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Comments: Please see the attached comments from the Park County Environmental Council, a community advocacy organization dedicated to the protection of wild land, water, wildlife and people in the northern Greater Yellowstone Ecosystem. We focus locally to protect habitat and improve community resilience so people and the wild can thrive.

We thank the Forest Service for the opportunity to provide comments on the East Crazy Inspiration Divide Land Exchange and for their work to resolve land management issues in the Crazy Mountains.

12/16/2022

Custer Gallatin National Forest

Attn: Forest Supervisor, Mary Erickson

P.O. Box 130

Bozeman, MT 59771

RE: Preliminary Environmental Assessment for the East Crazy Inspiration Divide Land Exchange

Dear Ms. Erickson,

I am writing on behalf of the Park County Environmental Council (PCEC), a local grassroots environmental group with more than 500 members and 3,500 supporters. I appreciate your time and consideration of this important matter, and thank you for the opportunity to provide comments to the Custer Gallatin National Forest (Forest Service) on the Preliminary Environmental Assessment for the East Crazy Inspiration Divide Land Exchange (EA or Proposal).

Park County Environmental Council is a community advocacy organization dedicated to the protection of wild land, water, wildlife and people in the northern Greater Yellowstone Ecosystem. We focus locally to protect habitat and improve community resilience so people and the wild can thrive.

PCEC's work takes place on Indigenous lands in one of the most critical wildlife habitat areas in North America. Indigenous Peoples have been and continue to be the stewards of this land since time immemorial. Many call this landscape home, including but not limited to: the Crow, Cheyenne, Blackfoot Confederacy, Flathead, Sioux, Shoshoni, Salish and Arapahoe. We are not the first generation of people to love and care for this place, and we won't be the last.

A group of locals formed PCEC in 1990 to fight resource extraction on public lands and unchecked development on private land. Throughout most of PCEC's history, we have worked successfully to prevent local industrial threats. In a landmark victory in 2019, PCEC led a united community to pass the Yellowstone Gateway Protection Act - federal legislation preventing gold mining on 30,000 acres of public lands. In recent years, we've stopped industrial threats such as gravel pits, asphalt plants, tire dumps, and oil and gas drilling.

Park County is experiencing rapid growth and change, and our once very interdependent small towns and rural communities are experiencing increasing wealth inequality and political division. This change is being further complicated by a rapidly changing climate: droughts and floods, fire, and invasive species. The future of PCEC's work requires working proactively to create resiliency and equity in our communities, so we can be prepared for change and continue to live in a place where people and the wild can thrive.

I. Background

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PCEC has long been a local advocate for the Crazy Mountains, or as we refer to them locally, the Crazies; in fact, our organization's original name was Crazy Paradise, reflecting our regard for the importance of the mountain range for Park County. We are a community within and surrounding the Crazies, and PCEC members regularly hike, hunt, fish, run, ride horses, ski, view wildlife and seek solace in this magnificent mountain range.

The legacy of checkerboard land ownership is on full display in the Crazy Mountains. Many of the odd numbered sections on the interior of the range are privately owned, such as the Chief Plenty Coups vision quest site on Crazy Peak and sections of Sweet Grass Creek, a wide, flat river valley that cuts deep into the east side of the range and has been traveled by humans for thousands of years.

The checkerboard land patterns have not only contributed to the history of conflict over land management and public access, but also make the Crazy Mountains a particularly vulnerable landscape to development in our growing corner of Montana. Private lands are vulnerable to development, which could fragment habitat for threatened species such as Canada lynx, wolverine, grizzly bear, and bison. Additionally, consolidation of public land is a necessary precursor to larger-scale protective designations on the forest, such as Wilderness. PCEC is committed to working with our community to identify solutions to land use conflicts in the Crazy Mountains.

For the last several years, we've been showing up, spending late nights in bars and church halls listening to neighbors, hosting open houses to hear from locals, walking for days and sleeping out nights on the ground, learning about the land, and talking to people who have spent their lifetimes on it. We understand the complexity of the issues faced by area ranchers, people like us that want to access and experience the land, and the Forest Service. We have also dug into the history and oral traditions of the people that came before us to understand the changes in relations and land management policies that separated people from land and one another. Many of these policies, like the land grants given to the railroad, created the foundation of the conflict we experience today.

Probably one of the biggest, and most under-recognized benefits of this project is relational.

Listen to the oral histories collected by the University of Montana and the Lewis and Clark National Forest from people that lived near the Crazy Mountains in the early part of the 1900s. There are several stories that demonstrate how well the ranchers, forest rangers and others knew and relied on one another. How the rangers would come through every year and maintain the trails so the ranchers could reach their grazing permits. How people would freely walk through private land and would stop in and share a meal with ranchers as they were passing through. So much has changed, and the relationships have been lost or are completely adversarial. We are very supportive of the Forest Service and their efforts to collaborate with area landowners and other diverse interests to consolidate federal land and resolve longstanding access issues. Like PCEC, other area ranchers, conservationists, tribal members, public land advocates, agency personnel in the community have also been showing up, listening to one another and forging new relationships. It resulted in the new Porcupine Ibex trail. It created the conversation out of which this project emerged. It is facilitating dialogue about long-term stewardship of the landscape.

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We encourage you to keep it up. It is working, and it is essential.

We're just the latest generation in a long line of people that have lived in relation with this wild, working and sacred mountain range. Let's keep trying to be the best possible ancestors of the land and build a more resilient community in the process.

II. Project Benefits

This land exchange represents a rare once-in-a-lifetime opportunity to undo some of the problematic checkerboard land ownership put in place in the Crazy Mountains over 150 years ago.

The East Crazy Inspiration Divide Land Exchange aligns with our long-term vision of a consolidated and contiguous public landscape with secured public access and permanent designation of the national forest lands.

Some of the benefits of the proposal include:

a. Land Consolidation

In order to accomplish large landscape protection for the Crazy Mountains the Forest Service first needs to address and find practical solutions to the checkerboard land ownership that fragments the range. The proposal consolidates roughly 30 square miles of checkerboard land and provides more effective and efficient management and protection of consolidated lands in the Crazy Mountains.

b. Wildlife Connectivity

Private lands in the interior of the range remain vulnerable to development. Local governments in Sweetgrass and Park County do not have the tools to preserve private development from infringing on wildlife habitat. The proposal improves wildlife connectivity and protects habitat by converting 10 sections of private land on the interior of the range to the Forest Service and reducing the potential for development in the backcountry.

c. More Public Land with Protective Status

There is a net gain of federal lands under some form of protective management "to preserve and enhance the quiet, undeveloped, unroaded characteristics" of the Crazy Mountains.

This land exchange adds 5,176 acres to the Crazy Mountain Backcountry Area, 1,104 acres to the Inventoried Roadless Area, and 640 acres to the South Crazy Mountains Recommended Wilderness Area. When combined with existing protections, these additional parcels extend the boundary of Inventoried Roadless Area to 82,091 acres, the South Crazy Mountains Recommended Wilderness area to 10,260 acres and Crazy Mountain BCA to 35,818 acres.

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All federal lands in the Crazy Mountains should be protected with a conservation designation like Wilderness, Backcountry, or Tribal Wilderness and the land consolidation achieved in this exchange serves as a major step in that direction.

d. Smeller Lake Expands the South Crazy Mountains Recommended Wilderness Area

The land exchange acquires an additional 640-acre parcel and the alpine Smeller Lake that was excluded from the previous South Crazy Mountains Land Exchange. This additional section will be added to the South Crazy Mountains Recommended Wilderness Area.

e. Cultural Resources

There is a net gain of federal lands that will be protected under treaty obligations and require engagement and ongoing consultation with tribes. The Crazy Mountains are recognized as a Tribal Cultural Landscape by the Forest Service. Unlike private land, any tribe that attaches religious and cultural significance to tribal cultural properties must be consulted by the Forest Service under Section 106 of the National Historic Preservation Act (1966). See more below.

f. Public Access Improvements

The proposal resolves long-standing public access and land use disputes between Big Timber and Sweet Grass Creeks by securing permanent easements and relocating the East Trunk connector primarily to consolidated public land: Trail 136, commonly referred to as the "East Trunk Trail," is a historic route that once connected Big Timber Creek Road to Sweet Grass Creek Road. This route crosses five sections of private land and three sections of public land. Due to the dispute over the legality and location of the trail between the landowners and the Forest Service, the route is obstructed, and has not been accessible to the public for several years. A hunter was cited for trespass trying to access the public land along this route in 2016.

g. Quiet Backcountry Experience

Post exchange, the proposal would provide a unique, quiet, backcountry experience: A new 22-mile "Sweet Trunk Trail" would be constructed and funded by the participating landowners on National Forest lands gained in the exchange. This wilderness-compatible foot and horse trail would connect to Trail 119 on the west side of the range, offering the opportunity for a backcountry loop. We value and appreciate improved opportunities for people in our community to access, enjoy and connect with wild lands, as these experiences are foundational to creating a culture of conservation and stewardship.

III. Park County Environmental Council Comments on East Crazy Mountain Land Exchange

The Crazies are invaluable wild nature and deserving of the utmost care and consideration. This land exchange represents an extremely rare opportunity to have willing landowners, the Forest Service, and many diverse interests engaging on an issue important to Montanans. It will impact the landscape, wildlife, and our communities forever. How the Forest Service proceeds could be a model for how to handle land use conflict, or not. We urge you to thoughtfully consider the comments, the science, and the cultural studies and make the best possible decision for people and wildlife.

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We'd like to offer the following comments, concerns, and recommendations. Our comments focus on the Crazy Mountains aspects of the exchange. Thank you for the opportunity to comment.

a. Meeting NEPA Process and Public Interest Obligations

We appreciate the opportunity to comment on the preliminary Environmental Assessment. However, we want to ensure that we and the members of the public have more opportunities to comment, as the Forest Service completes its analysis.

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The National Environmental Policy Act ("NEPA") requires the Forest Service to analyze and disclose the environmental consequences of its proposed actions before decisions are made. The purpose of scoping is to provide federal land managers "an early and open process for determining the scope of issues to be addressed

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and for identifying the significant issues related to a proposed action." Scoping allows the Forest Service to solicit any new information from stakeholders, landowners, scientists and the community that could point to the need for an environmental analysis ("EA") or an environmental impact statement ("EIS") instead of a

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categorical exclusion ("CE") .

Scoping is the means to identify the presence or absence of any extraordinary circumstances that would

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warrant further documentation in an EA or EIS. .

Many of PCEC's members are employed as scientists, outdoor recreation professionals and fly-fishing guides, or are wildlife enthusiasts, recreationists and business owners that rely on the extraordinary environmental resources associated with the Crazy Mountains. This community understands the importance of participating in public processes, as was evidenced during the effort to protect Yellowstone's Gateway from industrial mining.

PCEC strongly urges that the Forest Service open an additional comment period to allow for further community input and review upon completion of preliminary analysis. The Custer Gallatin is already in an ongoing lawsuit over a NEPA process complaint in the Crazy Mountains. This project may make the Forest Service vulnerable to another lawsuit that could stall the proposal.

Here are some suggestions to improve the public engagement process:

b. The public should have an additional open comment period and opportunity for engagement.

We are concerned with the decision to have a combined scoping/EA comment period as the only opportunity for individuals to provide written comment on this project. The only remaining opportunity for engagement is an objection period, restricted to only parties that commented during this initial period. We believe it is necessary that the comment period upon the release of the draft decision should be open to everyone.

c. The EA is preliminary and is missing critical information from the environmental, wildlife and cultural analyses that would inform public comments.

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42 U.S.C. § 4321 et seq.

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40 C.F.R. § 1501.7

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Forest Service Handbook 1909.15, ch. 30, § 31.1 at 4

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Id

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At public meetings in Bozeman and Big Timber the Forest Service made it clear that it had not completed the analysis and was unable to provide critical information. For example, the Forest Service was unable to answer questions about creek seasonality, fish habitat, wetlands and other critical elements. Additional information is required for people to adequately comment.

Here are questions that the Forest Service and Preliminary EA have been unable to answer:

What if there are important cultural sites on areas that would be transferred to private land? What if there is not enough wetland habitat to offset the loss of wetlands in Sweet Grass Creek? What if the new trail cuts through sensitive Canada lynx habitat? Is there any yearlong water source along the proposed 22-mile East Trunk Trail?

The Forest Service must complete the environmental analysis prior to settling on just one action alternative.

d. The Forest Service should thoroughly analyze the impacts of reasonably foreseeable uses of the land that the agency is conveying

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Miller (2019) states, "The complexity of complying with NEPA, the ESA, the NHPA, and related laws when processing a land exchange will often hinge on identifying and evaluating the impact of the reasonably foreseeable uses of the land that the federal agency is considering conveying."

Through the relationships we've built with the ranchers involved in the land exchange, we have a high degree of confidence that this generation of landowners will continue existing ranching, guest ranching, and outfitting traditions and conserve the rural and wild character of the Crazy Mountains.

However, there is no guarantee that future property owners will continue these practices.

The pace of growth and development in our area of Southwest Montana warrants the Forest Service to evaluate reasonably foreseeable uses of the public lands that would be conveyed to private landowners. If we look at examples of recently acquired land elsewhere in the region, we have several illustrative examples.

What if Sweet Grass Creek became a luxury commercial hotel? A development full of second homes? What if the eastern front of the Crazies becomes subdivisions or golf courses?

e. The Forest Service should thoroughly analyze the impacts of the project with a full EIS

There are many unanswered questions in the Preliminary EA. We believe the impacts of the land exchange, potential future development on private parcels, and a new trail through previously unfragmented land warrant a more detailed analysis.

To "preserve and enhance the quiet, undeveloped, unroaded characteristics and associated social and ecological benefits", we recommend the Forest Service conduct a full Environmental Impact Statement.

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Miller, S. K. (2019). Missing the Forest and the Trees: Lost Opportunities for Federal Land Exchanges. Columbia Journal of Environmental Law, 38(2). <https://doi.org/10.7916/cjel.v38i2.3517>

More Citation Formats

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f. Additional alternatives should be evaluated in the draft decision.

While there are several benefits of the combined land exchange, additional alternatives should be considered in the draft decision once the environmental, wildlife, and cultural analyses are completed.

One critically important question that needs to be addressed is: Should the sensitive riparian habitat, especially that in the most controversial sections 8 and 10, be deed restricted or precluded from the exchange?

As proposed, the land exchange is an unequal exchange of ecological landscapes. Sections 8 and 10 are valuable. They should be exchanged for checkerboard lands that are most critical to the survival of species and overall ecosystem health and connectivity. It would be beneficial for the public to have alternatives that are a more fair exchange.

For example, the Forest Service could consider whether there are any viable alternatives that include the public acquiring parcels farther up the Sweet Grass Creek drainage. These parcels may be superior to gaining the north facing timbered slopes in Sweet Grass Creek, especially if the trail can descend into the Sweet Grass flat bottom earlier in Section 10.

g. Make up for differences in value by acquiring additional land, not through cash equalization

While not enough data was included in the Preliminary EA to determine the market value of each of the parcels exchanged, we suspect the sections given up by the Forest Service are considerably more valuable than those gained. The low-lying creek bottom habitat along Sweet Grass Creek, for example, is being exchanged for lands that are "de facto" wilderness - land that is so steep and remote that it has a lower risk of being developed.

If the land values are not equal, the Forest Service should equalize the exchange by gaining more valuable riparian land in interior parcels. Ideally, this would be done with each landowner separately, so each landowner is giving and gaining equally valuable land. For example, if Eagle Park in Section 8 is traded, it should be exchanged for equally valuable riparian habitat in the same drainage, such as near Moose Lake, or at the junction of the trail up to Sunlight Lake. The acquisition of Rock Lake could also help equalize value and achieve consolidation within the South Crazy Mountains Recommended Wilderness that was unable to occur with the South Crazy Mountains Land Exchange.

h. Actions should be taken to make recommended wilderness and backcountry designations permanent

Many of the sections acquired in this land exchange are commingled or adjacent to land that was Recommended Wilderness, Backcountry Area or Inventoried Roadless Areas in the Forest Plan. As land is acquired, it will be managed similarly to the recommendations in the Forest Plan. Support for legislated backcountry and wilderness areas in the Crazy Mountains should be discussed with landowners, and be a prerequisite for the land exchange. We are hopeful that this land exchange builds momentum for legislative protections and urge the Forest Service to take steps towards permanent designation.

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IV. Cultural Consultation and Obligations under the National Historic Preservation Act

a. The Crazy Mountains are a unique cultural landscape deserving of an in-depth and comprehensive Class III Cultural Resource Evaluation and ethnographic study of the project area.

The Custer Gallatin Land Management Plan states that the Crazy Mountains "embody a tribal cultural landscape significant to ongoing traditional cultural practices". However, overall field work, archeological research and knowledge regarding the Crazy Mountains is limited. As of December 2022, the Montana

Cultural Resource Database shows that the area involved in the land exchange has not been inventoried. Congress has determined that "the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American

people," National Historic Preservation Act of 1966 , and has enacted a series of measures designed to

encourage preservation of sites and structures of historic, architectural, or cultural significance. Given the number of prehistoric and historic sites present in the Crazy Mountains and surrounding area, a comprehensive inventory including multiple Indigenous nations who identify as being connected to this mountain range is essential to understanding the cultural context of the area.

The Forest Service should analyze whether the construction of a new trail or reasonably foreseeable uses of the land transferred to private landowners will adversely affect any National Register historical properties. As defined by the Montana State Historic Preservation Office, National Register Historic Properties consist of districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feelings and association. Significance of Historic Properties are evaluated relative to the following criteria:

? associated with events that have made a significant contribution of the broad patterns of our history

? associated with the lives of persons significant in our past

? embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.

? have yielded, or may be likely to yield, information important in prehistory or history.

There is a deep archeological record in the general area, beginning about 11,000 radiocarbon years ago, as

evidenced by the Anzick site (Lahren, 1976) . Extensive prehistoric evidence for long-term use of the project area is documented in the Sam and Hilda Morris collection, interpreted by Dr. Lahren and displayed at Big

Timber's Crazy Mountain Museum. According to Lahren (2006), "If Clark had traveled north and east after crossing the Shields River, he would have followed the aboriginal trail along the east side of the Crazy Mountains through Sioux Crossing to the Musselshell River, Judith Basin and ultimately the Missouri River in the Big Dry Area."

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Montana Cultural Resource Database <https://svc.mt.gov/adsams/>

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80 Stat. 915, 16 U. S. C. § 470 (b) (1976 ed.)

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Penn. Central Transp. Co., v. New York City, 438 U.S. 104, n.1 (1978)

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The Myers- Hindman Site: An Exploratory Study of Human Occupation Patterns in the Upper Yellowstone Valley from 7000 B.C. to A.D. 1200, Unpublished doctoral dissertation, Department of Archaeology, University of Calgary, Alberta, Canada.

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Considering the deep human history, the presence of numerous Indigenous nations during the colonial settlement period, and the profound significance of vision questing in the range, the land exchange area is deserving of the utmost consideration.

b. The Forest Service must conduct deeper engagement, consultation and co-management with all regional Indigenous Nations that identify as connected to the Crazy Mountains.

The Crazy Mountains are native lands. There are more than 11,000 years of human history in this area. The wide creek valleys that cut into the range like Sweet Grass Creek and Rock Creek have a similarly long history of Indigenous use and habitation. During white settlement of the area, this land was home to the Crow, Salish, Cheyenne, Sioux, Blackfeet, and more. Many Indigenous Nations and peoples have had and maintain a connection to this mountain range. Therefore, engagement, consultation and future co-management should include all regional Indigenous Nations that identify as being connected to this landscape.

The Preliminary EA states that "In carrying out the responsibilities under Section 106 of the National Historic Preservation Act (1966), the Forest Service is required to consult with any tribe that attaches religious and

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cultural significance to such properties when any Federal undertaking may affect them." What Nations did the Forest Service reach out to seek input on this land exchange? It would be ideal for the Forest Service to clarify how they engage diverse Indigenous nations and peoples in addition to the Crow Nation, during every stage of this process since multiple Indigenous nations have been and are still connected to the landscape beyond the treaty era.

It would also be ideal for the Forest Service to clarify how they will protect and honor sacred land and traditional use in the Crazy Mountains for all Indigenous nations and peoples who identify as being connected to the range. Considering the more than 11,000 year human relationship with this mountain range, it really implores us to take the extra step of inclusion and outreach. We acknowledge that Tribal Governments and Historic Preservation Officers are very constrained on time and resources, and they could be responding to thousands of requests for Consultation each year. In addition to formal Consultation letters to Tribal Presidents, we recommend the Forest Service follow up with personal outreach to Tribal Governments and include participation of Indigenous partners whenever possible on the ground, such as when the archaeologist does site visits in the field.

c. Methodology for Conducting Archeological Studies

It would be beneficial to include and consider more than archeological knowledge to understand the layered history of the land. With time, land use changes and erosion, hard archeological evidence of Indigenous presence may not be apparent, but that is not the only way of knowing. A deeper understanding of the area could be obtained through oral tradition and oral history. Has the Forest Service considered asking diverse Indigenous narrators if they have stories of the Crazy Mountains? We recommend bringing Indigenous partners to the landscape. When people are present on the land different stories and ethnographic evidence

might come up that otherwise would not be part of the archaeological record.

d. Sites in the Crazy Mountains could be deserving of recognition under the National Register of Historic Places, but only after a thorough inventory

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16 USC 470a(d)(6)(A)

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Section 106 of NHPA requires that, prior to any federal undertaking, the relevant federal agency "take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register" and "afford the Advisory Council on Historic Preservation . . .

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a reasonable opportunity to comment with regard to such undertaking.

Section 106 of NHPA is a "stop, look, and listen" provision that requires each federal agency to consider the

effects of its programs. NHPA requires that a federal agency must make a reasonable and good faith effort to

identify historic properties; determine whether identified properties are eligible for listing on the National

register; assess the effects of the undertaking on any eligible historic properties found; determine whether

the effect will be adverse; and avoid or mitigate any adverse effects.

e. Deed restrictions should be used to protect important cultural resources

It would be helpful to understand how the Forest Service consults with Indigenous nations on tribal cultural resources found on public land. Will the Forest Service consult with Indigenous nations to determine if a cultural resource is considered to be significant and should not go into private land ownership, and if it does go into private land ownership, how will it be determined if there should be any restrictions on the land? In addition to the high peaks with known spiritual significance, it is very likely that the valley bottoms and foothills, with access to water and game, have a long history of Indigenous use and habitation. Agency regulations state that the Forest Service "shall reserve such rights or reserve such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate."

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Prehistoric sites merit careful consideration and may not be appropriate for exchange.

f. Crazy Peak Conservation Easements and Tribal Access

We are very grateful and supportive that Switchback Ranch, LLC has agreed, in conjunction with the land exchange, to grant a conservation easement to the Montana Land Reliance to maintain the open space character of Section 7 to preserve wildlife habitat, quiet enjoyment, and other values that enhance the surrounding character of the forested lands. The proposed conservation easement will prohibit all residential development on the property.

Considering the significance of this mountain to the Crow Nation, as the site of at least one of Chief Plenty Coups' vision quests, we believe it merits more protection and restriction of activities than just that of residential development. Significant cultural properties such as Crazy Peak are absolutely a "historical and cultural foundation of the Nation" and deserving of federal designation and permanent protection.

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16 U.S.C. § 470f

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Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 805 (9th Cir. 1999).

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36 C.F.R. § 800.4(b)

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36 C.F.R. § 60.4

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36 C.F.R. §§ 800.4(c), 800.5, 800.9(a)

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36 C.F.R. §§ 800.5(c), 800.9(b)

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36 C.F.R. §§ 800.8(e), 800.9(c)

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36 C.F.R. § 254.3(h)(1999); accord 36 C.F.R. § 254.3(h) (2013)

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While this may be outside of the Forest Service's authority, we recommended discussing additional protections such as registration as a national historic site, or a first right of refusal to the federal government in the eventual case that the landowner sells the land.

Because it is uncommon for the Forest Service to acquire land encumbered by a conservation easement, we recommended analyzing alternative conservation tools or deed restrictions that would facilitate transfer and protection of this historically significant site to the federal government in the future.

g. Clarification needed on permissive access for the Crow Tribe

We are also curious about the details of the arrangement between the Crow Nation and the Switchback Ranch on access to Crazy Peak. How would this access be granted? Who would manage it? Would it be perpetual like the conservation easement? How would it be arranged to transfer with the title of the land? Would members have to prove a tribal affiliation? Why is the arrangement only with Indigenous peoples of one Indigenous nation? While we believe there is a lot of good intent behind providing permissive access, there could be a lot of issues with an exclusive arrangement. While this is outside of the Agency's decision, we feel it is important to state these questions here so that they may be shared and considered by the project proponents.

h. An alternative could be for the Forest Service to acquire Crazy Peak and permanently protect this mountain as a National Historic Landmark.

The aforementioned concerns would be negated if Section 7 with Crazy Peak were to be acquired from the Switchback Ranch instead of Section 33 (Parcel H). While it contributes to the land consolidation of the area, it is de facto wilderness not required for relocation of the trail.

V. Land-use restrictions needed to protect habitat and riparian areas

a. The Forest Service needs to place any land that is traded to private ownership under deed restrictions or conservation easements to prevent future development.

One of stated goals of this exchange is to "Conserve the existing character of the Crazy Mountains." If future development is to occur on lands conveyed from the Forest Service to private landowners as part of this exchange, it would fly in the face of the spirit of this land exchange.

Without restrictions, we are concerned that lands transferring from public to private ownership might actually facilitate development on consolidated private land.

b. Deed restrictions, or conservation easements, to preclude all mineral development and mining, as well as preclude industrial, commercial and residential development should be placed on lands conveyed from public to private ownership.

For the last several years, PCEC has continually advocated to improve the public and conservation outcomes of the exchange.

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For example, in a March 2020 letter from PCEC to the project proponents, we stated: "To maximize the long-term conservation benefits, we recommend placing conservation easements on lands acquired from the Forest Service. These easements would restrict the potential use of lands in the exchange to normal ranching and grazing operations, and prohibit mining, logging, subdivision, residential or other developments that would significantly degrade the current wild character and archeological value of the land."

PCEC's support for advancing the exchange to the Forest Service hinged upon the understanding that landowners in Sweet Grass Creek would place conservation easements on lands being conveyed to private

ownership.

The landowners had expressed interest in permanently protecting wetlands and habitat for wildlife at least on Sections 8 and 10 in Sweet Grass Creek, but the current proposal does not require any land protections as a condition of the land exchange.

We were expecting to see the Forest Service require voluntary easements upon closing like that in the South Crazy Mountains Land Exchange and expect this to be part of any future decision.

c. The Forest Service has Precedent for Conservation Easements as part of South Crazy Mountains Land Exchange

As part of the Agreement to Initiate with the Forest Service in the South Crazy Mountain Land exchange, all landowners agreed to voluntarily place conservation easements on the federal lands to be conveyed into private ownership at closing of the exchange. The conservation easements were to preclude all mineral development and mining (hard rock and oil/gas), as well as residential, industrial, or commercial development, except one new recreation cabin which may be built and maintained on the land protected by the voluntary easement. The easements were to be held by a qualified non-profit conservation organization in the state of Montana, and would continue to allow for traditional land uses for the landowners including recreation, livestock grazing, and timber management. The executed voluntary conservation easements would be filed for the record with the Clerk and Recorder in Park County, and Sweet Grass County, Montana upon closing.

These restrictions gave the public assurance that the character of the wild and working landscape in the Crazy mountains would remain, post-exchange.

By contrast in the Preliminary EA for the East Crazy Mountains, discussion of conservation easements is considered to be "outside of the Agency's decision on this exchange" and were not evaluated. The easements were not agreed to during the Agreement to Initiate, and the Preliminary EA indicates a weak commitment of ongoing discussion "WLG has committed to continued discussions with land conservation organizations and wildlife conservation groups regarding additional conservation measures that would be accomplished post exchange to include additional voluntary conservation easements."

We urge that agreements with all landowners be finalized prior to the final EA and draft Decision Notice and that the restrictions that will be placed on properties be clearly defined.

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If the landowners do not agree to conservation easements, we suggest the Forest Service restrict the property prior to transferring the land to private landowners and make protection of the wetlands a condition of the land exchange. This is critically important information to be considered as part of the scope of the Environmental Analysis.

d. As an alternative to voluntary conservation easements, consider deed restrictions or other modifications to the acreage involved prior to conveying the land

A better alternative to voluntary conservation easements could be for the Forest Service to place land-use restrictions on wetlands, habitat, and cultural sites prior to exchanging the land. This could come in the form

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of conservation easements that are held by the Forest Legacy Program, conservation servitude agreements or deed restrictions (as long as they run with the title of the land). Refer to Missing the Forest and the Trees: Lost Opportunities for Federal Land Exchanges by Scott K. Miller on the matter. Agency regulations state that the Forest Service "shall reserve such rights or reserve such interests as are needed to protect the public interest or

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shall otherwise restrict the use of Federal lands to be exchanged, as appropriate."

With deed restrictions on the property prior to transfer, the Forest Service can also structure the restrictions to be in alignment with adjacent land management so that the Forest Service can more easily acquire the property in the future in the event that landowners are willing to sell the land outright.

VI. Wetland and Riparian Habitat

e. The Forest Service must ensure that wetland requirements are met.

At the public meetings in Bozeman and Big Timber, the Forest Service said that they did not know if the

proposed exchange would meet those requirements because they have not completed a full survey. In order to fully and adequately comment on this portion of the EA, we will need to see a final wetland report from the Forest Service. Until such time, we offer the following based upon the information given in the Preliminary EA.

We commend the Forest Service for working with landowners to acquire additional public land containing wetland resources through the acquisition of Smeller Lake.

However, even with those additions the discrepancy between wetland acreage in the exchange is quite lopsided. The public will be giving up approximately 52.4 acres of wetlands in return for approximately 7.8 acres of wetlands. A more equitable ratio of wetland acreage needs to be considered in the exchange.

f. Three of the landowners involved in the exchange have wetlands on other private inholdings in the Crazy Mountains that could be used to make up for the imbalance

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Montana also authorizes conservation servitudes appurtenant to adjacent lands owned in fee title at Section 70-17-101(18), M.C.A.

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36 C.F.R. § 254.3(h)(1999); accord 36 C.F.R. § 254.3(h) (2013)

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Carrocia Family Ranch, Crazy Mountain Ranch and Switchback Ranch all have valuable wetlands and waterways on their properties that could be acquired to balance the exchange. If the Forest Service was to acquire additional acreage such as Moose Lake, Rock Lake, Druckmiller Lake, Granite Lake, or Twin Lakes could not only balance the wetlands, but consolidate additional land and improve public access to some of these interior parcels. The Forest Service should leverage this opportunity to consolidate as much land as possible with landowners involved in the exchange.

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In referencing the the Montana Natural Heritage Program (MTNHP) Wetland and Riparian Mapping Tool , which the Forest Service staff also utilized, it appears that a majority of the wetlands currently located on public lands that will be given up in the exchange are located in Sections 8 and 10 on Sweet Grass Creek. This places the majority of wetland habitat with only two landowners involved in the exchange. Rather than encumber all the landowners with this aspect of the land exchange, we recommend that the balance of wetlands in the exchange be negotiated with the respective individual landowners.

g. We recommend that wetland and riparian habitat that is a part of the land exchange be balanced with similar habitat within the Sweet Grass Creek watershed to as great an extent as possible.

Currently, wetland and riparian habitat is being traded for mountainous, forested habitat that serves a much different function within the landscape. More suitable lands located in the upstream portions of Sweet Grass Creek appear to have similar riparian and wetland habitat that would provide a more balanced exchange of wetland and riparian habitats.

Additionally, no clear distinction is made between wetlands in the two different geographic portions of the land exchange. The wetland habitat in the Big Sky/Gallatin watershed should be balanced within that watershed and likewise for the Crazy Mountains/Upper Yellowstone watershed.

We are not just concerned with the total amount (acreage) of wetland and riparian habitat being discussed in the exchange; as we know a simple 1:1 (acre for acre) swap is too generalized, and an oversimplification. More critical in our minds is that the Forest Service needs to take into consideration the function and values of the wetlands and waters when evaluating the gains/losses associated with the exchange. For this, we refer the

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Forest Service to the MTNHP's Montana Wetland Ecological and Vulnerability Prioritization report .

The Forest Service references this very issue in the Preliminary EA regarding compliance with Executive Order 119990 that states that "land exchanges must preserve the resource values of wetlands. This goal is typically achieved by ensuring that the wetland values present on the lands acquired by the Forest Service meet or exceed those present on the lands conveyed to private ownership." And yet no additional details or

information is given in regard to this component of wetland evaluation in the Preliminary EA.
In order to evaluate whether the Forest Service is swapping out land that simply serves to consolidate public lands at the expense of losing ecologically significant habitats, or important functions, it is important for the

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[<https://mtnhp.org/mapviewer/?t=8>]

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[https://mtnhp.org/reports/ECO_MT_wetland_ecol_vulnerability_prioritization_geodatabase_report_20160706.pdf]

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Forest Service to provide a breakdown of the types of wetlands and waters (including lacustrine and riverine system) that would be associated with the exchange; as well as a comparison of the how many vulnerable/high priority wetlands and water features are in the exchange.

This level of detail will help with the evaluation and understanding of the exchange, ensuring that it isn't just based on the cumulative area of the wetlands/waters that are involved, but also the quality of those wetlands and waters, as well as the ecological significance those areas might have.

A breakdown on the geographic/topographic location of the wetlands/waters in the exchange is important too (i.e. alpine vs. foothills), as this factors into the habitat and forage and drinking water niches that wildlife depend on. Additionally, there is a critical link in this regard with the analysis in the EA on the effect on federally listed species in the exchange.

An analysis of the ecological value of wetlands and riparian habitat will also provide some insight on whether it is realistic to assume that the existing state and federal regulations will mitigate, or help minimize impacts to the wetlands that would be swapped and made private. For example, isolated wetlands and many seasonal wetlands and ephemeral streams have no federal or state protections.

The Forest Service should consider new alternatives in light of this information, based on the incomplete nature of the Preliminary EA's wetland evaluation to assess the wetlands and waters in more detail, not just acres, but also a breakdown on location, type and quality of those resources so that a determination can be made on the potential (or no potential) to lose important habitat/ecological resources in the exchange, as well as the increased risk of loss and degradation to resources that have been identified as being vulnerable.

VII. Wildlife

h. The wildlife analysis must consider the potential impacts of a new trail, as well as reasonably foreseeable development on lands to be transferred to private landowners.

The surrounding mountain ranges around the Crazy Mountains are occupied and active habitat for grizzly bears - a threatened species under the Endangered Species Act - bordering the Primary Conservation Area.

The Greater Yellowstone Ecosystem grizzly bears are not a healthy enough genetic population to continue to survive on its own, and in order for the species to be considered "recovered", the population must have connectivity to the Northern Continental Divide Ecosystem grizzly bear population.

That linkage does not currently exist; however, grizzly bear experts consider the Crazy Mountains as a key corridor for that connectivity to exist. Scientific evidence and anecdotal evidence from residents indicates that this area could be prime grizzly habitat.

While the preliminary EA discusses the Crazy Mountains as a part of the Northern Continental Divide Ecosystem grizzly bear population, it is much more likely that the area's first confirmed grizzly bears will be from the Greater Yellowstone Ecosystem (there have been many individuals that know what they're talking about that say that grizzlies are in the Crazies already). This makes the preliminary EA's assessment that "there is no need for habitat protections" lacking. The federal government has consistently failed to protect the Greater Yellowstone grizzly bear population, and connectivity is needed for the future of the species.

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The Crazy Mountains are documented habitat for Canada lynx, also a threatened species under the Endangered Species Act. The analysis in the preliminary EA is lacking. While the new trail might be being

built in currently unoccupied habitat, the Forest Service fails to consider the impact that increased use and visitation would have on the Canada lynx populations in the crazies. More analysis is needed.

Both of these species already face threats due to dwindling suitable habitat and food resources.

The Crazy Mountains are also prime habitat for wolverines, which should be protected under the Endangered Species Act and likely will be in the near-term future. The species is heavily impacted by climate change, including loss of snowpack. The EIS should look into this as well.

The Crazy Mountains are home to bighorn sheep, elk, deer, moose, marmots, pikas, coyotes, black bears and wolves. The section of the preliminary EA that focuses on Big Game is lacking. The Forest Service needs to consider the impact that new development on lower elevation parcels along Sweet Grass Creek (sections 8 and 10) would have on the species. More development would likely have a significant impact on elk populations. Research by the Forest Service's Michael Wisdom and others have found that the number of times an elk is disturbed at a young age directly correlates with its ability to survive. The impacts of the construction of a new trail merit more analysis for elk.

The Crazy Mountains are also home to many types of insects, which are likely losing habitat with snowpack and are facing significant losses in the face of the Insect Apocalypse. Many similar stoneflies in the Absaroka Beartooth Wilderness, such as the western glacier stonefly and the meltwater lednian stonefly, are in trouble in those ranges. Do they have populations in the Crazies? How would the proposal impact them? The preliminary Environmental Assessment says it has done a "preliminary" review for the western glacier stonefly, but more analysis is needed before the public can make an informed decision on the proposal.

The Environmental Impact Statement must take into account these species, and the effect the land exchange would have on these species. These species merit more than a "preliminary" analysis. The Crazies are a critical linkage point for many species. This analysis must consider the impact of a new trail, as well as the potential for development on public lands that are being transferred to private landowners. The net loss of wetlands would likely have a significant impact on these species, and since the Forest Service has not completed its analysis of wetlands, these impacts are impossible to know. This analysis must also include the impact of winter recreation, especially helicopter skiing and the development of parcels for skiing.

VIII. Public and Administrative Access

i. The Sweet Trunk trail is an acceptable alternative for the East Trunk Trail, but cannot replace the route through Sweet Grass Creek

PCEC believes the "Sweet Trunk" trail is a good resolution to the historic but disputed East Trunk Trail. It provides a permanent easement and trail access to Sweet Grass Creek from the east side in a timely manner. Not reserving administrative or public use is acceptable for the East Trunk Trail 136 because the reroute completely negates the historic route.

However, we still have significant concerns about Sweetgrass Road #900 (the two track road in the flat part of the valley up Sweet Grass Creek) and Sweetgrass Trail #122 (a single track trail beginning on the west side of section 8).

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These routes have been clearly marked on the earliest Forest Service maps of the area and public funding has been used to maintain these routes. In some cases the Forest Service contracted this labor from area ranchers. In an internal Forest Service memo, there are several mentions of maintenance, for example an invoice from the Forest Service to pay "Robert C Ward \$126 for 42 hours of tractor and operator... for work on Sweet
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Grass Road."

Also one can assume there was public use of what is now called Rein Lane and Sweetgrass Road due to community schools and a sawmill that used to be in the canyon. The Ward and Parker sawmill existed in section 9 and was operational until the 1950s. The first school in Sweetgrass Canyon was started in 1929 at the sawmill, later moved to the Brannin Ranch (now Carroccia's) in Section 2. In 1933 a schoolhouse was built halfway between Brannins and Ward and Parkers on Forest Service lands in Section 10. Funny anecdote, the school was supposedly called the 'Bachelor School' because it was built by several bachelors and operated

until 1938. It is only reasonable to suspect public use of Sweetgrass Road, and what is now called Rein Lane must have been commonplace to access the sawmill and school.

However, for the last decade or two, a large sign at the beginning of Sweetgrass Creek Road #900 states that Sweetgrass is a private road, and the Carroccia Limited Partnership requires guests to sign in at their guest ranch. Another gate at the beginning Rein Lane where it turns off of Melville Road is locked in early September, preventing all public access during the fall, winter and spring.

The Sweetgrass Trail and Road has been used consistently by hikers, hunters, fishermen, and other recreationists, including those hiking in from several west side trails such as 195/123 and 260/273. We recommend the Forest Service do additional due diligence on Sweetgrass Road and Trail, as there appears to be abundant evidence to reserve the historic right of way.

j. The Forest Service should reserve the public and administrative access in Parcels 1 and 2 for Sweetgrass Road #900 and Sweetgrass Trail #122 to maintain the status quo

While we have a viable public replacement for contested East Trunk Trail, there are many community members that do not feel the "Sweet Trunk" trail can replace Sweetgrass Creek Trail #122 or Sweetgrass Road #900.

Part of PCEC's support of the proposal hinged on the understanding that the "status quo" in Sweet Grass Creek would be maintained. Practically speaking, it would mean that not only could a person walk to Sweet Grass Creek on the permanent "Sweet Trunk" trail, but also how they currently access the area: from the west side trails and seasonally by permission on the east side from the guest ranch.

We believe that "maintaining the status quo" in Sweet Grass Creek would also be to reserve the Sweetgrass Road and Trail in areas where that route currently crosses public land, or Parcels 1 and 2. Another party may find evidence in the future to prove a public interest in the roads or trails that cross private land.

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2002. Documentation Overview of Sweetgrass Access to NFS Lands. Custer Gallatin National Forest Communication. FOIA.

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2002. Documentation Overview of Sweetgrass Access to NFS Lands. Custer Gallatin. Internal Communication.

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On Big Timber Creek and Trail #468 in Big Sky, the Forest Service is reserving administrative and public access on existing trails. Why is it not choosing to do so here? This seems to be an example of arbitrary and capricious decision making, reserving the trails in one area but not another.

The Forest Service must reserve the public's rights to Sweetgrass Creek Trail and Sweetgrass Creek Road on the public lands in the exchange. Instead, the current EA gives up the Forest Service's portion of one of the public's most treasured trails in Sweetgrass Canyon with no explanation. The Forest Service also failed to address this concern in public meetings.

k. The Forest Service should retain the backcountry camping area in Eagle Park and negotiate an easement across section 7

We wholeheartedly disagree with the statement on page 36, "The Sweet Grass Trail is a long out and back trail with no scenic destination." Not only is walking the trail through the canyon breathtaking, there are fantastic camping spots along the creek starting in Eagle Park, and beautiful waterfalls and swimming holes near the confluence with Milly Creek. PCEC staff have backpacked through and camped in the area from both the west and east side, and day hiked to the Milly Creek confluence from the guest ranch.

The Forest Service maintains Sweetgrass Trail #122 from Big Timber Canyon all the way to Eagle Park in Section 8 of Sweet Grass Creek. Trails that are maintained or have been historically been maintained by public funding should continue to be publicly accessible. PCEC staff hiked all of these trails in the summer of 2022, the trail was well maintained and there weren't any obstructions or requirements to sign in from the west side.

To maintain the status quo of the Sweetgrass Trail #122 through section 7, we recommend the Forest Service work with the landowners to secure a permanent easement at least through section 7 to Eagle Park.

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The questions that must be answered include: How do you obtain access? Where do you park and sign in? What dates is the trail open for permissive use? Can you call or register online for that access ahead of time?

A failure to provide clarity on permissive access risks creating a situation similar to other areas of the Crazy Mountains, where trails through large swaths of private land led to conflicts between private landowners and the public. If the public has some clarity on when and how they can use Rein Lane, Sweetgrass Road and Trail, it will go a long way towards a more amicable relationship between both parties.

The Forest Service should also consider whether people or stock will be able to obtain sufficient water from the tributaries to travel a 22-mile distance along the Sweet Trunk Trail. While not an obligation of the Forest Service, having occasional access to water will enhance the public useability and enjoyment of the trail.

The Forest Service used to have phone numbers of landowners available in the local district office that people could call to gain permission to access in areas where it was needed. We recommend bringing a practice like that back. Better yet, permissive access could be managed through an online portal like Recreation.gov or with an existing framework like Block Management. These systems of gaining a permit or permission to use a trail are becoming more commonplace when accessing federal land. This would take the burden off of landowners or a business to manage the access with a private system. It would also be fairer and more familiar to the public. A permit system might also prevent the area from getting overwhelmed by cars.

While it is better to have secured public access, encouraging people to explore different areas of the Crazy Mountains by asking permission could allow for some additional opportunities in the range.

p. The Forest Service should continue to pursue perpetual public access to Sweet Grass Creek

While the current landowners are seemingly unwilling to sell a public easement on Rein Lane, we urge the Forest Service to continue the pursuit of a negotiated solution on Rein Lane or somewhere in that area such as Billy Creek Road No. 7085. The large valley is a natural entry point in the range and the Custer Gallatin should not lose sight of this important access point to service its land management obligation.

IX. Grazing

q. Grazing allotments should be revised to reflect the new standards and goals of the 2022 forest plan revision in addition to enforcing vegetation and noxious weed monitoring.

Section 3.4: Grazing Allotments on National Forest System Lands states that no noxious weed monitoring has been conducted on the 6 grazing allotments within the Land Exchange. Monitoring needs to be required on all grazing leases. This is a requirement of the Allotment Management Plan (AMP) to obtain a lease/permit.

There is no mechanism to enforce monitoring as part of the lease.

At our last site visit, we noted that Section 8 and 10 have a lot of weed presence, including knapweed, Sulphur cinquefoil and Canada thistle. The Custer Gallatin Forest Plan 2022 Revision states new or revised allotment management plans incorporate adaptive management strategies to move vegetation toward the desired condition that support both of the foraging needs and impacts of livestock and wildlife. This goal requires systematic vegetation and noxious weed monitoring. The forest plan also discusses other allotment

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requirements in regards to wildlife fencing, wildlife friendly water developments, and best practices for riparian protection and at-risk plant species.

We request that all 6 grazing allotments be revised to reflect the new standards and goals of the 2022 forest plan revision in addition to enforcing vegetation and noxious weed monitoring. With revision of these allotments should come the re-evaluation of AUM's and minimum stubble height based on joint grazing impact assessments with the FWP regarding elk and/or deer numbers on Forest Service lands.

The preliminary EA also fails to consider the impact of grazing allotments could have on grizzly bears in the Crazy Mountains. Livestock predation is a leading killer of grizzly bears. As grizzlies move into the Crazies, the Forest Service must consider whether grazing allotments would adversely impact the grizzly populations that are needed for connectivity.

X. Conclusion

On behalf of all of us at PCEC, we would like to thank the Forest Service for the opportunity to provide comments on the East Crazy Inspiration Divide Land Exchange and for their work to resolve land

management issues in the Crazy Mountains.

The East Crazy Inspirational Divide Land exchange is a monumental step towards our long-term conservation goals of a consolidated and contiguous public landscape with secured public access and permanent designation of the national forest lands. We support many aspects of it.

However, this is an extremely rare opportunity to have the Forest Service, willing landowners and diverse interest groups engaging on an issue that will impact the landscape forever. The Crazies are invaluable wild nature and deserving of the utmost care and consideration. To meet the Forest Service's stated goal of the land exchange "to conserve the existing character of the Crazy Mountains" we will need more assurance that habitat and cultural landscapes exchanged out of federal ownership will have appropriate restrictions to protect these invaluable places. This is our one chance to get it right.

While there are no simple answers when it comes to resolving access and checkerboarding issues in the East Crazy Mountains, remember that places like Eagle Park and the riparian public lands in Sections 8 and 10 are of extremely high value both ecologically and recreationally. These lands are the Forest Service's most important negotiating chips when it comes to consolidating checkerboarded land in the eastern side of the range.

If this exchange were to go through as proposed in the Preliminary EA, the public would permanently lose a historic access point and trail, and two parcels that are well worth a 20-plus mile hike to visit and camp on. Without clarity on permissive access to Sweetgrass Road, Trail and Rein Lane, conflict between the public and landowners would have the potential to continue. Without restrictions on lands exchanged from the Forest Service to private landowners, this exchange has the risk of facilitating development.

The Forest Service needs to weigh whether the current proposal is worth going "all in" for. In this preliminary EA, we believe that there is not enough information to make such a determination. The Forest Service needs

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to complete its analysis. The Forest Service needs to propose additional alternatives. The public needs to weigh in again to help make that determination.

As southwest Montana continues to grow, development and recreational pressures on the Crazies will only increase. This is a critical time to be thinking about the future of this landscape. Thank you for the opportunity to elevate our concerns which we believe merit further consideration during the next phases of the analysis. We look forward to continued engagement in the Crazies and will provide more feedback once the analysis is complete in future comment periods. With our cumulative voices together, we will make better decisions for the future of this landscape and our communities.

Sincerely,
Michelle Uberuaga
Executive Director

Park County Environmental Council
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