

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In re 2011 Redistricting Cases)
)
)
)

4FA-11-2209 CI

MOTION FOR SUMMARY JUDGMENT
RE MAT-SU AND KENAI PENINSULA BOROUGHES

COME NOW the Alaska Democratic Party, Katie Hurley, and Warren the Alaska Redistricting Board's 2013 Proclamation Plan's splitting of the Matanuska Susitna and Kenai Peninsula Boroughs violate the proportional representation rights of their residents. This motion is supported by the accompanying memorandum.

DATED: September 16, 2013

By: 
Joe McKinnon (8310133)
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The above-signed hereby certifies that this motion, the Memorandum in Support of Motion for Summary Judgment Re Mat-Su and Kenai Boroughs were served by electronic mail on the following:

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4FA-11-2209 CI

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
RE PROPORTIONAL REPRESENTATION

Introduction

The Alaska Democratic Party, Katie Hurley, and Warren Keogh seek summary judgment on the issue of whether the Alaska Redistricting Board's 2013 Proclamation Plan complies with the requirements of proportional representation with respect to the Matanuska-Susitna Borough and the Kenai Peninsula Borough.

In *Kenai Peninsula Borough v. State*, the Alaska Supreme Court recognized the principle of "fair and effective representation" under the equal protection doctrine. The right to fair and effective representation is a right to group effectiveness or an equally powerful vote.¹ It is also known as the right to proportional representation. In *Kenai Peninsula*, the issue was raised in the context of whether a multimember district denied residents of the Kenai Peninsula Borough the right to group effectiveness.

The issue was raised again in *Hickel v. Southeast Conference*² in the context of whether the excess population of the Matanuska-Susitna (Mat-Su) Borough could be divided and placed in more than one district outside the borough.

¹ *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1366 (Alaska 1987).

² *Hickel v. Southeast Conference*, 846 P.2d 38 (Alaska 1992).

In 2002, the Court again dealt with the issue of proportional representation in the context of what to do with the excess populations of two adjacent boroughs each of which had sufficient excess population to “control” an additional house district.³

The current case provides a new twist: how is proportional representation applied in the context of boroughs with no excess population.

Facts

In the 2010 Census the Mat-Su Borough was determined to have a population of 88,995. That population is equal to the ideal population of 5.01 house districts.⁴ In the 2010 Census the Kenai Peninsula Borough was determined to have a population of 55,400. That population is equal to the ideal population of 3.14 districts.⁵

On July 14, 2003 the Alaska Redistricting Board (Board) issued its 2013 Proclamation Plan. The plan created four house districts wholly within the boundaries of the Mat-Su Borough. The remaining population that would have been sufficient for an additional seat was placed in two districts containing population from outside the Borough boundaries. District 9 places part of that population in a MatSu-Valdez-Richardson Highway District. District 12 places the rest of that population in an Anchorage MatSu District.⁶

The 2013 Proclamation Plan created three house districts wholly within the boundaries of the Kenai Borough.⁷ The remaining population including the communities of Tyonek, Beluga, Halibut Cove, Port Graham, Seldovia, and Nanwalek were included in House

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³ *In re 2001 Redistricting Cases*, 44 P.3d 141 (Alaska 2002).

⁴ Admitted in ARB Answer, Paragraph 11

⁵ Admitted in ARB Answer, Paragraph 15

⁶ ADP Exhibit No. 14.

⁷ ADP Exhibit No. 15

District 32 with population from Kodiak and other areas outside the Kenai Borough boundaries.⁸

Argument

In *Hickel v. Southeast Conference*, the Alaska Supreme Court addressed the issue of when it's appropriate to divide a borough during the redistricting process. The Court first noted that a borough is by definition socio-economically integrated and therefore any district drawn entirely inside a borough is by law socio-economically integrated. It then described how to deal with a borough's excess population

We recognize that it may be necessary to divide a borough so that its excess population is allocated to a district situated elsewhere. However, where possible, all of a municipality's population should go to one other district in order to maximize effective representation of the excess group. This result is compelled not only by article VI, section 6 requirements, but also by state equal protection clause which guarantees the right to proportional geographic representation.⁹

It is important to note the language used by the Court. It recognized that at some point it "may be necessary" to divide a borough. The use of the word "necessary" implies that the division of a borough must be needed, required, or unavoidable. It also identifies the circumstances under which a borough may be divided: so that its "excess population" can be allocated to another district.

In re 2001 Redistricting Cases summarized its holding in *Kenai Peninsula* :

Kenai Peninsula Borough recognized that when a reapportionment plan unnecessarily divides a municipality in a way that dilutes the effective strength of municipal voters, the plan's provisions will raise an inference of intentional discrimination. But an inference of discriminatory intent may be negated by a demonstration that the challenged aspects of a plan resulted from legitimate nondiscriminatory policies such as the article VI,

⁸ ADP Exhibit No. 16

⁹ *Hickel v. Southeast Conference*, 846 P.2d 38, 52 (Alaska 1992).

section 6 requirements of compactness, contiguity, and socio-economic integration.¹⁰

The Board's actions in splitting the Mat-Su and Kenai Boroughs when their excess populations were not needed elsewhere violate the proportional representation rights of the residents of those boroughs.

Mat-Su Borough

It is unlikely that any future redistricting board will see such a perfect match of population and geography as was presented to this board in the Matanuska-Susitna Borough. With a population of 88,995, the Borough has sufficient population for 5.01 house districts. On average, those five seats would each have an excess population of just 43 people or a deviation from the ideal of just .007%. The Board took this perfect match and proceeded to ignore it.

Instead of creating 5 close to ideal districts entirely within the Borough, the Board proceeded to draw just 4. It then took the population that would have been sufficient for a fifth seat and divided it between Districts 9 and 12. This dilution of the effective strength of Mat-Su voters was completely unnecessary. The Board justified it by claiming that splitting off a portion of the Mat-Su population was required to accommodate Anchorage's excess population. Under the Board's theory, Anchorage's excess population is not socio-economically integrated with any other available population and only Mat-Su population can be combined it.

However, there is a plan in the record that accommodates the excess Anchorage population without requiring that the Mat-Su Borough be split. The McKinnon Plan,¹¹ submitted by undersigned counsel as a member of the public, accommodates Anchorage's

¹⁰ *In re 2001 Redistricting Cases*, 44 P.3d 141, 144 (Alaska 2002).

¹¹ ADP Exhibit No. 13.

excess population without violating other constitutional principles. It creates a Anchorage-Valdez-Richardson Highway district to accommodate Anchorage's excess population.

According to its findings, the Board "looked very hard" at creating a similar district. The Board rejected the idea because it did not believe that the courts would consider an Anchorage-Valdez-Richardson Highway district to be socio-economically integrated.¹² However, that contention is mere conjecture. The Board cites no evidence whatsoever in its findings to indicate such a district would not be socio-economically integrated.

The only area that might be problematic with respect to the socio-economic integration of an Anchorage /Richardson Highway district would be its upper reaches near the Delta area. But there is nothing in the record to indicate that the Board's hard look included any sort of the evaluation of whether Anchorage was or wasn't integrated with the area. If the Board intended to use Anchorage's lack of integration with the Richardson Highway area as an excuse to split the Mat-Su, it certainly had a duty to make a good faith effort to investigate it.

For that matter, there is nothing in the record that the Board undertook any sort of evaluation of the Delta area's integration with the Mat-Su. It seems very unlikely that the Delta area has any significant integration with the Farmer's Loop, Fishhook, or Lazy Mountain areas of the Mat-Su that its paired with in District 9. The Board has not even made findings related to the socio-economic integration of the borough's Glenn Highway communities with that area. For all anyone could tell from the record, Delta area residents' only ties to the Mat-Su may well be that they drive through it on their way to Anchorage.

The Board notes that the Mat-Su Borough mayor spoke in support of the borough being split and paired with Anchorage. However, while the opinions of elected public

¹² *Written Findings in Support of ARB's 2013 Proclamation Plan (2013 Plan Findings)*, Finding 16c..

officials may or may not be an indication of community opinion, they provide little insight into whether a particular plan satisfies constitutional standards.

When the Board splits a borough, it raises an inference of intentional discrimination against the residents of the borough. The burden is on the Board to justify its actions. But it has failed to do. There is nothing that supports its conclusory statement that an Anchorage/Valdez/Richardson Highway district would not be socio-economically integrated or that a Mat-Su/Richardson Highway district is.

Kenai Peninsula Borough

Although the Kenai Peninsula Borough's population does not match ideal district numbers as closely as the Mat-Su, Board has not articulated any reason for splitting it. The Kenai borough has an "excess" population of 2,135. However, that excess population may only be used elsewhere if necessary to satisfy a constitutional requirement such as equal protection, compactness, contiguity, and socio-economic integration.

There is no need to split the borough for equal protection purposes. The excess Kenai population can be spread over its three districts so that each would have a population approximately 4.0% over the ideal population. That level of deviation in the Kenai can easily be worked into a plan with an overall deviation of less than 10%, thereby satisfying equal protection.¹³

The Board cannot justify splitting the borough for socio-economic integration purposes. By law the borough is a socio-economically integrated area. Breaking its borders and transferring its population can only decrease socio-economic integration. The board did not make any assertions that splitting the borough's boundaries was necessary for compactness or

¹³ There is a plan in the Board's record which does not break the Kenai Borough's boundaries and satisfies the requirements of equal protection. The McKinnon Plan, ADP Exhibit No. 13, has an overall variance of 9.6%.

contiguity. If splitting the Kenai Peninsula Borough was not necessary to satisfy any constitutional requirement, the Board has not overcome the inference that it intentionally discriminated against the borough.

Conclusion

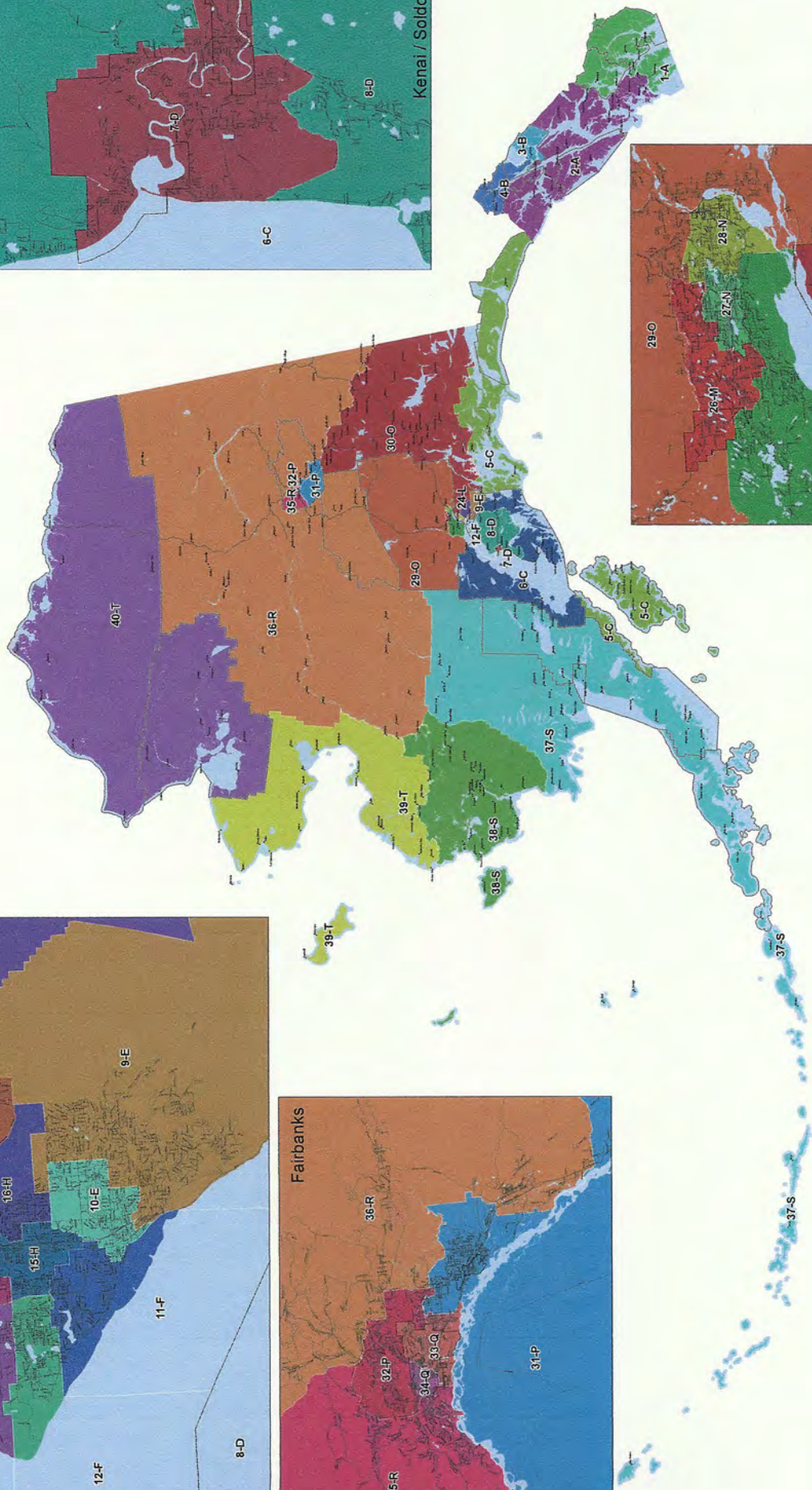
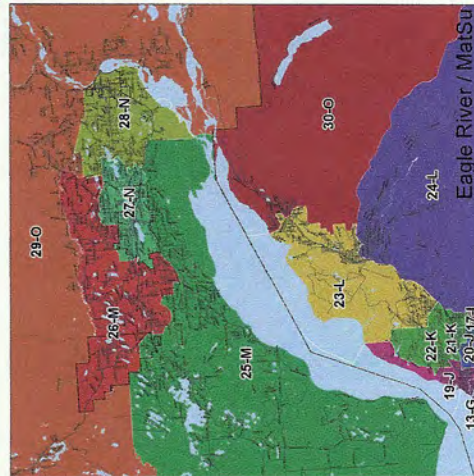
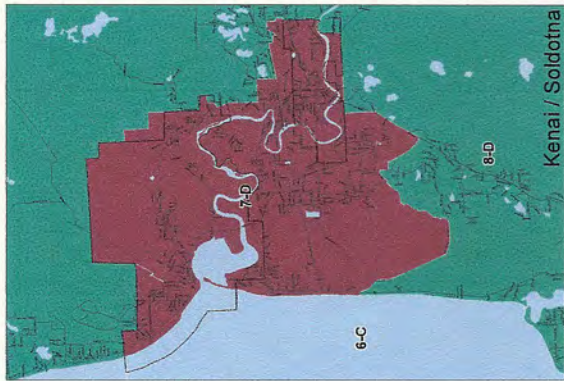
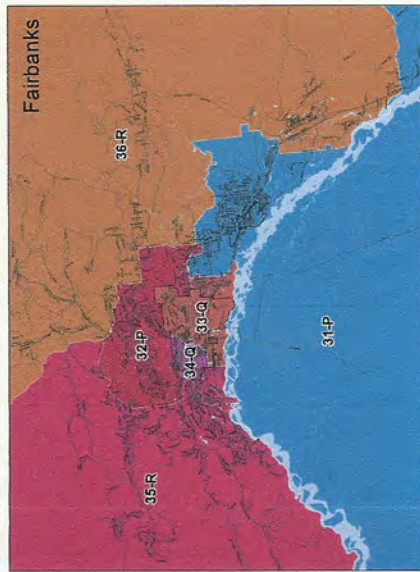
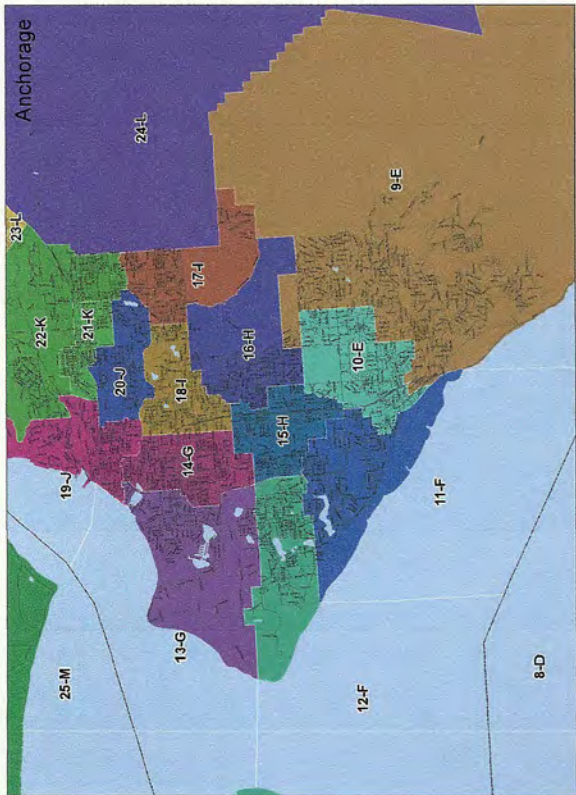
The Board's record shows no justification for splitting either the Mat-Su or Kenai Boroughs. Its actions violate the proportional representation rights of the residents of those boroughs. The Court should grant ADP's motion for summary judgment.

DATED: September 16, 2013.

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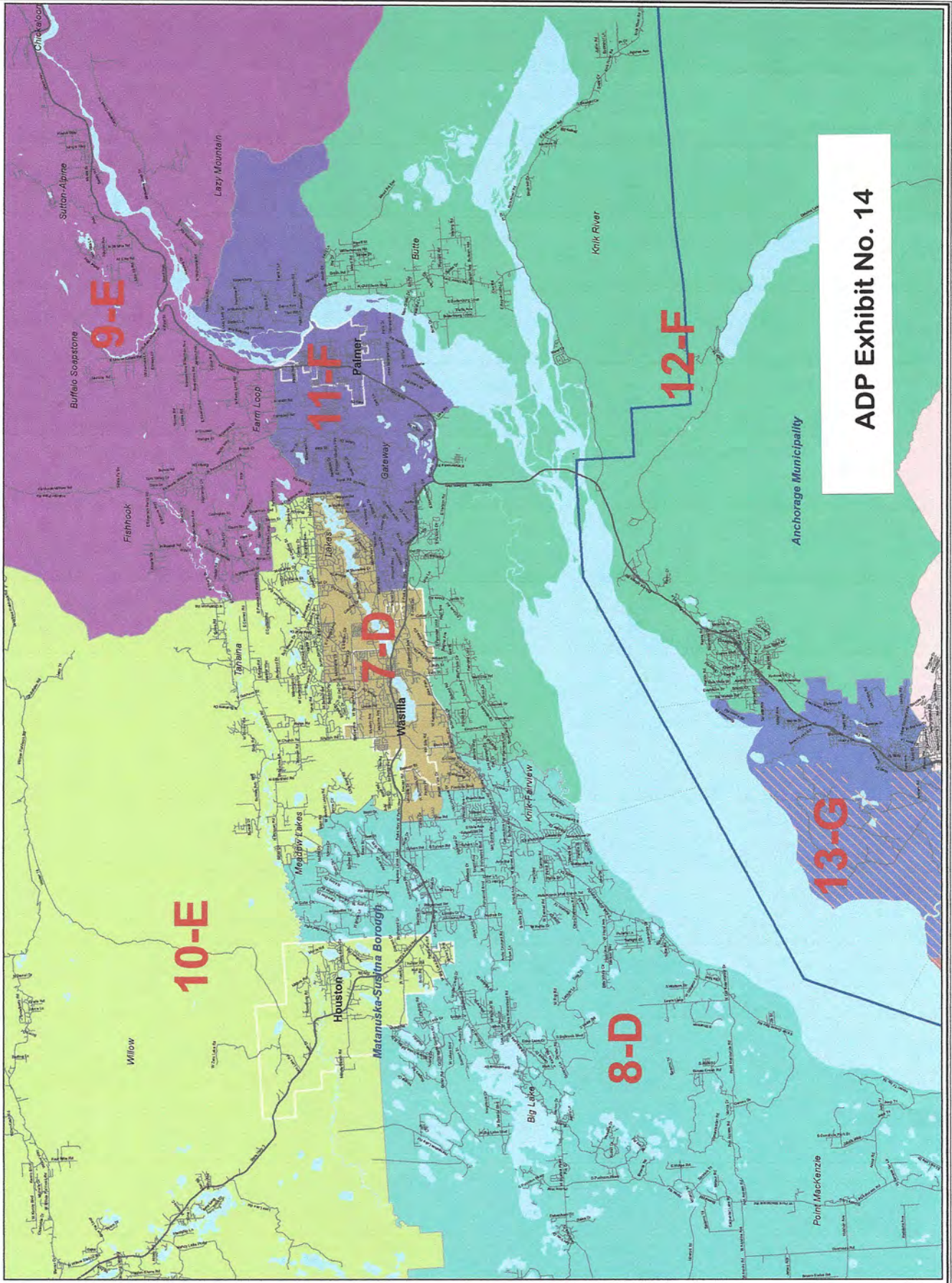
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McKinnon Plan



ADP Exhibit No. 13

2013 Proclamation House Districts



MatSu



Legend

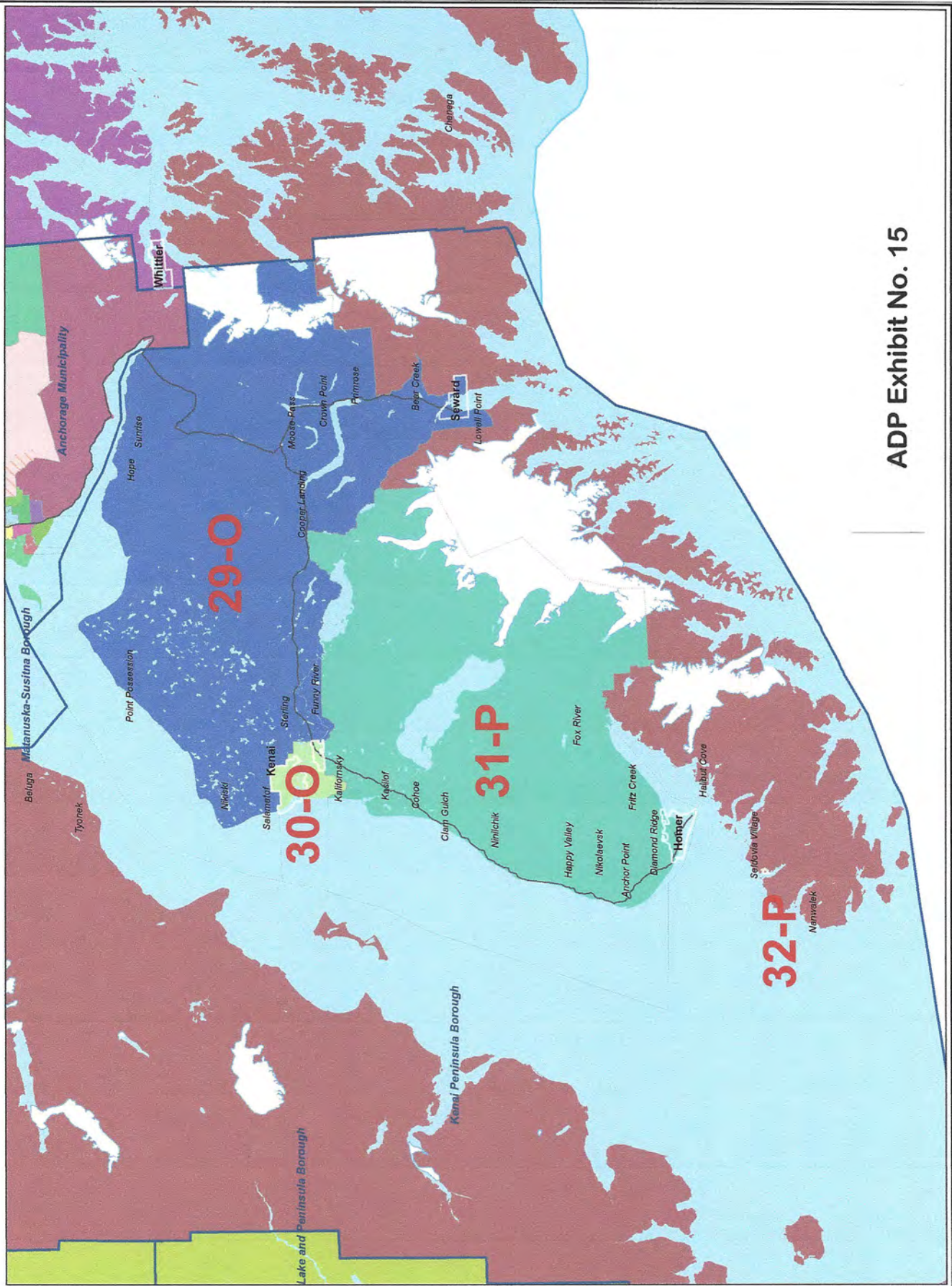
- Military
- City
- Borough
- Water Boundary



Prepared by:
Alaska Redistricting Board

ADP Exhibit No. 14

2013 Proclamation House Districts



Kenai Peninsula



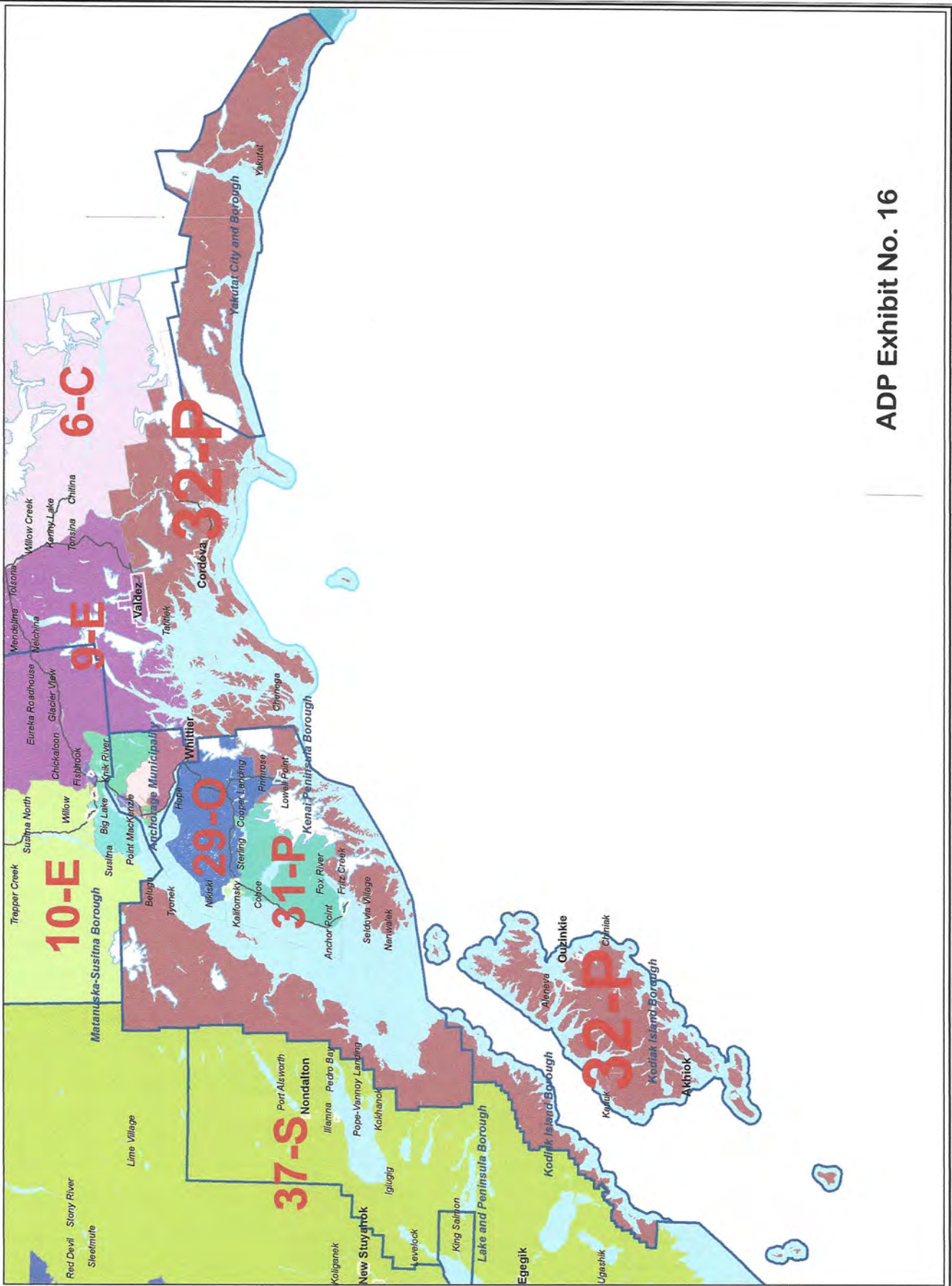
Legend

- Military (Red hatched pattern)
- City (Blue outline)
- Borough (Blue outline)
- Water Boundary (Blue outline)



Prepared by:
Alaska Redistricting Board

2013 Proclamation House Districts



House District 32



Legend

- Military
- City
- Borough
- Water Boundary





Annual Report 2012

*Vernon Albert & his family, of Ruby,
enjoy their first Christmas in their new
IRHA home. (2012)*



Opening Doors for Families

Dear IRHA Tribal Members:

Interior Regional Housing Authority (IRHA) is happy to release its annual report for fiscal year 2012. The report covers IRHA's achievements from January 2012 to December 31, 2012. Each department provides a report, which focuses on the various ways IRHA contributes to the economy and helps communities/families increase self-sufficiency.



Through the NAHASDA Indian Housing Block Grant from HUD, IRHA served as the Tribally Designated Housing Entity (TDHE) for 30 Tribes in 2012. IRHA also provided services to an additional five Tribes not under the IRHA umbrella.

IRHA offered clients the following programs in 2012: Rental Assistance in Fairbanks, Home Ownership Program (HOP), Tribal Advantage Equity Mortgage (TEAM) homebuyer down payment assistance, Rehabilitation of Existing Homes, the Senior Access Program and Weatherization (rural).

In 2012 IRHA completed Feasibility for Wood Heating assessments in eight communities through a grant from the Alaska Energy Authority (AEA). The next grant/phase of the project will be Design and Construction of Wood boilers in three of those eight communities. IRHA is partnering with Alaska Native Tribal Health Consortium (ANTHC) and Tanana Chiefs Conference (TCC) to complete this follow-up grant, which runs through 2014.

IRHA provided 2012 weatherization services to clients in Arctic Village, Ruby, McGrath and Dot Lake through the Alaska Housing Finance Corporation (AHFC) Weatherization grant.

IRHA has been operating an AHFC Senior Access Program grant since late 2011. To date, 18 ramps and/or access modifications have been completed and more are in progress. IRHA serves seniors in the Yukon Koyukuk census area, the Fairbanks North Star Borough and Southeast Fairbanks census areas.

The McGrath Community Center was completed in 2012. IRHA partnered with the City of McGrath, and the McGrath Native Village Council to complete the \$2.6 million project. The budget for the project was \$3.6 million and we are proud to announce that the actual cost of the project came in about one million under budget!

A grant from AHFC's Pre-Development program enabled IRHA to complete architectural schematic drawings, soil testing, environmental review, a site survey and operating costs forecast plans for a Minto elder's 4-plex. As follow up to that project, IRHA is working with the Minto Tribe to submit an Indian Community Development Block grant for the construction of that building.

In October 2012 the IRHA Board of Commissioners held a two day strategic planning session. The hard work of our Commissioners and staff resulted in the following values:

Values

- Excellent Customer Service
- Quality Construction
- Efficiency in all that we do
- Transparency
- We are all accountable for our success
- We celebrate our successes
- Respect

IRHA Energy and Weatherization Annual Report

Weatherization

IRHA will be starting its sixth year of providing weatherization services. Funding is provided annually by Alaska Housing Finance Corporation. The next grant year starts on April 1, 2013. In 2013 IRHA will be providing weatherization to the McGrath area, serving the villages of McGrath, Takotna, Nikolai, and Telida.

2012 projects in Ruby, Arctic Village, and McGrath are nearing completion.

Since 2008 IRHA has provided weatherization services to the following communities

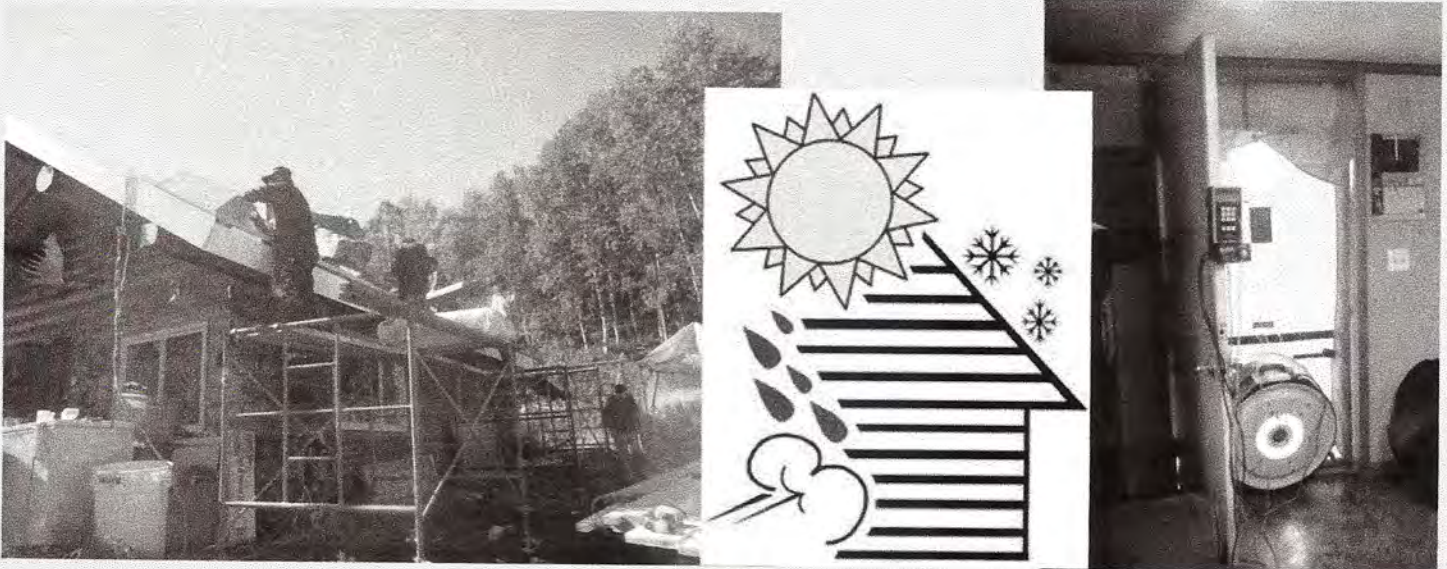
2008	Nenana (14 units) Fairbanks (4 IRHA homes)	Northway (31)
2009	Hughes (9 homes) Huslia (39 homes) Shageluk (7 homes) Tok (6 units IRHA tri-plex)	2011 Stevens Village (24) Kaltag (49) Ruby (17)
2010	Grayling (41 homes) Rampart (5)	2012 Ruby (31) Arctic Village (52) McGrath (14) Dot Lake (12)

Tanana Chiefs Conference, Interior Weatherization, and Alaska Community Development Corporation are also weatherization service providers to the interior communities.

Weatherization focuses on insulating, air sealing, and heating systems. To qualify for weatherization services you must be income eligible and living in the home to be weatherized.

Leveraging funding

The IRHA Weatherization Department is always looking for opportunities to provide more services to the clients when possible. IRHA seeks other available funding to benefit clients and provide services outside of the weatherization work scopes. We have been able to leverage funds with the NAHASDA Program, the Senior Access Program, and the USDA 504 elder grant.



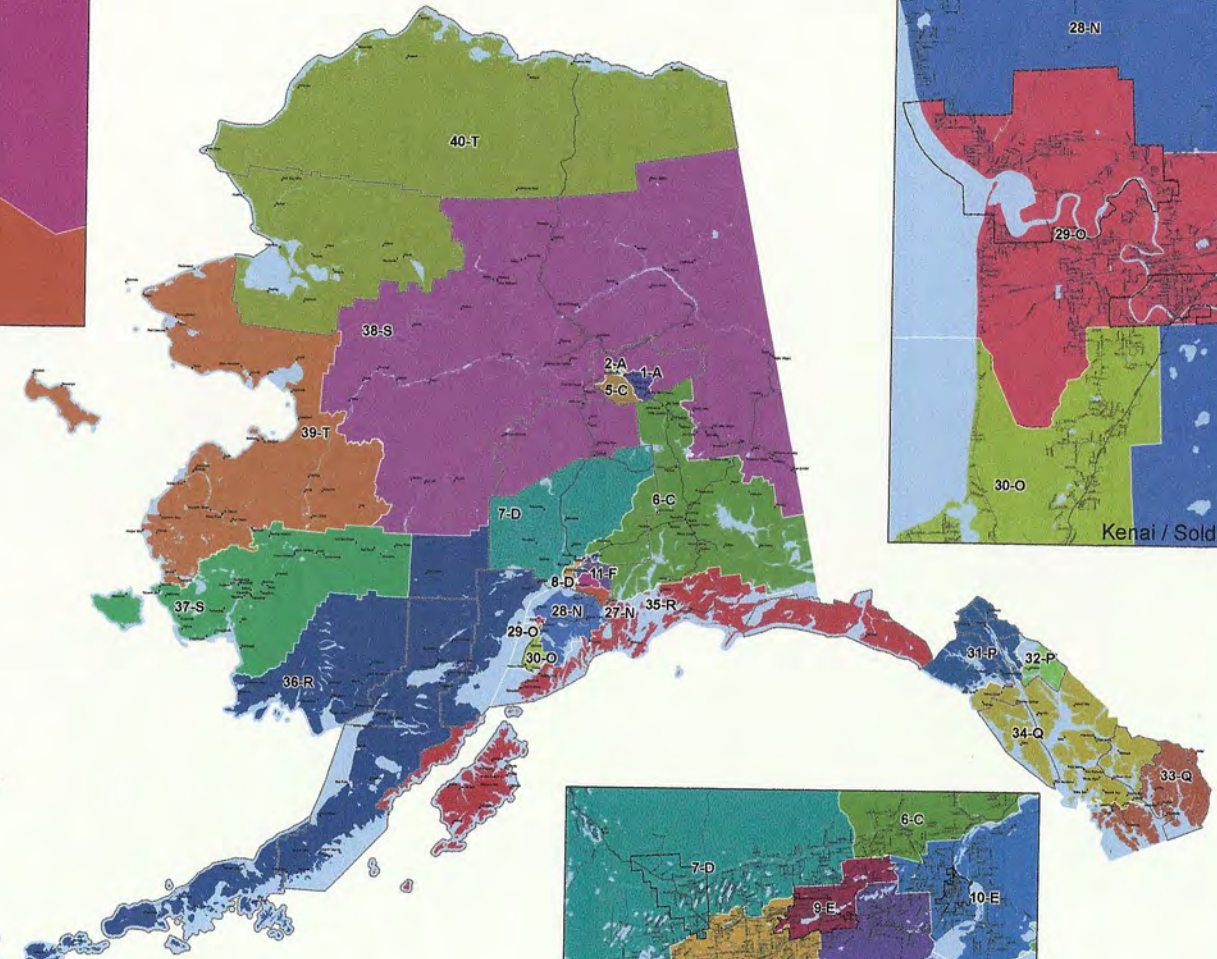
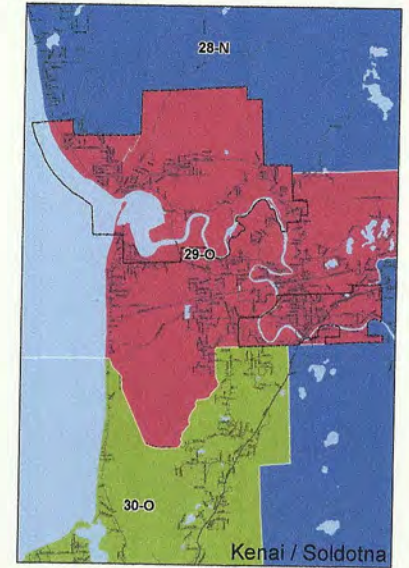
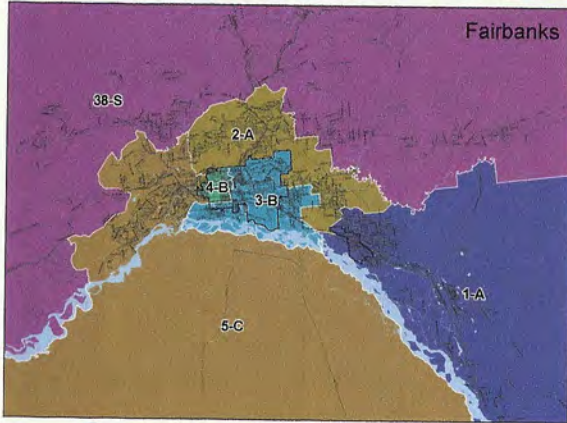
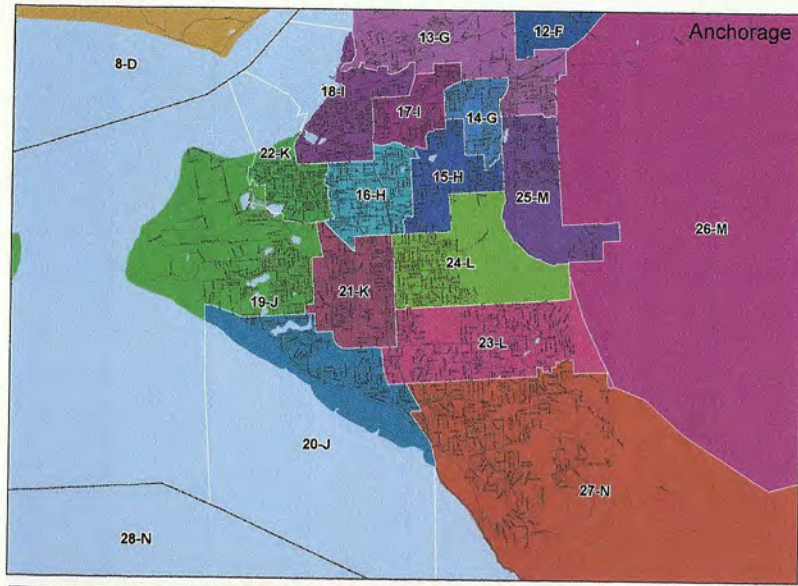
Construction Report

In 2012 Interior Regional Housing Authority provided assistance in the following communities:

Arctic Village	51 AHFC Weatherization's, USDA Clinic Solar Panels & End user Efficiency Electrical Upgrades, & Street Lights USDA
Birch Creek	1 Rehabilitation of Existing Home
Circle	2 Rehabilitation of Existing Homes, EECBG Efficiency Upgrades at Washateria
Dot Lake Homes	14 AHFC Weatherization's, 1 Senior Access Program, 5 Rehabilitation of Existing Homes
Evansville	3 Rehabilitation of Existing Homes, 3 Senior Access Program
Fairbanks	8 Rehabilitation of Existing Homes, 9 New Constructions & 2 foundations in place ready for construction spring of 2013, Continuing maintenance of Fairbanks Four-plex
Fort Yukon	2 Rehabilitation of Existing Homes
Galena	2 Senior Access Program
Hughes	EECBG Street Lights, Prep for Biomass, & USDA Solar Photovoltaic's at Council-City Building
Huslia Homes	1 Reconstruction of Fire Damaged Dwelling, & 16 Rehabilitation of Existing 4 Senior Access Program
Minto grade	3 Rehabilitation of Existing Homes, EECBG Lighting Upgrades & Boiler Up-
McGrath	14 AHFC Weatherization's & completion of the McGrath Community Center
Nenana	2 Acquisitions & 4 Rehabilitations, 1 Senior Access Program, continuing maintenance of Meda Lord Senior Center
Northway	2 Rehabilitations & 4 Senior Access Program
Koyukuk	ANTHC Upgrade Mechanical System & New Roof on Washateria USDA Solar Thermal, Solar Photovoltaic's at Washateria Building & Council City Office, 1 Self Help, & 1 Rehabilitation of Existing Home
Kaltag	2 Senior Access Program & EECBG Electrical Upgrades
Rampart grade	2 Rehabilitation of Existing Homes & EECBG Street Lights & Washateria Up-
Ruby	90 AHFC Weatherization's, Pilings on failed Foundation, USDA Street lights, Solar Photovoltaic's at Washateria Building & Electrical Upgrades throughout Ruby
Stevens Village	Replace Council Office Roof & EECBG Solar Thermal on Washateria
Tok	Continuing maintenance of Tok Tri-plex

The funding for these projects comes from NAHASDA, CAS, USDA, AHFC, Stimulus and Contract funding.

Board Draft Option A Not Adopted



ADP Exhibit No. 11

Note: As of the June 19, 2013
Source: Alaska Redistricting Board

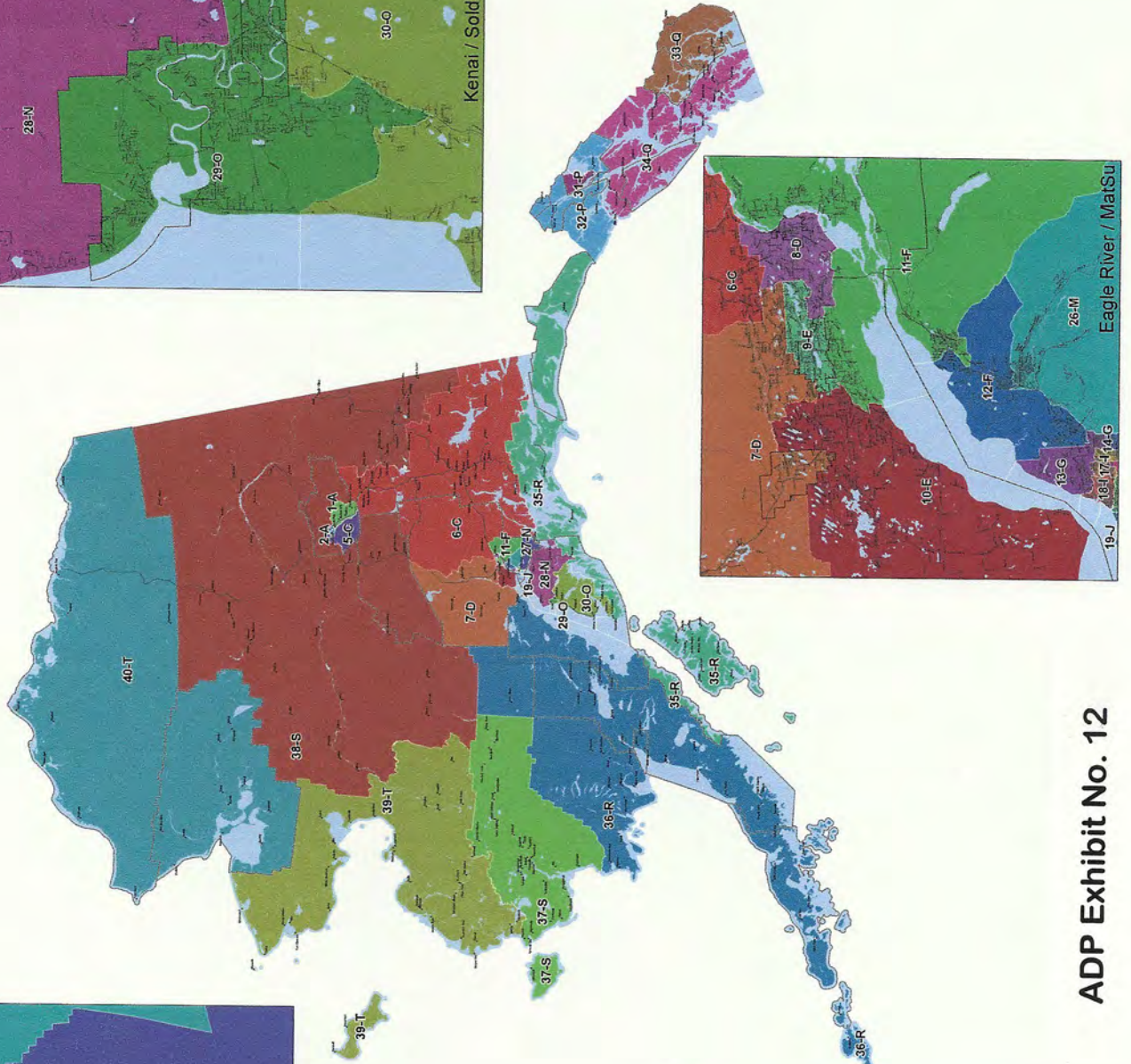
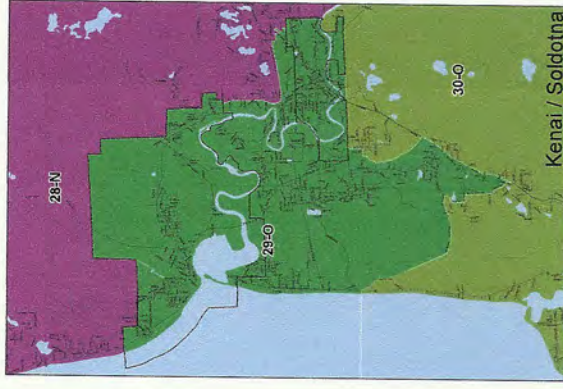
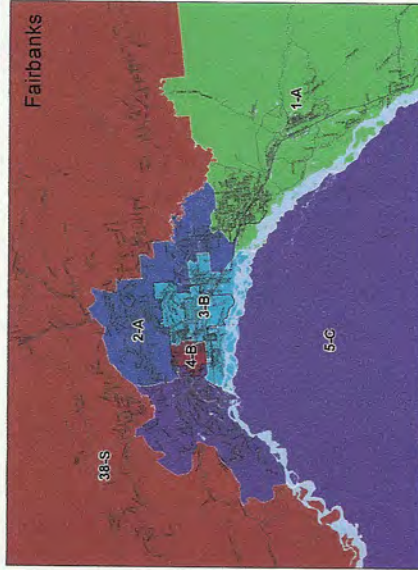
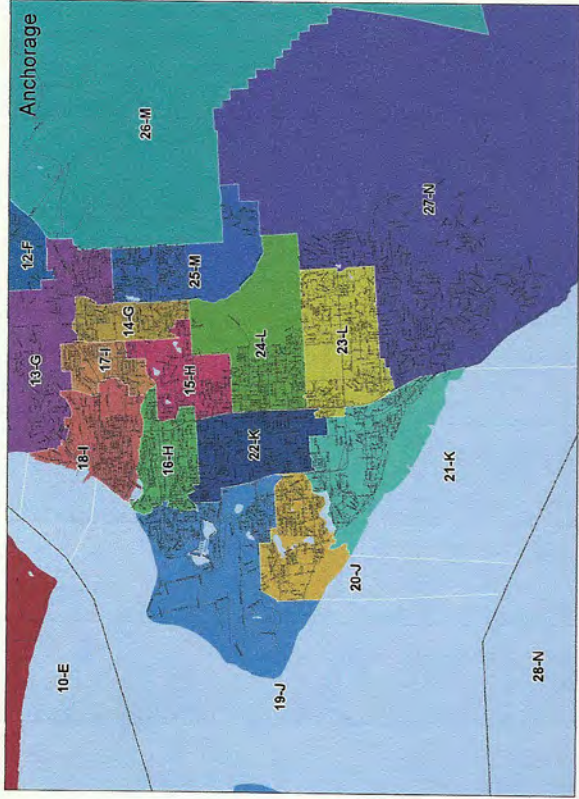
6/19/2013

Board Draft Option A

District	Total Population	Ideal	Deviation	Difference
1	17927	17,755	0.97%	172
2	17872	17,755	0.66%	-94
A	35799	35510	0.81%	78
3	17671	17,755	-0.47%	-118
4	17814	17,755	0.33%	67
B	35485	35510	-0.07%	-51
5	17836	17,755	0.46%	315
6	18246	17,755	2.77%	-464
C	36082	35510	1.61%	-149
7	17963	17,755	1.17%	-30
8	18134	17,755	2.13%	14
D	36097	35510	1.65%	-16
9	17173	17,755	-3.28%	21
10	17738	17,755	-0.10%	74
E	34911	35510	-1.69%	95
11	18273	17,755	2.92%	140
12	17946	17,755	1.08%	335
F	36219	35510	2.00%	475
13	17931	17,755	0.99%	468
14	17807	17,755	0.29%	460
G	35738	35510	0.64%	928
15	17728	17,755	-0.15%	204
16	17847	17,755	0.52%	225
H	35575	35510	0.18%	429
17	17828	17,755	0.41%	-3
18	17534	17,755	-1.24%	70
I	35362	35510	-0.42%	67
19	18287	17,755	3.00%	1
20	17974	17,755	1.23%	-59
J	36261	35510	2.11%	-58
21	17969	17,755	1.21%	-55
22	17641	17,755	-0.64%	-37
K	35610	35510	0.28%	-92
23	17139	17,755	-3.47%	-74
24	17924	17,755	0.95%	-54
L	35063	35510	-1.26%	-128
25	17678	17,755	-0.43%	-26
26	18270	17,755	2.90%	-23
M	35948	35510	1.23%	-49
27	17563	17,755	-1.08%	-35
28	17744	17,755	-0.06%	-42
N	35307	35510	-0.57%	-77
29	18306	17,755	3.10%	-90
30	17968	17,755	1.20%	-75
O	36274	35510	2.15%	-165
31	17745	17,755	-0.06%	2
32	17635	17,755	-0.68%	-60
P	35380	35510	-0.37%	-58
33	17845	17,755	0.51%	-504
34	17777	17,755	0.12%	32
Q	35622	35510	0.32%	-472
35	17924	17,755	0.95%	256
36	16905	17,755	-4.79%	609
R	34829	35510	-1.92%	865
37	17047	17,755	-3.99%	125
38	17567	17,755	-1.06%	-318
S	34614	35510	-2.52%	-193
39	17102	17,755	-3.68%	-804
40	16953	17,755	-4.52%	-802
T	34055	35510	-4.10%	-1606

Overall Deviation 7.9%

Board Draft Option G Not Adopted

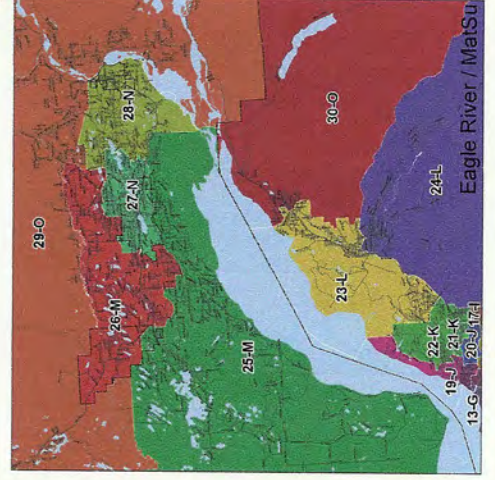
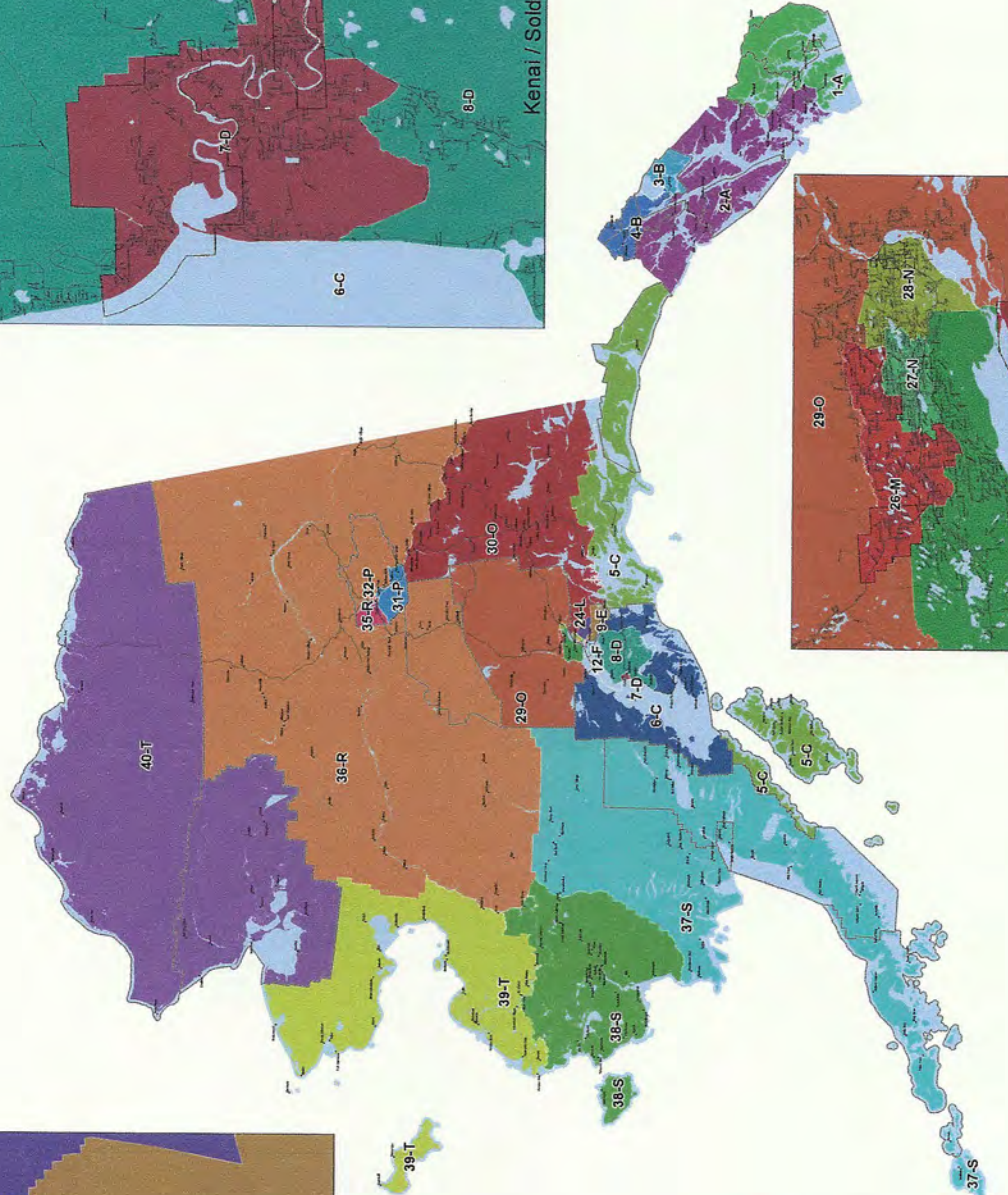
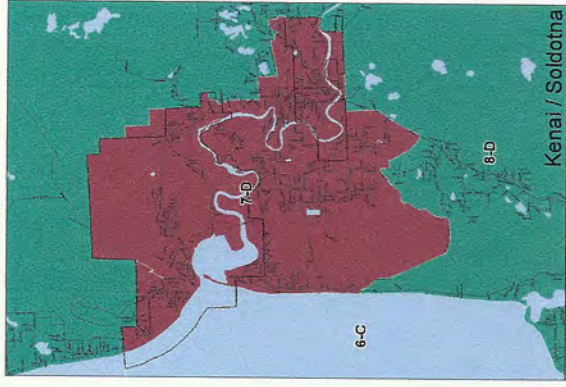
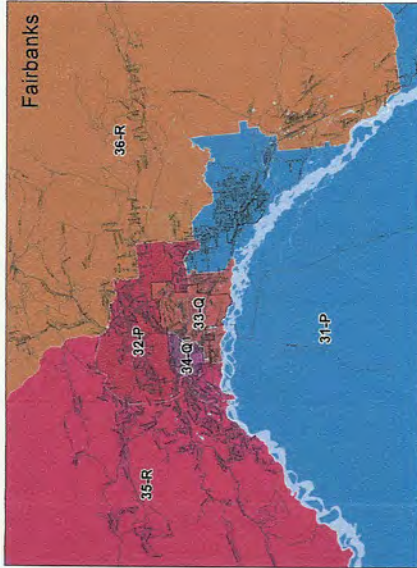
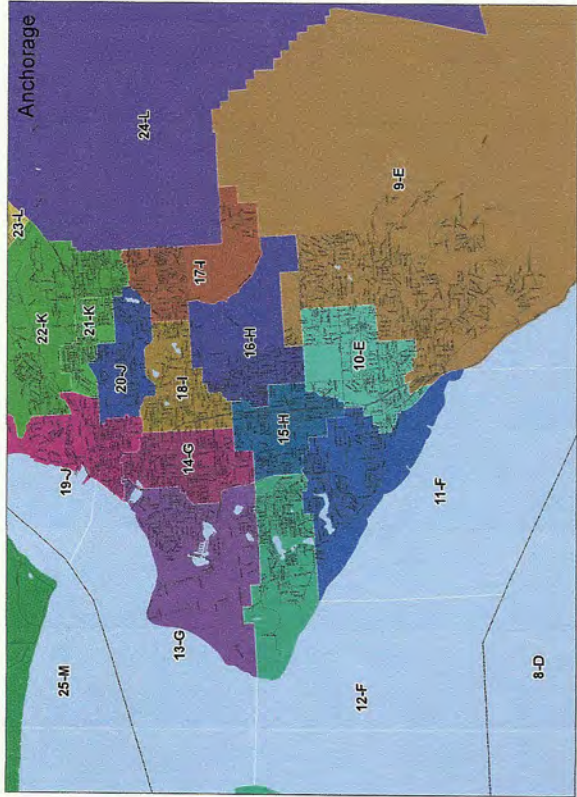


6/21/2013

Board Draft Option G

District	Total Population	Ideal	Deviation	Difference
1	17927	17,755	0.97%	172
2	17872	17,755	0.66%	117
A	35799	35510	0.81%	289
3	17671	17,755	-0.47%	-84
4	17814	17,755	0.33%	59
B	35485	35510	-0.07%	-25
5	17836	17,755	0.46%	81
6	18089	17,755	1.88%	334
C	35925	35510	1.17%	415
7	18004	17,755	1.40%	249
8	18156	17,755	2.26%	401
D	36160	35510	1.83%	650
9	17767	17,755	0.07%	12
10	17750	17,755	-0.03%	-5
E	35517	35510	0.02%	7
11	17826	17,755	0.40%	71
12	18079	17,755	1.82%	324
F	35905	35510	1.11%	395
13	17931	17,755	0.99%	176
14	17806	17,755	0.29%	51
G	35737	35510	0.64%	227
15	17797	17,755	0.24%	42
16	17925	17,755	0.96%	170
H	35722	35510	0.60%	212
17	17667	17,755	-0.50%	-88
18	17743	17,755	-0.07%	-12
I	35410	35510	-0.28%	-100
19	17642	17,755	-0.64%	-113
20	17755	17,755	0.00%	0
J	35397	35510	-0.32%	-113
21	17702	17,755	-0.30%	-53
22	17809	17,755	0.30%	54
K	35511	35510	0.00%	1
23	17693	17,755	-0.35%	-62
24	17924	17,755	0.95%	169
L	35617	35510	0.30%	107
25	17678	17,755	-0.43%	-77
26	18072	17,755	1.79%	317
M	35750	35510	0.68%	240
27	17778	17,755	0.13%	23
28	18138	17,755	2.16%	383
N	35916	35510	1.14%	406
29	18185	17,755	2.42%	430
30	18230	17,755	2.68%	475
O	36415	35510	2.55%	905
31	17499	17,755	-1.44%	-256
32	17804	17,755	0.28%	49
P	35303	35510	-0.58%	-207
33	17393	17,755	-2.04%	-362
34	18306	17,755	3.10%	551
Q	35699	35510	0.53%	189
35	17389	17,755	-2.06%	-366
36	16905	17,755	-4.79%	-850
R	34294	35510	-3.42%	-1216
37	17047	17,755	-3.99%	-708
38	17567	17,755	-1.06%	-188
S	34614	35510	-2.52%	-896
39	17102	17,755	-3.68%	-653
40	16953	17,755	-4.52%	-802
T	34055	35510	-4.10%	-1455

McKinnon Plan



ADP Exhibit No. 13