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Organization: Friends of the Crazy Mountains

Title:

Comments: Please find attached comment in rejection of the East Crazy Inspiration Divide Land Exchange.

December 21, 2022

ATTN: Forest Supervisor Mary Erickson

P.O. Box 130

Bozeman, MT 59771-0130

Dear Supervisor Erickson:

Friends of the Crazy Mountains ("Friends") is an organization dedicated to lending a public hand to our public lands through trail work and protecting historical access to our public, National Forest System lands in the Crazy Mountains. Friends is also dedicated to protecting wildlife and wildlife habitat in the Crazy Mountains. Friends also watchdogs County, State, and Federal agencies who have jurisdiction over the Crazy Mountains.

#### Background

In 2016, the organization was formed over concerns about how historical access on public trails was being obstructed by private landowners and their agents. Friends is committed to protecting public access rights on National Forest System trails in the Crazy Mountains and ensuring Forest Service compliance with federal law, including its own forest plan and travel plan.

In 2017, Friends convened the only public meetings on west-side trail issues at the Yellowstone Ranger District in Livingston.

In 2018, Friends, along with Enhancing Montana's Wildlife and Habitat, hosted the only public meeting on the west-side land exchange.

In 2019, Friends, the Montana Chapter of Backcountry Hunters and Anglers, Enhancing Montana's Wildlife and Habitat, and the Skyline Sportsmen's Association brought a civil action for declaratory and injunctive relief against the Forest Service. The 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. Plaintiffs' pleadings, exhibits, and the administrative record on file in Case: CV-19-66-BLG-SPW-TJC; Friends of the Crazy Mountains, a public land organization, et al. vs. Mary Erickson, in her official capacity as Forest Supervisor for the Custer Gallatin National Forest, et al., are incorporated herein by this reference.

In 2020, Friends attended a meeting requested by Tom Glass (Western Land Group, representing the Yellowstone Club) and Jess Peterson (Western Skies Strategies), with the other plaintiffs and attorneys, involving a proposed eastern Crazy Mountains land exchange between private landowners and the Custer Gallatin National Forest. Friends' response to the initial proposal, which appeared in statewide newspapers, is attached. This latest proposal does not change Friends' position.

In 2022, a federal judge sided with the Forest Service and non-Federal party in the lawsuit and plaintiffs subsequently appealed to the Ninth Circuit. A briefing schedule is set. Plaintiffs' opening brief is due on February 3, 2023.

Friends brings this comment in rejection of the East Crazy Inspiration Divide Land Exchange on behalf of itself, its members, and its supporters. Alternative A [ndash] No Action is the correct alternative because the proposal fails to meet the specific requirements of federal law, which leaves the public unable to make an informed decision.

The Preliminary Environmental Assessment (PEA) prepared for the East Crazy Inspiration Divide Land Exchange contains deficiencies that are too numerous to mention all of them. Therefore, Friends highlights some of the deficiencies that render the proposed land exchange a public policy failure.

#### Pending Litigation

The PEA does not disclose to the public that the Forest Service is party to a dispute involving East Trunk trail (No. 115/136) and Sweet Grass trail (No. 122) on the east-side. Friends would like to see the Forest Service not move forward with the proposed land exchange until the Ninth Circuit has ruled. The Forest Service and non-Federal party will not be prejudiced by the delay.

#### National Environmental Policy Act (NEPA)

The PEA does not comply with NEPA. Friends is committed to ensuring the Forest Service takes a hard look at the environmental consequences of its decisions and explore a reasonable range of alternatives as required by NEPA. The two alternatives on page 11 of the PEA does not satisfy the Forest Service's obligation to [ldquo]rigorously explore and objectively evaluate reasonable alternatives,[rdquo] including [ldquo]reasonable alternatives not within the jurisdiction of the lead agency[rdquo]. This assures an outcome is pre-ordained, which is antithetical to NEPA and its public process. Friends would like to see the Forest Service 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, Friends would like to see the Forest Service do a full Environmental Impact Statement to adequately consider and analyze the direct, indirect, and cumulative effects of the proposed action.

#### Railroad Grant Deeds

Page 5 of the PEA states in part:

Much of the Crazy Mountains is a [ldquo]checkerboard[rdquo] pattern of private and Federal ownership as a result of the railroad land grants on odd-numbered sections.

The PEA does not 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 [ldquo]arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[rdquo] and/or constitutes [ldquo]agency action unlawfully withheld or unreasonably delayed.[rdquo] 5 U.S.C. [sect][sect] 706(2)(A) and 706(1). Friends would like to see the Forest Service consider, disclose to the public, and discuss the recorded (written) easements from the railroad grants.

#### Federal Land Policy and Management Act (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. [sect] 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. [sect] 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. [sect] 254.9(b)(1).

The PEA does not comply with FLPMA. 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 relocation proposal. Friends would like to see the Forest Service 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 PEA look at the economic value of the mineral rights being exchanged. Friends would like to see the Forest Service analyze the effects that severed ownership of mineral interests in the parcels being acquired could have on those lands in the future.

#### National Forest Management Act (NFMA)

The PEA does not comply with NFMA. 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. [sect][sect] 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.

#### Federal Advisory Committee Act (FACA)

Page 6 of the PEA states in part:

In 2018, YC hired a non-Federal land exchange coordinator, Western Land Group (WLG), to begin working with landowners and stakeholders to develop a proposal for a comprehensive east Crazy Mountains solution. After several years of negotiation, landowners and YC entered into agreements enabling a multi-landowner exchange proposal to consolidate lands and resolve access issues.

Four landowners in the east side Crazy Mountains and YC, collectively represented by WLG, submitted the "East Crazy Mountains and Inspiration Divide Public Access Improvement" land exchange proposal to the Forest and the public in July 2020.

In July 2020, Crazy Mountain Working Group (CMWG) n/k/a Crazy Mountain Access Project (CMAP) informed the public it submitted the land exchange proposal to the Forest Service. As such, CMAP appears to qualify as an "advisory committee" subject to FACA.

FACA imposes a number of procedural requirements on [ldquo]advisory committees[rdquo] which are defined as any committee or [ldquo]similar group[rdquo] which is [ldquo]established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for . . . one or more agencies or officers of the Federal Government . . .[rdquo] 5 U.S.C. app. 2 [sect]3(2). FACA mandates that unless an exception under FOIA applies, the [ldquo]records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying . . .[rdquo] 5 U.S.C. app. 2 [sect] 10(b). FACA requires that each advisory committee be [ldquo]fairly balanced in terms of points of view represented and the functions to be performed[rdquo] and not be [ldquo]inappropriately influenced by the appointing authority or by any special interest.[rdquo] 5 U.S.C. app. 2 [sect][sect] 5(b)(2), (b)(3).

Friends[rsquo] initial response to the CMWG, which appeared in statewide newspapers, is attached.

#### National Historic Preservation Act (NHPA)

Page 4 of the PEA identifies four elements that are outside of the Forest Service[rsquo]s decision on this exchange and not evaluated. Friends addresses the element of tribal access to Crazy Peak.

Ceremonial access to Crazy Peak is conditioned upon the proposed land exchange being finalized. This is disingenuous and provides Switchback Ranch, LLC leverage over Crow Nation.

[ldquo]The Forest Service has a legal obligation to engage with Native American tribes. Section 106 of the National Historic Preservation Act (NHPA) mandates that federal agencies [ldquo][hellip]consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by the agency[rsquo]s undertakings[rdquo]. The Forest Service policy is to establish and maintain effective relationships with tribes with respect to cultural resources.

See also comment submitted by Larry Lahren, PhD, author of Homeland: An Archaeologist[rsquo]s View of Yellowstone Country[rsquo]s Past.

#### Inspiration Divide

This is an unrelated land exchange in the Madison Range. Friends would like to see it severed from the East

Crazy Land Exchange.

Conclusion

The public interest will not be well served by this proposed land exchange. Friends reject the East Crazy Inspiration Divide Land Exchange for the reasons stated above and, because of the lack of transparency, for other reasons unknown. If the Forest Service had done its job and followed its own policies, the public would not be in the position of disadvantage.

Sincerely,

Brad Wilson

Brad Wilson

Founder

Attachments (2)

Voices: Historical trail rights must be part of Crazy Mountains Solution

August 27, 2020, by Brad Wilson

The Crazy Mountains of Montana are a rare jewel. Many of us who have lived here our whole lives understand the value of these natural resources and the need to preserve them. The Crazies are home to sensitive species wolverine and Canadian Lynx, as well as mountain goats, bear, elk, mule deer, and white tail deer.

The tributaries that flow from these mountains into the mighty Yellowstone River contain the Yellowstone Cutthroat trout, a native species experiencing population declines. There is only one place in the world that has these fish and that is right here in Yellowstone country. These mountains offer the public everything from hunting (putting meat on our tables), fishing, and firewood to heat our homes to just being able to head into the mountains for tranquility and solitude. cued after ten days missing at sea

Unfortunately, the Crazies are slowly shrinking for the public, which in turn makes its resources subject to privatization. That is evident as we continue to trade off some of the most beautiful sections of land to bordering landowners who have commercial outfitting businesses and to those who have illegally locked gates and other access obstructions, in an attempt to stop us, the public, from using our historical trails.

In February of 2020, Friends of the Crazy Mountains, and our coalition group, was invited to a meeting hosted by Western Land Group, Inc. and Western Skies Strategies, paid consultants of Yellowstone Club and Montana Stockgrowers, respectively. Yellowstone Club, through its consultant, was appointed by the Forest Service to help negotiate a plan for east side Crazy Mountain access issues in exchange for consideration of a land swap to increase the Club's private skiing terrain.

During the course of this meeting, our coalition voiced support for portions of the proposal, but we also voiced concerns pertaining to destruction of wildlife habitat, sacrificing lands that contain prime habitat along the Sweet Grass, as well as losing Historical Trail #122 and East Trunk Trail #115/136. Our concerns and easily implemented alternatives were not even considered.

The Forest Service has long held the position that these trails are public. In 2006, Crazy Mountain landowners sued the Forest Service challenging that position after release of the 2006 Gallatin Forest Travel Plan. A federal Judge ruled for the Forest Service, which serves the public.

By hiring a Congressional lobbyist who registered on March 1, 2020, Yellowstone Club signaled this proposal on the East Crazies is going to be pursued Legislatively and not Administratively, which means the NEPA process and public comment period would be bypassed.

Are we willing to surrender long-standing and wildlife friendly access points on the Upper Sweet Grass and East Trunk, in exchange for the unnecessary destruction of wildlife habitat? Yellowstone Club is willing to build a new 22-mile trail through some of the most secluded wildlife habitat in the Crazy Mountains and sell that as a compromise for losing the reasonable Sweet Grass Access and some lower mountain public sections.

This 22-mile trail will also exclude many user groups, such as the young and elderly, because the new location is in much steeper and more rugged terrain than the existing #122 and #115 trails.

This proposal, at best, is simply fancy window dressing and behind the curtain, the Forest Service is fleecing away our public lands.

The Crazies are on a path for commercialization at the expense of the public and wildlife. For example, the pending South Land Exchange involves three luxury resorts. The writing is on the mountain, recreation is replacing our long-fought efforts of conservation.

**STOP!!** Do not let the Forest Service keep relinquishing our historical trail rights. Once these historical trails are gone, they are extinguished forever. Demand the Forest Service stand up and defend the public's historic rights on these trails.

The pending lawsuit in federal court against the Forest Service on these trails should play out before any hasty decisions are made that will impact future use of these areas and trails. This case will set precedent for the future. We should not put the cart before the horse. What is to prevent a different landowner with inholdings to throw a gate up and lock the new trail in the future, again creating litigation at the public's expense?

At this point, please send in your comments to Senators Tester and Daines and Representative Gianforte asking this proposal be submitted Administratively, as the public needs to have a voice. The existing proposal, if adopted, will forever alter the primitive character of the Crazy Mountains.

Asking the public landowner to give up their historical trail rights would be like asking the private landowner to give up their historical water rights without a fight. They would not and neither should we!

Brad Wilson is Founder of Friends of the Crazy Mountains. His family has over 100 years of historic use on the public trail system in the Crazy Mountains.

Who is the Crazy Mountain Working Group?

May 2, 2018, by Brad Wilson

The relationship between the United States Forest Service (USFS) and a collaborative group can only be successful if the process is transparent and open to public scrutiny, which brings me to the point of my letter. Who is the Crazy Mountain Working Group (CMWG)?

In August 2017, a column penned by Nate Anderson of Crazy Mountain Stockgrowers[rsquo] Association and Erica Lighthiser of Park County Environmental Council appeared in statewide newspapers to announce a working group formed (four months prior) to address public access issues in the Crazy Mountains. The group includes [ldquo]a cross-section of landowners, access advocates, nonprofits, and state and federal government representatives[rldquo]. Notably absent from the public-private collaboration was tribal representation. The Crow Nation attaches religious and cultural significance to the Crazy Mountains, and with them the USFS has a legal obligation to engage.

The CMWG has been meeting for a year, including USFS representation, yet where is their charter or bylaws, including list of members? The public does not receive any notice of meetings or meeting minutes. The lack of transparency raises questions about under whose authority and legal framework does this group operate.

Earlier this year, the USFS released a proposal to "solve" a public access/private property dispute on the west side involving the Porcupine Lowline Trail, which is part of the 100-year old Crazy Mountain trail system. Crazy Mountain public access conflict issues are decades-old and complex, so when the USFS and CMWG agreed on a proposal after six months of private collaboration, the public and community stakeholders became suspicious.

The stockgrowers funded a facilitator for these meetings who, Friends of the Crazy Mountains discovered, worked at the legal firm of one of the signers of the Open Letter to the Secretary of Agriculture and Senator Daines concerning Yellowstone District Ranger Alex Sienkiewicz. Because all meetings were closed to observation by the public, it[rsquo]s unknown how the proposal was influenced and fast-tracked to a Categorical Exclusion public scoping without conducting a proper NEPA process, which appears to violate Forest Service policy.

Recently in the press, the CMWG and Western Landowners Alliance touted the power of public-private collaboration and how the proposal is a win-win; however, the Public Comment/Objection Reading Room (found here: <https://cara.ecosystem-management.org/Public//ReadingRoom?Project=53388>) reveal the opposite is true. Objection to the proposal comes from a diverse group of interested parties that include, but not limited to, the Montana Chapter of the Sierra Club, Montanans for Gallatin Wilderness, Theodore Roosevelt Conservation Partnership, Park County Rod and Gun Club, Enhancing Montana[rsquo]s Wildlife and Habitat, Skyline Sportsman[rsquo]s Association, Friends of the Crazy Mountains, other affected landowners, motorized users, retired engineers, hikers, backpackers, and other users.

Some proponents of the proposal purport to be environmentalists and conservationists, yet support a proposed



trail that will destroy critical wildlife habitat and was categorically excluded from an Environmental Assessment or Impact Statement. How can anyone support this proposal without the proper NEPA process being followed? In a bizarre twist, the Crazy Mountain Stockgrowers and the Park County Environmental Council did not agree on the proposal.

Who is the CMWG? The public has a right to know.

Brad Wilson is Founder of Friends of the Crazy Mountains. His family has over 100 years of historic use on the public trail system in the Crazy Mountains, including the trail in question.