City of Santa Fe, New Mexico

memo

To: ICRC

From: Zachary Shandler, Assistant City Attorney 35

Date: February 12, 2015

Re: Redistricting Principles

The Santa Fe Municipal Charter in Section 6.03 provides the following instruction to the Independent Citizens' Redistricting Commission. The instruction reads: "the commission's decisions will be based exclusively on the following principles in the following order of priority:

"Section 6.03 A. each district shall contain as nearly as possible substantially the same population based upon the most recent federal census."

This is the concept of "*Population Equality.*" It means that districts shall be designed within the population deviations allowed by law in accordance with the principle of "one person – one vote."

United States Supreme Court cases have ruled that when a deviation between the sizes of different districts is 10% or less, there is a presumption of legal validity. A deviation above 10% can be justified by a legitimate purpose such as preserving geographic cohesion. *Mahan v. Howell*, 450 U.S. 315 (1973) (the Supreme Court upheld redistricting of the Virginia House of Delegates that had a deviation of 16%); *Brown v. Tomson*, 462 U.S. 835 (1983) (the Supreme Court upheld Wyoming's redistricting of their House with an <u>average</u> deviation of 16% and a maximum deviation of 89%).

The New Mexico Supreme Court has stated:

> As mentioned earlier, the "one person, one vote" doctrine applied by the United States Supreme Court in *Reynolds v Sims,* 377 U.S. at 558, 84 S.Ct. 1362 (internal quotation marks and citation omitted), is grounded in the Equal Protection Clause. This doctrine prohibits the dilution of individual voting power by means of state districting plans that allocate legislative seats to districts of unequal populations, thereby diminishing the relative voting strength of each voter in overpopulated districts. While the United States Supreme Court has held that population equality is the paramount objective of apportionment for congressional districts, *Karcher v. Daggett,* 462 U.S. 725, 732–33, 103 S.Ct. 2653, 77 L.Ed.2d 133 (1983), state

> legislative district plans require only "*substantial*" population equality, *see Gaffney v. Cummings,* 412 U.S. 735, 748, 93 S.Ct. 2321, 37 L.Ed.2d 298 (1973). According to the results of the 2010 census, ideal population equality among each of the seventy House Districts in New Mexico would be 29,417 persons. However, such mathematical precision is not mandated *73 by the Equal Protection Clause. *See Reynolds,* 377 U.S. at 577, 84 S.Ct. 1362. Adherence to the requirements of the Voting Rights Act is essential, and justifiable considerations, such as incorporating legitimate and rational state policies relevant to our representative form of government, may result in deviations from ideal population equality. *See id.* at 577–81, 84 S.Ct. 1362.

Maestas v. Hall, 2012-NMSC-006, ¶ 14.

"Section 6.03 B. districting plans must avoid dilution of minority voting strength."

This is the concept of "*Minority Voting Rights.*" It means districts shall be designed to provide appropriate minority participation in the electoral process in accordance with the U.S. Constitution and federal voting rights legislation. Districts will not be: a. "Packed": design of districts in which overall minority voting power is diluted by concentrating minorities into an artificially small number of City Council districts; or b. "Cracked": design of districts in which minority voting power is diluted by spreading minorities over all or most school board districts so that minority populations are small in each district.

The New Mexico Supreme Court has stated:

> Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, prohibits any State or political subdivision from imposing any electoral practice "which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973(a). If districts are drawn in such a way that a bloc voting majority is usually able to defeat candidates supported by a politically cohesive, geographically insular minority group of sufficient size, those districts will not be in compliance with Section 2.

Maestas v. Hall, 2012-NMSC-006, ¶ 15.

"Section 6.03 C. communities of interest, including those based upon ethnic and economic factors, shall be preserved within a single district whenever reasonable."

This is the concept of "*Communities of Interest.*" It means that district boundaries shall consider ethnic and economic factors and shall be designed, if possible, to respect neighborhood boundaries for communities of interest within the City. However, there is tension among all of these principles: accounting for communities of interest cannot occur if it will cause population equality, compactness, contiguity or minority voting rights to be violated.

It is my understanding that the Santa Fe county commission is the governmental body that adopts voting precincts that are identified on voting maps. New Mexico law prevents local public bodies from splitting precincts in map making unless necessary to comply

with federal law or to preserve communities of interest. The law reads: "A local public body, when creating or redrawing districts, shall not split a precinct into two or more districts for any elected office unless necessary to comply with federal law or to preserve communities of interest." NMSA 1978, § 1-3-12(E)

"Section 6.03 D. each district shall be formed of compact, contiguous territories. The total length of all district boundary lines shall be as short as possible."

This is the concept of "*Compactness and Contiguity.*" It means that plans shall vary in their levels of compactness, but in no case shall there be non-contiguity and instead compactness shall be maximized. The total length of all district boundary lines shall be as short as possible. This also touches on the concept of *"Gerrymandering."* This infamous term means that districts shall be designed to avoid contorted districts unless necessary to accomplish legally more relevant concerns.

"Section 6.03 E. districting plans shall compensate for U.S. census undercount of minorities."

This concept can best be handled by your Independent Consultant who can explain the mathematical work done on counting and undercounts.

In conclusion, how do you balance out all of these considerations? This memorandum has identified a lot of interesting legal language like "substantial" and "unless necessary" that opens the door to some discretionary judgments in the process. The New Mexico Supreme Court has provided some further clues:

> 1. Although ideal population equality and whether a plan dilutes the vote of any racial minority are primary considerations in drawing a districting map, minor deviations from absolute population equality are tolerated to permit states to pursue legitimate and rational state policies relevant to our representative government.
> *Maestas v. Hall*, 2012-NMSC-006, ¶ 21.
>
> 2. Because the promotion of legitimate and rational state policies will often necessitate "minor deviations" from absolute population equality, the United States Supreme Court has held that such minor deviations alone are insufficient to establish a prima facie case of invidious discrimination. *Voinovich,* 507 U.S. at 161, 113 S.Ct. 1149. So what constitutes a minor deviation? In *Brown v. Thomson,* 462 U.S. 835, 842, 103 S.Ct. 2690, 77 L.Ed.2d 214 (1983), the United States Supreme Court held that redistricting plans with a maximum population deviation below ten percent fall within the category of minor deviations that are insufficient to establish a prima facie violation of the Equal Protection Clause.
> *Maestas v. Hall*, 2012-NMSC-006, ¶ 22.
>
> 3. Compactness and contiguity are important considerations because these requirements help to reduce travel time and costs. These considerations make it easier for legislative candidates to campaign for office, and once they are elected, to maintain close and continuing contact with the people they represent. It has also been

suggested that compactness and contiguity greatly reduce, although they do not eliminate, the possibilities of gerrymandering.
Maestas v. Hall, 2012-NMSC-006, ¶ 35.

4. Similarly, considering political and geographic boundaries furthers our representative government. Minimizing fragmentation of political subdivisions, counties, towns, villages, wards, precincts, and neighborhoods allows constituencies to organize effectively and decreases the likelihood of voter confusion regarding other elections based on political subdivision geographics.
Maestas v. Hall, 2012-NMSC-006, ¶ 36.

5. With respect to the legislative policy of preserving communities of interest, we recognize that this criterion may be subject to varying interpretations. We interpret communities of interest to include a contiguous population that shares common economic, social, and cultural interests which should be included within a single district for purposes of its effective and fair representation. The rationale for giving due weight to clear communities of interest is that "[t]o be an effective representative, a legislator must represent a district that has a reasonable homogeneity of needs and interests; otherwise the policies he supports will not represent the preferences of most of his constituents."
Maestas v. Hall, 2012-NMSC-006, ¶ 37.

If you have any further questions, the purpose of hiring the Independent Consultant was to provide a resource with experience and wisdom in helping you prepare a map that can best meet all of the above-stated requirements. As the Commission goes forward in helping to determine issues like "communities of interest" it would be best to make your request for different maps via the Chairperson (as opposed to city GIS staff) (i.e. to ensure all members are working on the same maps – same year, same vintage, etc).

SHANDLER, ZACHARY A.

From: Michael Sharp <msharp@rpinc.com>
Sent: Thursday, February 12, 2015 1:31 PM
To: SHANDLER, ZACHARY A.
Subject: Materials for Redistricting Commission
Attachments: SF_City_Council_2014_with_annexed_areas.pdf; Santa Fe City_2002_TotVAP.pdf; Santa Fe City_2012_TotVAP.pdf; Santa Fe City_map_letter_2002.pdf; Santa Fe City_map_letter_2012.pdf

Hi Zach,

During the Redistricting Commission meeting last week, members asked for an illustration of which areas in Santa Fe grew faster than others. Another request was for a map of the City Council districts with an overlay of the newly annexed areas. Attached are five documents for the Redistricting Commission. Below are brief descriptions of each. We will go over them in much more detail during Thursday's meeting as part of our presentation.

SF City Council 2014 with annexed areas pdf: This is a map showing the current City Council districts (assuming all of the annexed area is placed in District 3) with annexed areas outlined in yellow and crosshatched.

Santa Fe City 2002 TotVAP pdf: This table shows the 2010 Census population counts for the City Council districts as they existed prior to redistricting in 2011 (i.e. the districts as they were drawn for the 2002 through 2010 elections). When we assisted the City with redistricting in 2001 following the 2000 Census, the districts were all substantially equal in population. This table shows the population of the districts 10 years later. In essence, the table illustrates how District 3 grew much faster than the other three districts from 2000 to 2010.

Santa Fe City map letter 2002 pdf: This map shows the City Council districts as they existed prior to redistricting in 2011. The deviation numbers are based on the 2010 Census and show each district's deviation from the ideal population. Districts 1, 2 and 4 were too small and had to gain population, while District 3 was too big and needed to lose population.

Santa Fe City 2012 TotVAP pdf: This table shows the 2010 Census population counts for the City Council districts after redistricting in 2011 (i.e. the districts as they were drawn for the 2012 election). The table illustrates how the populations of the four districts were substantially equal post-redistricting.

Santa Fe City map letter 2012 pdf: This map shows the City Council districts as they existed after redistricting in 2011. Districts 1, 2 and 4 increased in size because they had to gain population, while District 3 shrunk because it needed to lose population.

If you have any questions, please feel free to contact me or Brian.

Thanks,
Michael

Michael Sharp
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Santa Fe City Council
2012 Districts

2010 Census

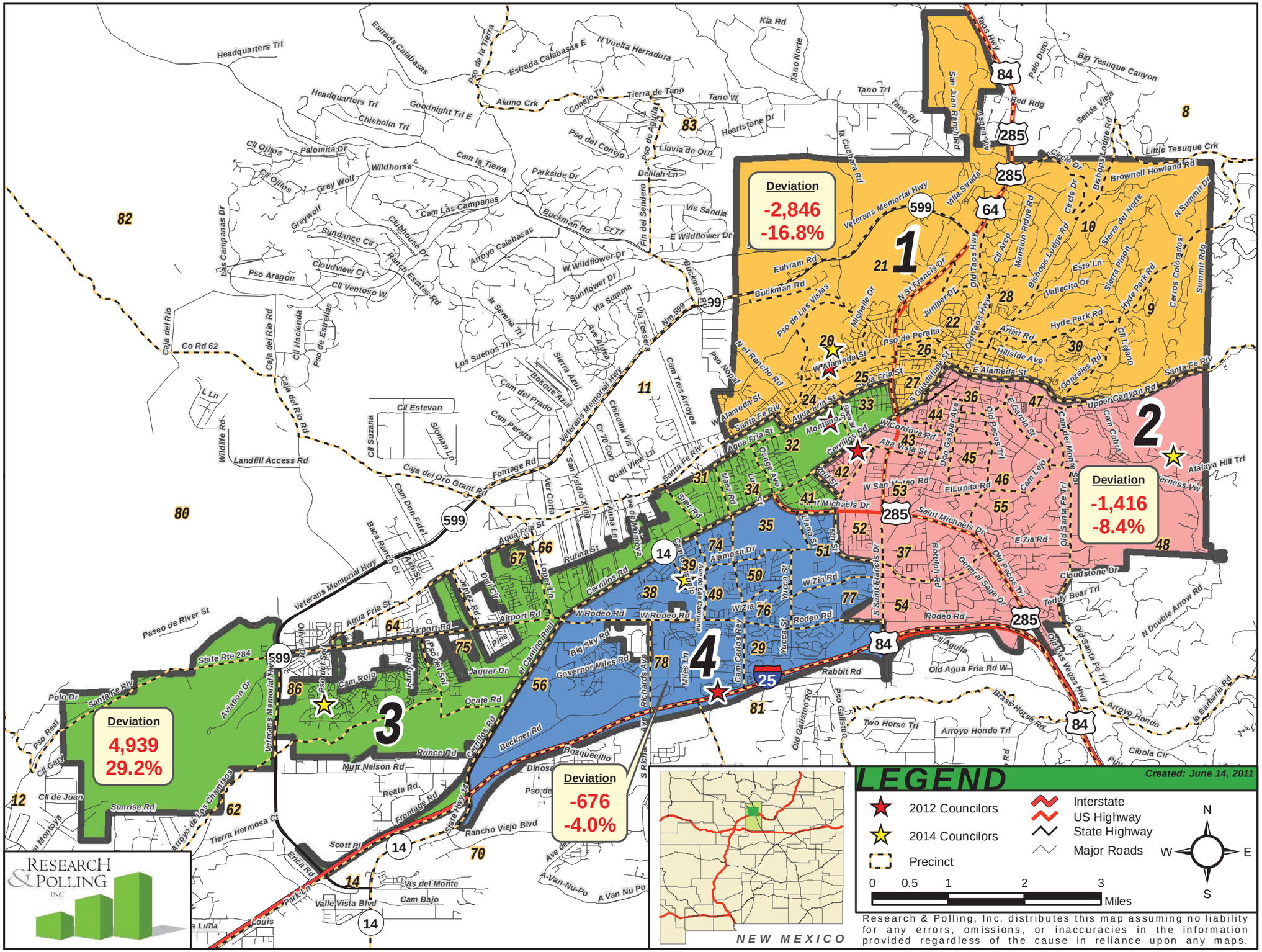
				Non-Hispanic Origin				
District	Pop	Deviation	Hispanic	White	Native American	Black	Asian	Other Races
1	17,256	319 1.9%	6,054 35.1%	10,336 59.9%	216 1.3%	134 0.8%	204 1.2%	312 1.8%
18+	15,077		4,947 32.8%	9,407 62.4%	185 1.2%	113 0.7%	187 1.2%	238 1.6%
2	17,283	346 2.0%	6,426 37.2%	9,980 57.7%	198 1.1%	120 0.7%	256 1.5%	303 1.8%
18+	14,584		4,894 33.6%	9,012 61.8%	156 1.1%	97 0.7%	205 1.4%	220 1.5%
3	16,942	5 0.0%	12,028 71.0%	3,981 23.5%	294 1.7%	141 0.8%	268 1.6%	230 1.4%
18+	12,015		7,911 65.8%	3,411 28.4%	220 1.8%	121 1.0%	204 1.7%	148 1.2%
4	16,268	-669 -3.9%	8,448 51.9%	7,053 43.4%	182 1.1%	134 0.8%	199 1.2%	252 1.5%
18+	13,282		6,393 48.1%	6,315 47.5%	145 1.1%	114 0.9%	158 1.2%	157 1.2%
Totals	67,749	Ideal: 16,937	32,956 48.6%	31,350 46.3%	890 1.3%	529 0.8%	927 1.4%	1,097 1.5%
18+	54,958		24,145 43.9%	26,145 51.2%	706 1.3%	445 0.8%	754 1.4%	763 1.2%

Santa Fe City Council
2002 Districts

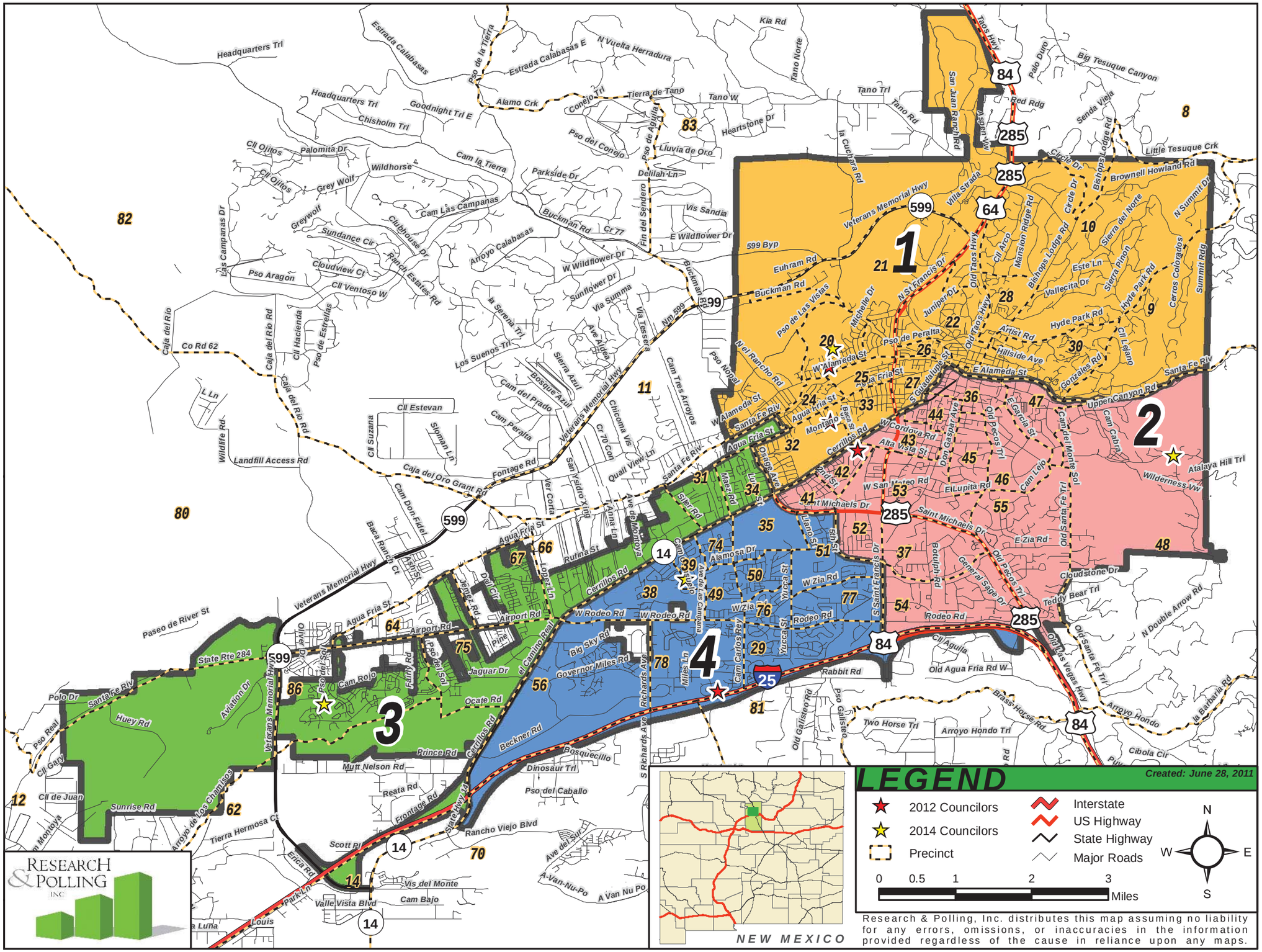
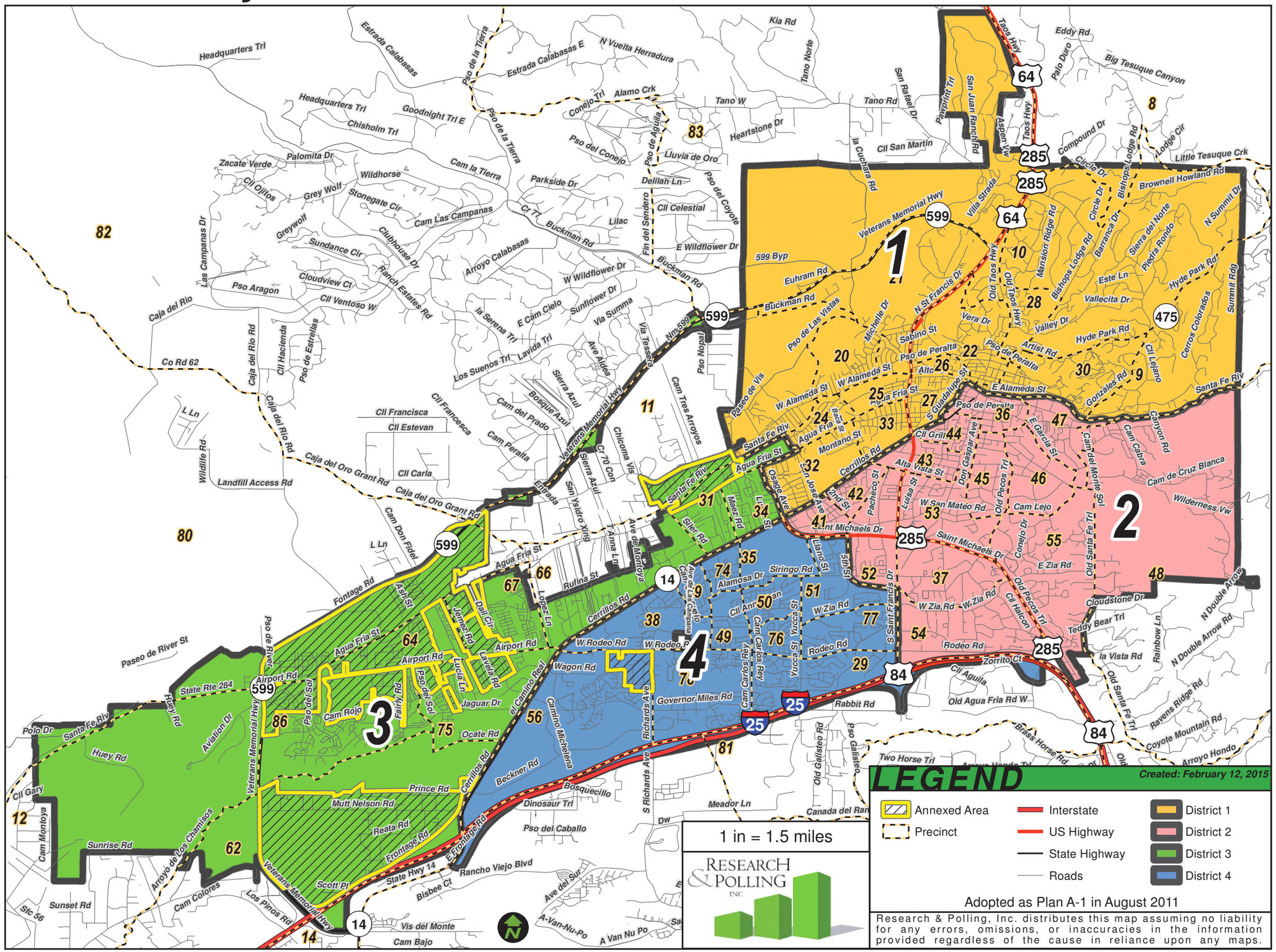
2010 Census

					Non-Hispanic Origin									
District	Pop	Deviation		Hispanic		White		Native American		Black		Asian		Other Races	
1	14,091	-2,846	-16.8%	4,454	31.6%	8,945	63.5%	155	1.1%	112	0.8%	178	1.3%	247	1.8%
18+	12,357			3,635	29.4%	8,147	65.9%	128	1.0%	93	0.8%	168	1.4%	186	1.5%
2	15,521	-1,416	-8.4%	4,892	31.5%	9,797	63.1%	186	1.2%	114	0.7%	248	1.6%	284	1.8%
18+	13,416			3,926	29.3%	8,850	66.0%	145	1.1%	92	0.7%	200	1.5%	203	1.5%
3	21,876	4,939	29.2%	15,169	69.3%	5,555	25.4%	367	1.7%	169	0.8%	302	1.4%	314	1.4%
18+	15,909			10,197	64.1%	4,833	30.4%	288	1.8%	146	0.9%	228	1.4%	217	1.4%
4	16,261	-676	-4.0%	8,441	51.9%	7,053	43.4%	182	1.1%	134	0.8%	199	1.2%	252	1.5%
18+	13,276			6,387	48.1%	6,315	47.6%	145	1.1%	114	0.9%	158	1.2%	157	1.2%
Totals	67,749	Ideal:	16,937	32,956	48.6%	31,350	46.3%	890	1.3%	529	0.8%	927	1.4%	1,097	1.5%
18+	54,958			24,145	43.9%	28,145	51.2%	706	1.3%	445	0.8%	754	1.4%	763	1.2%

Santa Fe City Council 2002



Santa Fe City Council 2012



Santa Fe City Council 2014