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Northern Region/ Custer Gallatin National Forest

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Comment Consideration and Response

East Crazy Inspiration Divide Land Exchange



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Table of Contents

Introduction	1
Content Analysis Methodology.....	1
Comment Consideration and Response	1
Theme 1: Process.....	1
Commenters requested that the Forest Service conduct a more detailed environmental assessment.....	1
Commentor suggested that the proposed action and preliminary environmental analysis incorrectly included voluntary elements.	2
Commentors posed questions regarding if the Crazy Mountain Working Group or Crazy Mountain Access Project played an advisory role in developing the project triggering FACA.	2
Commentors indicated the combined scoping and public comment opportunity was inadequate and the timing of comment period made public participation difficult.	2
Commentors claimed an Environmental Impact Statement (EIS) is required for the project.....	3
Commentors stated cumulative effects of successive land exchanges in the Crazy Mountains have not been discussed or analyzed.	3
Theme 2: Alternatives.....	4
Commenters assert that the Forest Service failed to consider reasonable alternatives and bring forward a variety of suggestions.....	4
Commentors stated that alternatives cannot be dismissed without a full analysis.....	4
Commentors asked for an explanation of the exclusion of a small portion of Section 13 from Parcel I in the exchange.....	5
Theme 3: Lands Exchange Process.....	5
Commentors expressed concern over development and resource degradation without conservation easements or similar management tool to limit development.	5
Commentors questioned the imbalance of wetlands in the proposed trade and the legality of loss of wetlands/riparian areas.....	5
Commentor suggested the Forest Service consider the use of angle-point surveys and describe lands using aliquot parts.	5
Commentors expressed concern that the preliminary Environmental Analysis is lacking value and relative value of lands proposed for exchange.....	6
Commentors asked that any difference in value of lands be made up by acquiring additional land, not through cash equalization to maximize benefit to the public.....	6

Commentors noted that value of timber or other natural resources (water, wildlife) are not analyzed or disclosed.....	6
Commentors expressed concern over development and resource degradation without conservation easements or similar management tool to limit development, including the Forest Service placing a Right of First Refusal on all federal lands conveyed to private owners.....	7
Theme 4: Specific Resource Comments.....	7
Recreation and Trails	7
Access.....	10
Travel Management.....	13
Wildlife and Threatened and Endangered Species.....	13
Minerals	15
Cultural Resources and Tribal Consultation.....	15
Water Rights	16
Range	16
Aquatic Species	16
Comments Considered Out of Scope.....	17

Introduction

The Custer Gallatin National Forest values public participation and feedback. A written response to comments is not required for an environmental assessment or subsequent decision notice¹, but we feel it is important to document our consideration of public feedback. The comment period for the preliminary environmental assessment and the notice of exchange proposal occurred at the same time (November 9th, 2022) and meets the requirements of 36 CFR 218.25(a)(i) and 254.8. We received 1,090 comment letters, 942 of which were unique.

The scoping process and addressing key concerns from public comments is summarized in the draft decision notice, please see pages 4 through 7.

We carefully reviewed all the comment letters we received, and used them to identify issues for developing the environmental assessment. We also used the public concerns to develop Alternative 1, the Modified Proposed action. The comment consideration documented here is not intended to be exhaustive, rather we have identified concern themes from groups of comments.

Content Analysis Methodology

To identify comment themes and unique concerns, we followed this procedure:

- All written public comments submitted were read in their entirety.
- All written comments were coded based on specific topics that were used to group similar comments (see Themes 1 through 4 below).
- All subgroup themes of written comments were reviewed to identify unique concerns, which were summarized as concern statements.
- All subgroup themes of written comments were categorized by the most appropriate concern statement.

Comment Consideration and Response

Theme 1: Process

Commenters requested that the Forest Service conduct a more detailed environmental assessment.

The Center for Environmental Quality's (CEQ) regulations at, 40 CFR 1508.9, state that an environmental assessment, "Means a concise public document," that briefly provides sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s), to determine whether to prepare either an environmental impact statement or a finding of no significant impact. At 40 CFR 1500.4 (e) CEQ directs agencies to discuss only briefly issues other than significant ones.

The Forest acknowledges that a preliminary environmental assessment was provided during scoping. A more detailed environmental assessment that meets the regulations above with a succinct analysis of environmental effects that may result from the project has been prepared and is available on the [project website](#). Land exchanges and trail building and re-routes have been completed on the Custer Gallatin

¹ Per 40 CFR 1503.4, 40 CFR 1501.5, and 36 CFR 220.7

before and effects are well understood based on specialists' experience, expertise, and the scientific literature.

Commentor suggested that the proposed action and preliminary environmental analysis incorrectly included voluntary elements.

The Preliminary Analysis document describes these voluntary items on Section 1.1 Introduction page 4 and specifically says: "In conjunction with this land exchange, the non-Federal party negotiated the following elements on private lands within or near the exchange area to enhance the overall public benefits of this project. These elements are outside of the Agency's decision on this exchange and as such will not be evaluated in this document. "

Involuntary elements were included for informational purposes and were not considered in the preliminary evaluation of environmental effects, or in the environmental assessment.

Commentors posed questions regarding if the Crazy Mountain Working Group or Crazy Mountain Access Project played an advisory role in developing the project triggering FACA.

Four landowners in the east side Crazy Mountains and YC, collectively represented by Western Land Group (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 September 2020, the Forest provided preliminary feedback on the proposal and identified issues for WLG to consider prior to submitting their final proposal. The Forest also clarified the importance of the administrative land exchange process as authorized under the General Exchange Act and Federal Land Policy and Management Act of 1976 and promulgated in 36 CFR 254 Subpart A, and the requisite open and inclusive public involvement. On July 9, 2021, WLG submitted the non-Federal parties' final proposal. The Forest Service completed an evaluation of the proposal and brought the Agency proposal to the public including hosting public meetings in fall 2022, and now is presenting the final Environmental Assessment and draft Decision Notice.

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

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

Commentors indicated the combined scoping and public comment opportunity was inadequate and the timing of comment period made public participation difficult.

There is no statute or regulation that requires the scoping period be separate from the comment period. Except where required by statute or regulations, the responsible official may adjust or combine the various steps of the NEPA process (Forest Service Handbook 1909.15, Chapter 10). The responsible

official (Custer Gallatin Forest Supervisor), elected to combine the NEPA scoping and public comment processes for this project.

In addition, Forest Service regulations governing land exchanges require a 45-day notice and opportunity to comment (36 CFR 254.8 (b)). Due to this regulation the comment period for the preliminary environmental assessment was 45-days rather than the required 30-days (36 CFR 218.25(a)(i)).

While we understand the concern, the Forest received over 1000 comments on the project, suggesting robust engagement from the public.

Commentors claimed an Environmental Impact Statement (EIS) is required for the project.

Agencies are required to prepare an environmental assessment (EA) for projects that do not normally require an EIS and are not subject to a categorical exclusion to determine whether an Environmental Impact Statement or Finding of No Significant Impact (FONSI) is appropriate. Based on the consideration of information gathered during the scoping periods and effects disclosed in environmental assessment, the responsible official determined that a Finding of No Significant Impact is appropriate, and an EIS will not be prepared. Please see the draft Decision Notice and Finding of No Significant Impact for the responsible official's decision and rationale.

Commentors stated cumulative effects of successive land exchanges in the Crazy Mountains have not been discussed or analyzed.

Cumulative effects are measurable and meaningful effects that would overlap the effects of this project in time and space. Several past projects have been fully executed as described below. Past projects were not within the boundary of this project. Once a lands transaction is executed, it becomes the new landownership or land status baseline from which the effects of projects are assessed. No future projects in the Crazy Mountains are being considered or are reasonably foreseeable.

Past notable land exchanges, right of way acquisition and land purchase projects in the Crazy Mountains include:

Land Exchanges

- 1934/37, F.W. McReynolds (2 exchanges: 637 acres and 1,105 acres)
- 1940, Jacob Johnson (2,551 acres)
- 1947, Northern Pacific Railway Co. (3,120 acres)
- 1950, Raymond Criswell (3,829 acres)
- 1985, Sharon Cochran (634 acres)
- 1999, Spear Lazy U Ranch (1,076 acres) plus donation of 227.5 acres
- 2007, Muffie Murray (160 acres) plus donation of 248.6 acres
- 2022, Wild Eagle Mountain Ranch Land Exchange; 640 acres
- 2022, Rock Creek Land Exchange; 2022; 1237 acres

Road Access

- 1953/54, Big Timber Creek Road (result of litigation regarding public access)
- 1956, Shields River Road No. 844

Comment Consideration and Response, East Crazy Inspiration Divide Land Exchange

- 1967, Forest Lake Road No. 66
- 1974, Ibex Road No. 2510
- 1974, Rock Creek Trailhead, Rock Creek Trail No. 270
- 2020, Big Timber Canyon Road No. 197 (donation and partial termination of 1954 easement)
- 2020, North Rock Creek Spur Road No. 199.2, Rock Creek Trailhead, Rock Creek Trail No. 270 (donation and partial termination of 1974 easement)
- 2020, Big Elk Creek Road 654
- 2020, Big Elk Creek Trail 640 and Trailhead

Land Purchases

- 1975, The Nature Conservancy (4,574 acres)
- 1991-93, Louise R. Galt/71 Ranch (38,916 acres) completed in 3 phases with 6 purchases.

Theme 2: Alternatives

Commenters assert that the Forest Service failed to consider reasonable alternatives and bring forward a variety of suggestions.

Alternatives suggested by the public are addressed in Table 10 on pages 27-28 of the environmental assessment. A no action alternative, proposed action alternative, and alternative 1 were considered and analyzed.

Analysis of alternatives in the environmental assessment process was used to inform the responsible official and the public of the reasonable alternatives. Forest Service regulations at 36 CFR 220.7(b)(2) state that an environmental assessment “shall briefly describe the proposed action and alternative(s) that meet the need for action. No specific number of alternatives is required or prescribed.” In determining the range of alternatives to be considered, emphasis was placed on what is “reasonable.” Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply a desirable alternative (46 Federal Register 18026).

Alternative 1, the Modified Proposed Action, was created to respond to some suggestions for alternatives. Other alternatives suggested by the public would not meet the need for action or would not be reasonable or feasible.

Commentors stated that alternatives cannot be dismissed without a full analysis.

Per 36 CFR 220.7, “no specific number of alternatives is required or prescribed” in an environmental assessment. The Forest Service has no obligation to fully develop every suggested alternative. As above, the Responsible Official determined the range of alternatives through consideration of what is reasonable.

Based on comments received during the 45-day public comment period on the preliminary environmental assessment (December 2022), the Forest Service reengaged with WLG to explore additional alternatives to respond to the Key Issue identified in section 1.4 of the environmental assessment. While many iterations or alternative ideas were suggested during public comment, they were not feasible or reasonable because they are outside of the decision space of the Forest Service or require willing landowners and thereby are eliminated from detailed analysis.

Commentors asked for an explanation of the exclusion of a small portion of Section 13 from Parcel I in the exchange.

The Forest was unable to negotiate acquisition of the entire section in this exchange with the existing landowners. The landowner is retaining approximately 25 acres not included in Parcel I for existing improvements on the private property. The United States currently holds a recorded easement through this inholding for Sweet Grass Trail No. 122 and secure public access will continue.

Theme 3: Lands Exchange Process

Commentors expressed concern over development and resource degradation without conservation easements or similar management tool to limit development.

Alternative 1, the Modified Proposed Action, was developed, in part, to address this concern. The durable conservation tools such as conservation easements are described in the environmental assessment in section 2.3 and in section 2.5.

In their initial proposal, the proponents have indicated that the intention is that all the Crazy Mountain landowners will incorporate the Federal lands into their existing ranching, guiding, and residential operations. The Yellowstone Club has indicated they will use the federal lands for private ski terrain and recreation.

As part of Alternative 1, the Forest Service and several of the landowners have agreed that conservation easements or deed restrictions/protective covenants will be placed on lands leaving federal ownership at closing (Parcels 1, 2, 3, 4, 8, 9, 10). These protections are perpetual and will be a requirement of the binding exchange agreement. Deed restrictions for wetland and associated riparian protection will also be placed on Parcels 7, 8, 9, 10.

Commentors questioned the imbalance of wetlands in the proposed trade and the legality of loss of wetlands/riparian areas.

Alternative 1, the Modified Proposed Action, was developed, in part, to address this concern. The Modified Proposed Action, Alternative 1 modifies the boundaries of Parcels 2, 8 and D so that the Forest Service retains about 55 acres wetland acres. Deed restrictions will be placed on about 40 acres of wetlands in Parcels 7, 8, 9, and 10. These modifications create the advantage of keeping more wetlands and riparian areas in the Federal ownership, as described in the EA, while also ensuring that there is no net loss of wetland value. As described on page 60 of the environmental assessment, the refined preliminary wetland assessment estimated total wetland value within the federal Parcels as 91.01 acres. The sum of wetland value within the non-federal parcels combined with the wetlands protected by deed restrictions is 97.87 acres, which would ensure compliance with Executive Order 11990.

Commentor suggested the Forest Service consider the use of angle-point surveys and describe lands using aliquot parts.

Legal descriptions for federal and non-federal parcels conform to the Specifications for Description of Land (2017), USDI Bureau of Land Management, Cadastral Survey. Generally, this involves a legal description written in aliquot parts. The parcels included in the exchange are described using aliquot parts to make boundary management efficient. Any surveys that need to be completed will be conducted in accordance with the Manual of Surveying Instructions (2009), USDI Bureau of Land Management,

Cadastral Survey. As an element of the exchange the proponents will finance all the requisite survey to federal standards.

Commentors expressed concern that the preliminary Environmental Analysis is lacking value and relative value of lands proposed for exchange.

Land exchanges must be equal in value per regulations (36 CFR 254 Subpart A) and law (the Federal Land Policy and Management Act of 1976). As part of determining the feasibility of the exchange, the initial consultation with an appraiser was completed by the Forest Service in 2022 prior to the development of the preliminary environmental analysis. As a result of the valuation consultation, it was determined the lands involved in the land exchange are equal in value or could be made equal in value by a cash equalization payment by either party that would not exceed 25% of the value of the Federal lands as required by 36 CFR 254.12.

The lands involved in this exchange will be appraised to Federal standards to determine market value, this process is anticipated to conclude in 2024 and will be disclosed in the final decision (36 CFR 254.9). (*Draft DN/FONSI pg. 12*).

Commentors asked that any difference in value of lands be made up by acquiring additional land, not through cash equalization to maximize benefit to the public.

The intent of the land exchange is that the lands would be equal in value as discussed above. The valuation consultation indicates this project is equal or within the 25% threshold. In a large exchange it is extremely difficult to achieve exactly equal values. The Forest Service preferred approach is that differences are made up with additional lands to provide public benefit whenever possible. However, the identification of these lands early enough in the process isn't always feasible which is why the Forest Service, or the non-federal parties may need to rely on cash equalization for values within 25% of the value of the Federal lands (CFR 254.12).

In the selected alternative (Alternative 1), the Forest Service will acquire 2,255 more acres than conveyed, and the appraisal will consider all the requirements of this Alternative involving Federal lands.

Commentors noted that value of timber or other natural resources (water, wildlife) are not analyzed or disclosed.

The Forest Service appraises lands for exchange by analyzing and establishing the highest and best use of the property (Uniform Appraisal Standards for Federal Land Acquisitions 1.4.3). This process enables the appraiser to determine which comparable sales to select for use in the applicable approaches to value, typically the sales comparison approach. This approach includes analysis of the comparable sales and other market data determines which elements of comparison merit consideration in the appraisal (Uniform Appraisal Standards for Federal Land Acquisitions 1.5.1.1). Elements of comparison for rural, large acreage property in this part of Montana could include items such as: location, surface water, vegetation (may include timber), terrain, access, configuration, and/or recreation amenities (may include wildlife).

The sales data chosen typically encompasses similar factors of value affecting the subject property and based on the sales, those factors of value are inclusive in the overall dollar per acre value of the property. As above, a final Decision will not be signed until the appraisals and associated documentation are complete (*draft DN/FONSI pg. 12*).

Commentors expressed concern over development and resource degradation without conservation easements or similar management tool to limit development, including the Forest Service placing a Right of First Refusal on all federal lands conveyed to private owners.

In their initial proposal to the Forest Service, the Crazy Mountain landowners have indicated that the intended uses for the federal parcels once in private ownership are incorporation into their existing ranching operations, guiding services, and residential use. The Yellowstone Club has indicated they will combine the federal lands with their current private ski terrain operation and recreation uses. The Forest Service and several of the landowners have agreed that conservation easements or deed restrictions/protective covenants will be placed on lands leaving federal ownership at closing (Parcels 1, 2, 3, 4, 8, 9, 10). These protections are perpetual and will be a requirement of the binding exchange agreement and carried into the recorded instruments.

A right of first refusal (ROFR) is a contractual obligation placed on the landowners requiring them to contact the rights holder with an option to purchase the property before they can accept an alternative third-party offer. The deed restrictions and conservation easements the landowners have agreed to will provide the necessary protection to limit development on the parcels. Encumbering the property with an additional contractual obligation can interfere with future property transfers among family members, creation of trusts, does not guarantee a purchase and can lead to disputes over the terms of the ROFR.

In addition, it would be difficult for the Forest Service to secure funding in a timely manner to respond a ROFR option. If a purchase is contemplated, the Agency must compete nationally for funds, a two-year process at a minimum. If the agency was able to secure funding, it would not be in timely response to a seller offering the property.

Theme 4: Specific Resource Comments

Recreation and Trails

Commentors concerned that new trail would be unusable for many at proposed grades, and single access point/trailhead would cause user bottleneck/conflict.

The Sweet Trunk Trail No. 274 has been designed and preliminarily laid out to meet Forest Service standards and designed for trail class 3 foot and stock trail. The Forest acknowledges that the new trail will gain elevation from the Big Timber Canyon Trailhead more quickly than the East Trunk Trail No. 136. However, the Forest Service Handbook standards provide for appropriate grades (3-12%), tread width (36-48 inch), and turning radius (5-8 foot) that consider the designed and allowable uses.

Stream crossings have been located at fordable locations, as opposed to bridge locations. Perennial water sources (including for pack and saddle users) are available at Big Timber, Otter, Dry, Hell Roaring, Bruin, and Sweet Grass creeks. North Amelong does not always flow at the ford location, but perennial water can be found a short distance downstream.

The new trail has the advantage of providing access to a large area of National Forest System lands that cannot currently be accessed from the East Trunk Trail No. 136. The new trail is likely to help to alleviate some of the impacts of high visitation at Blue and Twin Lakes by offering another trail opportunity for

Comment Consideration and Response, East Crazy Inspiration Divide Land Exchange

visitors on the east side of the Crazy Mountains and out of the Big Timber Canyon Trailhead. In addition, work to expand and improve the current trailhead facilities will also help to accommodate the expected increase in use.

Commentors questioned the Forest Service's ability to maintain a new 22-mile trail.

Each year, the Forest Service performs maintenance across the Yellowstone Ranger District's 750-mile plus long network of trails. Trail crews complete both routine and deferred maintenance on trails, including through overnight and day trips in the Crazies. The new 22-mile trail along the east side of the Crazies will be incorporated into this planned schedule of work and maintained as needed into the future.

Several commenters expressed concern that kayaking access to whitewater on public land will be lost in exchange (Big Timber and Sweet Grass).

Kayaking access to whitewater on National Forest System lands will be available at multiple points along Big Timber Creek. Big Timber Creek is popular for white water early season and is generally accessed via the Big Timber Canyon Trail No. 119 for which no change in ownership or access is proposed. A minor change in ownership would reduce cross country access to a small piece of Big Timber Creek in Parcel 7; downstream access from Forest Service lands in section 12 at the Big Timber Canyon picnic area would still be available.

The change in access for potential kayaking on Sweet Grass Creek is limited to the modifications of ownership in Parcel 1 and Parcel 2. Alternative 1, the selected alternative, addresses this concern because it will maintain cross country access to Sweet Grass Creek in Parcel 2. Though, as with the current condition, access will require a hike.

Several commenters proposed an adjustment to the boundary of Parcel 8 in the Inspiration Divide area to accommodate snowmobiling opportunities.

The proposal submitted during public comment that included modifications to Parcel 8 has been incorporated into Alternative 1, the modified proposed action.

Under Alternative 1, snowmobile recreational riding opportunity in the Buck Ridge area will be retained by reducing the land to be conveyed in Parcel 8 by 80 acres. This change will retain the Yellow Mule area and a bench below Eglise Ridge by shifting the boundary in Parcel 8. This change provides for a popular destination vista and a more logical turn around area for snowmobiles, reducing future potential management conflicts.

The Eglise Rock Overlook Trail No. 468 is located on Parcel 8 and the Forest Service would reserve an easement to secure public access on this motorized trail as part of both action alternatives.

Commentor felt the description of The Sweet Grass Trail in the Pre-EA was incorrectly applied. "The Sweet Grass Trail is a long out and back trail with no scenic destination. Current use levels are low with the most use occurring during the fall hunting season."

Descriptions of what is considered scenic can be somewhat subjective; however, that phrasing is not included in the Environmental Assessment.

The Sweet Grass Trail No. 122 is currently depicted as beginning in T. 4 N., R. 12 E., Section 2, running coincident with Sweet Grass Road No. 990 for approximately 3.6 miles to T. 4 N., R. 12 E., Section 8,

Comment Consideration and Response, East Crazy Inspiration Divide Land Exchange

where the road terminates. The trail crosses intermingled private and National Forest System lands for approximately 11 miles and ends in T. 4 N., R. 11 E., Section 34, at the junction with Big Timber Creek Trail No. 119 at the Conical Peak Saddle.

Anecdotal reports and observations from Yellowstone Ranger District trails staff indicated that observed use primarily occurs to access Cave Lake in the summer and for fall hunting. Field staff indicate that this use is relatively low when considering other locations in this Mountain Range. The Forest Service does not generally track use counts on individual trails and relies on field observations and visitor contacts made by employees during patrols.

Commentors would appreciate more consideration and accessibility issues for limited mobility users at trailheads, fishing access sites, and on new trails being constructed.

The new trail will be laid out and constructed to meet Forest Service standards for stock use. The trailhead expansion, where possible, will be designed to improve accessibility for limited mobility users. New parking, surfacing and restroom facilities will also be designed and installed in accordance with current appropriate accessibility standards.

Commentors suggest that the Sweet Trunk trail will result in crowding at the Big Timber Canyon Trailhead and question how the infrastructure would accommodate that increased use.

As the only public access to the Crazies on the eastside, in the context of the Crazy Mountains the Big Timber Canyon receives considerable visitation throughout the summer season. Visitors use the Big Timber Canyon Picnic Area, Half Moon Campground, and Big Timber Canyon Trailhead to access public lands. The Trailhead has become increasingly popular in recent years. Day-use recreationists hike to Blue and Twin Lake and those with permission summit Crazy Peaks from the trailhead. The infrastructure at the trailhead is minimal with one outhouse, a hitch rail, and a parking area that is rough and unevenly surfaced.

The Big Timber Canyon Trailhead, as the starting point of the new Sweet Trunk Trail, would be improved. Trailhead improvements would be funded by the non-federal party and may include resurfacing the current parking area, construction of additional parking, better parking for horse trailers, installation of new or additional toilet facilities, and installation of an interpretive kiosk. These modifications would meet the current above-capacity needs of the trailhead and would also serve to support the increased use from the new Sweet Trunk Trail.

The new trail will help disperse users now providing for a longer loop opportunity in addition to the day and overnight use of Blue and Twin Lakes.

Source: Recreation and Special Uses Report

Commentors would like to see the New Sweet Trunk Trail No. 274 designated for non-mechanized use.

This Crazy Mountain Backcountry area is not suitable for summer or winter motorized or mechanized use. The Sweet Trunk Trail will be located within this designated area and will be managed for foot and stock use. (*Draft DN/FONSI pg. 10*)

Commentors are concerned that the proposed exchange limits public hunting and fishing opportunities.

Hunting and fishing opportunities will not be directly limited through this exchange. Alternative 1 preserves access to Sweet Grass Creek for recreational fishing. Many of the parcels of National Forest System lands in the East Crazy mountains are currently not accessible due to the checkerboard nature of the area.

For both action alternatives, Montana Fish Wildlife and Parks, the agency that manages wildlife in Montana, would continue to offer hunting opportunities on public lands in this area as part of their management of big game. While there would be a change in hunting opportunity, the secured public access routes and consolidated landownership would allow for a greater dispersal of hunters onto Federal lands in the East Crazy mountains.

Source: Recreation and Special Uses Report

Access

Commentors concerned that the Pre-EA proposes access that is of significantly different quantity and quality to historical access, accessing different areas and requiring longer distances.

There is a long history of disagreement between the Forest Service, landowners, and the public on the use of Sweet Grass and East Trunk trails where the agency has no recorded easements across private property to access the National Forest System lands. While these routes have been displayed on Agency maps, they pass through private property and were established through use and practice, rather than pursuant to a written conveyance allowing the public and Forest Service to use these routes.

A primary need for action for this land exchange proposal is to resolve longstanding access issues surrounding these trails. The Access report identifies the status of each individual route within the project area to clearly articulate for the public where secured access does and does not exist. This project will not result in the loss of any perfected access routes or points in the Crazy Mountain range. *See sections 1.2 and 3.2 of the environmental assessment for additional info.*

This project includes construction of the Sweet Trunk Trail to provide for public access to National Forest System lands in the east Crazyes. From the Big Timber Canyon trailhead, will be about 22 miles via the Sweet Trunk Trail to the junction with Sweet Grass Trail No. 122 on proposed National Forest System lands in Parcel B. The mapped East Trunk and Sweet Grass Trails would have been closer to a 16 mile hike (11 miles of East Trunk and nearly 5 miles of Sweet Grass) to reach the Trail No. 122 junction. The Forest acknowledges that the new trail will be about 6 miles further to this same point if accessed from Big Timber Canyon.

Commentors would like to see the Forest Service analyze the historical records of public use/access and the possibility of an easement into the Sweet Grass Creek area.

The Forest Service has reviewed and evaluated the current and historic records pertaining to access routes into the Sweet Grass Creek drainage. This is documented in sections 1.2 Background and 3.2 Access in the environmental assessment.

This situation surrounding access to the Sweet Grass drainage is further complicated because Rein Lane, the access road to the Sweet Grass Trailhead, Trail and East Trunk Trail is not a National Forest System

Road and access has only been provided by Landowner permission. In the 2006 Travel Plan and associated maps, Rein Lane is not depicted as part of the Forest Transportation System. In the Travel Plan FEIS and associated documentation, the Forest asserted no interests for this road which is located outside of the Forest Boundary. (*EA pg. 34*)

Comments claim the public has a right to historical trails through “open and notorious” use of them.

One of the complex access issues in this area is a fundamental argument about whether the existence and historic use of roads and trails through adjacent private property affords a prescriptive right of access that the Forest Service could secure. The sole means of securing or perfecting a prescriptive easement across private lands when there is not agreement with the affected landowner is through litigation, with the courts adjudicating the existence of an easement. In other cases, the Forest Service has asked the court to determine the status of a prescriptive easement as a means of securing access where the facts and the record support such a claim. However, for the trails on the east side of the Crazies in Sweet Grass Canyon and the East Trunk Trail, decades of permissive use controlled by landowners, changes in the physical location of the trails and/or limited trail maintenance records over the span of years makes it more difficult to bring a successful claim and thereby increases the likelihood of an unsuccessful claim, which would leave the Forest Service and public with less access. (*Draft DN/FONSI pg. 2*).

Project sets dangerous precedent of rewarding private landowners for cutting public off from historical easements.

See above and page 2 of the draft Decision Notice and FONSI.

Historic records often show efforts to discuss or negotiate with landowners in times of disagreement; in some instances, those conversations have moved forward to productive resolution while others have sat idle and unresolved for decades. Typically, this is due to a lack of adequate agency evidence to support a legal claim. For emerging issues pertaining to historical use of a route to access National Forest System lands, those that have not idled for decades, the Agency works hard to quickly prepare and evaluate records to determine our positions and what steps may be appropriate to defend a historic interest.

On routes where the Agency holds perfected easements and where a landowner has compromised the easement, the Forest has a long history of defending agency easements and rights vigorously.

The Forest Service relies on regulations and policy to resolve access disputes through various landownership adjustments under 36 CFR 212 Subpart A, FSM 5460 and FSH 5409.17. Policy provides for a variety of methods to acquire and protect the Forest transportation system such as acquiring easements by purchase or donation, land exchange, cooperative and reciprocal access agreements, and establishing existing rights through adjudication.

Commentors requested that the Forest Service take into consideration historical railroad deed language and legal implications for access.

The Forest Service has considered this. The checkerboard landownership pattern in the Crazy Mountains was created through railroad land grants to Northern Pacific Railway. Deeds from Northern Pacific Railway to landowners (predating the existing landowners) generally reserved “an easement in the public for any public roads heretofore laid out or established.” The railroad deeds did not define the location of

Comment Consideration and Response, East Crazy Inspiration Divide Land Exchange

public roads “heretofore laid out” within the meaning of Montana’s law as of the 1930’s and 1940’s. The cited deeds do not identify a specific easement or incorporate maps identifying specific easement reservations.

The basis for this presumptive use right is therefore through the establishment of a prescriptive right of way. Again, the Forest Service possessing a valid prescriptive right of way through the railroad deed reservation would require litigation and a showing, by clear and convincing evidence, “open, notorious, adverse, continuous and uninterrupted use of the claimed easement for the full statutory period of five years.” Furthermore, there is a risk that the public prescriptive easement was extinguished by reverse prescription (i.e., where a landowner bars public access such as placement of a locked gate or “no trespassing” signs for five years). If a claim were unsuccessful, the Forest Service and public could be left with less access.

Commentors expressed concern about management challenges on difficult to access public land without rights of way or administrative access.

The Forest Service acknowledges that administrative access into Sweet Grass would be valuable to further assist in the administration of public lands. As stated in the alternatives considered but dismissed (*environmental assessment pages 26-28*), the Forest Service and the Landowners were unable to reach a compromise on this point. The Forest Service will continue work with landowners to gain permission to access the Sweet Grass area as needed for management activities (such as fire suppression and weed control) as we have in the past.

Comment asked for analyses of lost access to Cave Lake.

The project will improve the cross country access to Cave Lake via the Milly Creek drainage by acquiring Parcel I. Parcel I will be accessible from the Sweet Grass trail via the new Sweet Trunk trail from the east and Big Timber Canyon from the southwest. There is no Forest System trail to Cave Lake, but there are user created trails in this area.

Commenters note that one user created route crosses through other private lands in the SW corner of section 23, which is not included in this exchange and is therefore beyond the scope of this project.

Commentor notes that the advertised 42 mile loop trail will pass through Switchback Ranch for which there is no easement.

Information provided in the preliminary EA was incomplete, the Forest Service holds an easement for the small portion of Big Timber Creek Trail No. 119 crossing through section 1. Refer to the Section 3.2 Access in the Environmental Assessment and the Access specialist report for specific easement information.

There needs to be more clarity on what permissive access means and how it is maintained.

Permissive access is the use of an access road or trail by permission or discretion of the landowner, where there is no requirement or formal obligation that it will continue. It is maintained at the discretion of the landowner and does not convey a legal interest in the property.

Travel Management

Commentors state that the proposed trail and trailhead improvements will not be consistent with the Travel Management Plan, nor will the loss of historical trails.

This project is a standalone decision for a land exchange and associated elements (nonmotorized trail addition and trailhead improvements). The Project is consistent with the 2022 Land Management Plan as documented in the Plan Consistency Table. While the Action Alternatives meet the goals and objectives of the 2006 Travel Plan, there is no requirement that we make consistency findings.

Commenters misunderstand the relationship between “historic trails” and the purpose of developing Forest Access Objectives in the Travel Plan (Decision 1-3 to 1-10). The Travel Plan was very clear regarding the purpose of identifying routes where additional access was desired or needed. Stating those needs, interests did not establish a priority, pathway or strategy (Travel Plan ROD pages 28-29).

Commentors felt that the proposed road closures are not consistent with the Travel Management Plan and 2022 Land Management Plan

The Forest Service is not proposing any road closures as part of this project. The Proposed Action Alternative and Alternative 1 both move the forest towards the goals, objectives, and desired conditions in the 2022 Land Management Plan and is consistent with the expected outcomes of the Travel Plan.

Refer to the Environmental Assessment, and the Roads Trails and Access report for discussion of administrative roads not being retained under the action alternatives.

The decision to not retain the portions of administrative road is consistent with the Land Management Plan and Travel Management objectives.

Wildlife and Threatened and Endangered Species

Commentors felt the Pre-EA did not consider the impacts of the exchange on wildlife through privatization of habitat, and the potential for development on private land in the future.

The potential effects of the project on wildlife habitat, including the potential for future development was analyzed and disclosed in the Wildlife Report and summarized in Section 3.4 Wildlife Resources of the environmental assessment.

The proposed project is consistent with all Land Management Plan requirements for wildlife, as documented in the Plan Consistency Table. Habitat conditions would continue to provide security and refuge for species and meet the basic needs such as feeding, breeding and sheltering. The consolidation of ownership would also provide better habitat connectivity for daily and seasonal movements.

Commentors felt the Pre-EA did not analyze the impacts the proposed trail and trailhead development on wildlife.

This concern was addressed by analyzing and disclosing the potential effects of proposed trail and trailhead improvements on wildlife in the Wildlife Report and Environmental Assessment.

To summarize, habitat use and security would be most severely impacted by the presence and frequent use by motorized vehicles. This holds true for both predators such as grizzly bear and prey species such as big game. The new trail is non-motorized and would therefore not result in any reduction in security habitat for key species.

Commentors concerned that the land exchange's potential negative impacts on habitat and connectivity for wildlife have not been analyzed.

Conserving wildlife habitat connectivity and protecting key habitat is identified as a need for action (*EA pg. 7*). The potential effects of the project on habitat and connectivity were analyzed and disclosed in the Wildlife Report, and summarized in the EA. In general, consolidation of habitat would provide better connectivity for big game as they disperse and shift between seasonal habitats and potential exchange between adjacent ecosystems (*EA pages 46-47, 49-54*).

Commentors would like to see the impacts of exchange and higher elevation recreation on mountain goats analyzed.

This comment was addressed through analysis in the Wildlife Report and EA. In general, the project would result in an increase in both general and winter mountain goat habitat under federal protections (*EA pg. 54*).

Commentors felt there is a disparity of wildlife habitat quality in the proposed exchange.

The potential effects of the project on wildlife habitat were analyzed and disclosed in the Wildlife Report and summarized in the environmental assessment. Analysis found that the exchange will not result in equal benefits to all species. Some species like wolverine, Canada lynx, and grizzly bear would likely see greater benefits relative to big game. Mature multistory stand structure represents the best potential habitat for snowshoe hares which is the primary prey species for Canada lynx. Alternative 1 will result in an overall gain of over 179 acres of mature multistory stands into Federal ownership. For grizzly bear secure habitat, alternative 1 will result in an increase of about 185 acres consolidated under federal management in the recovery zone. Wolverine would see an increase in Federal management acres across all key habitat types, maternal, primary, and dispersal. (*EA pages 48, 50, 52-53*)

Overall, there would be an increase in big game habitat under federal ownership and subject to the increased protections outlined in the Land Management Plan compared to the current condition, with the exception of lower elevation elk winter habitat. While currently there is no crucial winter range delineated for big game within the project area, general winter habitat does exist and there would be a decrease under federal management given the lower elevations of federal lands exchanged (*EA page 53*).

Commentors felt that hunters will lose access to most productive lands (which will be privatized) and Elk will seek sanctuary on those private lands during hunting season.

This concern was addressed through additional discussion on the use of non-federal lands by elk during the hunting season in the environmental assessment. The current lower elevation habitats have unperfected public access. The proposed exchange would perfect access to Forest System lands that have been consolidated. Elk are likely to continue to use both the higher and lower elevation habitats in accordance with their seasonal habitat requirement needs (*EA, pg. 54*).

Commentors would like to know if surveys have been completed in project area for at-risk plants.

The potential effects of the project on at-risk plants is disclosed in Section 3.10 of the Environmental Assessment. As described in the Methodology section of the Botany Report, one botanical survey has

been completed in the project area. The survey took place in 2006 on approximately 100 acres within the east Crazy parcels (no sensitive species were found).

Whitebark pine surveys have not been conducted within the project areas. The Endangered Species Act does not require surveys, only the use of the best data available in analysis. The Forest Service Region 1 developed a potential habitat dataset layer depicting all lands within USFS Region 1's ownership that have potential to support whitebark pine given the species' ecological requirements and current topographic and climatic gradients (*Botany Report, Methodology section*). Refer to the Environmental Assessment and Biological Assessment for more on the project's potential effects on whitebark pine.

Minerals

Commentors concerned that a severed mineral estate opens exchanged lands to future development of mineral resources, noting that the mineral estate being exchanged is not equal.

The Forest Service has completed a Mineral Potential report as well as a full analysis of non-federal mineral title/ownership for each of the properties involved in the exchange. The report found that both the federal parcels proposed for exchange and the non-federal parcels to be acquired have a limited potential for the occurrence of a locatable, leasable, salable or critical minerals deposit. This conclusion is based primarily on the following three components, 1) absence of a developed mineral resource of any type on the subject parcels or on nearby lands, 2) limited historical exploration activities in the surrounding area, and 3) unfavorable geologic environment. Therefore the risk of development of mineral resources is low. (*Environmental Assessment, section 3.9*).

The Forest Service acknowledges an unequal exchange of mineral estates. Non-federal Parcels A, C, D, and J will convey 100 % of their mineral estate to the United States. Parcels B and H will convey 50% mineral estate and Parcels E, F, G and I will convey 25% of the mineral estate. (*Mineral Potential Report*)

The non-federal party will continue to diligently pursue acquisition of the outstanding mineral interests for conveyance to the United States by contacting the outstanding mineral owners to determine if they are willing to convey their mineral interests to the United States (*EA, pg. 22-23*).

Note: The Mineral Potential Report will be available on the project website after we receive concurrence from the Bureau of Land Management.

Cultural Resources and Tribal Consultation

Commentors request additional information regarding what tribes have been consulted with.

Tribes consulted with for this project include the Crow, Northern Cheyenne, Shoshone-Bannock, Confederated Salish and Kootenai Tribes, and Nez Perce. Tribal consultation is ongoing.

Commentors inquired as to the status of heritage surveys.

There has been heritage survey of all parcels leaving federal ownership (completed in the fall of 2022). The report has been finalized and is being submitted to the State Historic Preservation Office. It will be submitted as part of the Section 106 process to comply with the National Historic Preservation Act. Additionally, the heritage survey supports the National Environmental Policy Act analysis.

The Cultural Resource Type III inventory was conducted between September 28th and October 20th of 2022. All parcels leaving federal ownership were inventoried.

Water Rights

Commentors asked that the project consider the value of retaining the water rights in federal ownership on the parcels being conveyed.

The Forest Service has thoughtfully considered water rights. Water rights on federal parcels 2, 3, and 6 are proposed for conveyance from federal ownership to private ownership. These water rights are for use of stock to drink direct from the source (Sweet Grass Creek, Otter Creek and Amelong Creek). The Forest Service will be unable to put these stock water rights to beneficial use once these parcels are conveyed. There would be no value in retaining them if beneficial use cannot be achieved post exchange.

In the Modified Proposed Action, Alternative 1, the Forest Service is retaining 200 acres in Parcel 2 and will also retain the water right for stock use on this portion of the parcel. Water right 43BV 60160-00 for the use right for stock direct from source on Sweet Grass Creek will be retained in split ownership.

Range

Commentors asked for information on noxious weed monitoring/management on grazing allotments.

Grazing allotments and their management are beyond the scope of this project. Noxious weed management occurs forestwide under the 2005 Gallatin National Forest Invasive Weed Treatment Project EIS and ROD.

Commentors requested that grazing allotments be revised to reflect new standards and goals of the 2022 Forest Management Plan.

We appreciate the commenter's concerns. Amending grazing allotments, other than boundary changes that would result from the project (environmental assessment pg. 22), is beyond the scope of the actions in this project. The 2022 Land Management Plan is currently in effect. The Record of Decision for the Land Management Plan states: "Components applicable to livestock grazing (including the end of season stubble height guideline) will be incorporated through permit modification(s), reissuance of existing term permits, issuance of new term grazing permits, or as allotment management plan revisions and sufficiency reviews occur." The listed activities are not included in this project.

Comment asked for assessment of impacts of livestock grazing in project area.

Livestock grazing is not a component of this project other than boundary changes that would result from this project (environmental assessment pg. 22). This project would not create any new grazing allotments, so any impacts resulting from grazing are beyond the scope of this project.

Aquatic Species

Commentors asked that the EA consider stonefly and other insect's presence and impacts upon them from development and recreation in the Crazy Mountains.

The proposed action would put more aquatic habitat in federal ownership which ultimately would decrease probability of impacts to invertebrates.

The western glacier stonefly (*Zapada glacier*) is an aquatic macroinvertebrate known to occur in alpine streams and listed as threatened under Endangered Species Act. The western glacier stonefly occupies a narrow habitat niche in the uppermost reaches of alpine streams near glaciers, springs, ice, or permanent

snowfields. A preliminary review of satellite imagery for the Crazy Mountains parcels did not find snow fields or suitable habitat that would be affected by a change in land ownership or associated recreational use or trail construction (*Preliminary Environmental Assessment, Aquatic Resources page 50*).

Commentors asked that the EA consider proposal's impact on fish.

The potential effects of the project on fish and fish bearing streams and other waterbodies is included in section 3.5 of the Environmental Assessment.

Comments Considered Out of Scope

Commentors would like to see corner crossing analyzed as an access strategy.

Corner crossing as a strategy would not meet the purpose and need for the project and was not considered as an alternative. The legal status of corner crossings as the question is nested in state law. The State of Montana has periodically contemplated legislation on corner crossings including a house bill in 2017.

The Forest Service advises visitors to its lands to consult state law and takes no position on the legality of corner crossing. The Forest Service will continue to seek access across non-federal lands through acquisition of easements, land exchanges, acquisition of property that provides access from willing sellers and working with landowners of private lands on solutions.

Commentor stated that the Pre-EA did not analyze the application of treated wastewater on additional landscapes from the Yellowstone Club's wastewater permit for using treated water in snow making and down watershed effects of that snow melting.

The proposed project is primarily the transfer of land ownership which will not impact water quality. Exchanged parcels that are now privately owned will become managed by the Forest Service based on Forest Service land management guidelines and requirements. Exchanged parcels currently managed by the Forest Service would be transferred to private ownership and their management would be subject to applicable State, County and local regulatory laws and requirements. Future actions on private lands and their effects cannot be accurately predicted or analyzed at this point. Furthermore, the Forest Service does not regulate surface application of treated wastewater. The Montana Department of Environmental Quality and the Environmental Protection Agency regulate wastewater treatment and disposal.

EA fails to consider the impact of legislation such as the Northern Rockies Ecosystem Protection Act and H.R. 1755 and S. 1276. on the wilderness character of the affected landscapes.

Forest Service is required to follow current law, regulation and policies when making decisions. Legislation as mentioned in the issue statement is not yet law. There is a discussion in the EA about the protection and potential effects to Inventoried Roadless Area, Recommended Wilderness Area and the Back County Area.

Commentor noted lack of analysis on how exchange may impact value of property that will lose its border with National Forest Lands if proposed exchange is completed.

The appraisal process will determine market value of the federal and nonfederal lands involved in the exchange. Appraisals are conducted under the Uniform Appraisal Standards for Federal Land Acquisitions and Uniform Standards of Professional Appraisal Practice by a Licensed Appraiser. These appraisal requirements are applicable to all the lands involved in the exchange. National Forest System

Comment Consideration and Response, East Crazy Inspiration Divide Land Exchange

lands are managed for the public and it is not a requirement of these appraisal standards to value properties not involved in an exchange.