



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.



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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



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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.

