

<b>Topic:</b>	Natural Resource Protection & Conservation; Open Space Preservation; Wildlife & Fish Habitat; Scenic Resources
<b>Resource Type:</b>	Regulations
<b>State:</b>	New York
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	Town of Brookhaven
<b>Year (adopted, written, etc.):</b>	1991-2005
<b>Community Type - applicable to:</b>	Suburban; Rural
<b>Title:</b>	Town of Brookhaven Nature Preserves Ordinance
<b>Document Last Updated in Database:</b>	May 1, 2017

### ***Abstract***

The purpose of this law is to create nature preserves and to keep these areas in their existing natural or near natural state for the benefit of present and future Town residents. The law address such topics as the evaluation and dedication of parcels to nature preserve, management of nature preserves, volunteers, nature preserves designated on lands not owned by the Town, use of nature preserves, hours of operation, responsibility for loss, damage or theft, prohibitions, removal of all or portions of site from nature preserve, "Adopt-A-Preserve" agreements and penalties for offenses.

### ***Resource***

Town of Brookhaven NY Nature Preserves

Code of the Town of Brookhaven NY

Chapter 77: Nature Preserves

General Code

[http://www.e-](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D077%2Ehtm&cn=1254&n=[1][2])

[codes.generalcode.com/codebook\\_frameset.asp?t=tc&p=0012%2D077%2Ehtm&cn=1254](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D077%2Ehtm&cn=1254&n=[1][2])

[&n=\[1\]\[2\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D077%2Ehtm&cn=1254&n=[1][2])

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 10-15-1991 by L.L. No. 5-1991, effective 10-21-1991. Amendments noted where applicable.]

#### **§ 77-1. Intent.**

- A. Many areas of the Town of Brookhaven contain natural resources which are vital to, and enhance the quality of, the life of its residents. These natural resources include significant populations of wildlife; important natural communities; rare, endangered, unique or locally significant species of plants and wildlife; ponds, lakes, streams, estuaries and other surface waters; important geological formations; prehistoric,

aboriginal and historic cultural resources; and pristine potable groundwater. **[Amended 9-6-2005 by L.L. No. 23-2005, effective 9-12-2005]**

- B. These areas are important for displaying scenic beauty, providing habitat for significant species of wildlife and vegetation, furnishing habitat for commercially important species such as shellfish and finfish, protecting the Town's groundwater and drinking water supply, supplying passive recreational opportunities for Town residents, offering opportunities for education and scientific study and providing other important environmental benefits **[Amended 9-6-2005 by L.L. No. 23-2005, effective 9-12-2005]**
- C. Accordingly, it is recognized that many parts of the Town which contain important natural resources and which are either in public or private ownership, should be maintained in or as near as possible to their existing natural state in order to ensure the continued ecological benefits of these areas for Town residents.
- D. Therefore, it is the purpose of this chapter to designate areas as nature preserves and to manage and protect these areas in their existing natural or as near to natural state as possible for the benefit of present and future Town residents.

## **§ 77-2. Definitions.**

For the purpose of this chapter, the following terms and phrases shall be given the meaning stated herein:

**ADOPT-A-PRESERVE PROGRAM AND AGREEMENTS** — A program authorizing the entering into of an agreement between the Town of Brookhaven and qualifying individuals, organizations, groups, and business entities for the purpose of allowing these qualified individuals, organizations, groups and business entities to conduct routine stewardship and maintenance activities for the preservation of the nature preserve. **[Added 9-6-2005 by L.L. No. 23-2005, effective 9-12-2005]**

**COOPERATIVE MANAGEMENT AGREEMENT** — A legal, binding, written agreement between the Town of Brookhaven and the owners of private properties or public properties (other than those owned by the Town of Brookhaven) to allow the Town of Brookhaven to manage such lands in the same manner and for the same goals as Town-owned nature preserves.

**ECONOMIC DEVELOPMENT, DIVISION OF** — The Town of Brookhaven Division of Economic Development. **Editor's Note: The definition of "Division of Environmental Protection," which immediately followed this definition, was repealed 9-6-2005 by L.L. No. 23-2005, effective 9-12-2005.**

HIGHWAY DEPARTMENT — The Town of Brookhaven Highway Department.

HOUSING, COMMUNITY DEVELOPMENT AND INTERGOVERNMENTAL AFFAIRS, DEPARTMENT OF — The Town of Brookhaven Department of Housing, Community Development and Intergovernmental Affairs.

LAND MANAGEMENT, DIVISION OF — The Town of Brookhaven Division of Land Management. **[Added 9-6-2005 by L.L. No. 23-2005, effective 9-12-2005]**

NATURE PRESERVES — Any land(s), public or private, which are either owned by or under the jurisdiction of the Town of Brookhaven, or the Trustees of the Freeholders and Commonalty of the Town of Brookhaven, which have been designated by resolution of the Town Board of the Town of Brookhaven to be maintained in its existing natural state or a near-natural state or restored to a natural state. **[Amended 9-6-2005 by L.L. No. 23-2005, effective 9-12-2005]**

PARKS, RECREATION, SPORTS AND CULTURAL RESOURCES, DEPARTMENT OF — The Town of Brookhaven Department of Parks, Recreation and Sports and Cultural Resources. **[Amended 9-6-2005 by L.L. No. 23-2005, effective 9-12-2005]**

PLANNING, DIVISION OF — The Town of Brookhaven Division of Planning.

PRIVATE LANDS — Real property owned by individual persons, firms, partnerships, corporations, associations, companies or private utilities and which are not owned by the Town or other governmental bodies.

PUBLIC LANDS — Real property owned by governmental bodies, villages, the County of Suffolk, the State of New York or the United States government and which are not owned by the Town of Brookhaven.

TOWN LANDS — Real property owned by the Town of Brookhaven.

WASTE MANAGEMENT, DEPARTMENT OF — The Town of Brookhaven Department of Waste Management.

ZONE OF INFLUENCE — The land area, surrounding a public water supply well or wellfield, which contributes water in a manner and direction that will result in the water being entrained by the well or wellfield. **[Added 6-9-2005 by L.L. No. 23-2005, effective 9-12-2005]**

**§ 77-3. Qualifications for nature preserves. [Amended 6-9-2005 by L.L. No. 23-2005, effective 9-12-2005]**

To be considered for inclusion as a Town nature preserve, a parcel of real property must meet one or more of the following criteria:

- A. It provides habitat for endangered, threatened or special concern wildlife species, as listed in the New York State Environmental Conservation Law § 11-0535 or the Federal Endangered Species Act.
- B. It provides habitat for wildlife which are of special concern to the Town of Brookhaven or those that are of special or unique local importance.
- C. It contains habitats that contain or support occurrences of rare plant or wildlife species or ecological communities identified by the New York State Natural Heritage Program, which are ranked S1, S2, G1 or G2.
- D. It contains habitat that provides breeding, feeding, nesting or resting areas for significant concentrations or populations of wildlife or is a locally important haven for wildlife.
- E. It contains freshwater or tidal wetlands.
- F. It contains tree specimens listed on the state or national tree size records list: large, old growth forest stands or vegetational communities which are unusual in the Town or significant populations of protected plants as defined in the New York State Environmental Conservation Law § 9-1503.
- G. It contains examples of forests or other vegetational communities that were, but are no longer, common on Long Island, or contains outstanding examples of such which are unique to Long Island.
- H. It contains unique geological features such as kettleholes, drumlins, kames, or swales or those geological formations which are vulnerable to human disturbance, such as bluffs and dunes.
- I. It contains significant prehistoric, aboriginal or historic cultural resources or is adjacent to sites containing significant cultural resources.
- J. It lies over and protects sensitive deep-recharge or shallow-recharge aquifers, lies within core watershed areas, lies within special groundwater protection areas, lies within the zone of influence of public water supply well, or lies in areas important for

maintaining surface water quality.

- K. It provides scenic views, natural beauty or important local visual buffers or noise buffers.
- L. It provides an interconnection between two or more existing Town, county, state or federal nature preserves which are currently separate.

**§ 77-4. Evaluation and dedication of parcels to nature preserve. [Amended 9-6-2005 by L.L. No. 23-2005, effective 9-12-2005]**

Parcels of real property to be considered for nature preserve dedication shall first be evaluated by the Division of Land Management, which shall consult with only the Department of Parks, Recreation, and Sports and Cultural Resources for parcels previously dedicated as open space or parkland. The Division of Land Management shall consult with other Town departments and divisions, including, but not limited to, the Division of Planning, the Division of Economic Development, the Highway Department, the Department of Waste Management, the Department of Housing, Community Development, and Intergovernmental Affairs and the Department of Parks, Recreation and Sports and Cultural Resources for parcels which are currently classified for general municipal use. Any parcel considered for nature preserve designation must meet at least one or more of the criteria listed in § 77-3.

- A. Evaluation. As part of this evaluation procedure, the Division of Land Management shall prepare a brief report on each parcel, which shall include the following information:
  - (1) Introduction and reason for dedication to nature preserve, including the criteria the property meets as set forth in § 77-3.
  - (2) Legal setting and background. This section shall include the legal background of a proposed parcel, including the circumstances surrounding the taking or receipt of the parcel by the Town and the presence of any restrictions, covenants, and conditions.
  - (3) General site information. This section shall include the location and size of the parcel, existing land use and information on site access.
  - (4) Environmental setting and resources. This section shall include information on the geology, soils, topography, vegetation (based on on-site observations), wildlife (based both on on-site observations and review of literature for potential wildlife species), ecological communities water recharge potential, groundwater, surface water, visual resources and cultural resources of the parcel proposed for

designation as nature preserve.

(5) Potential for use as public parkland or other municipal use. This section shall evaluate the merit of using the site for public park purposes and shall evaluate the merits of public use versus preservation. This section shall also evaluate the use of the parcel for some municipal purpose other than a nature preserve or public park. The recommendation of the Commissioner of the Department of Parks, Recreation and Sports and Cultural Resources; Superintendent of Highways or other Commissioners shall accompany this section of the report.

B. Recommendation. Based on its evaluation report for a particular parcel, the Division of Land Management shall submit to the Town Board a formal recommendation regarding the parcel accompanied by a copy of the report described in § 77-4A. If in conflict with the recommendation of the Commissioner of Parks, Recreation and Sports and Cultural Resources; the Superintendent of Highways or other Commissioners, the recommendation shall note said conflict.

C. Dedication procedure. After considering the recommendation and report submitted by the Division of Land Management, the Town Board may dedicate parcels as Town nature preserves by resolution providing the owner and any mortgagees consent thereto. The resolution may designate all or a portion of a site as nature preserve. Upon dedication as a nature preserve, the Tax Assessor shall make an appropriate notation in the assessment records and the Commissioner of Planning, Environment and Land Management shall cause the Town Real Property Inventory to be so noted.

**§ 77-5. Management of nature preserves. [Amended 9-6-2005 by L.L. No. 23-2005, effective 9-12-2005]**

The Division of Land Management shall be primarily responsible for and shall supervise the management of Town nature preserves and shall be assisted by other Town departments and divisions as needed. Management of nature preserves shall be conducted as follows:

A. The majority of a nature preserve site shall be maintained in its existing natural or near-natural state or restored to a natural state and shall not be used for active purposes, such as ballfields, basketball courts, tennis courts, picnic areas, or other uses which would physically impair or irreparably alter the ecological or cultural value of said site. A minor portion of the nature preserve, up to 2% of the total acreage of the nature preserve parcel with a maximum of 40,000 square feet, may be used for parking, structures for interpretation and public comfort and the installation of trails, including wooden walkways. The restoration of portions of or all of a nature preserve to a previous natural condition, activities which maintain and perpetuate certain types of ecological communities such as the periodic mowing of grasslands, invasive species control, the implementation of prescribed burns, planting of native plant species and

other activities which enhance certain ecological qualities such as the improvement of a site for certain species of wildlife or vegetation shall not be precluded, however.

- B. Upon dedication as a nature preserve, said nature preserve, shall be posted with appropriate signs identifying the site as a Town nature preserve.
- C. Limitations on use. Use limitations on nature preserves may be imposed as needed in order to protect its ecological resources. Limitations may include designation of hours, days and seasons of use; access; prohibitions of certain types of activities; allowance of access by prearranged permit only and other reasonable limitations deemed necessary. Limitations on use shall be included in the management plan.
- D. Management plan. Within one year of a site's designation as a nature preserve, a management plan shall be prepared for the site which recommends the best use and management of the ecological qualities of the site. Each management plan shall be based on a literature review and in-depth on-site observations and inventories of a nature preserve's natural resources, including wildlife, vegetation, geology, cultural resources and other ecological characteristics and may include a review of relevant published reports, studies or articles. The management plan shall recommend the type of passive uses which may be acceptable; shall identify significant, sensitive areas which should be protected from human disturbance; shall recommend locations for trails, parking, fencing, signs and access points; shall identify desirable restoration activities; shall determine hours, days and seasons of use; shall recommend any limits on access if necessary; shall recommend the preparation of any interpretive publications and displays, and shall provide a timetable for implementation. Draft management plans shall be presented to the Town Board for its review. Upon approval of a management plan by the Town Board, said management plan shall be implemented by the Division of Land Management. Management plans may be revised as needed and, if revised, shall be subject to all the requirements of this chapter.

**§ 77-6. Volunteers. [Amended 9-6-2005 by L.L. No. 23-2005, effective 9-12-2005]**

Upon prior approval as part of a management plan for a specific nature preserve, the Town may allow the use of unpaid volunteers who are not full-time or part-time employees of the Town of Brookhaven for assistance in the management of its nature preserves. Volunteers shall be overseen and supervised by the Division of Land Management.

**§ 77-7. Nature preserves designated on lands not owned by Town.**

The Town may consider the designation of private lands or public lands, other than those owned by the Town of Brookhaven, as nature preserves. Such designation shall be at the request of the private entity or public agency controlling the subject land and said nature preserve designation shall only ensue upon the execution of a cooperative management

agreement between the Town and the private or public owner. Said agreement shall include designation of responsibility for liability and a determination of reasonable financial remuneration required to maintain and manage the non-Town nature preserve. Upon designation as a Town nature preserve, said parcel shall be subject to all the requirements of the chapter.

**§ 77-8. Use of nature preserves.**

Town nature preserves shall be used by residents (persons who reside in the Town of Brookhaven) and/or owners of taxable real property located in the Town of Brookhaven and nonresidents as authorized by the Town of Brookhaven. Nonresidents and guests of residents or taxpayers may be admitted to nature preserves pursuant to regulations issued by the Town Board.

**§ 77-9. Hours of operation.**

Except as noted in a management plan for a particular nature preserve or unless it is expressly posted on a particular nature preserve, a nature preserve shall be open for use between dawn and dusk, every day of the year.

**§ 77-10. Responsibility for loss, damage or theft.**

The Town shall not be responsible for loss, damage, theft, or injury to private or personal property used on a Town nature preserve, nor shall it be responsible for injuries sustained by reason of the public use of said facilities. Town nature preserves shall be used at the sole risk of the public.

**§ 77-11. Prohibitions.**

The following acts are expressly prohibited in Town nature preserves:

- A. Use of a nature preserve outside of the hours of operation as noted in § 77-9.
- B. Use of any motorized vehicle or self-propelled wheeled vehicle within a nature preserve, except for official vehicles of the Town of Brookhaven or other public agency.
- C. Camping, fishing, bathing and swimming unless authorized by the Town of Brookhaven.
- D. Kindling, building, maintaining or use of a fire.
- E. Littering, dumping or burial of any refuse, rubbish, debris, yard waste, fill, soil or vehicles as defined in Chapter 45 of the Town Code.



- F. The allowance of any dog, cat, livestock, horses or other non-native wildlife to enter within, into or onto a Town nature preserve.
- G. The use of motorized or unmotorized watercraft on or within any body of surface water within a Town nature preserve unless specifically authorized by the Town of Brookhaven.
- H. The injury, destruction, defacement, displacement, removal, filling in, raising, or tampering with of any Town-owned drive, path, walkway, boardwalk, structures, equipment, vehicle or signs or any wildlife, vegetation, natural features, surface water, cultural resources or any other ecological feature within a Town nature preserve.
- I. The carrying or use of explosives, firearms, shotguns, rifles, handguns, BB or pellet guns and slingshots, any other weapon in which the propelling force is a spring, elastic material or compressed air or gas or archery equipment, except by a police officer or peace officer.
- J. Hunting and trapping.
- K. The feeding of wild animals or the feeding and sheltering of domestic animals. **[Added 9-6-2005 by L.L. No. 23-2005, effective 9-12-2005 Editor's Note: This local law also redesignated former Subsections K and L as L and M, respectively. ]**
- L. Any other use designated by resolution of the Town Board for a particular site.
- M. Where appropriate, the Town Board may, by resolution, permit one or more of the uses enumerated above.

**§ 77-12. Removal of all or portions of site from nature preserve.**

In the future, an overriding and pressing public need may arise for which it may be necessary for the Town Board to consider the removal of all or a portion of a Town nature preserve from nature preserve designation. In order to allow for removal of the nature preserve designation the following procedure shall be followed by the Town Board:

- A. Any such proposal shall be designated a Type I action under the State Environmental Quality Review Act.
- B. A public hearing on such a proposal shall be held.
- C. No decision of the Town Board shall be made on removal of all or part of a nature

preserve designation for a period of 30 days after closing the hearing. During said thirty-day period written comments shall be accepted by the Town Board.

- D. Any decision of the Town Board shall include compliance with all applicable county, state, or federal laws and/or rules and regulations governing the disposition and/or alienation of public parkland. **[Added 9-6-2005 by L.L. No. 23-2005, effective 9-12-2005]**

**§ 77-13. “Adopt-A-Preserve” agreements. [Added 9-6-2005 by L.L. No. 23-2005, effective 9-12-2005]**

The Division of Land Management is hereby authorized to develop an “Adopt-A-Preserve” program and to enter into “Adopt-A-Preserve” agreements, subject to the review and approval of the Town Attorney, with interested individuals, organizations, businesses for the purpose of maintaining properties dedicated to the Town's nature preserve system.

**§ 77-14. Penalties for offenses.**

- A. Criminal penalties. The violation of any provision of this chapter shall be deemed an offense which shall be punishable by a fine of not less than \$100 nor more than \$1,000 or by imprisonment for a period not to exceed 15 days, or by both such fine and imprisonment.
- B. Civil penalties. In addition to any criminal penalties which may be imposed pursuant to Subsection A, any person who violates any provision of this chapter may be ordered to restore that portion of a nature preserve damaged by their unlawful destruction to such conditions as the Town Board may require. In the event that such person refuses or fails to restore the portion of the nature preserve damaged by them to a condition ordered by the Town Board, the Town Board may proceed in a court of competent jurisdiction for an order directing such person to restore the affected portion of the nature preserve in conformity with the requirements of the Town Board.