

PRECLEARANCE SUBMISSION OF THE 2012  
ALASKA STATE HOUSE AND SENATE  
AMENDED PROCLAMATION REDISTRICTING PLAN  
BY THE ALASKA REDISTRICTING BOARD  
UNDER SECTION 5 OF THE VOTING RIGHTS ACT

May 24, 2012

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*This submission statement is arranged pursuant to the order of the Justice's published rules for submission in 28 C.F.R. Part 51 §§ 51.27, 51.28. The information and data accompanying this submission is provided under separate cover and arranged by numbered volumes and folders. When needed, an explanation of the contents of each folder is included.*

### **The Change Affecting Voting, 28 C.F.R. § 51.27(a)-(c)**

The Board's Amended Proclamation Plan is a revised version of the Final Plan and Proclamation of Redistricting adopted on June 13, 2011, and precleared on October 11, 2011. After litigation over the state constitutionality of the Proclamation Plan, the Alaska Supreme Court ultimately ordered the Board to redraw the redistricting plan using a particular process delineated by the Court. The Amended Proclamation Plan is the result of the Board's efforts to comply with the Alaska Supreme Court's order.

Three separate challengers filed suit against the Proclamation Plan in July 2011, but only one remained for trial in January 2012. At the conclusion of the two-week trial, the trial court struck down two House Districts of the Proclamation Plan, House Districts 1 and 2, for violating the Alaska Constitution's compactness requirement. The trial court also found House District 38 violated the state constitutional socio-economic integration requirement, and House District 37 violated Alaska's contiguity requirement. The Board argued the deviations from the state constitutional requirements in House Districts 37 and 38 were necessary in order to comply with Section 5 of the Voting Rights Act. However, the trial court ultimately rejected the Board's argument, finding all of the Alaska Native districts the Board created to comply with the Voting Rights Act had a higher than necessary Alaska Native Voting Age Population ("VAP"). Therefore, none of the Alaska Native districts were necessary to comply with Section 5 of the Voting Rights Act. The trial court's order can be found in Volume 10, Folder 5 of the attached materials.

The Board appealed the trial court's decision on House Districts 37 and 38 to the Alaska Supreme Court. In a surprising decision, the Alaska Supreme Court found prior case law required the Board to first draw a plan that complies only with the Alaska Constitution without consideration to the federal Voting Rights Act. If the Board's Voting Rights Act expert determines this plan does not also comply with the Voting Rights Act, only then should the Board deviate from the state constitutional requirements, and only to the minimum extent necessary to comply with the Voting Rights Act. The Supreme Court's Order can be found in Volume 10, Folder 5 of the attached materials.

The Supreme Court remanded the plan back to the Board to draw a new plan that followed what has become known as the "*Hickel* process." After several days of public meetings, the Board eventually adopted the Amended Proclamation Plan as fully compliant with the Supreme Court's Order on April 5, 2012 and moved for approval from the trial court on April 10, 2012. The Proclamation adopting the Amended Plan, along with district and regional maps and a population analysis is located in Volume 11, Folders 1 through 5. The trial court, however, denied the Board's request after finding

the Board failed to follow the first step of the Supreme Court's order on remand by not redrawing each individual House district. The Board immediately appealed the trial court's order to the Supreme Court, and oral argument was held on May 10. The Supreme Court ultimately held the Amended Plan shall be used for the 2012 elections, but the Board's Petition for Review would remain under advisement.<sup>1</sup>

The Amended Proclamation Plan leaves the urban House districts from the Proclamation Plan unchanged except for those located in the Fairbanks North Star Borough. Alaska Native House Districts 39 and 40 remain unchanged from the Proclamation Plan, and House District 38 is only slightly modified. The configurations of House Districts 36 and 37, however, are substantially different from the Proclamation Plan, as discussed in further detail below.

**Submitting Authority, 28 C.F.R. § 51.27(d)-(f)**

This submission is made by the counsel for the Board, pursuant to Article VI, Section 9 of the Alaska Constitution and Alaska Statute 15.10.220 (1):

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<sup>1</sup> In its May 10 Order, the Alaska Supreme Court ordered the Board to redraw the House districts in Southeast Alaska, House Districts 31 through 34, without consideration to the federal Voting Rights Act. Although the Board's Proclamation Plan and Amended Plan both included an influence district in Southeast, House District 34, and avoided pairing an Alaska Native incumbent, Bill Thomas, the Alaska Supreme Court held such aspects were not necessary for compliance with the federal Voting Rights Act, ordering the Board to redraw the Southeast districts without regard to the VRA because in its opinion there was "no VRA justification for deviating from Alaska constitutional requirements in Southeast Alaska." The Supreme Court's order can be found in Volume 10, Folder 5.

On May 14, the Board adopted reconfigured House districts in Southeast compliant with the Alaska Supreme Court's order, and submitted them to the Court for approval on May 15. Copies of this plan and the Board's Notice of Compliance can be found in Volume 10, Folder 5. On May 18, the Supreme Court received several objections from various Alaska Native groups and boroughs in Southeast, disagreeing with the Supreme Court's conclusion the federal Voting Rights Act did not in fact require an influence district in Southeast. On May 22, the Alaska Supreme Court reversed its early decision and ordered the Amended Proclamation Plan adopted on April 5, without the reconfigured House districts in Southeast Alaska, would be used as the interim redistricting plan for the 2012 elections due to the "risk that the United States Department of Justice would decline to pre-clear them under the Voting Rights Act." A copy of this order can be found in Volume 10, Folder 5. Accordingly, the election districts in Southeast Alaska in the Amended Proclamation Plan are the exact same election districts for Southeast Alaska that were in the Board's original Proclamation Plan previously pre-cleared by DOJ.

The submitting authority is the Alaska Redistricting Board. The Board's office location and mailing address is 411 West 4<sup>th</sup> Avenue, Suite 302, Anchorage, Alaska 99501. The Board's contact information is as follows: phone (907) 269-7400, fax (907) 269-6691, and email [info@akredistricting.org](mailto:info@akredistricting.org).

### **The Constitutional Process for Redistricting, 28 C.F.R. § 51.27(g)-(i)**

Authority to redistrict is vested with the Board pursuant to Article VI, Section 3 of the Alaska Constitution. Pursuant to Article VI, Section 10 of the Alaska Constitution, the Board was required to adopt a draft plan or plans 30 days after the reporting of the decennial census of the United States, and a final plan and proclamation no later than 90 days after the reporting of the census. Block level census data was received by the Board from the U. S. Bureau of the Census on March 15, 2011. Thus, the deadline for adoption of a draft plan or plans was April 14, 2011, and the deadline for adoption of the final plan was June 13, 2011. Both deadlines were met by the Board.

The members of the Redistricting Board were appointed pursuant to Article VI, Section 8(b) of the Alaska Constitution. Governor Sean Parnell appointed John Torgerson of Soldotna, executive director of the Kenai Peninsula Economic Development District and former State Senator, and Albert Clough of Juneau, a retired commercial pilot, on June 25, 2010. Albert Clough resigned on February 23, 2011, when he accepted full time employment with the State of Alaska, and Governor Parnell appointed PeggyAnn McConnochie, a real estate broker from Juneau to replace Mr. Clough on the same day. Senate President Gary Stevens appointed Robert Brodie, a real estate broker and former mayor of Kodiak on June 25, 2010. The Speaker of the House of Representatives, Mike Chenault, appointed Jim Holm of Fairbanks, a business owner and former state representative, on July 8, 2010. Alaska Supreme Court Chief Justice Carpeneti appointed Marie Greene of Kotzebue, CEO of Alaska Native Regional Corporation Nana, Inc. and an Alaska Native (Inupiat), on August 31, 2010. Board member John Torgerson was elected Chair.

The Alaska Constitution sets forth the principles for redistricting. Article VI, Section 4 requires the Board to establish 40 single-member House districts and 20 single-member Senate districts, each composed of two House districts. Article VI, Section 6 requires House districts be contiguous and compact and contain, as nearly as practicable, a relatively integrated socio-economic area. Senate districts are required to be composed as near as practicable of two contiguous House districts.

After regular meetings and an open public process, the Board's Proclamation Plan was adopted on June 13, 2011. The Proclamation Plan was challenged in the Alaska Superior Court, petitioned to the Alaska Supreme Court, and was ultimately remanded to the Board for corrections to comply with the Alaska Supreme Court's Order on March 14, 2012. See Alaska Const. art. VI, § 11; Alaska Rule of Civil Procedure 90.8; Alaska Rule of Appellate Procedure 216.5. The Board met in open public meetings from March 26 through March 31, 2012, to develop a new plan of redistricting following the

mandated *Hickel* process. The Board accepted and reviewed a number of new plans from interested parties, but ultimately concluded none of them complied with the Supreme Court Order, the state constitution, and/or the Voting Rights Act.<sup>2</sup> Copies of these third party plans are located in Volume 14, Folder 3. The Board unanimously adopted its Amended Proclamation Plan in concept on March 31, 2012, and Chairman Torgerson signed a Proclamation of Redistricting on April 5, 2012.

As explained above, the trial court denied the Board's request to approve the Amended Proclamation Plan not on the merits, but for failure to comply with the first step in the Alaska Supreme Court's order of remand. The Board appealed the trial court's decision, and oral argument was held before the Alaska Supreme Court on May 10. The merits of that appeal regarding process are still under advisement. The Alaska Supreme Court did, however, order the Board's Amended Proclamation Plan be used as the interim plan for the 2012 elections. Accordingly, the Board hereby submits the Amended Proclamation Plan for preclearance.

#### **The Effective Date of the Redistricting Plan, 28 C.F.R. § 51.27 (j)-(k)**

This Amended Proclamation Plan was adopted by a 5-0 vote of the Board on March 31, 2012. The Board approved a Proclamation of Redistricting, which the Chair signed on April 5, 2012. This redistricting plan will serve as an interim redistricting plan that applies to the 2012 elections for the Alaska state legislature while litigation over the plan continues in state court. The 2012 general election is to be held on August 28, 2012. The candidate filing deadline is June 1, 2012. Otherwise, this proposed redistricting plan has not yet been enforced or administered.

#### **The Scope and Reasons for the Change, 28 C.F.R. § 51.27(l)-(m)**

This Amended Proclamation Plan affects the entire jurisdiction of the State of Alaska. It is a statewide redistricting plan as required by Article VI of the Alaska Constitution. The original Proclamation Plan followed the official reporting of the 2010 decennial census of the United States as required by Article VI, Sections 1 and 3 of the Alaska Constitution. On March 14, 2012, the Alaska Supreme Court remanded the Proclamation Plan to the Board for reformulation of a final plan that complied with its Order. The Amended Proclamation Plan makes the corrections to the Proclamation Plan as ordered by the Alaska Supreme Court.

#### **Effect on Racial or Language Minority Groups, 28 C.F.R. § 51.27(n)**

Alaska Natives are the only minority group covered under the Voting Rights Act of sufficient size and geographic concentration in Alaska to be of potential concern under

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<sup>2</sup> Board's legal counsel prepared a memorandum outlining the deficiencies in each of the third party plans. A copy of this memorandum can be found in Volume 10, Folder 5.

the Act. The Amended Plan will have no retrogressive effect with respect to Alaska Native voting strength. The Amended Proclamation Plan maintains five House districts (36, 37, 38, 39, and 40) and three Senate districts (R, S, and T) where Alaska Natives are effective in electing the candidate of their choice.

#### **A. The Benchmark Plan**

Dr. Lisa Handley, the Board's Voting Rights Act expert, conducted an analysis of voting patterns in Alaska since implementation of the current redistricting plan in 2002. Her report, "A Voting Rights Analysis of the Proclamation Alaska State Legislative Plans: Measuring the Degree of Racial Bloc Voting and Determining the Effectiveness of Proposed Minority Districts"<sup>3</sup> concludes Alaska legislative districts with an Alaska Native population of 41.8% or more have generally been effective in electing Alaska Native candidates in the past decade. The Benchmark Plan reflects the current legislative districts with the 2010 Census population data. Using the target "effectiveness" standard derived by Dr. Handley, the Benchmark Plan contains five "effective" Alaska Native House districts (Districts 6, 37, 38, 39, and 40) and three "effective" Alaska Native Senate districts (Districts C, S, and T) that consistently elect Alaska Native-preferred candidates even when voting is polarized.

In Benchmark House Districts 6, 38, 39, and 40, Alaska Natives constitute a majority of the total population (although all are substantially under-populated). Only three of the four, however, have a majority Alaska Native VAP. Benchmark District 6 is only 49.97% Alaska Native VAP. Yet based on Dr. Handley's analysis of voting patterns, Benchmark House Districts 6, 37, 38, 39, and 40 are "effective" Alaska Native House districts – that is, districts that consistently elect Alaska Native-preferred candidates even when voting is polarized. Benchmark House District 37, although not a majority Alaska Native composition, consistently elected an Alaska Native-preferred candidate during the last decade, even when voting was racially polarized despite being only 45.04% total Alaska Native population and 37.79% Alaska Native VAP.

In addition to these five House districts with substantial Alaska Native populations, there is a district in Southeast Alaska (House District 5 in the Benchmark Plan) that is approximately one-third Alaska Native voting age population and has elected an Alaska Native to legislative office over the course of the decade. The Alaska Native representative since 2004, however, is a Republican who did not receive a majority of the Alaska Native votes in the contest in which he faced an Alaska Native Democrat. Given the Alaska Native VAP number of the district, Dr. Handley considers this an "influence" district.

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<sup>3</sup> See Volume 1, Folder 6 of the Board's 8/12/11 original preclearance submission. Hereafter, citations to documents provided in the Board's original submission shall be referenced as "Org. Sub. Volume X, Folder X." References to "Volume X, Folder X" are reference to the new material provided with this submission, with the Volume number starting with Volume 10. Volumes 1-9 were part of the Board's original preclearance submission.



The Benchmark Plan also contains two Senate districts with a majority Alaska Native VAP, Senate Districts S and T, and one additional Senate district, District C, with an Alaska Native VAP that exceeds the 41.8% effectiveness standard. Dr. Handley's analysis concludes all three of these Benchmark Senate Districts have consistently elected Alaska Native-preferred candidates over the last decade.

**B. Challenges Faced By the Board in Meeting the Benchmark.**

As the state with the largest land area and the lowest population density in the United States, the redistricting process in Alaska has been described as a "herculean task." In this redistricting cycle, drafting a plan that complied with the VRA requirements that did not retrogress Alaska Native voting strength as it existed in the Benchmark was extraordinarily difficult due to a number of complicating factors.

*1. Under-population of Benchmark Alaska Native Districts*

Historically, Alaska's Native population was principally located in rural areas. At the time of statehood in 1959, 70% of Alaska's indigenous population resided in rural predominately Alaska Native villages and towns. By 2000, that number had dropped to approximately 57%. In the past decade, this "out-migration" accelerated as Alaska experienced a growing shift in population from rural to urban areas. While urban areas showed a high rate of growth, rural and predominantly Alaska Native areas experienced either a slow or negative growth rate as compared to the urban areas of the state. This population shift resulted in the considerable under-population of all but one Alaska Native district in the Benchmark Plan. Six of the Alaska Native Benchmark districts had deviations greater than 10%, with three at or over 20%. [A map showing the geographic distribution of Alaska Natives by borough and census area in the current legislative districts, according to the 2010 Census population data can be found in Org. Sub. Volume 2, Folder 5.] Nearly 50% of the Alaska Native VAP presently resides in the five largest "urban" areas of the state: the City and Borough of Juneau, the Kenai Peninsula Borough, the Municipality of Anchorage, the Mat-Su Borough, and the Fairbanks North Star Borough. [Information related to the Alaska Native population migration and rural demographics can be found in Org. Sub. Volume 4, Folders 1 through 5.]

The Alaska Native community was well aware of the potential impact these dramatic population shifts would have on redistricting. As a result, Alaska Native leaders took action in an attempt to ameliorate its potential political impact by rallying behind a 2010 effort to amend the Alaska Constitution. The constitutional amendment proposed to increase the size of the Alaska Legislature in order to address the potentially "irreconcilable problems" created by "population shifts to the Railbelt and disparate rules in the state Constitution and federal Voting Rights Act on how to redraw the lines." The proposal, sponsored by Nome Senator Donny Olson and Wrangell Representative Peggy Wilson, would have increased the number of representatives from 40 to 44 and senators from 20 to 22. SJR 21 passed through both chambers of the Alaska

Legislature, but was ultimately rejected by voters at the ballot box in November of 2010. [Documents related to the proposed constitutional amendment are located in Org. Sub. Volume 4, Folder 5.]

2. *Lack of Alaska Native Population Concentrations Adjacent to the Benchmark Alaska Native Districts*

Five of the Benchmark House districts with substantial Alaska Native populations were significantly under-populated. The Board could not make up for the population disparities in these districts without adding substantial non-Alaska Native population. There are no concentrations of Alaska Native populations adjacent to those districts as the maps found in Org. Sub. Volume 4, Folder 3 establish. [These maps are also found in Appendix A & B to Dr. Handley's report, found in Org. Sub. Volume 1, Folder 6.] The maps in Org. Sub. Volume 2, Folder 5 overlay the Benchmark House and Senate District boundaries on top of a thematic map shaded to show the percentage of Alaska Native population by borough and census area. As can be seen from these maps, there are only two areas with substantial Alaska Native concentrations that do not fall within the boundaries of a benchmark minority district. Both of these areas were included in the Proclamation Plan and Amended Proclamation Plan's Alaska Native Districts. [See Orig. Sub. Volume 3, Folder 5 and Volume 11, Folder 5.] The population in those two areas, however, is very small. Accordingly, in order to properly populate the Alaska Native districts, population from more urban areas of the state had to be included. The concentration of Alaska Natives in the urban areas was such that it was not feasible to add Alaska Natives from urban areas to rural Alaska Native districts without also adding non-Alaska Native population percentages that would have caused possible retrogression.

3. *Inability to Create Minority Districts in Urban Areas*

While nearly 50% of Alaska Natives live in the state's five largest urban areas, the creation of an "effective" district in these areas proved impossible despite considerable efforts made by the Board and its staff. The Alaska Native population in the urban areas is simply not sufficiently geographically compact to allow for the creation of such districts, as is demonstrated by the thematic maps of the Alaska Native population distribution in the five largest urban areas found in Org. Sub. Volume 4, Folder 3. [See also Appendix B to Dr. Handley's report, Orig. Sub. Volume 1, Folder 6.] While there are two areas of the Kenai Peninsula Borough that have small concentrations of Alaska Natives ranging from 40% to 60%, neither of those areas are actually placed within the urban districts of the Kenai Borough. Instead, both of those areas are included in districts outside the Kenai Borough, House Districts 35 and 36, in order to increase the Alaska Native populations in those districts. [Compare the urban density map found in Org. Sub. Volume 4, Folder 3 for the Kenai Peninsula Borough to the maps for Benchmark District 35 and 36, found in Org. Sub. Volume 2, Folder 3.]



**C. The Proclamation Plan**<sup>4</sup>

The challenges outlined above made creating a redistricting plan that protected Alaska Native voting strength against any decrease from that in the Benchmark Plan no easy task. The significant demographic changes of rural Alaska made it extremely difficult to meet the one-person, one-vote standard while still maintaining the required percentage of Alaska Native voting age population in the required number of minority districts. This problem was exasperated by the increase in the percentage of Alaska Native voting age population required to create an effective Alaska Native district. Based on significant public testimony, including testimony from Alaska Native legislators and leaders, the Board was encouraged to think “outside-the-box” to ensure it avoided retrogression. [Examples of this testimony can be found in Org. Sub. Volume 4, Folder 4.] As a result, the Board felt compelled to reconfigure the traditional boundaries of Alaska Native rural districts. It encouraged parties submitting alternative plans to do so as well.

The Board, led by Board members Greene and McConnochie, eventually created a plan it felt complied with the Voting Rights Act. Dr. Handley analyzed this plan and determined that it would not diminish the ability of Alaska Natives to elect their candidates of choice as compared to the Benchmark plan. The Board ultimately adopted this plan, the Proclamation Plan, by a unanimous 5-0 vote on June 13, 2011. The details of the Proclamation Plan can be found in the previous submission. The DOJ precleared the plan on October 11, 2011. This Plan, however, was rejected on State constitutional grounds as previously discussed above.

*1. Proclamation Plan: House Districts*

The Proclamation Plan contains the same number of districts that provide Alaska Natives with the ability to elect Native-preferred candidates as the 2002 Benchmark Plan. The House plan includes five majority Alaska Native population districts, although only three of these districts retain their majority Alaska Native status when considering Alaska Native VAP.

The configuration of the 2002 Plan had to change substantially in order to maintain the requisite number of effective Alaska Native districts. The Board had to unpack two heavily Alaska Native House districts (Districts 38 and 39) and disperse the Alaska Native population in these districts across several proposed districts in order to avoid retrogression. The Alaska Native population in Benchmark District 38, for example, was divided between Proclamation Districts 36 and 37. A portion of Benchmark District 39 was combined with many of the interior villages from Benchmark District 6 to produce Proclamation District 39. The remainder of Benchmark District 39 was placed in Proclamation District 38, which also moved into Fairbanks to pick up the additional

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<sup>4</sup> While the Board understands the DOJ’s analysis compares the Amended Proclamation Plan to the Benchmark, this section on the Proclamation Plan is included for background purposes and ease of reference.

population needed to meet the one-person, one-vote standard. Although the Plaintiffs challenged Proclamation House District 38, the Plaintiffs, the trial court, and the Supreme Court all agreed with the Board at least one of the Alaska Native rural districts would have to pick up substantial population from an urban area. The only dispute was from which urban area.

The Board also divided the Aleutian Islands (which are intact in Benchmark District 37) between Proclamation Districts 36 and 37 in order to increase the Alaska Native VAP in Proclamation District 36 to pair the Alaska Peninsula with Kodiak to form a third effective Senate district. This configuration also avoided the pairing of Alaska Native incumbent Senator Hoffman with the President of the Senate, Senator Stevens, which was a major concern for many Alaska Natives as expressed time and again to the Board. The division of the Aleutian Islands did, however, prompt a legal challenge under the state constitutional requirements.

The Proclamation Plan included five effective districts: House District 36 with 78.26% total population and 71.45% Alaska Native VAP; House District 37 with 56.18% total population and 46.63% Alaska Native VAP; House District 38 with 53.38% total population and 46.36% Alaska Native VAP; House District 39 with 72.50% total population and 67.09% Alaska Native VAP; and House District 40 with 71.15% total population and 62.22% Alaska Native VAP.

House District 40 in the Proclamation House Plan remains essentially intact as compared to House District 40 in the Benchmark Plan, and the Alaska Native VAP percentage declines only slightly from 63.60% to 62.22%. House District 37 included a sizeable portion of Benchmark District 37, a district in which voting has historically not been polarized and which consistently elected Alaska Native-preferred candidates with 38% Alaska Native VAP.

Southeast Alaska lost significant population (for example Benchmark District 5 was under populated by 22.02%), thus requiring the region to lose one House district and half of a Senate district. However, the Board was still able to maintain a district with a significant Alaska Native population which is likely an Alaska Native “influence” district. House District 34 in the Proclamation Plan had a total Alaska Native population of 36.96% and an Alaska Native VAP of 32.85%. While several of the alternative plans had a Southeast Alaska Native District with a slightly higher (0.5 to 2.5%) total Alaska Native and Alaska Native VAP, the Board determined that it was more important to keep the incumbent Alaska Native Legislator, Representative Bill Thomas, from the Benchmark Alaska Native District in the Proclamation Alaska Native District and avoid pairing him with a non-Alaska Native incumbent. All of the alternative plans either paired the Alaska Native incumbent with a non-Alaska Native incumbent from the same party, or drew the Alaska Native incumbent out of the Alaska Native district. A number of the plans did both.

## 2. *Proclamation Plan: Senate Districts*

As difficult as it was to draw a non-retrogressive state House plan, producing a non-retrogressive state Senate plan proved even more challenging. Although most of the plans put forward to the Board managed to create two majority Alaska Native state Senate districts, the third district offered in these plans was, in every instance, below the 41.8% Alaska Native VAP target. Dr. Handley concluded these districts were not likely to be effective. The Proclamation Plan, however, offered a third effective Senate district, Senate District R, which is comparable to the Alaska Native percentages in Benchmark Senate District C. Senate District R is 48.65% total Alaska Native population and 43.75% Alaska Native VAP. This district is comparable in Alaska Native percentages to Benchmark District C (which is 46.01% total Alaska Native population and 42.41% Alaska Native VAP), and it exceeds the target Alaska Native VAP percentage of 41.8% needed to elect a Native-preferred candidate.

The House district pairings used to produce the Proclamation Senate Plan created two majority Alaska Native Senate districts, although only one of those retained its majority when considering Alaska Native VAP. Senate District S, comprised of House Districts 37 and 38, is 46.85% Alaska Native VAP. However, House Districts 37 and 38 have Alaska Native VAPs well above the necessary 41.8% target, at 46.63% and 46.36% respectively. Thus, both are very likely effective, creating an effective Senate District S. Senate District S also contains an Alaska Native VAP above the necessary 41.8% target.

### **D. The Amended Proclamation Plan**

Despite the Board's best efforts, a handful of plaintiffs challenged the Proclamation Plan, and litigation ensued. The trial court found that two districts in the Fairbanks North Star Borough did not meet Alaska's constitutional compactness requirements on summary judgment.<sup>5</sup> After a two week trial, the trial court ruled the configuration of House Districts 37 and 38, which the Board admitted did not comply with the Alaska Constitution but whose shape was necessitated by the Board's need to comply with the VRA, were not required to comply with the VRA because all of the effective Alaska Native districts had a higher Alaska Native VAP than the court considered necessary to make them effective. [Volume 10, Folder 5, Court Orders, 2012.02.03 Order at p. 122-23, 133-34.] The Board appealed this decision to the Alaska Supreme Court. The Plaintiffs appealed the trial court's rulings rejecting their proportionality challenges to the House and Senate districts in Fairbanks.

On March 14, the Alaska Supreme Court issued an Order that did not rule on the merits of the Proclamation Plan, but instead found the Board had followed improper procedure when it drew the Proclamation Plan. The Court remanded the plan in its entirety to the Board to follow the so-called "Hickel process" because the Court found it could not

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<sup>5</sup> The Board did not appeal these rulings.

determine whether deviation from the Alaska constitutional redistricting requirements was necessary under the process followed by the Board. [Volume 10, Folder 5, Court Orders, 2012.03.14 Order at ¶ 7.]<sup>6</sup> The Supreme Court ordered the Board to “first design a plan focusing on compliance with the Article VI, Section 6 requirements of contiguity, compactness, and relative socioeconomic integration;...[o]nce such a plan is drawn, the Board must determine whether it complies the Voting Rights Act and, to the extent it is noncompliant, make revisions that deviate from the Alaska Constitution when deviation is ‘the only means available to satisfy Voting Rights Act requirements.’” [See Volume 10, Folder 5, Court Orders, 2012.03.14 Order at ¶ 7.] The Court later ordered the Board to redraw the House districts in Southeast Alaska without consideration to the Voting Rights Act, finding “there is no VRA justification for deviating from Alaska constitutional requirements in Southeast Alaska,” but rescinded its Order ten days later upon receiving several objections from Alaska Native groups in Southeast. [See Volume 10, Folder 5.]

The result of the Board’s efforts on remand is the Amended Proclamation Plan. Although the urban districts remain virtually unchanged between the Amended Plan and the Proclamation Plan, the configuration of a few of the Alaska Native districts is substantially different. The main reason is the Board chose to reunite the Aleutian Islands, which were previously split between two House districts in the Proclamation Plan – House Districts 36 and 37 – because it became clear it was not necessary to split the Aleutian Chain to create a non-retrogressive plan. This caused ripple effects across the remaining Alaska Native districts.

#### 1. *The Amended Plan: House Districts*

The Amended House Plan, just as the Proclamation Plan, includes five districts where Alaska Natives constitute a majority of the total population: District 36 with 85.70%; 37 with 51.02%; 38 with 52.38%; 39 with 70.84%; and 40 with 71.15%. While only three of these districts retain their majority Alaska Native status when voting age population statistics are considered - District 36 with 81.13% VAP, 39 with 65.63% VAP, and 40 with 62.77% VAP - the other two districts, 37 and 38, remain “effective”. Both have Alaska Native VAP greater than the 41.8% statewide target effectiveness standard. Moreover, District 37 is only 27.55% white VAP. As discussed further below, the non-Alaska Native population added to District 38 was specifically chosen in order to enhance the effectiveness of that District for Alaska Natives to elect their preferred candidate.

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<sup>6</sup> The Court did, however, reject the trial court’s Native VAP rationale, holding since it was undisputed that excess urban population had to be added to rural Alaska Native districts, then the fact that all five of the Alaska Native effective districts had more Native VAP than “necessary” to make them effective did “not justify concluding that Districts 37 and 38 were not necessary under the VRA.”

District 40 in the Amended Proclamation House Plan is the same as in the Proclamation Plan, and remains essentially intact from the Benchmark Plan. The Alaska Native VAP percentage declines only slightly from 63.60% to 62.77% from the Benchmark.

House District 39 and House District 38 also remain virtually the same in the Amended Proclamation Plan as the Proclamation Plan, except for some minor changes necessitated by the ripple effect caused by the need to reunite the Aleutian Chain while still maintaining the requisite number of effective House and Senate districts. For example, the Board moved two villages, Tanana and Ruby, from House District 38 to House District 39. Additionally, the community of Kenny Lake was moved from House District 6 and added to House District 39.

House District 38 still picks up the sufficient additional population needed to meet the one-person, one-vote standard from the eastern suburbs of Fairbanks. Due to the population shortfall in the five Benchmark Alaska Native districts (outside of Southeast Alaska), at least one of those districts had to pick up a substantial urban population not previously included within this set of Alaska Native districts. The Board needed to add approximately 8,000 people to one or more of the Alaska Native districts to bring the districts within an acceptable deviation range. In the Proclamation Plan, the Board chose to pick up the necessary population from the more rural suburban areas of the Fairbanks North Star Borough, around the communities of Ester and Goldstream. The added population was not Alaska Native, because the Alaska Native population in the Fairbanks North Star Borough is not sufficiently concentrated to allow the population added from Fairbanks to be mostly Alaska Native. Based on the advice of Dr. Handley, the Board chose those areas because they have historically voted Democratic and Alaska Natives historically tend to vote strongly Democratic. Accordingly, the Board felt adding population from the Ester and Goldstream areas was the best option to enhance the effectiveness of the district.<sup>7</sup>

On the northern end of House District 38, the Board removed Tanana and Ruby and placed them into House District 38. On the southern end of the district, the Board moved five villages – Anvik, Shageluk, Flat, Holy Cross, and Russian Mission – from

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<sup>7</sup> Upon remand, the Board drew several draft plans, labeled *Hickel* 01 through *Hickel* 04, which took the needed population from different areas of the state and combined it with different rural areas to solve the population shortfall in the rural districts. The shapefiles for these plans can be found in Volume 14, Folder 2. The Board's legal counsel analyzed each of these options, and ultimately determined the option that took the needed population from Ester and Goldstream best complied with the Supreme Court's Order and the Alaska constitutional requirements. As discussed in greater detail below, this option, according to Dr. Handley, also increased the effectiveness of House District 38 because it adds white Democrats to the District. [See Dr. Handley's Report re Amended Proclamation Plan located in Volume 10, Folder 4.] This alternative is far superior to alternatives offered by others such as the Calista Corporation, who attempt to solve the rural population shortfall by taking the needed population from other Republican areas of the Fairbanks North Star Borough, such as Eielson Air Force Base, thereby creating a Republican district that does not provide Alaska Natives with the ability to elect their preferred candidate of choice. [*Id.*]



House District 38 to House District 36. The Board also made minor changes to the eastern end of the district. The Board moved a few small census blocks from House District 5 to House District 38 in order to reunite the community of Ester, which was split in the Proclamation Plan.

In order to reunite the Aleutian Chain into a single contiguous House district while still maintaining the required number of effective House and Senate districts, the Board had to make significant changes to House Districts 36 and 37 from the Proclamation Plan to the Amended Proclamation Plan. The Board also had to ensure it created a House district with sufficient Alaska Native VAP to create a third “ability to elect” Senate district. The Board moved a number of villages near Bethel – Napiak, Oscarville, Kwethluk, Atmautluak, Kasigluk, Nunapitchuk, Mertarvik, Newtok, Tununak, Toksook Bay, and Nightmute – from House District 37 to House District 36. The Board also moved a number of villages in southwest Alaska – Eek, Quinhagak, Goodnews Bay, Platinum, Twin Hills, Togiak, Clark’s Point, Egegik, Pilot Point, Ugashik, Port Heiden, Chignik, Chignik Lake, Chignik Lagoon, Ivanof Bay, Perryville, Nelson Lagoon, Sand Point, King Cove, Cold Bay, and False Pass – from House District 36 to House District 37.

The result increased the Alaska Native VAP in House District 36 and decreased it in House District 37 relative to the Proclamation Plan. Dr. Handley concluded, although the Alaska Native VAP is lower in Amended Proclamation House District 37 at 42.97% NVAP than the Proclamation Plan at 46.63% NVAP, it is still higher than the effectiveness target of 41.8%. House District 37 is also still higher than the Alaska Native VAP in Benchmark House District 37 (with 37.79% NVAP) that includes all of the Aleutian Chain and consistently elected the Alaska Native-preferred candidate during the last decade.

Southeast Alaska remains unchanged from the Proclamation Plan to the Amended Proclamation Plan. House District 34 contains a significant Alaska Native population which is likely an Alaska Native “influence” district with a total Alaska Native population of 36.96% and an Alaska Native VAP of 32.85%. The Board also avoided pairing Alaska Native incumbent Bill Thomas, who was in the Benchmark Alaska Native district, and kept him in the Amended Proclamation Alaska Native district.

## 2. *The Amended Proclamation Plan: Senate Districts*

The creation of a non-retrogressive state Senate plan was the most difficult task faced by the Board. Senate districts in Alaska are constitutionally required to be “nested” and therefore must be made up of two contiguous House districts. This requirement limited the Board’s Senate pairing options. Benchmark Senate District C, one of the three effective Alaska Native Districts in the Benchmark Plan, was composed of Benchmark House Districts 5 and 6. Because Southeast Alaska lost one half a Senate district, and Benchmark House District 6 was reconfigured into several other Alaska Native districts, it was impossible to recreate Benchmark District C. The Amended Proclamation Plan



does, however, create a third effective Senate district that according to Dr. Handley, meets her effectiveness standard. [See Volume 10, Folder 4.]

In order to create a third effective Senate district, the Board had to combine an effective Alaska Native House district with a non-Alaska Native district that still produces a Senate district with high enough Alaska Native VAP to be effective. This requires at least one Alaska Native effective House district maintain a high concentration of Alaska Native VAP so it may be paired with a House district with a relatively low Alaska Native VAP. Senate District R is such a district, combining House District 35 at 17.19% Alaska Native VAP with House District 36 at 71.45% Alaska Native VAP. The resulting Senate district is 48.63% total Alaska Native and 43.75% Alaska Native VAP. Senate District R has slightly higher Alaska Native percentages compared to Benchmark District C, which has 46.01% total Native population and 42.41% NVAP. Senate District R in the Amended Proclamation is also higher than the Proclamation Senate District R due to the much higher Alaska Native population in Amended Proclamation House District 36. It also still exceeds the target Alaska Native VAP percentage of 41.8% needed to elect an Alaska Native-preferred candidate.

The Amended Proclamation Plan also contains two other effective Alaska Native Senate districts – District S and District T. District S is 54.78% total Alaska Native population, and 46.85% NVAP. Although the Alaska Native VAP is slightly lower than Senate District S in the Proclamation Plan due to the decrease of Alaska Natives in House District 37 after reuniting the Aleutian Islands, Dr. Handley concludes Amended Proclamation District S is still likely to be effective because it consists of two effective House districts, Districts 37 and 38. Moreover, District S has an Alaska Native VAP more than 5% above the 41.8% effectiveness target. District T is 71.82% total Alaska Native and 65.05% NVAP, which is considerably higher than the effectiveness target and only slightly different from the Proclamation Plan as a result of the small changes made to the configuration of House District 39.

In sum, the Board's Amended Proclamation Plan does not retrogress Alaska Native voting strength compared to the Benchmark Plan. The Alaska Native districts in the Amended Proclamation Plan are only slightly different from those in the Proclamation Plan which the DOJ has already precleared. Those districts that are substantially different maintain their effectiveness. Dr. Handley's analysis of the Amended Proclamation Plan concludes that it "is not retrogressive", and therefore provides Alaska Native voters the same opportunity to elect minority-preferred candidates to office as the Benchmark Plan offers. Moreover, none of the alternative plans provided to the Board by third parties provided Alaska Natives with a better opportunity to elect their candidates of choice. Accordingly, the Amended Proclamation Plan satisfies Section 5 of the Voting Rights Act and should be pre-cleared.

### 3. *Third Party Plans and Anticipated Objections*

After the Supreme Court remanded the plan to the Board, a handful of third parties submitted alternative plans to the Board for review and consideration. These parties included the RIGHTS Coalition (“RIGHTS”), the Calista Corporation (“Calista”), and the Alaskans for Fair Redistricting (“AFFR”). The Board and the Board’s legal counsel reviewed and analyzed each of the plans, but ultimately concluded none of them (1) complied with the *Hickel* process; and/or (2) met the VRA requirements; and/or (3) did not unnecessarily deviate from the Alaska constitutional requirements. Dr. Handley also analyzed the most recent third party submissions, and concluded that none of the plans offered Alaska Natives a greater opportunity to elect their candidate of choice than the Amended Proclamation Plan. [See Volume 10, Folder 4.]

The RIGHTS Plan, for example, has several districts with an Alaska Native VAP hovering at the 41.8% effectiveness target and significantly less than provided in the Amended Proclamation Plan. The RIGHTS Plan also has several state constitutional issues. The DOJ indicated in its Guidelines, when “evaluating alternative or illustrative plans, the Department of Justice relies upon plans that make the least departure from a jurisdiction’s stated redistricting criteria needed to prevent retrogression.” Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act; Notice, 76 Fed. Reg. 7470, 7472 (February 9, 2011). The RIGHTS Plan is not a viable alternative plan for at least six, and possibly nine, of its districts violate the state constitutional requirements of compactness, contiguity, and/or socio-economic integration. [See Volume 10, Folder 5, Legal Memorandum.]

The Calista Corporation submitted a plan that creates a Republican Alaska Native House district. Based on recompiled elections results, Dr. Handley determined the House District 38 proposed by Calista as an alternative to the Amended Proclamation House District 38 votes for the Republican candidate seven out of the 10 elections examined. The reason is Calista combines white Republicans from the FNSB with rural Alaska Native areas to create their House District 38. As a result, although the Calista House District 38 has a slightly higher Alaska Native VAP (47.19%) than the Amended Proclamation House District 38 (45.72%), Calista’s district is unlikely to elect the Alaska Native-preferred candidates, resulting in a non-effective district. In fact, in Dr. Handley’s expert opinion, the Calista Plan is retrogressive because it provides one less effective House district than the Benchmark. The Amended Proclamation House District 38, on the other hand, is a strongly Democratic district as the Board had intended, having taken the needed urban population from the Democratic areas of Ester and Goldstream, and is therefore effective. [Volume 10, Folder 4.]

The AFFR Plan also creates a Republican Alaska Native House district with only 42.8% Alaska Native VAP.<sup>8</sup> House District 35 in the AFFR Plan, like the Calista House District

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<sup>8</sup> This plan, entitled AFFR 06, is often-times referred to as the AFFR 7<sup>th</sup> Adjusted Plan by various groups who support this plan.

38, takes the needed population from white Republican areas of Fairbanks versus Democrats. The result is a district in which Alaska Native-preferred candidates can expect little crossover because it is a solidly Republican district with Republican candidates carrying 70% of the recent statewide competitive general elections in this proposed district. According to Dr. Handley, the AFFR House District 35 is not an effective Alaska Native district, and the AFFR plan is therefore also retrogressive. [See Volume 10, Folder 4.]<sup>9</sup>

The Plaintiffs in the state litigation, as well as Calista and a handful of other Alaska Native groups, have argued House District 38 in the Proclamation Plan is not effective.<sup>10</sup> These parties appear to base their assertions on so-called “new evidence” outlined in a report from cultural and linguistic anthropologist, Dr. Chase Hensel of Fairbanks. Dr. Hensel compares the turnout rates in seven homogenous Alaska Native precincts to two homogenous non-Alaska Native precincts in Amended Proclamation District 38. Based on this data, Dr. Hensel concludes non-Alaska Natives turned out at higher rates than Alaska Natives in the primary and general elections in this proposed district, thereby implying Amended House District 38 may not be effective. Dr. Handley, a Voting Rights Act expert, analyzed Dr. Hensel’s report, and discovered several problems with his approach. First, he examined only homogeneous precincts (no regression or ecological inference estimates were produced to estimate turnout rates for the entire district). Second, Dr. Hensel only considered turnout rates, ignoring cohesion and crossover rates. When Dr. Handley properly analyzed the recompiled election results for Amended Proclamation House District 38, taking into consideration the turnout rate, cohesion, and crossover rates, House District 38 is, in fact, effective. [See Volume 10, Folder 4.]

### **Pending Litigation, 28 C.F.R. § 51.27(0)**

Three lawsuits were filed in July 2011, challenging the constitutionality of the Proclamation Plan. Copies of the complaints were included in Org. Sub. Volume 1, Folder 7. None of these complaints alleged the Proclamation Plan had a discriminatory purpose or would have a discriminatory effect on the ability of Alaska Natives or members of other minority groups to elect candidates of their choice. In fact, Alaska Native corporations and individuals intervened on behalf of the Board to support and defend the Proclamation Plan.

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<sup>9</sup> The Aleutian Island district in the AFFR Plan, House District 38, is also only 34.6% NVAP and of questionable effectiveness.

<sup>10</sup> During the course of litigation, the Board has learned some of these groups may have already met with the DOJ and raised this objection. The Board anticipates these same groups will likely file similar objections in the coming weeks. Contrary to these objections, and for the reasons explained in this submission, as well as Dr. Handley’s report, the Amended Proclamation Plan does not retrogress the ability of Alaska Natives to elect their candidate of choice, and should therefore be precleared.

The results of the litigation to-date are explained in detail above and will not be repeated here. The relevant court decisions and orders can be found at Volume 10, Folder 5.

What is of importance is that after the Board adopted its Amended Proclamation Plan on April 5, 2012, the Board submitted the new plan to the Superior Court with a request for entry of final judgment affirming the plan as final and in full compliance with the orders of both the trial court and the Alaska Supreme Court. The trial court denied the Board's request, finding the Board failed to comply with the first step of the Supreme Court's mandated *Hickel* process. The Board immediately appealed the court's decision to the Supreme Court on May 1, 2012. The Board also filed a request to use the Proclamation Plan as an interim plan for the 2012 elections since it seemed unlikely the Amended Proclamation Plan could be approved and precleared in time. The Supreme Court, however, opted to use the Amended Proclamation Plan as the interim plan, without deciding whether the Board did in fact comply with the Court's *Hickel* process.

Currently, the Amended Proclamation Plan is to be used for the 2012 election cycle upon preclearance. The Alaska Supreme Court still has under advisement its decision as to whether the Board complied with the *Hickel* process, as well as the finality of the Amended Proclamation Plan.

#### **Prior Practice Preclearance, 28 C.F.R. § 51.27(p)**

The current Alaska legislative redistricting plan was adopted by proclamation dated April 25, 2002, and was precleared by the Attorney General by letter dated June 10, 2002. The 2011 Proclamation Plan was adopted on June 13, 2011, and precleared by the Attorney General by letter dated October 11, 2011.

#### **Demographic Information and Maps, 28 C.F.R. § 51.28 (a)(1) & (b)(1)**

The demographic information required by 28 CFR 51.28 (a)(1) for the effective Alaska Native districts in the Benchmark Plan can be found in Org. Sub. Volume 2, Folder 2. The same demographic information for each House and Senate district in the Amended Proclamation Plan is included in the population analysis, found in Volume 11, Folder 2. Volume 15, Folder 3 contains a documentation file with the information requested by 28 C.F.R. § 51.28(a)(5)(vii) for the data submitted in Volume 15, Folders 1 and 2.

Any alterations to precinct boundaries and polling places will be accomplished by the state's Division of Elections. The Alaska Attorney General will submit any such changes to the Department of Justice in a separate preclearance request.

Maps of each Amended Proclamation House district are included in Volume 11, Folder 3. In addition, Volume 14, Folder 1 contains the shapefiles for statewide, regional and district maps of the Amended Proclamation Plan. Org. Sub. Volume 2, Folders 3 and 4 contain statewide, regional and district maps for the Benchmark Plan. Volume 14,

Folder 2 contains the shapefiles for the Board's draft plans, or *Hickel* Plans. Volume 14, Folder 3 contain the shapefiles for the alternative plans submitted by third parties that the Board did not adopt.

The maps and accompanying data are also available on the Board's website at: <http://www.akredistricting.org/amendedproclamation.html>.

#### **Election Returns, 28 C.F.R. § 51.28 (d)**

Election returns for all statewide Alaska elections since the implementation of the 2001 redistricting plan are in electronic format in Org. Sub. Volume 9. Dr. Lisa Handley analyzed and summarized these election returns in her original report that was provided in Org. Sub. Volume 1, Folder 6, and again in her recent report, located in Volume 10, Folder 4 of the current submission.

#### **Publicity and Participation, 28 C.F.R. § 51.28 (f)**

All Board meetings were open to the public and held in accordance with Alaska's Open Meetings Act, Alaska Statute 44.62.310 et seq. The Board's prior submission described the public process that resulted in the 2011 Proclamation Plan, which was legally challenged. The Board regularly updated its website with information concerning the progress of the litigation. The entire trial transcript is available on the Board's website, <http://www.akredistricting.org>, as are copies of all the litigation documents, including the pleadings and decisions of the trial court and the Alaska Supreme Court.

The Board reconvened after the Supreme Court Order and Order of Remand from the Superior Court on March 26, 2012. The Board met every day thereafter through March 31, 2012, to develop a new plan of redistricting following the mandated *Hickel* process, which resulted in the adoption of its Amended Proclamation Plan in concept on March 31, 2012. Every one of the Board's meetings was open to the public, and was properly noticed using several different types of media, including email notices, Facebook announcements, and twitter tweets. The meetings were also streamed live on the internet. A few groups submitted plans before the Board adopted the Amended Proclamation Plan, which the Board reviewed and analyzed on the record. The Board posted copies of the third party plans, as well as the Board's *Hickel* Plans, and any and all comments received on the Board's website.

#### **Availability of the Submission, 28 C.F.R. § 51.28(g)**

Notice of the Board's preclearance request will be posted on its website, Facebook page, and sent to its followers on twitter, as soon as practicable after submission to the DOJ. Email notices will also be sent to all of those on the Board's email distribution list. The notice will indicate that the Board's submission, including all of the attachments, will be posted to and available for download from the Board's website. A complete copy of

this submission, including all appendices, will also be available for public inspection and copying at the Board's office.

**Minority Group Contacts, 28 C.F.R. § 51.28(h)**

A list of minority group contacts that participated in the redistricting process or may be interested in the redistricting plan is located in Volume 10, Folder 6. Throughout the litigation, a number of Alaska Native corporations and individuals participated as *amicus curiae*. A complete list of the Alaska Native organizations that participated as *amicus curiae* as well as their attorneys of record is contained in Volume 10, Folder 6.

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**ALASKA REDISTRICTING BOARD**  
Preclearance Request under Section 5 of the Voting Rights Act

**TABLE OF CONTENTS**

VOLUME 10

1. Letter of Submission
2. Submission Statement
3. Table of Contents
4. Report of Dr. Lisa Handley
5. Pending Litigation
  - a. Amended Proclamation Plan with Reconfigured Southeast Districts
    - i. Notice of Compliance
    - ii. Plan
    - iii. Reports
    - iv. District Maps
    - v. Regional Maps
    - vi. Plan Shapefiles
    - vii. Block Equivalency for House Districts
    - viii. Block Equivalency for Senate Districts
  - b. Court Orders
  - c. Legal Memorandum
  - d. Rebuttal Report by Dr. Lisa Handley
6. Contact Lists
7. Division of Election Notices

VOLUME 11

1. Amended Proclamation Plan
2. Amended Proclamation Reports
3. Amended Proclamation District Maps
4. Amended Proclamation Regional Maps
5. Amended Proclamation Thematic Maps

VOLUME 12

1. Public Notices
2. Online Outreach
3. Board Meetings – Schedule
4. Board Meetings – Notices
5. Board Meetings – Press Clips
6. Submission Announcement

VOLUME 13

1. Public Comment – Public Reading File

VOLUME 14

1. Amended Proclamation Plan
2. Board Draft Plans
  - a. Hickel\_01
  - b. Hickel\_02
  - c. Hickel\_03
  - d. Hickel\_04
3. Alternative Draft Plans
  - a. AFFR\_01
  - b. Calista\_01
  - c. Calista\_02
  - d. Calista\_03
  - e. Calista\_04
  - f. Calista\_05
  - g. Calista\_06
  - h. Calista\_07
  - i. RIGHTS\_01

VOLUME 15

1. Block Equivalency for House Districts
2. Block Equivalency for Senate Districts
3. Data Dictionary