



## THE LARCH COMPANY

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TO: Interested Parties  
FROM: Andy Kerr  
RE: Any Older Forest Regulation Must be Protective, Directive, Binding, and Enduring  
DATE: 22 February 2023

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No bureaucrat likes having their discretion limited. If an administrative rule vests or leaves discretion with the federal forest bureaucracy as to where, how much, and what kind of mature and old-growth (MOG) forest is to be protected and what such protection actually means, the bureaucracy will in all likelihood abuse their discretion to protect their current logging business model.

**Protective.** Any MOG rule must be specific as to the kinds of forest and trees that will not be logged or killed.

**Directive.** Any MOG rule should direct the federal forest agencies to not only fully conserve existing MOG forests and trees, but also to manage federal public forestlands to re-establish more old-growth forests.

**Binding.** Any MOG rule must bind the federal forest bureaucracy. While the 2012 Obama Forest Service planning rule ([36 CFR 219.1-219.62](#)) procedurally requires the bureaucracy to consider many ecosystem values and protections, substantively the rule actually requires the Forest Service to do precious little. In practice, the process of consideration rarely leads to protection. Where there is a requirement to do actually conserve something, it is left to the agency as to what is enough. The Forest Service planning rule has failed to materially improve the management of the National Forest System. In contrast, there are several administrative rules that specifically direct the Forest Service to do and not do certain things (and it has!):

- 2001 Clinton Forest Service Roadless Area Conservation Rule, ([36 CFR 294.10](#))
- 1973 Nixon Forest Service Special Interest Area Rule ([36 CFR 294.1](#))
- 1966 Johnson Forest Service Research Natural Area Rule ([36 CFR 251.23](#))

All of these rules *require* the Forest Service to take particular measures to conserve forest landscapes.

**Enduring.** An administrative rule, once promulgated, is extremely difficult for a subsequent administration to revoke or weaken. Not impossible, but extremely difficult. In contrast any forest protections embedded in national forest land and resource management plans is subject to subsequent weakening or elimination, which is a relatively easy thing to do.



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