Town of Shelburne Selectboard
Chapter 61 Right of First Refusal Policy

The Town of Shelburne encourages owners of open lands used for forestry, farming and recreation to enroll them 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. Therefore, in the event that these lands are proposed to be sold or converted for other uses, owners of land enrolled in these programs are required to grant the town a 120-day assignable right of first refusal.

This Chapter 61 Lands Policy outlines a process by which the Town of Shelburne will review and respond to notices of conversion of lands in Chapter 61, 61A and 61B and determine whether or not to exercise or assign its right of first refusal on these lands.

*[Note: For the purposes of this document, items that are required by statute are noted in **bold** face type. Other items are adopted as part of this policy. The statute should always be consulted for exact wording.]*

A. The Town's Right of First Refusal

Within 120 days of mailing (not receipt) **of a proper notice** (described below)**, the town must either act to exercise its option to purchase (matching a bona fide purchase offer), assign its rights to a nonprofit organization, or notify the property owner that it does not intend to exercise its right of first refusal.** If the town fails to act within the statutory 120 day period, the town forfeits its right of first refusal.

B. Requirements for Notice by Property Owner

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 town's Selectboard, Planning Board, Board of Assessors and Conservation Commission. This notice must include the following:

1. The name and address of the record owner(s) of the land;

2. A description of the premises to be sold or converted sufficient to identify the land;

3. A copy of the signed purchase and sale agreement making clear the terms of the offer that must be met.

C. Procedure for Review of Notices and Evaluation of Properties

1. Within one week of receipt of a proper Notice from a landowner, the Selectboard's office will:

   - ascertain that Notices with the required information were also transmitted to the Planning Board, Board of Assessors and Conservation Commission. Copies of the Notice will also be provided by the Selectboard to the Open Space Committee, Agricultural Commission and other relevant boards and town officials.
   - verify that a copy of a purchase and sale agreement, containing all terms of the offer, including the closing date, is attached to the Notice (Note: a summary of the terms of the agreement is insufficient; In the event of conversion without sale, the town still has the opportunity to purchase at fair market value at a price to be determined by an independent appraisal.)
   - determine the final day of the 120 day period and attempt to seek confirmation from the landowner or his/her representative regarding this date.

   The Selectboard may consult with town counsel to review the purchase and sales agreement to determine whether Shelburne is being given the same opportunity as the buyer with regard to the terms of the agreement, particularly with regard to contingencies that may affect the obligation to purchase (such as subdivision approval) or which may affect the purchase price. The Board should

consult with town counsel when the purchase and sale agreement contains contingencies which may or may not be able to be met and which may have the effect of delaying the deadline for the town to act to purchase the property.

2. Insufficient Notice: If the Notice is determined to be insufficient, the Selectboard will transmit a certified letter to the property owner notifying the landowner(s) that the proper notice has not been given and informing them that the 120 day clock has not started. A copy of this letter will be provided to the boards and officials noted above.

3. Proper Notice: Upon a determination that proper Notice was received:

   - The Open Space Committee, in conjunction with other Boards, will begin a diligent review of the parcel using the Land Evaluation Workbook. These Boards will have at least thirty days to conduct a review of the parcel and formulate recommendations.
   - The **Board of Selectman shall schedule and notice a public hearing** for the purpose of receiving comments on the importance of the property to the town, its conservation significance and/or potential for use to serve municipal needs and initiating discussion of whether or not the town should exercise or assign its right of first refusal. The public hearing should be scheduled within sixty days of receipt of the Notice from the property owner. **Notice of the hearing is required to be given in accordance with Ch. 39, Section 23B (Open Meeting Law).** The Selectboard will also notify the Planning Board, Conservation Commission, Open Space Committee, Agricultural Commission and Board of Assessors, of the date, time and place of the hearing.

     At the public haring, the Selectboard will afford interested boards, organizations, and individuals the right to comment. The Open Space Committee will present the results of its ranking criteria relevant to the parcel.

     If there is interest in pursuing acquisition of the property for municipal uses or in assigning the right of first refusal to a nonprofit organization, the Selectboard will continue the public hearing as needed to allow time to present a more specific proposal for consideration by the Board. The Selectboard may create a Review Committee comprised of the chairs (or their representatives) of these and other boards to assist in developing a proposal.

D. Decision by Town

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

1. **If the town desires to exercise its option, the Selectboard shall:**
   - Schedule a town meeting for the purpose of appropriating funds to purchase the property and place a warrant article on the warrant for this purpose and schedule an override vote (if necessary) for the purpose of authorizing expenditure of funds. The town meeting must be scheduled within the town's 120-day period, unless an extension of this deadline is received from both buyer and seller.
   - **Following the public hearing, notify the landowner by certified mail during the 120-day period, at the address specified in the landowner's notice, of the town's intent to exercise its option.**
   - **Record the notice to exercise in the registry of deeds as part of an affidavit of a notary public during the 120-day period.**
   - Close on the property by the date set forth in the contract.
2. **If the town desires to assign its right of first refusal to a qualified nonprofit conservation organization, the Selectboard shall:**

- **After a public hearing, vote to assign its right of refusal to the nonprofit organization, setting forth any terms and conditions of the assignment. [Note: the nonprofit must be willing to continue the current use of the "major portion of the property"**, interpreted to mean at least 51% of the property, but may be permitted to undertake a limited development on the balance of the property; **the Selectboard may place conditions on this use**, for example the number of lots in the limited development can be specified.]
- **Notify the landowner by certified mail, to the address specified in the landowners' notice, of the town's intent to assign its option to a nonprofit conservation organization, stating the name and address of nonprofit organization and the terms and conditions of the assignment.**
- **Record the notice to exercise in the Registry of Deeds as part of an affidavit of a notary public.**

3. If the town decides to forgo its right of first refusal, the Selectboard should record a waiver of its rights at the Registry of Deeds. Any waiver of the town's rights should be specific to the proposed purchase terms so that if the sale falls through and a new deal is negotiated, the 120 day clock will begin anew.
4. **The town can fail to act within the required 120 period (and any extensions thereof), in which case the town will be deemed to have failed to exercise its right of first refusal.**

This procedure is 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 has under MGL Chapter 61, 61A and 61B.

Adopted_____

Selectboard Members _____

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copies to:
Planning Board
Board of Assessors
Conservation Commission
Open Space Committee
Agricultural Commission
Town Clerk