

**Congress of the United States**  
**Washington, DC 20515**

March 20, 2024

The Honorable Thomas J. Vilsack  
Secretary  
U.S. Department of Agriculture  
1400 Independence Avenue SW  
Washington, D.C. 20250

Dear Secretary Vilsack,

We are concerned with the content and the process of the U.S. Department of Agriculture’s (USDA) “First-of-its-Kind National Forest Plan Amendment to Conserve and Steward Old Growth Forests”<sup>1</sup> published in the Federal Register on December 20, 2023.<sup>2</sup> We request your prompt and complete response to the enclosed questions to help inform our respective Committees’ oversight responsibilities and ensure USDA is complying with its Congressionally mandated duties, authorities, and procedural requirements governing 193 million acres of National Forest System (NFS) lands.

The Biden administration seeks to define and effectively create special considerations for “old-growth” and “mature forests” on federal lands, apparently striving to elevate a particular stage of forest succession above other, legally required multiple use purposes. This effort was initiated in April 2022 through Executive Order (E.O.) 14072<sup>3</sup> instructing the Department of the Interior, Bureau of Land Management (BLM) and USDA’s Forest Service to define and inventory old-growth and mature forests for lands managed by the agencies. In short, E.O. 14072 effectively charged the Forest Service and BLM to create a special definition and initiate a special disposition for “old-growth and mature forests” on federal lands absent a Congressional mandate or existing authority to do so.<sup>4</sup>

In response to E.O. 14072, the Forest Service initiated a Request for Information (RFI)<sup>5</sup> and an Advanced Notice of Proposed Rulemaking (ANPR)<sup>6</sup> on federal old-growth and mature forests. In the RFI, USDA stated: “Defining old growth and mature forests for purposes of conducting an inventory as required under E.O. 14072 Section 2(b) does not, by itself, change any current forest management policies or practices.”<sup>7</sup> USDA went on to say that developing policies to institutionalize “climate-smart management and conservation strategies that address threats to mature and old-growth forests on Federal land” would follow completion of definition development, identification, and inventory.<sup>8</sup>

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<sup>1</sup> Press Release, U.S. Department of Agriculture (Dec. 19, 2023), <https://www.fs.usda.gov/about-agency/newsroom/releases/usda-proposes-first-its-kind-national-forest-plan-amendment-serve>

<sup>2</sup> 88 FR 88042, December 20, 2023.

<sup>3</sup> United States, Executive Office of the President [Joseph Biden], Executive Order 14072: Strengthening the Nation’s Forests, Communities, and Local Economies. 20 April 2023. *Federal Register*, vol. 87, no. 81, pp. 24851-24855, <https://www.govinfo.gov/content/pkg/FR-2022-04-27/pdf/2022-09138.pdf>

<sup>4</sup> *Id.*

<sup>5</sup> [87 FR 42493](#), July 15, 2022

<sup>6</sup> [87 FR 24851](#), April 22, 2022

<sup>7</sup> E.O. 14072

<sup>8</sup> *Id.*

The Forest Service and BLM published an “initial draft”<sup>9</sup> seeking to define and inventory “old-growth and mature forests” to comply with E.O. 14072. However, after tens of thousands of public comments in response to the RFI, ANPR, and after the Biden administration convened a “Definition Development Team” in Washington, D.C., the administration declared these “definitions are considered dynamic, not static, and thus are subject to refinement as new information is incorporated (working definitions).”<sup>10</sup> The administration’s “initial draft” identified numerous variables that may be utilized in categorizing “old-growth forest types” by Forest Service Region, including species, climate, soil productivity, vegetation types, geographical areas and twenty-nine pages of appendices.<sup>11</sup>

Despite not creating a single, coherent definition for “old-growth” or “mature” forests, the administration proceeded with publishing an introductory report<sup>12</sup> finding wildfire, insects, and diseases as the leading threats to “mature and old-growth forests.” The introductory report also noted “tree cutting (any removal of trees) is currently a relatively minor threat...” and “in general, management improved or maintained these stands.”<sup>13</sup> Irrespective of the inability to develop a clear definition of “old-growth” or “mature” forests and indifferent to the Forest Service’s threat assessment identifying “tree cutting” as a minor threat, the administration declared the E.O.’s definitional and assessment requirements completed (Fulfillment of Executive Order 14072, Section 2(b)) in an effort to proceed with E.O. 14072 Section 2(c).<sup>14</sup>

We agree with the administration’s tacit qualification that Executive Orders do not, and cannot, by themselves, change policies or practices not otherwise authorized under existing law. However, we question what existing statutory authority or Congressional mandate permits or directs the administration to “institutionalize climate-smart management and conservation strategies”<sup>15</sup> to address threats to undefined categories of federal lands. Further, we express significant concerns with the administration’s stated intent to amend all 128 Forest Plans in the space of approximately 13 months through an unprecedented and truncated process.<sup>16</sup> If finalized as proposed, it will conflict with the multiple-use mandate under the National Forest Management Act (NFMA), the 2012 Planning Rule (Final Rule and Record of Decision)<sup>17</sup> governing the Forest Plan development process, and the National Environmental Policy Act by placing management restrictions on thousands of acres, stands, or entire units based on a “narrative framework” or a “working definition.”<sup>18</sup>

In the interest of fulfilling our oversight responsibilities and ensuring this administration is complying with its statutory authority and fulfilling its Congressional mandate covering 193 million acres of NFS lands, we request USDA provide written responses to the following questions on or before April 17, 2024:

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<sup>9</sup> U.S. Department of Agriculture. *Mature and Old Growth Forests: Definition, Identification, and Initial Inventory on Lands Managed by the Forest Service and Bureau of Land Management*, April 2023, <https://www.fs.usda.gov/sites/default/files/mature-and-old-growth-forests-tech.pdf>

<sup>10</sup> *Id.* at 13

<sup>11</sup> *Id.*

<sup>12</sup> U.S. Department of Agriculture. *Analysis of Threats to Mature and Old-Growth Forests on Lands Managed by the Forest Service and Bureau of Land Management*, January 2024, [https://www.fs.usda.gov/sites/default/files/fs\\_media/fs\\_document/MOG-Threats-Intro.pdf](https://www.fs.usda.gov/sites/default/files/fs_media/fs_document/MOG-Threats-Intro.pdf)

<sup>13</sup> *Id.*

<sup>14</sup> <https://www.fs.usda.gov/sites/default/files/mature-and-old-growth-forests-tech.pdf>

<sup>15</sup> E.O. 14072 Sec.2(c)(iii)

<sup>16</sup> *Id.*

<sup>17</sup> 36 CFR Part 219

<sup>18</sup> *Id.*

- 1) How many USDA Forest Service Land Management Plans have been updated in the last 15 years as required under the National Forest Management Act?
- 2) How many Forest Plans are out of compliance with NFMA's requirements?
- 3) How will USDA's "Land Management Plan Direction for Old-Growth Forest Conditions Across the National Forest System" comply with the following statutes:
  - a. the Forest and Rangelands Renewable Resources Planning Act, as amended by NFMA;
  - b. the Multiple Use-Sustained Yield Act (MUSYA);
  - c. the Healthy Forests Restoration Act;
  - d. the Federal Land Policy and Management Act;
  - e. the Alaska National Interest Lands Conservation Act; and
  - f. the Administrative Procedure Act.
- 4) Specifically, USDA's proposed national plan amendment includes "Standards for Management Actions within Old-Growth Forest Conditions (3)" stating that "vegetation management within old-growth forest conditions may not be for the primary purpose of growing, tending, harvesting, or regeneration of trees for economic reasons."<sup>19</sup> Please explain how this standard for management action, if adopted as proposed, is consistent with MUSYA and other existing statutory requirements governing NFS lands.
- 5) Does USDA consider a National Forest Plan amendment to be a rule or rulemaking process as defined under the Administrative Procedure Act (APA) or the Congressional Review Act (CRA)?
- 6) Does USDA consider its "Land Management Plan Direction for Old-Growth Forest Conditions Across the National Forest System," which will amend all 128 national Forest Plans, a rule or rulemaking process as defined under the APA or the CRA?
  - a. If not, please provide a full explanation with corresponding statutory citations on the classification, description, and APA or CRA exemption covering this agency action.
  - b. If so, when does USDA anticipate publishing a proposed rule for public comment?
- 7) Has USDA transmitted the "Land Management Plan Direction for Old-Growth Forest Conditions Across the National Forest System" to each House of Congress and/or the Comptroller General? If so, please provide a copy of the transmission with the corresponding date of transmission.
- 8) Has USDA transmitted the "Land Management Plan Direction for Old-Growth Forest Conditions Across the National Forest System" to the Office of Management and Budget (OMB) or the Office of Information and Regulatory Affairs (OIRA)?
  - a. If so, please provide a copy of the transmission with the corresponding date of transmission.
  - b. If not, please provide a full explanation of USDA's rationale and justification for not transmitting this action to OMB or OIRA.
- 9) Has USDA conducted a cost-benefit analysis under the Regulatory Flexibility Act<sup>20</sup>, Unfunded Mandates Reform Act<sup>21</sup>, or the Paperwork Reduction Act<sup>22</sup>?

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<sup>19</sup> <https://www.federalregister.gov/d/2023-27875/p-112>

<sup>20</sup> 5 U.S.C. §§601-612

<sup>21</sup> 2 U.S.C. §§1532-1538

<sup>22</sup> 44 U.S.C. §§3501-3520

- a. If so, please provide a copy of those analyses.
- b. If not, please provide a full explanation with corresponding statutory citations on the classification, description, and exemption covering this agency action.

Thank you for your prompt attention to this matter. We look forward to your response no later than April 17, 2024. Please contact our offices with any questions you may have regarding this request.

Sincerely,



John Boozman  
Ranking Member  
Senate Committee on Agriculture,  
Nutrition, and Forestry



Glenn "GT" Thompson  
Chairman  
House Committee on Agriculture



John Barrasso, M.D.  
Ranking Member  
Senate Committee on Energy  
and Natural Resources



Bruce Westerman  
Chairman  
House Committee on Natural Resources