

**BENZIE COUNTY, MICHIGAN
ORDINANCE NO. 2009-003**

AN ORDINANCE TO AMEND THE BENZIE COUNTY ZONING ORDINANCE BY ADDING NEW DEFINITIONS TO ARTICLE II, DEFINITIONS; BY ADDING A NEW ARTICLE XXIII - PLATTE LAKES AREA MANAGEMENT PLAN OVERLAY DISTRICT TO PROMOTE THE PRESERVATION OF NATURAL FEATURES, TO PROTECT WATER QUALITY AND TO REGULATE DEVELOPMENT AND THE USE OF PROPERTY WHICH BORDERS, ENCOMPASSES OR CONTACTS THE SURFACE WATERS, WATERCOURSES AND DRAINAGE WAYS TO THE PLATTE LAKES AREA.

THE COUNTY OF BENZIE HEREBY ORDAINS:

Section 1 – Amendment of Article II - Definitions.

Article II – Definitions of the Benzie County Zoning Ordinance is hereby amended to add thereto the following new definitions which will be inserted into the exiting list of definitions in alphabetical order.

Bottom-land – the land area of an inland lake or stream which lies below the ordinary high water mark and which may or may not be covered by water at a particular time.

Buffer strip – Natural, landscaped and open space areas or any combination thereof used to filter, impede or control storm water runoff or physically separate or screen one use or land feature from another in order to visually shield or reduce noise, artificial lighting, or other nuisances.

Easement to water – The interest in or the ownership or use of property having water frontage on a water resource by the occupants of one or more easement grantee lots.

Impervious surface – Any surface, including streets, roads, driveways, parking lots, sidewalks, patios and rooftops, which prevents storm water from percolating into the ground.

Lot, Water Front – A lot that has water frontage on a water body.

Lot line, Water Front – the ordinary high water mark of surface water or watercourses or boundary line of a wetland area (as defined by Section 307 of 1994 P.A. 451).

Mowing and Cutting – The process of cutting the grass or ground vegetation in a way which allows the cuttings to be removed for deposition elsewhere.

Non-Point Source Pollution – General storm water runoff from impervious surfaces and sediment from urban, agriculture and forestry sources, as well as subterranean water influx to a waterbody.

Ordinary High Water Marks – The line between upland and bottom land which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation.

Organic Beach Debris – Organic matter that washes up on the shoreline. To include but not be limited to leaves, aquatic plants, chara, filamental algae, dead fish, dead animals and shoreline vegetation that has broken loose and washed up, etc

Permeable Materials – Materials that permit full or partial absorption of storm water into underlying soils, including, but not limited to shredded bark, wood chips, paving bricks if installed without mortared joints, landscape stone and wood decks.

Phosphate Containing Fertilizer – Any fertilizer of any type that contains phosphorus.

Removal of Vegetation – Includes but is not limited to the cutting, pruning, pulling, digging out, chemical treatment, etc. such that a sufficient amount of the plant and or related root structure are removed/destroyed such that the plant will no longer continue to grow and bare soil is exposed.

Sediment – Solid particulate matter, mineral or organic that has been deposited in water, is in suspension, or being transported by water, or has been removed from its site of origin by the process of soil erosion whether natural or induced.

Slope – A portion of land that has either an upward or downward inclination.

Slope, Steep – A slope that has a topographic grade of eighteen percent (18%) or greater.

Soil Erosion – The wearing away of land by the action of wind, water, gravity or a combination thereof including ice.

Stream – Any natural flow of water which has a defined bank and bottom, whether it be continuous or intermittent.

Upland – The land area that lies above the ordinary high water mark or wetland.

Water Body – Any natural or artificial inland lake or stream, all being water resources.

Water Frontage – The horizontal distance measured along the water front line.

Wetland – Land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life and is commonly referred to as a bog, swamp or march. Additionally, any area that has the presence of saturated hydrological conditions during ten percent (10%) of the growing season and a dominant presence of hydrophilic vegetation or hydric soils.

Wildlife Habitats – Areas of natural environment upon which wildlife depend for survival as self-sustaining populations in the wild, including land and water needed for cover, protection or food supply. Wildlife may include mammals, birds, reptiles, amphibians, fishes, and invertebrates. Areas may include nesting areas, aquatic habitat, waterfowl staging areas, deeryards and habitat of endangered and threatened species.

Yard, Waterside – The open space extending across the full width of a lot between the building line and the ordinary high water mark of any water resource and measured perpendicular to the building at the closest point to the ordinary high water mark. This shall be the rear of the yard for a water front lot.

Section 2 – Addition of New Article XXIII.

The Benzie County Zoning Ordinance is hereby amended to add thereto a new Article XXIII – Platte Lakes Area Management Plan Overlay District to consist of Sections 23.1 through 23.5 to read as follows:

SECTION 23.1 – ESTABLISHMENT OF OVERLAY DISTRICT; INTENT AND PURPOSE.

This overlay district, the Platte Lakes Area Management Plan Overlay District, is hereby established and is intended to protect the health, safety and welfare of the Platte Lakes Area by promoting the preservation of natural features, protecting water quality and regulating development and the use of property which borders, encompasses or contacts the surface waters, watercourses and drainage ways to the Platte Lakes Area. The shape, size and character of the property located within this district may vary greatly due to circumstances imposed by the existing water bodies, watercourses, wetlands, drainage ways and varying slopes. Additionally, it is the intent of this ordinance to establish land management practices and procedures within the Platte Lakes Area that will help in the attainment and compliance with the court ordered Big Platte Lake water quality standard of 8.0 micro-grams per liter for phosphorus established in the Consent Judgment dated March 10, 2000 issued by the Ingham County Circuit Court in *Platte Lake Improvement Association vs. Michigan Department of Natural Resources*, File No. 86-57122 CE, particularly in Section 3 (Operation of the Hatchery), Paragraph F, sub-paragraph ii (Platte Lake Phosphorus Limit) thereof.

SECTION 23.2 PLATTE LAKES AREA

The Platte Lakes Area is defined as the property immediately surrounding the Platte Lakes. Boundaries may vary due to slopes and permeability of the soils, either of which may affect the distance of the boundary from the waters edge. The interpretation of the boundaries of this area shall be the responsibility of the Zoning Administrator, whose decision may be appealed to the Board of Appeals. In cases where a parcel is not entirely within the boundaries of the Platte Lakes Area only those portions within the Platte Lakes area are required to comply with the regulations of this Article.

SEC. 23.3 WATER RESOURCES SUBJECT TO ORDINANCE REGULATION.

Navigable water bodies and watercourses, wetland areas 0.5 acre or larger in size, non-navigable waterways with tributaries from other non-navigable waterways whose origin is from surface run off, or springs and located within the Platte Lakes Area Management Plan Overlay District are subject to the regulations set forth in this Article XXIII.

SEC. 23.4 DISTRICT REGULATIONS

- A. Dwelling and Accessory Structures.
 - 1. Only one dwelling per lot is permitted.
 - 2. Newly created building lots must be a minimum of one hundred (100) feet in width at the building line.

- B. Impervious Surfaces.
 - 1. Impervious surfaces must be engineered and sloped in a manner that will not allow direct drainage into a water resource.
 - 2. Drainage of surface runoff from an impervious surface must be directed to a retention area or rock filled void large enough to allow natural absorption of storm water run off from a twenty-five (25) year storm event of three and one-half (3.5) inches of rain in a twenty-four (24) hour period.

- C. Steep Slopes.
 - 1. Engineered slopes must be less than eighteen (18%) percent when located within one hundred (100) feet of a water resource. The surface must be maintained with a vegetative cover to minimize surface runoff.
 - 2. Natural slopes greater than eighteen (18%) percent must be maintained with a vegetative cover or retaining systems to minimize surface runoff.

- D. Buffer Strips.

In order to protect water quality, preserve sensitive wildlife habitat and reduce soil erosion and sedimentation, any proposed development or redevelopment, as defined in this subsection, on properties subject to this overlay district shall be separated from the adjacent high water mark or bottom land of any subject water

resource, by a buffer strip a minimum of twenty-five (25) feet in width as described below.

1. For purposes of this district, construction, development or redevelopment shall include any of the following activities:
 - a. The enlargement of the principle building square footage by more than two hundred (200) square feet.
 - b. The demolition of an existing principle building and the building of a new principle building within the same footprint.
2. The buffer strip shall consist of vegetation and or grass in living condition with the intent of minimizing sediment runoff into the adjacent water resource. A limited amount of improvement may be permitted within the strip as described below:
 - a. Buffer Strip: The depth of the buffer strip shall measure twenty-five (25) feet from the ordinary high water mark of the water body. This area is extremely sensitive and must be treated carefully when considering vegetation removal. Specifically any vegetative removal that would cause or enhance erosion is prohibited unless approved measures to eliminate or reduce erosion are implemented simultaneously. Subsequently, any existing erosion within the buffer zone to the adjacent water body, when identified by the Soil Erosion Control Agent, must be corrected per approved soil erosion control measures.
 - b. Therefore, the removal of any vegetation within the buffer strip shall be limited to an area equal in width to twenty-five (25%) percent of the length of the water frontage of the parcel, or twenty-five (25) feet, whichever is greater. No contiguous area of clearance shall be wider than twenty-five (25) feet. Consistent with the spirit of the district's intent, as much as possible of the mature vegetation shall be preserved. Areas within this strip that do not include abundant native vegetation so as to permit relatively unimpeded pedestrian access to the water resource and/or to permit a virtually open view of the water from the principal structure, shall be included as a portion of the total clear area. Features permitted in the buffer strip may include footpaths constructed of permeable materials, stairways, fences and walls. The buffer strip may not be used for the dumping of brush, clippings, fill dirt, trash, debris or other materials. Under no circumstances shall the removal of vegetation be allowed where the slope is greater than eighteen percent (18%), except for poisonous plants, which may be removed by mechanical means only, not with herbicides.
 - c. The mowing and or cutting of the vegetation within the buffer strip is an appropriate phosphorus reduction measure as long as the mowing height is such as to enable continued plant growth and the clippings from the mowing are removed

to an area outside of the buffer strip where their decay and re-entry to the buffer strip is prevented. In any case, this distance for deposition of organic debris from the water body is no less than the distance of the approved septic drain field from the water body for the property in question. If the property has a holding tank, the mowed clippings must be deposited at a location that meets the above criteria. If such a site cannot be arranged, then the buffer strip cannot be mowed. Under no circumstances can the mowed or cut vegetation be allowed to be deposited directly into the buffer strip or the adjacent water body.

- d. Removal of trees and shrubs within the buffer strip must be replaced with vegetation possessing equal or greater soil retaining potential. Grasses are preferred over trees, as far as phosphorous control is concerned, as trees deposit leaves and or needles into the buffer zone and adjacent water body. Re-vegetation may be conducted per Natural Resources Conservation Service or Benzie County Soil Erosion Control Plans. The removed material must be properly disposed of as provided in subparagraphs b and c, above.
- e. Removal of organic beach debris as well as tree leaves, etc. is encouraged as a phosphorus reduction measure so that phosphorus and other nutrients in the debris cannot decay and re-enter the water. The debris must be disposed of as provided in subparagraph c, above.
- f. Fertilization of any type is prohibited within the twenty-five (25) foot buffer zone.

E. Redirection of Water Resources.

Redirection of a water resource, in part or in whole, may only be conducted in accordance with a permit issued by the Michigan Department of Environmental Quality (MDEQ) or its successor agency.

F. Construction within the Platte Lakes Area Management Plan Overlay District.

- 1. Construction activities within the district shall not encroach or impact the designated buffer strip.
- 2. A Soil Erosion Control permit is required for earth changes within five hundred (500) feet of a lake or stream or for any earth change amounting to one (1) acre or more.

G. Fertilization within the district.

All fertilization within the district for non-agricultural operations is limited to phosphate free fertilizer.

- H. Agricultural Operations
1. No grazing of livestock shall be permitted within fifty feet (50) of the high water mark.
 2. An agricultural operation may operate under an approved Natural Resources Conservation Service conservation plan that will allow agricultural activity within a buffer strip while maintaining protection of the water resource.

SECTION 23.5 CONFLICTS

If there is any conflict between any provision of this Article and any other provision of this Zoning Ordinance, the more restrictive provision shall take precedence over the less restrictive.

Section 3. Severability.

Sections of this Ordinance shall be deemed severable and should any section, clause or provision of this ordinance be declared to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

Section 4. Saving Clause.

The amendment or repeal by this ordinance of any ordinance or ordinance provision shall have no effect upon prosecutions commenced prior to the effective date of this ordinance or prosecutions based upon actions taken by any person prior to the effective date of this Ordinance. Those prosecutions shall be conducted under the ordinance provisions in effect prior to the effective date of this Ordinance.

Section 5. Conflict.

Except as otherwise expressly provided, the provisions of this Ordinance shall control in the event of any inconsistency or conflict between this Ordinance and any other provision of any other Ordinance of the Local Unit.

Section 6. Publication.

This Ordinance shall be published by publishing a summary of the Ordinance in a newspaper of general circulation in Benzie County including the designation in the publication of the location in Benzie County where a true copy of the Ordinance can be inspected or obtained, as authorized by State law.

Section 7. Effective Date.

This Ordinance shall become effective on the eighth (8th) day following the date of publication of the notice of its adoption as provided in Section 6, above, and as certified by the Clerk, below.

At a regular meeting of the Board of Commissioners of Benzie County held on the 20th day of October, 2009, Pitcher moved for adoption of the ordinance and Damm supported the motion.

Voting for: Damm, Hollenbeck, Kelley, Pitcher, Roper, Tanner and
Walterhouse
Voting against: None
Absent: None

The chairperson declared the ordinance adopted.

/s/ Donald R. Tanner
Donald R. Tanner, Chairperson
Benzie County Board of Commissioners

Publish Date: December 9, 2009
Effective Date: December 17, 2009

Certification

I, Dawn Olney, Clerk of Benzie County, Michigan, do hereby certify that the foregoing is a true copy of the ordinance adopted by the Benzie County Board of Commissioners at a regular meeting held on October 20, 2009, at 448 Court Place, Beulah, Michigan, and that the Notice of Adoption was published in the Benzie Record Patriot on December 9, 2009.

/s/ Dawn Olney
Dawn Olney, Clerk