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Re: The East Crazy Inspirational Divide Land Exchange Proposal

Submitted electronically via <https://cara.fs2c.usda.gov/Public/CommentInput?Project=63115>.

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Please accept these comments on behalf of Wild Montana (formerly Montana Wilderness Association) and our members in response to the public comment period for the East Crazy Inspirational Divide Land Exchange Proposal.

I. Organizational Background

Since 1958, Wild Montana has been uniting and mobilizing people across Montana, creating and growing a conservation movement around a shared love of wild public lands and waters. We work at the local level, building trust, fostering collaboration, and forging agreements for protecting the wild, enhancing public land access, and helping communities thrive. Wild Montana routinely engages in public land-use planning processes, as well as local projects such as habitat restoration and timber harvest proposals, recreational infrastructure planning, oil and gas lease sales, guided hikes, and land acquisitions. Wild Montana and our thousands of members and tens of thousands of supporters are invested in the ecological integrity and quiet recreation opportunities on public lands across Montana, as well as the impact of climate change on Montana's wild places. Many of our members have a deep personal interest in protecting the Crazy Mountains ("Crazies"). One of Wild Montana's first "wilderness walk" guided hikes was led by the organization's founders Ken and Florence Baldwin, in 1960 in the Crazies.

Wild Montana has long supported public land consolidation in order to protect the outstanding natural and cultural values in the Crazies. In 2020, we submitted a letter to the project proponents with our recommendations for the land exchange proposal. After reviewing the most current iteration of the East Crazy Inspirational Divide Land Exchange and preliminary environmental assessment (PEA), we have unaddressed concerns and believe additional measures are necessary to strengthen the conservation value of the proposal.



II. The public needs guarantees against future development through easements or deed restrictions.

Wild Montana's primary concern remains that there are no guaranteed conservation easements for the public land parcels that will be traded into private ownership. Conservation easements or other land use restrictions that prohibit industrial, commercial, or residential development must be negotiated and analyzed as part of the proposal and corresponding environmental assessment. Without this safeguard, Wild Montana does not believe this proposal adequately benefits the public interest and encourages the Forest Service to reject the proposal.

After the exchange is complete, private land will block up the eastern edge of the Crazies. Without conservation easements on the new private land parcels that are adjacent to national forest lands, nothing will stand in the way of the development of these newly contiguous private lands. Development of the low-elevation habitat on the edge of public lands could have devastating impacts on wildlife habitat and change the character of the range. For example, the riparian corridor in Sweetgrass Creek would become entirely private. Land use change in this corridor could have a significant impact on wildlife habitat as well as the water quality of this important headwaters.

While many of the ranches involved in this exchange proposal are generations-old agricultural operations with no stated intent to develop or sell the acquired land in the future, without conservation easements, there is no guarantee the lands won't be developed. Further, if exclusive residential or commercial development occurred on these newly private parcels, the users of this development would have exclusive, easy access points on the newly established Sweet Trunk Trail. On the other hand, the public would be limited to the one access point at Halfmoon Campground. This would create a similar situation to the one that currently exists with the Inspiration Divide Trail, where the Yellowstone Club enjoys easy access to a trail that is considerably more difficult for the public to access.

The South Crazy Mountain Land Exchange, which was finalized in January 2022, included voluntary conservation easements for public land sections going to private ownership as a component of the agreement. The easements provide for traditional land uses, including recreation, livestock grazing, and timber management, but preclude all mineral development and mining, as well as residential, industrial, or commercial development (beyond one recreational cabin). The Forest Service should follow this precedent and require conservation easements for this East Crazy Mountains Land Exchange as well.



An alternative to voluntary conservation easements would be for the Forest Service to include covenants or other deed restrictions prior to exchanging the land from public to private ownership. That way, the Forest Service could offer more guarantees to the public about the future of important resources such as wetlands. Forest Service policy dictates that deed reservations or restrictions controlling future use and development are appropriate when the intended use of the conveyed Federal land would “conflict with established management objectives on adjacent Federal lands.”¹ The federal lands adjacent to the newly private parcels in this exchange are almost entirely inventoried roadless areas or were designated as a Backcountry Area in the 2022 Custer Gallatin Forest Plan. Backcountry Areas are generally undeveloped, and this designation restricts road construction, mineral extraction, and other future development with the purpose of preserving the existing character of the area. The newly private parcels could be a part of future commercial or residential development that would conflict with adjacent public land’s undeveloped character. The PEA explicitly states that the final decision will address “specific components of the Proposed Action, including... deed reservations or easements for access [and] deed restrictions to protect resources (ex. wetlands or cultural).”² However, the PEA does not explore these types of deed reservations or restrictions in its analysis besides mentioning that they are potential options. This is a missing piece to this land exchange, as we explain further in Section V(A) below.

Similarly, for the parcels of land going to private ownership in the Madison Range near Big Sky, the Yellowstone Club has stated that they intend to place a voluntary conservation easement on the acquired parcels to ensure they are only used for outdoor recreational uses and preclude development. We would like to see a guarantee that these easements will go into place before the exchange is finalized to provide assurances the easements will occur.

III. The land exchange should also include first right-of-refusal provisions.

In addition to conservation easements, Wild Montana would like to see a provision in the proposal that provides the Forest Service or a land trust a first right-of-refusal should any of the private lands involved in this exchange come up for sale. This should also apply to any of the remaining inholdings in the core of the range that are not addressed in this proposal but are owned by several of the same landowners who are involved in this exchange (Switchback Ranch, Carroccia, and Crazy Mountain Ranch). A first right-of-refusal would provide a path forward for consolidating the bulk of the checkerboarded land ownership in the Crazy

¹ FSH 5409.13, *Land Acquisition Handbook: Chapter 30*, Forest Service, Feb 2004, at 37.1.

² *East Crazy Inspiration Divide Land Exchange: Preliminary Environmental Assessment*, Forest Service, Nov. 2022, at 10 [hereinafter “PEA”].



Mountains, which is not addressed by this exchange, and would help ensure that development is limited throughout this important landscape in the future.

IV. The Forest Service should not relinquish public access claims.

The new Sweet Trunk Trail would travel along the east side of the Crazies through public land, connecting with the upper reaches of the Sweet Grass Trail. In exchange for the new trail, the Forest Service would relinquish public claims to the East Trunk Trail and to the lower stretch of the Sweet Grass Trail.

Under the current Travel Plan, the Sweet Grass Trail No. 122 is a public, non-motorized and non-mechanized trail. The Forest Service determined that the access to the area was inadequate and therefore stated in the Gallatin Travel Plan the need to “perfect trail access across private in holdings within Sweetgrass and Big Timber creek drainages, includ[ing] existing trails: East Trunk #115 [and] Sweet Grass #122.”³ Instead of adhering to the Travel Plan’s stated goals, this exchange undermines that access by relinquishing all existing claims to the area.

The Sweet Grass Trailhead and Trail and the East Trunk Trail have been the subjects of litigation since 2019. Litigants assert that the Forest Service failed to uphold longstanding easement rights to access these (and two other) trails in the Crazy Mountains. In 2022, a Montana District Court Judge sided with the Forest Service and dismissed the litigants’ claims.⁴ However, this decision is currently under appeal to the 9th Circuit.

The proposed trail reroute in Sweetgrass Canyon provides a lesser recreational opportunity than the original Sweet Grass Trail No. 122. The Sweet Trunk Trail would traverse the side of the mountain, eliminating public access to Sweetgrass Creek. This would eliminate opportunities for fishing, swimming, and hiking along the scenic Sweetgrass Creek. The Forest Service should reserve public and administrative access claims in the Sweetgrass Creek drainage along sections 7, 8, and 10. Further, giving up access claims that are currently disputed and in front of the 9th Circuit could set a bad precedent for future public land access disputes.

Retaining the public access claims to these disputed areas would maintain the status quo and allow the ongoing litigation to conclude. Giving up all public claim to this area now would

³ *Gallatin National Forest Travel Management Plan Decision*, Forest Service, Dec. 2006, at Chapter I-5.

⁴ *Friends of the Crazy Mountains v. Erickson*, CV 19-66-BLG-SPW (D. Mont. Mar. 30, 2022).



preclude the public from ever regaining access, regardless of the outcome of the litigation, or if evidence of a historic right-of-way ever came to light and affirmed the public's right to this area.

V. The Preliminary Environmental Assessment is insufficient, and the land exchange requires additional analysis.

While consolidation of habitat and increasing public land acreage in the Inventoried Roadless, Backcountry, and Recommended Wilderness Areas in the Crazies may be beneficial to wildlife in the long-term, there are other environmental effects from this exchange that need a more robust analysis from the Forest Service. The National Environmental Policy Act (NEPA) requires that the agency must take a “hard look at the environmental consequences” of a project.⁵ By providing limited project analysis, there cannot be a “hard look” at all project's direct, indirect, and cumulative effects.

A. Need to analyze all foreseeable impacts to wildlife.

The PEA is notably vague when discussing conservation easements, creating a gap in the impacts to wildlife that are analyzed. Voluntary easements on private land are identified as being outside the scope of analysis, while deed restrictions to protect resources (ex. wetlands or cultural) is very briefly mentioned but never expanded upon.”⁶

In contrast, the EA for the South Crazy Mountains Land Exchange included voluntary easements as a component of the agreement and within the environmental analysis. It identified reasonably foreseeable activities that could occur on lands involved in the exchange, based on the restrictions of the conservation easements and used that to analyze impacts to wildlife.

For example, The South Crazy Mountains EA stated, “[t]he conservation easement would adequately protect the riparian and floodplain areas to be conveyed to private ownership, and effectively mitigate potential effects of land management activities in floodplain and riparian zones.”⁷ The voluntary conservation easements in The South Crazy Mountains Land Exchange (and the associated reasonably foreseeable activities) were the basis for the EA concluding that impacts to habitat would be minimized for wolverine, lynx, bald eagle, elk, goshawk, marten, migratory birds, wild trout, and western toad. The South Crazy Mountains Land Exchange EA further concluded that due to the conservation easements, the exchange would “retain habitat

⁵ 42 U.S.C. § 4321 et seq.; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989).

⁶ PEA at 10.

⁷ *South Crazy Mountains Land Exchange: Preliminary Environmental Assessment*, Forest Service, Oct. 2019, at 18.



values on a majority of the acres” and “minimize permanent loss of habitat, resulting in a net increase in potential habitat” for many of the present species.⁸ That level of analysis gave the public a much greater understanding of how the proposed decision would (or wouldn’t) impact wildlife conservation.

The future uses of the public lands in the East Crazies to be conveyed into private ownership stand to significantly impact wildlife habitat and should be analyzed as part of the Forest Service’s decision process. This is especially important given that low-elevation big game habitat and riparian corridors make up the federal lands proposed for exchange into private ownership. Development is a reasonably foreseeable impact from land consolidation, especially considering a luxury real estate development interest (Yellowstone Club) is helping to facilitate this exchange. The Forest Service must therefore include an examination of the impact to wildlife that could occur from consolidation and subsequent development in its analysis.

B. Need to analyze alternatives to prevent development on the exchanged parcels.

The PEA contains a brief overview of alternatives that were considered but eliminated from detailed analysis; however, none of these alternatives studied avenues for restricting development on the exchanged parcels. Development restrictions such as conservation easements or deed reservations would ensure mitigation of any potentially significant reasonably foreseeable impacts to wildlife habitat, wetlands, cultural resources, and other important values and should be explicitly considered as part of this proposal.⁹ Wild Montana maintains that voluntary conservation easements are a critical component of ensuring that this proposal is in the public interest. However, we acknowledge that the Forest Service cannot compel voluntary easements and therefore may not analyze this if landowners are unwilling to agree. That said, the Forest Service has the ability to apply deed restrictions on public parcels being traded to private ownership and therefore must consider this as an alternative within the decision space of the agency in order to maximize the public benefit of this exchange.

The Crazy Mountains are an extremely valuable landscape in the Custer Gallatin National Forest for many people. This was exemplified by the level of public engagement around the Crazies in the Forest Plan revision public comment periods, and in the Forest Service’s ultimate

⁸ *Id.* at 21–23.

⁹ The Forest Service Handbook dictates that deed reservations or restrictions controlling future use and development are appropriate when the intended use of the conveyed Federal land would “conflict with established management objectives on adjacent Federal lands.” FSH 5409.13, *Land Acquisition Handbook: Chapter 30*, Forest Service, Feb 2004, at 37.1.



decision to designate an Area of Tribal Importance, Recommended Wilderness, and a Backcountry Area in the range. Because of the significance of this mountain range to the public, the Forest Service should consider every possible option to retain the character of the range and protect the values that make this place so special. Therefore, the analysis must consider an additional alternative that would provide for mitigation, including easements, deed restrictions, covenants, or other restrictions to protect the existing character of the public parcels to be conveyed.

C. Need to analyze environmental effects of the Sweet Trunk Trail.

The Forest Service must provide a more thorough analysis of the impacts of the land exchange and new trail on a previously unfragmented landscape. The new Sweet Trunk Trail would make a 40-mile loop possible. While this new trail would be non-motorized and provide foot and horse recreation opportunities, there will likely still be environmental effects from the trail construction and an increase in use.

The current PEA only briefly contemplates that the construction and increased human presence on the trail will have minor impacts to species such as elk, lynx, wolverine, and grizzly bear. However, the PEA does not include a sufficient analysis of impacts from the trail construction as well as the change in use. For example, the Forest Service discusses that the exchange could lead to an increase in opportunities for permitted outfitters and guides, however there is not substantial analysis as to how that may affect the environment.¹⁰

While this new trail will create a loop, the change in access will force users to all start from one location, Halfmoon Campground. This concentration of use as well as the potential increase in recreational pressure must be analyzed as well. The Crazies hold high value for wildlife and wildlife science shows that persistent human presence and new habitat fragmentation from trails can have a significant impact.¹¹ The Crazies already receive significant recreational pressure, and the East side of the range is one of the few areas where wildlife face less human pressure due to its current trail-less nature. The new trail construction and associated use should be considered in the context of recreational pressure on wildlife across the range.

¹⁰ PEA at 3.

¹¹ April Craighead, *We Outdoor Recreationists—All of Us—Are Displacing Wildlife*, Mountain Journal (Jan. 31, 2022), <https://mountainjournal.org/research-examines-impacts-of-outdoor-recreation-near-booming-bozeman-montana> (“All recreationists need to realize that their presence effects wildlife through loss of habitat, displacement and increased stress. No user group is less culpable than any other and there is substantial research to support this. Wildlife may respond slightly different to different user groups, hiker vs. biker vs. motorized vehicles. However, the end result is that most wildlife move away from humans and trails.”).



The land exchange proposal also includes a redesign and improvements to the Big Timber Canyon Trailhead. However, the Forest Service discloses very few details of these changes nor does the PEA properly analyze any of the potential impacts. Instead, the PEA simply states that “[t]he parties will eventually develop and enter into a more detailed agreement regarding the trail and trailhead improvements and identify the party’s roles and responsibilities.”¹² Since the changes to the trailhead are a piece of this proposal, the details and potential effects must be analyzed and presented to the public in accordance with NEPA.

Furthermore, the PEA doesn’t mention any impacts to mountain goats (*Oreamnos Americanus*). With an estimated population of 450 in the Crazies, the range sustains more mountain goats than the Beartooths and the Bob Marshall Wilderness region. Mountain goat populations in the Crazies are large and stable, in stark contrast to the Bitterroot, Sapphires, Swan, Pintlers, Bob Marshall, Rocky Mountain Front or the Whitefish Range where mountain goat populations are struggling.¹³ Mountain goats have the lowest reproductive rate and highest natural mortality rate of any ungulate in North America. Sensitive to changes and disturbance, Mountain goat populations are collapsing across most of their native ranges of western Montana, Idaho, Alberta, British Columbia, and Washington. In Western Montana, mountain goats are one third to one quarter of historic populations. Montana Fish, Wildlife, and Parks consider populations in the Crazy Mountains essential to the future survival of the species.¹⁴ The Crazies offer the perfect future refugia; excellent habitat in isolated basins at high elevations. This should be taken into consideration when analyzing the construction of an additional trail in a small range with existing heavy recreation pressure.

D. Need to analyze wetlands values and loss mitigation.

Executive Order 11990, “Protection of Wetlands,” requires minimization of destruction, loss, or degradation of wetlands and has become known as a policy of “no net loss.”¹⁵ The Forest Service has said that only preliminary estimates of wetland extent, type, and values have been undertaken and that further analysis will occur after the current comment period has closed.¹⁶ The PEA states that there is a need for “additional field verification of wetland extent, type, and

¹² PEA at 12.

¹³ Smith, B. L., and N. J. DeCesare. 2017. Status of Montana’s mountain goats: A synthesis of management data (1960–2015) and field biologists’ perspectives. Final report, Montana Fish, Wildlife and Parks.

¹⁴ *Id.*

¹⁵ Executive Order 11990, *Protection of Wetlands*, May 24, 1977.

¹⁶ PEA at 53 (“The final assessment of wetland quality and quantity will be completed following an additional field examination in 2023.”).



value across Federal and non-Federal Parcels.”¹⁷ The preliminary assessment of wetland value estimates that the value of the non-Federal parcels is 7.8 acres while the wetland acreage in the Federal parcels is 52.4 acres. This is a significant imbalance in the values of the lands being exchanged. While the PEA presents the options of restrictive covenants, easements, or withholding wetland areas for exchange, there is no analysis of this approach. The Forest Service must ensure proper protection of wetland values and analyze alternatives for conserving wetlands. And importantly, the public must be provided with an opportunity to review and comment on a complete analysis.

E. Need to analyze the environmental effects from remaining partial mineral rights.

The PEA fails to analyze the effects of the severed mineral rights for the parcels acquired by the Forest Service. The mineral title reports show that there are outstanding mineral interests in the mining estate on “the majority of the non-Federal parcels.”¹⁸ The PEA goes on to state that a “mineral potential report will be completed to evaluate the outstanding and reserved interests.”¹⁹ On the other hand, all of the federally owned mineral rights will be transferred to the non-Federal parties. Similar to the wetlands considerations, the final analysis will be completed after the current comment period. By having outstanding mineral interests on the parcels going to public lands, the Forest Service cannot provide assurances against future development. The PEA must analyze the reasonably foreseeable impacts from mineral exploration and development on the parcels where interests remain.

F. Need to analyze the environmental effects on the parcels in the Madison Range.

Wild Montana also has concerns about the exchanged parcels in the Madison Range near Big Sky. As mentioned above, the Yellowstone Club has stated that it is their “intention” to place conservation easements on the newly acquired parcel.²⁰ This would be to ensure that the lands are only used for “skiing and other appropriate outdoor recreational uses and preclude residential and further development.” Before the lands are exchanged, we would appreciate seeing a development plan for the newly acquired private parcels and outlining how the Yellowstone Club defines “appropriate outdoor recreational uses.” The PEA also states that the

¹⁷ *Id.*

¹⁸ PEA at 55.

¹⁹ *Id.*

²⁰ *East Crazy Inspiration Divide Land Exchange: Frequently Asked Questions*, Forest Service, Nov. 2022, at 3.



development of ski recreation and service roads have a “high likelihood” of affecting the South Fork West Gallatin River and that a hydrologist and soil scientist “may be necessary to inform cumulative effects analysis.”²¹ The PEA should include such analysis and disclosure of potential impacts to the watershed stemming from this reasonably foreseeable development.

Furthermore, as discussed above, accessing the new public land parcels remains difficult for the general public who are not members of the Yellowstone Club. This raises questions over the public benefit from exchanging public Forest Service lands with lands owned by the Yellowstone Club.

VI. The Forest Service must complete tribal consultation and properly engage with all the tribes that have an interest in the land exchange.

Several Indigenous peoples, including but not limited to the Crow, Salish, Cheyenne, Sioux, and Blackfeet have cultural connections to the Crazy Mountains. The Forest Service must ensure that consultation and engagement on this land exchange proposal include all Tribes that identify as being connected to the landscape.

In the 2022 Custer Gallatin National Forest Plan, the Forest Service designated the Crazy Mountains as an Area of Tribal Importance due to the significance of the range to the Crow Tribe. At this point in the land exchange proposal, the Forest Service has completed a “pre-consultation,” but cultural resource surveys in accordance with Section 106 of the National Historic Preservation Act have not been completed for the new 22-mile long Sweet Trunk Trail.²² The Forest Service acknowledges that surveys and consultation must be complete for the creation of the Sweet Trunk Trail and “before the final analysis can be done for that portion of the Proposed Action.”²³ The construction of the Sweet Trunk Trail is an integral part of this exchange proposal. Without completing the necessary consultation and analysis first, the Forest Service should not promise the public that the trail will be built as described. Consultation and analysis should inform the action, not the other way around. Additionally, the public should have access to information about how and if the trail construction could impact cultural resources in order to have a sufficient enough understanding of the proposal to provide public comment.

We support the part of the land exchange that will provide members of the Crow Tribe access to the privately owned Crazy Peak. The agreement between the Crow Tribe and private landowner

²¹ PEA at 52.

²² 16 U.S.C. § 470a(d)(6)(A).

²³ PEA at 54.



should be validated prior to the completion of this exchange to guarantee the agreement will be completed and enforced.

VII. The Forest Service must produce a more robust version of the environmental assessment with another open opportunity for public comment.

The PEA states that “[t]his is the kickoff of the public involvement process. The Forest is not at the point of making a decision at this stage...”²⁴ The Forest Service has opened public comment and held public meetings during this analysis period. If the Forest Service intends to incorporate the information gathered from the public, there must be an additional public review and comment period before the land exchange proposal can be complete and implemented.

Moreover, the Forest Service said the PEA is summarizing “preliminary potential effects of the proposed action.”²⁵ The current analysis document is a combination scoping/PEA however, the analysis is more akin to a scoping level of analysis looking at a brief summary of issues rather than a full EA.²⁶ Due to the preliminary nature of the analysis, there are outstanding issues that need to be resolved and disclosed to the public for consideration, as we have highlighted above. After the comment period closes, the Forest Service intends to complete the wetlands analysis, land appraisal,²⁷ tribal consultation, and Section 106 surveying. These processes, along with the public’s substantive comments, may necessitate a change in the land exchange proposal. However, the only remaining opportunity for public review of the proposal will be through objections to the Final EA and Draft Decision. The Forest Service should create an additional iteration of the EA and provide the public the opportunity to review and comment on the full, not preliminary, analysis of the proposed land exchange.

Lastly, while we appreciate the 45-day comment period, the deadline for public comments is December 23rd. Given the time of year and that many people are away for the holidays, the timing of this comment period is not conducive to maximum public engagement in the process.

²⁴ *East Crazy Inspiration Divide Land Exchange: Interested Party Letter*, Forest Service, Nov. 2022, at 2.

²⁵ PEA at 21.

²⁶ See 40 C.F.R. § 1501.9.

²⁷ Not only will the land have to be evaluated, but the Federal Land Policy and Management Act requires that the value of the exchanged lands be equal, adjusted for any difference in value by cash equalization payments up to 25% of the value of the Federal lands to be disposed. 43 U.S.C. § 1716.



VIII. Conclusion

Thank you for your consideration of our comments. Wild Montana's mission is centered on working with communities and finding common ground solutions. We know how difficult collaborative processes can be and we appreciate the opportunity to provide feedback on this proposal. We look forward to helping ensure the Crazy Mountains remain wild into the future.

Please keep us informed about the development and implementation of the East Crazy Inspirational Divide Land Exchange Proposal, and do not hesitate to contact us if you have any questions.

Sincerely,

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