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# Preliminary Report to the Local Boundary Commission

Concerning the Legislative Review Petition to Annex Approximately 245 Square Miles of Popof Island and its  
Surrounding Waters to the City of Sand Point

March 21, 2017





This preliminary report was written by Brent Williams, staff to the Local Boundary Commission (LBC or Commission). The staff (LBC staff or staff) is part of the Division of Community and Regional Affairs (DCRA) of the Alaska Department of Commerce, Community, and Economic Development (Commerce or Department). Readers can also find the report at:

<https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2016CityofSandPointAnnexationPetition/Reports.aspx>

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**Graphic illustration only:** this publication's maps are intended to be used only as general reference guides. Source documents remain the official record.

Cover photo is a scenic view of Sand Point. All photos courtesy of DCRA.

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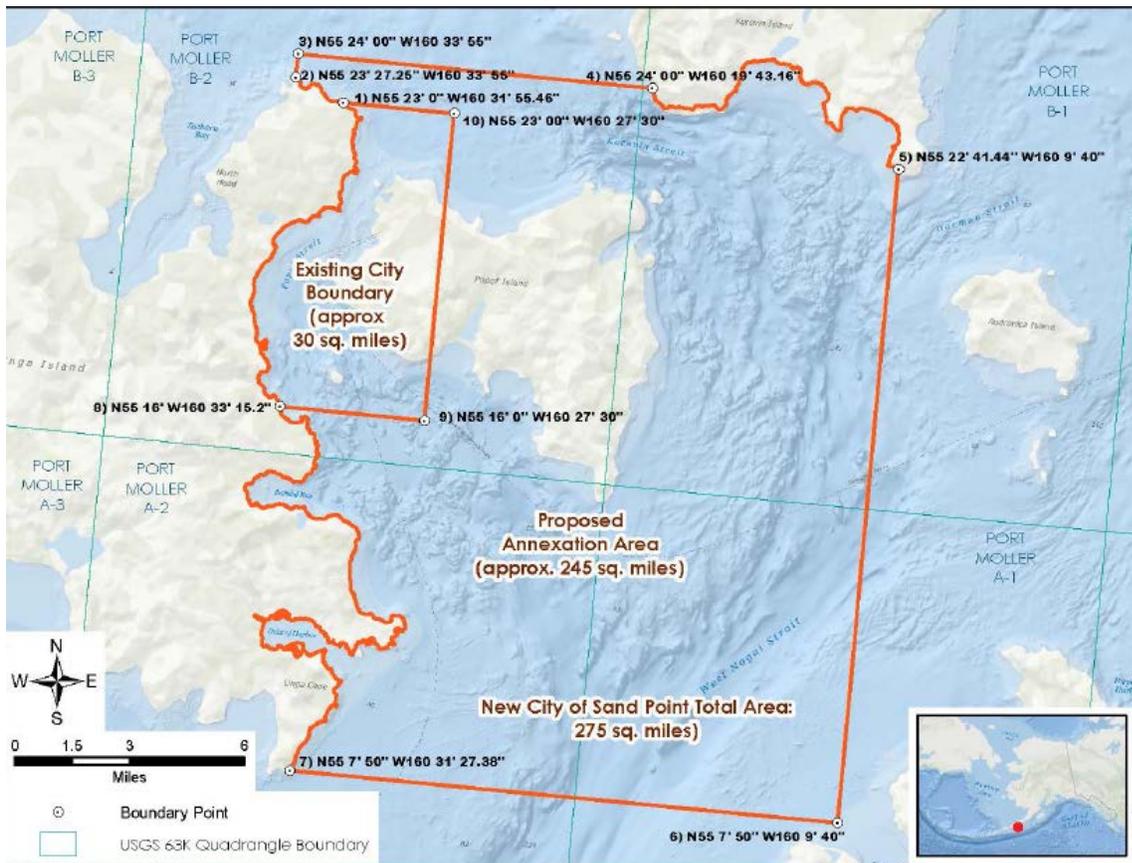
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# Executive Summary

The LBC has the responsibility of deciding boundary issues from a statewide perspective. 3 AAC 110.440 and 110.530 states that the Department will receive petitions, and if accepted, write a preliminary report and a final report regarding a subject petition. Each report contains the Department’s findings and recommendation regarding the petition. The City of Sand Point, located in the Aleutians East Borough, submitted a petition to annex 245 square miles encompassing the rest of Popof Island, and the waters surrounding it. This report provides the relevant background on the petition and addresses the required regulatory city annexation standards.

The LBC must find that the petition meets all of the standards in order to approve the annexation petition. The Department reviewed and analyzed the petition, the responsive brief, the reply brief, and other materials in making its recommendation. The Department also reviewed past reports and decisions for consistency, including the 1993 Sand Point annexation petition. Any person or entity with the capacity or sue or be sued may file a responsive brief. Per 3 AAC 110.480, a responsive brief is one that contains “facts and analyses favorable or adverse to the petition.” A reply brief is one written by the petitioner addressing all written comments and responsive briefs.

The annexation standards in this summary are a synopsis from Chapter 3 of the full report.



Existing City and Territory Proposed for Annexation

- 
- 1. Need 3 AAC 110.090** - *The territory must exhibit a reasonable need for city government. Also, territory may not be annexed to a city if essential municipal services can be provided more efficiently and more effectively by another existing city or by an organized borough.*

**The territory does not exhibit a reasonable need for city government.**

- The territory consists of 27.5 square miles of land and 217.5 square miles of water. The territory is largely unpopulated, with no residents on the water, and with at most two residents on the land. Sand Point only provides the territory emergency services. It does not appear to provide these services very often, and when it does, it provides these services to only part of the territory. The territory already receives those services without being part of the City. For those reasons the territory does not demonstrate a need for city government.
- The City (Sand Point or the City) is the only incorporated city within the proposed territory. The next nearest city is King Cove, 74 air miles away. The City is within Aleutian East Borough (AEB), which is a second class borough. AS 29.35.210(c) and (d) empower a second class borough to provide police services. Although the AEB is empowered to provide emergency services, it does not. It could, however, provide services effectively and efficiently on a regional basis if it chose to. For that reason, the petition does not meet 3 AAC 110.090(b).

- 
- 2. Character (3 AAC 110.100)** - *The territory must be compatible in character with the annexing city.*

**The Department finds that the character of the territory is not compatible with the character of the existing city because it finds few connections between the territory and the City. The petition does not meet the standard.**

- Most of the territory comprises of water with no residents living on it. The City's limited ties with the water include that Sand Point residents fish there, and that the City provides limited emergency services there. These do not suffice to show compatibility of character between the water portion of the territory and the City.
- The territory has no community. It has at most two residents (at Pirate Cove). That Sand Point residents use the rest of Popof Island for hunting, fishing, and recreational activities does not suffice to show compatibility of character with that part of the territory.

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**3. Resources 3 AAC 110.110** - *The economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level.*

**The Department finds that the economy within the proposed expanded boundaries of the city includes the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. The petition meets the standard.**

- The territory is largely uninhabited and the city does not plan to extend any new services to the territory or increase the level of emergency services that it now provides. No new functions or expenses will be associated with the proposed annexation. For that reason, the annexation will not cost Sand Point any more than it spends now. Instead, Sand Point would gain tax revenue to pay for the emergency services that it already provides.
- The City has a 2015 population of 951. This is larger than many Alaskan cities. The City provides such services as public safety, public works, planning/zoning, and a harbor. Fishing is very important to the economy. 103 residents hold 236 fishing permits. Based on those data, the City's population, and the services that it already provides, the Department finds that the City has sufficient human resources to provide essential municipal services.

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**4. Population (3 AAC 110.120)** - *The population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government.*

**The Department finds that the population within the proposed expanded boundaries of the city is sufficiently large and stable to support extending city government, and that the petition meets the standard.**

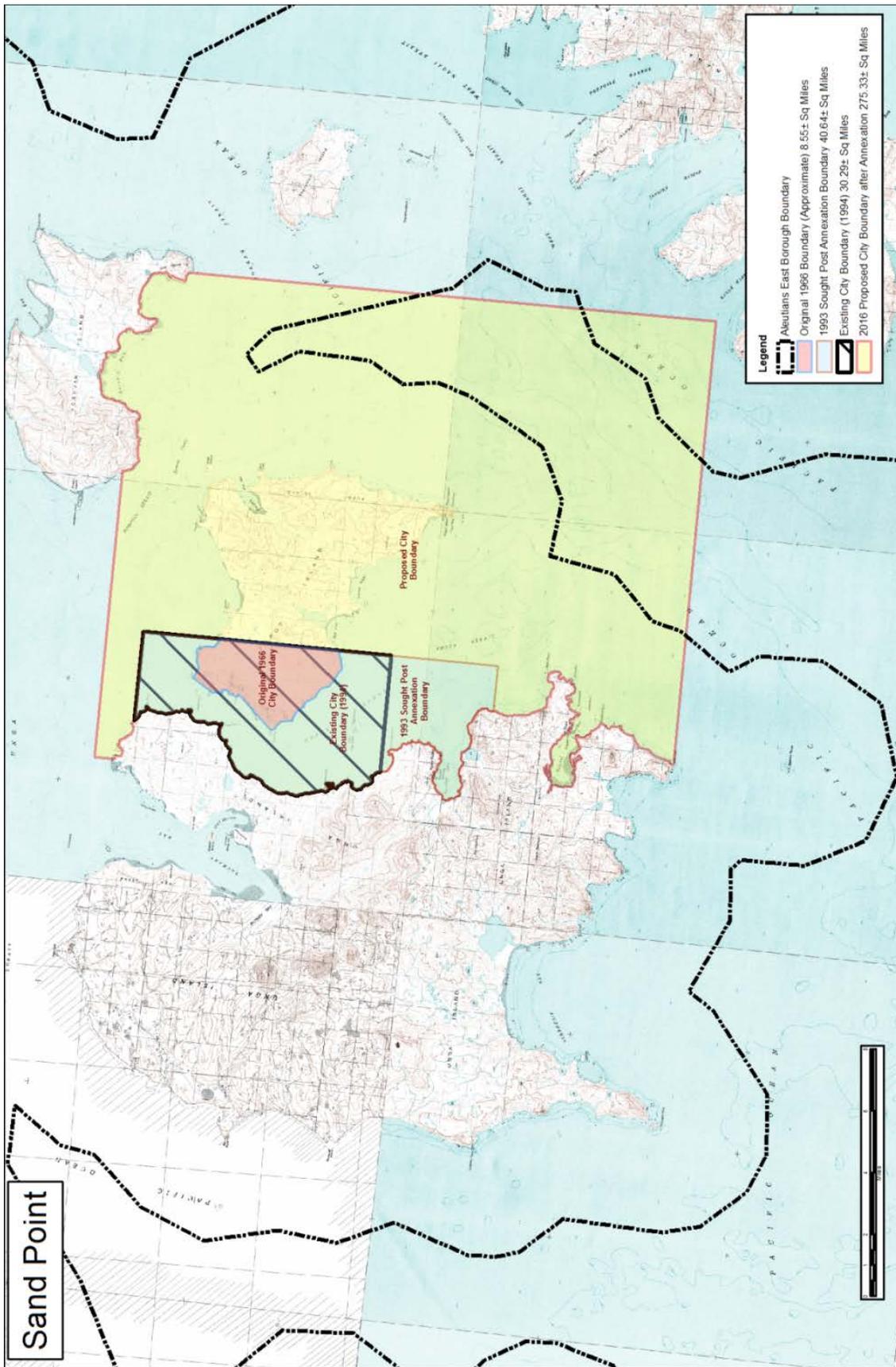
- The data show that the City's population is steadily increasing. The steady increase indicates that the population is stable as the standard requires. The age distribution shows a healthy balance of age groups. This indicates stability of the population. It also includes a number of young people, which indicates future growth. The Sand Point school has had a steady student enrollment of 105 to 111 over the past 10 years. Based on these numbers, the school population is stable.

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**5. Boundaries (3 AAC 110.130)** – *The boundaries must be appropriate for cities in several specified ways.*

**This section has several factors that the petition must meet— (a), (b), (c), and (d). The petition must meet all of 3 AAC 110.130. The Department finds that while the petition meets (a) and (b), it does not meet (c) and (d). For that reason, the petition does not meet 3 AAC 110.130.**

- Sand Point would be 275 square miles after annexation. It does not plan to increase its level of services. The satellite photomap shown under 3 AAC 110.130 Boundaries in Ch. 3 indicates that Popof Island contains streams and a reservoir. The city’s proposed expanded boundaries have all the land and water necessary to provide essential municipal services on an efficient, cost-effective level under 3 AAC 110.130(a).
- As evidenced by the map of the existing city and the territory proposed for annexation, the Department finds that the territory is contiguous to the City, and that the annexation does not create enclaves under 3 AAC 110.130(b).
- The City’s proposed expanded boundaries are not on a scale suitable for a city under 3 AAC 110.130(c)(1). The territory proposed for annexation is an entire geographical region or large unpopulated area under 3 AAC 110.130(c)(2).
- In 1985 and 1986, the LBC approved annexation of large amounts of seawater for Togiak, Unalaska, and St. Paul. The LBC did not then have a regulation analogous to 3 AAC 110.130(c) restricting the size of cities. The Commission could and did approve city annexations that were larger than subsequent city annexations. The present petition can also be distinguished from the 1993 Sand Point annexation petition because now Sand Point seeks to annex a much larger territory, one that is not on a scale suitable for city government.



Map Showing the Territory that Sand Point Petitioned to Annex in 1993, and the Territory that the LBC Approved

- The October 23, 1987, AEB certificate of incorporation states that its water boundaries extend to the limits of the state’s jurisdiction under AS 44.03.010. That statute states that Alaska’s offshore jurisdiction extends to the high seas, to the extent that the United States claims that jurisdiction. The 1953 federal Submerged Lands Act gave the states jurisdiction three miles from the coast. As a political subdivision of the state, the AEB’s borders cannot extend further than the state’s jurisdiction. If the AEB boundaries extend only three miles from the coast, then the AEB borders only extend three miles from Popof, Korovin, and Andronica Islands. In that case, the AEB borders would not include all of the waters that the City seeks to annex (see the above map and the map under 3 AAC 110.130), causing the City’s proposed boundaries to overlap the AEB boundary. That means than the City’s petition needs to comply with the standards and procedures either to annex the enlarged city to the AEB or to detach the enlarged city from the AEB. In other words, the city must be completely either inside or outside the borough, not straddling it. The petition does not comply with those standards and procedures.
- 

**6. Best Interests of the State (3 AAC 110.135)** - *The proposed annexation must be in the best interests of the state under AS 29.06.040(a).*

**The Department finds that the proposed annexation is not in the best interests of the state.**

- The proposed annexation would financially hurt the AEB due to a decreased share of the state raw fish tax. Such a loss is not in the best interests of the state. The proposed annexation will not relieve the state of the responsibility of providing local services. The proposed annexation is not on a scale suitable for city government as the City would consist mainly of unpopulated seawater. None of those circumstances are in the best interests of the state.
- 

**7. Legislative Review (3 AAC 110.140)** - *Territory that meets the annexation standards may be annexed to a city by the legislative review process if the commission also determines that any one of eight specified circumstances exists.*

**The Department finds that the petition meets none of the eight circumstances listed under 3 AAC 110.140. For that reason, the petition does not meet 3 AAC 110.140.**

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**8. Transition Plan (3 AAC 110.900)(a-f)** - *The petition must present an adequate transition plan demonstrating the annexing city's intent and capacity to extend essential municipal services in the shortest practicable time after annexation.*

**3 AAC 110.900** requires that petition present a transition plan as part of a boundary change. The Department finds that the petition does present such a transition plan.

- Sand Point already provides emergency services to the territory and will continue to do so. Due to the fact that there is no municipality or entity already providing services to the largely unpopulated territory, the transition plan suffices in this case.
- 

**9. Statement of Nondiscrimination (3 AAC 110.910)** - *The proposed change may not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.*

**The Petition meets this standard.**

- The effect of the petition will not deny anyone the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The petition meets 3 AAC 110.910.
- 

**10. Essential Municipal Services (3 AAC 110.970)** - *essential municipal services for a city, must be reasonably necessary to the community; promote maximum, local self-government; and cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state. . .*

- For the first criterion, the City provides essential municipal services that are reasonably to the existing community of Sand Point. For the second criterion, those emergency services do not provide maximum local self-government because the territory is largely unpopulated. Lastly, the AEB can provide those services if it chooses to do so.
- 

**11. Determination of Maximum Local Self-Government (3 AAC 110.981)** - *The proposed boundary change must promote maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska.*

**The Department finds that the petition does not promote maximum local self-government, and so the petition does not meet this standard.**

- The City will provide few services to the largely unpopulated territory. The proposed annexation would not extend local government to territory or population.

**12. Minimum Number of Local Government Units (3 AAC 110.982)-** *The proposed boundary change must promote a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska.*

**The petition promotes a minimum number of local government units, and so meets this standard.**

- The Department finds that the proposed annexation will not create any new governments or overlapping governmental units because Sand Point is already within the AEB. The existing City is enlarging its boundaries rather than promoting the incorporation of a new city or creation of a new borough service area. The petition meets this standard.

The Department finds that the petition does not meet all of the city annexation standards. For that reason and others, the Department recommends that the LBC deny the petition.

<b>Standard</b>	<b>Met or not met (X or √)</b>
Need	X
Character	X
Resources	√
Population	√
Boundaries	X
Best Interests of the State	X
Legislative Review	X
Transition	√
Statement of Nondiscrimination	√
Determination of Essential Municipal Services	X
Determination of Maximum Local Self-Government	X
Determination of a Minimum Number of Local Government Units	√

**Matrix of Whether Standards Are Met or Not**

# Chapter 1 – Background and Proceedings

## 1.1 The Local Boundary Commission

In Alaska, as in other states, city boundaries are flexible. Cities may expand or retract their boundaries to adapt to changing conditions. Annexation permits a city to enlarge its boundaries to accommodate growth and development or to address other needs.

Alaska law provides for objective analysis of annexation petitions by an independent body. The law promotes consideration of interests beyond those of the local government and the territory involved. Alaska’s constitution created the Local Boundary Commission (“Commission” or “LBC”) to review annexation petitions and other municipal boundary issues.

The LBC consists of five members, one from each of Alaska’s four judicial districts, plus one member who serves at large. Commission members serve without compensation and at the pleasure of the governor.

The members of the LBC are:

Lynn Chrystal, chair, serving at large

John Harrington, serving from the First Judicial District

Robert Harcharek, serving from the Second Judicial District

Debra Mack, serving from the Third Judicial District

Lavell Wilson, serving from the Fourth Judicial District

While the Division of Community and Regional Affairs (“DCRA”), part of Commerce, provides technical and administrative support to the Commission, the LBC is completely independent of DCRA, the Department, and other state agencies. The LBC is required to determine whether the proposed annexation meets the applicable regulatory standards. It is not bound to follow the Department’s recommendation in this report.

The Department investigates annexation proposals and prepares reports conveying its recommendation to the Commission. To ensure that interested parties’ rights to due process and equal protection are maintained, laws strictly limit contact with the LBC on all pending municipal boundary proposals. Communications must be submitted to the Commission through the staff.

## 1.2 Reasons for Annexation

- Petitioners typically include a list of reasons for the proposed boundary change. Sand Point seeks to annex the rest of Popof Island and its surrounding waters for economic,

anticipated health and safety, and cultural reasons (petition, p. 23). It has identified a number of reasons why the LBC should approve the annexation petition:

- To address inequities in the City's tax system by taxing the Sand Point fishers for the services that they receive in the territory.
- For Sand Point to receive fish tax revenue rather than another community.
- To enable the City to better provide emergency services to the rest of Popof Island.
- Traditional use of the territory by Sand Point residents for commercial, subsistence, cultural, and recreational activities.
- Maintaining the community fabric because former residents of Squaw Harbor, Unga Village, and Korovin Island now live in Sand Point.
- Receiving royalties from potential mining on Popof Island near Red Cove, and to recover costs to the City for any such mining.

### **1.3 Procedures for Annexation Petition**

The LBC can approve, amend, or deny a petition. If the Commission denies a petition, then the process stops. If the LBC approves or amends a petition, then the petition process continues. How it continues depends on the petition method used. There are two petition methods: local option and legislative review. Under the local option method for annexation petitions, if the LBC approves the petition, then the annexing city will hold a vote in the city, and another separate vote will be held in the territory to be annexed. If a majority of voters in *each* election approves the annexation, then the annexation goes into effect once it is certified.

If the legislative review method is used and the Commission approves the petition, the LBC will send its decision to the Legislature. The Legislature then has 45 days to disapprove the decision by a majority of each house. If the Legislature does not disapprove the decision, then the annexation goes into effect at the end of the 45 days.

Article X, Section 12 of the Constitution of the State of Alaska provides that:

The [Local Boundary Commission] may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

The Alaska Supreme Court has ruled that the intention of Article X, Section 12 of Alaska's constitution, and its implementing statute, AS 44.47.567 (now AS 44.33.812), was to provide an objective administrative body to make state-level decisions regarding local boundary changes. That

court has held in several cases that the legislative review method of annexation stems from the conviction among those who wrote Alaska’s constitution that “local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.”<sup>1</sup> The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community.<sup>2</sup>

The Alaska Supreme Court stated why the constitutional framers created the LBC:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: those local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:

. . . lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.<sup>3</sup>

Sand Point submitted a petition to annex approximately 245 square miles of Popof Island and its surrounding waters. Sand Point is using the legislative review method. The petitioner chooses the method, but the LBC can change the method. As the territory proposed for annexation is largely unpopulated, the Department believes that it is inappropriate to hold an election there due to the small number of voters, if any, in proportion to the size of the territory. The Department believes that the legislative review method is the appropriate method here. Under the legislative review method, the earliest that the proposed annexation could go into effect is March 2018.

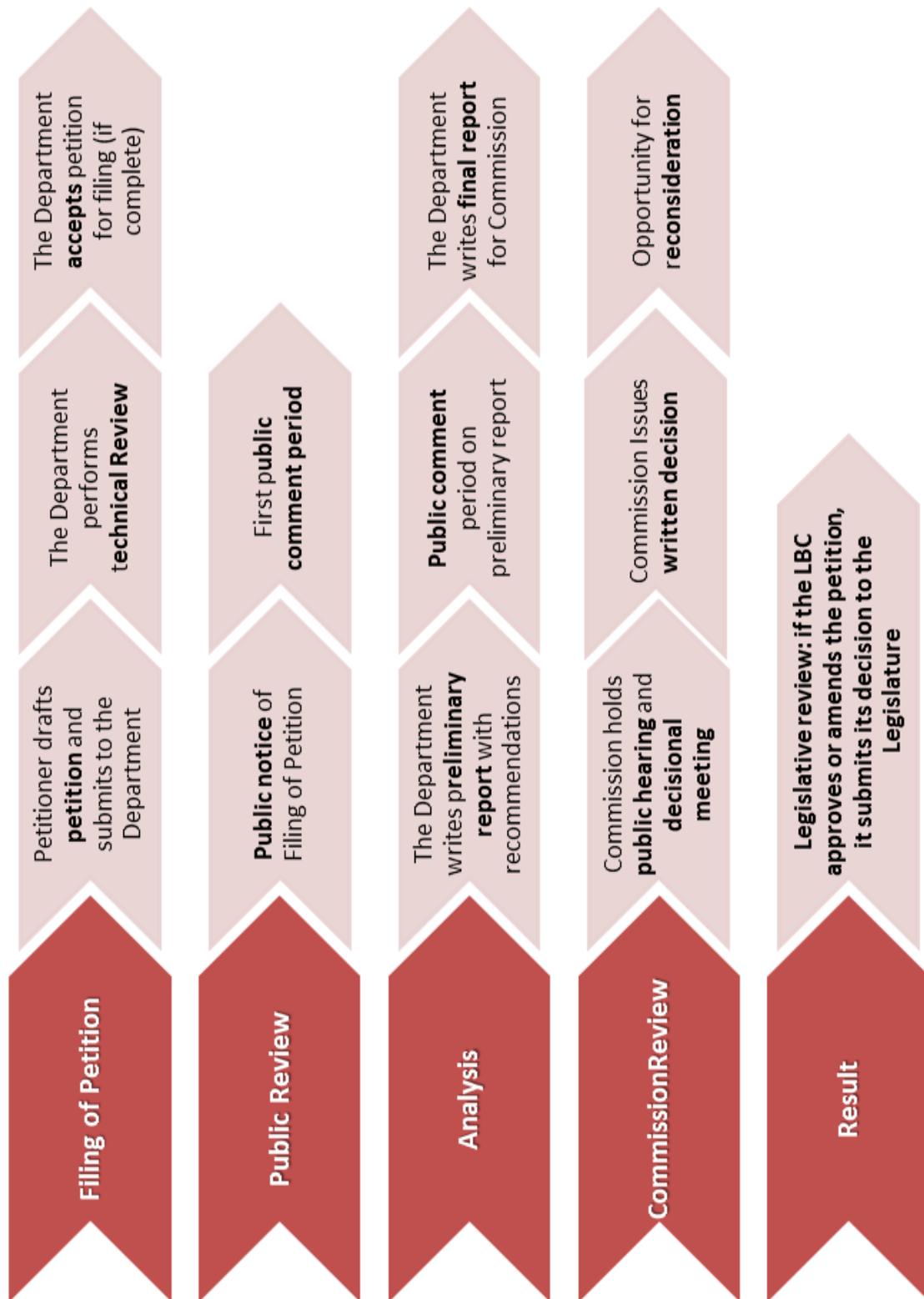
Below is a chart that explains the petition’s process and proceedings.

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<sup>1</sup> *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962); *Oesan v. City of Dillingham*, 439 P.2d 180 (Alaska 1968); *City of Douglas v. City & Borough of Juneau*, 484 P.2d 1040 (Alaska 1971)

<sup>2</sup> *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, 368 P.2d 540 (Alaska 1962).

<sup>3</sup> *Fairview Public Utility District No. 1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962).



Flowchart of Petition Processes

## 1.4 Current Petition Proceedings

- April 15, 2016: the City of Sand Point filed a petition to annex 245 square miles of Popof Island and its surrounding waters, mainly to be able to levy a raw fish tax. On May 29, 2016, LBC the Department completed the technical review for Sand Point in a timely manner. The Department found that the petition was incomplete, and returned it with the required LBC chair's concurrence to City Administrator Andy Varner to complete.
- June 17, 2016: Sand Point resubmitted the petition. The Department undertook a second technical review.
- July 19, 2016: with the LBC chair's required concurrence, the Department sent the petition back for more metes and bounds information.
- October 4, 2016: the Department formally accepted the petition. That started the public comment period. The Department received a comment each from the Unga Corporation and Amy Foster, and a responsive brief from Larry and Caleb Hemenover. All opposed the proposed annexation. No person or entity submitted a comment or responsive brief that supported the proposed annexation. The City then filed a reply brief. The comments and briefs are available at <https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2016CityofSandPointAnnexationPetition/PublicCommentsandBriefs.aspx>.
- The Unga Corporation objected to the size of the proposed annexation. It was also concerned that the proposed annexation would hinder the future use and economic growth on Unga Island. Ms. Foster wrote that she was concerned about the size of the proposed annexation. The Hemenovers were concerned about the possibility of future taxes, and how they feel that they are treated by the City.
- In its reply brief the City addressed the Unga Corp.'s apprehensions by stating that its proposed annexation did not include a large geographical region. It also wrote that Unga Corp. lands were not included in the territory. Sand Point addressed Ms. Foster's concerns by replying that other communities have used annexation as a source of revenue. It further wrote that the annexation should help the City to enhance its public services, not to decrease them. The reply brief addressed the Hemenovers' misgivings by writing that the fish tax already existed and that the annexation would not increase it. The reply brief also stated that Sand Point had no intent of levying a property tax.

## 1.5 Future Proceedings

- March 21, 2017: the Department releases this preliminary report. This starts a public comment period.

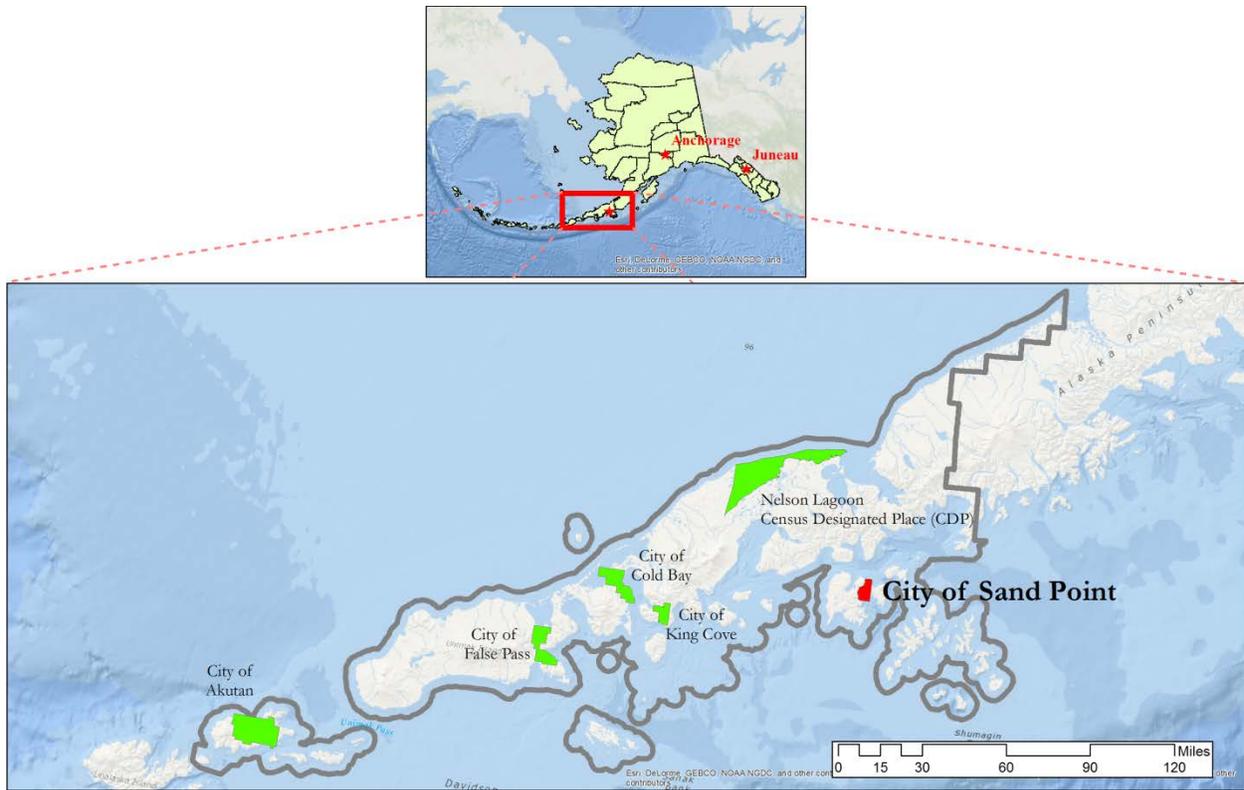
- April 25, 2017: the public comment period ends.
- June 6, 2017: the Department will issue a final report.
- July 11, 2017: the LBC will hold a public hearing and decisional meeting
- August 1, 2017: the Commission will meet to approve or amend a draft written decision.
- August 10, 2017 (or before): the LBC will mail the decision. That starts an 18-day period for anyone to ask for reconsideration on the grounds articulated in 3 AAC 110.580, and starts a 30-day period for the Commission to order reconsideration on its own motion. If the LBC approves the petition, it will present that decision to the Legislature within the first 10 days of the Legislature's regular session in January 2018.

See Appendix C for the Petition Schedule. This schedule is subject to change by the Commission chair.

# Chapter 2 – Profile of Sand Point and of the Territory Proposed for Annexation

## 2.1 Location

Sand Point is a first class city in southwestern Alaska. It is located in the Aleutians East Borough (“AEB”) 556 air miles from Anchorage. The city lies on the eastern edge of Popof Island, and includes Popof Strait. Popof Strait comprises the waters between Popof Island and Unga Island to its west. Sand Point has approximately 7.8 square miles of land and 21.1 square miles of water for a total of approximately 29 square miles. The territory proposed for annexation (“territory”) has approximately 27.5 square miles of land and 217.5 square miles of water for a total of 245 square miles.



Location of Sand Point

## 2.2 Geography and Climate

The 2004 City of Sand Point Comprehensive Community Development Plan (comprehensive plan) states “[m]uch of Sand Point is confined to a one-mile long, half-mile wide hilly peninsula extending

into Popof Strait, forming Humboldt Harbor.”<sup>4</sup> Popof Island has some small mountains, with a maximum elevation of 1,480 feet.<sup>5</sup> “Its shoreline is rocky and irregular, characterized primarily of cliffs and bluffs. There are few natural protected bays on the island; a manmade breakwater protects the existing boat harbor at the mouth of Humboldt Slough.”<sup>6</sup>

Cool summers and no dry season characterize Sand Point’s humid subarctic continental climate.<sup>7</sup> It gets 42 inches of rain and 72 inches of snow, compared to a US average of 39 inches of rain and 26 inches of snow.<sup>8</sup>

## 2.3 History and Culture

According to the DCRA Community Database Online, Sand Point was founded in 1898 by a San Francisco fishing company for use as a cod fishing station and trading post. The first residents of the community were Aleuts from surrounding villages as well as Scandinavian fishers. In the early 1900s Sand Point served as a repair and supply center for gold mining. In the 1930s fish processing became the primary economic activity. In 1946 the Aleutian Cold Storage built a halibut plant in Sand Point. In 1966 the city incorporated. The 1933 St. Nicholas Chapel, a Russian Orthodox church, is on the National Register of Historical Places.<sup>9</sup>

According to page 9 of the petition, the Unga Corporation is the village corporation for Unga Island. It is also the surface estate owner on Unga Island. The Shumagin Corporation is the village corporation for Sand Point. It is the surface owner for Popof Island, and for parts of Unga Island. Shumagin also manages a bison hunt on Popof Island. The Aleut Corp. is the subsurface owner on both Unga and Popof Islands.

## 2.4 Transportation

“Sand Point has a state-owned airport with an asphalt runway. Direct flights to Anchorage are available. Marine facilities include a 25-acre boat harbor with four docks, 134 boat slips, a harbormaster office, barge off-loading area, and a 150-ton lift. Regular barge services supply the community. The state ferry operates between Sand Point and Unalaska, Akutan, False Pass, Cold Bay, and King Cove between May and October.”<sup>10</sup>

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<sup>4</sup> <https://www.commerce.alaska.gov/dcra/DCRARepoExt/RepoPubs/Plans/SandPoint-CP-2004.pdf>, p. 15.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> <https://weatherspark.com/averages/33052/Sand-Point-Alaska-United-States>.

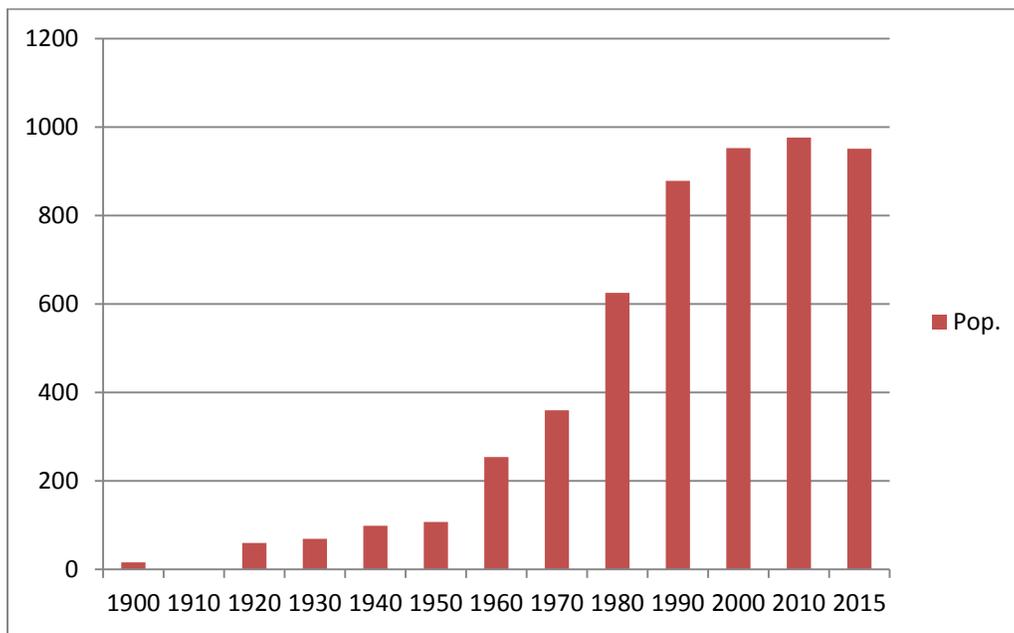
<sup>8</sup> [http://www.bestplaces.net/climate/city/alaska/sand\\_point](http://www.bestplaces.net/climate/city/alaska/sand_point).

<sup>9</sup> <https://www.commerce.alaska.gov/dcra/DCRAExternal/community/Details/7a28bb85-2a63-417e-90ef-521d02ed6b92>.

<sup>10</sup> *Id.*

## 2.5 Population

The City's 2015 population is 950.<sup>11</sup> As of the 2010 census, 17.01 percent of its residents are white, 34.73 percent are Asian, and 39.04 percent are Native.<sup>12</sup> As shown by the below chart, Sand Point's population has steadily increased since 1920. Sand Point's population temporally increases when a large number of seasonal workers arrive to work in the fishing boats and in the fish processing plants. Of the 976 people residing in Sand Point in 2010, 350 or 35.9 percent live in group quarters.<sup>13</sup> The group quarters can house seasonal workers. The 2004 comprehensive plan states that the busiest fish processing months are January, February, August, and September, when the downtown area can increase by 150 to 300 people.<sup>14</sup>



Sand Point Population by Year

The territory sought for annexation by the City of Sand Point is largely unpopulated. At most, it has two residents. Neither the U.S. Census Bureau nor the Alaska State Demographer provides population projections for cities, but the State Demographer does provide them for boroughs. It estimated the AEB's population for each five-year period between 2015 and 2045.<sup>15</sup> In 2015, AEB estimated population is 2,854, with an estimated median age of 44.1. In 2045, the projected population is 2,621, with an estimated median age of 45.0. The estimated population drops from

<sup>11</sup> <http://live.laborstats.alaska.gov/pop/index.cfm>.

<sup>12</sup> <https://www.commerce.alaska.gov/dcra/DCRAExternal/community/Details/7a28bb85-2a63-417e-90ef-521d02ed6b92>.

<sup>13</sup> <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

<sup>14</sup> <https://www.commerce.alaska.gov/dcra/DCRARepoExt/RepoPubs/Plans/SandPoint-CP-2004.pdf>, p. 21.

<sup>15</sup> <http://live.laborstats.alaska.gov/pop/projections.cfm>.

2,854 in 2015 to 2,621 in 2045, or a decrease of 233 (8.16 percent). As Sand Point's population has increased, the Department does not use the AEB's declining projected population to predict Sand Point's projected population. The Department notes, however, that Sand Point's population has increased in every federal Census since 1920.

## 2.6 Economy



**Trident fish processing plant**

Commercial fishing activities are the heart of the local culture and economy. The comprehensive plan states that Sand Point has historically been tied to the fishing industry, and likely will be in the future.<sup>16</sup> Trident Seafood maintains a cold storage, and fish processing plant in Sand Point, and Peter Pan has a support facility there.<sup>17</sup> Trident is the only processing plant on the island; it hires most of its workers from outside of Alaska.<sup>18</sup> It operates year-round, and seasonally employs between 50 and 400 people.<sup>19</sup> Sand Point has a large transient population engaged in fishing and cannery work.

In 2015, Sand Point had 454 residents aged 16 and over. 259 residents or 57.0 percent were employed. Of those workers, 169 worked in the private sector, and 90 in local government (Sand Point is the borough seat). The most common occupations were local government (34.7 percent),

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<sup>16</sup> <https://www.commerce.alaska.gov/dca/DCRARepoExt/RepoPubs/Plans/SandPoint-CP-2004.pdf>, p. 24.

<sup>17</sup> <http://www.sandpointak.com/>.

<sup>18</sup> Comprehensive plan, p. 27.

<sup>19</sup> <http://www.tridentseafoods.com/Our-Story/Our-Plants>.

manufacturing (21.6 percent), trade, transportation, and utilities (12.7 percent), and educational and health services (10.8 percent).<sup>20</sup>

Of the 43 percent who were not employed, some were presumably in school, retired, or chose not to work (e.g. staying at home). That is supported by the fact that there were only 51 unemployment insurance claimants, instead of 259.

Regarding land use, the Shumagin Corporation is the primary surface land owner on Popof Island. Sand Point has a large subdivision known as “the Meadows,” which is also where the single K-12 school and the Unga Tribal building are. Most of the City’s residents live there. As of 2004, the Meadows is underdeveloped, so there is room for future growth (comprehensive plan, p. 32).



**Peter Pan storage facility**

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<http://live.laborstats.alaska.gov/alari/details.cfm?yr=2015&dst=01&dst=03&dst=04&dst=06&dst=12&dst=09&dst=11&dst=07&r=6&b=1&p=278#ds03>.



### 3.2 Need (3 AAC 110.090)

- (a) *The territory must exhibit a reasonable need for city government. In this regard, the commission may consider relevant factors, including*
- (1) *existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation;*
  - (2) *existing or reasonably anticipated health, safety, and general welfare conditions;*
  - (3) *existing or reasonably anticipated economic development;*
  - (4) *adequacy of existing services;*
  - (5) *extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities; and*
  - (6) *whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the annexing city.*

#### ***Views Stated by Sand Point***

The petition states that the City provides public safety services to both Popof Island and to the surrounding waters when a need arises and when the situation is reasonable (petition, p. 20). If an accident or emergency were to occur in the territory, Sand Point's police, fire, and emergency services would be the first responder (petition, p. 23). The City states that it has a 32' aluminum fireboat called the *Rainmaker* that responds to emergencies in the waters around Popof Island (petition, p. 5). It plans to extend other services such as planning and tax levying (petition, p. 42). Although the petition states that the City provides services "all over the proposed annexation territory," (petition, p. 5), the places that it mentions receiving services to do not include the considerable waters to the east and south of Popof Island. Page 5 of the petition mentions that the City has provided emergency services on Unga Island. How far the City travels to provide emergency services can depend on the weather and amount of open water.<sup>21</sup> The City states that the furthest it has provided services to is about 10-12 miles away in Korovin Bay.<sup>22</sup> Sand Point concedes that based on the distance and extent of the emergency, the Coast Guard or the Alaska State Troopers (AST) would be the appropriate responder (petition, p. 20).

#### ***Views Stated by Respondents***

Not all agree that the territory needs city services. Larry and Caleb Hemenover state that they reside in Pirate Cove on the northern shore of Popof Island. They wrote in their December 7, 2016, responsive brief that they would receive no benefits, yet would be part of a city that in their view has demonstrated indifference to what they characterize as "their community" in the past. While Pirate

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<sup>21</sup> January 26, 2017, email from City Administrator Andy Varner.

<sup>22</sup> February 10, 2017, email from Andy Varner.

Cove has buildings, Pirate Cove resident Larry Hemenover indicated that he did not think the *Rainmaker* could help put out fires there because the buildings are on shore.<sup>23</sup>

### *Department Analysis*

The largely unpopulated territory consists of 27.5 square miles of land and 217.5 square miles of water. In examining the existing and reasonably anticipated economic and social conditions and development, the primary economic activity in the territory is fishing. There are at most two residents in the territory and there is no indication of future population growth in the territory. There is existing fishing in the territory, as well as a quarry on Popof Island. The State of Alaska manages the fishing and it fluctuates from year to year based on market and biological conditions. The proposed annexation is unlikely to affect the economic development in the territory on the basis of fishing and/or development of the quarry. While the petition mentioned possible mining near Red Cove, it did not state that the mining was a likely occurrence over the next 10 years.

In examining the existing or reasonably anticipated health, safety, and general welfare conditions, the City intends to provide planning services to the territory. Planning of such a large territory is a regional function more appropriate for the existing borough than the city. As most of the territory is water, planning will not benefit most of the territory and is not a service that the territory needs. Providing emergency services to the territory is more appropriate for the borough because providing services to such a large territory is more of a regional, and hence a borough function.

Regarding the adequacy of existing services, the only service that Sand Point currently provides the territory is extraterritorial emergency services. Based on independent research, the Department concurs that Sand Point has a fireboat, a police department, and a volunteer search and rescue (SAR) team. The City does not appear to provide these emergency services very often, and when it does, it provides these services to only part of the territory. As opposed to its successful 1993 annexation petition, the City has not submitted any log or data listing the number of times that it has provided emergency services to the territory.

That circumstance differs from Sand Point' 1993 annexation petition. In 1993, Sand Point sought to annex 40.64 square miles of water between Popof and Unga Islands (see Exhibit E for a map). In that petition, the City listed the number of visits to the city subsidized health clinic by the fishers and processing workers. That helped show a need for city government. The Commission approved that petition (after it amended it to reduce the size of the annexation). The same circumstance does not exist here. While the City states that it provides emergency services to Unga Island, Unga is outside of the territory, and so services provided there are not relevant to this standard.

“Sand Point residents also noted that even though they may have certain pieces of rescue equipment there is no one in the community trained to use some of them.”<sup>24</sup> The Department is concerned that

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<sup>23</sup> February 2, 2017, phone call with Larry Hemenover.

if need is based on emergency services, that the community is not trained to use all of its emergency equipment to best assist the territory.

Regarding whether owners or residents of the territory already receive services, there are no owners or residents in the water portion of the territory. “Owners” cannot include boat owners, as 3 AAC 110.990(12) defines “property owner” solely as an owner of real property. Further, the territory already receives those emergency services without being part of the City. The Department finds that the largely unpopulated territory will not receive more benefits by becoming part of the City.

In conclusion for 3 AAC 110.090(a), the Department finds that Sand Point has not made the case that the territory exhibits a reasonable need for city government. For that reason, the Department finds that the petition does not meet the standard of 3 AAC 110.090(a).

*(b) Territory may not be annexed to a city if essential municipal services can be provided more efficiently and more effectively by another existing city or by an organized borough, on an areawide basis or nonareawide basis, or through a borough service area that, in the determination of the commission, was established in accordance with art. X, sec. 5, Constitution of the State of Alaska.*

Sand Point is the only city within the proposed territory. There is no other nearby city. While conceivably the AEB could provide those services, it does not do so. According to its website, the AEB does not provide any emergency services.<sup>25</sup> There is no indication that it plans to provide these services. It could provide those services, however, if it chose to do so. It would be more efficient for the borough to do so on an areawide or nonareawide basis because of efficiencies of scale. For those reasons, the Department finds that the petition does not meet 3 AAC 110.090(b).



**Scenic Winter View of Sand Point**

In conclusion, the Department finds that the Petition meets neither (a) and (b), and so the petition does not overall meet 110.090 Need.

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<sup>24</sup> <https://icelawproject.org/news-events/december-2016-report-from-sand-point-talking-circle-on-local-engagement-in-search-and-rescue/>.

<sup>25</sup> <http://www.aleutianseast.org/>

### **3.3 Character (3 AAC 110.100)**

*The territory must be compatible in character with the annexing city. In this regard, the commission may consider relevant factors, including the*

- (1) land use, subdivision platting, and ownership patterns;*
- (2) salability of land for residential, commercial, or industrial purposes;*
- (3) population density;*
- (4) cause of recent population changes;*
- (5) suitability of the territory for reasonably anticipated community purposes;*
- (6) existing and reasonably anticipated transportation patterns and facilities; and*
- (7) natural geographical features and environmental factors.*

#### ***Views Stated by Sand Point***

Sand Point contends that there are ties between the City and the territory. The petition states that Sand Point residents use Popof Island year-round to hunt bison, pick berries, hike, beachcomb, and other activities. Sand Point also states that its residents fish in the waters surrounding Popof Island. The City states that cultural and historic ties exist between the City and the territory because former inhabitants of Unga Island and Korovin Island moved to Sand Point (petition, p. 6).

#### ***Department Analysis***

In analyzing possible ties between Sand Point and the territory, the Department examines the population density and any recent population changes. The territory is largely unpopulated; it has at most two residents. That is two residents (at best) for a territory consisting of 245 square miles of land and water, or 0.0082 persons per square mile (assuming that Larry and Caleb Hemenover do actually reside at Pirate Cove on the north shore of Popof Island). As the territory is largely unpopulated, there have been no recent population changes, nor are any expected. The territory has no residents on the water that makes up the bulk of the territory. The territory has no community (although the Hemenovers identified their holdings at Pirate Cove as such).

In analyzing land use and its suitability for community purposes, the Department finds that the City's primary ties with the land portion of the territory (the part of Popof Island outside city limits) are that Sand Point residents visit the rest of Popof Island to hunt, fish, and for recreational activities. The Hemenovers say that city services will not help them. They have expressed no ties between them and the City. Although residents from the Unga and Korovin Islands moved to Sand Point and continue to use their ancestral grounds for subsistence purposes, Unga Island and Korovin Island are not within the territory. The cultural ties between the former inhabitants of those islands and the City are therefore irrelevant.

The City's primary ties with the water are that some Sand Point residents fish there, and that the City provides limited emergency services there. Some of the places that the petition mentions as receiving emergency services are outside of the territory, and so have no bearing on the annexation petition. Further, the City doesn't provide emergency services to the entire water portion of the territory.

Beyond mentioning some of the types of emergency services it has provided and where it has provided them, the City has not provided any detailed documentation about how often or where it provides those emergency services. Without that documentation, the Department cannot ascertain how often and where the City provides emergency services.

Sand Point operates a landfill in the territory and the Shumagin Corp. operates a quarry near the landfill. The City maintains a road leading to the landfill and quarry. Other than these, the territory has little permanent infrastructure. Given the subsistence activities in the territory, there are trails tied to the activities. The water has no roads and no infrastructure that could tie it to the City.

In conclusion, the Department finds that the character of the territory is not compatible with the character of the existing city because there are insufficient ties between Sand Point and the territory. The petition does not meet the standard of 3 AAC 110.100 Character.

### **3.4 Resources (3 AAC 110.110)**

*The economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including the*

- (1) reasonably anticipated functions of the city in the territory being annexed;*
- (2) reasonably anticipated new expenses of the city that would result from annexation;*
- (3) actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory;*
- (4) feasibility and plausibility of those aspects of the city's anticipated operating and capital budgets that would be affected by the annexation through the period extending one full fiscal year beyond the reasonably anticipated date for completion of the transition set out in 3 AAC 110.900;*
- (5) economic base of the territory within the city after annexation;*
- (6) valuations of taxable property in the territory proposed for annexation;*
- (7) land use in the territory proposed for annexation;*
- (8) existing and reasonably anticipated industrial, commercial, and resource development in the territory proposed for annexation;*
- (9) personal income of residents in the territory and in the city; and*
- (10) need for and availability of employable skilled and unskilled persons to serve the city government as a result of annexation.*

#### ***Views Stated by Sand Point***

According to the petition, Sand Point will provide only minimal services to the territory and hence the City would incur few new expenses. Annexation will bring in additional income to the City through a fish tax, while producing minimal new expenses. Sand Point would have an economy sufficient to provide essential municipal services after annexation. It cites fishing stocks and potential mining as possibly adding value to the post-annexation city. City staff has the capacity to provide expanded essential municipal services and projects (petition, pp. 20-27).

The City budget indicates that its public safety expenditures will not increase long term after the proposed annexation. Although the public safety expenditures increase by \$5,000 the first year after the proposed annexation (FY18), in FY19 they return to their FY17 level (petition, p. 19).

***Department Analysis***

In analyzing Sand Point’s financial and human resources, the Department notes that the territory is largely uninhabited. According to its website, the City provides such services as public safety, public works, planning/zoning, and a harbor. The City does not plan to extend any new services to the territory. Sand Point already provides limited emergency services to at least part of the territory. There is no indication that the City plans to increase the level of emergency services that it now provides. The annexation will not cost Sand Point any more than it spends now. Instead, Sand Point would garner tax revenue to pay for the emergency services that it already provides.

In analyzing Sand Point’s financial and human resources, the Department examines the City’s budget. AS 29.20.640 requires every city and borough to submit its current annual budget and audit to the Department. The below chart shows those budget data that the City has provided in its required annual financial reports. The chart indicates that the City has produced a balanced budget or a surplus since FY14.

	2017 Draft	2016 Final	2015	2014 Amendment	2013 Amendment	2012 Amended
Revenues	4,154,337	4,387,322	4,594,671	4,610,803	17,786,904 <sup>26</sup>	5,104,979
Expenditures	4,154,337	4,386,377	4,594,671	4,456,397	17,999,287	5,177,305
Balance	0	500	0	154,406	(212,383)	(72,326)

**City of Sand Point Fiscal Year Budgets<sup>27</sup>**

The City’s budgets, based on information that the City submits annually to the Department, indicate deficits in FY12 and FY13. In FY14, the City enjoyed a surplus. In the years since, Sand Point’s revenues have roughly equaled its expenditures. When the Department asked why there was no longer a deficit, City Administrator Andy Varner replied that the City was doing a better job of collecting what it was owed, and that the City had raised taxes a few years ago.<sup>28</sup>

The City expects to garner about \$68,000 in raw fish tax from the territory, and about \$12,000 in sales tax on processed fish, for a total of \$80,000. Sand Point expects a drop in Community

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<sup>26</sup> Both Revenues and Expenditures include \$10,250,000 for harbor construction and \$3,600,000 for School Loop Road and other projects. Subtracting those amounts from Revenues leaves \$3, 936,904. Subtracting those amounts from Expenditures leaves \$4,149, 287.

<sup>27</sup> <https://www.commerce.alaska.gov/dcr/dcrepoext/Pages/FinancialDocumentsLibrary.aspx>.

<sup>28</sup> January 26, 2016, phone call with Mr. Varner.

Assistance Payment from \$138,000 in FY16 to \$50,000 in FY19. That is an \$88,000 decrease. The expected \$80,000 increase in fish tax revenue will nearly erase that revenue decrease.

It is not clear if the City has calculated any increase in the state fish tax. It is important to look at the revenue from state fish taxes. With the state fishery business tax (AS 43.75.130) (informally called a raw fish tax),<sup>29</sup> the state keeps 50 percent for the general fund. The Department of Revenue (“DOR”) distributes the other 50 percent to the municipality in which the fish is processed (including delivering fish to a tender). If the processing occurs in a city located within a borough, the city and borough split the 50 percent. DOR’s “Fiscal Year 2016 Shared Taxes and Fees Annual Report” shows that the AEB and Sand Point received \$1,606,523 and \$200,421 respectively from that fund.<sup>30</sup> The annexation would result in a loss of income to the AEB, but an increase to the City, for processing occurring within Sand Point’s expanded boundaries. See the Best Interests of the State for a further analysis. The Department has no data for the raw fish tax in the territory and cannot determine the precise gain to the City and the resulting loss of income to the AEB.

In analyzing Sand Point’s financial and human resources, the Department examines the economic base, development, and land use of the post-annexation boundaries. In 2015, Sand Point had 454 residents aged 16 and over. 259 residents or 57.0 percent were employed. Of those workers, 169 worked in the private sector, and 90 in local government (Sand Point is the borough seat). The most common occupations were local government (34.7 percent), manufacturing (21.6 percent), trade, transportation, and utilities (12.7 percent), and educational and health services (10.8 percent).<sup>31</sup> Of the 43 percent who were not employed, some were presumably in school, retired, or chose not to work (e.g. staying at home). That is supported by the fact that there were only 51 unemployment insurance claimants, instead of 259.

Sand Point’s economy heavily depends on fishing and fish processing. Trident has a plant in Sand Point that processes salmon and groundfish. It can daily process 350,000 pounds of salmon or 1.5 million pounds of pollack. The plant operates year round, with employment ranging from 50 to 400 workers.<sup>32</sup> Peter Pan operates a storage and support facility in Sand Point, but no longer processes there after the cannery burned down years ago.<sup>33</sup> In 2015, 103 Sand Point residents hold 236 fishing permits. Residents caught \$17,430,182 worth of fish.<sup>34</sup> In other economic development, the Shumagin Corporation operates a quarry in the territory, and another near the harbor.

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<sup>29</sup> *Preliminary Report to the Local Boundary Commission Regarding the Proposal to annex by local option, approximately 396 square miles of water and 3 square miles of land to the City of Dillingham*, p. 68.

<sup>30</sup> <http://tax.alaska.gov/programs/documentviewer/viewer.aspx?1301r>.

<sup>31</sup>

<http://live.laborstats.alaska.gov/alari/details.cfm?yr=2015&dst=01&dst=03&dst=04&dst=06&dst=12&dst=09&dst=11&dst=07&r=6&b=1&p=278#ds03>.

<sup>32</sup> <http://www.tridentseafoods.com/Our-Story/Our-Plants>.

<sup>33</sup> March 13, 2017, email from DCRA Local Government Specialist V John Nickels.

<sup>34</sup> [https://www.cfec.state.ak.us/fishery\\_statistics/earnings.htm](https://www.cfec.state.ak.us/fishery_statistics/earnings.htm).

In analyzing Sand Point's financial and human resources, the Department examines the residents' population, personal skills and income. The City has a 2015 population of 951. This is larger than many Alaskan cities. It is also larger than half of Alaska's first class cities. Per the DCRA Community Database Online, the private sector employs 65 percent of workers, and the public sector employs 35 percent of workers, with total wages of \$8.38 million.<sup>35</sup>

In conclusion, the City does not plan to expand its services. The territory is largely uninhabited and needs few services. No new functions or expenses will be associated with the proposed annexation. Sand Point's economy is heavily, but not exclusively, based on fishing. Local government is also a large employer. The Shumagin Corp. also operates two quarries. The City's population exceeds that of at least other Alaskan communities and of at least two boroughs. Based on those data, the Department finds that Sand Point has sufficient financial and human resources to provide essential municipal services. The Department finds that the petition meets 3 AAC 110.110.

### **3.5 Population (3 AAC 110.120)**

*The population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission may consider relevant factors, including*

- (1) census enumerations;*
- (2) duration of residency;*
- (3) historical population patterns;*
- (4) seasonal population changes;*
- (5) age distributions;*
- (6) contemporary and historical public school enrollment data; and*
- (7) nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends.*

#### ***Views Stated by Sand Point***

The petition states that "Sand Point's population is large enough to support extending city government, particularly with a healthy school population, historically stable population patterns, and a steady seasonal population influx during high commercial fishing activity" (petition, p. 27). Mr. Varner states that the seasonal population of fishers and cannery workers could increase by as much as 1,000 during the summer salmon season.<sup>36</sup> Annexation will not change the City's population (petition, p. 42). As to whether any people live in the territory proposed for annexation, Mr. Varner states that Larry and Caleb Hemenover are out of state Idaho residents who own property in Pirate Cove, but do not reside in Pirate Cove.<sup>37</sup>

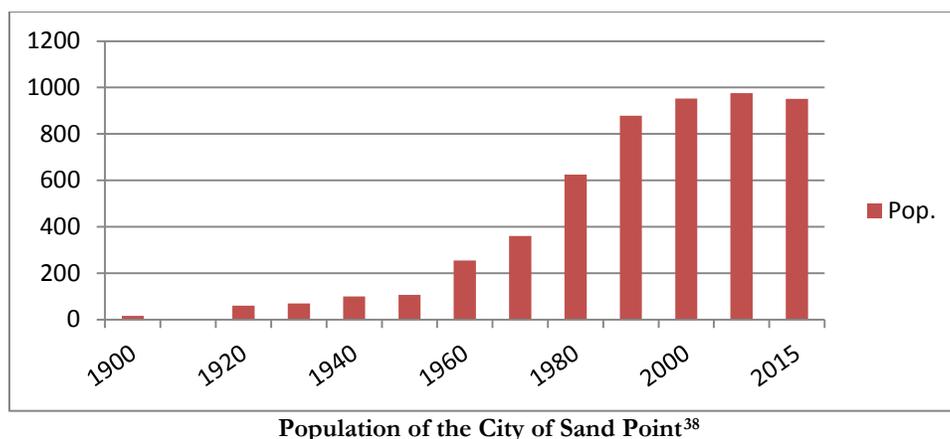
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<sup>35</sup> <https://www.commerce.alaska.gov/dcra/DCRAExternal/community/Details/7a28bb85-2a63-417e-90ef-521d02ed6b92>.

<sup>36</sup> February 27, 2017 email from Andy Varner.

<sup>37</sup> February 10, 2017, email from Andy Varner.

## Department Analysis



In analyzing Sand Point’s population, the Department examines the City’s population history, including federal census data, Alaska Department of Labor and Workforce Development (“DLWD”) annual estimates, and PFD distributions. Sand Point’s population has increased in every census since 1920. DLWD estimates the City’s 2015 population to be 950.<sup>39</sup> The data in the above chart show that the City’s population is steadily increasing. Sand Point is the Borough seat and the largest city in the Borough. Sand Point’s population of nearly 1,000 people is larger than all but 23 of Alaska’s 145 cities, and larger than over half of the state’s other first class cities. It is also larger than one of Alaska’s 10 home rule cities and of two boroughs.<sup>40</sup> Neither the U.S. Census Bureau nor the Alaska State Demographer provides population projections for cities, so the Department has no data to predict Sand Point’s future population.

The territory sought for annexation by the City of Sand Point is largely unpopulated. Mr. Larry Hemenover stated that he and his son Caleb do live there. The Division of Elections does not have them listed, however, in the Alaska voter registration system.<sup>41</sup> A conversation with PFD revealed that Larry and Caleb Hemenover last received PFD dividend checks in 1995 and 1994, respectively.<sup>42</sup> Although Alaska residents often are registered to vote and to receive PFD dividend checks, not all Alaskans vote or receive PFD dividends. After considering the petition, comments, and briefs; after speaking with Larry Hemenover; and after independently investigating, the Department finds that it is not clear whether Mr. Hemenover and his son Caleb live at Pirate Cove. Regardless, nobody lives on the water portion of the territory, and at most two people live in the

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<sup>38</sup> As the U.S. conducts censuses only every 10 years, the 2015 population comes from the Alaska Department of Labor and Workforce Development (DWLD) figures. The DLWD issues population estimates in every non-census year. The DWLD bases these estimates on PFD data.

<sup>39</sup> <http://live.laborstats.alaska.gov/pop/index.cfm>.

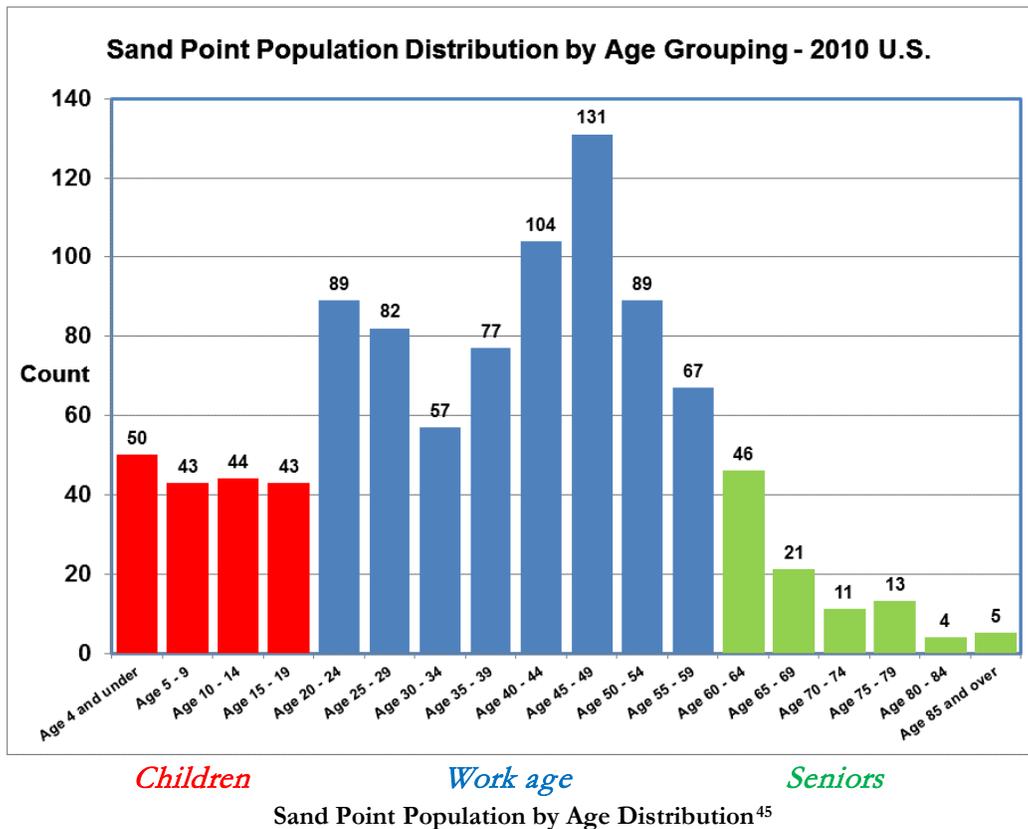
<sup>40</sup> <https://www.commerce.alaska.gov/dcra/DCRAExternal/community/Details/7a28bb85-2a63-417e-90ef-521d02ed6b92>.

<sup>41</sup> February 23, 2017, email from Brian Jackson of the Division of Elections.

<sup>42</sup> February 23, 2017, phone call with the Permanent Fund Dividend Division.

portion of Popof Island outside of city limits. That means that a maximum of two people live in all of the territory. For that reason, the Department refers to the territory as “largely unpopulated.”

In analyzing Sand Point’s population, the Department examines the City’s seasonal population changes. Sand Point’s population temporarily increases when a large number of seasonal workers arrive to work in the fishing boats, tenders, and in the Trident and Peter Pan facilities. The 2004 comprehensive plan states that the busiest fish processing months are January, February, August, and September, when the downtown area can increase by 150 to 300 people.<sup>43</sup> This can cause the City’s population to change several times during the course of a year. Of the 976 people residing in Sand Point in 2010, 350 or 35.9 percent live in group quarters.<sup>44</sup>



In analyzing Sand Point’s population, the Department also examines the City’s age distribution, including school enrollment. The median age is 37.<sup>46</sup> The population also includes a number of young people, which indicates future growth. According to AEB school Superintendent Michael

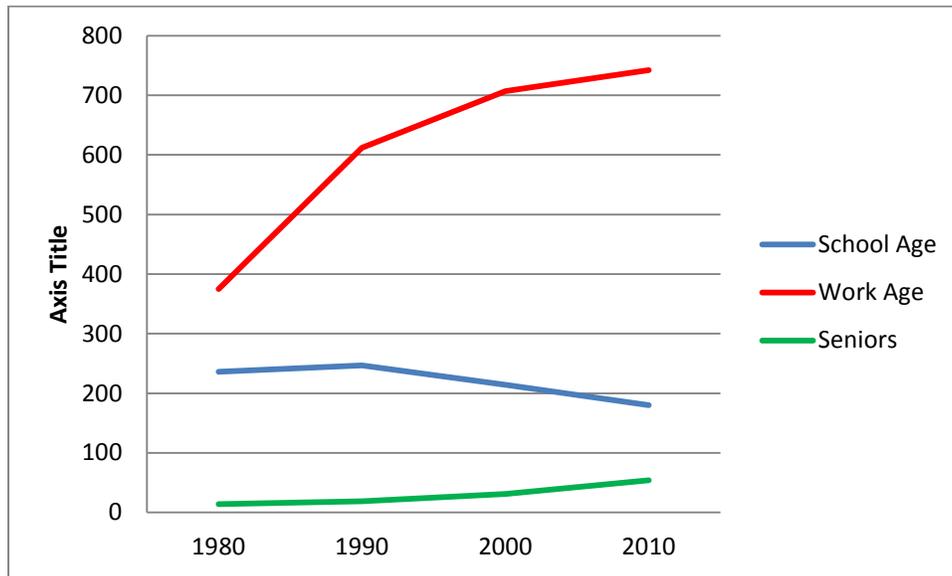
<sup>43</sup> <https://www.commerce.alaska.gov/dcra/DCRARepoExt/RepoPubs/Plans/SandPoint-CP-2004.pdf>, p. 21.

<sup>44</sup> <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

<sup>45</sup> <https://www.commerce.alaska.gov/dcra/DCRAExternal/community/Details/7a28bb85-2a63-417e-90ef-521d02ed6b92>.

<sup>46</sup> <https://www.commerce.alaska.gov/dcra/DCRAExternal/community/Details/7a28bb85-2a63-417e-90ef-521d02ed6b92>.

Seifert, the Sand Point school has had a steady student enrollment of 105 to 111 over the past 10 years.<sup>47</sup> The influx of seasonal workers can affect the City’s age distribution. As the comprehensive report states on page 18, Trident employs transient seasonal workers. This results in a higher proportion of single males in their twenties and thirties. Just as the population can change during the course of a year, so can the age distribution, as seasonal workers come and go.



Decennial Census Population by Age and Sex, City of Sand Point, 1980 to 2010<sup>48</sup>

In conclusion, after considering the above population tables and other information, the Department observes that the work age population is increasing at the same time that the general population is increasing. Simultaneously, the school age population is decreasing, although not as dramatically. Many factors could cause these increases and decreases. The factors could include the aging of the baby boomer generation, fluctuations in the fishing industry, and the overall economy of the city, state, and nation. The age distribution shows a healthy balance of age groups. The Department finds that the population is sufficiently large and stable to support extending city government. The population of the territory will not strain Sand Point’s provision of services to the current city or to the territory because the territory is largely unpopulated, and because the City does not plan to expand services. For those reasons the Department finds that the petition meets this standard.

### 3.6 Boundaries (3 AAC 110.130)

This section has several factors that the petition must meet. The standard considers whether the proposed expanded boundaries contain all land and water necessary to provide essential municipal services on an efficient, cost-effective level. The regulation also requires the territory to be contiguous to the municipality, and not create enclaves. This standard further considers whether the

<sup>47</sup> February 23, 2017, email communication with Mr. Seifert.

<sup>48</sup> Data from Eddie Hunsinger, State Demographer, Alaska Department of Labor and Workforce Development

scale is appropriate for a city. Lastly, the regulation requires that the proposed expanded boundaries of the city not include entire geographical regions or large unpopulated areas. The report will address each factor in turn.

*(a) The proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including*

- (1) land use and ownership patterns;*
- (2) population density;*
- (3) existing and reasonably anticipated transportation patterns and facilities;*
- (4) natural geographical features and environmental factors; and*
- (5) extraterritorial powers of cities.*

### ***Views Stated by Sand Point***

The proposed expanded boundaries contain sufficient land and water necessary to provide the development of essential municipal services. The Humboldt Reservoir provides Sand Point with a viable and plentiful water source. There is ample room for development in the School Loop Road District of town and along Sand Point Road (petition, p. 26). The Humboldt reservoir holds 4.5 acre-feet, or 1,466,300 gallons of water.<sup>49</sup>

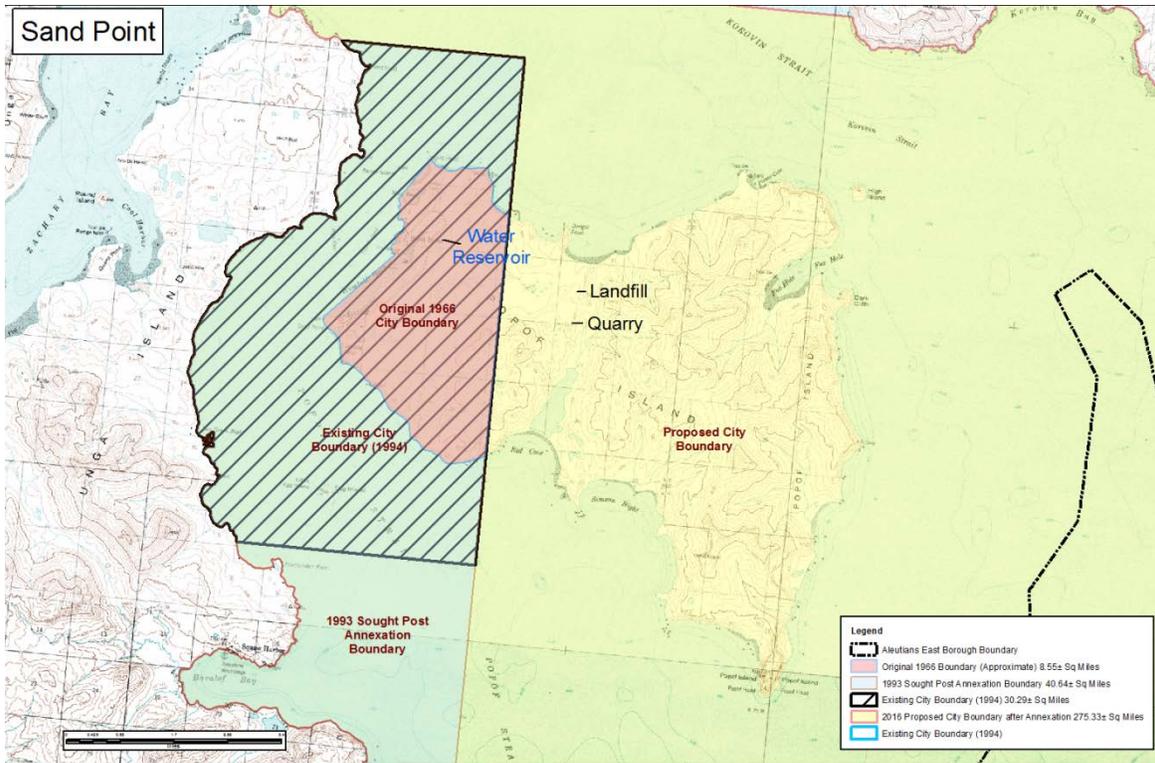
### ***Department Analysis***

In analyzing Sand Point's boundaries, the Department also examines the City's post-annexation land use and ownership. The Shumagin Corporation is the village corporation for Sand Point. It is the surface owner for Popof Island. Shumagin also manages a bison hunt on Popof Island. The Aleut Corp. is the subsurface owner on both Unga and Popof Islands. There is little development of the part of Popof Island outside City boundaries, with the exception of the quarry, the landfill, the road leading to them, and the Hemenovers' buildings at Pirate Cove. Sand Point has limited access to groundwater due to the scarcity of water-yielding deposits, and the lack of significant amounts of surface water.<sup>50</sup>

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<sup>49</sup> February 27, 2017, email from Mr. Varner.

<sup>50</sup> Comprehensive plan, p. 16.



**Map Showing the Location of the City of Sand Point's Reservoir, Quarry, and Landfill**

In analyzing Sand Point's boundaries, the Department also examines the City's post-annexation population density. The territory is largely unpopulated; it has at most two residents. That is two residents (at best) for a territory consisting of 245 square miles of land and water, or 0.0082 persons per square mile (assuming that Larry and Caleb Hemenover do actually reside at Pirate Cove). The territory has no residents on the water that makes up the bulk of the territory. There have been no recent population changes, nor are any expected.

In analyzing Sand Point's boundaries, the Department also examines the City's post-annexation geographical features and topography. The territory proposed for annexation ("territory") has approximately 27.5 square miles of land and 217.5 square miles of water for a total of 245 square miles. Sand Point would be 275 miles after annexation, including 35.5 square miles of land. The city would be predominately seawater. DCRA's community database indicates that the City wastewater treatment system has a capacity of 100,001 – 500,000 gallons per day.

In conclusion for 3 AAC 110.130(a), the Department finds that Sand Point does not plan to increase its level of services to a largely unpopulated territory. There is little development of the part of Popof Island that the City plans to annex, and no development in the seawater. The Department finds that Popof Island contains a reservoir that supplies the City with water. For those reasons, the Department finds that a city of 275 square miles has all the land and water necessary to provide essential municipal services on an efficient, cost-effective level.

*(b) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.*

As evidenced by the map of the existing city and the territory proposed for annexation, the Department finds that the territory is contiguous to the City, and that the annexation does not create enclaves.

*(c) To promote the limitation of community, the proposed expanded boundaries of the city*  
*(1) must be on a scale suitable for city government and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation; and*  
*(2) may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 - 3 AAC 110.135 and are otherwise suitable for city government.*

### ***Views Stated by Sand Point***

Sand Point has been careful only to annex territory necessary in order to provide public services and public safety needs. The territory will aid the City's future growth and development efforts. The proposed city boundaries are on a scale suitable for city government, given the City's future development patterns (petition, p. 27).

The City stated that it is proposing to annex a large unpopulated geographical area (petition, p. 27). It also stated that it is not trying to annex an entire geographical region, and compared its proposed size to that of Yakutat, Unalaska, St. Paul, and Togiak (reply brief, pp. 2-3).

### ***Views Stated by Commenters***

Comments submitted, however, disagree with those assertions. In her December 7, 2016, comment, Amy Foster wrote that the territory was too large to annex for levying raw fish taxes.

The Unga Corporation wrote in its December 5, 2016, comment that the proposed annexation shouldn't include an entire geographical region or large unpopulated areas, unless those boundaries are on a scale suitable for city government growth, development, and public safety needs.

### ***Department Analysis***

These comments, particularly the one from the Unga Corporation, go right to the heart of the matter: is the proposed size of 275 square miles of land and water on a scale suitable for city government? As the criteria for 3 AAC 110.130(c)(1) and (2) are similar, and the comments respond to both, the Department will consider 3 AAC 110.130(c)(1) and (2) together below.

In analyzing the petition, comments, and briefs, the Department notes that Alaska's constitution, its statutes, and the LBC regulations do not specifically note the proper size for a city. Every petition is

different and a city's scale must be appropriate in each situation. Only cities—as opposed to boroughs—have laws limiting their boundaries (but not specifying the number of square miles). While each petition is analyzed against the standards on its own merits, it can be instructive to look at past city annexation petitions' reports and decisions for guidance as to the proper size of cities. For example, in analyzing the 1986 petitions from Clark's Point and Dillingham to annex 242 and 918.25 square miles respectively, the Department wrote that:

The discrepancy in size between the areas actually proposed for annexation and the areas actually inhibited is inordinately large and does not justify inclusion of masses of territory for the sole purpose of revenue enhancement.<sup>51</sup> The city wishes to enhance its revenue by receipt of substantial raw fish taxes.<sup>52</sup>

In that petition, Dillingham sought both land and the waters of Nushagak Bay. Similarly, Sand Point seeks to annex a large territory of both land and water (predominately water). Its purpose in doing so is similar to Dillingham's in 1986: to garner additional revenue. Although the annexation regulations differed in 1986,<sup>53</sup> the Commission denied Dillingham's petition because it did not meet the criteria. The LBC indicated that the proposed annexation was more appropriate for a region rather than a community or city, and that the territory was unlikely to see much future growth and development. The LBC did approve the annexation of 40 square miles of land northwest of Dillingham.<sup>54</sup>

If the LBC denied the current petition, such a decision would be similar to the Commission's denial upon reconsideration of Dillingham's petition to annex nearly 400 square miles of Nushagak Bay on January 24, 2017. The LBC denied the petition upon reconsideration, partly because proposed annexation was not on a scale suitable for city government.

Similarly, the same day, upon reconsideration the Commission amended the Manokotak petition to annex 37 square miles of land and about 118 square miles of water. The LBC excluded water that it believed did not demonstrate a need for city government. Commissioners indicated that the original boundaries proposed for Tract B (part of Nushagak Bay) represented a large, unpopulated territory unsuitable to include in the city in its entirety. The Commission also found that Tract B included a large geographical region or large unpopulated area, and amended Tract B's boundaries to reduce the annexed territory and so comply with the boundaries standard.<sup>55</sup>

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<sup>51</sup> September 1986 report on the Clark's Point and Dillingham annexation petitions, p. 8.

<sup>52</sup> *Id.* at v.

<sup>53</sup> In 1986 the LBC did not have a regulation analogous to 3 AAC 110.130(c) that promoted the limitation of community, and specified that the city must be on a scale suitable for city government.

<sup>54</sup> "Statement of Decision in the Matter of the Petition for Annexation of Territory to the City of Dillingham, Alaska," 4 pp. 4-7.

<sup>55</sup> "Local Boundary Commission Statement of Decision of Reconsideration in the matter of the January 3, 2017, request by respondents Native Village of Ekuk, et al., for the Local Boundary Commission to reconsider the decision approving the petition by the City of Manokotak to annex approximately 155.12± square miles of land and water," p. 7.

Similar to the Dillingham and Manokotak reconsideration decisions, the territory proposed for annexation can be considered an entire geographical region or large unpopulated area. Indeed, Sand Point states that the City is proposing to annex “a large and unpopulated geographical area (including water)” and argues that the exception clause of 3 AAC 110.130(c)(2) applies (petition, pp. 27-28). Under 110.130(c)(2), the LBC can approve annexation of large unpopulated areas or entire geographical regions if the boundaries are justified by other factors including need, character, population, resources, boundaries, and best interests of the state.

In its December 28, 2016, reply brief, Sand Point listed several other cities as other examples of cities with large amounts of water.<sup>56</sup> In examining those cities, namely Unalaska, St. Paul, and Togiak,<sup>57</sup> the Department finds that each city’s boundaries can be distinguished from the boundaries that Sand Point seeks to annex. The Department also examines the 1993 Sand Point annexation petition, and distinguishes it from the present one. The Department further finds that the reasons that the LBC used in approving those annexations are not pertinent here.

For example, Unalaska has 111 square miles of land and 101.3 square miles of water for a total of 212.3 square miles. In 1986, Unalaska was 25.4 square miles. That year the LBC denied Unalaska’s petition to annex 1,294 square miles of land and water but did approve annexation of 189 square miles of land and water. The LBC based its decision at least partly on the fact that floating processors were located primarily in Unalaska Bay, Iliuliuk Bay, and Captains Bay.<sup>58</sup> The LBC agreed that Unalaska should exercise control over these bays because the processors affect water quality, require city services, and use city facilities.<sup>59</sup> The LBC further found that the floating processors could likely affect the community because they employed transient workers who placed demands on emergency services and on law enforcement services.<sup>60</sup> Sand Point has made no such arguments about transient workers. In addition to those reasons, the Unalaska petition decision can be distinguished from the Sand Point petition in another way. First, as in the case of the 1986 Dillingham petition referred to above, the LBC did not have a regulation analogous to 3 AAC 110.130(c) in 1986. The Commission had no standards in effect at the time restricting city size or scale. For that reason, the LBC could and did approve city annexations that were larger than subsequent city annexations. Now this regulation describes a city’s appropriate boundaries; that language can limit the extent of Sand Point’s proposed annexation.

St. Paul, Alaska’s largest city in terms of area, has 40.3 square miles of land and 255.2 square miles of water totaling 295.5 square miles. In 1985, it petitioned to annex 193 square miles of water and one square mile of land. The LBC approved that petition.<sup>61</sup> For reasons similar to the 1986 Dillingham

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<sup>56</sup> Reply brief, pp. 2-3.

<sup>57</sup> The Department is not examining the mentioned Yakutat because that is a borough, not a city.

<sup>58</sup> January 19, 1986, “Summary of Proposed Action, Findings of Fact, Conclusions of Law, Statement of Decision,” p. 3.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> January 19, 1986, “Summary of Proposed Action, Findings of Fact, Conclusions of Law, Statement of Decision,” pp. 3-4.

and Unalaska decisions, and to the 2017 Dillingham and Manokotak reconsideration decisions, the LBC's St. Paul decision differs from Sand Point's proposed annexation. First, the LBC did not have a regulation analogous to 3 AAC 110.130(c) in 1986. The Commission had no standards in effect at the time restricting the size of cities. For that reason, the Commission could and did approve city annexations that were larger than subsequent city annexations. Second, the LBC found that similar to Sand Point, St. Paul provided search and rescue operations before the proposed annexation and would do so afterwards. A key difference is that the LBC found that annexation would "allow the City to continue such activity without the present liabilities associated with the lack of municipal jurisdiction."<sup>62</sup> Sand Point has made no such claim of liabilities. Third, the City of St. Paul provided potable water to the offshore floating processors and fishing boats. It was preparing to develop alternative potable water sources to meet anticipated increased need. Sand Point has made no such claim of a similar circumstance.

Togiak is Alaska's third largest city. It has 45.2 square miles of land and 183.3 square miles of water for a total of 228.5 square miles. In 1985, Togiak sought to annex 183 square miles of Togiak Bay.<sup>63</sup> The LBC approved that petition because there was a need of police services to enforce the ban on alcohol, and because no other municipality could provide these services more efficiently than Togiak. The LBC also found that the illegal alcohol adversely affected Togiak's health and welfare, and that annexation would allow the city to enforce the ban. Sand Point has made no such claims. For a reason similar to the 1986 Dillingham, Unalaska, and St. Paul decisions, and to the 2017 Dillingham and Manokotak reconsideration decisions, the LBC's Togiak decision differs from Sand Point's proposed annexation. The LBC did not have a regulation analogous to 3 AAC 110.130(c) in 1986. The Commission had no standards in effect at the time restricting the size of cities. For that reason, the LBC could and did approve city annexations that were larger than subsequent city annexations.

In 1993, Sand Point was 8.55 square miles. It sought to annex 40.64 square miles of water between Popof and Unga Islands (see Exhibit E for a map). It gave similar reasons that it does now: tax burden inequity and expanding the City's revenue.<sup>64</sup> It had been difficult for the City to determine which fishing boats were inside the City borders, and which were outside of it.<sup>65</sup> That made taxing the boats more difficult. The LBC amended the petition in 1994 to exclude Baralof Bay and the waters near it, consistent with the Department recommendation. As indicated by the map below, in doing so it approved annexation of just 21.74 square miles.

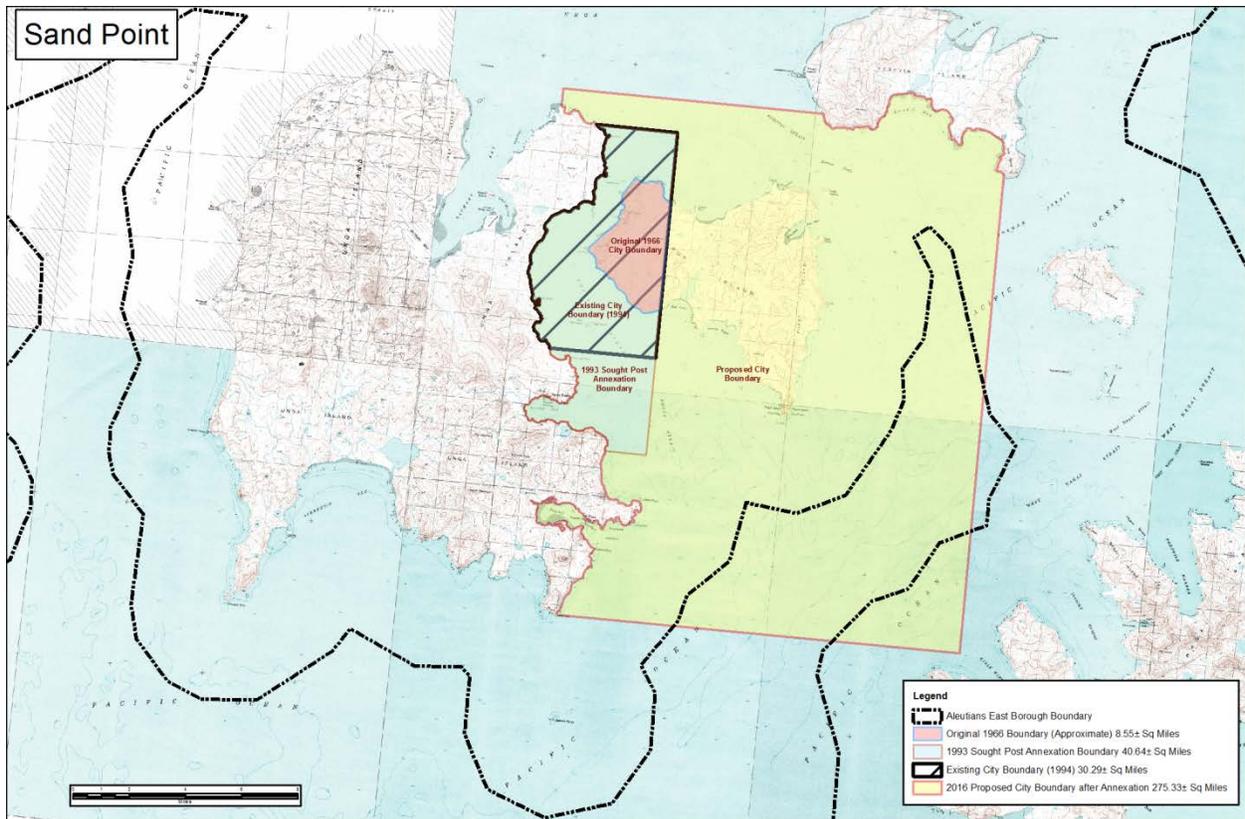
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<sup>62</sup> *Id.* at 1.

<sup>63</sup> January 18, 1985, "Summary of Proposed Action, Findings of Fact, Statement of Decision," p. 1.

<sup>64</sup> "In the Matter of the Petition for Annexation of Territory to the City of Sand Point, Alaska, Petition for Annexation," p. 3.

<sup>65</sup> Local Boundary Commission Minutes Meeting of July 12, 1994, p. 2.



**Map Showing the Sand Point Boundaries Before and After the 1993 Annexation Petition**

The 1993 petition differs from the present one in several ways. First, the territory that it sought in 1993 was both smaller and closer to the City’s harbor. Here, however, Sand Point seeks to annex a much larger territory, one that is not on a scale suitable for city government. The territory here is much further from the harbor and its nearby fishing and processing activity. That proximity made it easier for the City to show ties and use by the fleet and cannery workers. Further, in 1993 the City showed that it provided services to the fleet such as medical care and public safety.<sup>66</sup> It documented visits by the fishers at the city subsidized clinic.<sup>67</sup> The City has not shown such facts in the present petition. The Department reaches a different conclusion than it did in 1994 because the facts and circumstances differ from what they were in 1993 and 1994.

In 1987, Sand Point sought to annex 31.36 square miles of land and 106.25 square miles of water. In a June 22, 1987, letter, then Municipal and Regional Assistance Director Marty Rutherford wrote the Sand Point City administrator. The letter raised concerns of certain technical difficulties and policy questions in the petition. She wrote that the petition did not meet several of the annexation standards. The letter further stated that there was little foundation to support the petition. Similarly, the present petition does not meet several of the standards.

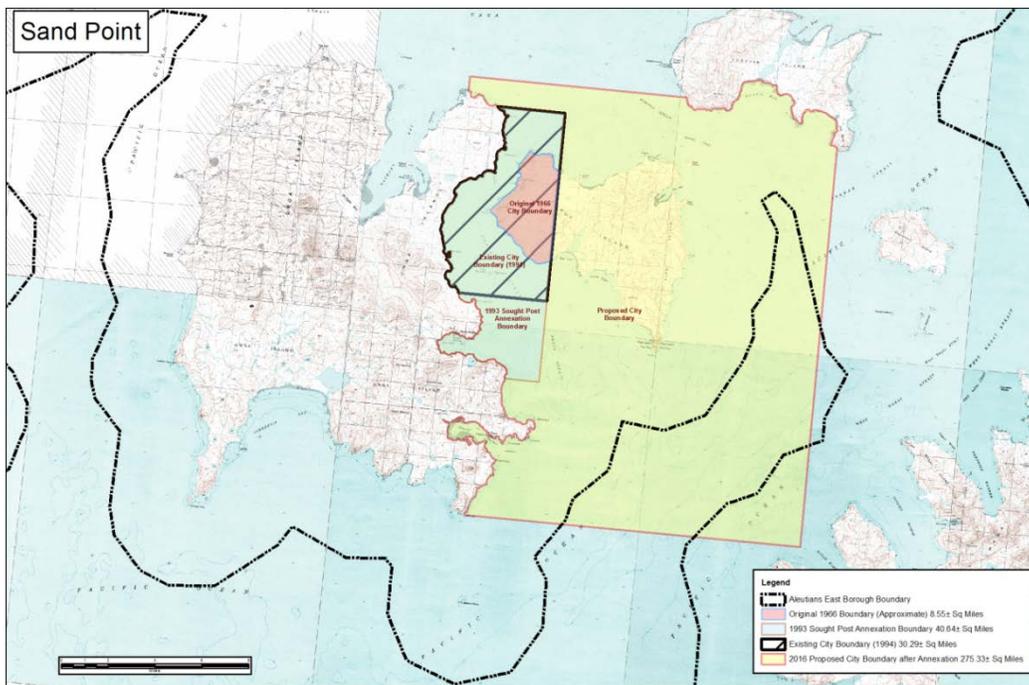
<sup>66</sup> “In the Matter of the Petition for Annexation of Territory to the City of Sand Point, Alaska, Petition for Annexation,” pp. 4-5.

<sup>67</sup> *Id.*, Exhibit 4.

In conclusion, the Department finds that what Sand Point seeks to annex can be distinguished from the Unalaska decision, the St. Paul decision, the Togiak decision, and the 1994 Sand Point decision for the reasons articulated above. For 3 AAC 110.130(c)(1), the Department finds that, like the 2017 Dillingham and Manokotak reconsideration decisions, that the proposed expanded boundaries of the city are not on a scale suitable for city government. The Department also finds that the proposed expanded boundaries of the city do not include a territory of reasonably predictable growth, development, and public safety needs during the 10 years after annexation.

Under 3 AAC 110.130(c)(2) the proposed expanded boundaries cannot include entire geographical regions or large unpopulated areas unless the boundaries are justified by other factors including best interests of the state, resources, character, and need. The Department and the petition concur that the territory is a large unpopulated (or nearly so) area, but the Department finds no justification given by the petition or any other part of the record to allow this justification. The Department finds that the exception clause raised by the City does not apply because, among other reasons, the proposed city boundaries are not on a scale suitable for city government, and because annexing such a large area is not in the best interests of the state (see Best Interests of the State below).

For those reasons, the Department finds that the petition does not meet of 3 AAC 110.130(c).



**Map Showing the Territory That Sand Point Seeks to Annex,  
and the Three-Mile Limit of Alaska's Maritime Jurisdiction**

- (d) *If a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the*

*boundaries of another existing city, the petition for annexation must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.*

### ***Views Stated by Sand Point***

The City and the proposed territory are within the AEB. Annexation won't change that. The new boundaries won't affect any other city within the AEB (petition, p. 28).

### ***Department Analysis***

The October 23, 1987, Aleutians East Borough certificate of incorporation states that its water boundaries extend to the limits of the state's jurisdiction under AS 29.03.010. That statute states that Alaska's offshore jurisdiction extends to the high seas, to the extent that the United States claims that jurisdiction. The AEB incorporation petition decision states that the LBC included land and water outside of the state's jurisdiction because it was necessary to develop fully the AEB's municipal services. Nonetheless, the 1953 federal Submerged Lands Act gave the states jurisdiction three miles from the coast.<sup>68</sup>

If Alaska's jurisdiction only extends to three miles from the coast, then it is logical that any political subdivision of the state, including the AEB, only extends three miles as well. Such a three-mile limit would be consistent with the Department of Fish and Game's three-mile jurisdiction.

If the AEB boundaries only extend three miles from the shore, then its borders only extend three miles from Popof, Korovin, and Andronica Islands. In that case, the AEB borders would not include all of the waters that the City seeks to annex. That would mean that the City's proposed boundaries overlap a borough boundary, which means that the City's petition would need to comply with the standards and procedures to either annex the enlarged city to the AEB or to detach the enlarged city from the AEB. For those reasons, the Department finds that the petition does not meet 3 AAC 110.130(d).

Alternatively, either the petitioner (before the hearing) or the LBC could amend the petition so that the proposed annexation conforms to the AEB boundaries.

In concluding its analysis of 3 AAC 110.130, the Department finds that while the petition meets (a) and (b), it does not meet (c) and (d). The petition must meet all of 3 AAC 110.130. The Department finds that it does not and so the petition does not meet 3 AAC 110.130. If the LBC were to approve the petition, the Department recommends that it exclude those waters that appear to lie outside the state's jurisdiction unless and until the petitioner can prove that those waters are within the AEB boundaries.

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<sup>68</sup>[https://www.boem.gov/uploadedFiles/BOEM/Oil\\_and\\_Gas\\_Energy\\_Program/Leasing/Outer\\_Continental\\_Shelf/Lands\\_Act\\_History/submerged.pdf](https://www.boem.gov/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Outer_Continental_Shelf/Lands_Act_History/submerged.pdf).

### 3.7 Best Interests of the State (3 AAC 110.140; AS 29.06.040(a))

*In determining whether annexation to a city is in the best interests of the state under AS 29.06.040(a), the commission may consider relevant factors, including whether annexation*

- (1) promotes maximum local self-government, as determined under 3 AAC 110.981;*
- (2) promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska; and*
- (3) will relieve the state government of the responsibility of providing local services.*

This standard requires the petition to demonstrate that the proposed annexation is in the best interests of the state. While the standard lists three guidelines as examples, neither the LBC nor the Department are limited to those three guidelines—they can consider other impacts on the best interests of the state. In analyzing the best interests of the state, the LBC examines any favorable or adverse impact upon the state, including its political subdivisions. The Department will do the same in analyzing this standard. The Department has identified three factors to look at in analyzing the best interests of the state: the *Fiscal Impact of Sand Point Annexing the Territory*, *Relieving the State Government of the Responsibility of Providing Local Services*, and *Whether the Scale of the Proposed Annexation is in the Best Interests of the State*. The Department analyzes each separately below.

#### ***Fiscal Impact of Sand Point Annexing the Territory***

##### Views Stated by Sand Point

Levying and collecting a raw fish tax will help pay for these services because the fishers who will pay those taxes are largely Sand Point residents (petition, p. 42). Sand Point provides fire and search and rescue (SAR) services to the territory (petition, p. 5). Although the territory is largely unpopulated, fishers, hikers, hunters, and others use and visit it (petition, p. 5). They use those services at Sand Point's expense (petition, p. 24). The City argues that taxing that taxing the territory would enable it to pay for the services that it provides (petition, p. 24).

##### Department Analysis

As found above in 3 AAC 110.090, Sand Point is the only municipality that can provide those services because there is no other city nearby, and because the AEB does not provide those services. Nor is there any indication that the AEB will soon provide those services. Providing those services to the territory is a choice that Sand Point makes. It does not have to provide those services if it chooses not to. Not providing those services itself is a choice that the AEB makes. A possible alternative would be for the AEB, in lieu of providing emergency services itself to the territory, to compensate Sand Point for the cost of providing these services. That way, Sand Point could still provide services to the territory without suffering a financial detriment. If it chose to do compensate Sand Point, the AEB has the option of recouping its expenditure of compensating Sand Point by modestly raising its fish tax.

Another option is for Sand Point to charge service fees for its SAR operations. Other agencies do so. That would be a way for the City to recoup its costs without having to annex such a vast, largely unpopulated area. That would be consistent with the LBC's 1986 Dillingham annexation decision that "in many cases additional revenues could be obtained through user fees" without having to annex.

While recovering its public safety and SAR costs through a fish tax would benefit the City, and a financially stronger municipality is in the best interests of the state, the annexation can also have a negative financial effect on the AEB. As explained under 3 AAC 110.110 Resources above, the AEB currently gets 100 percent of the funds that DOR distributes for any processing in the territory (including delivering fish to a tender). If the proposed annexation went into effect, the AEB would split its share evenly with the City. That would result in a loss of half that income to the AEB. In this particular case, the Department finds that it is not in the best interests of the state to reduce this funding to the AEB.

### ***Relieving the State Government of the Responsibility of Providing Local Services***

#### Views Stated by Sand Point

If approved, the annexation won't require any new resources from the State. Allowing the City to expand its tax base and create new revenue sources will remove some burden from the State if the Legislature decides to reduce municipal support funding (petition, pp. 28-29).

#### Department Analysis

The Department finds that if the state reduces municipal funding, that it will do so independently of any increased revenue that Sand Point earns. If the state reduces Community Assistance Payments, it makes sense that it would do so across the board for all municipalities. Further, the petition does not mention any services that the state currently provides in the territory that would be assumed by the City. For those reasons, the Department finds that this proposed annexation will not relieve the state of the responsibility of providing local services.

### ***Whether the Scale of the Proposed Annexation is in the Best Interests of the State***

#### Views Stated by Sand Point

Sand Point states that it has been careful not to annex more than necessary. It further states that that its proposed boundaries are on a scale suitable for city government because of future development patterns (petition, p. 27).

#### Department Analysis

As the Department found above in 3 AAC 110.130(c) Boundaries, the proposed expanded boundaries of Sand Point are not on a scale suitable for city government and do not include a territory of reasonably predictable growth, development, and public safety needs during the 10

years after annexation. The Department found above under 3 AAC 110.130(c)(2) that the territory is a large unpopulated (or nearly unpopulated) area.

Sand Point proposes annexing a territory that is nearly all water, and that has at most two people in it. Annexing the territory would not meet the best interests of the state standard because doing so would contradict the limitation of community doctrine of 3 AAC 110.130(c). A city of about 275 square miles of land and seawater (mainly seawater) does not fit into the common sense definition of community. It would also contravene the requirement that cities be on a scale suitable for city government. A vast, largely unpopulated territory of primarily water is not on a scale suitable for a city government.

For the reasons articulated above under 3 AAC 110.130 Boundaries, the Department finds that the Sand Point proposed annexation could be distinguished from the Unalaska, St. Paul, Togiak, and the 1994 Sand Point decisions. Based on the findings the Department made in 3 AAC 110.130, the Department concludes that this particular proposed annexation is not on a scale suitable for city government because it includes a large nearly unpopulated area of seawater, even given the unique conditions of being a city in Alaska.

As the 1986 report on Dillingham's annexation petition stated on page xiv, "[t]he discrepancy in size between the areas actually proposed for annexation and the areas actually inhabited is inordinately large and does not justify inclusion of masses of territory for the sole purpose of revenue enhancement." The same situation exists here—Sand Point is attempting to annex a largely uninhabited territory that is much larger than existing city. It is doing so largely to gain revenue. If the Department found that it was inappropriate for the LBC to approve the similar Dillingham petition (the Department did find that it was appropriate for the LBC to approve annexing just five of square miles of the 918.25 that Dillingham asked for), then it is logical for the Department to reach the same conclusion here.

Sand Point is in a borough (the AEB). The AEB could provide emergency services to the territory—or ask Sand Point to do so and reimburse it. AS 29.35.210(c) and (d) authorize the AEB to provide emergency services. The fact that the AEB does not provide emergency services (as opposed to cannot) does not mean that Sand Point has to provide services in an area that is not on a scale suitable for city government. That is a borough function—whether or not the AEB chooses to exercise it.

### Conclusion

In considering best interests of the state, the Department finds that the City does provide emergency services to the territory, and that doing so is a service to the territory. A fish tax levied in the territory could compensate the City for those expenditures. But a concern for the Department is the scale of the city after the proposed annexation. In this particular case, and with these particular facts, 275 square miles is not on a scale suitable for city government if the city would consist mainly of unpopulated seawater. For that reason the proposed annexation is not in the best interests of the state. The petition does not meet this standard.

### 3.8 Legislative Review (3 AAC 110.140)

*Territory that meets the annexation standards specified in 3 AAC 110.090 – 3 AAC 110.135 may be annexed to a city by the legislative review process if the commission also determines that any one of the following circumstances exists:*

- (1) the territory is wholly or substantially surrounded by the annexing city;*
- (2) the health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;*
- (3) the extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;*
- (4) residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;*
- (5) annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city;*
- (6) repealed 5/19/2002;*
- (7) annexation of the territory will promote*
  - (A) maximum local self-government, as determined under 3 AAC 110.981; and*
  - (B) a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska;*
- (8) annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 - 3 AAC 110.042, and is in the best interests of the state;*
- (9) the commission determines that specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 are best served through annexation of the territory by the legislative review process, and that annexation is in the best interests of the state.*

This standard requires that this legislative review petition meet at least one of the eight factors listed in 3 AAC 110.140. The petition contended that it met one of the eight standards, namely 3 AAC 110.140(7). The Department will examine each factor to see if it meets the standards.

Regarding 3 AAC 110.140(1), the territory is not wholly or substantially surrounded by the City, so that does not apply.

Regarding 3 AAC 110.140(2), there is no indication that the health, safety, or general welfare is or will be endangered by present or potential conditions in the territory.

Regarding 3 AAC 110.140(3), it is not necessary to annex in order to extend city services or facilities into the territory in order to provide adequate services to city residents.

Regarding 3 AAC 110.140(4), residents or property owners in the territory do not receive, or can reasonably expect to receive, the benefit of city government without commensurate tax

contributions. The territory has at most two residents, and there is no indication that they will receive city services.

Regarding 3 AAC 110.140(5), annexation of the territory will not enable the City to plan and control reasonably anticipated growth and development in the territory that may otherwise adversely affect the city. While it is true that Popof Island has mining potential, the Department is not aware of any reasonably anticipated mining activity, or any other anticipated growth and development in the territory that may otherwise adversely affect the city. There are fishers and tenders, but they do no adversely impact Sand Point.

3 AAC 110.140(6) was repealed in 2008.

Regarding 3 AAC 110.140(7), the Department finds below in 3 AAC 110.981 that the proposed annexation does not promote maximum local self-government to the territory. The Department finds below in 3 AAC 110.982 that it does promote a minimum number of local government units because it would enlarge an existing city, rather than creating a new city or borough service area. The regulation requires that annexation promote both maximum local self-government *and* a minimum number of local government units. The Department finds that the proposed annexation only promotes a minimum number of local government units, and so 3 AAC 110.140(7) is not met.

Regarding 3 AAC 110.140(8), the Department found above in 3 AAC 110.135 Best Interests of the State that the proposed annexation is not in the best interests of the state.

Regarding 3 AAC 110.140(9), the Department again finds that the proposed annexation is not in the best interests of the state, and therefore the petition does not meet the standard.

### ***Conclusion***

The Department finds that none of the circumstances listed under 3 AAC 110.140 is met. For that reason, the Department finds that the petition does not meet 3 AAC 110.140.



Scenic View of Sand Point

### 3.9 Transition Plan (3 AAC 110.900)(a-f)

3 AAC 110.900 requires that petition present a transition plan as part of a boundary change.

- (a) *A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for municipal detachment or dissolution under AS 29.06, or a city reclassification under AS 29.04, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after detachment, dissolution, or city reclassification.*

#### ***Views Stated by Sand Point***

Regarding 3 AAC 110.900(a), Sand Point already provides some public services, primarily public safety, to the rest of Popof Island and its surrounding waters. This occurs when the need arises and the situation is reasonable. Existing City staff has the capacity to extend essential municipal services to the territory (petition, p. 20).

#### ***Department Analysis***

Department finds that the City will extend the same emergency services that it provides today. Based on the petition, the Department finds that the City will not increase the level of services that it is providing now. Although Sand Point will not be introducing those services to the territory for the first time, the Department finds that the petition does include a practical plan showing its capacity to extend services. The fact that the City is already providing those services indicates its capacity.

*(b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.*

### ***Views Stated by Sand Point***

Regarding 3 AAC 110.900(b), the City has the capacity to assume the relevant powers and duties of providing services to the territory (petition, p. 20). Regarding 3 AAC 110.900(b) and (c), the transition should not take more than six months. Sand Point will need to work with the Shumagin Corporation due to Shumagin's land ownership rights. The City anticipates minimal issues with the transition because it and Shumagin have a good working history (petition, p. 21).

### ***Department Analysis***

Again, the City will not be assuming powers from any other municipality or entity. It will merely continue to provide the services that it already does. The petition indicates that Sand Point consulted with AEB Mayor Stanley Mack, with AEB Administrator Rick Gifford, with Shumagin Corporation board members, with Aleut Corporation Chairman Dick Jacobsen, and with Unga Corporation board member Amy Foster. The Department has confirmed with Shumagin Corporation President Glen Gardner that the City and the corporation do indeed have a good working relationship.<sup>69</sup> Mr. Gardner sees no issues to work out upon the proposed annexation.<sup>70</sup> The Department finds that Sand Point is not assuming powers, duties, rights, and functions from another municipality or entity. It further finds that the plan was prepared with consultation with appropriate borough officials.

Given the facts and circumstances, the Department finds that the transition should take place within the two-year deadline.

*(c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included within the boundaries proposed for change and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.*

---

<sup>69</sup> February 6, 2017, phone call with Glen Gardener.

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

### ***Views Stated by Sand Point***

Regarding 3 AAC 110.900(c), there are little to no existing assets and liabilities that the City will need to transfer and integrate (petition, p. 21).

### ***Department Analysis***

The Department finds that there are few if any existing assets and liabilities that the City will need to transfer and integrate, that AEB officials were consulted, and that because there are little to no assets and liabilities, that a plan to prevent loss is unnecessary.

*(d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included within the boundaries of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.*

### ***Department Analysis***

Regarding 3 AAC 110.900(d), the Department finds that an agreement is not necessary because there is no evidence presented that such an agreement is necessary. If both sides are willing, however, the Department suggests further talks between the City and the Unga Corporation (“Unga”) because of fears expressed to the Department by Unga personnel about how the proposed annexation could affect Unga activities on Unga Island.

*(e) The transition plan must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.*

### ***Department Analysis***

Regarding 3 AAC 110.900(e), as indicated under 3 AAC 110.900(b) above, the Department finds that Sand Point has consulted the proper officials, and listed their names and titles, the consultation dates, and the subjects addressed. Other than mentioning an overview and potential land issues, the Petition did not elaborate upon the subjects discussed.

*(f) If a prospective petitioner has been unable to consult with officials of an existing borough, city, or unorganized borough service area because those officials have chosen not to consult or were unavailable during reasonable times to consult with a prospective petitioner, the prospective petitioner may request that the commission waive the requirement for consultation with those officials. The request for a waiver must document all attempts by the prospective petitioner to consult with officials of each existing borough, city, and unorganized borough service area. If the commission determines that the prospective petitioner acted in good faith and that further efforts to consult with the officials would not be productive in a reasonable period of time, the commission may waive the requirement for consultation.*

### *Department Analysis*

Regarding 3 AAC 110.900(f), the Department finds it moot, as the petition does not indicate that any AEB official declined to consult or was unable to consult.

### *Conclusion*

In conclusion for all of 3 AAC 110.900, the Department finds that because Sand Point already provides emergency services to the territory and will continue to do so, and because no municipality or entity already provides services to the largely unpopulated territory, the transition plan suffices in this case.

### **3.10 Statement of Nondiscrimination (3 AAC 110.910)**

*A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.*

### *Department Analysis*

No evidence was presented that the proposed annexation would discriminate or adversely affect any person's civil or political rights. This is particularly so because the territory is largely unpopulated. The Department finds that the effect of the petition will not deny anyone the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. For that reason, the petition meets this standard of 3 AAC 110.910.

### **3.11 Essential Municipal Services (3 AAC 110.970)**

*(c) . . . If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that*

- (1) are reasonably necessary to the community;*
- (2) promote maximum, local self-government; and*
- (3) cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state. . .*

### *Views Stated by Sand Point*

Public safety and emergency response services will extend into the territory as far as is feasible. Some responses have already occurred at or near the edge of the territory (petition, p. 30).

### *Department Analysis*

The standard refers to proposed expanded boundaries of the city. For the first criterion, the Department finds that the City will provide few essential municipal services to the territory. It will only provide limited emergency services, planning, and tax levying. For the second criterion, as indicated immediately below under 3 AAC 110.981, the Department finds that those emergency services do not provide maximum local self-government because the territory is largely unpopulated.

Lastly, the Department finds no reason why the AEB could not provide those emergency services if it chose to. For those reasons the Department finds that the LBC will not be able to determine that the essential municipal services consist of those mandatory and discretionary powers and facilities that are reasonably necessary and promote maximum local self-government.

### **3.12 Determination of Maximum Local Self-Government (3 AAC 110.981)**

*In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider. . .*

*(8) for city incorporation or annexation in an organized borough, whether the proposal would extend local government to territory or population of the organized borough where local government needs cannot be met by the borough on an areawide or nonareawide basis, by annexation to an existing city, or through an existing borough service area.*

#### ***Views Stated by Sand Point***

Annexation will promote maximum local self-government by giving Sand Point the power to tax and to provide services in Popof Island and its surrounding waters (petition, p. 28).

#### ***Department Analysis***

The Department finds that the proposed annexation would bring needed revenue to the City. Having more revenue to govern oneself promotes maximum local self-government. The city, however, is proposing to annex 245 square miles of land and water (mostly water) of largely unpopulated territory. The City already provides limited emergency services to the territory. The only other services it would add would be planning and tax levying. Few people could take advantage of the fact that the territory would then be in the City, because few if any people live there. As the City would provide few services to a largely unpopulated territory, the proposed annexation would not extend local government to population of the borough.

While the City would be providing services to the territory, the services are few. This is not a case where a city is extending services such as water lines and roads in advance of anticipated population growth. No one will ever live on the water, and there is no indication that the population on the land will increase in the near future. Nor is there any showing that the AEB cannot provide those needs if it chooses to. For those reasons, the Department finds that the proposed annexation does not promote maximum local self-government to the territory or population, and so the petition does not meet the standard.

### **3.13 Minimum Number of Local Government Units (3 AAC 110.982)**

*Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider. . .*

*(7) for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area;*

The Department finds that the proposed annexation will not create any new governments, and will not create overlapping governmental units because Sand Point is already within the AEB. The existing City of Sand Point's jurisdictional boundaries are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area. For the reasons articulated under 3 AAC 110.140(7) above, the Department finds that the petition promotes a minimum number of local government units, and so this standard is met.



**Scenic View of Sand Point**

## Chapter 4—Report Conclusion and Recommendations

Boundary changes in Alaska are decided at the state level. The LBC is tasked with determining whether a proposed change is in the best interests of the state. The Department finds that the City does not meet all of the city annexation standards, and for that reason recommends that the Commission deny the petition.

In assessing Sand Point's petition, the Department has reviewed the petition as well as the comments, responsive brief, and reply brief. In addition, the Department has reviewed the documents from previous annexation petitions, including the 1986, 2010, and 2015 Dillingham annexation petitions, the 2015 Manokotak annexation petition, the 1993 Sand Point annexation petition, and the Unalaska, St. Paul, and Togiak annexation petitions.

The Department finds that the petition meets the Resources, Population, Non-discrimination, and Minimum Number of Local Government Units standards. The Department also finds that the petition has an adequate transition plan, considering that no transition is necessary because the City will not be assuming any duties, assets, or liabilities from another entity.

For the reasons articulated above, the Department finds that the petition does not meet the Need, Character, Boundaries, Best Interests of the State, Legislative Review, and Maximum Local Self-Government standards. The Department finds that, like the 2017 Dillingham and Manokotak annexation petition decisions on reconsideration, the proposed expanded boundaries of the city are not on a scale suitable for city government.

The Department also finds that the territory proposed for annexation can be considered an entire geographical region or large unpopulated area (with at most two residents), and for that reason annexing such a large area is not in the best interests of the state. Further, the Department finds that the Sand Point proposed annexation can be distinguished from the Unalaska, St. Paul, and Togiak annexation petition decisions, all of which approved annexation of a large territory consisting mainly of water. It can also be distinguished from its 1994 Sand Point annexation petition decision for the reasons articulated under 3 AAC 110.130 Boundaries.

Of particular concern is the size and scale of the proposed annexation. Cities are meant to be community governments. In this particular case, and with these particular facts, 275 square miles is not on a scale suitable for city government if the city consists mainly of unpopulated waters. The Department concludes that this particular proposed annexation is not on a scale suitable for city government, even given the unique conditions of being a city in Alaska. For that reason and others, the Department recommends that the LBC deny the petition.

# Appendices

## Appendix A: Comments and Briefs

- Responsive Brief From Larry and Caleb Hemenover
- Comment from the Unga Corporation
- Comment from Amy Foster
- Reply Brief from the City of Sand Point

## Appendix B: Public Notice of Preliminary Report

## Appendix C: Petition Schedule

## Appendix D: Map of Local Fishing Districts

The residents of Pirate Cove are protesting the proposed annexation of our community. As one of the largest land owners effected by this proposal, we see no advantage to this. No power, water, sewer, ect. will come Pirate Cove way, any revenue made here could be taxed, taking away monies that could be used for our own utilities.

Though it may start as only a raw fish tax, it opens the door for property taxes, sales tax, and a whole list of other possibilities if we were to be included - with little or no services from Sand Point rendered.

The whole of Popof island except Pirate Cove was included into the City limits years ago and Pirate Cove was excluded then as the City did not want to supply any utilities and in fact tried to cut off access overland to the property. Now they are stating the whole island is a recreational area. We were vandalized in the 90s by relatives of people on the city council, yet when we brought the Chief of Police over to investigate he was reprimanded and the results buried.

I am opposed to this Annex of Pirate Cove for these reasons and demand to be excluded. We would receive no benefits, yet would be put under the aegis of a body that, in the past, has demonstrated indifference to our community.

Please note, Pirate Cove was a settled area long before Sand Point. It began as a hunting camp & codfishing station in 1876.

Once again, we vehemently oppose this annexation.

Larry N Hemenover



Caleb Hemenover

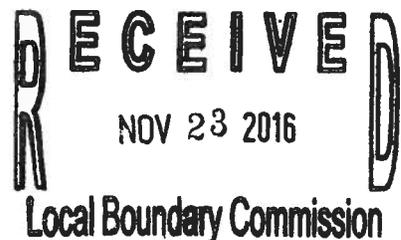


Physical Address:

Pirate Cove, Popof Island, Aleutians East Borough, Alaska

Postal Mail:

PO Box 275 / Sand Point, AK 99661



To the best of the my knowledge, information, and belief, formed after reasonable inquiry, the responsive brief and exhibits are founded in fact and are not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

Larry N. Hemenover



Deposited & identity verified on November 18, 2016  
by Debra Suebn Postmaster exp. with office



**RECEIVED**  
NOV 23 2016  
Local Boundary Commission

Two copies of the brief have been served on the petitioner, the City of Sand Point, by regular mail, postage prepaid.

Larry N. Hemenover



*Signature & identity verified on November 18, 2016  
By Debra Under Postmaster esp with you*



**RECEIVED**  
NOV 23 2016  
Local Boundary Commission

UNGA CORPORATION

P. O. BOX 130  
SAND POINT, ALASKA 99661  
PH 907-383-5215

December 5, 2016

Local Boundary Commission Staff  
550 W. Seventh Avenue, Suite 1640  
Anchorage, AK 99501-3510

Re: Petition to Annex 245 Square Miles of Popof Island and its Surrounding Waters to the City of Sand Point

Dear Sirs:

The Unga Corporation requests the Local Boundary Commission to deny the City of Sand Point Petition to annex territory by legislative review. The Unga Corporation's area of concern in the proposed annexations is the eastern portion of Unga Island. We believe this proposed annexation should not include an entire geographical region or large unpopulated areas, except if those boundaries are justified by and must be on a scale suitable for city government growth, development and public safety needs which we do not see justified.

This proposed annexation would make the existing city of 29 miles to 274 square miles 10 times larger than it is today in an area with a probability of not increasing its population by a substantial amount that does not fit within the narrow exception to the limitation of community principles.

The Unga Corporation owns lands on Unga Island and with this proposed annexation will hinder future economic development and future generational use and development on Unga Island and its surrounding area. Stating that there are currently zero residents living on Unga Island is incorrect. Two historical towns are on the Eastern portion of Unga Island Squaw Harbor, Alaska 7 miles SSW of Sand Point and Unga, Alaska 4.5 SSE of Squaw Harbor.

The Unga Corporation urges the Commission to deny the proposed annexation of the City of Sand Point "Petition to Annex 245 Square Miles of Popof Island and the Surrounding Waters to the City of Sand Point."

Sincerely,



Sherry Foster

President, Unga Corporation

AMY FOSTER  
P. O. BOX 254  
SAND POINT, ALASKA 99661

December 7, 2016

Local Boundary Commission  
550 W. 7<sup>th</sup> Avenue, Suite 1640  
Anchorage, Alaska 99501-3510

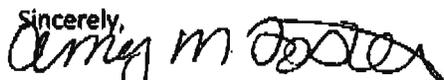
RE: City of Sand Point Annexation

Dear Sirs:

I would like to take this opportunity to comment on the matter directly pertaining to the "Notice of Filing of Legislative Review Annexation Petition by the City of Sand Point" in the filing of a petition with the Local Boundary Commission to annex territory by legislative review method.

I am writing to object to this annexation proposal to annex 245 square miles of Popof Island and surrounding waters. 274 square miles for the City of Sand Point to annex in a given time is a tremendous amount of area to annex for the purposes of taxation of raw fish taxes. As a citizen, resident, and commercial fishermen I have concerns about the proposed annexation. I also do not adhere to many of the statements within the proposed annexation territory.

I urge the commission at this time to deny the proposed annexation of the City of Sand Point.

Sincerely,  
  
Amy M Foster

RECEIVED  
DEC 08 2016  
Local Boundary Commission



December 28, 2016

## CITY OF SAND POINT ANNEXATION

### REPLY BRIEF

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The City of Sand Point received three public comments in response to the annexation petition. Two were received before the public comment period deadline expired on December 7, 2016, while one comment was allowed by the Commission after the comment period had ended. One of the commenters (Hemenover) deemed their comment a “responsive brief,” and as such the City responded to them directly during the reply brief period.

We will respond to the comments in the order that they were received.

#### **Hemenovers, Pirate Cove** (received November 23, 2016)

The commenter’s assertion that annexation “opens the door” to a property tax in the territory is unfounded. The City of Sand Point does not currently levy a property tax, and there has been no discussion at any City level of recommending a property tax associated with the proposed annexation. The vast majority of rural and off-road Alaska communities do not levy a property tax, and we have found no historical evidence that suggests one is likely to be considered for Sand Point in the future. The most current Community Comprehensive Plan from 1994 (due for an update in 2017) makes no mention of a property tax. Likewise, there have been no official statements of increasing the city sales tax (currently at 4%) due to annexation. The commenter is correct that the primary taxation concern of the annexation proposal is related to the raw fish tax, but that again is not going to increase due to the annexation, and it is a tax that any fisherman would be paying regardless of whether the annexation passes or not.

The Hemenovers, like anyone else, are paying a sales tax on any applicable sales transactions they make in Sand Point, and that will remain unchanged. That tax in part is used to fund city services such as street and facility maintenance, public safety, and parks and recreation. The Hemenovers and any other visitors to Sand Point can enjoy those services, just as visitors to Kodiak, Homer, or any other city that levies a sales tax can enjoy. A sales tax does not equate to the provision of utility services. A practical expectation can be made that the City will continue to provide emergency service response capabilities to an area such as Pirate Cove- again, as much as is reasonable- but without a true overland connector such as a road over Popof Island, it is not realistic to assume that police services and water and sewer lines would extend all over the island.

Moreover, the largest land owners potentially to be affected by the proposed annexation would likely be the Shumagin Corporation, the village corporation and surface owners of Popof Island. They have offered no objection to the annexation petition.

Finally, we take all commenter's concerns into serious consideration, but it is worth noting that Mr. Hemenover owes the City of Sand Point more than \$14,000 in uncollected harbor fees.

\*\*\*\*\*

**Unga Corporation, Sand Point** (received December 6, 2016)

The Unga Corporation is concerned about the effects of annexation on the eastern portion of Unga Island. The City has made clear to Unga Corp representatives on several occasions that the proposed annexation does not include any portion of the island; it only seeks to incorporate the area of water *between* Unga Island and Popof Island, where Sand Point is located.

The Corporation is concerned that annexation "will hinder future economic development and future generational use on Unga Island and its surrounding area." This assertion is speculative and without basis as the current city boundaries already border a large portion of the northeast section of Unga Island, with no documented detrimental effect on the Corporation's ability to foster economic development and use on the island.

The City is not attempting to annex "an entire geographical region," as the commenter asserts. Sand Point is located within the Aleutians East Borough (AEB), and the Borough is the "region" for this part of the state. This annexation is only attempting to carve out a relatively small portion of the AEB; we are not seeking to divide the AEB into two boroughs.

Finally, according to the latest data from the State of Alaska Department of Labor and the Department of Commerce, Community and Economic Development- Division of Community & Regional Affairs, the 2015 population of both Unga Village and Squaw Harbor was 0. There was also no data for either community from the 2010 U.S. Census. If there are residents living on Unga Island the City is more than happy to speak to them and discuss their concerns related to the petition.

\*\*\*\*\*

**Amy Foster, Sand Point** (received December 8, 2016)

The commenter's main objection is that the proposed area is too large "to annex for the purposes of taxation of raw fish." True, one of the City's goals in pursuing the annexation is to recover additional fish tax dollars in an expanded fishing district, and the reasons for doing so are outlined in the petition. Countless Alaskan communities have employed annexation as a form of revenue generation, including the two most recent cases of Dillingham and Manokotak approved by the LBC. As state government revenues shrink- thus affecting the support programs that used to go directly to communities (such as revenue sharing)- local governments must look to more *localized* revenue sources to provide services. In Sand Point's case that revenue source is predominantly fish, and in the proposed territory fishing boats and other vessels that traverse those waters use city services in the form of the harbor, the city dock, the health clinic, landfill, public safety, and more. The primary users of those waters- whether Sand Point residents or visitors- rely on municipal services, and capturing more revenue helps to enhance those services.

The expansion area in question (245 square miles) is comparable or even smaller than the areas of Yakutat, Unalaska, St. Paul and Togiak, in addition to the Bristol Bay Borough; all communities with

similar or smaller populations than Sand Point. The aforementioned communities have larger boundaries to incorporate more opportunities for revenues, among many reasons, and water is often a large percentage of these areas. The scope to expand services to a body of water is limited. There is obviously no population living on the water, of course, but the resources that these communities, as well as Sand Point, depend on are located in these waters. Thus, often the users and harvesters of these resources live and work in Sand Point.

The City has responded to emergencies in the proposed territory for many years, and incorporating that area into city boundaries will help justify expending municipal resources in that territory. Mrs. Foster has some trepidation with the size of proposed area of annexation, and the City Administrator has spoken to her on a few occasions and taken her concerns into consideration when working on the petition. However, residents should not see diminished services due to an enlargement of City boundaries. The intent of the annexation is for new revenue to enhance the public services the City already offers, and to use those resources to plan for possible new development on Popof Island.

## Notice of Preliminary Report Concerning the Annexation Petition from the City of Sand Point

The Department of Commerce, Community, and Economic Development (Department) will issue a preliminary report on March 21, 2017, regarding the annexation petition from the City of Sand Point. The report, petition, and all related materials are available on the LBC website:

<https://www.commerce.alaska.gov/web/dcra/LocalBoundaryCommission/CurrentPetitions/2016CityofSandPointAnnexationPetition.aspx>.

The mailing of this report opens a public comment period. Any interested persons or entities may file written comments with the Department on this preliminary report. Comments should also be sent to the petitioner. Comments sent to the Department should be accompanied by a statement that the comment was also submitted to the petitioner, or the commenter should notify the Department of an inability to send a comment to the petitioner. Public comments must be filed and sent in accordance with 3 AAC 110.480. The Local Boundary Commission (LBC) has waived the requirement that commenters send a paper original of a comment submitted electronically. The deadline for the Department to receive all comments is **4:30 p.m., Tuesday, April 25, 2017** at:

LBC staff, 550 W. 7<sup>th</sup> Avenue, Suite 1640, Anchorage, AK 99501. Fax: 907-269-4563; Email: [LBC@alaska.gov](mailto:LBC@alaska.gov)

Please also submit the comments to the Petitioner: City of Sand Point, Attention: Andy Varner, 3380 C Street, Suite 205, Anchorage, AK 99503. Fax: (907) 274-3540; Email: [avarner@sandpointak.org](mailto:avarner@sandpointak.org)

Following receipt and consideration of comments on this preliminary report, the Department will issue a final report. 3 AAC 110.530 sets out the procedures governing departmental reports. The LBC will then hold at least one public hearing on the petition. If the LBC approves the petition, it will send its decision to the Legislature during the first 10 days of the next regular session of the Legislature.

Questions may be directed to the Department at the above mailing address, email address, or fax number, or by calling 907-269-4559/4587.

It is recommended that persons interested in receiving future LBC notices, updates, and materials by email subscribe to the LBC notice list server by visiting <http://list.state.ak.us/mailman/listinfo/dced-localboundarycommission> and following the instructions.

**Sand Point Petition Schedule**  
**March 20, 2017**

These dates are subject to change.

**October 4, 2016**

LBC accepts petition for filing.

**October 5, 2016**

Staff publishes public notice of filing the petition in the *ADN*. Public comment on petition starts. Publication repeated on October 12 and 19, 2016.

**October 28, 2016**

Staff publishes public notice of filing the petition in *In the Loop*.

**December 7, 2016 (Public comment period lasts 63 days)**

Department must receive public comments and/or responsive briefs by 4:30 p.m.

**December 28, 2016 (Three weeks to file reply brief)**

Deadline for department to receive petitioner's reply brief.

**March 21, 2017 (79 days to write preliminary report)**

Staff will consider comments and briefs in preliminary report and distribute preliminary report. Public comment on preliminary report begins on the date report is mailed.

**April 25, 2017 (Lasts for 35 days)**

Public comment period for preliminary report ends.

**June 6, 2017**

LBC publishes public hearing notice (at least **30 days** before hearing). Staff also provides notice through other means designed to reach the public.

**June 6, 2017 (42 days to write final report)**

LBC staff mails final report (must precede the hearing by at least **21 days**).

**July 11, 2017 (28 days after staff mails final report)**

LBC holds a public hearing and a decisional meeting. The LBC must hold a decisional meeting within 90 days of the hearing, but can immediately follow it.

**August 1, 2017**

LBC meets to approve or amend draft written decision.

**August 10, 2017 (Or before—deadline for LBC to issue written decision; must be issued within 30 days after decisional meeting)**

**18 day** period for public to request reconsideration of decision starts. LBC has **30 days** to reconsider on its own motion. If reconsideration granted, then petitioner or respondent has **10 days** to file a brief.

**January 16, 2018**

2018 Regular Session of the Alaska Legislature starts. If that LBC approves the petition, it will present its decision to the Legislature within the first 10 days of a regular session. If the Legislature does not disapprove the petition, the proposed boundary change takes effect in 45 days.

