



Conservation and Land Use Planning

under Massachusetts' Chapter 61 Laws

*A Primer for Cities, Towns
& Conservation Organizations*
Second Revised Edition, November 2007



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Introduction

This booklet revises Mount Grace Land Conservation Trust's "Conservation and Land Use Planning with Massachusetts' Chapter 61 Laws: A Primer for Cities, Towns, and Conservation Organizations" (1990) by Keith Ross and Scott Wallace.



The information presented here is designed to explain how municipalities and conservation organizations can use Chapter 61 laws to protect important natural resources in their communities. The report advises cities and towns facing conversions of classified lands in the evaluation and potential acquisition of the properties. The subject of this booklet is both broad and complex. While Mount Grace has taken steps to ensure the accuracy of the material, Chapter 61, 61A and 61B statutes are subject to interpretation and amendment. Mount Grace strongly recommends capable legal review of the particular circumstances of the sale or conversion of land enrolled in Chapter 61, 61A or 61B. Consulting qualified legal counsel before and during acquisition is a necessary part of the planning and execution process.

Written by Stacey Francese and Jay Rasku

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Additional copies are available for \$5.00 by contacting Mount Grace. This booklet is also available on the Mount Grace website at www.mountgrace.org.

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Chapter 61 Background

During the past several decades, constitutional amendments approved by the citizens of Massachusetts have authorized three programs which require cities and towns to reduce assessments of farm, forest and open space lands, provided the owners make a commitment to keep their lands in one or more of those uses. These programs were motivated in large part by rising property values, which were forcing farmers and forest landowners to sell their land because of the increasing tax burden. These tax reduction programs are known as Chapter 61—the Forestland Act; Chapter 61A—the Farmland Assessment Act; and Chapter 61B—the Recreational Land Act. While most states have similar assessment programs to retain open space, typically referred to as “current use programs,” only the three Massachusetts laws give municipalities a “right of first refusal” to acquire lands that have been enrolled in these programs. The three Chapter 61 laws also allow municipalities to assign the right of first refusal to a non-profit conservation organization or to the Commonwealth of Massachusetts and its political subdivisions. Assignment of the right of first refusal is a useful option when a municipality cannot act within the 120-day “right of first refusal period” to get the necessary town meeting or city council approvals required to buy and sell property.

The right of first refusal option is triggered when land classified under one of the Chapter 61 statutes is “sold for” or “converted to” residential, commercial or industrial purposes. The right of first refusal serves as a legal interest in the property that grants the municipality the right to match a bona fide offer for conversion of the property from its forest, agricultural or recreational use. The laws are consistent with the early practice in colonial land settlements, where a town held the right of first refusal on land granted to new settlers. This prevented land speculation and promoted long term stability in the community.

On December 22, 2006, the Governor of Massachusetts signed amendments to Chapters 61, 61A and 61B, which significantly changed the laws. The amendments, entitled “Chapter 394 of the Acts of 2006,” became effective on March 22, 2007.¹ The new provisions simplified the three Chapter 61 programs, making it easier for landowners to enroll. The law also clarified the right of first refusal process and extended a municipality’s ability to exercise its right up to a year after a landowner is not taxed under the program.

In 2007, Massachusetts agencies estimated that 97,000 acres were classified under Chapter 61 forestry and 209,000 acres were classified under Chapter 61A—good estimates aren’t available for land in Chapter 61B. These laws make an important contribution to the quality of life in Massachusetts by helping to control development on productive, scenic and natural lands.

¹For the complete text, go to www.mass.gov/legis/laws/seslaw06/sl060394.htm

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Conservation Value of Chapter 61, 61A and 61B Lands

Most landowners classify their lands in Chapter 61, 61A and 61B to take advantage of reduced property taxes. Many of these lands are woodlots and small farms on the outskirts of expanding urban and suburban areas. As development increases around these properties, taxes rise to cover the costs of expanded town services. Without Chapter 61, 61A and 61B, these increases in taxes would force some landowners to sell their property. Today, many parcels have remained undeveloped as a direct result of the reduced annual property tax bills following enrollment in these programs.



As growth continues at a rapid pace, the landscape of Massachusetts is quickly changing. By protecting forests, farms, scenic and historic areas from excessive development, land conservation can have significant and long-lasting, positive environmental, social and economic impacts. Conserving undeveloped land protects drinking water supplies, preserves biodiversity and helps retain the character of the landscape. Land conservation is also integral to the preservation of historic areas. By ensuring that historic farms and other areas are not developed, the three Chapter 61 laws help preserve a vital element of Massachusetts' cultural heritage.

Economically, protecting open space and encouraging appropriate development helps municipalities avoid the costly mistake of misusing or overwhelming available resources. Unplanned development often incurs costs for town services, particularly school, highway and sewer. Too

often, the bottom line effect of development on a municipality is negative, maximizing private profit at the expense of public planning. Keeping land open can ease the burden on the local tax base by keeping the costs of community services lower. The three Chapter 61 laws can play a significant part in maintaining the quality of life in a community. In assessing the economic impacts of acquiring lands through the right of first refusal option, the municipality should carefully project the costs resulting from development and the benefits of open space. It should decide what development is appropriate for that community and weigh the financial impact before releasing the right of refusal option on Chapter 61, 61A or 61B land. In some cases, the projected cost of services may exceed the cost of purchasing the property. In other cases, municipal needs for land may outweigh any benefits of conversion to other uses.

Highlights of Chapter 61 Laws

Each of the Chapter 61 laws provides a voluntary and temporary form of conservation. The owner commits a property to agricultural, forest or recreational use. In exchange, the town or city reduces taxes and is granted the right to purchase the property if and when it is removed from Chapter 61, 61A or 61B classification to be converted or sold for residential, commercial or industrial use. The property taxes of classified land are tied to the income the land can produce; thus, under Chapter 61 the

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tax is based on the value of the land solely for timber production. In Chapter 61A, the valuations depend on the crop and animals raised, reflecting the annual net income gained from agriculture and horticulture.

Chapter 61, 61A and 61B provisions differ from conservation restrictions and should not be confused with permanently protected land. A conservation restriction is a legally binding agreement between a landowner and a government agency or a non-profit conservation organization, whereby the landowner agrees to permanently limit the use of the property in order to protect its conservation values. A conservation restriction is recorded at the Registry of Deeds and binds current and future owners in perpetuity. However, the voluntary Chapter 61 programs often serve a critical first step in developing coordinated priorities for the permanent protection of important natural resources.

Chapter 61, 61A and 61B provisions also differ from deed restrictions. A deed restriction is a legal device for controlling the use and development of land by future owners. Deed restrictions are not permanent and must be re-recorded on a regular basis. A deed restriction usually runs for no longer than 30 years, with the allowance or permissibility to re-record the restriction. In contrast to conservation restrictions and deed restrictions, Chapter 61, 61A and 61B laws allow for voluntary removal of property from the program at any time, though it may be subject to a penalty tax. For information on penalty taxes, see “Chapter 61, 61A and 61B Penalties Chart” on page 15.

The next sections describe each of the three Chapter 61 laws in more detail. In addition, please consult “Understanding Chapter 61 Laws” chart on page 9.

Alain Pateroy



Chapter 61

Known as the “Forestland Tax Law,” Chapter 61 helps maintain open land by providing tax benefits to maintain forests. This program is for properties of contiguous forestland of ten acres or more and is administered by the Massachusetts Department of Conservation and Recreation (DCR).

To qualify for the program, a landowner must have a ten-year forest management plan in the format required by DCR. The plan is reviewed and certified by a DCR forester, also referred to as the “State Forester.” DCR requires that all boundaries be blazed and painted and that the management plan involve some level of forest management activities such as harvesting or timber stand improvement. If the plan meets DCR requirements, DCR will issue a management certificate for the property. The State Forester (or a designee) has the right to inspect the property for compliance with Chapter 61.

The management certificate enables the property owner to apply to the local Board of Assessors for reduced taxes under Chapter 61 (as opposed to normal Chapter 59 assessment). Once classification is granted, Chapter 61 provides for a reduction in property assessment as determined by the Farmland Valuation Advisory Commission for the “value that the land has for forest production purposes.” This new valuation system will begin with the fiscal year beginning on July 1, 2008. The 2006 Chapter 61 changes also eliminate the stumpage tax beginning July 1, 2008,² and allow forestland with a management plan to qualify for Chapter 61A and 61B (see following sections). Once the Assessors have accepted the forest management certificate and the landowner application, the municipality records a lien on the property at the Registry of Deeds.

Chapter 61 classification runs for a ten-year period. The landowner may withdraw from the program at any time within the ten years, but may face a penalty tax if a change of use is involved. At the end of ten years, the owner may either file an application for recertification or withdraw the property from classification. If withdrawal is chosen, the landowner does not pay any penalties unless he or she converts the land from forestry to another use. Neither does a landowner pay any penalties if he or she withdraws and then converts the land to another use covered by one of the other two Chapter 61 classifications—61A or 61B.

²Before the Chapter 61 changes of December 2006, the property assessment was reduced by 95%, and land was subject to a yield tax of 8% of the stumpage value of all forest products harvested from the land.

For example, if the landowner leaves the program within or after ten years and does not re-enroll, but does not convert the land to another use, he or she does not pay any penalty. In another example, a landowner who leaves the program either within or at the end of the ten years and puts the land into agricultural use pays no penalty. Penalty taxes and rights of first refusal only apply if there is a sale for, or conversion to, another use—for example, from forestry to residential housing.

The right of first refusal by municipalities extends a full year after the property leaves the Chapter program. For a more complete description of Chapter 61, 61A and 61B penalties please see page 15.

David Brothers



Chapter 61A

Chapter 61A classification is for lands used primarily for agriculture or horticulture. Land in agricultural use is defined as land primarily used in raising animals, which includes everything from cattle to bees to fur-bearing animals. Land in horticultural use is land used for raising anything from fruit to vegetables to ornamental shrubs.

To qualify for the program, a property owner must have at least five acres in farm use for at least 2 years prior to application. Each year, the farmer must also demonstrate sales of farm products produced on the land equal to \$500 for the first five acres, and \$5 for every acre thereafter, except for forest and wetlands, which must produce \$0.50 per acre.

Some amount of forestland can also be classified under Chapter 61A. These “productive” forestland portions require the same forest management plan as land classified under Chapter 61, and must also be certified by the State Forester. An exception to this requirement is the following: above a threshold acreage of land devoted to agriculture or horticulture, a landowner may enroll an equal amount of “non-productive” contiguous land, such as scrubby woodland or rocky hillsides, in the program without certification from the State Forester.

Once the application for classification is approved, the municipality records a lien on the property at the Registry of Deeds. The property is then typically assessed at different valuations for different agricultural or horticultural uses. For example, orchard land is typically assessed higher than hay fields. Each year, the state’s Farmland Valuation Advisory Commission sets a range of values for each type of agricultural land use. Local Assessors then decide which value within the range to use.

Chapter 61A classification runs for a one-year period. To re-enroll, the landowner must file an application by October 1st (nine months before the start of the next tax year, which begins July 1st). The application deadline is extended during years when the municipality is revaluing property.

If the property is removed from classification under Chapter 61A, there are no penalty taxes unless there is a conversion to another land use not covered by any of the three Chapter 61 programs (forestry, agricultural or recreational lands). The right of first refusal option by municipalities extends a full year after the property leaves the Chapter program. For information about the penalty taxes, if there is a conversion or change of use, see page 15.

Chapter 61B

Chapter 61B is designed to promote conservation of open space and recreational lands. To qualify for the program, a landowner must have at least five acres retained in a substantially natural, wild, open, pastured or landscaped condition. A landowner can also qualify with a minimum of five acres of forestland under a forest management plan certified by the State Forester to allow the preservation of wildlife and other natural values such as water resources, clean air, rare or endangered species, high quality soils, geologic

Joanne McGee



features and scenic resources. Chapter 61B land in the natural, wild, or open categories does not have to be open to the public.

Alternatively, five acres or more of land used for a qualifying recreational purpose is allowed in the 61B program. A qualifying recreational use must not interfere with environmental benefits from the land and must be available to the general public or a non-profit organization. Recreational use includes hiking, camping, golfing, horseback riding, skiing, swimming and others specified in the Chapter 61B statute.

Once the application for classification is approved, the municipality records a lien on the property at the Registry of Deeds. The property is then assessed at its recreational use value, which cannot exceed 25% of its regular fair market value, with local Assessors making the decision. In other words, the assessed valuation of the property is reduced by at least 75%.

Chapter 61B classification runs for a one-year period. To re-enroll, the landowner must file an application by October 1st (nine months before the start of the next tax year, which begins July 1st). The application deadline is extended during years when the municipality is revaluing property.

If the property is removed from classification under Chapter 61B, the landowner pays no penalty unless there is a change of use. Under the 2006 Chapter 61 changes, no penalty is charged if the land is converted to any other land use covered by the other Chapter 61 programs—recreation, farmland or forestry. The right of first refusal option by municipalities extends a full year after the property leaves the Chapter program. For a more complete description of the penalty taxes, see page 15.

Changing Classifications

Under the 2006 changes in Chapter 61, landowners can switch the enrollment of their land from one chapter to another without penalty.

Chapter 61, 61A and 61B Law Details Chart

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The following chart outlines key components for the Chapter 61, 61A and 61B programs. For the full text of each statute, go to the following websites:

Chapter 61

www.mass.gov/legis/laws/mgl/61-1.htm

Chapter 61A

www.mass.gov/legis/laws/mgl/61a-1.htm

Chapter 61B

www.mass.gov/legis/laws/mgl/61b-1.htm

	Chapter 61 Forestland	Chapter 61A Agricultural & horticultural land	Chapter 61B Open space or recreational land
Description	Promotes conservation of woodlands by providing tax incentives to manage forests.	Promotes conservation of agricultural and horticultural lands by providing tax incentives to maintain lands actively devoted to these purposes. Covers the farmlands, certified forestlands and some accessory lands of a farm.	Promotes conservation of open and recreational lands by providing tax incentives to maintain land in natural, wild, open, pastured, managed forest or landscaped condition, or for a recreational use.

	Chapter 61 Forestland	Chapter 61A Agricultural & horticultural land	Chapter 61B Open space or recreational land
Eligibility requirements	<p>Minimum of ten contiguous acres.</p> <p>The land must have been devoted to a use "not incompatible" with forest production for at least two prior years.</p> <p>A 10-year forest management plan approved by the State Forester, which includes some level of forest management activities.</p>	<p>Minimum of five acres.</p> <p>The land must have been devoted to agricultural or horticultural use for at least two prior years.</p> <p>The land may also contain up to 50% of non-agricultural or horticultural lands that are not in residential, industrial or commercial use.</p> <p>Required annual sales must be at least \$500 per year in agricultural or horticultural products for the first five acres, plus \$5 per acre for each acre of farmland over five acres and \$.50 per acre for forestland or wetland.</p>	<p>Minimum of five acres.</p> <p>The land must be retained in a substantially natural, wild, open, pastured, managed forest or landscaped condition, or used for an approved recreational purpose.</p> <p>The 2006 Chapter 61 changes allow horseback riding and horse boarding uses to qualify for Chapter 61B.</p>
Defined use	<p>Land devoted to the growth of forest products. Upon application, the State Forester may allow accessory land devoted to other non-timber uses to be included in certification.</p> <p>"Forest Products" are defined as "wood, timber, Christmas trees, other forest growth and any other product produced by forest vegetation."</p>	<p>Land is considered to be in agricultural use when it is primarily used in raising animals for the purpose of selling such animals or a product derived from such animals in the regular course of business.</p>	<p>Land retained in a substantially natural, wild or open condition or in a landscaped condition in such manner as to allow to a significant extent the preservation of wildlife and other natural resources.</p> <p>Or</p> <p>Land to be used for certain permitted recreational purposes such as hiking and camping and open to the public or members of a non-profit organization.</p>

	Chapter 61 Forestland	Chapter 61A Agricultural & horticultural land	Chapter 61B Open space or recreational land
Defined use (continued)		Land is considered to be in horticultural use when used in raising fruits, vegetables, berries, nuts and other food for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products and ornamental plants and shrubs for the purpose of selling such products in the regular course of business, or when primarily and directly used in raising forest products under a program certified by the State Forester to be a planned program to improve the quantity and quality of a forest crop for sale.	The recreational use must not materially interfere with the environmental benefits of the land. Land may be "in a pastured or managed forest condition under a certified forest management plan approved by and subject to procedures established by the state forester," thus allowing for forestry uses on land in 61B.
Buildings & other structures	The land under all dwellings, driveways, and yard areas when used for regular family living is assessed at the full Chapter 59 tax assessments. However, the land under agricultural buildings or structures necessary and relating to the Chapter 61A program will be valued under the Chapter 61A program.		
Enrollment & renewal process	To enroll, the landowner must submit a written application for certification to the State Forester before July 1st for classification in the next year. For example, the application must be submitted by July 1, 2007 to be eligible for the July 1, 2008—June 30, 2009 fiscal year.	To enroll, the landowner must submit a written application to the Board of Assessors of the city or town by October 1st for classification during the next fiscal year. For example, the application must be submitted by October 1, 2007 to be eligible for the July 1, 2008—June 30, 2009 fiscal year.	To enroll, the landowner must submit a written application to the Board of Assessors of the city or town by October 1st for classification during the next fiscal year. For example, the application must be submitted by October 1, 2007 to be eligible for the July 1, 2008—June 30, 2009 fiscal year.

	Chapter 61 Forestland	Chapter 61A Agricultural & horticultural land	Chapter 61B Open space or recreational land
Enrollment & renewal process (continued)	<p>The landowner must then submit, before October 1st of the same year, a written application to the Board of Assessors of the city or town. The application must include the State Forester's certification and a copy of the approved forest management plan. For example, the application must be submitted by October 1, 2007 to be eligible for the July 12, 2008—June 30, 2009 fiscal year.</p> <p>Every ten years the owner must file an application for recertification with the municipality that includes a new certification by the State Forester.</p>	<p>The landowner must then reapply annually to the Board of Assessors by October 1st.</p>	<p>The landowner must then reapply annually to the Board of Assessors by October 1st.</p>
Property tax	<p>Property taxes are assessed at valuations based on forest production purposes. Those valuations are determined by the Farmland Valuation Advisory Committee.</p>	<p>Property taxes are assessed at valuations based on agricultural and horticultural production purposes. Those valuations are determined by the Farmland Valuation Advisory Committee.</p>	<p>Property taxes are based on the property's use for open space or recreation. The reduction is at least 75% of what the Chapter 59 tax assessment would be, based on the fair market value of the property.</p>
Lien	<p>Once the classification is approved, the municipality records a lien on the property at the Registry of Deeds. This tax lien and notice informs all potential purchasers that the property is subject to the provisions of the Chapter 61 laws.</p>		
Notice to city or town	<p>A landowner who has property classified in Chapter 61, 61A or 61B must notify the Mayor and City Council or the Selectboard, as well as the Board of Assessors, Planning Board, Conservation Commission, and State Forester, by certified mail, when all or a portion of the land is being sold for, or converted to, a disqualifying use. This requirement of the landowner extends for one year after not being taxed under the program.</p>		

	Chapter 61 Forestland	Chapter 61A Agricultural & horticultural land	Chapter 61B Open space or recreational land
Notice To city or town (continued)	<p>This notice by the landowner triggers the 120-day option period, during which the city or town has the right of first refusal to meet a bona fide offer to purchase the land, or, in the case of a conversion of use by the landowner, to pay fair market value for the property. In both cases, the municipality may elect to assign their right to a qualified conservation organization or agency. (See page 23 for the legal requirements of the landowner when giving notice).</p> <p>Note: A landowner who is not changing the use of the land, but is simply withdrawing from the program at the end of, or at any time within, the 10 years in Chapter 61—or at the end of, or within, the one year in Chapter 61A or 61B—triggers neither a requirement of notification, nor a right of first refusal.</p>		
Change of use withdrawal & failure to reapply	<p>Any land valued, assessed and taxed under the provisions of one of the particular Chapters, if sold for another use or changed to another use not consistent with any of the three chapters, is subject to a Conveyance Tax or a Roll-Back Tax.</p> <p>The landowner will only pay the higher of the two tax penalties, not both. Roll-Back Taxes will apply when the amount of those taxes exceeds the amount, if any, imposed under the Conveyance Tax section for that particular Chapter. In the same way, when Roll-Back Taxes do exceed the amount imposed for the Conveyance Tax penalty, then the land is not subject to the Conveyance Tax.</p> <p>Simply withdrawing from a Chapter program may not result in any penalty taxes. For more detailed information on Chapter 61 penalty taxes see page 15.</p> <p>Failure to reapply to a Chapter program by the required date will result in paying full Chapter 59 taxes until the landowner reapplies to Chapter 61, 61A or 61B. See “Enrollment & Renewal Process” (beginning on page 11).</p>		
Change of use of part of the property	<p>If a change of use occurs on a portion of the land under a Chapter program, and that change is not to a land use covered by Chapter 61, 61A or 61B, then only that portion of the land where the change of use occurred will be subject to Roll-Back Taxes or Conveyance Taxes.</p>		



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Chapter 61, 61A and 61B Penalties Chart



The Chapter 61 programs center on the agreement between the municipality and the landowner. In exchange for the municipality significantly reducing a landowner's property taxes, the landowner commits to keeping his or her land as farmland, forestland or open space for a specified period of time. If the landowner changes the use of the land to one not covered by one of the three Chapter programs within that time frame, certain penalty taxes may apply.

The following are two significant changes to Chapter 61 penalties resulting from the 2006 Chapter 61 amendments.

1. There are no Conveyance Taxes, Roll-Back Taxes or municipal "right of first refusal" if the land leaves a Chapter program at the end of the enrollment period and there is no conversion or change of use.
2. In addition, there is no penalty if the land leaves a Chapter program and is then converted to a use covered by one of the other two Chapter programs. For example, a farm in Chapter 61A can be converted to a golf course and not pay penalty taxes, as long as it then meets Chapter 61B requirements. A managed forest in Chapter 61 can be converted to a nursery and greenhouse operation and not pay penalty taxes, as long as it then meets Chapter 61A requirements.

The charts below detail the two penalty taxes found in the Chapter 61 programs: the Conveyance Tax and the Roll-Back Tax.

Chapter 61 Forestland	
Triggering act	The land is no longer considered to be in forestry use or agricultural, horticultural or recreational use as described in any of the Chapter programs.
Penalty type	Conveyance Tax or Roll-Back Tax.
Which tax applies?	If the land is sold for or converted to an ineligible use within a period of ten years from the date of its acquisition or the earliest date of its uninterrupted use in forest production by the current owner, the higher of the two taxes applies, but not both.
Conveyance Tax	<p>The Conveyance Tax is designed to levy a more severe financial penalty if the land is sold for another use or converted to another use within the early years of involvement with the Chapter 61 or Chapter 61B program.</p> <p>A Conveyance Tax is assessed:</p> <ol style="list-style-type: none"> 1. If the property is sold for, or converted, to another use within ten years of its acquisition by the current landowner. 2. If the property is sold for, or converted to, another use within ten years of the date of its earliest uninterrupted use by the current owner consistent with one of the Chapter 61 Programs. <ul style="list-style-type: none"> • For example, if a renter of forestland has worked the land for five years and then purchases and acquires the forestland, the Conveyance Tax start date is from the date the renter began to use the property, or “earliest uninterrupted use”—not the date when the renter became the owner of the property. <p>The Conveyance Tax is a percentage of the sale price of the property or a percentage of the land value in the case of conversion by the owner. The Conveyance Tax is 10% of the sale price or land value, which declines by 1% for every year the property has been owned or has been in uninterrupted use.</p> <p>In determining the amount of the Conveyance Tax when the land use is changed by the owner, the value of the land for the purpose of determining a total sales price shall be fair market value as determined by the Board of Assessors.</p> <p>No Conveyance Tax is assessed if the land leaves the Chapter program at the end of the enrollment period and there is no conversion or change of use from forestry. (Roll-Back Taxes may apply, however). In addition, there is no penalty if the land leaves the program and is then converted to a use covered in Chapter 61A or 61B.</p>

Chapter 61 Forestland

Conveyance Tax (continued)

No Conveyance Tax is assessed if the entire land or some lesser interest is acquired for a natural resource purpose by a duly authorized land conservation organization or agency of the Commonwealth. However, if that entity sells or converts any portion of that land to commercial, residential or industrial use within five years after acquisition, a Conveyance Tax will be assessed against the organization.

An owner managing land for forestry for more than ten years under Chapter 61 can sell the land at any time without paying the Conveyance Tax. In addition, land enrolled in Chapter 61 Forestry before October 1, 2007 is exempt from the Conveyance Tax until that land has been transferred to another owner.

When the land is purchased by a new owner, who states on a notarized affidavit his or her intention to keep the land in current use as productive forestland or another use covered by Chapter 61A or 61B, the Conveyance Tax can be avoided if the new owner agrees to keep it in that use for at least the next five years. If the land is not continued in the use stated in the affidavit for at least five consecutive years, then Conveyance Tax becomes due and payable and is the liability of the new owner.

Roll-Back Tax

The Roll-Back Tax is assessed if the land changes use while classified or within five years after being removed from classification under the Chapter 61 Program.

The Roll-Back Tax is the amount of the difference between what the landowner paid in taxes under Chapter 61 and what would have been paid had the land been taxed at its fair market value, plus interest.

The Roll-Back Tax looks back five years, and has a flat 5% simple interest rate per annum. The tax is assessed on the land or part of the land that has changed in use.

If the change of use occurs when the land is classified in a Chapter 61 program, the tax is imposed for the current fiscal year and the four prior years. If the land is not classified at that time, the tax is imposed for the five prior years. For example, if the land has been un-enrolled for three years, taxes are only owed on the difference for the last two years of enrollment.

No Roll-Back Tax will be assessed if the land continues to meet the definitions of forest, agriculture, horticulture or recreational land under Chapters 61, 61A or 61B within the five years after the land leaves Chapter 61.

To whom the penalty is paid

The penalty tax is paid to the city or town.

Proportional penalties

If a portion of classified land is withdrawn from classification, the land that has changed use becomes liable for the appropriate penalty tax on that portion of the land.

	Chapter 61A Agricultural & horticultural land	Chapter 61B Open space or recreational land
Triggering act	The land is no longer considered to be in agricultural, horticultural or forestry or recreational use as described in any of the Chapter programs.	
Penalty type	Conveyance Tax or Roll-Back Tax.	
Which tax applies?	If the land is sold for or converted to an ineligible use, within a period of ten years from the date of its acquisition (not classification) or the earliest date of its uninterrupted use in either agriculture or horticulture by the current owner, the higher of the two taxes applies, but not both.	If the land is sold for or converted to an ineligible use, within a period of ten years from the date of its classification in Chapter 61B, the higher of the two taxes applies, but not both.
Conveyance Tax	<p>The Conveyance Tax is designed to levy a more severe financial penalty if the land is sold for another use or converted to another use within the early years of involvement with the Chapter 61A or 61B program.</p> <p>The Conveyance Tax is a percentage of the sale price of the property, or a percentage of the land value in the case of conversion by the owner.</p> <p>In determining the amount of the Conveyance Tax when the land use is changed by the owner, the value of the land for the purpose of determining a total sales price is the fair market value as determined by the Board of Assessors.</p> <p>No Conveyance Tax is assessed if the land leaves the Chapter 61A or 61B program at the end of the enrollment period and there is no conversion or change of use from agriculture, horticulture, or recreation. (Roll-Back Taxes may apply). In addition, there is no penalty if the land leaves the program and is then converted to a use covered in Chapter 61, 61A or 61B.</p> <p>When the land is purchased by a new owner, who states in a notarized affidavit the intention to keep the land in current agricultural, horticultural, or recreational use, or another use covered by Chapter 61, the new owner agrees to keep it in the same use for at least the next five years. If the land is not continued in the use stated in the affidavit for at least five consecutive years the Conveyance Tax becomes due and payable and is the liability of the new owner.</p> <p>No Conveyance Tax is assessed if the entire land or some lesser interest is acquired for a natural resource purpose by a duly authorized land conservation organization or agency. However, if that entity sells or converts any portion of that land to commercial, residential or industrial use within five years after acquisition, a Conveyance Tax will be assessed against the organization.</p>	

	Chapter 61A Agricultural & horticultural land	Chapter 61B Open space or recreational land
Differences in Conveyance Tax for Chapter 61A & Chapter 61B	<p>The rate of the Conveyance Tax is: 10% of the total price of the property if the land is sold or converted within the first year of ownership (or uninterrupted use by the current owner), 9% if sold within the second year, and so on with the rate declining each year until it reaches 1% in the tenth year.</p> <p>An owner farming the land for more than ten years under Chapter 61A can sell the land at any time without paying the Conveyance Tax.</p>	<p>The rate of the Conveyance Tax is: 10% of the total price if such land is sold or converted within the first five years of classification, and 5% if the land is sold within the 6th through tenth year.</p> <p>An owner with ten or more years from the first classified year of maintained open space or continuous recreational use in Chapter 61B can sell the land at any time without paying the Conveyance Tax.</p>
Roll-Back Tax	<p>The Roll-Back Tax is assessed if the land changes use while classified or within five years after being removed from classification under the Chapter 61 Program.</p> <p>The Roll-Back Tax is the amount of the difference between what the landowner paid in taxes under a Chapter 61 program and what would have been paid had the land been taxed at fair market value (plus interest).</p> <p>The Roll-Back Tax looks back five years, and has a flat 5% simple interest rate per annum. The tax is assessed on the land or part of the land that has changed in use. An exception is if the land was under Chapter 61A as of July 1, 2006 and if it remains in the same ownership as it was on that date, or under the ownership of the original owner's spouse, parent, grandparent, child, grandchild, brother, sister or surviving spouse of any deceased relative.</p> <p>If the change of use occurs when the land is classified in a Chapter 61 program, the tax is imposed for the current fiscal year and the four prior years. If the land is not classified at that time, the tax is imposed for the five prior years. For example, if the land has been un-enrolled for three years, taxes are only owed on the difference for the last two years of enrollment.</p> <p>No Roll-Back Tax will be assessed if the land continues to meet the definitions of forest, agriculture, horticulture or recreational land under Chapters 61, 61A or 61B within the five years after the land leaves either Chapter 61A or 61B.</p>	
To whom the penalty is paid	The penalty tax is paid to the city or town.	
Proportional penalties	If a portion of classified land is withdrawn from classification, the land that has changed use becomes liable for the appropriate penalty tax on that portion of the land.	

Sample Municipal Conservation Fund for Chapter 61

Municipalities in Massachusetts can choose to create town-held conservation funds to deposit Roll-Back or Conveyance Taxes into for use for conservation purposes including management or purchasing of conservation properties.

Chapter 82 of the Acts of 2004

AN ACT AUTHORIZING THE TOWN OF DIGHTON TO ESTABLISH A SPECIAL FUND.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Notwithstanding section 53 of chapter 44 of the General Laws or any other general or special law to the contrary, the town of Dighton may establish a special conservation fund into which shall be deposited funds collected as Roll-Back or Conveyance or Forest Product Taxes pursuant to chapters 61, 61A and 61B of the General Laws. The town treasurer shall keep the funds separate and apart from all other monies of the town. The conservation commission of the town of Dighton, with the approval of the board of selectmen of the town, may expend the principal and income from these funds for the acquisition and management of properties for conservation purposes or anything relative thereto.

Approved April 23, 2004.

Pamela Kimball-Smith



Exercising a Chapter 61 Right of First Refusal



There are several basic steps to exercising a Chapter 61, 61A or 61B right of first refusal. Each stage relates to the others. While each step in the process is treated separately, several may be going

on at the same time. The following descriptions are intended to help municipal officials, land conservation organizations and others make informed decisions on the exercise, or assignment, of rights of first refusal that become available under Chapter 61 laws.

Remember to always work closely with legal counsel, as interpretations of the laws often change. Even when the landowner is sympathetic to the desire of the municipality to conserve the land in question, the municipality should always work in close consultation with legal counsel, mindful that a court challenge is always a possibility.

Negotiating with Landowners Prior to Notification

Municipalities almost always find it easier to conserve land through negotiations with landowners on the municipality's terms rather than matching a contract developed by someone else on their terms. If land in Chapter 61, 61A or 61B has important conservation assets, it is recommended that a municipality not wait until notice is presented, but take a proactive approach of gathering preliminary information and adopting a Chapter 61 procedure (see page 24). It is advantageous to have the Open Space Committee, the Recreation Commission and/or the Conservation Commission regularly review the land enrolled in the Chapter 61 programs and prioritize the parcels of interest to the municipality. The municipality can then approach landowners enrolled in Chapter 61, 61A or 61B and encourage them to contact the municipality first if they are thinking about selling or converting their land. This process allows communities to assess the conservation merits of Chapter 61, 61A and 61B land, to cultivate relationships with landowners of important properties, and to seek to protect the lands through direct negotiation with landowners. This can eliminate the constraint of having to match the terms of a deal negotiated by others within the 120-day timeframe.

Notification from Landowner

A landowner who has property classified under one of the Chapter 61 laws must notify the municipality when all or a portion of the land is being converted to a disqualifying use. Landowners cannot sell land or convert land to another use for an additional one year after being taxed under Chapter 61 without giving the municipality a notice of intent to sell or convert. As defined by statute, the notice of intent to sell or convert must be sent by the landowner by certified mail—or hand delivered—to the Mayor and City Council of a city or Selectboard of a town, and in the case of either a city or a town, to the Board of Assessors, the Planning Board and the Conservation Commission, and to the State Forester. Proper notice triggers the 120-day option period, during which the

city or town has the right of first refusal to meet a bona fide offer to purchase the land or, in the case of conversion by the landowner, an option to purchase the land at full and fair market value to be determined by an impartial appraisal. The 120-day option period begins running on the day following the latest date of deposit of the notice in the United States mail.

Sean Pollock



The 120-day period does not start until the landowner complies with the notification procedures. Proper notice to the municipality must include:

1. A statement of intent to sell or convert.
2. A statement of proposed use of the land.
3. The location and acreage of land as shown on a map drawn at the scale of the Assessor's map in the city or town in which the land is situated.
4. The name, address and telephone number of the landowner.
5. In the case of an intent to sell the land for another use, a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited only to the property classified under the Chapter. To be a bona fide offer, the purchase and sale agreement may not be dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use, or the potential for, or the potential extent of, development of the property for industrial or commercial use.
6. Any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under the Chapter, but sold or to be sold contemporaneously with the proposed sale.
7. In the case of an intent to convert the land to other use, the landowner must also provide to the municipality the name of the landowner's attorney (if the landowner has retained an attorney).

It is recommended that Town Counsel review the offer to make sure that it is indeed a bona fide offer. If the notice is deficient as to any one or more of the requirements, then the municipality, within 30 days of receipt of the notice, must notify the landowner in writing that the notice was deficient and does not comply. The 120-day period will begin only if and when the landowner sends in a notice that complies with the requirements of the law listed above. It is also important to know what the other contract stipulations are. For example, the landowner may be taking back a mortgage for a period of time. This could be important to the municipality or to a land trust considering accepting the assignment. (See page 29 for information about assigning the right of first refusal.)

A municipality is ill-advised to waive the right of first refusal without notifying additional municipal boards and initiating an evaluation process. Municipal officials must not be rushed into a waiver by proponents of the sale and should use as much of the 120-day period as is necessary to properly evaluate the sale and its impact on the town or city.

After receiving proper notice from the landowner, the Selectboard or Mayor should ascertain that the notice was properly transmitted to the Planning Board, the Board of Assessors and the Conservation Commission. Copies of the notice should also be given to the Open Space Committee, Agricultural Commission, Historical Commission, Community Preservation Committee, Water Commission, local, regional and statewide land trusts and other relevant board and town officials. Land trusts may be able to provide valuable experience and assistance as well as information about the property. Information on local organizations can be obtained from the Massachusetts Land Trust Coalition on their website at www.massland.org.

When land enrolled in Chapter 61, 61A or 61B is being converted to an ineligible use without a sale, the municipality has the option of purchasing the land at full and fair market value. The value of the property is determined by a qualified, independent appraiser, hired by the municipality, using the best appraisal standards available, within the first 30 days after the notice. If the landowner is dissatisfied with the appraisal, the landowner—at the landowner’s expense—may contract for a second appraisal to be completed within the first 60 days of the right of first refusal period. If after the completion of the second appraisal the municipality and the landowner cannot agree on a price, both parties must contract for a third appraisal with a mutually agreed upon Appraiser, splitting the cost evenly. The third appraisal is the final determination of price, and must be delivered to the parties within 90 days of the landowner’s initial notice to convert.

Upon agreement of a consideration of value between the landowner and the municipality, the city or town will then have a full 120 days to exercise its right of first refusal option.

At any time in the process, the landowner may withdraw his or her notice to convert with no penalty, thus withdrawing the town’s right of first refusal. This act also prevents the landowner from following through with the conversion.

Whether the municipality is exercising its right of first refusal on a sale of land or a conversion of land, the city or town may only do so after holding a public hearing, in accordance with M.G.L. Chapter 39, Section 23B. The hearing must be followed by a written notice signed by the Mayor or Selectboard and mailed to the landowner by certified mail. Included in the notice to the landowner of the city’s or town’s election to exercise its right of first refusal must be the proposed purchase and sale agreement between the municipality and the landowner. The municipality may, at that same public hearing or at a future meeting, assign the right of first refusal to a qualified non-profit or agency of the Commonwealth.

Selectboard or Mayoral Procedure

It is helpful for the Selectboard or Mayor to have a clear procedure in place that is followed whenever the city or town receives a Chapter 61, 61A or 61B notification. (Please see page 37 for a Sample Selectboard/Mayoral Procedure). Since a municipality may experience frequent changes of board members or have committees that meet only occasionally, a set Chapter 61, 61A or 61B procedure provides continuity. In establishing a procedure, it is highly recommended that the Selectboard or Mayor not act until all the relevant committees and conservation organizations have been notified and have had time to comment on any action that will be taken. When notice is received by the Selectboard or Mayor, the municipality should notify all the relevant board chairs and conservation organizations either by phone or by sending notice. Boards required to be notified by the landowner are the Planning Board, the Conservation Commission and the Board of Assessors. Other relevant boards that should be notified include the Board of Health, Open Space Committee, Agricultural Commission, Water Commission, Community Preservation Committee, Historical Commission and the Finance Committee.

Information Gathering

In evaluating the significance of the property, it is recommended that local officials gather background information to determine the property's conservation value and significance as well as the financial impact of potential development. In some cases, the increased cost of services that accompany development may exceed the cost of purchasing the property. The following paragraphs describe several recommended steps that may be a useful part of the process.

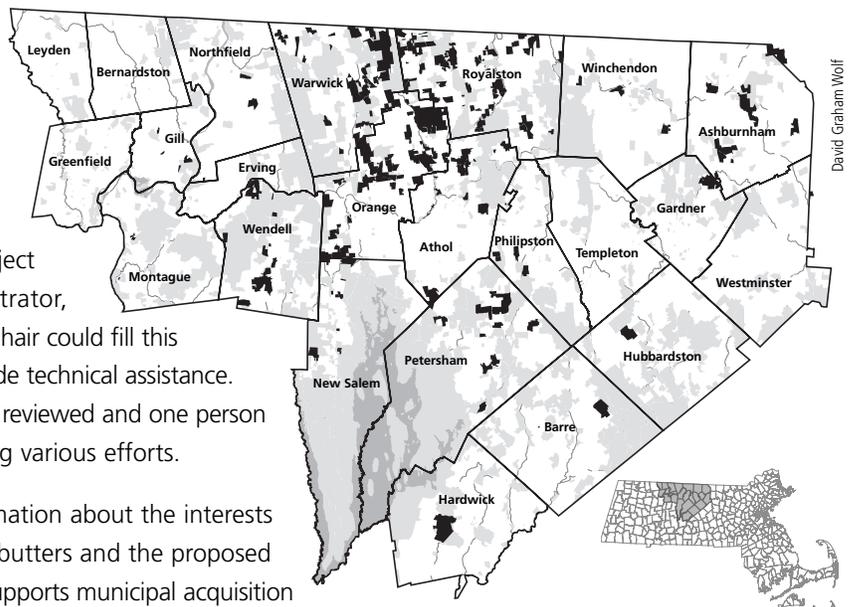
As soon as the notice of intent to sell or convert is received from the landowner, identify a project coordinator to oversee review of the proposal. The coordinator delegates tasks and responsibilities to individuals or committees and coordinates these activities in light of the very tight project schedule. The Town or City Administrator, Manager or Open Space Committee Chair could fill this role. A land trust may be able to provide technical assistance. Each element of the project should be reviewed and one person should be responsible for coordinating various efforts.

Start by gathering background information about the interests and perspectives of the landowner, abutters and the proposed buyer. It may be that the landowner supports municipal acquisition of the property. Perhaps the proposed buyer will work with the municipality to plan development around important natural features. It may be that the abutters will help protect the property. Each of these parties can provide valuable insights into the property. Abutters can be identified through the local Assessor's maps, recorded survey maps, or from the county Registry of Deeds deed description.

Analyze the location of the property relative to other protected lands and perform an environmental assessment. While not required, it can be helpful to work with the regional planning agency to gather Geographic Information Systems (GIS) data. GIS maps offer important geographic information concerning the physical, social and economic environment. Contact information and online mapping tools are available at www.mass.gov/mgis. A review of GIS information may be able to help answer some of the questions about the significance of the property, such as: Does this property abut any other protected land such as state land, conservation land, municipal land or private land with a conservation restriction? Is the land part of the public drinking water aquifer? Is this property an important link in a present or planned corridor of protected land? Is it identified as rare or endangered species habitat? Your local conservation group should be able to help you contact a statewide or regional conservation organization that can assist here as well.

Examine maps and plans, including aquifer maps, groundwater recharge maps, open space plans, municipal master plans, Massachusetts Natural Heritage and Endangered Species Program "Priority Habitat," "BioMap" and "Living Waters" maps, geology maps, forest management plans, agricultural plans, MEMA

Utilize information about other protected lands and important natural resources. (*Mount Grace protected lands map*)



hazard mitigation plans, recreation and trail maps and maps of proposed recreational trails. The goal is to determine if this property is important in any of these planning efforts. It may have a unique geological feature, important soils, or be the source of drinking water or the site of an important historical event.

Inspect the property. Have an environmental assessment performed to identify the existence of hazardous or toxic materials affecting the property. Determine whether or not the benefits of obtaining the property outweigh any risks. The environmental assessment should include an inspection of the following; the property, chain of title, current and past uses of the property, and neighboring properties. Local building and fire department records can be helpful.

The city or town (or its assignees) has the right during the 120-day option period, "at reasonable times and upon reasonable notice," to enter the property for inspection, including surveying, soil testing for Title V, water sampling and other assessments. In addition to these rights of inspection, the municipality enjoys all the rights of inspection assigned to the buyer in the purchase and sale agreement contained in the notice of intent. If the purchase and sale agreement includes a provision for the buyer to test for hazardous or toxic material, then the municipality may also—otherwise, this is prohibited without permission.

Examine zoning bylaws and subdivision control regulations to determine the maximum permitted level of development. This provides a determination of the impact on town services the potential development could have. The municipality should ensure that available resources will not be overwhelmed by the proposed development. Are the roads in adequate condition to support increased traffic? Is there room in the school for new children? Can the landfill handle additional trash? Are there adequate water and sewer lines in place, and can the town's wastewater treatment facility handle the expansion? Are there adequate police and fire services available? It is important to develop a checklist of growth constraints for the municipality that can be used to assess the impact of proposed developments. A determination should be made of whether the increased cost of services exceeds the cost of purchasing the property.

Examine current municipal land needs. For example, the community may need land for ballfields, a new school or affordable housing. The property in question may be appropriate for one or more of these uses, depending on the resources that are present. If the municipality buys the property, it is not required to keep the property in the Chapter use. However, if the right of first refusal is assigned to a land trust or to the Commonwealth or one of its political subdivisions, such as the Massachusetts Department of Fish and Game, then at least 70% of the land under the Chapter programs must be kept in the Chapter 61 use. In any event, the assignee cannot develop a greater portion of the land than was proposed by the developer whose offer gave rise to the assignment.

It may be possible to divide the property between several uses. For example, the town may want to develop a small number of affordable units on the front of the property and leave the remainder as conservation land. Perhaps the property is appropriate for a community garden or a new senior center. An evaluation of these alternatives requires a familiarity with the zoning bylaws and the development potential of the property, and may require professional land planning assistance. A combination of uses may help generate the support needed to fund municipal acquisition of the property.

Evaluate the price and determine whether this would be a reasonable purchase for the municipality. In the case of a proposed sale of Chapter 61 land, the municipality may decide to get an appraisal to determine

whether the purchase price reflects the value of the property. A formal review by a professional appraiser is of the highest importance in determining the value of the land. Keep in mind however that this does not change the price that the town must pay if choosing to exercise their option—they may only match the bona fide offer.

Board Coordination

During the decision-making process, it is critical to coordinate activities of the municipal staff and all municipal boards involved in the decision. The Selectboard, Planning Board, Conservation Commission, Board of Assessors, Board of Health, Community Preservation Committee, Water Commission, Historical Commission, Finance Committee and other relevant boards should be consulted at various phases of the project and kept up to date on new developments. The right of first refusal option should be discussed initially at each Board's regular meeting. Once a conservation proposal starts to come together, joint meetings can be scheduled when necessary.

Public Hearing

A public hearing is required if the municipality decides to act on its right of first refusal, or to assign the right to a non-profit organization or to the Commonwealth or one of its political subdivisions. However, it is recommended that a public hearing be formalized in the Chapter 61 process in the case of any town board expressing interest in the property.

After the municipality has been notified and information gathering has begun, the Selectboard or Mayor should schedule and give notice of a public hearing. Notice of the hearing must be given in accordance with Massachusetts General Law Ch. 39, Section 23B (Open Meeting Law). The Planning Board, Conservation

Commission, Board of Assessors and other boards and conservation organizations should be notified of the date, time and place of the hearing. The purpose of the public hearing is to receive comments on the importance of the property to the municipality and whether or not the municipality should exercise or assign its right of first refusal. To ensure enough time to receive all comments, the public hearing should be scheduled no less than two weeks and no more than two months from receipt of the notice from the property owner.

At the hearing, all interested parties should have the right to comment. Committees should present

the results of their ranking criteria relevant to the parcel. At the close of the hearing, the Selectboard or Mayor may decide that there is enough interest in pursuing acquisition of the property or assigning the right of first refusal to a land trust or government agency. Early public feedback on the project can be very important. If the public does not support the project and prefers to see the property developed, then that may be the best option.



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Decision by the Municipality

Based on input at the public hearing, the information-gathering process, and board and committee meetings, realistic project plans for the property will emerge. The Selectboard or Mayor must determine whether or not to pursue the opportunity to exercise the right of first refusal. The Selectboard or Mayor must choose one of four courses of action:

1. Exercise the Option

The municipality may choose to exercise its right of first refusal. To select funds to purchase the property the municipality will have to consider the future use of the property and the sources of funding for the acquisition. The municipality will also need to give consideration to the 120-day time period and whether a Town Meeting or Council vote—and, if necessary, a debt exclusion ballot question—will need to be scheduled within the 120-day period.

Acquiring the Property for Conservation Purposes

The municipality may decide that the entire parcel will be conserved. Reasons could include aquifer protection, historic preservation, scenic vistas, rare species habitat or that the property is abutting land that is already protected. Typically, purchase of a parcel for protection is carried out by the municipality, the state or a land trust.

If the municipality cannot borrow funds within the 120-day period, a land trust may be able to accept the assignment and purchase the property with written agreement that the town or city will repurchase.

If the state is to be the purchaser, it may be advantageous for a land trust to take title to the property and hold it for the state to repurchase. When funds are available, state agencies generally require 6 to 24 months to acquire property.

Acquire the Property for Other Municipal Uses or a Combination of Municipal and Conservation Purposes

The municipality can choose to allow only enough development to cover expenses while conserving important natural resources. Coordination between the municipality and a land trust can be important to the

success of limited development. Limited development can help the city or town address its affordable housing, elderly housing or special housing needs.

Deciding to Exercise the Option

Whether the municipality decides to conserve all or some of the property, once the decision is made to exercise its option, the Selectboard or Mayor must take several steps. The municipality must record the notice to exercise at the Registry of Deeds. The municipality must also notify the landowner, by certified mail to the address specified in the landowner's notice, of its intent to exercise the option. The Board or Mayor should schedule a town or city council meeting to appropriate funds to purchase the property. (see the Project Funding section on page 43 for ways to finance projects). These steps must all be taken within the 120-day period.



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The municipality or its assignee must close on the land purchase within 90 days of its decision to exercise or assign its right unless otherwise agreed upon in writing by the landowner.

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2. Assign the Option

There are several reasons why a municipality might want to assign the option. The town or city may need an entity that is able to act faster than the municipality can. Perhaps the municipality wants to conserve the land through a private and public partnership and enlist a land trust to help raise money. Another reason may be that the municipality needs part of the funding for acquisition to come from limited development, which is more easily accomplished through a private non-profit organization.

If the municipality is considering granting its option to a land trust, prompt cooperation is needed to develop a plan for the property. The town or city and the land trust should have a thorough discussion to establish each party's goals and plans of action. After the public hearing, the municipality may vote to assign its right of refusal to the land trust under such terms and conditions as the Mayor or Selectboard deem appropriate. Such assignment requires at least 70% of the property use to be consistent with one of the chapters. The municipality must then notify the landowner by certified mail, to the address specified in the landowner's notice, of the municipality's intent to assign its option to a land trust, stating the name and address of the trust and the terms and conditions of the assignment. The municipality must notify the landowner within the 120-day period and must also record the notice to assign at the Registry of Deeds as part of a notarized affidavit.

There are two important elements of assigning the right of first refusal option. The first is the public hearing requirement which (according to M.G.L. Chapter 39, Section 23B) is a 48-hour public notice period. The second important area is the terms and conditions of assignment. These terms and conditions should be drawn up by the Selectboard or Mayor, in consultation with legal counsel for the town or city, and the organization accepting the right of first refusal and its attorneys. The terms should specify the desired plan and other "fallback" plans in order of preference. It is important that this document allow for a full range of possibilities acceptable to both parties. Once the terms and conditions are agreed upon, they can be incorporated as a part of the assignment. The assignment of the option should take place no later than a week before the official end of the 120-day period. This allows for proper recording of the documents within the option period, as required by the statute, and time to resolve any controversy that may develop. The public hearing should be well publicized to allow the parties another opportunity to comment on the assignment.

If Chapter 61, 61A or 61B land is acquired by a non-profit, at least 70% of the land must be preserved and meet the definitions of forest, agricultural or recreation land under Chapters 61, 61A or 61B. In no case may the non-profit develop a greater proportion of the land than the offer that gave rise to the

acquisition. All such land must be placed under a permanent conservation restriction. If this land is acquired by a non-profit and is subsequently sold within five years, the non-profit is subject to the Conveyance Tax.

If the municipality assigns its right of first refusal, it must provide written notice of the assignment to the landowner. The notice should include the proposed purchase and sale agreement.

The municipality or its assignee must close on the land purchase within 90 days of its decision to exercise or assign its right unless otherwise agreed upon in writing by the landowner.

3. Waive the Option

It may be the decision of all parties involved that the proposed buyer will develop the property without compromise of important natural resources. It could be that there are no important natural resources that need protecting and that the proposed development is the best use of the land and is acceptable to the municipality. Perhaps a written agreement has been crafted between the municipality and the developer in which the developer will protect identified resource areas as a part of the project.

The municipality could employ its ability to assign the option to a land trust or an agency of the Commonwealth to encourage a developer to incorporate protection of natural resources in the development plan. Serious alternative proposals from land trusts have been used very effectively in the past to encourage a development to more closely reflect a town's interest.

If any terms of the purchase and sale change between the landowner and the potential buyer, the notification process starts over. That is, the landowner is required to notify the municipality, which has a new 120-day window to act, and so on. Although this next step isn't required, if the municipality has a strong interest in a parcel, but feels that the price is out of line or that it cannot meet one or more of the purchase agreement terms, the town or city could respond with a limited waiver that waives the municipality's right to purchase the parcel under the specific terms of the existing agreement. If, for any reason, any terms of the agreement should be significantly changed—or if the sale falls through—the limited waiver puts the landowner and potential buyer on notice that the municipality has a new 120-day period within which to evaluate the terms of the new agreement and make its decision.

A municipality is advised to record its limited waiver at the Registry of Deeds. This ensures that the municipality's right to purchase the parcel will remain intact should the terms of the purchase and sale agreement be altered. The municipality should not offer a full waiver of its purchase rights unless it has no interest in the property under any terms of purchase. Capable legal counsel should review any municipal waiver and should provide advice on the proper filing procedures.

It is important that the seller of the land not be delayed unnecessarily. If discussion with other municipal boards, citizens and conservation groups clearly indicates that the municipality has no interest in the option, then the Selectboard should sign off as soon as possible. Unnecessary delay will only turn away people who may wish to classify their property under the Chapter 61 laws.

When the municipality has no interest in the property, a written notice of non-exercise signed by the Mayor or the Selectboard should be sent to the landowner by certified mail at the address specified in



the notice of intent. The notice is then required to be recorded at the Registry of Deeds.

4. Fail to Act

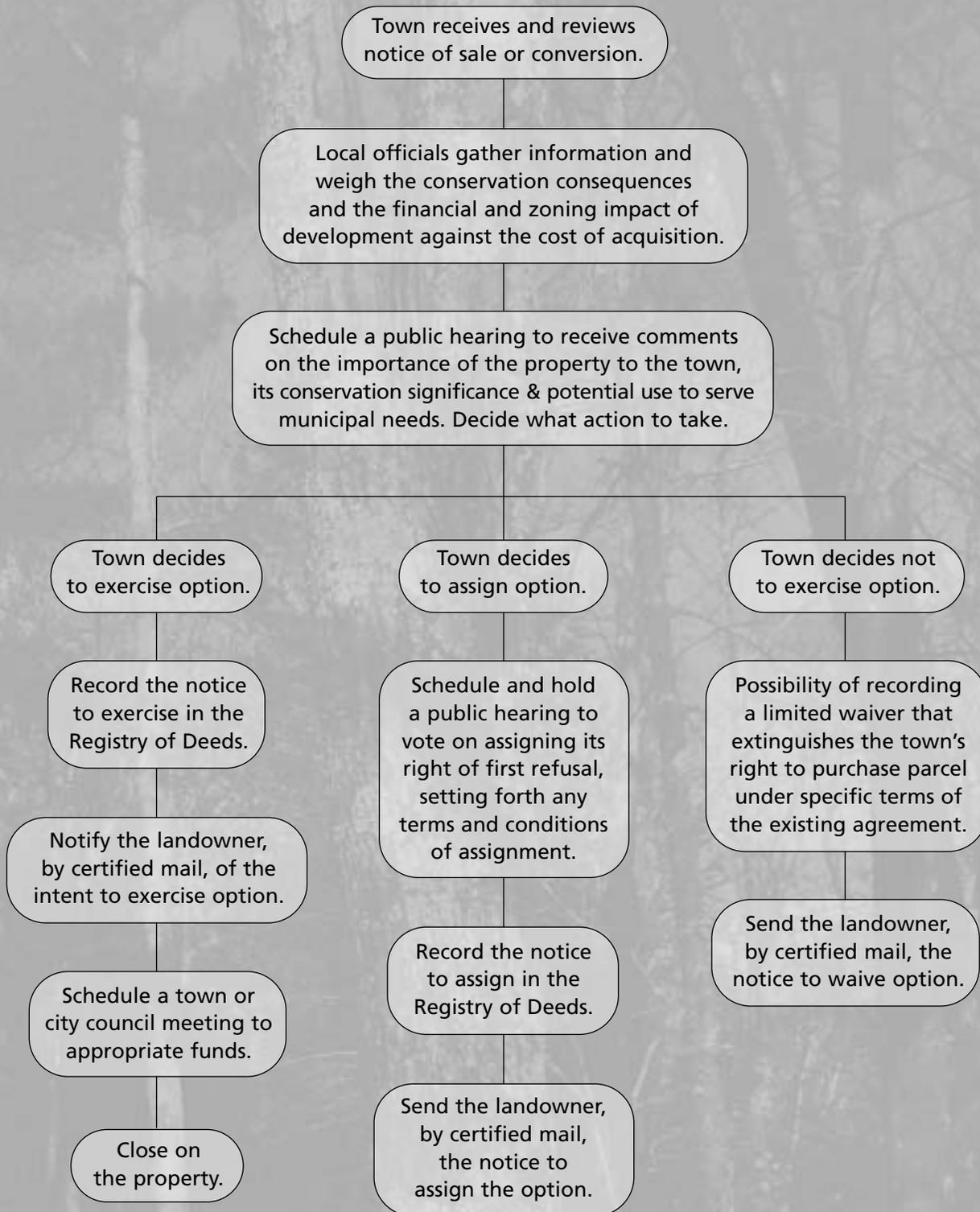
If the municipality fails to act within the required 120-day period, the municipality is deemed to have failed to exercise its right of first refusal and the sale or conversion of land may proceed.

In this case, it is in the landowner's best interest to obtain a document from the municipality stating it has allowed the 120-day period to expire and has not exercised its right of first refusal. It is also advisable that the landowner record this information at the Registry of Deeds.

Changes in the Statutes

Each year there may be various bills offered in the Legislature to modify portions of the Chapter 61 laws. It is important when first considering a Chapter 61, 61A or 61B sale or conversion that the current status of the particular statute be determined.

Summary Chart of the Chapter 61 Option Process



Schedule of the Option Process

The Chapter 61 statutes stipulate that a right of first refusal option must be exercised within 120 days of receipt of notice. This is a short period of time in which to accomplish a long list of tasks. The following chart details the different tasks involved, gives suggestions on who should complete the tasks and provides a suggested timeline for when the tasks should be completed. The term “Study Group” below refers to a town group composed of a member of each of the relevant town boards, which might include the Planning Board, Finance Committee, Selectboard or Mayor, Conservation Commission, Open Space Committee, Community Preservation Committee, Water Commission, Historical Commission and the Agricultural Committee, along with other appropriate town employees.

What	Who	When
Municipality receives & reviews notice of sale	Mayor/Selectboard, Board of Assessors, Planning Board, Conservation Commission	Day 1
Appoint project leader & Study Group to evaluate whether municipality wants to acquire property for municipal use	Mayor/Selectboard	2-7
Ascertain that notice was properly transmitted to Planning Board, Board of Assessors & Conservation Commission	Mayor/Selectboard	3-5
Consult with Open Space Committee for 61 & 61B, & Agricultural Commission for 61A	Mayor/Selectboard, Open Space Committee, Agricultural Commission	2-7
Provide copy of notice to all relevant boards & municipal officials	Mayor/Selectboard	3-5

Schedule of the Option Process (continued)

What	Who	When
Consult with Town Counsel to review the purchase & sales agreement	Mayor/Selectboard, Study Group	3–10
Inform land trusts and conservation agencies, request assistance	Mayor/Selectboard, Study Group	3–14
Gather background information on property	Study Group	7–30
Acquire & review property management plans	Study Group	7–30
Analyze property’s location relative to other protected lands and municipal needs, assess its natural resources, determine conservation values	Study Group with Open Space Committee, Conservation Committee and conservation organizations	7–30
Solicit input on property from abutters, municipal officials	Study Group with Mayor/Selectboard, others	7–30
Review town open space, water protection, master, & MEMA hazard mitigation plans, etc.	Study Group with Planning Board, Mayor/Selectboard, Water Commission	7–30
Review municipal zoning and subdivision control regulations	Study Group with Mayor/Selectboard, Zoning & Planning Board, Town Counsel	7–30
Schedule municipal/council meeting, prepare and mail warrant	Mayor/Selectboard	7–45
Acquire appraisals if needed	Study Group, Mayor/Selectboard, Appraiser	7–45
Consider municipal strategy	Study Group, Mayor/Selectboard	14–60
Public hearing	All	14–60
Town meeting/council meeting. Override ballot, if necessary	Mayor/Selectboard	60–80
Arrange financing	Mayor/Selectboard, Finance Committee	60–Close
Finalize purchase agreements	Mayor/Selectboard, Treasurer, Town Counsel	60–Close
Finalize planning documents	Study Group, Mayor/Selectboard	60–Close
Finalize legal documents	Mayor/Selectboard, Town Counsel	60–Close
Finalize financial documents	Mayor/Selectboard, Town Counsel	60–Close
Selectboard/Mayor accept option	Mayor/Selectboard, Town Counsel	90–100
Record notice of exercise. Send certified mail notice as required.	Mayor/Selectboard, Town Counsel	101–120
Closing must happen within 90 days of the decision to exercise or assign the right of first refusal.*	Mayor/Selectboard, Town Counsel	101–200*

**since the town has 120 days to decide, theoretically the closing could take place on day 210*

Schedule of the Assignment Process

The statutes stipulate that a right of first refusal option must be assigned within 120 days of receipt of notice. This is a short period of time in which to accomplish a long list of tasks. The following chart details the different tasks involved, gives suggestions on who should complete the tasks and provides a suggested timeline for when the tasks should be completed. The term “Study Group” below refers to a town group composed of a member of each of the relevant town boards, including the Planning Board, Finance Committee, Selectboard/Mayor, Conservation Commission, Open Space Committee, Historical Commission and the Agricultural Committee, along with other appropriate town employees.

What	Who	When
Municipality receives & reviews notice of sale	Mayor/Selectboard, Board of Assessors, Planning Board, Conservation Commission	Day 1
Appoint project leader & Study Group to evaluate whether municipality wants to assign the property to a conservation organization	Mayor/Selectboard	2-7
Ascertain that notice was properly transmitted to Planning Board, Board of Assessors & Conservation Commission	Mayor/Selectboard	3-5
Consult with Open Space Committee for 61 & 61B, & Agricultural Commission for 61A	Mayor/Selectboard, Open Space Committee, Agricultural Commission	2-7
Provide copy of notice to all relevant boards & municipal officials	Mayor/Selectboard	3-5
Consult with Town Counsel to review the purchase & sales agreement	Mayor/Selectboard, Study Group	3-10

Schedule of the Assignment Process (continued)

What	Who	When
Establish a relationship with a land trust or conservation agency, discuss project options	Mayor/Selectboard, Study Group	3–14
Gather background information on property	Study Group, conservation organization	7–30
Acquire & review property management plans	Study Group, conservation organization	7–30
Analyze location relative to other protected lands and municipal needs, assess natural resources on the property, determine conservation values	Study Group with Conservation Committee Regional Planning Organization and conservation organization	7–30
Solicit input on property from abutters, town officials	Study Group with Mayor/Selectboard, conservation organization, others	7–30
Review municipal open space, water protection, master, & MEMA hazard mitigation plans, etc.	Study Group with Planning Board, Mayor/Selectboard, Water Commission	7–30
Review municipal zoning and subdivision control regulations	Study Group with Mayor/Selectboard, Zoning & Planning Board, Town Counsel	7–30
Acquire appraisals if needed	Study Group, Mayor/Selectboard, Appraiser	21–90
Public Hearing to allow assignment	All	14–90
Negotiate terms & conditions of assignment	Study Group, Mayor/Selectboard, Town Counsel, conservation organization	60–90
Accept assignment	Conservation organization	60–100
Finalize assignment, send notice of assignment to landowner	Study Group with Mayor/Selectboard, conservation organization, Town Counsel	60–100
Arrange financing	Conservation organization	60–Close
Finalize purchase agreements	Conservation organization	60–Close
Finalize legal documents	Conservation organization	60–Close
Finalize financial documents	Conservation organization	60–Close
Record notice of exercise and assignment. Send certified mail notice as required.	Mayor/Selectboard, conservation organization, Town Counsel	101–120
Closing must happen within 90 days of the decision to exercise or assign the right of first refusal.*	Conservation organization	101–200*

**since the town has 120 days to decide, theoretically the closing could take place on day 210*

Sample Selectboard/Mayoral Lands Policy and Process

Whereas the Town/City of _____ encourages owners of open lands used for forestry, farming or recreation to enroll their property in the Chapter 61, 61A and 61B preferential tax programs in order to help maintain these lands in their current use, but in doing so, forgoes tax revenue that would otherwise be generated by these lands; and

Whereas owners of land enrolled in these programs are required to grant the Town/City a 120-day assignable right of first refusal in the event that these lands are proposed to be sold or converted for other uses; and

Whereas the Town/City of _____ has the ability to exercise its right of first refusal on land sold for, or converted to, another use within one year of leaving Chapter 61, 61A and 61B; and

Whereas the Town/City of _____ has ongoing needs for land for municipal purposes including conservation land and finds it in the Town/City's best interest to give full consideration to the opportunity presented by withdrawal of land from these programs, to gather information from relevant boards and staff, and to determine whether the Town/City should exercise or assign its right of first refusal;

Therefore the Selectboard/Mayor adopt(s) this Chapter 61 Lands Policy to set forth a clear process by which the Town/City will review and respond to notices of conversion and sale of lands in Chapters 61, 61A and 61B and determine whether or not to exercise or assign its right of first refusal on these lands. These policies and procedures are adopted solely for the purposes of coordinating local review. Failure to adhere to these policies and procedures shall not affect any rights that the Town/City has under MGL Chapters 61, 61A and 61B, nor shall they affect any rights of the landowner.

Note: For the purposes of this document, the following items that are required by statute are noted in italic type. This is not an exact replication of the wording of the statute. Other items are adopted as part of this policy. The statute should always be consulted for exact wording.

A. Right of First Refusal

Within 120 days of mailing (not receipt) of a proper notice, (municipality) must either:

1. *Act to exercise its option to purchase (to meet a bona fide purchase offer or, in the case of intended conversion by the landowner, an option to purchase at full and fair market value), recorded at the Registry of Deeds,*
2. *Assign its rights to a non-profit conservation organization or the Commonwealth or any of its political subdivisions, recorded at the Registry of Deeds,*

Or

3. *Notify the property owner that it does not intend to exercise its right of first refusal.*

Default alternative...

4. *Failure to record either the notice of exercise or the notice of assignment within 120 days is also considered conclusive evidence that (municipality) will not exercise its right of first refusal.*

B. Requirements for Notice by Property Owner

1. *The 120-day right of first refusal time period begins with a notice of the landowner's intent to sell or convert a parcel for commercial, industrial or residential use. This notice must be sent by certified mail or hand delivered to (the city's) Mayor and City Council/ (the town's) the Selectboard, in addition to the Planning Board, Board of Assessors and Conservation Commission, and to the State Forester. This notice must include the following:*
 - a. *A statement of intent to sell or convert,*
 - b. *A statement of proposed use of the land,*
 - c. *The location and acreage of land as shown on a map drawn at the scale of (municipal) Assessor's map of the town in which the land is situated,*
 - d. *The name, address and telephone number of the landowner,*
 - e. *In the case of an intent to sell, a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited only to the property classified under the Chapter, and must be a bona fide offer,*
 - f. *The purchase and sale agreement must be a bona fide offer, defined as a good faith offer not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of, development of the property for industrial or commercial use,*
 - g. *Any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under the Chapter, but sold or to be sold contemporaneously with the proposed sale,*
 - h. *A notarized affidavit that the landowner has mailed or delivered the notice will be conclusive evidence that the notice has been mailed in the manner and at the time specified,*
 - i. *In the case of an intent to convert the land to other use, the landowner must also notify (municipality) of the landowner's attorney, if any.*

C. Procedure for Review of Notices and Evaluation of Properties

1. *Within three days of receipt of a proper Notice from a landowner, the Selectboard/Mayor's office will ascertain that Notice, with the required information, was also properly transmitted to the Planning Board, Board of Assessors and Conservation Commission. Copies of the Notice will be provided by the Mayor/Selectboard to the (Open Space Committee, Community Preservation Committee, Water Commission, Agricultural Commission, Historic Commission, land trusts and other relevant boards and town officials).*
2. *The Selectboard/Mayor's office will also determine the final day of the 120-day period and attempt to seek confirmation from the landowner or his/her representative regarding this date.*

3. The Selectboard/Mayor will consult with municipal counsel to review the notice, including the purchase and sale agreement, and determine whether (municipality) is being given the same opportunity as the buyer with regard to the terms of the agreement.
4. *If the Notice is determined to be insufficient, the Selectboard/Mayor will immediately, but, in no event, in no more than 30 days from receipt of the Notice, transmit a certified letter notifying the landowner in writing that the proper notice has not been given and informing him/her that the 120-day clock has not started. A copy of this letter will be provided to the Planning Board, Board of Assessors and Conservation Commission and other boards/officials in Paragraph C(1).*
5. The Selectboard/Mayor shall gather information on the property to determine its conservation value. The Selectboard/Mayor shall gather background information about the interests and perspectives of the landowner, abutters and the proposed buyer. An analysis of the location of the property relative to other protected lands shall be performed along with an environmental assessment. A determination will be made whether the property contains any unique geological or other environmental features, important soils, a drinking water source, or was the site of an important historical event. An inspection of the property shall occur, with (municipality) enjoying all the rights designated to the buyer in the purchase and sale agreement contained in the notice of intent, including surveying, soil testing and water testing. Zoning and subdivision control regulations will be examined to determine the impact of the potential development on town services.
6. Upon a determination that proper Notice was received, the Selectboard/Mayor shall schedule and give notice of a public hearing for the purpose of receiving comments on the importance of the property to (municipality), its conservation significance and/or potential for use to serve municipal needs and for initiating discussion of whether or not (municipality) should exercise or assign its right of first refusal. The public hearing will be scheduled within 60 days of receipt of the notice from the property owner. In those cases where there is a proposed conversion of the land but no sale, the determination of sale price may take as long as 90 days, at which point the public hearing will be scheduled (see section C (7)). *Notice of the hearing is required to be given in accordance with M.G.L. Ch. 39, Section 23B (Open Meeting Law).* The Selectboard/Mayor will also notify the Planning Board, Conservation Commission, Open Space Committee and Board of Assessors, and (the other boards and organizations listed in paragraph C (1)). *The option to exercise the right of first refusal may only occur after a public hearing.*

At the public hearing, the Selectboard/Mayor will afford interested boards, organizations and individuals the right to comment. If there is interest in pursuing acquisition of the property for municipal uses or in assigning the right of first refusal to a non-profit conservation organization or to the Commonwealth or one of its political subdivisions, the Selectboard/Mayor will continue the public hearing as needed to allow time to present a more specific proposal for consideration by the Board. The Selectboard/Mayor may create a Study Committee comprised of the chairs (or their representatives) of these and other boards to assist in developing a proposal.

7. *If the landowner is converting the property, and (municipality) is interested in the option to purchase the land at fair market value, (municipality) will hire a qualified independent appraiser, and obtain the appraisal within 30 days of receiving the notice to convert. If the landowner contests the appraisal, the landowner may hire a qualified independent appraiser and obtain an appraisal within 60 days of the notice to convert. If (municipality) and the landowner cannot agree on an appraised value, then the two parties will jointly hire a third appraiser and obtain an appraisal within 90 days of the notice to convert. The price of the third appraisal will prevail if there is a sale, but at anytime the landowner may withdraw his or her notice to convert. Upon agreement of a consideration, (municipality) will have 120 days to exercise its option.*

D. Decision by Municipality

Based on input at the public hearing and further research as warranted, the Selectboard/Mayor will close the hearing and determine whether or not to pursue the opportunity to exercise the right of first refusal. The Selectboard/Mayor must choose one of four courses of action:

1. If (municipality) desires to exercise its option, the Selectboard/Mayor shall:
 - *Record the notice to exercise the option at the Registry of Deeds as part of an affidavit of a notary public during the 120-day period.*
 - *Notify the landowner by certified mail during the 120-day period, at the address specified in the landowner's notice, of the (municipality's) intent to exercise its option.*
 - *Schedule a town meeting or city council meeting for the purpose of appropriating funds to purchase the property, place a warrant article on the town warrant for this purpose, and schedule an override vote (if necessary) for the purpose of authorizing expenditure of funds. The town or city council meeting must be scheduled within (municipality's) 120-day period, unless an extension of this deadline is agreed to in writing between (municipality) and the seller.*
 - *Closure on the property must occur within 90 days of the (municipality's) decision to exercise its right of first refusal, unless otherwise agreed to in writing by the landowner.*
2. If (municipality) desires to assign its right of first refusal to a qualified land trust/conservation agency, the Selectboard/Mayor shall:
 - *At a public hearing during the 120-day period, vote to assign its right of refusal to the non-profit organization, setting forth any terms and conditions of the assignment. [Note: the non-profit conservation organization or the Commonwealth or any of its political subdivisions must conserve at least 70% of the property in a use consistent with one of the three Chapters, or no less a percentage conserved than proposed by the developer whose offer gave rise to the assignment, whichever is greater, but may be permitted to undertake a limited development on the balance of the property. The Selectboard/Mayor may place conditions on this use; for example the number of lots in the limited development can be specified.]*
 - *Record the notice to exercise at the Registry of Deeds as part of an affidavit of a notary public during the 120-day period.*
 - *Notify the landowner by certified mail during the 120-day period, at the address specified in the landowner's notice, of (municipality's) intent to assign its option to a non-profit conservation organization, stating the name and address of the non-profit organization and the terms and conditions of the assignment.*
 - *Closure on the property must occur within 90 days of the (municipality's) decision to assign its right of first refusal, unless otherwise agreed to in writing by the landowner.*
3. If (municipality) decides to forgo its right of first refusal, the Selectboard/Mayor should:
 - *Examine wisdom of recording a limited waiver of its rights at the Registry of Deeds. Any waiver of (municipality's) rights should be specific to the proposed purchase terms so that if the sale falls through and a new proposal comes forth, the 120-day clock will begin again.*
 - *(Municipality) shall use as much of the 120-day period as is necessary to properly evaluate the property and the potential of exercising or assigning the right of first refusal. It is possible that (municipality) may decide that it cannot afford to purchase the property, but any such choice should be thoroughly discussed and researched before making such a determination. Where there is consensus on the absence of conservation value or where (municipality) has negotiated a signed agreement with the landowner and/or developer that meets the municipal needs with regard to the property, the town may choose not to exercise its right. Any such negotiations, however, should occur in consultation with the boards/committees entitled to notice by statute.*
4. *(Municipality) can fail to act within the required 120-day period (and any extensions thereof), in which case (municipality) will be deemed to have failed to exercise its right of first refusal.*

Questions and Answers

Why are some forestlands classified under Chapters 61, 61A or 61B?

Because forestry is a recognized component of horticulture, the statute allows a landowner to choose to classify productive forestland under Chapter 61A, instead of Chapter 61.

If the landowner's primary objective is to leave the land natural, but wishes to perform some forestry activities, 61B may be preferable.

What can a conservation organization or municipality do with the land once it is acquired?

In the event of an assignment to a conservation organization, at least 70% of the land, or the amount that would have remained undeveloped under the plans submitted in the notice of intent, whichever is greater, must be consigned to an appropriate Chapter 61 use. The remaining portion of the land may be used in such manner as is allowed by the organization and that is as compatible as possible with the conservation values of the land. The statute is silent about what a municipality may or may not do with Chapter 61, 61A or 61B land acquired through the right of first refusal.

What portion of the land does the municipality have to acquire if it wishes to exercise its option?

The municipality may only accept or reject any bona fide offer, unless by mutual agreement. The municipality may not choose a portion unless the property involved is from more than one application for Chapter 61, 61A or 61B land taxation, in which case the municipality may choose to purchase only the land on any individual application or combination of applications.

What constitutes notice?

A notice must contain:

1. A statement of intent to sell or convert,
2. A statement of proposed use of the land,
3. The location and acreage of land as shown on a map drawn at the scale of the Assessor's map in the city or town in which the land is situated,
4. The name, address and telephone number of the landowner,
5. A certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale (which, for an intent to sell, is limited only to the property classified under the chapter). The purchase and sale agreement may not be dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of, development of the property for industrial or commercial use,
6. Any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under the chapter, but sold or to be sold contemporaneously with the proposed sale,
7. In the case of an intent to convert the land to other use, the landowner must also notify the municipality of the landowner's attorney, if any.

What if there are contingencies in the purchase and sale agreement?

Contingencies are a normal part of real estate contracts, and a bona fide offer to purchase exists where the seller receives an enforceable offer; however, the purchase and sale agreement may not be dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of, development of the property for industrial or commercial use.

What do you do if notice is defective?

The Selectboard/Mayor should notify the landowner immediately, but in no event later than 30 days after receipt of the notice, by certified mail, that the notice given does not fulfill the requirements of the law and that the 120-day response period will not begin until proper notice has been given.

Are there any exceptions for the conversion of land that do not trigger a right of first refusal?

Conversion to any other Chapter 61-type use (agricultural to recreational, recreational to forestry, etc.) does not trigger any right of first refusal (regardless of actual enrollment in the respective chapter). The specific use of land for a residence for the owner or the parent, grandparent, child, grandchild or brother or sister of the owner, or the surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full time in the classified use of the parcel shall not be deemed to be a conversion.



Pamela Kimball-Smith

Can a municipality renegotiate the terms of the contract between the buyer and seller?

No. A municipality has the right to step into the contract term-for-term. The municipality cannot pick and choose which terms they prefer. There have been some rare exceptions to this rule when all of the parties agreed to changes. Always consult with your legal counsel.

Is it possible to get an extension of the 120 days?

It is possible to get an extension of the 120 days, but it is at the discretion of the landowner. The municipality can request an extension, but the landowner is free to decide whether to grant or deny any extension of the 120 days.

Is the Chapter 61, 61A or 61B right of first refusal eligible for an executive session decision, and if so should it be handled this way?

When assigning the option to a qualified conservation organization, or deciding to exercise the right itself, a public hearing is required, so an executive session decision is considered inappropriate. The public meeting is required except for a decision to not exercise or assign the right of first refusal.

Under Massachusetts General Law Chapter 39, Section 23B, executive sessions may be held to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the government body or to consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation. However, no executive session shall be held until the governmental body has first convened in an open session for which notice has been given and a majority of the members have voted to go into executive session. While it is possible to decide whether to exercise the right of first refusal in an executive session, the general consensus is that it is better to have a public hearing than make a decision through executive session. It is important to involve different boards and members of the community to participate in the process.

What should the municipality do when the notice includes both classified and unclassified land?

The municipality has the option only on the land that is classified.

How to Finance a Chapter 61, 61A or 61B Land Acquisition

Form of Financing	How it works
Public financing municipal	<p>The Community Preservation Act (CPA)</p> <p>The Community Preservation Act is statewide enabling legislation that allows communities to conserve open space as well as preserve historic sites, create outdoor recreational areas and build community housing.</p> <p>The CPA allows participating municipalities to adopt a real estate tax surcharge of up to 3% in order to fund these efforts. A minimum of 10% of the annual revenues of the fund must be used for open space conservation, historic preservation and community housing. The remaining 70% can be allocated for any combination of the allowed uses, or for outdoor recreational use. Communities are encouraged to consider the creative combination of allowable uses in their expenditure of CPA funds. For example, a large tract of land can be acquired for open space protection while reserving part of the parcel for the development of community housing.</p> <p>The Act also requires that a permanent conservation restriction be placed on any "real property interest" acquired using CPA funds to ensure that the property continues to be used for the applicable CPA purpose.</p> <p>For more information about the CPA visit the Community Preservation Coalition website: www.communitypreservation.org.</p> <p>Municipal Conservation Fund</p> <p>The municipality may have a conservation fund for interested citizens willing to contribute to the protection of the property. Individuals who make donations of cash to the town may be able to take the same donation value as if the donation was made to a non-profit, charitable organization. Municipalities may also choose to create a conservation fund to designate Roll-Back taxes from Chapter 61, 61A and 61B lands to (see page 20).</p> <p>Municipal Vote</p> <p>A significant means of raising funds is for the municipality to hold a town or city council meeting where voters can allocate funds for the acquisition of Chapter 61, 61A or 61B land. The municipality may be able to raise the money through special levies to pay for the property. In some cases, the cost of open space protection will be less than the cost of providing municipal services to the proposed development. The increased services such as schools, police and fire, trash pick-up and road maintenance required by a development may cost more than the outright purchase of the land.</p>

Municipal Vote (continued)

One issue that may arise in allocating funds through a town or city council vote is Proposition 2 1/2, which places constraints on the amount of the levy raised by a city or town and the amount the levy can be increased from year to year. However, it is possible for a community to levy above its levy limit or its levy ceiling on a temporary basis. A community can assess taxes in excess of its levy limit or levy ceiling for the payment of certain capital projects and for the payment of specified debt service costs. An exclusion for the purpose of raising funds for debt service costs is referred to as a debt exclusion, and an exclusion for the purpose of raising funds for capital project costs is referred to as a capital outlay expenditure exclusion. Both exclusions require voter approval, with very limited exception. These exclusions require a 2/3 vote of the community's Selectboard or town or city council (with the mayor's approval if required by law) in order to be presented to the voters. A majority vote of approval by the electorate is also required. Questions presented to exclude a debt obligation must state the purpose or purposes for which the monies from the debt issue will be used. Questions presented to exclude a capital outlay expenditure exclusion must state the amounts and purposes of the expenditures.

Public grants federal & state

Federal Land and Water Conservation Fund (LWCF), Massachusetts Division of Conservation Services

The Land and Water Conservation Fund provides up to 50% of the total project cost for the acquisition, development and renovation of park, recreation or conservation areas. Municipalities, special districts and state agencies are eligible to apply. Access by the general public is required.

The application is available on the EOEEA website: www.mass.gov/envir/dcs/landwater.

Self-Help Grant, Massachusetts Division of Conservation Services

This program was established to allow municipalities with an approved open space and recreation plan to gain funding for the acquisition of land for conservation or passive outdoor recreation purposes. Lands acquired may include wildlife habitat, trails, unique natural, historic or cultural resources, water resources and forest and farmland. Compatible passive outdoor recreational uses such as hiking, fishing, hunting, cross-country skiing, bird observation and the like are encouraged. Access by the general public is required.

In many cases, the 120-day Chapter 61 right of first refusal timeframe in which a community must act does not overlap with the Self-Help Grant funding window. One option is for the municipality to enter into a partnership with a land trust. This partnership involves the municipality's Conservation Commission applying for a Self-Help grant to purchase the property. The municipality assigns its right of first refusal to the land trust, which can then acquire the land and hold it until Self-Help funding becomes available to the city or town. At that time, the municipality purchases the land from the land trust and retains ownership of the property. The Self-Help funds are then used to reimburse the municipality.

Eligibility for Self-Help funding requires the municipality to allocate funds to purchase the entire project. The Self-Help Grant then reimburses the city or town between

52% and 75%, depending on the municipality's percentage reimbursement rate set by the state.

The Self-Help information and grant application is available on the EOEEA website: www.mass.gov/envir/dcs/selfhelp.

**Private
foundation
& corporate
giving**

Municipalities may seek private foundation and corporate grants. Depending on the foundation grant requirements, the municipality may need to partner with a land trust or other & corporate non-profit organization to acquire some forms of funding. Many grant resources are giving available at local and college libraries, or online. Several useful sources are listed below:

Associated Grant Makers (AGM)—The Resource Center for Philanthropy that can be used to: identify potential sources of grants; research local and national foundations; corporate giving programs and community funders; and gain free access to materials on all aspects of philanthropy and non-profit management, including fundraising, board development & proposal writing. AGM also has a website that contains many resources for grant seekers including sample proposal/report forms and searchable databases.

Associated Grant Makers

55 Court Street, Suite 520 Boston, MA 02108 • (617) 426-2606
www.agmconnect.org

Other AGM locations across the state:

Boston Public Library, Social Science Department, McKim Building, 2nd Floor
700 Boylston Street, Boston, MA 02117 • (617) 536-5400 ext. 2261
www.bpl.org/research/socsci/index.htm

Cape Cod Community College

2240 Iyannough Road
West Barnstable, MA 02268 • (508) 362-2131 ext. 4343

Berkshire Athenaeum

1 Wendell Avenue
Pittsfield, MA 02201 • (413) 499-9480

Community Foundation of Southeastern Massachusetts

227 Union Street, Suite 609
New Bedford, MA 02742 • (508) 996-8253
www.cfsema.org

Western Mass Funding Resource Center

Springfield City Library
220 State Street, Springfield, MA 01103 • (413) 263-6828 ext. 213

Worcester Public Library Grants Resource Center

On-line and e-resources to make locating funding easy and fast.

Worcester Public Library

3 Salem Square Worcester, MA 01608 • (508) 799-1655 ext. 3
www.worcpublib.org/resources/collections.html

<p>Private foundation & corporate giving (continued)</p>	<p>Other Resources:</p> <p>The Foundation Center—A website that contains several resources for funding, and offers the Foundation Directory Online and the Corporate Donors Directory. Publications by the Foundation Center may also be found at some local libraries. www.fdncenter.org</p> <p>Guidestar—An internet resource that provides comprehensive data on non-profit organizations, connecting them with donors, foundations, businesses and governing agencies. • www.guidestar.org</p> <p>Institute for Non-profit Development at Mount Wachusett Community College Provides training, technical assistance, grant resource library and coalition building services to non-profits serving North Central Massachusetts.</p> <p>Mount Wachusett Community College 110 Erdman Way, Leominster, MA 01453 • (978) 840-3221 ext. 199 democracy.mwcc.edu/pages/121.html</p>
<p>Conservation buyer</p>	<p>Conservation Buyer Programs have been used by land trusts to protect properties in private ownership. In the context of the Chapter 61 programs, the municipality or a non-profit assignee can purchase the property, place a conservation restriction on the property, and then resell the property to a conservation buyer. The new buyer is made aware of the permanent conservation restriction and must comply with its terms.</p>
<p>Limited development</p>	<p>At times, the only financially feasible means of preserving some of the conservation values of the property is for a land trust to acquire the property, select a portion of the land (this portion must be no greater than 30% of the property or no greater than that portion proposed for development by the developer whose offer gave rise to the assignment, whichever is smaller) for development or resale, and use the revenues generated to pay off the cost of acquisition. The remaining portion of the land is conserved as open space. This will allow limited development while still conserving areas deemed important to protect.</p> <p>A municipality can work with a land trust to draft plans for limited development of the property that meets the municipality's needs and conserves a major portion of the property. The development is carried out in a manner that is as compatible as possible with the conservation values of the land that remains open space.</p> <p>Affordable Housing—Significant benefits may be available to the municipality by combining affordable housing with land conservation on these projects. Many municipalities do not meet the mandate under state guidelines that ten percent of town or city housing be "affordable." Working with a land trust, a municipality may incorporate an affordable housing component that better serves its needs than an unfriendly comprehensive permit proposal.</p>

Directory

The following organizations may be of assistance in planning and executing a right of first refusal option on Chapter 61, 61A or 61B land.

Public and Private Land Conservation Organizations Serving MA

Non-Profit Local, Regional and Statewide Land Trusts Serving Massachusetts

These organizations provide a variety of land conservation services on a local and regional basis. Many offer conservation planning assistance and work with municipalities to accept the assignment of rights of first refusal. Many acquire or hold conservation restrictions on land. All of the land trusts in Massachusetts are listed on the Massachusetts Land Trust Coalition website, which is available at www.massland.org.

American Farmland Trust (AFT)

1 Short Street, Suite 2, Northampton, MA 01060-3952 • (413) 586-9330

AFT is a national organization that provides protection for important farmland soils. They can provide interim financing and can assist in the long term protection of farms. www.farmland.org

Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA)

100 Cambridge, 9th Floor, Boston, MA 02114 • (617) 626-1000

The EOEEA provides a variety of financial and technical resources that can aid in land protection. Within EOEEA, the Division of Conservation Services administers the Self-Help, Urban Self-Help, Land and Water Conservation Fund, Conservation Partnership, Drinking Water Supply Projection Grant Program and other grants for land conservation. www.mass.gov/envir

Massachusetts Audubon Society (MAS)

208 South Great Road, Lincoln, MA 01773 • (781) 259-9500 or 800-AUDUBON

Mass Audubon is a statewide organization that works to protect the nature of Massachusetts for people and wildlife. Together with more than 100,000 members, the organization cares for 32,000 acres of conservation land, provides educational programs for 200,000 children and adults annually, and advocates for sound environmental policies at local, state and federal levels. Mass Audubon is interested in protecting lands adjacent to its sanctuaries as well as lands of statewide conservation significance. It seeks to accept gifts and purchase both lands and conservation restrictions and has worked in partnership with several communities to exercise their Chapter 61 rights. www.massaudubon.org

Massachusetts Department of Agricultural Resources (DAR)

Agricultural Preservation Restriction Program (APR)

251 Causeway Street, Suite 500, Boston, MA 02114-2151 • (617) 626-1720

Within the Department of Agricultural Resources (DAR) is the Agricultural Preservation Restriction Program (APR). The APR program is a statewide voluntary program which is intended to offer a non-development alternative to farmers and other owners of prime and "state important" agricultural land. The program offers to pay farmers the difference between the "fair market value" and the "agricultural value" of their farmland in exchange for a permanent conservation restriction which precludes any use of the property that will have a negative impact on its agricultural viability. To qualify, the property must be actively operated as a farm. The application, criteria and guidelines are available on the DFA website. www.mass.gov/agr/landuse/APR

Massachusetts Department of Conservation and Recreation (DCR)

251 Causeway Street, Boston, MA 02114 • (617) 626-1250

The DCR is a statewide agency that is dedicated to protecting, promoting and enhancing the natural, cultural and recreational resources for the well being of all. DCR is divided into the Division of State Parks and Recreation, Division of Urban Parks and Recreation and the Division of Water Supply Protection. DCR is actively involved in acquiring holdings within State Forests or lands that abut State Forest property, hiking trail corridors, as well as Quabbin Reservoir, Wachusett Reservoir and Ware River watershed lands. www.mass.gov/dcr

Massachusetts Department of Fish and Game (DFG) / Division of Fisheries and Wildlife (DFW)

251 Causeway Street, Suite 400, Boston, MA 02114-2104

The DFG is the state agency that is responsible for the management and conservation of the state's fisheries and wildlife, including rare and endangered species. Mass Wildlife (also known as the Division of Fisheries and Wildlife), is a division of the DFG that acquires land that provides habitat for all types of wildlife.

www.mass.gov/dfwele

Natural Resources Conservation Services (NRCS)

451 West Street, Amherst, MA 01002 • (413) 253-4350

The NRCS is a federal agency that works with landowners to improve and protect soil, water and other natural resources. NRCS employs soil conservationists, soil scientists, agronomists, biologists, engineers, geologists and resource planners. These experts help landowners develop conservation plans, create and restore wetlands, restore and manage other natural ecosystems as well as advise on storm water remediation, nutrient and animal waste management and watershed planning. While farmers remain the primary client of NRCS, the agency also provides technical assistance to city planners, watershed groups, state and local governments, civic organizations and individual homeowners. www.ma.nrcs.usda.gov

New England Forestry Foundation (NEFF)

P.O. Box 1346, Littleton, MA 01460 • (978) 952-6856

NEFF is a New England organization that protects forestland and offers forest management services.

NEFF can hold conservation restrictions and can assist in the development of long-term management plans for forestlands. www.neforestry.org

The Nature Conservancy (TNC)

205 Portland Street, Suite 400, Boston, MA 02114 • (617) 227-7017

TNC is a national organization that protects important rare and endangered plant and animal habitat.

TNC provides interim financing for the acquisition of these important lands. It also accepts conservation easements, participates in trade lands acquisitions and, in some cases, will retain ownership of the parcel.

www.nature.org/massachusetts

The Trustees of Reservations (TTOR)

464 Abbott Avenue, Leominster, MA 01453 • (978) 840-4446 ext. 1919

The Trustees of Reservations is a statewide organization that provides protection for important historical or environmentally significant properties throughout the Commonwealth. The Trustees accept conservation restrictions, donations of real and appreciated properties and provide assistance to local land conservation trusts.

www.thetrustees.org

Trust for Public Land (TPL)

33 Union Street, 4th Floor, Boston, MA 02108 • (617) 367-6200

A national non-profit land conservation group, TPL has specialized in helping municipalities conserve "land for people." TPL has worked with many municipalities to weigh the pros and cons of exercising rights under the Chapter 61 laws and has accepted assignment of Chapter 61 rights from many towns, including Billerica, Easthampton, Grafton, Rockland, Sterling and Stow. www.tpl.or

Regional Planning Organizations

When County Government was abolished in Massachusetts, regional service organizations, known as "regional planning organizations," "regional planning commissions" or "councils of government" were established to provide municipalities with technical assistance, including land use planning. Contact your municipal offices to find the contact information of the regional service organization for your area.

The Pioneer Valley Planning Commission also has a directory:

www.pvpc.org/web-content/html/home/abrpas_index.html



Support Mount Grace Land Conservation Trust

Mount Grace Land Conservation Trust (www.mountgrace.org) is a regional land trust that serves 23 towns in Franklin and Worcester counties and is supported by memberships and private, state and federal grants. It protects significant natural, agricultural and scenic areas and encourages land stewardship in North Central and Western Massachusetts for the benefit of the environment, the economy and future generations. In 21 years through collaborations and partnerships, Mount Grace has protected over 21,000 acres.

To join as a member please complete, detach and return to:

Mount Grace Land Conservation Trust
1461 Old Keene Road, Athol, MA 01331-9689

- Please **renew** my annual membership
- Please **start** my annual membership

With my contribution of:

- \$25 \$50 \$100 \$250 \$500 \$1,000
- \$2,500 \$5,000 Other \$ _____

- I would like to pledge \$ _____ per quarter through the MGLCT Pledge Program.
Please send me quarterly reminders at the proper time for payment.

Name* _____

Address* _____

Town* _____ State* _____ Zip code* _____

Phone Number(s) _____

Email Address _____

*Marked fields are required

- I want to volunteer my time to help MGLCT.
- Please contact me about how to protect a piece of land that is important to me.
- I would like more information about how to include MGLCT in my will.
- Please do not publish my name in your list of contributors.
- Please do not share my name with other organizations



For More Information

Mount Grace Land Conservation Trust

1461 Old Keene Road

Athol, Massachusetts 01331

(978) 248-2043

Email: landtrust@mountgrace.org

www.mountgrace.org

