

# Town of Auburn, Massachusetts

Julie A. Jacobson  
Town Manager

## Board of Selectmen

Doreen M. Goodrich, Chairman  
Tristan J. Laliberte, Vice Chairman  
Daniel S. Carpenter  
Lionel R. Berthiaume  
Scott C. Wrenn

Section 400

## BOARD OF SELECTMEN POLICY

### LANDS POLICY AND PROCESS:

### MGL CHAPTER 61, 61A, OR 61B LAND

**Purpose:** To establish standards and procedures for municipal staff, relevant boards and/or committees, and residents of the Town of Auburn (“Town”) regarding the general steps that are expected to be followed when landowners notify the Town of their intent to convert or sell their Chapter 61, 61A, or 61B land. *This is not intended to be an exact replication of the wording of the statute. The statute should be consulted for exact wording and any requirements that may not have been discussed in this policy document. To verify exact rights and responsibilities under this program, consult Massachusetts General Laws (M.G.L.) Chapters 61, 61A, and 61B of the Mass General Laws or a land use attorney, and town counsel.*

**Summary:** Massachusetts current land programs (M.G.L. Ch. 61, Ch. 61A, and Ch. 61B) were created to give preferential tax treatment to those landowners who maintain their property as open space for the purposes of timber production, agriculture or recreation. Chapter 61 was designed to classify forestland. Chapter 61A was designed to classify agricultural land which may include forestland and Chapter 61B was designed to classify recreational land which can also include forestland.

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### Landowner Notification Requirements:

Per M.G.L. Chapter 61, the landowner must provide a “Notice of Intent”, by certified mail, to the Town Manager, Board of Selectmen, Board of Assessors, Planning Board, Conservation Commission, Open Space Committee and the State Forester (*C/O to the Commissioner of the Department of Conservation and Recreation*) to sell or convert classified land.

The notice of intent should 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 the land as shown on the assessors’ map,

4. The name, address, and telephone of the landowner and/or attorney representing the landowner,
5. 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. *A bona fide offer is 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.*
6. Any additional agreements or a statement of additional consideration for any contiguous land under the same ownership.

### **General Timeline Requirements:**

The Town has 120 days following the day of deposit of the complete notice in the US Mail to waive, exercise or assign its first refusal option to purchase the Land. The day after the “Notice of Intent” is mailed to all appropriate parties as listed above, by certified mail, the 120-day timeline begins for the Town to consider whether to waive or exercise its first refusal option or to assign its rights to a not-for-profit organization for preservation of open space. The certified mail receipts must be provided to the town to ensure that an accurate time period is followed. If the notification letter from the landowner is deficient, the town has 30 days in which to give the landowner notice thereof, in which case the landowner must resubmit the Notice of Intent, which restarts the 120-day period.

Within the 120-day timeframe the Board of Selectmen must take a formal vote to either a) exercise the first refusal option, b) assign the first refusal option to a qualified nonprofit conservation organization or agency, OR c) waive (not exercise) the first refusal option.

In the case of *intended or determined conversion not involving sale*, the Town has the option to purchase the land at full and fair market value to be determined by an impartial appraisal performed by a certified appraiser hired at the expense of the Town or its assignee, the original appraisal to be completed and delivered to the landowner within 30 days after the notice of conversion to the municipality. In the event that the landowner is dissatisfied with the original appraisal, the landowner may, at the landowner's expense, contract for a second appraisal, to be completed within 60 days after the delivery of the notice to convert. If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties will contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of conversion to the municipality and shall be the final determination of consideration. Upon agreement of a consideration, the town shall then have 120 days to exercise its option. During the appraisal process, the landowner may revoke the intent to convert at any time and with no recourse to either party.

## **Town Response Requirements**

When the Town receives a “Notice of Intent” the following steps must be completed within the 120 day period.

**Town Counsel** will review the Notice of Intent to make sure the notice is proper and complete. If the notice of intent to sell or convert does not contain all of the material as described above, then Town Counsel will notify the Town Manager who shall, within 30 days after receipt of the Notice of Intent, notify the landowner in writing that the notice is insufficient and does not comply, and that the 120-day period has not begun.

### **Town Manager**

Upon receipt of notification, the Town Manager will contact all relevant Town Departments to review the property and assess potential impacts to the town’s natural resources, zoning, master plan, open space plans and the potential impact on town services. The Town Manager may forward such notice to other relevant town boards, commissions or committees, such as the Open Space and Recreation Committee, as appropriate. Additionally, the Town Manager will notify appropriate Town Departments, Boards and Committees if the notice of intent is insufficient.

The Town Manager will post the notification on the Town’s web site for public viewing.

The Town Manager or Board of Selectmen or his/her assignees may, during the 120 day period, have the right, at reasonable times and upon reasonable notice, to enter upon the land for the purpose of surveying and inspecting the land, including, but not limited to, soil testing for purposes of Title V and the taking of water samples.

**Boards, Committees and/or Commissions** shall bring to the attention of its members the notification as received from the Town Manager. If a Board, Department, or Commission has an interest in acquiring the property through the town’s first refusal option they shall notify the Board of Selectmen, within 30 days, of their interest, reasons, and purpose.

Note: Responses and recommendations are due at the conclusion of the 30 day period. It will be assumed that any entity not submitting a response by this time does not wish to recommend that the town exercises the first refusal option.

### **The Board of Selectmen**

Following the receipt of the Notice of Intent the Board of Selectmen will:

- Schedule a meeting, preferably on the next Board agenda, when the Board of Selectmen shall discuss the notice of intent and any comments from the appropriate Boards and Commissions on the first refusal options. It is

recommended that abutters within 500 feet of the land be notified of the public hearing.

- Per M.G.L., if the Board of Selectmen is considering exercising or assigning the right of first refusal, they **must** schedule a **public hearing** with proper notice in accordance with M.G.L. section 23B of Chapter 39 before making that decision. These options may be exercised only after a public hearing followed by written notice signed by the Board of Selectmen, mailed to the landowner by certified mail at such address as may be specified in the notice of intent.
- Take a formal vote at a scheduled meeting within the 120 day timeframe to either: a) exercise the first refusal option, b) assign the first refusal option to a qualified nonprofit conservation organization or agency or to the commonwealth or any of its political subdivisions, OR c) decline to exercise the first refusal option.
- Prior to the Board of Selectmen vote to exercise their right of first refusal, if grant funds have not been secured or Town funds have not been previously authorized or appropriated for such purposes, the funds for the land purchase must be appropriated by vote of Town Meeting. If the funds have not previously been appropriated at an Annual Town Meeting, the Board of Selectmen must hold a Special Town Meeting within the 120 period to appropriate the funds for the acquisition. The Special Town Meeting must be held within a timeframe that allows for the certification of the Town Meeting vote (8 days) and the subsequent Board of Selectmen meeting at which the final vote will be taken to occur.
- If a special Town Meeting has not been held prior to the Board's decision whether or not to exercise its option, then any decision regarding election by the Board of Selectmen would have to be made contingent upon approval of appropriation by Town Meeting.

### **First Refusal Options**

If the Board of Selectmen decides to exercise the first refusal option to purchase the land after a public hearing they must:

- Send the landowner by certified mail a notice of intent in accordance with MGL Ch. 61§ 8, 61A§ 14, and 61B§ 9.
- In the case of an intent to convert without a sale, the notice to the landowner to exercise its option shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the mayor or board of selectmen, or upon expiration of any extended period the landowner has agreed to in writing, whichever is later. The notice to the landowner shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the landowner, is returned by

certified mail to the mayor or board of selectmen, or upon expiration of any extended period the landowner has agreed to in writing, whichever is later.

- Record at the Registry of Deeds a notice of their vote to exercise the first refusal option which is signed by the Board of Selectmen. The notice should include the name of the owner of the land and a description of the premises which is adequate for identification and a copy of the purchase and sale agreement.
- As a courtesy, provide written notification to appropriate Town boards, commissions and committees of their vote.

If a vote is taken to assign the first refusal option to a qualified nonprofit conservation organization or to the commonwealth or any of its political subdivisions after a public hearing the following steps must be completed:

- Prepare and send the landowner by certified mail a notice of intent in accordance with MGL Ch. 61§ 8, 61A§ 14, and 61B§ 9.
- Record at the Registry of Deeds a notice of their vote which is signed by the Board of Selectmen. The notice should include the name of the owner of the land and a description of the premises which is adequate for identification, the name and address of the organization or agency of the Commonwealth which will exercise this option and the terms and conditions of the assignment. The Land Trust or Agency must record a conservation restriction.
- As a courtesy, provide written notification to appropriate Town boards, commissions and committees of their vote.

### **Non-Exercise of First Refusal Option**

If the Board of Selectmen decides to waive (not exercise) the first refusal option they must:

- Prepare and send the owner by certified mail a notice of non-exercise in accordance with MGL Ch. 61§ 8, 61A§ 14, and 61B§ 9.
- Record at the Registry of Deeds a notice of non-exercise signed by the Board of Selectmen which contains the name of the record owner of the land and a description of the premises which is adequate for identification purposes.
- As a courtesy, provide written notification to appropriate Town boards, commissions and committees of their vote.

### **Default Provision**

Failure to record either the notice to exercise or the notice of assignment within the 120-day period the decision will default to “Non-Exercise of First Refusal Option”. Note: If neither the Notice of Exercise nor the Notice of Assignment is recorded within the 120-day period, the Town’s option expires and the landowner is free to sell, but only upon the original terms spelled out in the purchase and sale agreement that accompanied his/her original Notice of Intent.

***Adopted by Vote of the Board of Selectmen  
January 22, 2018***

102 Central Street  
Auburn, MA 01501  
Telephone (508) 832-7720 Fax (508) 832-4270