

Planning Commission Report

Meeting date: January 2, 2018

TO: Borough Assembly
FROM: Planning Commission
Subject: Special Use Permit - John Murgas

The Planning Commission received an application from John Murgas dba Island Ventures for a Special User Permit to construct a temporary launch ramp on borough-owned tidelands in Scow Bay.

The Planning Commission seeks guidance from the Borough Assembly as to whether to expand interpretation of a Special Use Permit to include use of borough tidelands by commercial operations.

A Special Use Permit (SUP) is a no-cost permit for use of borough property, usually a right-of-way. In general, an SUP grants the permittee permission to construct improvements and sole responsibility for maintenance of lands within a platted borough right-of-way.

The existing ordinance is vague on when to use special use permit and provides one example: use of platted right-of-way for a driveway. Over the last twenty years, nearly every SUP issued has been for use of a platted right-of-way.

Special Use Permits Issued by City/Borough

1996 - SUP to use ROW for driveway to private residence
1997 – SUP to maintain a water service line in ROW to private residence
1997 - SUP to maintain a water and sewer service line in ROW to private residence
1998 – SUP to use ROW for driveway to private residence
1999 – SUP to maintain a water and sewer line in ROW to private residence
1999 – “Land Use Agreement” with nonprofit for use of borough land as archery range
2000 – SUP to use ROW for driveway to private residence
2015 – Parking area in ROW for rental property
2015 – SUP to use ROW for driveway to private residence
2016 – SUP to use ROW for driveway to private residence
2016 – SUP to use ROW for driveway to private residence

The borough attorney’s opinion is attached and recommends this request be considered under a lease arrangement rather than a special use permit. The borough has many tideland leases particularly in the area of the Port Dock and Scow Bay.

The Planning Commission would appreciate guidance as to whether this application is appropriate to consider as an SUP or whether it should be considered under a lease agreement.

Liz Cabrera

From: Sara Heideman <sheideman@law-alaska.com>
Sent: Tuesday, November 28, 2017 2:55 PM
To: Liz Cabrera
Subject: SUPs

Hi Liz:

This follows up on our telephone conversation regarding special use permits (SUP) versus leases. Thanks for sending up the listing of recent SUPs that I requested.

As I understand it, special use permits have been issued in the past primarily for non-exclusive use of public right-of-ways (ROWs) for private residence driveways and utilities. The listing of SUPs which you provided would indicate that about eleven SUPs have been issued in the past twenty years or so, and that nine of them fall into that category. Another involved nonprofit use of land for an archery range. The last SUP involved non-exclusive use of a ROW for parking purposes. Accordingly, while the Borough Code, Chapter 19.76, regarding special use permits does not contain language limiting the issuance of a SUP to residential (versus commercial), non-exclusive use of a ROW, recent past practice would indicate that the ordinance has been primarily interpreted in that fashion.

On the other hand, commercial use of non-ROW borough land and tidelands, when that usage will otherwise restrict some or all public use of the parcel, and especially where improvements will be constructed, should generally be addressed through the lease procedures found in Chapters 16.12 and 16.16 of the Borough Code.

Please let me know if you have any questions.

Thx,
Sara

Sara E. Heideman
Heideman Law Offices
500 L Street, Suite 200
Anchorage, Alaska 99501
(907) 279-5528

This electronic message is from a law firm. It may contain confidential or privileged information. If you receive this transmission in error, or without authorization, please reply to the sender to advise of the error and delete this transmission and any attachments.

Chapter 19.76 - SPECIAL USE PERMIT

Sections:

19.76.010 - Purpose of provisions.

There are some instances when the private sector needs to use city property for uses other than what the property was initially intended for. A special use permit provides for consideration of factors affecting the suitability of the proposed activity. An example would be to use a plated, but undeveloped, right-of-way for private access to private property.

(Ord. 557 § 3 (part), 1985)

19.76.020 - Conditions of approval.

The city council shall issue the permit if the request is found to be of a beneficial nature to the community and that adjacent and surrounding properties will not be adversely impacted.

(Ord. 557 § 3 (part), 1985)

19.76.030 - Application.

A written application shall be filed with the planning and zoning commission through the building official. This application shall state the nature of the request and show how the proposed activity will comply with the standards set forth under Section 19.76.020 of this chapter, Conditions of Approval.

(Ord. 557 § 3 (part), 1985)

19.76.040 - Site plan request.

A specific and detailed site plan shall be submitted with the application.

(Ord. 557 § 3 (part), 1985)

19.76.050 - Investigation and report to commission.

The building official shall investigate and report to the commission on the impact, if any, this proposed activity would have on the proposed site and on surrounding properties.

(Ord. 557 § 3 (part), 1985)

19.76.060 - Hearing and notices.

The commission shall set a date for and hold a public hearing upon each properly submitted application. Such hearing shall be held not later than sixty days following the date of filing of such application. At least fifteen days before the hearing, a public notice specifying the subject, time and place of the hearing shall be posted at three public places. In addition, at least fifteen days' notice of the time and place of the hearing shall be mailed to all parties in interest and to all property owners within six hundred feet of the property involved that is subject of the application; and, if the property described lies within a recorded subdivision, to all persons holding a legal interest within that subdivision. The failure of any person to receive any notice required under this section, where the records of the city indicate the

notice was provided in a timely and proper manner, shall not affect the validity of any proceeding under this section.

(Ord. 600 § 3 (part), 1987: Ord. 557 § 3 (part), 1985)

19.76.070 - Public inspection of application.

From the time of filing such application until the time of such hearing, the application, together with all the plans and data submitted, shall be available for public inspection in the office of the building official.

(Ord. 557 § 3 (part), 1985)

19.76.080 - Recommendation to city council.

The commission shall make a report in writing to the city council as to their findings and recommendations. The commission's report to the city council shall be made within thirty days after the closing of the public hearing.

(Ord. 600 § 3 (part), 1987: Ord. 557 § 3 (part), 1985)

19.76.090 - City council decision.

The city council shall render its decision within thirty days after receipt of a written report from the planning commission unless such time limit is extended by the city council.

(Ord. 600 § 3 (part), 1987: Ord. 557 § 3 (part), 1985)

19.76.100 - Issuance of permit.

In granting a special use permit, the council shall state under what conditions, if any, the permit has been issued. Any such conditions must be complied with. Violation of any condition shall result in revocation of the permit, and further use of the property shall constitute a violation of this title and shall be punishable accordingly.

(Ord. 557 § 3 (part), 1985)

19.76.110 - Expiration of permit.

Any special use permit approved by the city council shall expire unless the privilege granted is utilized within one year after the granting of the special use permit. Any permittee holding an un-expired permit may apply for an extension of the time within which he may commence work under that permit when he is unable to commence work within the time required by this section. The city council may extend the time for action by the permittee for a period not exceeding one year upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than two times without an additional public hearing and written recommendation from the planning commission.

(Ord. 626 § 3 (part), 1988: Ord. 557 § 3 (part), 1985)

19.76.120 - Suspension or revocation.

The city council may, in writing, suspend or revoke a permit issued under the provisions of this section whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation or any provisions of this code.

(Ord. 626 § 3 (part), 1988)

PID: _____ Date Received: _____ Received By: _____

Fee: \$170.00 (CODE: 110.000.404110)

Planning Commission Public Hearing Date: _____ Approved _____ Denied _____

FOR OFFICE USE ONLY

APPLICATION FOR SPECIAL USE PERMIT

Petersburg Borough
Community & Economic Development
PO Box 329
Petersburg, Alaska 99833

I. APPLICANT(S): ISLAND VENTURES LLC

II. DESCRIPTION: (Use additional paper if necessary)

Legal Description of the area requested for the special use permit:

WRANGELL NARROWS SEC 4 T 59 S R 79 E CRM

LAT 56.7806 N LONG 132.9730 W

Size of the petition area: 5,400 SF (0.12 A)

III. APPLICATION INFORMATION: (Use additional paper if necessary)

Explain details of proposed development: ATTACHED

TEMPORARY BOAT RAMP

Explain schedule of timing of development program: ATTACHED

A SPECIAL USE PERMIT CONDITIONS OF APPROVAL:

The Borough Assembly may issue the permit if the request, as approved by the Planning Commission, is found to be of beneficial nature to the community and that adjacent and surrounding property will not be adversely impacted.

There are instances when the private sector needs to use borough property for uses other than what the property was initially intended for. An example would be to use a platted, but undeveloped, right-of-way for private access to private property.

Explain how your application meets these conditions: ATTACHED

Note: The Borough Assembly shall render its decision within thirty days after the conclusion of the public hearing, and upon receipt of Planning Commission recommendations.

In granting a special use permit, the commission shall state under what conditions, if any, the permit has been issued. Any such condition must be complied with. Violation of any condition shall result in revocation of the permit and further use of the property shall constitute a violation of this title, and shall be punishable accordingly.

A Schematic site plat must be attached showing the type and location of all proposed uses on the site, and all vehicular and pedestrian circulation patterns relevant to those uses.

Approval of a special use permit may require verification of insurance coverage. Contact the Borough Clerk at 772-4425 for further information on these additional requirements.

I hereby affirm that the above information is true and correct to the best of my knowledge. I also affirm that I am the true and legal property owner or authorized agent thereof for the property subject herein.

ISLAND VENTURES L.L.C. John Mungas, MGR.
Print Petitioners Name

ALL PETERSBURG BOROUGH
Signature of the Owner(s) of the Land in Petition Area

NOV. 14, 2017
Date

296 MITKOF HIGHWAY, P.O. BOX 966 907-772-3909
Address (Street and Mailing) PETERSBURG, AK 99833 Phone Number

PROPOSED RAMP
✓

SCOW BAY
TURN AROUND

ISLAND VENTURES LLC
3/12
DATE OF PHOTO
NOV. 12, 2017



4/12

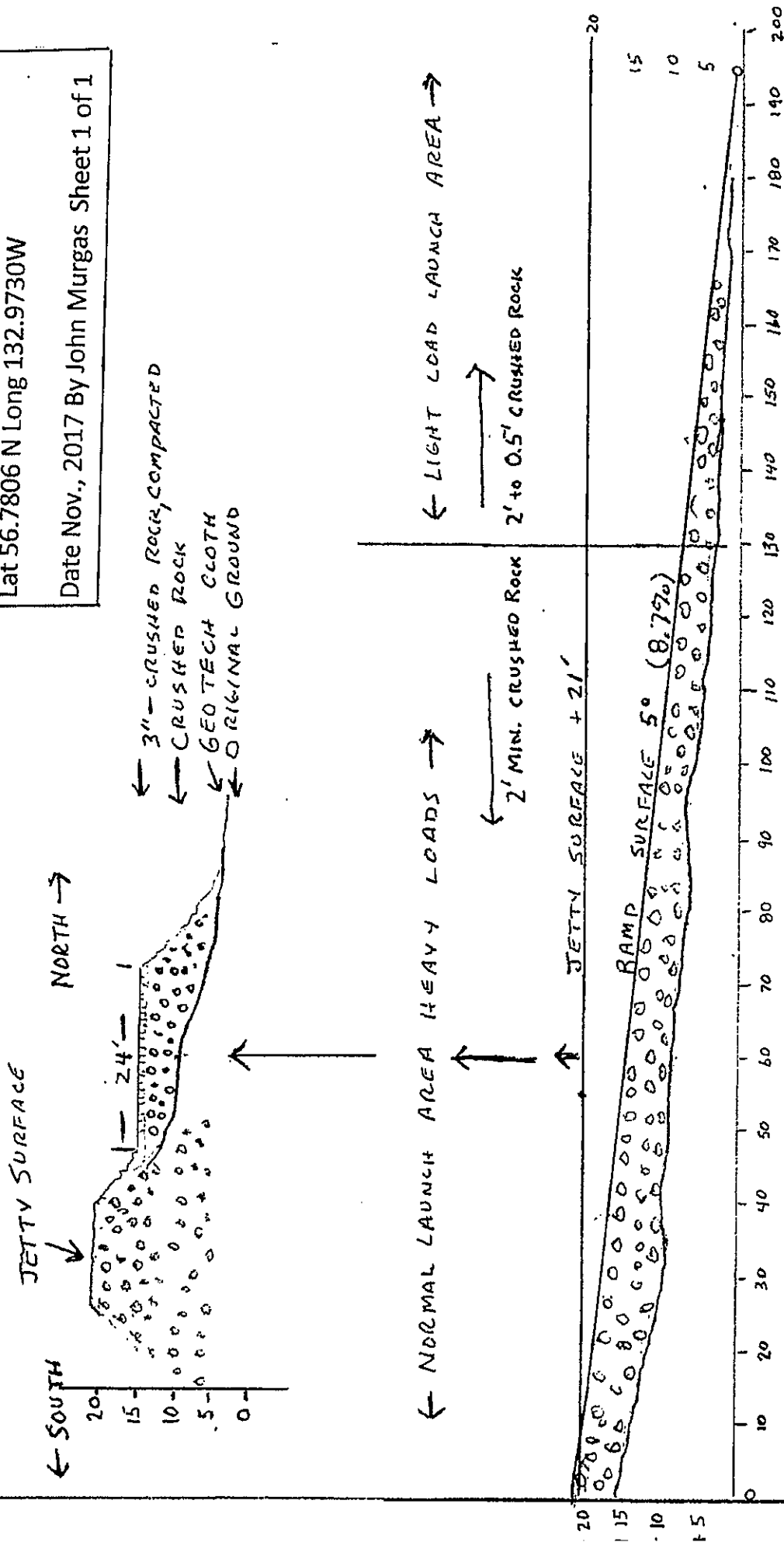
SCOW BAY TEMPORARY RAMP

Applicant: Island Ventures LLC

Wrangell Narrows Sec 4 T 59 S R 79 E CRM

Lat 56.7806 N Long 132.9730W

Date Nov., 2017 By John Murgas Sheet 1 of 1



III. DETAILS

DESCRIPTION Island Ventures LLC proposes to install, at its expense, including USACE Permit, a temporary public use boat ramp adjacent to and north of the present spit at the Scow Bay Turnaround, approximately 250 feet south of the present ramp. Surface dimensions would be 24 feet width by 170 feet length. Overall width including shoulder would average 32 feet (34 feet at top, 30 feet at bottom). Construction native ground up would be geotech cloth, 2 to 8 feet pit run crushed rock, compacted 3 inch minus rock on surface, barrier rock on south shoulder as needed. The ramp would be "temporary" in the sense it would be completely buried by the Petersburg Borough when and if the Borough moves forward with planned expansion of the Scow Bay Turnaround facility, or for any other public purpose. 100% of the materials would be functional fill for the planned expansion with zero waste.

PURPOSE The purpose of the ramp is strictly limited to improving safety of launching and hauling boats when there are prevailing southerly winds and waves, which averages about 30% of the time, depending on season. Severity ranges from mild to severe. The existing jetty provides excellent protection from those conditions.

COST/BENEFIT, SAFETY, MAINTENANCE Although the temporary life span of the proposed ramp may be short (estimated at 2 to 10 years depending on grant funds for the total Scow Bay project), cost/benefit is still worth while. A single mishap while loading or launching a vessel due to southerly winds and waves can far exceed the cost of the ramp. Increased safety offered by the proposed ramp would reduce liability for the Petersburg Borough. The ramp would be maintained by Island Ventures LLC. If, for unknown reasons, the ramp becomes unusable, at the discretion of the Petersburg Borough, Island Ventures LLC agrees to reclaim the rock and restore the ground to its original condition as best possible.

ROCK REIMBURSEMENT Although not contractual, and entirely at the discretion of the Petersburg Borough, Island Ventures LLC requests the Petersburg Borough give consideration to reimbursing Island Ventures LLC for value of the rock of the ramp for reducing costs of fill for the Petersburg Borough when and if the Petersburg Borough moves forward with other public use of the ramp. This could include allowing Island Ventures LLC to remove the rock Island Ventures LLC installed for construction of the ramp, or trade for value, whole or partial. This request by Island Ventures LLC implies no requirement by the Petersburg Borough to agree to the requested consideration, nor is it a requirement for this Special Use Permit application to move forward.

SCHEDULE USACE permit is estimated to take 3 to 6 months, if granted. If not granted, the project would be cancelled. Construction is estimated to be completed within 6 months after

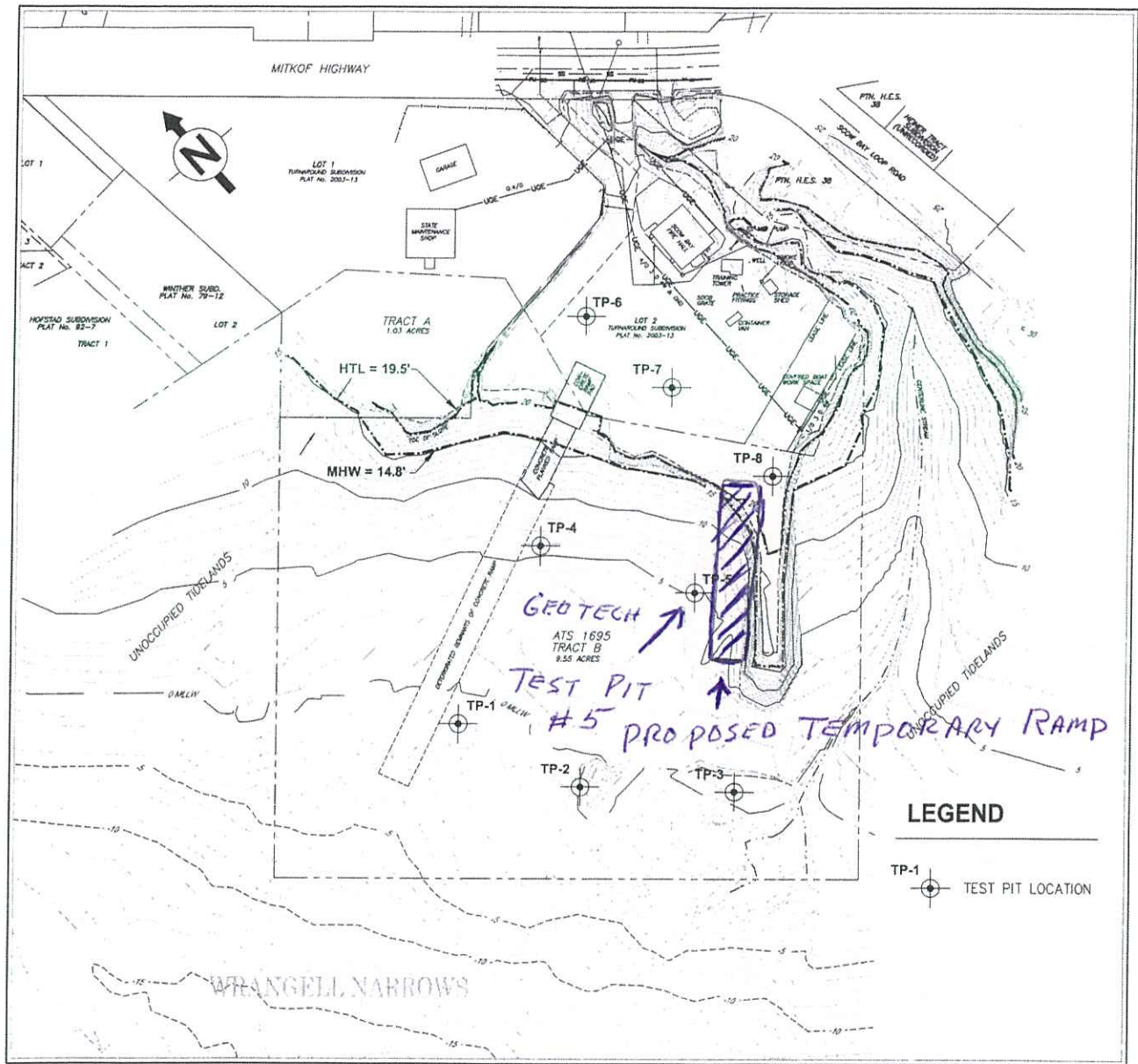
USACE permit is issued, excluding winter months November through March. Actual construction time is estimated 3 days.

BENEFIT TO COMMUNITY Boat launching ramps are vital to all communities in SE Alaska. On a per capita basis, Petersburg has less than average ramps in its main population area. The present Scow Bay ramp receives much use, both commercial and pleasure. An additional ramp that allows safe use in prevailing southerly winds would be beneficial to the community. It would help keep commercial vessel services in Petersburg instead of going to other communities.

FAVORABLE RAMP SLOPE Ramp slope of 5 degrees is the maximum slope for a large vessel hydraulic trailer without potential vessel sliding. It is minimally adequate for most recreational vessels. The present Scow Bay ramp slope is 5 degrees only on the upper concrete portion, then tapers (banana shaped) to 4 and 3 degrees, so is useable for recreational boats only at its upper portion. The proposed ramp is designed to provide a more constant slope, which will allow a larger tide window for recreational vessels.

RESTRICTIONS Like all ramps under Petersburg Port Authority rule, landing craft and barge loading would have to be restricted because of erosion from prop wash while loading and unloading takes place. Jet boats also would be restricted because of the severe erosion from jet wash. This restriction should not be a problem for jet powered boats as they presently frequent the present ramp with its present concrete surface on the upper portion. Island Ventures LLC would provide signage of the restrictions. If that signage is unsuccessful at regulating use of the ramp, Island Ventures LLC is prepared to gate the ramp with signage offering to ungate the ramp for any user during daylight hours with a telephone contact number, or any other procedures determined by the Petersburg Harbormaster.

OTHER Geotechnical data is favorable. See attached test pit data. The adjacent spit, installed in the 1960's, has not settled. Tidal current, at all stages of tide, is zero. Wave erosion of beach rock and sands, and littoral drift erosion, are close to zero. Maintenance of surface 3 inch minus compacted rock is expected to be minimal. There would be no loss of traction nor compromise of surface competency of the rock ramp vs a concrete ramp. Island Ventures LLC has been operating on the rock portion of the present ramp with minimal maintenance since 2007.



PURPOSE:
TEST PIT INVESTIGATION

**EXISTING
CONDITIONS**

SCALE IN FEET
0 100 200

20
SCALE

DATUM:
MLLW = 0.0'

HTL = 19.5'
MHW = 14.8'
MLLW = 0.0'

PND PROJECT NO. 162046.01

SCOW BAY BOAT HAULOUT

APPLICANT: CITY AND BOROUGH PETERSBURG, ALASKA
FILE NO.:
WATERWAY: WRANGELL NARROWS
PROPOSED ACTIVITY: TEST PIT INVESTIGATION
SEC. 4 T. 59 S R. 79 E M COPPER RIVER MERIDIAN
LAT.: 56.7806° N LONG.: 132.9730° W
DATE: MARCH 2017

SHEET 1 of 1