



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 12-032
Assembly Meeting Date: 1/24/12

Business Item Description:	Attachments:
Subject: Ordinance establishing a public park at Picture Point	1. Ordinance 11-10-274 2. Manager's Memo 3. Comparison of versions 1 and 2 of the ordinance 4. Fully amended version 2 of the ordinance
Originator: Mark Earnest, Borough Manager	
Originating Department: Administration	
Date Submitted: 10/25/11	

Full Title/Motion:
 Motion: Advance Ordinance 11-10-274 to a second public hearing on 2/14/12.
 Note: amendment to the ordinance is recommended by substituting the fully amended version 2 of the ordinance.

Administrative Recommendation:

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$ 0	\$	\$

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.:	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
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Summary Statement:
 The borough is obligated to establish a mechanism for protecting the compensatory mitigation measures at Picture Point for the PC Dock Waterfront Improvements project. The US Army Corps of Engineers requires it to be established "in perpetuity," and this ordinance will satisfy that requirement. It was introduced on 10/25. The first public hearing was originally scheduled for 11/15, but it was rescheduled to 1/10/12 to provide the planning commission (PC) with an opportunity to review and comment. The PC delayed their review until their 1/19/12 meeting, so staff recommends the second public hearing be scheduled for the first assembly meeting in February when the PC comments are most likely to be available. The borough attorney has proposed an amendment to correct the legal property description, and it is outlined in a memo from the clerk. Staff recommends this amendment be made prior to advancing to the second public hearing.

Referral:

Sent to: Planning Commission	Date: 11/15/11
Recommendation:	Refer to: Meeting Date: 1/19/12

Assembly Action:

Workshop Date(s):	Public Hearing Date(s): 1/24/12
Meeting Date(s): 10/25/11, 11/15/11, 1/10/12, 1/24/12	Tabled to Date:

An Ordinance of the Haines Borough adding Haines Borough Code Title 12 Chapter 12.40 to establish a public park at Picture Point.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Purpose. This ordinance adds Title 12 Chapter 12.40 to establish a public park at Picture Point. The code is amended as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED
~~STRIKETHROUGH~~ ITEMS ARE DELETED

**Chapter 12.40
PICTURE POINT PARK**

Sections:

- 12.40.010 Definitions
- 12.40.020 Picture Point Park Establishment and Values
- 12.40.030 Regulations for Protection of Natural Resources and Wildlife
- 12.40.040 Reserved Rights and Allowable Uses
- 12.40.050 Park Operation
- 12.40.060 Enforcement and Penalties

12.40.010 Definitions

As used in this chapter,

“Permit” means Department of the Army permit number POA-2009-1303 Portage Cove issued by the Juneau Regulatory District Corps of Engineers on June 24, 2010, required to mitigate for unavoidable impacts authorized by that permit.

“Property” means that area of tidelands and submerged lands located at Picture Point owned by the borough, whose legal description is:

Commencing at the southernmost property corner of Lot 3 Nukdik Point View Subdivision, Plat No. 2009-1, which is at the 1987 meander line at ATS 1308, from which the Northwest property corner of Lot 3 bears N 45° 42' 52" W a distance of 67.69 feet thus being the **Basis of Bearing** for this legal description; thence N 54° 55' 31" E a distance of 390.04 feet to the **True Point of Beginning**; thence S 49° 41' 53" E a distance of 141.47 feet; thence N 66° 46' 51" a distance of 81.68 feet; thence N. 10° 24' 31" W a distance of 73.92 feet; thence S 89° 31' 21" W a distance of 79.55; thence S 53° 52' 18" W a distance of 33.38; thence S 74° 16' 56" W a distance of 62.49 feet; thence S 47° 42' 21" W a distance of 88.92 feet; thence S 65° 54' 02" W a distance of 40.26 feet to the **Point of Beginning**, containing 0.649 acres more or less

12.40.020 Picture Point Park Establishment and Values

The establishment of a public park at Picture Point is a condition of the Permit. .

The Haines Borough recognizes the conservation, scenic, natural, or aesthetic value of the Property in its natural state. The purpose of this public park is to maintain aquatic resources and other natural values of the Property, and prevent the use or development of the Property for any purpose or in any manner that would conflict with the maintenance of the Property in its natural condition.

12.40.030 Regulations for Protection of Natural Resources and Wildlife.

Any activity on, or use of the Property inconsistent with the purpose of this public park is prohibited unless identified as an allowable use. Any construction activity on this restricted area is prohibited, except:

1. Public utilities may be constructed operated, maintained , extended or located in existing utility easements provided the Borough or its permittee returns any tideland disturbed from utility construction activity to its natural state.
2. Construction activities as allowed by the Permit for educational, cultural, or recreational purposes.
3. Construction of facilities to be used for educational, recreational, or cultural purposes after consultation with and approval of the U.S. Army Corps of Engineers.
4. An elevated walking trail for the purpose of environmental education and awareness may be constructed at the site provided the project is within the scope of the U.S. Army Corps of Engineers nationwide permit on minor discharges or structural discharges.

12.40.040 Reserved Rights and Allowable Uses.

The Haines Borough reserves for itself, its citizens, personal representatives, heirs, successors or assigns, the right to continue the use of the Property for all purposes consistent with this establishment of a public park, including, but not limited to, the right to quiet enjoyment of the Property, the rights of ingress and egress, including, but not limited to, traditional and contemporary subsistence and cultural activities, the right to hunt, fish, gather, and hike on the Property, the right to sell, transfer, gift or otherwise convey the Property, in whole or in part, provided such sale, transfer or gift conveyance is subject to the terms of, and shall specifically reference this Chapter. The following uses within the park boundaries are generally allowed:

- A. Hunting, fishing, trapping, or placement of a crab pot, shrimp pot, herring pound or fish wheel that complies with applicable municipal, state, and federal statutes and regulations on the taking of fish and game.
- B. Harvesting a small number of wild plants, mushrooms, berries, and other plant material for personal, non-commercial use.
- C. Brushing or cutting a trail less than five feet wide using only hand-held tools such as a chainsaw.
- D. Hiking, backpacking, skiing, climbing, and other foot travel; bicycling, traveling by horse or dogsled or with pack animals.
- E. Landing an aircraft or using watercraft (such as a boat, jet-ski, raft, kayak, or canoe), in a manner that minimizes surface damage, without damaging the Property.
- F. Using dead and down wood for a cooking or warming fire.
- G. Setting up and using a camp for personal, non-commercial recreational purposes, or for any non-recreational purpose (such as an educational camp), for not more than 14 days.
- H. Using a tent platform or other temporary structure that can readily be dismantled and removed or a float house that can readily be moved.

I. Brushing or cutting a survey line less than five feet wide using only hand-held tools (such as a chainsaw), or setting a survey marker.

J. Signs may be displayed to state:

- a. The name and address of the property, or the owner's name;
- b. The area is protected by this Chapter as adopted by the Haines Borough Assembly;
- c. Prohibition of any unauthorized entry or use;
- d. An advertisement for the sale or rent of the Property;
- e. To warn the public of hazards (if any); or for
- f. Environmental education, awareness, or interpretive panels.

K. Placing riprap or other suitable bank stabilization material to prevent erosion of a contiguous privately owned upland parcel if material is placed onto stable shoreland and the project is otherwise in the scope of the U.S. Army Corps of Engineers nationwide permit on bank stabilization.

L. An event or assembly of 50 people or less, including events sponsored by non-profit organizations or commercial events.

M. Recreational or other uses not listed above may occur within the park boundaries provided the use

- a. Is not a commercial recreational camp or facility that remains overnight;
- b. Does not involve explosives or explosive devices (except firearms);
- c. Is not prospecting or mining using hydraulic equipment methods;
- d. Is not for geophysical exploration for minerals or an oil and gas exploration;
- e. Does not cause or contribute to significant disturbance of vegetation, drainage, or soil stability;
- f. Does not interfere with public access or other public uses or interests.

Notwithstanding the foregoing Restrictions, the owner reserves for itself, its successors and assigns, the right to construct wetland, intertidal and stream mitigation on the Property, in accordance with the Compensatory Mitigation Plan for the Permit dated April 2011.

12.40.050 Park Operation

A. Permits. Temporary Use Permits issued under HBC 14.16.200 are required for special events.

B. Park Fees. Fees as set by action of the Assembly shall be charged for special events accompanied with a damage deposit.

12.40.060 Enforcement and Penalties

A. Enforcement.

- a. The Haines Borough Manager shall have the right to issue administrative regulations pertaining to use of the Property subject to approval of the Assembly.
- b. The Haines Borough Police Department, other licensed peace officers, and designated Haines Borough employees, shall have the authority to enforce this Chapter and any city manager regulations and may eject from the park any persons acting in violation of this Chapter or any Temporary Use permit issued for use of the Property.
- c. Nothing in this Chapter shall prevent Haines Borough employees from performing their assigned duties.
- d. Enforcement of this Chapter shall be in the same manner set forth in HBC Chapter 9.01.

B. Penalties. Violations of this Chapter are subject to the same penalties as provided in HBC 1.24 and 9.01.

Haines Borough
Ordinance No. 11-10-274
Page 4 of 4

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ____
DAY OF _____, 2011.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: 10/25/11
Date of First Public Hearing: 01/24/12 - Hearing postponed on 11/15 and 1/10 to give the PC an opportunity to review
Date of Second Public Hearing: __/__/__



Haines Borough Administration
Mark Earnest, Borough Manager
(907)766-2231 • Fax(907)766-2716
mearnest@haines.ak.us

Manager's Report – Picture Point Park Ordinance

January 19, 2012

Attached is the revised Ordinance No. 11-10-274, establishing a public park at Picture Point. The attachment contains both a legislative (underline and strikethrough) version as compared to the ordinance as originally presented, as well as a "clean" version with the changes.

This revision was at the request of the Planning Commission at their December 8, 2011 meeting. The Commission appointed Rob Goldberg to meet with me to go review and recommend changes to the original document. Mr. Goldberg and I accomplished that task and the revised document is the result of that meeting. The Planning Commission is welcomed to make additional comments at the January 19, 2012 meeting. Those comments will be forwarded to the Assembly, if not incorporated into a substitute version for the January 24 meeting.

HAINES BOROUGH, ALASKA
ORDINANCE No. 11-~~XX-XXX~~10-274

AN ORDINANCE OF THE HAINES BOROUGH ADDING HAINES BOROUGH
CODE TITLE ~~4812~~ CHAPTER ~~48.13012.40~~ TO ESTABLISH A PUBLIC PARK AT
PICTURE POINT

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance shall become effective immediately upon adoption.

Section 4. Purpose. This ordinance adds Title ~~4812~~ Chapter ~~48.13012.40~~ to establish a public park at Picture Point. The code is amended as follows:

Chapter ~~48.13012.40~~
PICTURE POINT PARK

Sections:

48.13012.40.010	Definitions
48.13012.40.020	Picture Point Park Establishment and Values
48.13012.40.030	Regulations for Protection of Natural Resources and Wildlife
48.13012.40.040	Reserved Rights and Allowable Uses
48.13012.40.050	Park Operation
48.13012.40.060	Enforcement and Penalties

~~48.13012.40.010~~ **Definitions**

As used in this chapter,

“Permit” means Department of the Army permit number POA-2009-~~4303403~~ Portage Cove issued by the Juneau Regulatory District Corps of Engineers on June 24, 2010, required to mitigate for unavoidable impacts authorized by that permit

“Property” means that area of tidelands and submerged lands located at Picture Point owned by the borough, whose legal description is :

Commencing at the southernmost property corner of Lot 3 Nukdik Point View Subdivision, Plat No. 2009-1, which is at the 1987 meander line ~~atof~~ ATS 1308, from which the Northwest property corner of Lot 3 bears N 45° 42' 52" W a distance of 67.69 feet thus being the **Basis of Bearing** for this legal description; thence N 54° 55' 31" E a distance of 390.04 feet to the **True Point of Beginning**; thence S 49° 41' 53" E a distance of ~~441.47138.82~~ feet; thence N ~~66~~

45°54'51"E a distance of 141.7 feet; thence N66° 46' 51" a distance of 81.68 feet; thence N. 10° 24' 31" W a distance of 73.92 feet; thence S 89° 31' 21" W a distance of 79.55 feet; thence S 53° 52' 18" W a distance of 33.38 feet; thence S 74° 16' 56" W a distance of 62.49 feet; thence S 47° 42' 21" W a distance of 88.92 feet; thence S 65° 54' 02" W a distance of 40.26 feet to the **Point of Beginning**, containing 0.649 acres more or less.

18.130

12.40.020 **Picture Point Park Establishment and Values**

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18.13012.40.030 **Regulations for Protection of Natural Resources and Wildlife.**

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2. Construction activities as allowed by the Permit for educational, cultural, or recreational purposes. .
3. Construction of facilities to be used for educational, recreational, or cultural purposes after consultation with and approval of the U.S. Army Corps of Engineers.
4. An elevated walking trail for the purpose of environmental education and awareness may be constructed at the site provided the project is within the scope of the U.S. Army Corps of Engineers nationwide permit on minor discharges or structural discharges.

18.13012.40.040 **Reserved Rights and Allowable Uses.**

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The following uses within the park boundaries are generally allowed:

- A. ~~Hunting, fishing, trapping~~Fishing, or placement of a crab pot, or shrimp pot, ~~herring pound or fish wheel~~, that complies with applicable municipal, state, and federal statutes and regulations on the taking of fish and game shellfish.
- B. Harvesting a small number of wild plants, mushrooms, berries, and other plant material for personal, non-commercial use. .

~~C. Brushing or cutting a trail less than five feet wide using only hand-held tools such as a chainsaw.~~

~~D.C. Hiking, backpacking, skiing, climbing, and other foot travel; or bicycling, ~~traveling by horse or dogsled or with pack animals.~~~~

~~E.D. ~~Landing an aircraft or using~~ Using watercraft (such as a boat, jet-ski, raft, kayak, or canoe), in a manner that minimizes surface damage, without damaging the Property.~~

~~F. Using dead and down wood for a cooking or warming fire.~~

~~G. Setting up and using a camp for personal, non-commercial recreational purposes, or for any non-recreational purpose (such as an educational camp), for not more than 14 days,~~

~~H. Using a tent platform or other temporary structure that can readily be dismantled and removed or a floathouse that can readily be moved.~~

~~I. Brushing or cutting a survey line less than five feet wide using only hand-held tools (such as a chainsaw), or setting a survey marker.~~

~~J.E.~~ Signs may be displayed to state:

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- d. ~~An advertisement for the sale~~ Sale or rent of the Property;
- e. To warn the public of hazards (if any); or for
- f. Environmental education, awareness, or interpretive panels.

~~K.F.~~ Placing riprap or other suitable bank stabilization material to prevent erosion of a contiguous privately owned upland parcel if material is placed onto stable shoreland and the project is otherwise in the scope of the U.S. Army Corps of Engineers nationwide permit on bank stabilization.

~~L.~~

~~M.G.~~ An event or assembly of 50 people or less, including events sponsored by non-profit organizations or commercial events.

~~N.H.~~ Recreational or other uses not listed above may occur within the park boundaries provided the use

- a. Is not a commercial recreational camp or facility that remains overnight;
- b. Does not involve explosives or explosive devices (~~except firearms~~); other than Borough-sponsored fireworks displays;
- c. Is not prospecting or mining using hydraulic equipment methods;
- d. Is not for geophysical exploration for minerals or an oil and gas exploration;
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Notwithstanding the foregoing Restrictions, the owner reserves for itself, its successors and assigns, the right to construct wetland, intertidal and stream mitigation on the Property, in accordance with the Compensatory Mitigation Plan for the Permit dated April 2011.

18.13012.40.050 Park Operation

A. Hours of Operation. XX:00 am – XX:00 pm, except for special programs and permission.

B. Permits. Temporary Use Permits issued under HBC 14.16.200 are required for special events.

C. Park Fees. Fees as set by action of the Assembly shall be charged for special events accompanied with a damage deposit.

[18.130](#)

[12.40.060](#) **Enforcement and Penalties**

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 - c. Nothing in this Chapter shall prevent Haines Borough employees from performing their assigned duties.
 - d. Enforcement of this Chapter shall be in the same manner set forth in HBC Chapter 9.01.
- B. Penalties. Violations of this Chapter are subject to the same penalties as provided in HBC 1.24 and 9.01.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS __ DAY OF _____, [20112012](#).

ATTEST:

Julie Cozzi, Borough Clerk
Mayor

~~Janice Hill~~[Stephanie Scott](#), Borough

Date Introduced: [xx/xx/xx10/25/11](#)
Date of First Public Hearing: [xx/xx/xx11/15/11](#)
Date of Second Public Hearing: xx/xx/xx

HAINES BOROUGH, ALASKA
ORDINANCE No. 11-10-274

**AN ORDINANCE OF THE HAINES BOROUGH ADDING HAINES BOROUGH
CODE TITLE 12 CHAPTER 12.40 TO ESTABLISH A PUBLIC PARK AT PICTURE
POINT**

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ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS __ DAY OF _____, 2012.

ATTEST:

Julie Cozzi, Borough Clerk

Stephanie Scott, Borough Mayor

Date Introduced: 10/25/11
Date of First Public Hearing: 11/15/11
Date of Second Public Hearing: xx/xx/xx