



**DEPARTMENT OF
NATURAL RESOURCES**

**OFFICE OF THE COMMISSIONER
OF PUBLIC LANDS**

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May 1, 2020

Dear Forest Industry Partners:

Attached you will find guidance that has been given to our region staff related to contract extensions for DNR timber sales. This guidance is consistent with guidance provided during the “Great Recession” in 2009 and draws from guidance, experience, and court cases from the recessions in the 1980’s.

The global pandemic that has caused unprecedented shutdowns of the world economy is having far reaching consequences that we are all still struggling to understand. DNR is committed to continuing to provide a sustainable supply of volume to the market and to be as flexible as the law allows in responding to the challenges we all face.

As you are aware, we have modified our timber sale auctions to provide for social distancing while still preserving the public bid opening process. Similarly, the Board of Natural Resources meetings have moved to an online format to allow their crucial business to continue. We have worked with purchasers of our sort sales to increase flexibility in deliveries while still allowing our harvesting contractors to continue working.

We have also been receiving questions on how the department will consider requests for contract extensions. The attached document provides guidance to our staff on what conditions must be met in order to meet the requirements of “acting in good faith and endeavoring to remove”. At its most fundamental, purchasers must demonstrate that they intend to meet the obligations of the contract, and have been actively working to do so.

DNR will continue to work with our industry partners, legislators, and others to help the supply chain get back on track. Please feel free to contact me with any questions as we move forward.

Sincerely,

Angus W. Brodie
Deputy Supervisor for State Uplands

Guidance for Interpretation of Timber Sale Contracts

Term Extensions: Clauses G-050 and G-051

Revised – April 30, 2020

Given the current economic climate, many purchasers are inquiring about timber sale contract extensions. Contract extensions are intended to be used when circumstances outside a purchaser's control have prevented them from completing the sale in the timeframe provided. The approval of an extension of the term of the contract is within the discretion of the Region Manager and must be in the best interest of the state. The following guidance is provided in interpreting the contract clauses authorizing DNR to grant an extension.

Contract Clauses G-050 and G-051

Washington State law requires that a purchaser must remove all timber from the sale area within the time-period specified in the contract entered into with DNR.¹ However, RCW 79.15.100(5) authorizes DNR to grant an extension of the contract's term under certain circumstances. It provides, in relevant part, as follows:

The department may extend a contract beyond the normal termination date specified in the sale contract as the time for removal of valuable materials when, in the department's judgment, the purchaser is ***acting in good faith*** and ***endeavoring to remove*** the materials.²

Consistent with RCW 79.15.100(5), DNR has provided for the grant of an extension in contract Clauses G-050 and G-051. It provides in relevant part as follows:

Extensions of this contract term may be granted only if, in the judgment of the State, Purchaser is ***acting in good faith*** and is ***endeavoring to remove the forest products conveyed***.

Therefore Contract clauses G-050 and G-051 require both of these requirements to be established for DNR to grant a request for the extension of the contract's term. The following guidance is provided in assessing whether a Purchaser's actions under a contract constitute "acting in good faith" and "endeavoring to remove the forest products conveyed" when evaluating a request for a contract extension.

A. Acting in Good Faith

Good faith requires, at a minimum, that a Purchaser comply with the terms of the contract and otherwise meet all of its expectations, without interfering with the benefits the State is to receive under the contract. ***In determining whether a purchaser is acting in good faith, the purchaser must establish, at a minimum, all of the following:***

1. The request for an extension was submitted to DNR in writing prior to the expiration date of the contract.
2. The completion of all required roads. This includes abandonment of a road if timing constraints under the contract, or are specified in writing under an agreement entered into between the purchaser and DNR, dictate completion by a certain date.
3. The sale is financially sound (i.e., no unpaid billings, invoices or charges).
4. No regulatory restrictions resulting from purchaser actions or inactions are in effect.

¹ RCW 79.15.100(5)

² (Emphasis added in bold and italics)

5. The sale is 25 percent (1st extension), or 90 percent (2nd extension) paid for; or advance timber payment is received to bring the sale to 25 percent or 90 percent paid for, as required.
6. Interest is paid on the remaining balance of the sale, as determined using the definition in the clause G-050 or G-051 (no interest charged on the initial deposit if the other 90 percent of the sale is paid); and
7. The per acre per annum charge is paid by Purchaser for all acres which have not received an operating release.

The above requirements are coupled with the expectation that a Purchaser has acted fairly and reasonably in performing operations under the Contract. This includes, but is not limited to, acting reasonably, honestly, and with respect when interacting with DNR staff who are responsible for administering the requirements of the contract. A purchaser acting otherwise will not be shown to have established the requirement for acting in good faith.

B. Endeavoring to Remove

In order to meet the requirement for “*endeavoring to remove the forest products conveyed*,” the Purchaser must make a **serious determined effort** to fulfill its obligation to complete this work within the term of the Contract. All of the following must be established to meet this requirement:

1. A Pre-Work Conference was conducted and Plan of Operations was signed by the Purchaser and DNR that provided sufficient time to harvest all timber and complete all required work for the sale prior to expiration of the term of the contract. However, operations were subsequently interrupted by circumstances that prevented the Purchaser from completing all operations within the term of the contract. If a Purchaser has multiple contracts with the State, and work on a sale is interrupted as described above, the regional manager can evaluate whether the need for reprioritization of work on other sites justifies the granting of an extension.
2. Purchaser submits a Plan of Operations that details a plan to begin operations following the extension, in compliance with any seasonal restrictions.