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FILED VIA ELECTRONIC SUBMISSION

November 10, 2023

Objection Reviewing Officer
USDA Forest Service, Northern Region
26 Fort Missoula Road
Missoula, MT 59804

Subject: ECID Project Objection

Dear Reviewing Officer:

In accordance with 36 C.F.R. § 218.8, Friends of the Crazy Mountains (“Friends”) brings its timely objection to the East Crazy Inspiration Divide Land Exchange on behalf of itself and its supporters. The name of the responsible official is Mary Erickson; and the project is located in the Custer Gallatin National Forest in both the Yellowstone and Bozeman Ranger Districts.

In response to the combined scoping/Preliminary Environmental Assessment comment period, Friends’ prior specific written comments of December 21, 2022, and prior attachments, are incorporated herein by reference. Friends’ objection applies to the project as a whole because it: 1) fails to meet the specific requirements of federal law; and 2) the public interest will not be well served.

Issue 1:

The Forest Supervisor should not sign off on the Final Decision Notice until the Ninth Circuit has issued its opinion in Case 22-35555, *Friends of the Crazy Mountains v. Mary Erickson*. This appeal challenges the Forest Service’s decision to approve the Porcupine Ibex Trail project. See attached Oct. 17, 2023 Courthouse News article: *Trail access to Montana’s Crazy Mountains lands at Ninth Circuit*.

In Friends prior specific comment (page 2, Pending Litigation), we asked the Forest Service to not move forward with the proposed land exchange until the Ninth Circuit has ruled. The Forest Service did not provide a response. Plaintiffs appealed the Order’s findings on the NEPA claims

in Case CV-19-66-BLG-SPW-TJC, *Friends of the Crazy Mountains, et al. v. Mary Erickson, et al.* This case challenges the Forest Service's decisions and related failures with respect to four National Forest trails in the Crazy Mountains: Porcupine Lowline trail (No. 267) and Elk Creek trail (No. 195) on the west side, and East Trunk trail (No. 115/136) and Sweet Grass trail (No. 122) on the east side.

To resolve this issue, the Forest Supervisor should not sign off on the Final Decision Notice until the Ninth Circuit has issued its opinion. The public must have a reasoned opinion by the court in order to understand some of the complex issues in the mountain range and to provide for informed decision making.

Issue 2:

The Forest Supervisor must consider the Inspiration Divide land trade separately.

In Friends prior specific comment (page 5, Inspiration Divide), we asked the Forest Service to sever this unrelated land exchange from the East Crazy Land Exchange. The Inspiration Divide component does not meet the Federal Land Policy and Management Act (FLPMA) requirement that the "public interest will be well served by making that exchange". See 43 U.S.C. §1716(a), incorporated herein by reference. The Inspiration Divide land trade favors wealthy private interests over the public. As stated by Montana conservationist Andrew Posewitz: "All the leverage the Forest Service gave to the Yellowstone Club was inappropriate. If the Big Sky portion was pulled out, the East Crazy land swap would have even less support." See attached Dec. 27, 2022 Courthouse News article: *Public wary Montana land swap may favor wealthy landowners*. See also page 6, 1.2 Background Section of the September 2023 Environmental Assessment, incorporated herein by reference.

To resolve this issue, the Forest Service must consider the Inspiration Divide land trade separately and reevaluate the East Crazy Land Exchange.

Issue 3:

The Forest Supervisor did not engage and consult with the current Executive Branch of the Apsáalooke Nation.

In Friends prior specific comment (page 5, National Historic Preservation Act), we raised the concern that conditioning ceremonial access to Crazy Peak upon the proposed land exchange being finalized was disingenuous and provided the landowner leverage over Crow Nation. Notwithstanding that concern, we referenced Section 106 of the National Historic Preservation Act, incorporated herein by reference. In this regard, the Forest Service has an ongoing legal obligation to consult and engage with tribes with respect to cultural resources. After reviewing the September 19, 2023 Tribal Relations Report, incorporated herein by reference, on page 2 the Forest Service references a 2020 letter of support from former Crow Tribe Chairman Alvin (Jr.) Not Afraid. In 2020, Not Afraid and his entire executive branch was voted out of office. Since

December 2020, Frank White Clay has served as the official Chairman of the Executive Branch and the Forest Service has made no effort to establish a relationship with the new administration on this project.

To resolve this issue, the Forest Service must engage and consult with Chairman Frank White Clay and obtain a current position statement from the Executive Branch.

Issue 4:

The public was subject to misinformation about the history of the deal.

There are two groups, namely Crazy Mountain Working Group (CMWG) and Crazy Mountain Access Project (CMAP), which misinformed the public about how the proposal originated, referring to it as a “citizen-led proposal” submitted to the Forest Service by CMAP. See: <https://www.crazymountainproject.com/blog>. In Friends prior specific comment (page 2, Background), we attended a stakeholder meeting requested by Tom Glass (Western Land Group, representing the Yellowstone Club) and Jess Peterson (Western Skies Strategies). Mr. Glass explained he was the architect of the proposal between the private entities and the Custer Gallatin National Forest. His explanation is consistent with page 6, 1.2 Background Section of the September 2023 Environmental Assessment, incorporated herein by reference. See also prior attachment “*Voices: Historical trail rights must be part of Crazy Mountains Solutions,*” August 27, 2020, by Brad Wilson.

CMWG and CMAP have confused the public and overplayed their role in the deal through commentary and news releases which were picked up by media outlets. CMWG describes itself as a “a cross-section of landowners, access advocates, nonprofits, and state and federal government representatives”; and CMAP is described as “an informal coalition of ranchers, conservationists, and hunters”. See prior attachment “*Who is the Crazy Mountain Working Group,*” May 2, 2018, by Brad Wilson. Additionally, in Friends prior specific comment (page 4, Federal Advisory Committee Act), we asserted these groups appear to qualify as an “advisory committee” subject to FACA. In response, the Forest Service states, in part:

Per FACA (Executive Order 12024) The Forest Service did not form the Crazy Mountain Working Group. The Group does not function as a decision-making or advisory committee to the Forest Service. The Forest Service does not control membership, participation, scheduling, or facilitation. Meetings are organized and coordinated by a third-party facilitator, and they do not provide the Agency with advice or recommendations. The proposal did not come from the Crazy Mountain Working Group nor the Crazy Mountain Access project (emphasis added).

The Crazy Mountain Access Project is an informal coalition of ranchers, conservationists, and hunters working to find common ground in Montana’s Crazy Mountains that provided support publicly for the proposal they do not advise on or make recommendations to the Agency, including this project.

See page 2, September 2023 Comment Consideration and Response, incorporated herein by reference

To resolve this issue, the Forest Service must review and question the work of these groups both of which failed to garner trust and widespread support for the Agency decision(s).

Issue 5:

The proposed land exchange does not comply with the National Environmental Policy Act (NEPA), incorporated herein by reference.

In Friends prior specific comment (page 2, National Environmental Policy Act), we asked the Forest Service to explore a reasonable range of alternatives as required by NEPA. The two alternatives on page 10, September 2023 Environmental Assessment, incorporated herein by reference, do not satisfy the Forest Service's obligation to "rigorously explore and objectively evaluate reasonable alternatives," including "reasonable alternatives not within the jurisdiction of the lead agency". This assures an outcome is pre-ordained, which is antithetical to NEPA and its public process.

To resolve this issue, the Forest Service must include an alternative that comports with the travel plan's objectives and protects and defends historical access rights with trail work, signs etc. on East Trunk and Sweet Grass while respecting private property (and works to perfect such rights). Additionally, the Forest Service must do a full Environmental Impact Statement to adequately consider and analyze the direct, indirect, and cumulative effects of the proposed action.

Issue 6:

The proposed land exchange does not consider, disclose to the public, or discuss the recorded (written) easements from the railroad grants, which are a matter of property law.

In Friends prior specific comment (page 3, Railroad Grant Deeds), we asked the Forest Service to consider, disclose to the public, or discuss the recorded (written) easements from the railroad grants. The Forest Service's decision and/or failure to consider, disclose to the public, or discuss the recorded (written) easements from the railroad grants is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706(2)(A) and 706(1).

To resolve this issue, the Forest Service must consider, disclose to the public, and discuss the recorded (written) easements from the railroad grants, which are a matter of property law.

Issue 7:

The proposed land exchange does not comply with the Federal Land Policy and Management Act (FLPMA), incorporated herein by reference.

In Friends prior specific comment (page 3, Federal Land Policy and Management Act), we raised the requirements of FLPMA. FLPMA requires the Forest Service to appraise the land or interest in land included in an exchange before agreeing to the exchange. 43 U.S.C. § 1716(d)(1). The appraisal must set forth an opinion regarding the market value of the interests that are the subject of the exchange. 36 C.F.R. § 254.9(b). In determining the market value, the appraiser shall determine the highest and best use of the property to be appraised, estimate the value of the lands and any interests, and include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities in its estimate. 36 C.F.R. § 254.9(b)(1).

Prior to initiating public scoping, the Forest Service and the landowners failed to conduct a feasibility analysis to include a title search on the landowners' property, a boundary management review, a federal land status report, a valuation consultation, and identification of parties responsible for costs. Additionally, the Forest Service and/or landowners failed to obtain title insurance commitment for the proposal.

To resolve this issue, the Forest Service must disclose the monetary value of land exchanged, disclose valuation of severed water rights, and disclose a valuation of timberlands in the exchange. FLPMA also requires the EA look at the economic value of the mineral rights being exchanged. The Forest Service must analyze the effects that severed ownership of mineral interests in the parcels being acquired could have on those lands in the future.

Issue 8:

The proposed land exchange does not comply with the National Forest Management Act (NFMA), incorporated herein by reference.

In Friends prior specific comment (page 3, National Forest Management Act), we raised the issue that the Forest Service's consideration to no longer manage the East Trunk and Sweet Grass trails as National Forest trails conflicts with the Forest Service's travel plan and decision approving travel plan.

The 2006 travel plan and record of decision approving the travel plan is an amendment to the forest plan. The Forest Service must comply with obligations included (and commitments made) in its travel plan and record of decision approving the travel plan. The travel rule directs the Forest Service to manage and maintain all National Forest System trails identified in the travel plan according to their specific uses (and seasons of use). 36 C.F.R. §§ 212.50 to 212.57. 138. The forest plan and travel plan identifies the East Trunk and Sweet Grass trails as National Forest System trails. The consideration to no longer manage the East Trunk and Sweet Grass trails as National Forest trails conflicts with the Forest Service's travel plan and decision approving travel plan.

To resolve this issue, the Forest Service must comply with obligations included (and commitments made) in its travel plan and record of decision approving the travel plan.

Issue 9:

The Forest Service did not include future consideration and effects of a special use mountain biking recreation event on the proposed 22-mile trail, and/or allowing bicycles.

This issue arose after the opportunities for formal comment because the September 9, 2023 Recreation and Special Uses Report, incorporated herein by reference, did not become available to the public until September 28, 2023.

On Dec. 2, 2022, Friends, along with fellow Plaintiffs and Counsel, participated in a Zoom meeting with the Forest Service to discuss east side issues. Friends asked the CGNF Forest Supervisor if the proposed trail was engineered as a mountain bike trail, and if the Forest Service was going to allow bikes on the trail. The Forest Supervisor stated “no” to both inquiries, but then went on to opine this could change down the road.

While the Recreation and Special Uses Report, page 7, indicates travel in the East Crazy Area would not be suitable for motorized or mechanized (bicycle) travel, the design of the proposed 22-mile trail shows otherwise. At Friends 2020 meeting with WLG, we were provided a copy of the attached January 3, 2020 Narrative of the Proposed East Side Crazy Mountain Trail between Halfmoon Campground (Big Timber Creek) and Sweet Grass Creek, incorporated herein by reference. The report was prepared by Forestration which is known for its world-class public hiking and mountain biking trails.

To resolve this issue, the Forest Service must update its Recreation and Special Uses Report to include future consideration and effects of a special use mountain biking recreation event and/or allowing bicycles.

Conclusion:

The proposed land exchange, at best, is simply fancy window dressing and behind the curtain, the Forest Service is fleecing away our public lands. Friends asks the Forest Service to stop relinquishing our historical trail rights. Once these historical trails are gone, they are extinguished forever. We ask the Forest Service to stand up and defend the public’s historic rights on these trails.

Friends object to the East Crazy Inspiration Divide Land Exchange for the reasons stated above and, because of the lack of transparency, for other reasons unknown.

Thank you for your time and consideration. We look forward to hearing from you through the undersigned.

Respectfully submitted,

/s/ Brad Wilson
Brad Wilson
Founder

Attachments: (3)

Oct. 17, 2023 Courthouse News article
Dec. 27, 2022 Courthouse News article
Jan. 3, 2020 Forestoration Narrative of Proposed Trail