

Article XII Overlay Districts

Section 12.1 PURPOSE, OVERLAY DISTRICTS LIST AND DEFINITIONS

Section 12.1.1 The purpose of this Article XII is to allow for the creation of overlay districts within Benzie County. Such overlay districts are intended to provide supplementary zoning regulations to protect Benzie County's unique resources such as water bodies, trails, and other areas that are of high value and/or fragile in nature. The intent of any overlay district is to protect the health, safety, and welfare of landowners, citizens, and visitors who enjoy the use of Benzie County's unique and valued resources.

Section 12.1.2 Scope

Overlay district ordinances shall not violate, ease requirements, or diminish the standards of underlying zoning, state, and federal law. Overlay district ordinances may, however, establish higher standards and stricter requirements than the underlying zoning and state law. The Benzie County Master Plan calls for the protection of the county's natural resources; adoption of unique overlay districts to provide that protection is beneficial in achieving that end.

Section 12.1.3 Water Bodies Overlay Districts

Water bodies overlay districts are best supported and defended when watershed management plans have been created and best management practices have been formulated.

Section 12.1.4 Overlay District Ordinances Contained Herein

- a) Section 12.2 Benzie County Water Bodies Overlay District
- b) Section 12.3 Crystal Lake Watershed Overlay District
- c) Section 12.4 Betsie Valley Trail Overlay District
- d) Section 12.5 Platte Lake Overlay District – Benzonia Township

Section 12.1.5 Definitions

Overlay District: A defined geographical area for which a zoning code is available as a supplement to the underlying zoning and state and federal law.

Boat Dock (see Article II.2.2 Definitions)

Boat Dockage (see Article II.2.2 Definitions)

Buffer Strip: Open space populated with natural vegetation used to (a) filter or impede storm water runoff, (b) stabilize banks and shorelines, (c) physically separate or screen one use, property, or land feature from another in order to visually shield or reduce noise, artificial lighting, or other nuisances, (d) maintain aesthetic value.

Impervious Surface: Any surface, including, but not limited to, streets, roads, driveways, parking lots, sidewalks, patios, and rooftops that prevent storm water from percolating directly into the ground (and Article II.2.2 Definitions).

Keyhole: A keyhole development, also called funnel development, is the development of a large parcel that has a relatively small, narrow frontage on a body of water. The small access point is intended for use by many more persons than is typical from a single family lot. Key holing occurs as a result of a "back lot" property owner purchasing a small, waterfront lot to accommodate access by owners/residents/guests. Typical back lot developments include condominiums, campgrounds, or planned unit developments.

Non-Point Source Pollution: Harmful substances that are carried by rain and snow moving over and through the earth and end up in groundwater, rivers, or lakes. These substances come from various sources and can be natural or man-made. They're called non-point source because instead of being dumped directly from a building or other artifact into a body of water, the pollutant is diluted and transported by the natural cycle of precipitation.

Point Source Pollution: Pollutants discharged from any identifiable point, including pipes, ditches, channels, sewers, tunnels, and containers of various types.

Riparian Parcel: Any land parcel where any portion of its boundary lies adjacent to a water body.

Water Body: A natural or artificial lake, river, or stream that is considered to be a water resource (see Article II.2.2 Definitions)

Section 12.2 WATER BODIES OVERLAY DISTRICT

Section 12.2 Water Bodies Overlay District

Section 12.2.1 This overlay district ordinance shall automatically be superseded for any water body when a unique overlay district is adopted for that water body. This Water Bodies Overlay District Ordinance is a set of minimal protection standards that apply to all water bodies under Benzie County zoning when they do not otherwise lie within other water body overlay districts.

Section 12.2.3 In the absence of any reference to a zoning requirement or restriction in this section 12.2, the underlying zoning, state and federal law shall apply.

Section 12.2.3 The purpose of this overlay district is to manage the factors that contribute to water body integrity and character. These factors include but are not limited to:

- a) Boat docks and dockages.
- b) Boat usage on the water.
- c) Buffer strips.
- d) Noise and nuisance containment.
- e) Dredging.
- f) Soil erosion and sedimentation control.
- g) Fertilizer use and most importantly phosphorus fertilizers.
- h) Vegetation protection - aesthetics and character.
- i) Vegetation management – phosphorous containment.
- j) Marinas and keyholes.

- k) Ground water protection.
- l) Protection of aesthetic, scenic and recreational value.
- m) Tree canopy and organic matter protection in support of aquatic ecosystems.
- n) Storm water run-off filtration and infiltration.
- o) Riparian wildlife habitat protection.
- p) Safety provisions.
- q) Aquatic plant management provisions.
- r) Management of storm water run-off to remove pollutants from both "point" and "non-point" sources of pollution.
- s) Chemical, physical and biological integrity of the water resource - maintenance and restoration.
- t) Shoreline and steep slopes stabilization.
- u) Private roads and driveways.

Section 12.2.4 The boundary of the district shall include all of the riparian parcels located in Benzie County that are not otherwise included in other overlay districts. The boundary shall extend from the shoreline to the maximum of 200 feet or the parcel boundary, whichever is greater.

Section 12.2.5 Within the overlay district boundary, a two tiered 75 foot wide buffer strip along the shoreline shall be maintained. The first tier, the riparian buffer strip, shall be 25 feet wide running parallel to the shoreline and the second tier shall be a buffer strip 50 feet wide running outside of and parallel to the first tier.

Section 12.2.5.1 Restrictions common to both tiers:

- a) Diseased vegetation and unsafe trees shall be removed. Non-native invasive plants and shrubs and noxious plants including poison ivy and poison sumac, may be removed. Note: fallen trees and dead/dying standing trees are essential habitat to birds, amphibians, and other woodland creatures and should be left in place unless obstructive to existing access points/paths.)
- b) Chemical control of vegetation shall be prohibited except for poison ivy and poison sumac.
- c) Soil tilling for crops or gardening is prohibited.
- d) Soil disturbance may not exceed the minimum needed for the conduct of permitted activities.
- e) Cutting down trees is restricted. For purposes of obtaining views of the water, pruning is allowed. Contact the Benzie Conservation District for proper pruning methods. If area is heavily wooded, some trees may be removed, however, a minimum of 90 square feet of basal area must remain. In other words, an average of 113 ten to sixteen inches (10"-16") diameter at breast height (dbh) trees per acre must remain. If trees are smaller than 10" dbh, more trees must remain. If trees are larger than 16" dbh, fewer trees can remain. Perhaps the easiest way to visualize and enforce this restriction is to follow the chart 12.2A below. For example if most trees are 10-16" dbh, property owners must leave a tree every 15 feet. Ideally all size classes will be present. In the case of new

home construction, no removal shall take place until after construction is nearly complete and the placement of view windows in homes is fully understood.

- f) Fertilizers containing phosphorus are prohibited.

Tree Size	Minimum spacing required
5" and under (saplings and shrubs)	Every 6 feet
6" – 9" (pole size trees)	Every 11 feet
10" – 16" (average size trees)	Every 15 feet
18" and larger	Every 20 feet

Chart 12.2A - Minimum Tree Densities

Section 12.2.5.2 First Tier - Riparian Buffer Strip Restrictions

- a) Within the 25-foot first tier "riparian buffer strip", pre-existing natural vegetation shall be preserved or non-native vegetation shall be restored to a natural state comprised of local native plant species. Trees and shrubs may be pruned for a filtered view of the water, but tree cutting per paragraph 12.2.5.1.e above is restricted. Any removal of plants, except poisonous plants, must be done using mechanical (i.e. hand tools) methods to prevent direct pollution of the adjacent water body with toxic chemicals. Disturbed soils must be immediately replanted with native plant species to prevent erosion and sedimentation of the adjacent water body
- b) No structures, impervious surfaces or storage of organic wastes, fertilizers or chemicals shall be allowed within the 25-foot buffer.
- c) Cut and pruned vegetative material shall be removed from the 25-foot first tier as an appropriate phosphorus reduction measure to eliminate the reintroduction of phosphorus through plant decay.
- d) Access pathways, not to exceed four (4) feet in width, are permitted to the water body. Access paths on steep slopes shall be constructed stairways designed to prevent erosion and damage to fragile soils. If wetlands are to be impacted, a permit must first be obtained from the MDEQ.
- e) A clearing parallel to the bank or shoreline, not to exceed four (4) feet in depth, is permitted up to twenty-five (25) feet in length, or twenty-five (25%) percent of the width of the parcel, whichever is the smaller.

Section 12.2.6 Unless already specified in another part of this ordinance or by homeowner association bylaws, minimum setback of all construction from the water body shoreline shall be fifty (50) feet.

Section 12.2.7 Steep Slopes

- a) Engineered slopes must be less than eighteen (18%) percent.
- b) Development on slopes of twelve (12) percent or greater shall meet the design requirements of this section

- i) Density: The permitted density for residential dwellings shall be based on the existing slope of the site. The permitted number of dwellings shall be based on the following chart 12.2B:

Maximum Density Without Sewer	Maximum Density With Sewer	Existing Slope
1.00 Unit per Acre	2.00 Units per Acre	12 to 17 Percent
0.75 Unit per Acre	1.50 Units per Acre	18 to 24 Percent
0.50 Unit per Acre	1.00 Unit per Acre	25+ Percent

Chart 12.2B – Residential Dwelling Densities

- ii) Impervious Surface Lot Coverage: The amount of land allowed to be covered by impervious surfaces shall be based on the existing slope of the site. Lot coverage shall be defined as the percentage of the lot (excluding rights-of-way and wetlands) that is covered by impervious surfaces, including structures and paving. In the case of planned unit developments, Condominiums and other planned developments, each individual lot need not meet the requirements of this section, provided that the total project does meet the requirements of this section (see Chart 12.2C).

Impervious Surface Lot Coverage	Existing Slope
30 Percent	12 to 17 percent slope
20 Percent	18 to 24 percent slope
10 Percent	25+ percent slope

Chart 12.2C – Impervious Lot Coverage

- iii) Natural Vegetative Cover: Outside of the 25-foot first tier (section 12.2.5 above), as much of the existing vegetation, including bushes, shrubs, natural ground cover, and trees, shall remain on the site as possible. Lawn (turf grass) areas shall not qualify as natural vegetative cover required in this section. The required amount of vegetative area to remain undisturbed shall be based on the existing slope on the site and shall be clearly indicated on the proposed site plan or sketch plan. The natural vegetative areas shall be located along lot lines, natural drainage courses, wet lands, and steep slopes to the extent possible. In the case of planned unit developments, condominiums and other planned developments, each individual lot need not meet the requirements of this Section, provided that the total project does meet the requirements of this Section (see Chart 12.2D).

Percent of Lot to Remain in Natural Vegetative Cover	Existing Slope
30 Percent	12 to 17 percent slope
40 Percent	18 to 24 percent slope
50 Percent	25+ percent slope

Chart 12.2D - Minimum Natural Vegetative Cover

- iv) Development on slopes of twenty-five (25) percent or greater shall be prohibited unless there are no other reasonable or prudent alternatives. If the property owner believes that no reasonable or prudent alternatives exist, he or she must first obtain a Special Land Use Permit pursuant to Article XIV prior to any development on slopes of twenty-five (25) percent or greater. In reviewing the Special Land Use request, the Zoning Administrator or Planning Commission must find that the following conditions are met: (a) that no other reasonable or prudent alternatives exist, (b) that the development will not create excessive soil erosion or sedimentation and that it will not impair the quality of water discharged from the site, (c) that the peak rate of storm water runoff after development will not exceed the peak rate of storm water runoff that has occurred prior to the proposed development, and (d) that all design requirements of this Section are met.
- v) Determination of Slope: The determination of slope shall be made by the Zoning Administrator based on the Slope Map. The Slope Map shall be on file with the County Clerk and the Zoning Administrator at all times. The Zoning Administrator shall make the best possible determination using the scale of the map and shall record his or her determination on a site plan that is made available by the property owner. In cases where there is more than one slope category on a lot or proposed development, the Zoning Administrator shall indicate these areas on the site plan.
- vi) If the property owner disagrees with the slope determination made by the Zoning Administrator, he or she may request a review of the determination by the Planning Commission during the site plan review process. In making its case, the property owner shall present topographic mapping or a survey prepared and sealed by a licensed community planner, a licensed architect, a registered civil engineer, or a licensed surveyor. Based on the evidence presented by the Zoning Administrator and the property owner, the Planning Commission shall make a slope determination and shall record its decision on the proposed site plan.

Section 12.2.8 Private roads and driveways located in the Watershed Overlay District shall not be located within thirty (30) feet of the water body shoreline or within twenty five (25) feet of a wetland or stream. Private roads in hilly terrain shall be encouraged to run parallel to natural contours of the land in order to minimize cutting, filling, and erosion.

Section 12.2.9 Dredging and shoreline alteration shall be done in accordance with DEQ regulations and permitting requirements.

Section 12.2.10 Water Access Lots and Dockages – Article III Sections 3.7 and 3.8 in their entirety apply to this overlay district.

Section 12.2.11 Boat use on the water is controlled by DNR regulations and permitting requirements.

Section 12.3 CRYSTAL LAKE WATERSHED OVERLAY DISTRICT

Existing Article XXIV “Crystal Lake Watershed Overlay District” is to be inserted here.

Section 12.4 BETSIE VALLEY TRAIL OVERLAY DISTRICT

Existing Article XXVII “Betsie Valley Trail Overlay District” is to be inserted here.

Section 12.5 PLATTE LAKE OVERLAY DISTRICT - BENZONIA TOWNSHIP

Article XXVI of the Lake Township zoning ordinance implements an overlay district for the portion of Platte Lake contained within Lake Township. An overlay district for the portion contained within Benzonia Township may be added in a future time.