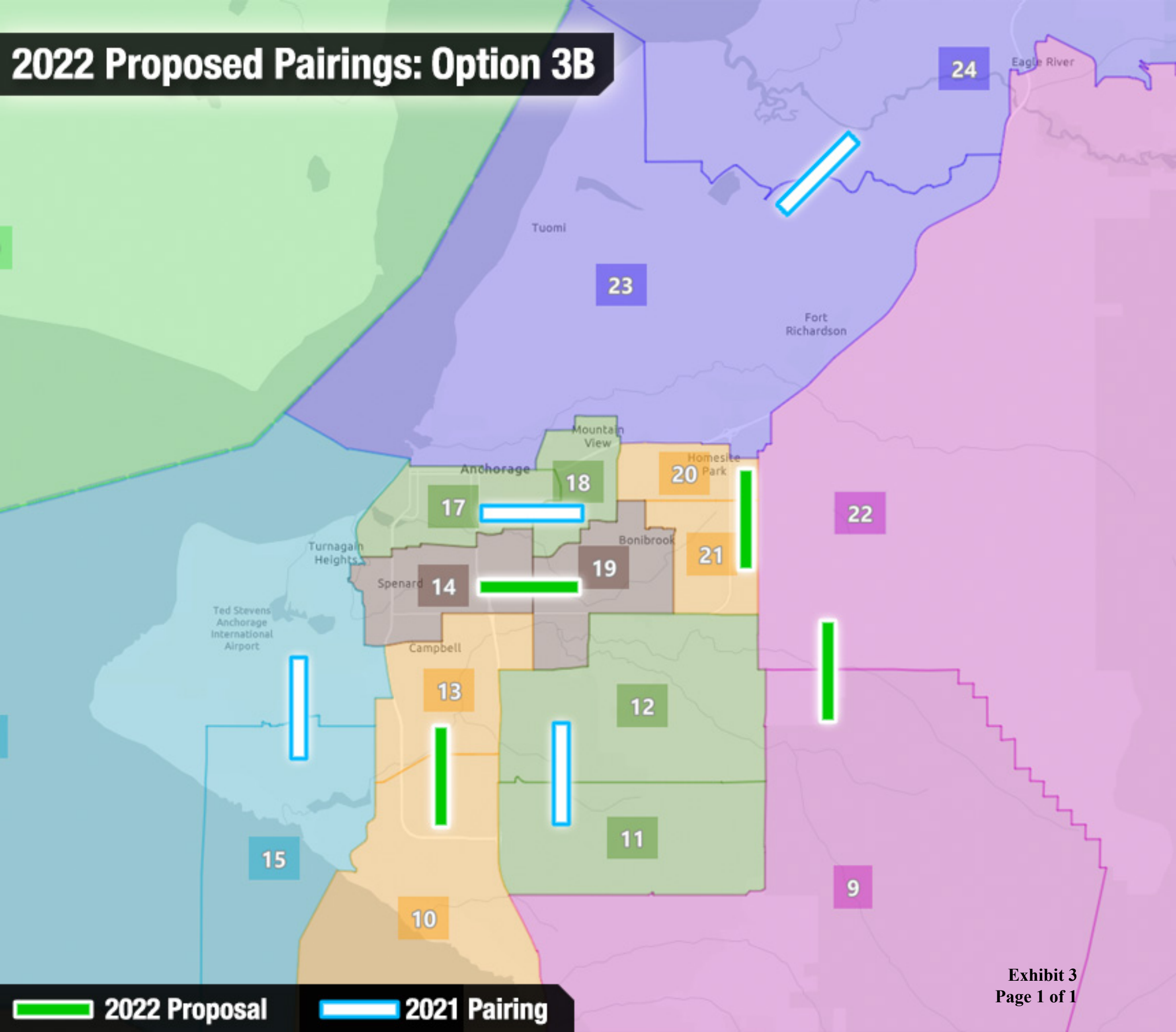
2022 Proposed Revision: Bahnke v1



2022 Proposed Pairings: Option 2



2022 Proposed Pairings: Option 3B



Municipality of Anchorage



P.O. Box 390
Girdwood, Alaska 99587
<http://www.muni.org/gbos>
David Bronson, Mayor

GIRDWOOD VALLEY SERVICE AREA BOARD OF SUPERVISORS
Mike Edgington and Briana Sullivan, Co-Chairs
Jennifer Wingard, Amanda Sassi, Guy Wade

Resolution 2022-08

Of the Girdwood Board of Supervisors

A RESOLUTION IN SUPPORT OF THE ALASKA REDISTRICTING BOARD SENATE PAIRING MAPS 1 OR 2, AND OPPOSITION TO SENATE PAIRING MAP 3 OR ANY SIMILAR PROPOSED PAIRINGS WHICH COMBINE EAGLE RIVER AND GIRDWOOD

WHEREAS, the Girdwood Board of Supervisors (GBOS) is the duly elected 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; and

WHEREAS, the Alaska Redistricting Board issued a 2021 Proclamation of Redistricting on November 10, 2021; and

WHEREAS, several legal challenges were filed to the 2021 Proclamation and, after rulings by the Superior and Supreme Courts, the Alaska Redistricting Board is now reconsidering senate pairings for the Anchorage area; and

WHEREAS, GBOS reviewed the proposed senate pairing plans (Maps 1, 2 & 3), which were the Alaska Redistricting Board's adopted draft senate pairing plans as of April 5th 2022; and

WHEREAS, maps 1 & 2 maps combine the geographically contiguous and culturally & socio-economically coherent communities of the Hillside, South Anchorage and Turnagain Arm/Girdwood/Whittier into senate seats; and

WHEREAS, map 3, or any similar map which combines Turnagain Arm/Girdwood with Eagle River, does not combine communities of similar interests, nor in any meaningful sense are the house districts contiguous, requiring traversing the width of the roadless Chugach Mountain Range to get from the northern to southern communities.

THEREFORE, the Girdwood Board of Supervisors supports the senate pairings represented by maps 1 or 2, and opposes the senate pairings represented by map 3, or any similar proposal that combines Eagle River with South Anchorage/Hillside/Turnagain Arm/Girdwood.

Passed and approved by a vote of 5 in favor to 0 against this 5th day of April 2022.

Mike Edgington, GBOS Co-Chair

Briana Sullivan, GBOS Co-Chair

**ANCHORAGE, ALASKA
AR No. 2022-112(S)**

**A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING
ANCHORAGE SENATE DISTRICTS REVISION OPTION #2 BEFORE THE ALASKA
REDISTRICTING BOARD THAT PAIRS HOUSE DISTRICT 17 WITH 23, AND
HOUSE DISTRICT 22 WITH 24.**

WHEREAS, Alaska State Redistricting happens once a decade, concluding with the Alaska Redistricting Board (ARB) adopting a Final Proclamation of Redistricting (Proclamation) affecting communities for a decade; and

WHEREAS, the adoption of the Proclamation on November 10, 2021, triggered a Charter provision requiring the Anchorage Assembly to determine whether it was malapportioned and also triggered a Charter amendment passed by voters in 2020 directing the Assembly to add a 12th member. On November 23, 2021, with the passage of [AR 2021-382](#) the Assembly declared itself malapportioned and began the reapportionment process; and

WHEREAS, the Assembly conducted extensive public outreach and recorded substantial public testimony between November 23, 2021 and March 23, 2022, concluding when Anchorage Ordinance AO 2022-37 (S-1), As Amended, was approved containing the new apportionment map; and

WHEREAS, in a legal challenge to the 2021 Redistricting Proclamation the Alaska Superior Court in Case No. 3AN-21-08869CI found that the Alaska Redistricting Board's pairing of House Districts 21 and 22 into Senate District K is unconstitutional and that this pairing must be changed on remand to the ARB; and

WHEREAS, the Alaska Supreme Court on March 25, 2022 affirmed the superior court's determination that "the Board's Senate K pairing of house districts constituted an unconstitutional political gerrymander violating equal protection under the Alaska Constitution" and the remand to the ARB to correct it; and

WHEREAS, on remand, the Alaska Redistricting Board adopted proposed revisions to the 2021 Proclamation Plan Anchorage Senate District K (<https://www.akredistrict.org/2022-proposed-revisions/>), and as of April 8, 2022, Options 2 and Option 3B remain for its consideration; and

WHEREAS, Proposed Option 3B joins south Eagle River with South Anchorage, Girdwood, Turnagain Arm including Portage, and even beyond the borders of the Municipality into Whittier in the Chugach Census Block; and

WHEREAS, during the recent Municipality of Anchorage Reapportionment process, residents from Eagle River, South Anchorage and Girdwood spoke out overwhelmingly against proposals that would combine these communities with scores of comments opposing the combination; and

WHEREAS, the Alaska Redistricting Board should not contemplate a pairing of House districts like presented in Option 3B, that combines geographically and demographically

distinct areas and simply shifts the constitutional infirmity into other areas **and provides only second-class contiguity**; and

WHEREAS, the Anchorage Reapportionment Committee heard from five community councils and scores of individuals regarding their opposition to grouping Eagle River and South Anchorage on the basis that these are distinctly different regions with few shared communities of interest; and

WHEREAS, the Alaska Redistricting Board's Proposed Anchorage Senate Districts Option 2 combines House District 23 which is the Joint Base Elmendorf-Richardson, **Government Hill and downtown Anchorage** area with House District 17 **which is the main [covering the]** downtown area; and House District 22, the south Eagle River area, with House District 24, the north Eagle River area; and

WHEREAS, the record demonstrates that a plan is possible which adopts all highly contiguous pairings that maintain communities of interest, keeping neighbors with neighbors, including Government Hill and North Downtown Anchorage with South Downtown Anchorage, Chugiak with Eagle River, and South Anchorage with Southwest Anchorage in Option 2; and

WHEREAS, Option 3B offers pairings with only second-class contiguity that connects Chugiak with Government Hill and Downtown, Eagle River with Girdwood, Portage, and Whittier which all have substantial geographic barriers including the Chugach Front Range Mountains, the federally secured borders of JBER, and in some cases hours of highway time; and

WHEREAS, the Assembly has heard no constitutional arguments that are persuasive in justifying the breaking up of natural contiguous communities of interest that can stand in the face of the overwhelming public testimony it received to the contrary; and

WHEREAS, Option 2 more closely joins neighboring communities of [f] common interest that interact through direct road access to shop, work, and play in their respective areas, in clear compliance with the Superior Court's Constitutional directives to respect natural boundaries where possible in describing boundaries (e.g. drainages and mountain ranges), and the testimony from communities of interest, while maintaining contiguity and compactness in drawing such district lines;

NOW, THEREFORE, BE IT RESOLVED THAT the Anchorage Municipal Assembly supports the Alaska Redistricting Board's Proposed Anchorage Senate Districts Option 2 which pairs House Districts 17 and 23 to form one Senate district, and House Districts 22 and 24 to form another Senate district.

PASSED AND APPROVED by the Anchorage Assembly this 12th day of April, 2022.

ATTEST:

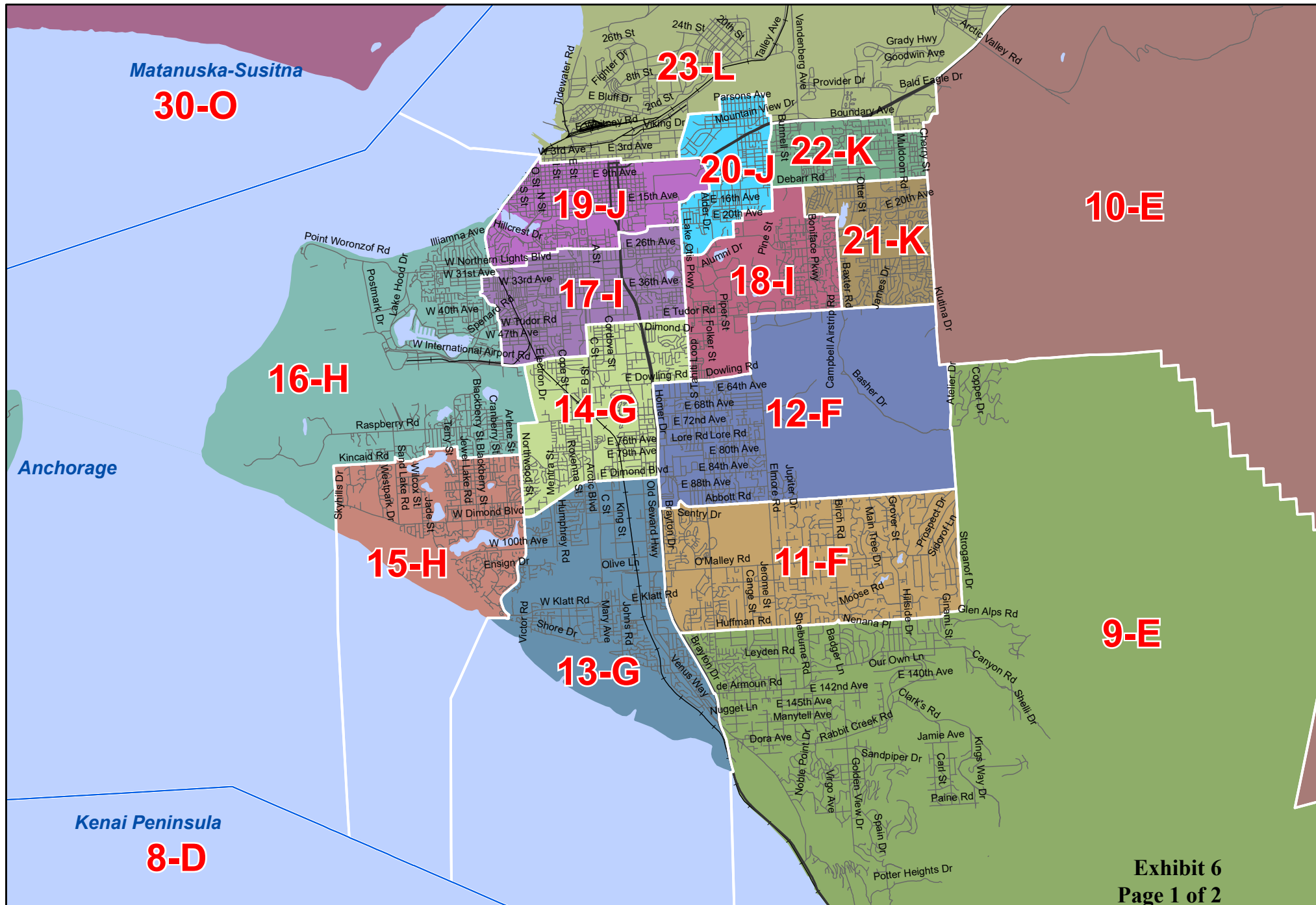

Chair


Municipal Clerk



April 2022 Board Proclamation Anchorage

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





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

