



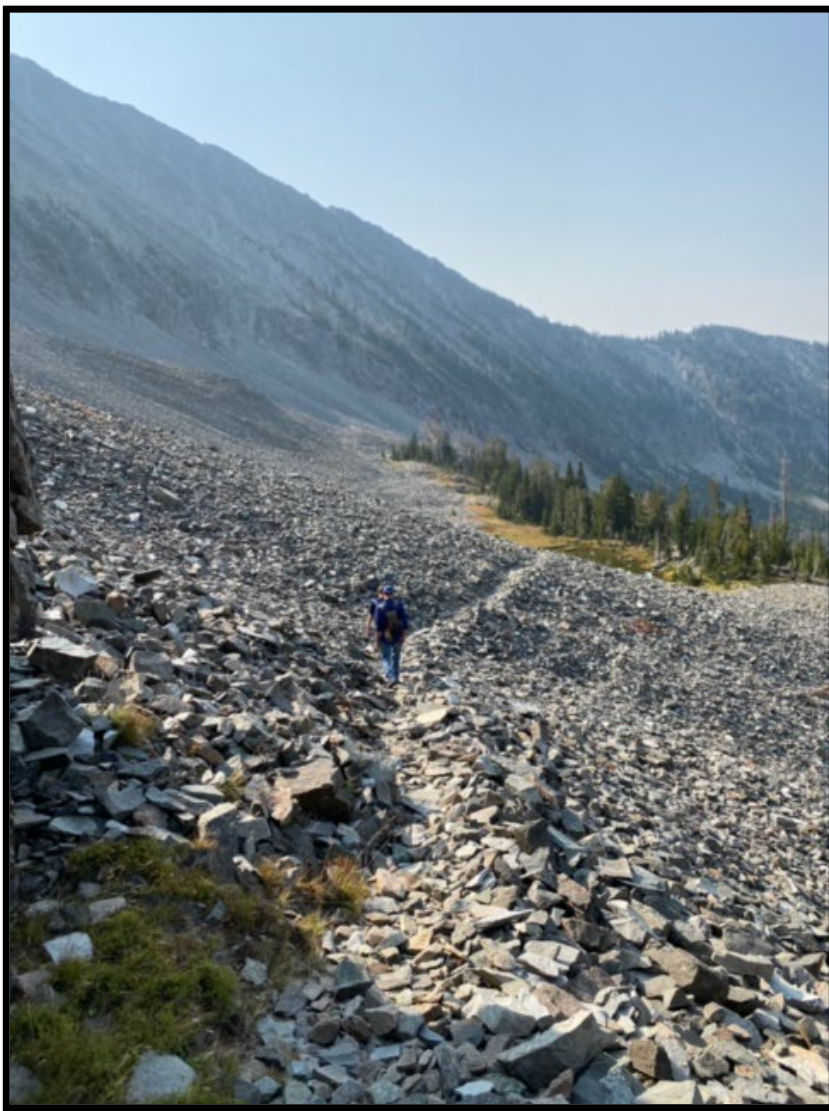
Forest Service
U.S. DEPARTMENT OF AGRICULTURE

Northern Region/ Custer Gallatin National Forest

September 2023

East Crazy Inspiration Divide Land Exchange

Draft Decision Notice and Finding of No Significant Impact



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Introduction

This draft decision notice discloses and documents my decision for the East Crazy Inspiration Divide Land Exchange project, which includes exchange of federal lands and associated interests for non-federal lands and associated interests, trail construction or relocation, and trailhead improvements within the boundaries of the Yellowstone and Bozeman Ranger Districts.

As the Custer Gallatin National Forest Supervisor, I am the responsible official with the authority to determine if there are significant impacts based on the environmental assessment and associated project record, which are incorporated into this draft decision notice.

The environmental assessment and associated project record disclose and document the anticipated environmental effects of the East Crazy Inspiration Divide Land Exchange. The original proposed action, detailed in section 2.3 was modified based on public comments and subsequent negotiations between the Forest Service (agency) and landowners to better address public concerns.

Decision and Rationale

I have decided to implement alternative 1, the modified proposed action. Alternative 1 includes the exchange of 3,855 acres of federal land for 6,110 acres of non-federal land. This includes 420 federal acres and 605 non-federal acres in the Inspiration Divide area in Madison County, Montana, and about 3,435 federal acres and about 5,505 non-federal acres in the east Crazy Mountain area in Sweet Grass and Park Counties in Montana.

The exchange of federal for non-federal lands is designed to consolidate ownership out of the existing checkerboard pattern and resolve longstanding public access issues in the east Crazy Mountain area, and to acquire lands with high wildlife and recreation values. The need for action is described in detail in section 1.3 of the environmental assessment (*pages 6-7*).

Detailed legal land descriptions of the lands for selected to exchange, federal and non-federal, are found below in Tables 1 and 2.

I have determined the selected alternative best meets the need for action and would not result in significant effects to the human environment (documented below in the Finding of No Significant Impact). My Decision is based on the effects analyzed and disclosed in the environmental assessment, resource specific specialists' reports and the supporting information in the project record. I have also considered the past, present and reasonably foreseeable activities, and their potential to affect the project area cumulatively with the East Crazy Inspiration Divide Land Exchange (described in the environmental assessment and documented throughout effects analysis and resource specific reports).

My decision is consistent with all laws, regulations, and policies, including the National Environmental Policy Act of 1969, as amended (42 USC 4321–4347), the National Forest Management Act, the Council of Environmental Quality regulations, and Forest Service regulations (36 CFR 220.4). The United States Forest Service has the authority to implement a land exchange through the following regulations:

- General Exchange Act of March 20, 1922 (42 Stat. 465, as amended; 16 U.S.C. 485, 486);
- Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716, 1717));

- Federal Land Exchange Facilitation Act of August 20, 1988 (102 Stat. 1086 as amended; 43 U.S.C. 1716).

Other applicable regulatory framework is addressed in resource specific reports and in the Findings Required by Other Laws section of this document.

Rationale for Decision

This land exchange includes lands in the Big Sky area (Inspiration Divide) and the East Crazy Mountains. The existing checkerboard land ownership pattern between federal and private lands in the Crazy Mountain range creates the greatest concern and complexity in this land exchange decision. Forest Service policy and Custer Gallatin Land Management Plan direction¹ encourage the Forest to consolidate public ownership and protect, maintain or improve public access.

Associated with the complex public and private ownership pattern in the East Crazy Mountains are roads and trails that traverse private properties. For each of these existing routes, there is a unique set of facts and circumstances related to access and ownership². Multiple Forest Service land managers have worked diligently for more than 40 years to resolve access needs in the Crazy Mountain Range. There have been land adjustments in other areas of this landscape which have included land acquisitions and exchanges, and this is one of the final areas of the Crazy Mountains to be addressed. If there were easy solutions to the access challenges in this area, the situation would have already been resolved.

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.

Land exchanges are an important tool that the Forest Service uses to consolidate land ownership, acquire lands with high wildlife or recreation values, and resolve public access issues. Though they present opportunities to gain lands in the public estate, there are always tradeoffs involved in lands passing out of public ownership. My decision-making process includes consideration of tradeoffs between resource effects, types of access and uses provided for, authorizing laws and regulations, land management intent, and the perceptions of gain and loss.

Throughout the process of developing and analyzing the anticipated effects of the East Crazy Inspiration Divide Exchange, the high value that people place on this area has been clear. On a landscape such as this, it is not surprising that people have expressed strong reservations about the loss of specific National Forest lands that they use and enjoy.

¹ Plan components BC-GO-LAND 01 and FW-GO-WL 03, Plan pages 163 and 53, respectively.

² Detailed in section 3.2 of the environmental assessment.

Achieving the Need for Action

I find that alternative 1 meets the need for action in the following ways:

1. To resolve long-standing public access and land use disputes. This includes the need to address historically complicated management of checkerboard ownership patterns and to resolve longstanding access issues surrounding the Sweet Grass Trail No. 122 (Sweet Grass) and East Trunk Trail No. 136 (East Trunk).
 - The implementation of the exchange includes the direct consolidation of lands which will resolve the checkerboard ownership in this area immediately upon implementation. It also includes patent reservations and acquiring easements, and trail construction to create perpetual, legal access to consolidated lands.
2. To provide for more effective and efficient natural resource management and protection of consolidated lands.
 - Consolidation will be achieved immediately upon the implementation of the exchange.
 - Boundary marking and posting and perpetual boundary maintenance will be significantly reduced.
3. To improve recreational opportunities and provide for perpetual public access in the East Crazies, Smeller Lake and along Inspiration Divide.
 - Smeller Lake is a 52 acre high alpine lake located in Parcel K that is highly valued for its habitat value for Yellowstone cutthroat trout and quality recreational opportunities. This parcel will enter Forest Service ownership immediately upon the implementation of the exchange, which means the public will have perpetual public access to this special area.
 - The addition of the 22 mile Sweet Trunk Trail will improve the connectivity, overall access, and recreational opportunities for foot and stock in the east Crazy Mountains. It will become part of the larger east Crazy trail network providing a 40 mile loop around the eastern part of the Crazy mountains, and be located almost entirely within National Forest System lands.
 - The Inspiration Divide Trail will enter public ownership upon implementation of the exchange.
4. To secure and protect roadless characteristics and provide a quiet, recreation opportunity consistent with the Crazy Mountain Backcountry Area and South Crazy Mountain Recommended Wilderness Area.
 - The interior, undeveloped sections of non-federal land acquired in the exchange in the Crazy Mountain area will become part of these special designation areas immediately upon implementation of the exchange. This eliminates the possibility that these interior, comingled lands could be developed and affect the character of the special designation areas.
5. To conserve the existing traditional uses and landscape character of the Crazy Mountains by reducing the potential for development of private lands interior to and comingled with National Forest System lands.

- As above, acquiring the lands in this area protects the traditional uses and landscape character by eliminating the possibility that these interior sections could be developed.
6. To conserve wildlife connectivity and protect key habitat.
 - The non-federal parcels that will be acquired in the Crazy Mountains upon implementation of the exchange are unroaded, undeveloped, or unfragmented tracts of land intact ecosystems that provide valuable wildlife habitat.
 7. To protect interior sections of high country in the east Crazy Mountains, which will better protect landscapes important to the Crow Tribe.
 - In the Crazy Mountain area, the lands that will be acquired upon implementation of the exchange are timbered drainages that lead to high elevation rocky ridges, slopes and peaks, upwards of 9,000 feet in elevation. These high elevation lands will be protected from development through public ownership and federal management, and through their inclusion in the special area designations.

Public Involvement and Scoping

The Forest Service listed this project in the Schedule of Proposed Actions on October 31, 2022. 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.

The Notice of Exchange Proposal (NOEP) was published in the *Bozeman Daily Chronicle* newspaper for four consecutive weeks from November 9, 2022, to November 30, 2022. The public scoping period was run concurrently with the NOEP, with the scoping comment period ending on December 24, 2022.

Instructions for submitting comments on the project during the 45-day combined public scoping and comment period were described in the legal notice published in the *Bozeman Daily Chronicle* (newspaper of record) on Wednesday, November 9th, 2022, and available online, the same day, at: <https://www.fs.usda.gov/project/?project=63115>. We received 1,090 comment letters, 942 of which were unique.

Public meetings were held in November of 2022 in Bozeman and Big Timber, Montana, along with a virtual option so that those who were interested could join from any location.

Addressing Key Concerns from Public Comments:

Comment consideration is documented in the “Comment Consideration and Response” document available in the project record.

The Forest Service developed alternative 1 to address key concerns raised during the comment period:

Wetlands Protection and Balance: Alternative 1 addressed the need to ensure that the wetland values present on the lands acquired by the Forest Service meet or exceed those present on the lands conveyed to private ownership. This was achieved by reducing the federal lands to be conveyed to retaining high value wetlands in federal ownership, and through federal deed restrictions on those lands conveyed with wetland value. Federal deed restrictions protect areas in perpetuity by placing limits on disturbance, construction, alteration, draining, dredging, channelizing, filling or diking. Forty acres of quality wetlands

were identified to receive deed restrictions to ensure they remain functioning and intact. Quality wetlands were identified based on their resource value³, and accessibility to ensure compliance monitoring is conducted.

- Lands conveyed in Parcel 2 (federal to private) were reduced to retain 200 acres of National Forest System lands containing 50 acres of high value wetlands and the associated riparian areas. The Forest Service will also retain the water right for surface water of Sweet Grass Creek within the 200 acres.
- Lands conveyed in Parcel 8 (federal to private) were reduced to retain 80 acres containing 5 acres of quality wetlands and the associated riparian areas.
- In the Inspiration Divide Area, federal deed restrictions will be placed on Parcels 8, 9, and 10. The deed restriction will protect 17 acres of wetlands and provide adequate access for monitoring.
- In the Crazy Mountains, deed restrictions will be placed on 23 acres in Parcel 7, along Big Timber Creek and Big Timber Canyon Road. The deed restriction will protect wetlands and provide adequate access for monitoring.

Access and Recreation: Alternative 1 incorporates changes that provide or retain access for dispersed recreation, hunting, fishing and trail opportunities. The Forest achieved this by reducing the federal lands to be conveyed and securing an easement.

- Access to Sweet Grass Creek and the surrounding 200 acres will be preserved through the Parcel 2 boundary modification. Sweet Grass Creek will be available via dispersed or cross-country travel from the Sweet Trunk Trail No. 274 in Parcel C (private to federal).
- Ensure perpetual public access to the proposed Sweet Trunk Trail No. 274 in the north half of the private land adjacent to Parcel D by securing an easement for about one mile of trail from the landowner.
- 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 will reserve an easement preserving public access on this motorized trail. The boundary changes in alternative 1 reduce the length of trail to be reserved by reducing the acres of federal lands being conveyed.

Preservation of Character and Limited Development: Alternative 1 adds perpetual protections helping retain the character of lands being conveyed through restrictive covenants prohibiting subdivision of four parcels in the Sweet Grass Drainage and a conservation easement on three parcels being conveyed to

³ Wetland value is a factor assigned to each wetland type in relation to the highest quality wetland types (e.g., perennial slope wetland). See the wetland report for more information on values.

private in the Inspiration Divide area. These protections are in addition to the federally held wetland deed restrictions.

- The lands leaving federal ownership in the Inspiration Divide area (Parcels 8, 9, and 10) will be protected from development by a conservation easement that will be managed by Montana Land Reliance. The conservation easement protects open space and preserves scenic views. The easement allows for skiing, ski resort structures and improvements, and other appropriate outdoor recreational uses and prohibits subdivision, mineral removal, construction of new buildings (except as allowed for recreational opportunities). This conservation easement will be recorded at closing and is a required element of the exchange.
- The lands leaving federal ownership in Sweetgrass Canyon (Parcels 1, 2, 3 and 4) will be placed under a deed restriction agreement monitored and enforced by the Sweet Grass County Conservation District. The deed restriction or restrictive covenants would prohibit subdivision into parcels under 160 acres. The deed restriction would also prohibit mineral development and exploration (oil, gas, hydrocarbons, and hardrock minerals). This deed restriction agreement will be recorded at closing and is a required element of the exchange. Other private lands uses such as grazing, recreation, or vegetation management will be allowed.

Acknowledgement of Other Concerns Raised:

Perception of loss of “existing” access in the Sweet Grass drainage and the East Trunk Trail. Many commentors either perceive that there is currently public access on the Sweet Grass Trail and the East Trunk Trail, or they recognize that this access has been blocked or controlled by landowners and hope that the Forest Service will make a legal argument to perfect access to these routes. As detailed in the Background, section 1.2 of the environmental assessment and the Roads Trails and Access Report, my determination is the best way to secure long-term stable access is through land ownership consolidation and construction of a new access route.

Concerns with the role of the Yellowstone Club (YC) in the exchange. Some commentors were concerned with the involvement of the Yellowstone Club in the exchange and present a variety of concerns related to influence and future development. The Yellowstone Club is a landowner and party to the land exchange. Assembled land exchanges are complicated exchanges and third-party consultants often help facilitate these projects.

The YC plays two critical roles in this exchange. The first is the lands that they bring to the exchange. As detailed in the Alternative 1, Modified Proposed Action, the exchange results in a net reduction of YC ownership in the Big Sky area. No lands are acquired by the YC in the Crazy Mountains. A secondary role that YC has played in this exchange is to bring resources to pay for the construction of the Sweet Trunk Trail and trailhead improvements, funds for the third-party contractor, and funds to defray other expenses, such as title and survey costs.

Desire by some to defer a decision. These concerns reflect a variety of thoughts: that there could be some documentation or records found to strengthen a case for a legal prescriptive case for Rein Lane or the East Trunk or Sweet Grass trail; that future legal arguments in the Montana Supreme Court on the legality of “corner crossing” could afford access to currently landlocked public lands; or that there is some “better” deal that could be achieved at some other time. I fully appreciate that in a land exchange such as this, there is a need to secure the best outcome. I believe that this decision secures the strongest and most certain possible outcome to serve the long-term public interest. Over 100 years of history have

shown that existing access challenges in the East Crazy mountains will never be any less difficult to resolve.

Conclusion

In conclusion, my decision is to move forward with alternative 1, the modified proposed action. This is based on careful review and consideration of the information contained within the environmental assessment, project record, and consideration of public comments. The environmental effects associated with this decision are limited in scope and intensity and therefore consistent with a finding of no significant impacts and an environmental impact statement is not required.

Authorized Actions

Land Exchange

My decision authorizes the implementation of Alternative 1, the assembled land exchange described on pages 16 to 20 of the environmental assessment, and the additional elements common to both alternatives described on pages 21-26 of the environmental assessment (*section 2.5*). The lands for exchange are detailed in Tables 1 and 2, and shown in Figures 1 and 3 in Appendix A.

Table 1. Non-federal parcels authorized for exchange into the federal estate.

| Parcel | Legal Description | Acreage | County | Owner |
|----------|--|---------|-------------|---|
| A | T. 4 N., R. 12 E., Section 5. | 639.52 | Sweet Grass | Ward & Parker Ranch, LLC |
| B | T. 4 N., R. 12 E., Section 7, Lots 1 thru 12. | 410.28 | Sweet Grass | Carroccia Ranch, LP & Carroccia Family, LP |
| C | T. 4 N., R. 12 E., Section 15. | 640 | Sweet Grass | Carroccia Ranch, LP & Carroccia Family, LP |
| D | T. 4 N., R. 12 E., Section 17, S1/2 | 320 | Sweet Grass | Ward & Parker Ranch, LLC |
| E | T. 4 N., R. 12 E., Section 23. | 640 | Sweet Grass | Hailstone Ranch Company |
| F | T. 4 N., R. 12 E., Section 27 | 640 | Sweet Grass | Hailstone Ranch Company |
| G | T. 4 N., R. 12 E., Section 35, W1/2. | 320 | Sweet Grass | Hailstone Ranch Company |
| H | T. 4 N., R. 12 E., Section 33. | 640 | Sweet Grass | Switchback Ranch, LLC |
| I | T. 4 N., R. 11 E., Section 13: NE1/4, NE1/4NE1/4NW1/4, E1/2NW1/4NE1/4NW1/4, S1/2N1/2NW1/4, S1/2NW1/4, S1/2. | 615 | Park | Switchback Ranch, LLC |
| J | T. 7 S., R. 2 E., Section 4, SE¼; Section 9, SW1/4NW1/4SW1/4NE1/4, W1/2SW1/4SW1/4NE1/4, W1/2NE1/4NW1/4, W1/2NW1/4, S1/2NE1/4SE1/4NW1/4, W1/2SE1/4NW1/4, SE1/4SE1/4NW1/4, SW1/4, W1/4SW1/4NE1/4SE1/4, S1/2SW1/4NE1/4SE1/4, SW1/4NE1/4NW1/4SE1/4, NW1/4NW1/4NW1/4SE1/4, S1/2NW1/4NW1/4SE1/4, S1/2NW1/4SE1/4, SW1/4SE1/4, SW1/4NE1/4SE1/4SE1/4, W1/2SE1/4SE1/4, and W1/2SE1/4SE1/4SE1/4; Section 15, SW1/4NW1/4SW1/4NW1/4, NW1/4SW1/4SW1/4NW1/4, S1/2SW1/4SW1/4NW1/4, W1/2NW1/4SW1/4, | 605 | Madison | Yellowstone Development, LLC & Yellowstone Mountain Club, LLC |

| | | | | |
|-----------------------------|---|-----|------|----------------------|
| | W1/2W1/2NW1/4SW1/4SW1/4, and W1/2SW1/4SW1/4SW1/4. | | | |
| K | T. 3 N., R. 11 E., Section 13. | 640 | Park | CMR Ranch Owner, LLC |
| TOTAL ACRES: 6,109.8 | | | | |

Table 2. Federal lands authorized for exchange to non-federal ownership.

| Parcel | Legal Description | Acreage | County | Owner |
|------------------------------|---|---------|-------------|---------------|
| 1 | T. 4 N., R. 12 E., Section 8. | 640 | Sweet Grass | United States |
| 2 | T. 4 N., R. 12 E., Section 10, N1/2, W1/2SW1/4, E1/2E1/2SE1/4. | 440 | Sweet Grass | United States |
| 3 | T. 4 N., R. 12 E., Section 12, lots 1 thru 4, E1/2SW1/4NE1/4, W1/2NW1/4, S1/2NE1/4SW1/4, W1/2SW1/4, SE1/4SW1/4, and W1/2SE1/4. | 485.42 | Sweet Grass | United States |
| 4 | T. 4 N., R. 12 E., Section 14, NE1/4NE1/4, N1/2NW1/4NE1/4, SE1/4NW1/4NE1/4, N1/2NE1/4NW1/4, SE1/4NE1/4, and E1/2NE1/4SE1/4. | 150 | Sweet Grass | United States |
| 5 | T. 4 N., R. 12 E., Section 24. | 640 | Sweet Grass | United States |
| 6 | T. 4 N., R. 12 E., Section 36, W1/2, NE1/4 excepting H.E.S. 1129 Tract B, SE1/4 excepting H.E.S. 1129 tract A and B; H.E.S. 1129 Tract C. | 483.65 | Sweet Grass | United States |
| 7 | T. 3 N., R. 12 E., Section 2, excepting H.E.S. No. 100. | 595.80 | Sweet Grass | United States |
| 8 | T. 7 S., R. 2 E., Section 26, N1/2NE1/4, N1/2NW1/4, N1/2SE1/4NE1/4, N1/2SW1/4NE1/4, N1/2SE1/4NW1/4, N1/2SW1/4NW1/4. | 240 | Madison | United States |
| 9 | T. 7 S., R. 2 E., Section 25, W1/2NW1/4NW1/4. | 20 | Madison | United States |
| 10 | T. 7 S., R. 2 E., Section 22, E1/2NE1/4, E1/2SE1/4. | 160 | Madison | United States |
| TOTAL ACRES: 3,854.87 | | | | |

Trail Construction and Trailhead Improvement

Sweet Trunk Trail No. 274

I authorize the construction of a 22-mile trail named Sweet Trunk Trail No. 274 that will replace East Trunk Trail No. 136 (about 11 miles) and a segment of Sweet Grass Trail No. 122. The segments of East

Trunk and Sweet Grass Trails to be replaced will not be reserved on federal lands as part of this exchange. (The proposed trail location is shown in Figure 5, page 16 of the environmental assessment.) The non-federal party will fund the construction of this trail. The trail will be designated a Class 3 trail and designed for hiker/pedestrian and pack and saddle trail design parameters. The trail will be open to foot and horse travel, not motorized or mechanized.

The Forest Service will secure an easement where the new trail crosses non-federal lands in Parcel D (the landowner will donate the easement). Portions of the new trail that cross current federal lands which will be conveyed will be reserved in the patent.

Big Timber Canyon Trailhead Improvements

I authorize improvements to the Big Timber Canyon Trailhead which will be funded by the non-federal party and may include: resurfacing of the current parking area, construction or reconfiguration to better accommodate existing use and additional parking, installation of toilet facilities, and installation of an interpretive kiosk. The final design of improvements will be authorized by the Yellowstone District Ranger before implementation. The parties will enter into a more detailed collection agreement regarding the trail and trailhead improvements.

Inspiration Divide Trail No. 8

I authorize the relocation of about 1,500 feet of the Inspiration Divide Trail No. 8 as shown in Figure 6, page 17 of the environmental assessment. This relocated trail will be to National Forest System trail standards and located entirely on Forest Service lands.

Additional Authorized Elements

I authorize the additional elements of the project that are described in the “Additional Elements Common to Both Alternatives” section of the environmental assessment on pages 21 through 26.

Design Features

My decision authorizes and makes binding the design features listed on page 68 of the environmental assessment.

Finding of No Significant Impact

I have determined that there will be no significant impact to the human environment (40 CFR 1501.6). Therefore, no Environmental Impact Statement will be prepared.

I took a hard look at the environmental effects of Alternative 1 through careful review of the Environmental Assessment, which is incorporated by reference, resource specific specialists reports, and the project record (36 CFR 220.7(b)(3)(v) and 40 CFR 1501.12). The analysis of effects considered both direct and indirect effects, and their potential to interact cumulatively with the effects of past, present, and reasonably foreseeable future actions. I considered the degree of effects and potentially affected environment. The beneficial effects of the action do not bias my finding of no significant environmental effects.

Potentially Affected Environment and its Resources

Non-federal Parcels A through I and K, total about 5,505 acres in Park and Sweet Grass Counties in the Crazy Mountain Range in Montana.

These parcels range from bottomlands around 6,000 feet in elevation along the Sweet Grass drainage to steep peaks and ridges upwards of 9,000 feet in elevation. Most of the non-federal parcels are timbered drainages that lead to high elevation rocky ridges, slopes and peaks. This area includes unroaded, undeveloped, or unfragmented tracts of land that provide wildlife habitat and intact ecosystems.

Parcel J is 605 acres and is located near Big Sky Basin in a landscape comprised of timbered lands, open meadows and gentle to moderate topography in Madison County, Montana. This parcel is adjacent to the Madison Roadless Area, which is adjacent to the boundary of the Lee Metcalf Wilderness Area (Taylor Hilgard Unit). Parcel J lies within a critical wildlife corridor that provides connectivity between high elevation summer range and lower elevation winter range for grizzly bear, wolves, and big game species.

Federal Parcels 1 through 7 total about 3,435 acres in the foothills of the east Crazy Mountains within Sweet Grass and Big Timber drainages ranging in elevation from 6,000 feet to 8,000 feet in Sweet Grass County, Montana. The parcels include lower elevation areas in the Sweet Grass drainage and high elevation parcels dominated by timber and less vegetated openings. They are generally more gradual in topography than the non-federal parcels, though some rocky steep terrain exists.

Federal Parcels 8 through 10 total 420 acres near Eglise Rock (Eglise Peak) in the Big Sky Basin area. The lands are comprised of timbered lands, open meadows, and foothill shrublands and grasslands. The area is used for recreational opportunities including motorized uses, hiking, hunting, and snowmobiling.

Resources include the endangered Canada lynx and grizzly bear, and threatened wolverine and whitebark pine. The high elevations in the Crazy Mountains are an important cultural landscape, and both areas offer meaningful recreation experiences.

Note: Additional information is documented in the environmental assessment as the “existing conditions” or “affected environment” in chapter 3 on pages 28, 34-38, 40, 44-46, 56-57, 59, 60, 62-63, 65, and 67.

Short and Long-Term and Beneficial and Adverse Effects

I considered both the length (short and long-term) and nature (beneficial and adverse) of effects that would result from this decision. Effects were analyzed and detailed throughout the environmental assessment and in resource specific reports.

In the short-term, wildlife may be disturbed and temporarily displaced by constructing the new trails and improving the trailhead. The wildlife biologist found that these effects would not be measurable or meaningful, and would be short duration. Trail construction may also result in individual whitebark pines being damaged or destroyed. However, design features would minimize potential losses and the overall effect of individual tree losses to the larger population would be small. Accordingly, I have determined that the potential short term effects of this project do not rise to the level of significance.

In the long-term, the US Forest Service will gain 2,255 acres compared to the existing condition, and the newly acquired lands will consolidate the checkerboard land ownership in the East Crazy mountains. These lands are unroaded, undeveloped, or unfragmented tracts of land that provide wildlife habitat and intact ecosystems, which will lasting beneficial effects on wildlife habitat quantity and connectivity. The

Forest will gain whitebark pine habitat, including climate refugia and potential areas for restoration. Recreational opportunities will be expanded by the construction of new trails and access will be guaranteed by Forest Service ownership or easement. The overall amount of wetlands under federal protection through ownership or deed restriction will be modestly increased.

The balance of long-term effects is beneficial. However, no effects thresholds will be crossed due to implementation of the project. Therefore, I find that long term effects will not be significant.

Effects on Public Health and Safety

I have determined the project will not significantly affect public health or safety. Land exchanges have occurred on the Custer Gallatin National Forest without compromising public health. There are no circumstances or conditions associated with the proposed action to indicate there will be unusual or substantial risks to public health and safety. No proposed activities have been identified as being detrimental to public health.

Effects that would violate Federal, State, or Local Law Protecting the Environment

The proposed action complies with applicable environmental laws, as documented below in the Findings Required by Other Laws and Regulations section of this decision notice.

Findings Required by Other Laws and Regulations

Federal Land Policy and Management Act

By mutual agreement between the Forest Service and the non-federal party, documented in the Agreement to Initiate, each component of the East Crazy Inspiration Divide Land Exchange, by law, must be completed on an equal value basis. In order to obtain an equal value exchange, if the final appraisals indicate the value of the non-federal lands exceeds the value of the federal lands, the landowners could: 1) voluntarily offer to donate any additional non-federal lands to the U.S. in a separate transaction; 2) receive a cash equalization payment from the United States; or 3) reduce the amount of non-federal land conveyed to the United States. If the final appraisals indicate the value of the federal land exceeds the value of the non-federal lands, the Forest Service could: 1) receive a cash equalization payment from the landowners; or 2) reduce the amount of federal land conveyed to private ownership.

The final approved appraisal reports are anticipated in early 2024. The final Decision Notice will include the final appraised values and equalization strategy⁴. The final Decision Notice will not be signed until the appraisals and associated documentation have been completed. *Note: this exchange will meet the equal value requirements of 36 CFR 254.3(c).*

⁴ An Equal Value Statement disclosing the approved values for the federal and nonfederal land and any cash equalization payments that may be required, will be incorporated into the decision documents consistent with policy (FSH 5409.13, 34.1 (3)). These documents will be finalized and included in the record prior approval of the exchanges.

Determination of Public Benefits

Forest Service regulations at 36 CFR 254.3 (b) state that “the authorizing official may complete an exchange only after a determination is made that the public interest is well served.” As the authorizing official I find that:

- The resource values and the public objectives served by the non-federal lands or interests to be acquired will be equal or exceed the resource values and the public objectives served by the federal lands to be conveyed because there will be a net gain of about 2,255 acres, and because consolidation will provide for more effective resource management and protection in the Crazies, resolve long standing access disputes, provide for perpetual public access, and employ durable conservation tools on lands to be conveyed to protect resource values.
- The intended use of the conveyed federal land will not substantially conflict with established management objectives on adjacent federal lands, including Indian Trust lands because I have employed durable conservation tools such as deed restrictions and conservation easements to ensure the undeveloped nature of conveyed lands will largely persist. *Refer to the Authorized Actions section for more information on conservation tools.*

Endangered Species Act

Under Section 7 of the Endangered Species Act (ESA) of 1973 as amended, the Forest Service is required to ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. It also requires the Forest Service to confer on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed or result in the destruction or adverse modification of critical habitat proposed to be designated for such species.

The project Wildlife Biologist and Botanist submitted a Biological Assessment (BA) for the proposed East Crazy Inspiration Divide Land Exchange to the US Fish and Wildlife Service in August 2023.

Biological assessments, which disclose effects of the project on endangered and threatened species, were prepared with the following ESA determinations:

- **Whitebark pine**- may affect, likely to adversely affect
- **Grizzly bear**- may affect, not likely to adversely affect
- **Canada lynx**- may affect, not likely to adversely affect
- **Wolverine**- will not jeopardize the continued existence

An ESA determination considers the impacts to individuals, and a “likely to adversely affect” determination results when expected impacts are neither discountable, insignificant, or beneficial. The ESA determination is independent of the National Environmental Policy Act (NEPA). Under NEPA, the Forest Service must consider the degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act. A “likely to adversely affect” ESA determination does not inherently indicate that there will be NEPA significance because NEPA regulations direct the agency to consider the degree of adverse effect on the species, not on individuals of the species.

Consultation is expected to be completed in or near March of 2024. The final decision will not be signed until consultation is complete and any terms and conditions have been incorporated into the project.

Source: Biological Assessment

Migratory Bird Treaty Act and Executive Order 13186

In December 2008, the Forest Service and the United States Fish and Wildlife Service (FWS) signed a “Memorandum of Understanding” to promote the conservation of migratory birds (U.S. Department of the Interior 2008). Section D (3) of the Memorandum obliges the Forest Service, within its National Environmental Policy Act process, to “evaluate the effects of agency action on migratory birds, focusing first on species of management concern along with their priority habitats and key risk factors”. The 2008 Memorandum of Understanding was extended in 2016 through December 31, 2017.

The Memorandum of Understanding has recently been extended indefinitely, or until either the U.S. Fish and Wildlife Service or the United States Forest Service deems it necessary to revise. Responsibilities of Federal Agencies to Protect Migratory Birds (66 Federal Regulation 3853, 2001) and to ensure that it meets agency needs related to the Migratory Bird Treaty Act.

I have determined that the East Crazies Land Exchange complies with the Migratory Bird Treaty Act and Executive Order 13186 because the wildlife biologist evaluated the effects of this project on migratory birds and found that adverse effects would not be measurable or meaningful and overall potential habitat acres under federal management protections would be expanded.

Source: Environmental assessment page 55.

National Historic Preservation Act

I have determined the selected alternative will comply with the National Historic Preservation Act and its implementing regulations (36 CFR Part 800) through the Programmatic Agreement between the Forest Service Northern Region and the Montana State Historic Preservation Officer.

Consultation with the Montana State Historic Preservation Office is underway for this project. The Memorandum of Agreement, with respect to the rock cairn cultural resource, is being prepared.

Tribal consultation has provided input that supports compliance with these federal laws and executive orders.

Source: Cultural Report, pages 4-5, and Tribal Specialist Report pages 4-5.

National Forest Management Act

On April 9, 2012 the Department of Agriculture issued a final planning rule for National Forest System land management planning (2012 Rule) ([77 FR 68 \[21162-21276\]](#)). Except for the plan consistency requirements in 36 CFR §219.15, none of the requirements of the 2012 Rule apply to projects or activities” (36 CFR §219.2(c)).

I have determined the project is consistent with the 2022 Land Management Plan as detailed in the Land Management Plan Consistency Table available on the [project webpage](#). Consistency is also document in section 1.5.2 of the environmental assessment (*pages 8-10*).

Roadless Rule

The intent of the 2001 Roadless Rule is to provide lasting protection for inventoried roadless areas within the National Forest System in the context of multiple-use management. The final environmental impact statement for the 2001 Roadless Rule stated that, “For lands acquired through exchange, Forest Service regulation states that those lands within areas having an administrative designation set through the land management planning process, shall automatically become part of the area within which they are located, and shall be managed in accordance with the laws, regulations, and land management plans applicable to the area (36 CFR 254.3(f)).”

The 2001 Inventoried Roadless boundaries will not be amended as part of this decision and the acquired parcels will be not become inventoried roadless or reflected as such on National Map products, but they will be protected by the surrounding roadless area management. Additionally, lands in the Crazy Mountain Inventoried Roadless area will receive Backcountry Area or Recommended Wilderness Area designation and will therefore receive protections similar to inventoried roadless designation.

The roadless rule does not affect land exchanges, so conveying lands out of the federal estate currently designated as inventoried roadless is not prohibited. For these reasons, I find that this project is consistent with the Roadless Rule.

Source: environmental assessment pages 30-32.

Relevant Executive Orders

Executive Order 11990: Protection of Wetlands

Executive Order 11990 requires that the exchange preserve wetland functions with no net loss to the federal estate. The selected alternative complies with this executive order because the sum of wetland value is about 91 acres on federal lands to be conveyed, while the sum of wetland value within the non-federal parcels to be acquired combined with the wetlands protected by deed restrictions is about 98 acres.

Source: Environmental assessment page 60.

Executive Order 12962: Recreational Fishing Opportunities

Executive Order 12962 directs federal agencies to the extent permitted by law and where practicable, and in cooperation with States and Tribes, improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities.

The selected alternative will result in mixed impacts to fishing opportunity. A relatively minor negative impact would result because stream access to Big Timber Creek in Parcel 7, which contains introduced brook trout, brown trout, and rainbow trout and native mountain whitefish, would be lost. A relatively large positive impact would result from the acquisition of Parcel K because the public will gain perpetual public access to the 52 acre Smeller Lake and its Yellowstone cutthroat fishery. The public will retain access to Sweet Grass Creek due to the boundary adjustment in Parcel 2 in alternative 1.

Source: Environmental assessment pages 58-59.

Administrative Review

The East Crazy Inspiration Divide Land Exchange Environmental Assessment and Draft Decision Notice and Finding of No Significant Impact are available on the project webpage at:

<https://www.fs.usda.gov/project/custergallatin/?project=63115>.

The East Crazy Inspiration Divide Land Exchange Project is subject to the objection process pursuant to 36 CFR 218, subparts A and B.

How to file an Objection and Timeframe

Individuals or organizations who submitted specific written comments in response to scoping or comment periods provided for the Environmental Assessment may file an objection to this project. The notice of objection must meet the content requirements at 36 CFR 218.8. Objections must be filed electronically, by regular mail, hand-delivery, or express delivery. Objections filed other than electronically should be addressed to:

Objection Reviewing Officer
USDA Forest Service, Northern Region
26 Fort Missoula Road,
Missoula, Montana 59804

The office hours for those submitting hand-delivered objections are: 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays.

Electronic objections must be submitted at:

<https://cara.fs.usda.gov/Public//CommentInput?Project=63115>

In cases where no identifiable name is attached to an electronic message, a verification of identify will be required. A scanned signature is one way to provide verification.

Objections, including attachments, must be filed within 45 days following the publication date of the legal notice in the Bozeman Daily Chronicle (Bozeman, Montana), the newspaper of record. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to file an objection, and those wishing to object should not rely upon dates or timeframe information provided by any other source.

Objections received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this action and will be available for public inspection. Pursuant to 7 CFR 1.27 (d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act permits such confidentiality. Requests for confidentiality may be granted in only very limited circumstances.

Implementation

If no objections are filed within the 45-day period, implementation of the decision may occur on, but not before, the fifth business day following the end of the objection filing period.

When objections are filed, approval of project activities will not occur until the pre-decisional review process is complete and a final Decision Notice issued. Implementation may begin immediately thereafter

and will consist of the execution and recordation of deeds in the County of Record for the properties' location.

For more information concerning the East Crazy Inspiration Divide Land Exchange Project, contact the Custer Gallatin National Forest's Supervisor's Office (406.587.6701) during normal business hours.

Approved by:

[reserved for final decision]

MARY ERICKSON

Forest Supervisor

Custer Gallatin National Forest

Appendix A- Maps

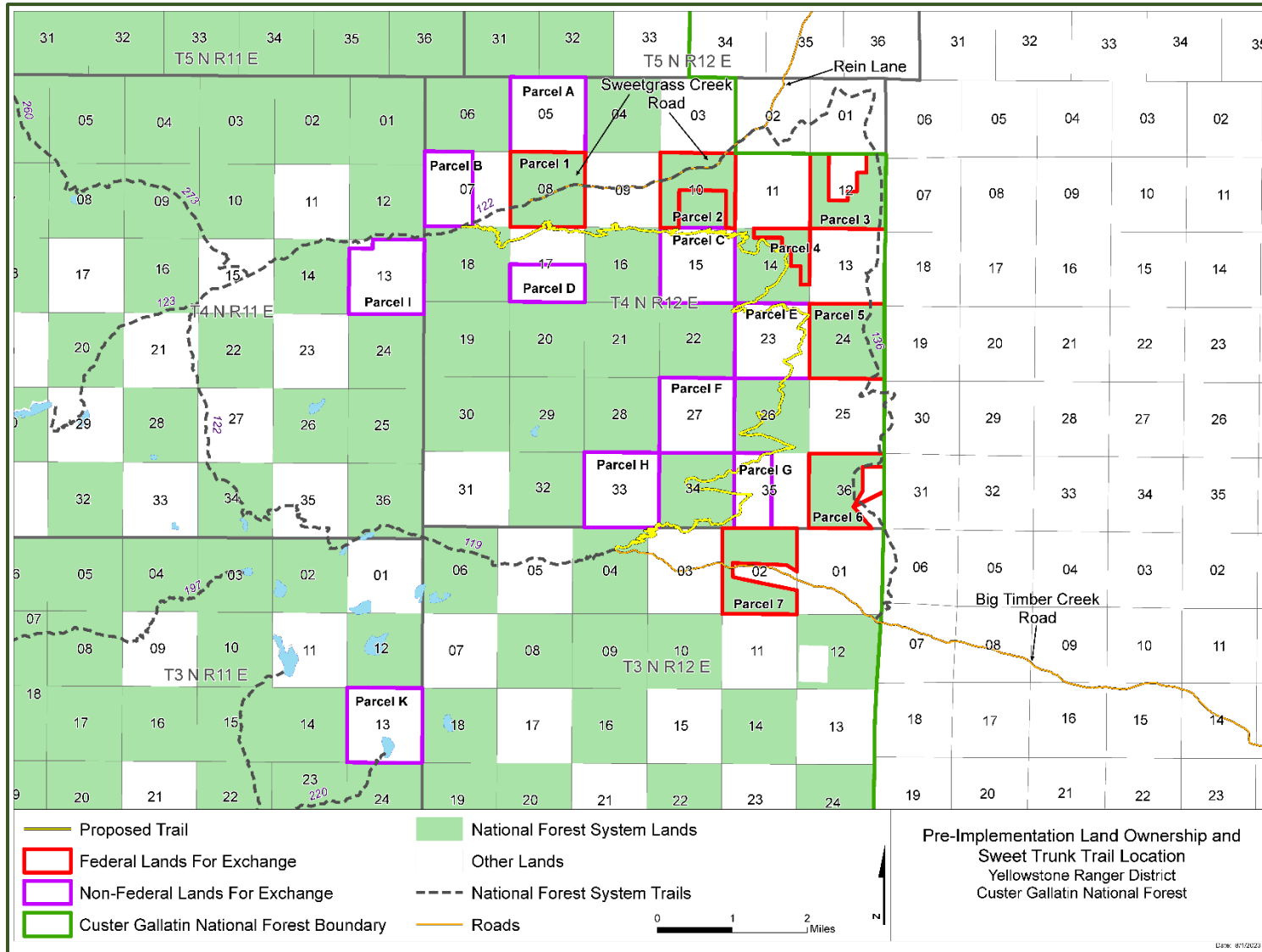


Figure 1. Lands that will be exchanged in the Crazy Mountain area, the existing ownership condition, and the location of the Sweet Trunk Trail.

Draft Decision Notice and Finding of No Significant Impact- East Crazy Inspiration Divide Land Exchange

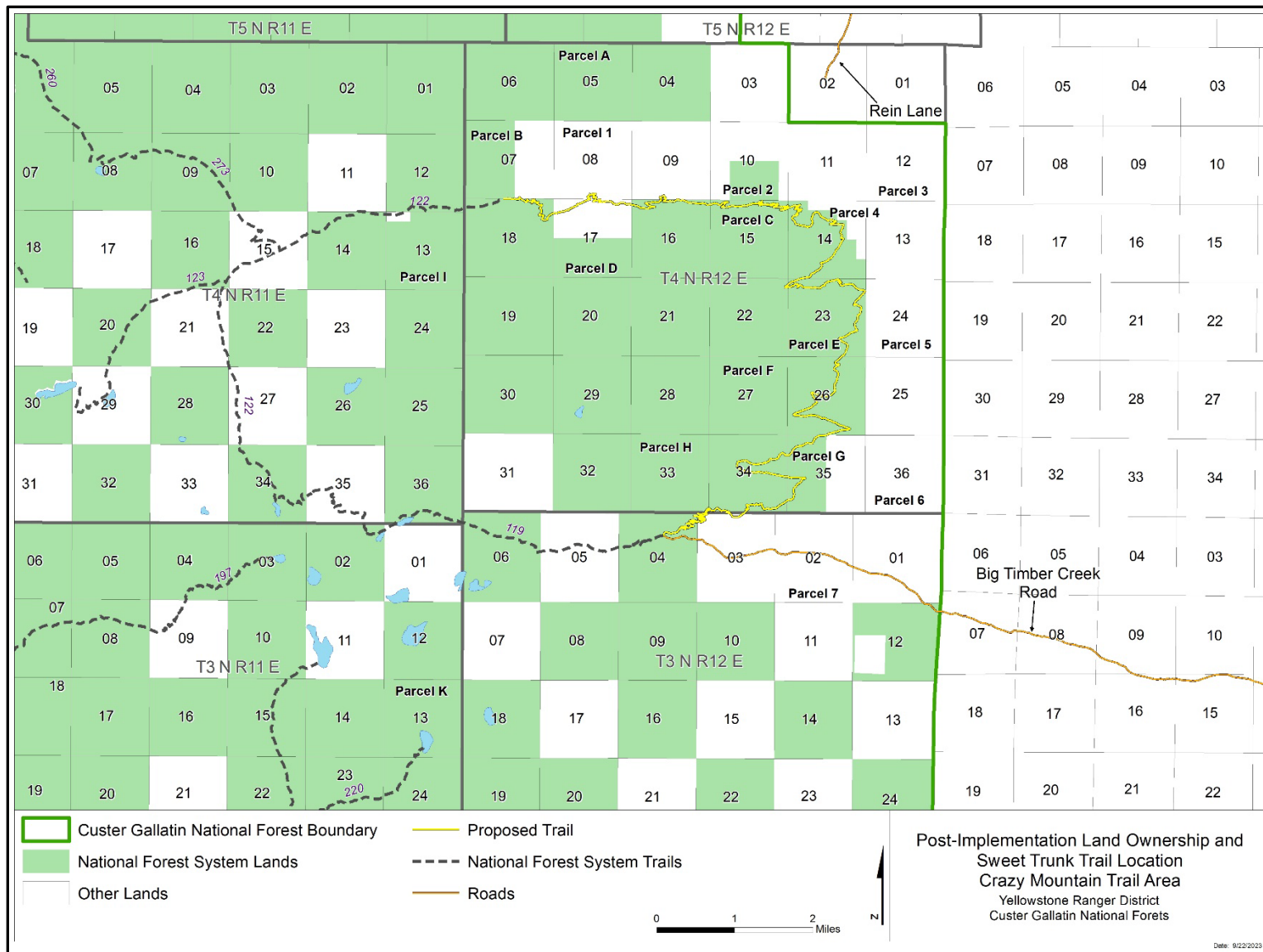


Figure 2. Lands that will be exchanged in the Crazy Mountain area, the post-implementation ownership condition, and the location of the Sweet Trunk Trail.

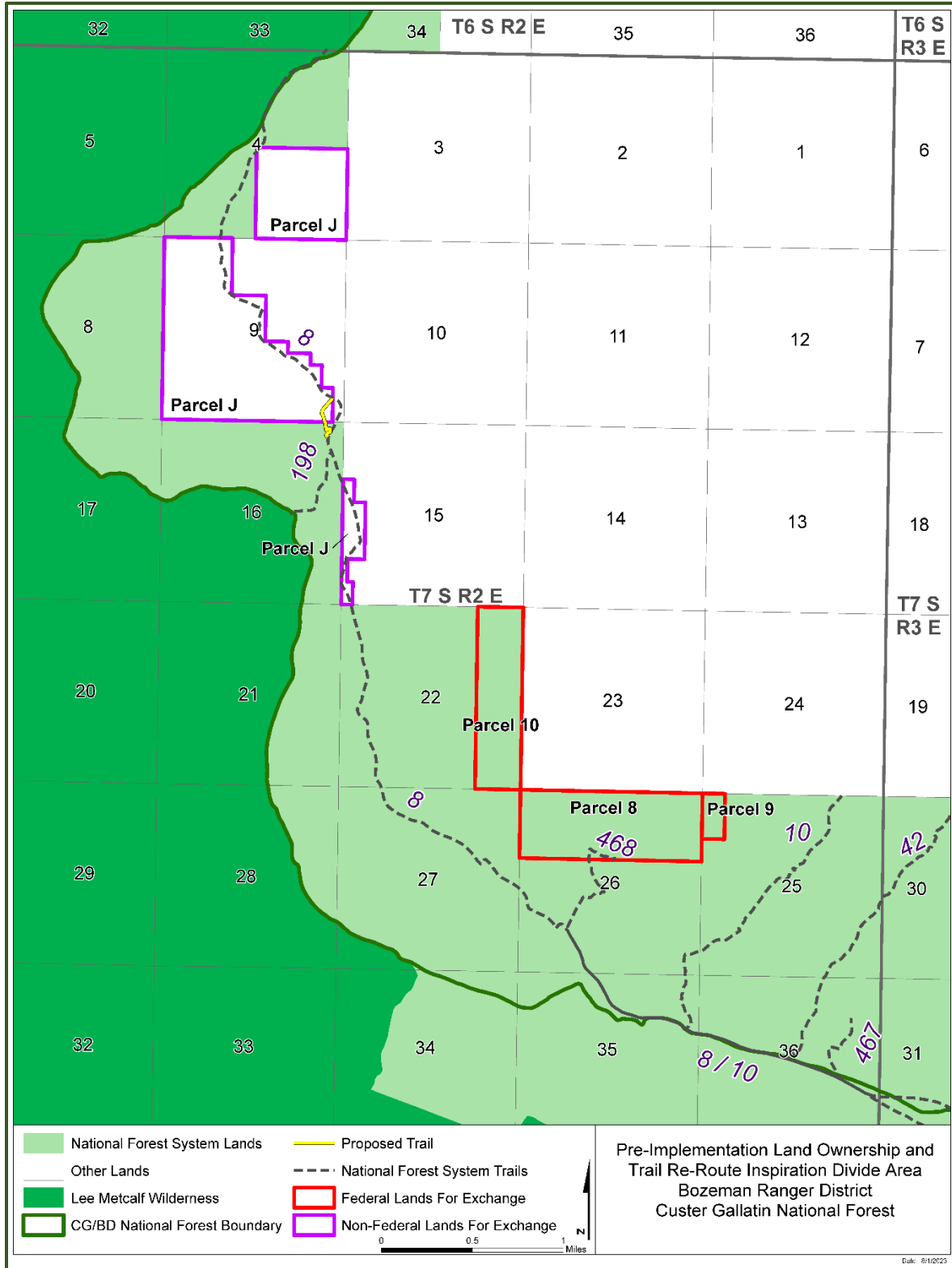


Figure 3. Lands that will be exchanged in the Inspiration Divide area, the existing ownership condition, and the location of the Inspiration Divide trail re-route.

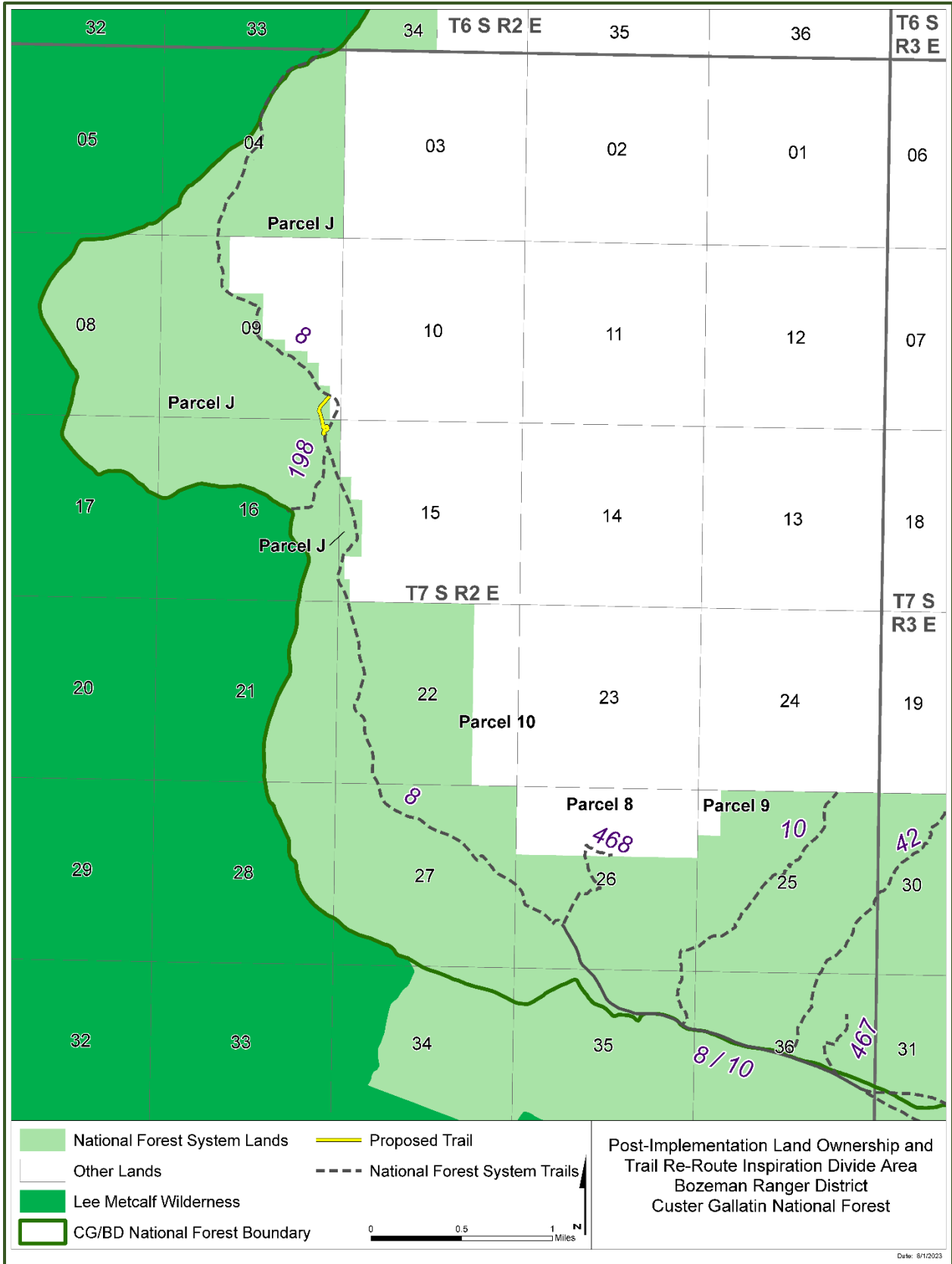


Figure 4. The post-implementation ownership condition in the Inspiration Divide area and the location of the Inspiration Divide trail re-route.