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Comments: 11/08/2023

Custer Gallatin National Forest

Attn: Forest Supervisor, Mary Erickson

P.O. Box 130

Bozeman, MT 59771

RE: 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 based in Livingston, Montana. PCEC has long been a local advocate for the Crazy Mountains; in fact, our organization's original name was Crazy Paradise, reflecting our high regard for the mountain range for Park County. We are a community that lives within and surrounding the Crazy Mountains, and our members have deep respect and connection to this magnificent mountain range.

Thank you for your time and thoughtful consideration of the East Crazy Inspiration Divide Land Exchange and the opportunity to provide our formal objections on the Environmental Assessment (referred to throughout as EA or land exchange).

#### Background

PCEC is committed to working with diverse partners to not only identify solutions to land access conflicts in the Crazy Mountains, but to also deepen relationships and understanding between people so that we can be better stewards to this ecosystem and all its biodiversity.

PCEC has been both at the table and out in the field, participating in these conversations for years as a member of the Crazy Mountain Working Group. We are a founding member and helped sponsor the Crazy Mountain Access Project, and hosted meetings to gather public input on the swap before it was submitted to the Forest Service. We see value with overall purpose and need for this land exchange. We understand the complexity of the issues faced by the Forest Service, area ranchers and people like us that long to connect with and experience the Crazy Mountains. Consolidating public and private land into contiguous areas is less challenging to manage for both the Forest Service and the landowner. It also should clarify where and how people can access public land. This land exchange goes a long way in achieving these stated objectives.

We believe that conservation requires a collaborative approach where the Forest Service invites meaningful participation from ranchers, Indigenous peoples and the broader community. PCEC applauds the Forest Service for working with landowners to address the major themes in the public concerns and improve the overall deal, including retaining and protecting important wetlands, public access and private land protection. This proposal has improved since the original concept we were presented back in 2019.

However, the Forest Service's proposed alternative ultimately falls short of conserving key wildlife habitat and cultural landscapes of the Crazy Mountains. It does not provide enough clarity to address public concern regarding access. Therefore, PCEC has the following objections to the EA that we recommend the Forest Service address before making their final decision. Many of the issues we have with the land exchange are related to the elements the landowners and project proponents negotiated on private lands within or near the exchange area to enhance the overall public benefits of this project. These elements included additional conservation measures, tribal access and an easement on Crazy Peak, and permissive access in Sweet Grass. PCEC participated in many conversations where these improvements were discussed and they were widely advertised as benefits of the project. Many of these commitments are not mentioned in the EA, and we fear they may not be carried forward at all. While a voluntary agreement between private parties may be outside of the scope of the Forest Service analysis, we feel the Forest Service should delay the final decision until these agreements are clear and formalized. Especially more restrictive conservation measures, which appear to be fundamental assumptions upon which the environmental impacts of the exchange were analyzed.

## Objections

Private land-use restrictions must be stronger to protect the character of the Crazy Mountains

One of the key issues generated by PCEC, other organizations and the public during the Pre-EA comment period was "if lands are exchanged out of the federal estate without development management tools, then those lands could be over developed and the character of the area could be degraded" (EA, p7).

The EA responds to this concern with county deed restrictions that are to be filed with Sweet Grass County Conservation District as a condition of closing the land exchange. These deed restrictions only prohibit subdivision into parcels under 160 acres and mineral development and exploration. The covenants only pertain to Parcels 1, 2, 3, 4 and 7, not Parcels 4, 5 and 6 on the Crazy Mountain eastern front, an area that is just as vulnerable to development. Parcel 6 contains an archaeological site that would receive a protective covenant, but only on 0.02 acres.

Deed restrictions are not as protective and permanent as a conservation easement, which a third party land trust monitors, stewards and enforces in perpetuity. Deed restrictions can be removed if agreed to by all parties involved in the restriction - in this case the landowner and the Sweet Grass County Conservation District. We are concerned that the Sweet Grass County Conservation District may not have the capacity or resources to provide third party validation and monitoring. Voluntary conservation easements were used in the South Crazy Land Exchange, and widely discussed by project proponents throughout the development of the proposal. From the Pre-EA:

"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." (p. 4)

We hope to be part of these continued discussions.

Even if the deed restriction was the right tool, however, the restrictions proposed in the EA do not prohibit foreseeable growth and development in Southwest Montana. Park and Sweet Grass Counties are experiencing rapid and unprecedented growth and change. Today it is not just mining and resource extraction, but an insatiable desire for recreation, rapid commercialization, residential and luxury amenity developments that threaten both wildlife and people's quality of life and ability to afford to live in this region. These changes are of course being exacerbated by a rapidly warming climate. The value of Sweet Grass Canyon or the eastern front of the Crazy Mountains is not in its minerals but in its potential to be a luxury development, resort or subdivision. Limiting subdivision of parcels under 160 acres does not limit how much development can occur within that parcel of land. Conceivably the three and a half sections that would be traded in Sweet Grass Canyon could be subdivided up to 16 times and have multiple buildings per 160 acres. By comparison, guest ranches elsewhere in

the range occupy more modest acreage: the Crazy Mountain Ranch buildings including the old west town, barns and parking structures are on less than 60 acres; Sweet Grass Ranch buildings are on less than 20 acres. As far as we understand it, restricting the subdivision of parcels to a minimum of 160 acres does not protect the drainage from any of these types of foreseeable development. Even if the current landowners have no intention of subdividing or selling their property, the value of this consolidated private land far up into the Sweet Grass Creek drainage will eventually be too valuable not to.

There exists an especially poignant example that is relevant to this exchange: the land swaps in the 1990s that consolidated public land in the Gallatin Range and created the consolidated private lands near Big Sky that later became the Yellowstone Club. At the time, few imagined that the area would become today, just one generation later. We must do everything possible to ensure the East Crazy Mountains do not have a similar fate.

Having direct conversations with the multi-generational landowners involved in the land exchange, we have found they share common values of protecting the landscape and acknowledge the pressure of our ever expanding human footprint. They are knowledgeable about available conservation tools and have met with staff from land trusts. They have indicated a willingness to put more protective measures on the land they would acquire from the Forest Service. Therefore, before finalizing this land exchange, we ask the Forest Service to wait until landowners agree to secure the easements necessary to permanently protect all the land leaving the public domain.

The Forest Service has a recent precedent for securing conservation easements leaving the public domain elsewhere in the range. In the South Crazy Mountain Land exchange in 2021 EA:

"As part of the Agreement to Initiate each of the three landowners (Crazy Mountain Ranch, Rock Creek Ranch, and Wild Eagle Mountain Ranch) have agreed to voluntarily place conservation easements on the federal lands to be conveyed into private ownership, at closing of the exchange. These voluntary conservation easements would be held by a qualified non-profit conservation organization in the state of Montana.

These voluntary conservation easements would continue to allow for traditional land uses for the landowners including recreation, livestock grazing, and timber management. The voluntary conservation easements would preclude all mineral development and mining (hard rock and oil/gas) and preclude residential, industrial, or commercial development, except one new recreation cabin which may be built and maintained on the land protected by the voluntary conservation easements. The executed voluntary conservation easements would be filed for the record with the Clerk and Recorder in Park County, and Sweet Grass County, Montana." (South Crazy Mountains EA, p. 12)

While we understand these easements were voluntary, we believe landowners in the East Crazy Mountains also wish to preserve the character of the Crazy Mountains. The conservation easements outlined above are a more appropriate tool for protecting the landscape for future generations.

We object to the current deed restrictions in the EA because they will not meaningfully protect the wild landscape and working ranchland of the Crazy Mountains. We implore the Forest Service not to move forward with the decision until conservation easements similar to those in South Crazy Mountains are secured on all land being traded from the federal government to private landowners.

Without more protective conservation measures, the analysis must consider the potential impacts of a new trail and foreseeable future uses of the land.

When considering potential impacts on wildlife and other ecosystem values, the Forest Service must consider all reasonably foreseeable future actions, including those by federal and non-federal parties. 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."

With the new Sweet Trunk Trail providing access to consolidated public lands and the opportunity for a 40-mile loop trail, we anticipate the human pressure in the East Crazy Mountains to increase. While this new trail would be non-motorized and non-mechanized, the EA does not include a thorough analysis of the potential impacts from trail construction and the increase in use. The Forest Service must provide a more thorough analysis of the impacts of the new trail and increased recreational pressure on sensitive wildlife such as Canada lynx, wolverine and grizzly bear.

Furthermore, instead of considering the effects on wildlife if the newly exchanged parcels were to be developed, the EA concludes that because the landowners intend to leave the land undeveloped, there will be no negative effects on wildlife. This assumption is inadequate and shortsighted. Without stricter conservation tools to protect the land from development, this conclusion is unknown and cannot be assumed. In getting to know many of the ranchers involved in the land exchange, we are confident 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. While current landowner management practices may not have a negative impact on wildlife, 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: luxury commercial hotels, second home subdivisions, gated communities with private ski hills, glamping operations, golf courses and more. The Forest Service must analyze all reasonably foreseeable land uses unless there are much more protective land use restrictions put in place.

New boundary adjustments require further consideration

We appreciate the boundary adjustment that was made in response to public concern in Section 10 to both protect sensitive wetlands and provide public access to Sweet Grass Creek. Having walked the flagged route in this area, Section 10 is a natural area to drop down out of the forested north-facing slope onto the valley floor to camp and access water. The creek, due to seasonal subterranean flow, is mostly dry in this area, so the boundary adjustment will likely encourage the public to walk up the drainage instead of on the existing Sweetgrass Creek trail. This new impact should be considered as part of the analysis. Doing a boundary adjustment to maintain the existing camping area in Eagle Park (Section 8) instead of Section 10, or allowing the public to cross the creek to walk on the existing Sweet Grass road once they have walked from Big Timber Canyon may be possible alternatives. The latter will require fewer miles of new trail to be built, and reduce the associated impacts of new trail construction.

It is concerning that the Sweetgrass Road and Trail are completely erased from the map on Figure 2 of the Draft Decision Notice (p. ii). Sweetgrass Road Trail should remain on forest service maps, as do other roads and trails, even if they are private.

For the record, the Forest Service should reserve the Sweetgrass Road and Trail at least in areas where that route currently crosses public land, or Parcels 1 and 2. In our view, giving up rights to Trail No. 122 where it currently crosses public land is inconsistent with the stated commitment of respecting "the status quo". If these sections are reserved, people could potentially cross Sweet Grass Creek in Section 10, and then resume travel on the existing road.

The land exchange should not be carried forward without formalizing voluntary commitments

Crazy Peak conservation easement and Tribal access

We recognize the Forest Service for their effort to safeguard the Crazy Mountains as a Tribal Cultural Landscape

in their most recent Forest Plan, and the formal recognition of Indigenous Peoples' ongoing connection to this landscape. Including the perspective of the Crow Tribal Historic Preservation Officer (THPO) Aaron Brien in the cultural resources assessment was a meaningful step towards more active collaboration and stewardship of this important Indigenous landscape.

The EA refers to a letter of support from the Crow Tribe submitted with the proposal package. From our understanding, part of that support was because the landowner David Leuschen committed to protecting Crazy Peak, the site of at least one of Chief Plenty Coups' vision quests, with a conservation easement on Section 7, T3N, R12E. The language from the Pre-EA is listed below for reference.

"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." (Pre-EA, p 4)

While Section 7 is not directly involved in the exchange, because this commitment was widely advertised as a benefit of the exchange, the Forest Service should delay closing the land exchange until this easement is secured.

Switchback Ranch, LLC also committed to providing Tribes access to Crazy Peak for continued visitation of the spiritually and culturally significant site.

"Tribal access to Crazy Peak in Section 7, T3N, R12E. The details of this arrangement will be described in an agreement between the Crow Nation and Switchback Ranch, LLC. The Forest Service would not be signatory to this agreement nor involved in its management or oversight."(Pre-EA, p 4)

Again, the Section 7, T3N, R12E Tribal access agreement was widely touted as a benefit of the exchange to the Crow Tribe and likely was a consideration in gaining their support. With little reference to this commitment in the EA, we are concerned this cooperative agreement will not be carried out.

We are also curious, why were other Indigenous nations and peoples who identify as connected to the Crazy Mountains not considered and included in this agreement? The Forest Service consulted with Indigenous Nations including the Confederated Salish and Kootenai Tribes, Nez Perce, Northern Cheyenne, and Shoshone-Bannock. Were they made aware of this agreement? Was there adequate time and resources for these Nations to provide comments and be consulted? Is it possible that these nations and peoples could also benefit from a similar Tribal access arrangement?

At a minimum, a formal written agreement from Switchback Ranch, LLC detailing Tribal access to Section 7, T3N, R12E should be secured before a final decision is made on the land exchange. The access agreement should run with the title of the land so this benefit does not expire if the land is sold.

We believe Crazy Peak deserves permanent protection and a right of first refusal to the federal government in the eventual case that the landowner sells the land. This is in alignment with the values of the Crazy Mountains as a Tribal Cultural Landscape, allowing Tribal practices to be conducted in privacy and without disruption in perpetuity.

b. Maintaining permissive access to Sweet Grass Road and Trail is not mentioned in the EA

Part of PCEC's support of the proposal hinged on the commitment that the "status quo" in Sweet Grass Creek would be maintained. In the Preliminary EA one of the anticipated benefits of the land exchange listed was the following:

"The proposal respects the status quo regarding permissive public access into the upper Sweet Grass Creek drainage over Rein Lane. The landowners have indicated that they intend to continue allowing permissive seasonal access across the private lands they own, so long as private property is respected." (Pre-EA, p 4)

Our understanding, through direct conversations with the landowners, was that after the exchange, the public should still be able to drive to the end of Rein Lane, park, sign in at the Sweet Grass Ranch and walk or ride a horse on Sweetgrass Road and Trail, just like they can today during the summer. It would also mean they could access Sweetgrass Road and Trail from the west side after traveling over the divide.

While these elements are outside of the Agency's decision on this exchange and could not be evaluated, it is concerning that this agreement is not mentioned in the EA. If landowners were to significantly change the status quo: e.g. erect gates on the west side to prohibit travel, or stop allowing permissive access on the east side, this would not be in the spirit of this compromise.

Providing more clarity in the agreement on how the public can obtain permission to visit the Sweet Grass drainage would result in setting clear expectations, improved communication, and will help reduce conflict and build respect between private landowners and the public.

For example, if I wanted to walk up to the Eagle Park area to see the waterfalls in the summertime, before I drove to Sweetgrass Creek access trailhead I would want to know: who do I contact, and who do I ask for permission? Should I call or email ahead of time? Where should I park when I get there? Is there cellular service or should everything be in place before I arrive? In what building at the guest ranch do I sign in? Roughly what dates is Rein open for permissive use? Roughly what date does Rein Lane close? Can I bring my dog? Are there leash restrictions? Can you call or register online for that access ahead of time? If there was an automated way to register an inquiry online it may create less burden for the rancher. There are several examples of how permissive access and other relevant information can be conveyed, and we recommend these details be agreed to prior to finalizing the exchange. The answers to these questions could be included as an attachment in the final decision.

## Conclusion

PCEC would like to thank the Forest Service for facilitating this process and working to incorporate public feedback from the Preliminary EA. We still believe the exchange could be a major 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. This agreement is also an opportunity to set a precedent that demonstrates a good example of land consolidation and exchanges despite their complex nature if we honor our combined values within a robust agreement.

However, we cannot put our support behind this project until:

Permanent conservation measures that prohibit not only subdivision, but industrial, commercial and residential development are agreed to by landowners receiving public land in the exchange.

The Forest Service considers all reasonably foreseeable uses of the land in its environmental analysis.

Implications of potential boundary and trail locations in Sweet Grass are thoroughly considered.

Voluntary Measures like Crazy Peak conservation easements, Tribal access and maintaining permissive access to Sweet Grass Road and Trail are in writing, and agreements are secured before the Forest Service finalizes the analysis.

While we feel the proposed action alternative in the EA falls short of adequately addressing public concerns, we hope that the objections raised by PCEC and others can help the Forest Service continue to improve overall conservation and public benefits of the land exchange before making a final decision.

The Crazy Mountains deserve the utmost consideration and permanent protection. This land exchange 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. We must do all we can today so future generations can know and be connected to these mountains. With our cumulative voices together, we will make better decisions for the future of this ecosystem and our communities.

Thank you for the opportunity to elevate our concerns, which we believe merit further consideration during the final phases of the analysis.

Sincerely,

Michelle Uberuaga  
Executive Director  
Park County Environmental Council