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ENACTMENT: ADOPT LOCAL LAW INTRODUCTORY NUMBER 45-2007
AMENDING THE CODE OF THE TOWN OF HUNTINGTON SO AS TO ADD CHAPTER
172 (LAND CONSERVATION), ARTICLE I (TRANSFER OF DENSITY FLOW RIGHTS)

Resolution for Town Board Meeting dated: March 4, 2008

The following resolution was offered by: Supervisor Petrone

and seconded by: **COUNCILWOMAN BERLAND**

WHEREAS, a Final Generic Environmental Impact Statement (FGEIS) for the proposed TDFR Program was accepted on February 5, 2008, and a Findings Statement has been drafted as directed by the Town Board, and

WHEREAS, the Town Board has had ample opportunity to consider the merits of the proposed Code change, to evaluate compatibility with the Comprehensive Plan, to deliberate the FGEIS, and having taken a hard look at the social, economic, and environmental aspects of the matter pursuant to SEQRA, and

WHEREAS, the Town Board having held simultaneous public hearings on the 4th day of December, 2007 at 7:00 p.m. to consider adopting Local Law Introductory No. 45-2007 amending the Code of the Town of Huntington so as to add Chapter 172 (Land Conservation), Article I (Transfer of Density Flow Rights) and the DGEIS thereon;

NOW THEREFORE

THE TOWN BOARD

HEREBY ADOPTS the findings statement appended hereto and considered a part hereof and directs the Director of Planning and Environment to file the findings statement in accordance with 6 NYCRR 617.11 and 617.12; and

HEREBY ADOPTS Local Law Introductory Number 45- 2007 amending the Code of the Town of Huntington so as to add Chapter 172 (Land Conservation), Article I (Transfer of Density Flow Rights) as follows:

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF HUNTINGTON AS FOLLOWS:

LOCAL LAW NO. 7 - 2008

AMENDING THE CODE OF THE TOWN OF HUNTINGTON SO AS TO ADD CHAPTER
172 (LAND CONSERVATION), ARTICLE I (TRANSFER OF DENSITY FLOW RIGHTS)

Section 1. Amendment to the Code of the Town of Huntington so as to add Chapter 172 (Land Conservation), ARTICLE I (Transfer Of Density Flow Rights) to read as follows:

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CHAPTER 172 LAND CONSERVATION

ARTICLE I Transfer of Density Flow Rights

§ 172-1 Legislative Intent

The Town Board recognizes that there are several conservation tools that may benefit the preservation of natural open space, while encouraging responsible economic development. This Article shall embrace such programs and policies that serve to accomplish both objectives. It is the intent and purpose of this article to implement land use policies adopted by the Town Board in conjunction with the update of the Huntington Comprehensive Plan with specific reference to the conservation of open space, provision of affordable/workforce housing, the support of existing industry, and the necessary and appropriate economic development of the community, particularly for in-fill and Brownfields projects. This legislation shall serve to diminish residential sprawl and enable more concentrated development consistent with town zoning and the Principles of Smart Growth and Livability.

§ 172-2 Definitions

Definitions. For the purposes of this article, the following terms and words shall have the meanings indicated:

DENSITY FLOW RIGHTS – the rights permitted to a lot, parcel, or area of land pursuant to the Suffolk County Sanitary Code for the specific hydrogeological (groundwater recharge) zone in which the land is situated. Density Flow Rights differ from development rights that are defined in § 198-118.2 of Town Code, which are tied to zoning specifications and the transfer thereof allows yield on a receiving site to exceed zoning requirements.

DENSITY RIGHTS BANK – a depository comprised of (1) a database maintained by the Department of Planning and Environment that catalogues density flow rights acquired and/or redeemed by the Town of Huntington as public party and/or private party transfers and (2) a trust-in-agency account into which deposits are made upon sale of publicly-held flow rights and from which withdrawals are made to purchase interests to acquire and conserve open space, as authorized by the Town Board.

LETTER OF INTERPRETATION (PRIVATE) – a letter issued by the Director of Planning and Environment that indicates the number of density credits that could potentially be severed from a proposed sending site through a private party transfer.

LETTER OF INTERPRETATION (PUBLIC) – a letter issued by the Director of Planning and Environment that indicates the number of publicly-held density credits that could potentially be committed to a public benefit receiving project.

PASSIVE OPEN SPACE – land(s) acquired by the Town of Huntington or other governmental agency or conservation organization that otherwise have development potential, but are

maintained for conservation purposes without physical site improvement, except for typical appurtenances, such as trails, benches, signage or pervious parking, and with no maintained or fertilized turf.

PRIVATE PARTY TRANSFER – a conveyance of density flow rights between two individual property owners in support of an application pending review of a board or department in the Town of Huntington.

PUBLIC BENEFIT TRANSFER – a conveyance of density flow rights between the Town of Huntington and another party that supports a defined public purpose or goal (offset) identified in the Comprehensive Plan and is necessary to implement an application pending review of a board or department in the Town of Huntington.

RECEIVING PARCEL(S) – one or more areas of land to which Density Flow Rights generated from one or more sending parcels may be transferred and in which development is permitted to occur, but may not exceed density allowed by existing zoning, by reason of such transfer, preferably hamlet centers, nodes and corridors as identified by the Comprehensive Plan.

SENDING PARCEL(S) – one or more parcels of land from which Density Flow Rights are severed permanently for use in one or more receiving areas in the Town of Huntington.

TRANSFER OF DENSITY FLOW RIGHTS – the Process by which such rights are transferred from one lot, parcel, or area of land in any sending area to another lot, parcel, or area of land in one or more receiving districts or areas in the Town of Huntington. Transfer of Density Flow Rights (TDFR) must result in the permanent protection of open space determined to be of value to the Town's protected lands inventory, consistent with identified local goals for land protection, and in compliance with SCDHS TDR Standards.

§ 172-3 Authority of the Planning Board

A. Authorization. The Planning Board is authorized to enable the transfer of Density Flow Rights from one (1) or more parcel(s) of land where such authorization shall be found to be beneficial to the town through serving to implement the Comprehensive Plan and its update and to be in accordance with the provisions of this article. Only the Planning Board and the Suffolk County Department of Health Services may definitively determine the Density Flow Rights allotted a particular parcel or area of land.

B. Administration. The Planning Board shall be the sole arbitrator of consistency associated with this article. The Planning Board shall:

1. Resolve interpretation of density flow credits and TDFR Program consistency for private party transfers upon application and review;
2. Issue density flow credit certificates for private party transfers upon the filing of proof that title to the sending site has been transferred to or that a conservation easement has been created in the favor of the Town of Huntington or other governmental or land trust organization approved by the Town Board, and that such deed or easement has been duly recorded by the parties with the Suffolk County Clerk;

3. Determine density flow rights to be dedicated to the Density Rights Bank when lands are about to be acquired through purchase, dedication or donation that will remain in their natural state;
4. Determine consistency and resolve recommended density flow credits for public benefit transfer/ redemption from the Density Rights Bank to the Town Board;
5. Retain and catalogue issued certificates for both private party and public benefit projects and redeemed density flow credits in a secure Department of Planning and Environment-managed database;
6. Prepare and distribute an annual report to the Town Board, Town Clerk and Suffolk County Department of Health Services providing statistics on TDFR program activity;
7. Provide standard deed and easement language.

C. Referral to Suffolk County Department of Health Services. The Department of Planning and Environment will refer all applications to the SCDHS to verify the potential density credits that can be sent from or received on any parcel(s) prior to issuance of any letters of interpretation or density flow certificates by the Planning Board.

§ 172-4 Consistency with Comprehensive Plan and Policies

A. Comprehensive Plan. The relevant sending and receiving parcels considered under the Huntington TDFR Law shall be consistent with the Town Comprehensive Plan and any policies adopted by the Huntington Town Board. The TDFR Law enables development in accordance with applicable zoning regulations and the Comprehensive Plan, and will not pose impacts beyond those anticipated at allowable build-out levels.

§ 172-5 Reserved

§ 172-6 Calculation of Credits

A. Allocation of density flow credits. An application for the allocation of density flow credits shall be made to the Planning Board. The Planning Board shall calculate the total number of credits upon the real property within a designated sending area using a density yield factor.

B. Density yield for sending parcels is established by one of two methods consistent with the SCDHS TDR standards.

1. Yield map. If a subdivision requires a road, yield will be based on a yield map that shows 20,000 square foot lots with required site improvements, such as road(s) and recharge basin if necessary.
2. Mathematical formula. The development yield factor for all sending parcels shall be one (1) density flow credit per 20,000 square feet of real property or one (1) density flow credit per lot established prior to 1981 when Article 6 of the Suffolk County Sanitary Code specifying density requirements was established. Barring extenuating circumstances described in the rules for transfer for which a reduction may be taken, the sending site acreage multiplied by 0.5 shall be approximately equal to the density flow credit allocation.

§ 172-7 Rules for Transfer of Density Flow Rights

A. Standards. The following basic standards shall apply for Transfer of Density Flow Rights (TDFR) in the Town of Huntington, in addition to those set forth in the SCDHS TDR Standards.

1. A single density flow credit shall correspond to 20,000 square feet of lot area, which is the equivalent of 300 gallons per day (gpd) flow (e.g., a one acre lot in an R-40 zone could send two density flow credits).
2. Sending sites may generate and receiving sites may accept fractional flow credits broken down to the nearest quarter (75 gpd) of a credit.
3. A density flow credit or portion thereof shall only be received at a site for which yield has been proven to the satisfaction of the Planning Board based on a fully-conforming yield study or site plan or which meets Town standards for issuance of a building permit (e.g., single and separate parcel).
4. Location and site quality will be considered before any determination of sending rights is made. If there is any indication of conditions (e.g., proximity to wetlands, wellsite(s), saturated soils) that might not support a septic system on a property proposed as a sending site, the owner/applicant may be asked to provide qualifying data to assist determination of flow rights and the total area from which the rights are calculated may be reduced.
5. Density flow credits shall not be generated from:
 - (a) Property from which credits or rights have been previously purchased or transferred;
 - (b) Property encumbered by easements, rights of way, or other encumbrances of record, unless such impediments are to be extinguished prior to transfer (e.g., abandonment of a right-of-way);
 - (c) Property improved with buildings or other improvements, unless a distinct open space parcel can be defined therefrom;
 - (d) Property designated as buffer, park set-aside or open space that is held privately and which has been created as a requirement or condition of an approval by the Town Board, Planning Board or Zoning Board of Appeals or specified in Town Code; or
 - (e) Property located within a sewer district or approved for connection to a sewage treatment facility.
6. Lands within Special Groundwater Protection Areas as defined in the (1993) Long Island Comprehensive Special Groundwater Protection Area Plan should serve primarily as sending areas.
7. Sending and receiving areas should be in the same groundwater management zone.
8. Sending and receiving properties need not be similarly zoned.
9. A separate deed conveying the sending parcel to the Town of Huntington or other governmental or land trust organization approved by the Town Board or deed restriction (e.g., conservation easement or declaration of covenant and restriction) inuring to the benefit of the Town of Huntington must be filed for the affected sending area before rights are sent from that property. If a less than fee interest is conveyed, it must allow perpetual oversight and access for monitoring by the Town or another government or conservation organization on an approved list. The Director of Planning and Environment shall, with the assistance of the Town Attorney, review the content and form

of each such deed or easement prior to its filing for compliance with the requirements of this article.

10. A sending site may be dedicated or deeded to the Town of Huntington or other governmental or land trust organization approved by the Town Board.

11. Sending sites will be managed as natural open space in perpetuity without any maintained or fertilized turf.

12. Density flow rights shall not be received on:

(a) Property individually-listed or within a district listed on the National Register of Historic Places or designated by the Town Board, unless the transfer is protective of the historic resource;

(a) Lots with an average slope greater than or equal to 10%;

(b) Golf courses;

(c) Property located within a sewer district or approved for connection to a sewage treatment facility;

(d) Environmentally sensitive sites or sites with features that would be compromised by added density.

13. No TDFR shall result in a transfer into the Town from another municipality or out to another municipality.

B. Procedures for severance and redemption of density flow rights. Separate procedures apply for private party transfers and public benefit transfers.

§ 172-8 Private Party Transfers

A. Request for Letter of Interpretation (LOI). The property owner and contract vendee, if applicable, shall file a signed and notarized application with the Planning Board for a letter of interpretation on a form to be supplied by the Department of Planning and Environment together with the following documents and a five hundred (\$500) dollar application fee:

1. Copy of the property survey;

2. Legal description of that portion of the property to be considered in the letter of interpretation.

3. Copy of latest deed and a covenants and restrictions search;

4. Copy of tax bill;

5. Environmental Assessment Form (only if request is not consistent with an application for which a SEQRA review has been completed); and

6. A letter requesting the transfer, identifying involved properties, and indicating whether the density flow certificates will be utilized for residential, commercial and/or industrial development;

7. Any other documentation required by the Planning Board or the planning staff.

B. Review of LOI Request for Private Party Transfer. Upon the submission of a complete application, the Planning Board will review it with staff support and, if deemed acceptable by the Planning Board, following confirmation by the SCDHS, the Director of Planning and Environment shall issue a letter of interpretation indicating the number of density flow credits that could ultimately be severed from the real property or a portion thereof within sixty (60) days. The property owner has thirty (30) days from the date of

the letter of interpretation to appeal the allocation of density flow credits identified in the letter of interpretation to the Planning Board upon written letter of appeal and submission of a filing fee of one hundred (\$100) dollars. A letter of interpretation shall expire two (2) years following its issuance. The expiration date shall be tolled by any pending Town application review.

C. Density flow credit application. Subsequent to receipt of a letter of interpretation, a property owner or contract vendee may request a density flow credit certificate from the Planning Board by submission of the following:

1. The letter of interpretation;
2. A full title search, including a search for any and all encumbrances, including all liens, and covenants and restrictions, on the property;
3. A completed density flow credit certificate application form to be supplied by the Department of Planning and Environment;
4. Proposed deed of conveyance and/or conservation easement; and
5. Any other documentation requested by the Department of Planning or Planning Board.

D. Density flow credit certificate. Upon the recording of the appropriate conservation easement in the Office of the County Clerk encumbering all or part of a sending parcel or a signed deed of transfer to the Town of Huntington therefor, and the provision of evidence of same to the Planning Board, the Planning Board shall issue a density flow credit certificate certifying that the holder is entitled to a specific number/fraction of density flow credits. As the density flow credit certificate has real value as an interest in the property, any sale or transfer thereof must be registered with the Department of Planning and Environment.

E. Redemption of density flow credits/Transfer authorization. Density flow credits are considered to be an interest in real property. They may be used to increase the development yields on receiving parcel(s) only in accordance with existing zoning, with SCDHS TDR Standards, and with procedures established by the Town Board consistent with the goals and objectives set forth in the Town Comprehensive Plan. A request to redeem a density flow credit at a specific receiving area may accompany the request for the density flow credit certificate or it may be made within 2 years from the issuance of the Letter of Interpretation. If the transfer request involves an application that is pending before the Planning Board, it may authorize the transfer as a specified item when it issues conditional final approval. If the transfer request is pending review of the Department of Engineering Services, a separate Planning Board resolution shall be required.

F. Registration of Transfer. The Department of Planning and Environment shall track all transfer transactions in a central database and notify the Assessor and Director of Engineering Services when a transfer of density flow rights has been authorized to insure proper assessment of the sending parcel as vacant unbuildable property.

§ 172-9 (reserved)

§ 172-10 (reserved)

§ 172-11 Public Benefit Transfers

A. Procedure. Upon the submission of a complete application for a Letter of Interpretation pursuant to § 172-8A, the Planning Board will conduct a consistency review and consider the availability of density flow credits held by the Density Rights Bank, the public purpose to be served by the pending project that would benefit from the transfer and its relation to fulfillment of Comprehensive Plan goals. Publicly-held density rights may only be considered by the Town Board, if in the Board's discretion, the receiving parcel project meets one or more of the following criteria:

1. Incorporates workforce housing or affordable housing;
2. Provides for significant economic development in a hamlet or village center area;
3. Donates real property or other tangible benefit to the Town of Huntington;
4. Provides significant environmental benefit to the Town of Huntington;
5. Implements the recommendations of the Town's Comprehensive Plan;
6. Achieves some other worthwhile goal or benefit as determined by the Town Board.

B. The Planning Board shall submit its written recommendation to the Town Board within sixty (60) days of the filing of a complete application. The Town Board may consider the recommendation of the Planning Board and issue a determination by resolution. If the Town Board fails to act within ninety (90) days, or fails to extend the period in which to act, the proposed use of public density flow credits shall be deemed to have been denied.

C. Value Determination. If the Town Board affirms the use of credits held by the Density Rights Bank, in conformance with criteria and goals identified in this article for an appropriate public use, the Planning Board will order an independent certified appraisal to determine the fair market value of the requested flow credits, which shall be established by the difference in value between the development potential of the property as exists at the time of application and the development potential with the added flow credits. Upon receipt of the appraisal, the Planning Board shall assess a fee that is payable in an amount equal to or less than the appraised value of the flow rights, based on dollar for dollar in-kind offsets that accompany the proposed project. The fee established by the Planning Board will be referred to the Town Board for its review and consideration. Once the Town Board establishes the fee, the Director of Planning and Environment may issue a supporting LOI, which shall specify the fee and state the appraised value of the rights and the associated value of any offsets that are considered a condition of the LOI.

D. Density flow credit certificate.

1. Subsequent to receipt of a letter of interpretation, a property owner may request a density flow credit certificate from the Planning Board by submission of the following documents with a five hundred dollar (\$500) fee:

- (a) The letter of interpretation;
- (b) A full title search, which includes a search for all encumbrances, including all liens, and covenants and restrictions, on the property; and

(c) A completed density flow credit certificate application form to be supplied by the Department of Planning and Environment; and

(d) Payment or guarantee acceptable to the Town Attorney of the established fee, which will be credited to the Affordable Housing Trust Fund.

2. Upon completion of the statutory requirements, the Planning Board shall issue a density flow credit certificate certifying that the holder is entitled to a specific number of density flow credits. Density flow credits shall expire within two (2) years from the date of issuance of the Letter of Interpretation, unless otherwise extended for no more than two (2) years per extension, in the discretion of the Planning Board, for good cause shown. Any application for an extension shall be made prior to the expiration of the original term of the density flow credits, or any extension thereof, and can not be extended by the Planning Board more than twice. Public density flow credits shall be used within six (6) years from the date of issuance of the Letter of Interpretation.

E. Restricted Use of Public Credits

Public density flow credits are only useable pursuant to the grant under which they were created. They are site-specific to the project reviewed by the Planning Board. Resale of public flow credits is strictly prohibited.

§ 172.12 Passive Open Space Review

A. Passive Open Space Review for Density Rights Bank. The Town Open Space Coordinator shall consult the Planning Board with regard to all planned natural area land acquisitions or rededication of Town-held properties for conservation purposes prior to submitting a resolution to the Town Board for dedication and/or funding authorization. All such Town Board resolutions will include reference to the credits to be generated and dedicated to the Density Rights Bank. Where possible, shared acquisitions with other governmental agencies should result in a matching allocation of density flow rights (e.g., 50%-50%).

B. Management and Monitoring of Sending Sites

The Town Department of Planning and Environment is authorized to monitor all sending sites annually to insure that they are being maintained in accordance with this article in a natural passive open space condition. Failure to maintain a sending site in its natural vegetative state and in compliance with the provisions of this article shall be deemed an offense against this article.

C. Donation of Density Flow Rights

The Density Rights Bank may also include density flow rights acquired through philanthropy, such as by voluntary land donation to the Town of Huntington or other governmental or land trust organization approved by the Town Board or conservation easement duly recorded with the Office of the County Clerk, provided that the sending property meets a designated goal of the Comprehensive Plan. The philanthropy may or may not be by outright gift in full.

§ 172.13 Penalties for Offenses

A person or business entity who commits or permits any acts in violation of any provision of this article shall be deemed to have committed an offense against this chapter and shall be liable for such violation and the penalty therefore, and shall upon conviction thereof, be

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subject to a penalty of not less than two hundred fifty (\$250) dollars and not more than one thousand (\$1,000) dollars. Each day, or part thereof, such violation continues or is permitted to exist following notification by the Town, or service of a notice of violation or summons shall constitute a separate offense, punishable in like manner.

Section 2. Severability

If any clause, sentence, paragraph, subdivision, section or other part of this local law shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect, impair, or invalidate the remainder of this local law, and it shall be construed to have been the legislative intent to enact this local law without such unconstitutional or invalid parts therein.

Section 3. Effective Date

This Local Law shall take effect immediately upon filing in the Offices of the Secretary of State of New York.

* * * INDICATES NO CHANGE TO PRESENT TEXT
ADDITIONS ARE INDICATED BY UNDERLINE
DELETIONS ARE INDICATED BY [BRACKETS]

VOTE: AYES: 5 NOES: 0 ABSTENTIONS: 0

Supervisor Frank P. Petrone	AYE
Councilwoman Susan A. Berland	AYE
Councilman Stuart P. Besen	AYE
Councilman Mark A. Cuthbertson	AYE
Councilwoman Glenda A. Jackson	AYE

THE RESOLUTION WAS THEREUPON DECLARED DULY ADOPTED.