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

Comments on East Crazy Inspiration Divide Land Exchange Preliminary Environmental Assessment

Dear Ms. Erickson,

On behalf of our more than one million members and supporters, The Wilderness Society (TWS) submits these comments on the Custer Gallatin National Forest's (CGNF) Preliminary Environmental Assessment for the East Crazy Inspiration Divide Land Exchange Project (EA). We sincerely appreciate CGNF's efforts to engage the public in fulfilling its obligation to ensure that its land exchanges are reflective of current science, policies, and conditions and effective to meet today's public land management challenges, needs, and opportunities.

TWS's mission is to unite people to protect America's wild places. We see a future where people and wild nature flourish together, meeting the challenges of a rapidly changing planet. To accomplish that vision, we work to ensure that public lands are a solution to the climate and extinction crises and that all people benefit equitably from public lands. We focus much of our work in 14 priority landscapes that we have identified as the most biologically rich, large-scale landscapes to protect and connect, working in partnership with communities, Tribes, state and federal agencies, conservation organizations, and many others to advance habitat conservation, connectivity, ecological resilience, and equitable access to nature.

The Greater Yellowstone Ecosystem and High Divide (GYE-HD) is one of TWS's 14 priority landscapes.<sup>1</sup> Research into connectivity across North America consistently reveals the importance of this landscape to a continental network of protected areas. Greater Yellowstone

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<sup>1</sup> See Greater Yellowstone & High Divide Map (Attachment 1)

needs little introduction, renowned as one of the largest intact temperate ecosystems in North America. The lesser-known High Divide connects three of the most iconic protected areas in the West: Greater Yellowstone, the wildlands of central Idaho, and the Crown of the Continent in northwestern Montana (see embedded map below).



The Crazy Mountains and the Madison Range are both key parts of this landscape, with the Crazies providing connectivity to the northeastern reaches of the GYE-HD and the affected area of the Madison Range bordering the Lee Metcalf Wilderness Area.

TWS appreciates the efforts of the CGNF to consolidate the checkerboard embedded within the Crazies. Our comments seek to improve the proposed action and associated EA by better protecting the conservation value of the federal parcels that are to be traded. We request that you consider and adopt reasonable options for the conservation of these parcels.

## 1. Recommended Improvements to the Environmental Assessment and Proposed Action

### 1.1. Ensure Robust Tribal Consultation

The Apsaalooke, or Crow, have lived in the Yellowstone region since time immemorial, and all the lands within and around the Crazy Mountains were agreed to be Apsaalooke homelands through the Treaty of 1851. TWS fully supports and recognizes the interests of the Apsaalooke Nation in protecting the Crazies as a spiritual and historic landscape, and we are encouraged by the CGNF's pre-consultation, as well as ongoing discussions between the tribe and landowners regarding access to Crazy Peak.

Per Land Management Plan Goal BC-GO-TRIBAL-01, which states that the CGNF shall “protect and honor Crow treaty obligations, sacred land, and traditional use in the Crazy Mountains,”<sup>2</sup> we request that tribal access to Crazy Peak be made a condition of this land exchange. We would also like to highlight the duty that the CGNF has to undergo robust tribal consultation with the Apsaalooke Nation, as well as other tribal nations with an interest in this landscape.

### *1.2. Conservation-Oriented Management is Warranted*

TWS understands that one of the stated purposes of this proposed action is to resolve long-standing access issues. However, given the ecological value and development risk of both the Crazy Mountains and the Madison Range, ensuring future conservation-oriented management of the traded parcels through this exchange process is necessary.

As recognized in the Custer Gallatin National Forest Land Management Plan (LMP), riparian areas are of great value and significance in the plan’s direction, aimed at providing for ecological sustainability and integrity, as required by the 2012 planning rule.<sup>3</sup> Riparian habitats are described in the LMP as “disproportionately critical in providing habitat and habitat connectivity for fish, other aquatic biota, and wildlife,” and whose ecological conditions “must be maintained, restored, or enhanced.”<sup>4</sup> Section FW-DC-WTR 02 of the LMP requires that “spatial connectivity is prevalent within or between watersheds,”<sup>5</sup> and includes in-depth goals, objectives, and desired conditions for watershed, aquatic, and riparian ecosystems. The Final Environmental Impact Statement (FEIS) also advocates for the value of watersheds, headwaters, and their surrounding lands, stating that “these areas are the building blocks of a conservation network,” and asserting that naturally functioning headwaters will be “particularly important as refuge habitat for cutthroat trout, and other species, in light of potential effects of climate change.”<sup>6</sup> Given the explicit value of the headwaters and riparian areas identified in the LMP and FEIS, and to ensure consistency with the plan’s direction for those areas, as described further below, The Wilderness Society urges the CGNF to include mechanisms for protecting the conservation value of the exchanged lands, particularly lands within the Sweetgrass Creek drainage and Big Timber Creek drainage.

Additionally, TWS requests that all traded parcels within this land exchange be protected through a conservation mechanism due to their ecological significance. In the Crazy Mountains

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<sup>2</sup> Custer Gallatin National Forest, 2022 Land Management Plan, pg. 163

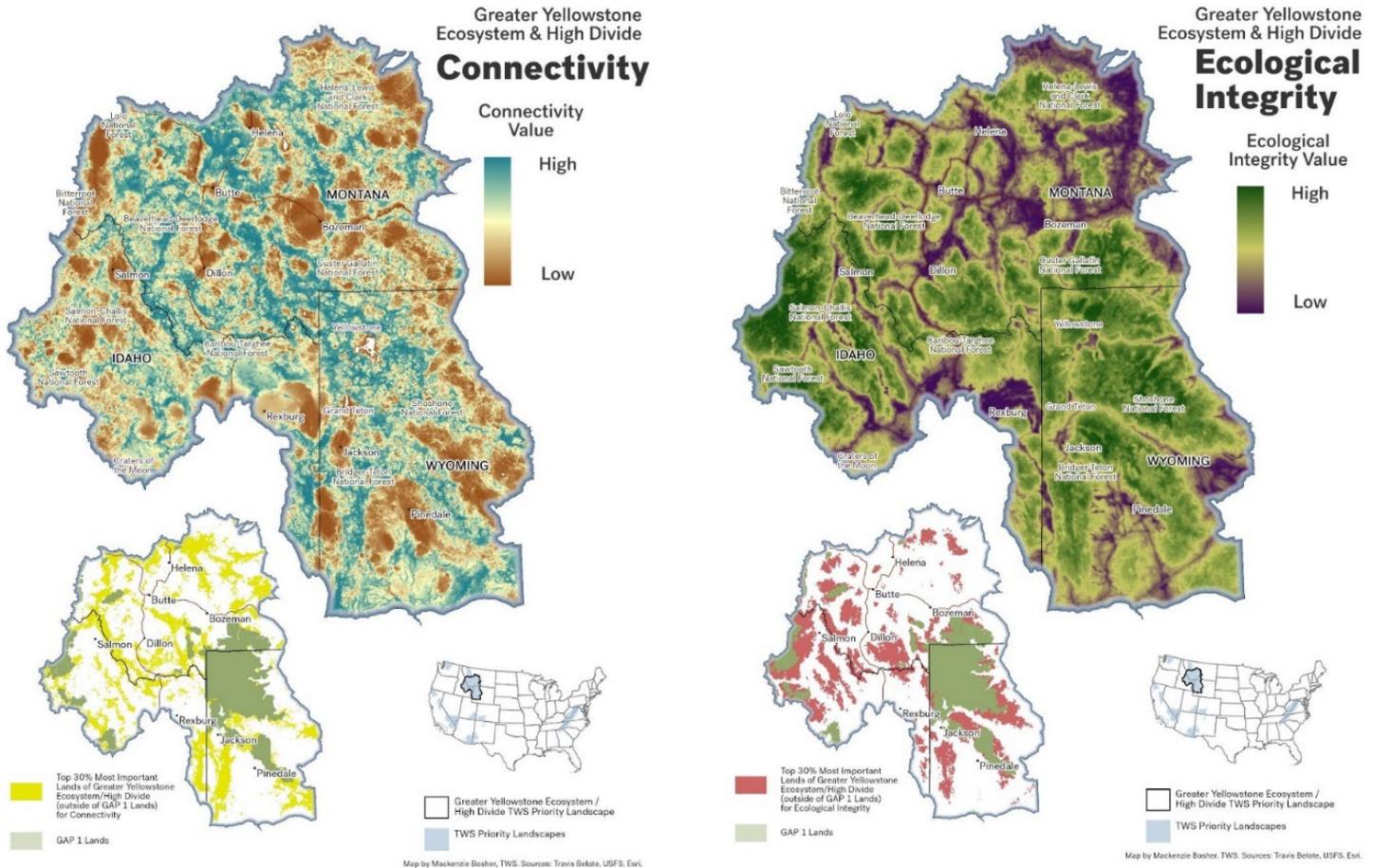
<sup>3</sup> See 36 C.F.R. § 219.8.

<sup>4</sup> Custer Gallatin National Forest, 2022 Land Management Plan, pg. 26

<sup>5</sup> Custer Gallatin National Forest, 2022 Land Management Plan, pg. 23

<sup>6</sup> Custer Gallatin National Forest, 2022 Final Environmental Impact Statement for the Land Management Plan, pg. 114

and within the affected parcels in the Madison Range, a recent ecological assessment performed by The Wilderness Society found these lands to be within the top 30% most important lands in the GYE-HD for connectivity and ecological integrity (see embedded maps below).



### 1.3. Mechanisms for Protecting Conservation Value

To protect the ecological importance of these lands, we request that the Forest Service consider various conservation mechanisms and integrate them into the range of alternatives, proposed action, and impacts analysis. Potential options are described below. This change will likely require another public comment period on a revised draft EA but is necessary for the reasons described above.

#### 1.3.1. Option A: Voluntary Conservation Easements

Voluntary conservation easements provide a tool for protecting the value of federally traded parcels, and one that is familiar to the CGNF. In the 2021 South Crazy Land Exchange, the three affected landowners “agreed to voluntarily place a Conservation Easement on the Federal lands to be conveyed into private ownership.”<sup>7</sup> The easement allowed for continued traditional land uses such as recreation, livestock grazing, and timber management, but precluded all mineral development, mining, industrial, or commercial development. This sort of agreement and language could be mirrored and used for the parcels in the East Crazies. In the Madison Range, voluntary conservation easement language could mirror that which is currently utilized on Parcel J, which precludes “any residential, industrial, or commercial development (other than ski runs and lifts) and preserves the habitat, scenic, and open space values of these lands.”<sup>8</sup>

### *1.3.2. Option B: Deed Restrictions*

Under federal law, “a conservation easement can be reserved in a deed to limit development or otherwise protect the environmental and aesthetic values of the land.”<sup>9</sup> Indeed, Forest Service regulations governing land exchanges mandate that the agency “reserve such rights or retain such interests as are needed to protect the public interest.”<sup>10</sup> The Forest Service should thus consider including via deed restrictions relevant covenants, easements, or other restrictions on the conveyed parcels in both the Crazy Mountains and Madison Range to ensure their conservation and help the agency “more accurately and confidently determine the future use of the land.”<sup>11</sup> The deed restricted option is preferable because it would provide the Forest Service and the public with more certainty than a voluntary conservation easement.

The use of conservation mechanisms, be it voluntary easements or deed restrictions, allows for more consistent and ecologically sound management of the traded parcels. For example, LMP component FW-SUIT-RMZ- 01 determines that “riparian management zones are not suitable for timber production.”<sup>12</sup> Without an embedded conservation mechanism, the traded parcels would be free to be managed in a fashion that is contrary to the Land Management Plan and damaging to the ecological integrity of this landscape as a whole.

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<sup>7</sup> Custer Gallatin National Forest, 2021 South Crazies Land Exchange Environmental Assessment, pg. 12

<sup>8</sup> Custer Gallatin National Forest, 2022 East Crazy Inspiration Divide Land Exchange Preliminary Environmental Assessment, pg. 8

<sup>9</sup> Scott Miller, 2019 Missing the Forest and the Trees: Lost Opportunities for Federal Land Exchanges, 38:2 Columbia J. of Env'tl. Law 197, 221 (Attachment 2)

<sup>10</sup> 36 C.F.R. § 254.3(h).

<sup>11</sup> See Miller, p. 199.

<sup>12</sup> Custer Gallatin National Forest, 2021 South Crazies Land Exchange Environmental Assessment, pg. 30

In any alternatives lacking mechanisms for protecting the conservation value of the exchanged parcels – including the current proposed action – the EA must analyze the environmental impacts of any reasonably foreseeable development of the exchanged parcels. Given that Montana land exchanges have a history of resulting in large scale development adjacent to important public lands, as well as the existing large private inholdings in both the Crazy Mountains and the Madison Range that pose development risks, analysis of the social, ecological, and other impacts of that reasonably foreseeable development is crucial and required under the National Environmental Policy Act.

## **2. Conclusion**

The Wilderness Society appreciates the hard work of the CGNF planning and realty team, and the various other parties who have put time and effort into this land exchange proposal. While we believe that the Preliminary Environmental Assessment goes far toward resolving access issues, it lacks the long-term conservation-oriented management that is required by Forest Plan direction, and that these lands warrant. To resolve this, we request that the Environmental Assessment analyze the impact of potential development to both the Madison Range and Crazy Mountains, should conservation protecting mechanisms not be utilized, and request that the proposed action and range of alternatives include mechanisms to provide for conservation-oriented management of the exchanged parcels. This should ideally be accomplished through the use of deed restrictions in this and future land exchanges in the Custer Gallatin National Forest. We look forward to continuing our participation in this land exchange process.

Thank you for considering our comments.

Sincerely,

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Southwest Montana Community Conservation Specialist  
The Wilderness Society

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Senior Legal Director  
The Wilderness Society

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The Wilderness Society