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Re: East Crazy Inspirational Divide Land Exchange (ECID) Objection

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

November 13, 2023

Pursuant to 36 C.F.R. Part 218.8(d)(4), Wild Montana submits these objections on the Draft Decision Notice and Finding of No Significant Impact for the East Crazy Inspirational Divide Land Exchange Proposal.

I. Description of Objecting Party.

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, 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" 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 additional conservation measures for the land exchange proposal, and in 2022, we submitted organizational comments on the preliminary environmental assessment. We appreciate that the Forest Service has taken into consideration and implemented some of our feedback from the preliminary environmental assessment, however, we believe the proposal still needs to be



strengthened in order to adequately serve the public interest and protect the ecological resources of the range that the Forest Service stewards.

II. Wild Montana remains steadfast in our request that the proposal include durable and robust conservation assurances for lands transferred to private ownership.

Wild Montana's primary concern remains that there are limited or no conservation assurances for every public land parcel that will be traded into private ownership. Providing these assurances is the fundamental condition for our support of this land exchange proposal.

A. Need to strengthen and expand existing restrictive covenants.

The 2023 modified proposal and Final Environmental Assessment (FEA) includes restrictive covenants on four parcels (parcels 1, 2, 3, and 4) in the Sweetgrass Creek drainage. These additions represent a good start toward providing protections, however, they do not go far enough and three parcels on the east side of the range (parcels 5, 6, and 7) remain unencumbered. We request that the Forest Service and private landowners provide further assurances that large-scale development will not occur on any of the exchanged parcels going into private ownership. Development could have a significant effect on the character of the range and the wildlife habitat it provides. Durable and more robust conservation assurances, whether conservation easement or restrictive covenants, must run with the land to ensure the wild character of the land remains into the future.

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, 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 currently proposed restrictive covenants limit the subdivision of parcels under 160 acres and prohibit mineral exploration and development in the Sweetgrass Creek Drainage. With these insufficient restrictions, commercial and residential development



can still occur in the drainage and on the unencumbered parcels on the east side. Residential and commercial development is entirely possible within the bounds of the proposed restrictive covenants. What's more, even if the parcels were subdivided to 160 acres, it would be a significant change to the current character of the area and would degrade the essential low-elevation wildlife habitat. The land values for exclusive luxury real estate have skyrocketed in Montana, and this proposal, with such limited development protections, sets the stage for considerable land conversion to occur on the east side of the range.

The South Crazy Mountain Land Exchange, which was finalized in January 2022, included 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. The lack of conservation safeguards in this exchange disproportionately favors the interest of the private landowners at the expense of the public interest and the natural resources that the Forest Service is entrusted with. The Forest Service must strengthen this proposal in order to meet its goal of making decisions for “the greatest good, for the greatest number, for the longest time”.

III. The Forest Service analysis of this proposal is insufficient and does not provide the public with full transparency.

Secondarily to our concerns regarding conservation assurances, Wild Montana finds the FEA lacking and would like to see additional analysis and public disclosure.

A. Need to analyze all foreseeable impacts to wildlife.

1. Impacts from potential development.

The Forest Service's analysis of the proposal cannot rely on an underlying assumption that the land going to private ownership will remain undeveloped when no assurances are guaranteed by the proposal. For each species discussed in the FEA, the analysis follows the same pattern. The analysis concludes that the species will not be negatively impacted or potential cumulative impacts would be negligible because the “[p]rivate landowners *intend* to maintain land as undeveloped rangeland or to continue similar use in the foreseeable future” and the species will be benefited by consolidating public lands



and increasing connectivity.¹ This is flawed reasoning that is basing the analysis on speculative conditions.

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

Under the National Environmental Policy Act (NEPA), the Forest Service must analyze reasonably foreseeable environmental effects of a proposed agency action.² An effect is “reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account when reaching a decision.”³ Without more durable conservation protections in place, as discussed in Section II, it is reasonably foreseeable that the lands going to private ownership could be developed. At a minimum, the Forest Service must analyze what would happen if the landowners decided to develop within the parameters of the existing proposed restrictions. It is foreseeable that even if the land remained in large sections or if it was subdivided to a size larger than 160 acres, it could still be extensively developed for a multitude of uses other than mineral development. Furthermore, there could be unrestricted development on parcels 5, 6, and 7. Development is a reasonably foreseeable impact from land consolidation, especially considering a luxury real estate development interest (the Yellowstone Club) is helping to facilitate this exchange. The change in character of the land resulting from development stands to significantly impact wildlife habitat and must be analyzed as part of the Forest Service’s decisionmaking 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.

An agency action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under the Administrative Procedure Act (APA) “if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision

¹ *Easy Crazy Inspiration Divide Land Exchange: Environmental Assessment*, U.S. Forest Service (Sept. 2023), at 44–55 (emphasis added) [hereinafter *FEA*].

² 42 U.S.C. § 4332. The amended NEPA regulations under the Fiscal Responsibility Act of 2023 (H.R. 3746), reinstated this explicit language into the statute and the Council of Environmental Quality’s May 2022 final rule for NEPA’s implementing regulations, also included a directive for agencies to review reasonably foreseeable impacts.

³ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).



that runs counter to the evidence before the agency...⁴ By issuing a Finding of No Significant Impact for this land exchange proposal without completing the requisite analysis, taking into account reasonably foreseeable effects, the Forest Service's decision is arbitrary and capricious in violation of NEPA. The Forest Service must remedy the land exchange proposal's analysis by taking a hard look at the evidence in front of the agency, not assumptions, regarding the potential for development and impacts on wildlife to fulfill their obligations under the APA and NEPA.

2. Impacts from increased human presence after the creation 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 FEA 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 FEA does not include 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.⁵

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. 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.⁶ The Crazies already

⁴ 5 U.S.C. § 706; *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (summarizing judicial review under the Administrative Procedure Act).

⁵ FEA at 43–44.

⁶ 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.”).



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.

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 FEA properly analyze any of the potential impacts. Instead, the FEA simply states that “[t]he parties will enter into a more detailed collection agreement regarding the trail and trailhead improvements” and these improvements “may include” resurfacing the current parking area, construction of additional parking, installation of toilet facilities, and installation of an interpretive kiosk.⁷ 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.

B. Need to analyze the environmental effects of remaining partial mineral rights.

The FEA analysis 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. On the other hand, all of the federally owned mineral rights will be transferred to the non-federal parties. The FEA recognizes that the agency identified eight land parcels (parcels B, E, F, G, H, I, J, and K) with outstanding mineral rights, with ownership that is fractionalized among many owners. The FEA goes on to state that the Forest Service would manage the surface estate consistent with the management goals and objectives in the Land Management Plan for adjacent federal lands and that for the lands “where all or part of the minerals estate does not transfer to federal ownership, the Forest Service has no authority over the disposition of the mineral estate of the authority to deny the exercise of an outstanding mineral right.”⁸

By having outstanding mineral interests on the parcels going to public lands, the Forest Service cannot provide assurances against future development. It begs the question of whether this land exchange is in the public interest if whole-estate lands are traded away for split estates that could someday be developed. Stating that there will be no potential environmental impacts because there is presumably low moderate potential for discovery is not a sufficient analysis of the severed mineral estate. The Forest Service

⁷ FEA at 22.

⁸ FEA at 66.



must analyze the reasonably foreseeable impacts from mineral exploration and development on the parcels where interests remain.

C. Need to conduct land appraisals and provide the public with that information in a timely manner.

The Federal Land Policy and Management Act of 1976 (FLPMA) requires that the value of exchanged lands be equal.⁹ The FEA contemplates possibilities if the final appraisal were to come back with land values where either the non-federal lands exceed the value of federal lands or vice versa.¹⁰ If there are unequal values, the Forest Service and private landowners may change the amount of land being conveyed. This final land valuation will not occur until the final decision. As discussed above, outstanding mineral interests remain. These potential mining interests must be considered in the Forest Service's land appraisal.¹¹ Since the valuation could impact the specifics of the lands that are exchanged, the valuation should be completed when the public still has the opportunity to engage with the analysis, not after the public engagement timeline has concluded. If the valuation finds unequal values, a supplemental comment period should be offered to allow the public to weigh in on changes to the version of the proposal that was presented to the public.

IV. The Forest Service should not relinquish public access claims in violation of the Gallatin Travel Plan.

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 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 inholdings within Sweetgrass and Big Timber creek drainages, includ[ing] existing trails: East Trunk #115 [and] Sweet Grass #122."¹² Instead of

⁹ *Federal Land Policy and Management Act*, 43 U.S.C. § 1716.

¹⁰ *FEA* at 20.

¹¹ 16 U.S.C. § 486 ("Either party to an exchange may make reservations of timber, minerals, or easements, the values of which shall be duly considered in determining the values of the exchanged lands.").

¹² *Gallatin National Forest Travel Management Plan Decision*, Forest Service, Dec. 2006, at Chapter I-5.



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 as well as 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. Retaining the public access claims to these disputed areas would maintain the status quo. Giving up all public claims to this area now would preclude the public from ever regaining access if evidence of a historic right-of-way ever came to light and affirmed the public's right to this area.

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 easy 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 could set a bad precedent for future public land access disputes.

V. The Forest Service must properly engage with all the Tribes that have an interest in the land exchange and landowners must provide enforceable assurances regarding the Crow Tribe's access to Crazy Peak.

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 includes 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. The FEA states that the Crow Tribe submitted a letter of support in 2020. We want to ensure that continued and transparent tribal consultation has occurred since 2020.

Additionally, while we understand that the agreement between Switchback Ranch, LLC and the Crow Nation regarding access to Crazy Peak in Section 7 is outside Forest Service jurisdiction, the agreement must be finalized before or as a simultaneous condition of the exchange. We want to ensure that the Crow Tribe will have an enforceable right to access Crazy Peak and therefore request that the agreement between the two parties be made in writing with signatures from each party. Further, this



agreement should run with the land and not be specific to Switchback Ranch, LLC so that the Crow Tribe can continue to have access to the parcel of land even if ownership of Switchback Ranch changes.

VI. Conclusion

To reiterate, adding stronger conservation assurances to this proposal is the fundamental condition for our support and we believe is the only way for the Forest Service to meet its obligation to act in the public interest. 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. Pursuant to 36 C.F.R. § 218.11(a), we request to meet with the reviewing officer to discuss the issues raised in this objection and potential resolution. In the event that multiple objections are filed on this decision, Wild Montana respectfully requests that the resolution meeting be held with all objectors present. Thank you for your time and consideration. We look forward to helping ensure the Crazy Mountains remain wild into the future.

Sincerely,

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