DRAFT

DECISION NOTICE

And

FINDING OF NO SIGNIFICANT IMPACT

RED LODGE MOUNTAIN LAND EXCHANGE

Carbon County, Montana
Custer Gallatin National Forest
Beartooth Ranger District

December 2016

Lead Agency: USDA, Forest Service

Responsible Official: Mary C. Erickson, Forest Supervisor
Custer Gallatin National Forest
P.O. Box 130. Federal Building
Bozeman, MT 59771

For further Information, Contact: Jeff Gildehaus, ID Team Leader
Beartooth Ranger District
6811 U.S. Highway 212
Red Lodge, MT 59068
Telephone, (406) 446-2103

Equal Employment Opportunity Act – “The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, and marital or family status (not all prohibited bases apply to all programs). Persons with disabilities who require alternative means for communication of program information (braille, large print, autotape, etc.) should contact USDA’s TARGET Center at (202) 720-5964 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Ave., SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). The USDA is an equal opportunity provider and employer.”
Table of Contents

<table>
<thead>
<tr>
<th>SUBJECT</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>3</td>
</tr>
<tr>
<td>Project Map</td>
<td>4</td>
</tr>
<tr>
<td>Background</td>
<td>5</td>
</tr>
<tr>
<td>Purpose and Need</td>
<td>5</td>
</tr>
<tr>
<td>Proposed Action</td>
<td>6</td>
</tr>
<tr>
<td>Decision and Reasons for the Decision</td>
<td>8</td>
</tr>
<tr>
<td>Scope of the Decision</td>
<td>8</td>
</tr>
<tr>
<td>Decision Criteria</td>
<td>8</td>
</tr>
<tr>
<td>Decision</td>
<td>8</td>
</tr>
<tr>
<td>Reasons for the Decision</td>
<td>10</td>
</tr>
<tr>
<td>Consistency with the Forest Plan and Applicable Laws,</td>
<td>11</td>
</tr>
<tr>
<td>Regulations and Policies</td>
<td></td>
</tr>
<tr>
<td>Determination of Public Benefits</td>
<td>14</td>
</tr>
<tr>
<td>Consideration of Issues Identified Through Public Comment</td>
<td>16</td>
</tr>
<tr>
<td>Alternatives Studied in Detail</td>
<td>17</td>
</tr>
<tr>
<td>No Action</td>
<td>18</td>
</tr>
<tr>
<td>Proposed Action</td>
<td>18</td>
</tr>
<tr>
<td>Public Involvement</td>
<td>21</td>
</tr>
<tr>
<td>Consideration of Public Comments on the EA</td>
<td>22</td>
</tr>
<tr>
<td>Finding of No Significant Impact</td>
<td>24</td>
</tr>
<tr>
<td>Findings Required by Law, Regulations and Agency Policy</td>
<td>26</td>
</tr>
<tr>
<td>Administrative Review</td>
<td>28</td>
</tr>
<tr>
<td>Implementation</td>
<td>30</td>
</tr>
<tr>
<td>Contacts</td>
<td>30</td>
</tr>
<tr>
<td>Signature and Date</td>
<td>30</td>
</tr>
</tbody>
</table>
INTRODUCTION

In June 2016, the Forest Service issued an Environmental Assessment ("EA"), addressing the anticipated environmental impacts of the proposed “Red Lodge Mountain Land Exchange” project, on the Beartooth Ranger District of the Custer Gallatin National Forest. The lands identified for exchange are located in Carbon County, MT, six miles west of Red Lodge, within Sections 22, 25, 26, 27 and 35, Township 7 South, Range 19 East, P.M.M. (Please see the project map on page 4.)

The purpose of this Draft Decision Notice (DN) is to document my decision and “finding of no significant impact” (FONSI) for the proposed “Red Lodge Mountain Land Exchange”.

After careful consideration of the impacts of the alternatives disclosed in the EA, I have selected the “Proposed Action” (EA Alternative 2) for implementation.

In this alternative, the United States would convey two parcels of “Federal lands” that comprise a total of 250.23± acres to the owners of Red Lodge Mountain Resort (“RLMR”). In exchange, the owners of RLMR would convey three parcels of “non-Federal lands”, that comprise a total of 382.45± acres, to the United States.

The owners of RLMR are Red Lodge Grizzly Peak, Inc. and AG/JMA Red Lodge Realty Holdings, L.L.C., and are hereinafter collectively referred to as "AG/JMA".

The proposed action includes establishment of Ranger Trail #107. The Ranger Trail #107 would extend approximately 12.5 miles across National Forest System ("NFS") lands, State of Montana lands, and private lands from Forest Road #2141 at West Red Lodge Creek to the intersection with Forest Road #21479 at Red Lodge Mountain Ski Area. The U.S. would reserve a permanent easement on the segment of Trail #107 that crosses the Federal lands proposed for exchange.

An additional component of the Proposed Action is a proposed new trail (“RLM Uphill Trail #108”) across the Federal lands and AG/JMA lands. The proposed RLM Uphill Trail #108 would provide an uphill connection from the resort parking lot to NFS lands in the vicinity of Grizzly Peak.

Another additional component of the Proposed Action is the reservation of permanent trail easements by the U.S. for continued public access on those segments of Willow Creek Trail #105 and Nichols Creek Trail #110 that cross the Federal lands.

A final component of the Proposed Action is the reservation of easements for two existing roads used by the Forest Service for administrative purposes. The U.S. would reserve permanent easements for those segments of Forest Road #21479, and its connecting spur Road #21479C, that cross the Federal lands.
BACKGROUND

Discussions between the landowners and the Forest Service regarding a potential land exchange began in 2007. The current specific exchange proposal was developed in 2012.

The proposed land exchange includes two parcels totaling 250.23 acres, more or less, of National Forest System (NFS) land (“Federal lands”) to be conveyed to AG/JMA. In exchange the United States would acquire three parcels totaling 382.45 acres, more or less, of private land (“non-Federal lands”). The non-Federal lands and most of the Federal lands are within the current ski area permit for Red Lodge Mountain Ski Area.

A Forest Service Interdisciplinary Team (IDT) reviewed the proposal to ensure consistency with the Forest Plan, laws, regulations and agency policies. In December 2014, the Forest Service (Northern Region, Director of Recreation, Mineral, Lands, Heritage and Wilderness) reviewed the Feasibility Analysis for this proposed exchange and gave approval to proceed with public scoping and environmental analysis. In August 2015, AG/JMA and the Forest Service entered into an Agreement to Initiate (ATI).

Scoping for this proposal was initiated in February 2015, and public comment was solicited through newspaper legal notices, letters to interested and affected parties, and in a public meeting in Red Lodge. Through this scoping, the Forest Service identified issues and developed three alternatives to the Proposed Action. Two of these alternatives were analyzed in detail, and the environmental effects were disclosed in an EA issued in June, 2016. The EA was made available for 30-day public review and comment. The decision described in this DN was made following a thorough review of the EA and project record. Three comments were received during the 30 day public review period. One comment expressed overall support for the project and improving access to public lands. Two comments required review and response and are addressed in the Consideration of Public Comments in the EA section of this DN.

The EA, DN/FONSI and the Project File are available for public review at the Forest Supervisor’s Office, 10 East Babcock Avenue, Bozeman, MT, and at the Beartooth Ranger District Office, 6811 U.S. Highway 212, Red Lodge, MT 59068. The EA and the DN/FONSI are also available on the Custer Gallatin N.F. web page, (http://www.fs.usda.gov/main/custergallatin/home).

PURPOSE AND NEED

The overall purpose and need for the proposed “Red Lodge Mountain Land Exchange” is to:

- Consolidate land ownership and reduce future management costs, and
- Enhance recreational trail opportunities, and
• Support long-term economic viability of the ski area, and
• Protect key wildlife habitat.

Both parties desire to consolidate ownership to better manage the respective NFS and private lands in the future. Forest Service goals, which involve managing NFS lands for healthy forests, range, timber, water, wildlife habitat and recreation, can better be achieved when the NFS lands are consolidated and have reasonable access. The exchange would provide reasonable access to consolidated NFS lands, and it would also provide additional recreational trails for public use in this area.

PROPOSED ACTION

AG/JMA and the Forest Service would exchange lands that are equal in value as determined by current appraisals that have been reviewed and approved by the Forest Service. The lands considered for exchange are shown on the Project Map. Table 1 further describes the components of the Proposed Action:

Table 1 – Components of the Proposed Action

<table>
<thead>
<tr>
<th>Federal components of the Proposed Action</th>
<th>Non-Federal components of the Proposed Action</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Federal lands</strong>&lt;br&gt; (U.S. would convey to AG/JMA):</td>
<td><strong>Non-Federal lands</strong>&lt;br&gt; AG/JMA would convey to the U.S.):</td>
</tr>
<tr>
<td>Township 7 South, Range 19 East:</td>
<td>Township 7 South, Range 19 East:</td>
</tr>
<tr>
<td>Section 25: SW¼SE¼NE¼, SW¼NE¼, S½NW¼, S½N½NW¼, E½NE¼SW¼, SW¼NW¼SE¼, N½NW¼SE¼, NW¼NE¼SE¼, consisting of 230.00 acres and,</td>
<td>Section 22: S½SE¼, consisting of 80 acres,</td>
</tr>
<tr>
<td>Section 26: N½NW¼SE¼, consisting of 20.23 acres.</td>
<td>Section 26: S½NE¼SE¼, consisting of 20.30 acres,</td>
</tr>
<tr>
<td>(U.S. would convey to AG/JMA): Total Federal lands = 250.23± acres</td>
<td>Section 27: E½NE¼, NE¼SE¼, consisting of 122.15 acres and,</td>
</tr>
<tr>
<td>Mineral Estate:&lt;br&gt;The non-Federal lands are encumbered by a split mineral estate, whereby approximately one-half (1/2) of the minerals and certain</td>
<td>(AG/JMA would convey to U.S.): Total Non Federal lands = 382.45± acres</td>
</tr>
</tbody>
</table>

Red Lodge Mountain Land Exchange

Page 6 of 30
### Easement Reservations:
The U.S. would reserve a road easement for existing Road #21479 and Road #21479C across the Federal lands.

The U.S. would reserve a public trail easement across the Federal lands for:
* proposed Ranger Trail #107,
* proposed RLM Uphill Trail #108,
* existing Willow Creek Trail #105, and
* existing Nichols Creek Trail #110.

### Ditches and Canals:
The U.S. would reserve a right-of-way therein for ditches or canals constructed by the authority of the United States.

### Water Rights:
Two Forest Service water right claims, 43D 57779 00 and 43D 97621 00, would transfer to AG/JMA.

### Deed Restrictions:
The conveyance document (patent) from the U.S. to AG/JMA would include permanent deed restrictions to protect designated wetlands and riparian habitat along certain segments of Willow Creek located on the Federal lands.

surface prospecting rights remain outstanding. AG/JMA would convey all the mineral rights that it owns to the U.S. at closing. If a portion of the mineral estate remains severed from the surface estate at closing, the deed to the U.S. would include “after-acquired title” language, such that if AG/JMA or successors are able to acquire the severed minerals at any time in the future, after closing, those severed minerals would automatically transfer to the U.S.

### Easement Reservation:
AG/JMA would reserve an easement for existing Road #21479D, which accesses the Cole Creek Lift Tower, across the non-Federal lands.

### Easement grants to the U.S.:
AG/JMA would grant a public trail easement to the U.S. for proposed Ranger Trail #107 across other AG/JMA lands not involved in the land exchange.

AG/JMA would secure a public trail easement to the U.S. for proposed Ranger Trail #107 across Palisades Livestock lands.

AG/JMA would secure a public trail easement to the U.S. for proposed Ranger Trail #107 across State of Montana DNRC lands.

AG/JMA would grant a public trail easement to the U.S. for the RLM Uphill Trail # 108 across other AG/JMA lands not involved in the land exchange.

### Water Rights:
No non-Federal water right claims would transfer to the Forest Service.

### Deed Restrictions:
The non-Federal lands would be conveyed to the U.S. without any deed restrictions.
DECISION AND REASONS FOR THE DECISION

Scope of the Decision

The scope of this decision is limited to whether the Forest Service will implement the Proposed Action, including any mitigation and monitoring requirements, as described in the EA (June, 2016) for the “Red Lodge Mountain Land Exchange”. The decision that I am making is site-specific. It is not programmatic and is not a general management plan for the area.

As Forest Supervisor, I am the responsible official for this project. The Director of Recreation, Mineral, Lands, Heritage, and Wilderness for the Northern Region, whose authority is delegated by the Regional Forester, has delegated this authority to me.

Decision Criteria

The project, including the land exchange, stems from direction and objectives in the Forest Plan. I considered how each alternative would consolidate land ownership and reduce future management costs, enhance recreational trail opportunities, support long-term economic viability of the ski area, and protect key wildlife habitat.

In making my decision regarding the land exchange, I focused upon three criteria:

1. Consistency with the Forest Plan, applicable laws, regulations and policy.
2. Determination of public benefits.
3. Consideration of the issues and comments made by the public.

Decision

Based upon the analysis conducted by the interdisciplinary team, and documented in the EA for the Red Lodge Mountain land Exchange, the Biological Assessment (BA), Biological Evaluation (BE) and the Project File, I have decided to select and approve the Proposed Action. I will also refer to this as the “Selected Action”. I have decided to implement the Selected Action in two stages due to the complexity of acquiring the trail easements across State and private lands for Ranger Trail #107. The following is a summary of my decision.

In the Selected Action Stage I, the U.S. will convey 250.23 acres of Federal lands to AG/JMA, and AG/JMA will convey 382.45 acres of non-Federal lands to the U.S. that are equal in value, as determined by current appraisals approved by the Forest Service.
The Federal and non-Federal lands were appraised in accordance with federal standards. Based on the approved appraisal reports, the estimated total market value of the Federal lands is $2,462,000 and the estimated total market value of the Non-federal lands is $2,448,000. The values of the lands exchanged either shall be equal but may the values may be equalized by cash payment of up to 25% of the value of the Federal lands. A cash equalization payment of $14,000 from AG/JMA, to the United States of America, will bring the exchanged lands to equal value as required by law. The land exchange will be completed on the basis of equal market values.

It is anticipated the Red Lodge Mountain Land Exchange, including conveyance of the identified Federal lands, minerals and non-Federal lands, and all identified road and trail easement reservations and grants, with the exception of trail easements for the Ranger Trail #107, would be implemented in 2017. The conveyance would be documented by execution and recordation of deeds in the County of Record for the properties location.

In the Selected Action Stage II, for those segments of proposed Ranger Trail #107 that cross the State and private lands:

- Montana DNRC would grant a permanent trail easement directly to the U.S. AG/JMA would pay DNRC for the cost of the easement. Due to the separate review process of the Montana DNRC, this easement may be received at a second closing, separate from the land exchange closing.
- AG/JMA will attempt to acquire a permanent trail easement from Palisades Livestock and convey it to the U.S. in the land exchange. This easement may also be granted at a second closing, separate from the land exchange closing.

It is anticipated the conveyance of trail easement reservations and grants for the Ranger Trail #107, would be completed in 2018. The conveyance would be documented by execution and recordation of deeds in the County of Record for the properties location.

The U.S. will also convey the mineral estate associated with the Federal lands to AG/JMA. AG/JMA will convey the half mineral estate that it owns, associated with the non-Federal lands, to the U.S. If AG/JMA or its successors are successful in acquiring the partly-severed mineral estate prior to, or after closing the exchange, the doctrine of after-acquired title will be used in the deed(s) from AG/JMA to the U.S. Two Forest Service water rights will transfer to AG/JMA. No non-Federal water rights will transfer to the Forest Service.

Following the exchange, the lands conveyed to the U.S. will be incorporated into the Custer Gallatin National Forest, and managed and monitored in accordance with the Custer National Forest Land and Resource Management Plan, 1986 (Forest Plan) and future land management plans that may be developed for the Custer Gallatin National Forest under the National Forest Management Act.
Under current regulations (36 CFR 254.3(f)), the lands to be conveyed to the U.S. will be managed in accordance with the existing Master Development Plan (“MDP”) and the existing Forest Plan, until such time the MDP and/or Forest Plan are revised. The non-Federal lands are located within the RLMR’s Term Special Use Permit boundary, and will be generally managed with an emphasis on public recreation in Management Area F.

It is anticipated that AG/JMA will continue to manage the Federal lands as a component of RLMR in association with activities of the ski area, including base area development, as previously analyzed in the MDP and FEIS (USFS 1996).

Specific mitigation and monitoring measures needed to achieve Forest Plan objectives and Best Management Practices are identified in the EA (Chapter II, page 18/19). Mitigation and monitoring measures have been identified to protect land resources, vegetation, wildlife, special status animal and plants, wetlands, riparian zones, floodplains, fisheries, aquatics and cultural resources. The mitigation measures also address noxious weeds, timber, fuels, soils resources and water quality. All mitigation measures listed in the EA have been incorporated into the design of the Selected Alternative. The environmental analysis of the Selected Action was completed with these mitigation measures identified as project design criteria. The Selected Action, along with my decision to require all of the project design criteria meets all applicable laws, regulations, and policies.


**Reasons for the Decision**

I made my decision to select the Proposed Action because it best meets the overall purpose and need for the project, best responds to the public issues, and it sets the stage for more effective and efficient management of NFS lands in the future. Forest Service specialists considered public comments and used those comments to strengthen the environmental analysis. The issues and concerns have been thoroughly analyzed and discussed in the EA. All comments and analysis are filed in the project record.

Considering all alternatives, including those considered but eliminated from detailed study, a range of reasonable alternatives was considered. I have reviewed the alternatives considered in detail and find they were responsive to key issues and the purpose and need for the analysis.

In accordance with 36 CFR 254.3 (b)(2)(i) and (ii), I determined that this land exchange, including the reservations of easements for roads and trails on public land to be conveyed, acquisition of easements for roads and trails on private and state lands, deed
restrictions for wetlands/riparian lands to be conveyed, and reservations for ski area improvements on land conveyed to the U.S. will serve the public interest; that the resource values and public objectives served by the Non-federal lands to be acquired exceed the resource objectives served by the Federal lands to be conveyed, and that the intended use of the conveyed Federal lands will not substantially conflict with established management objectives on adjacent Federal lands.

The EA demonstrates that National Forest management will not be adversely affected by this exchange. The EA also demonstrates that there will be no significant adverse impacts to the quality of the human environment as a result of this exchange. (EA, Chapter 4).

Additional specific reasons for proceeding with the Red Lodge Mountain Land Exchange follow:

Consistency with the Forest Plan and Applicable Laws, Regulations and Policies

The Selected Action is in compliance with the current Forest Plan and various laws and regulations under which the Forest Service operates. It incorporates all applicable Forest Plan forest-wide standards and management area prescriptions. Lands added to the National Forest will be managed similar to existing NFS lands, which are located in Management Area (MA) F. Lands in MA F are managed primarily for recreation.

The Forest Plan provides criteria for considering land exchanges, purchases and other land adjustments. Said Forest Plan (Chapter II, 10, Lands, Landownership Adjustment, p. 32) states:

1. Ownership adjustments will be made Forest-wide to improve the efficiency and effectiveness of resource management of NFS lands, and interests in lands, for public benefit.
2. Land areas that have important public values, such as significant recreation use or opportunity, key wildlife habitat, valuable commodity potential, or areas containing historical or archeological values will generally be retained. The merit of any adjustment proposal will be judged according to whether it will benefit the overall management of the NFS. The following is considered beneficial:
   (1) Lands or interests in lands will be consolidated to improve ownership patterns and resource management within proclaimed boundaries. Federal lands within existing wilderness will be consolidated by acquiring interior private lands and/or interests in lands, including patented mining claims.
3. In order for NFS lands or interests in lands to be available for disposal, one or more of the following criteria will be met (by relative priority):
   (1) Landlocked by private land or interests in lands or partly so, and has no or limited access.

Red Lodge Mountain Land Exchange

Page 11 of 30
(2) Intermingled with patented mining claims or homestead patents.
(4) Occupied by permitted private improvements of significant value.

6. In order for other land or interests in lands to be considered for acquisition, one or more of the following criteria will be met (by relative priority):

(2) Isolated by Federal Land or nearly so.
(8) Pertinent to reducing landline location surveys.

I find the non-Federal lands proposed for exchange have desirable natural resource attributes, including the presence of Cole Creek. Acquisition of the non-Federal lands will specifically meet Forest Plan objectives by consolidating three isolated private land parcels into one parcel thereby eliminating 1.6 miles of landline, and improving ownership patterns and resource management within proclaimed boundaries. The Federal lands proposed for exchange specifically meet Forest Plan objectives by trading lands that are intermingled with private lands created through mining claims and are occupied by permitted private improvements of significant value.

I reviewed the Biological Assessment for threatened and endangered species, and Biological Evaluation for sensitive species, and found the following:

- Implementation of the Proposed Action *May Affect But Is Not Likely to Adversely Affect* Canada Lynx and Canada Lynx Critical Habitat. The proposal is outside the Yellowstone Grizzly Bear Recovery Zone, but inside one of two bear analysis units (BAU) in the Beartooth Mountains. Because of the net gain of secure habitat (positive) and the possible disturbance or displacement of individual grizzly bears from non motorized trail use (negative) the Proposed Action *May Affect But Is Not Likely to Adversely Affect* Grizzly Bears.

- The Proposed Action would have *No Impact* on the American peregrine falcon, gray wolf, pallid bat, or spotted bat. The land exchange results in a net gain of habitat managed under federal ownership; however the trails may have a slight negative effect on bald eagles and wolverines. Therefore, the Proposed Action may impact individuals but is not likely to cause a trend to federal listing or loss of viability of the bald eagle or the wolverine.

- The Proposed Action could have a *neutral to slight negative effect* on Management Indicator Species including Brewer’s sparrow, Northern goshawk, ruffed grouse, Bullock’s oriole, yellow warbler, elk, golden eagle, merlin, mule deer, white-tailed deer, and neotropical migrant bird species. The Proposed Action has a *negative effect* on moose, due to increased human and dog presence on important winter habitat for moose in this area.
Based upon sensitive plant surveys, the Proposed Action *may impact* individual beartooth goldenweed and shoshonea plants but is not likely to result in a trend toward federal listing or loss of viability. The Proposed Action *has no impact* on whitebark pine.

Within the EA, I find documentation concerning floodplains and wetlands in compliance with Executive Orders 11988 and 11990 (See EA Chapter III, pp 32-39 and Chapter IV, pp 63-66). The Proposed Action would have no effect on wetlands from change of landownership, continued recreational use of the ski area, or future facilities enhancements or improvements. The 2.79 acres of mapped riparian forested habitat and additional acreage along Willow Creek on the Federal lands will transfer to AG/JMA. The 0.26-acre of riparian forested habitat on non-Federal lands will transfer to U.S. ownership and management. The wetlands and riparian habitat along Willow Creek on the Section 25 Federal parcel will be permanently protected by a deed restriction. A clarification of a three year time interval for the monitoring requirement for this deed restriction was added to the EA. The deed restriction covers all areas within 50 feet of the creek centerline and the nearby spring associated with water right 43D 57779 00. Therefore, the Selected Action meets the intent of the two Executive Orders.

The Forest Archaeologist examined the project area for compliance with Section 106 of the National Historic Preservation Act (NHPA) and obligations under the American Indian Religious Freedom Act of 1978 (AIRFRA).

Mitigation measures as identified in the EA (Chapter II, page 19) will be included. Consultation with the Montana State Historic Preservation Office (SHPO) resulted in a finding that 24CB2434 (Red Lodge mountain Ski Area) is Not Eligible for the National Register of Historic Places.

The SHPO also concurred with the determination of No Effect to Historic Properties and “no adverse effect” for the Proposed Action because three of the four archaeological sites that qualify, or may qualify, for NRHP listing under Criterion D will be avoided during trail construction and will therefore, be preserved in place. The remaining site comprises a well-preserved segment (1.12± miles) of the old Ranger Trail that will be impacted from trail improvement and non-motorized traffic. However, re-development of the trail is considered to be in the best interest of its preservation, maintenance, and historical appreciation. Under terms of a 1995 programmatic agreement with the SHPO, the Forest Archaeologist has recommended that the Proposed Action may proceed. No indications exist through survey or consultation with the eight Tribes contacted for this project that this project will have any effect or pose any concerns to the eight Tribes or individuals.
I find that this decision is consistent with the Goals, Objectives, and Standards listed in the Forest Plan and will be monitored and incorporated into future land management plans that may be developed for the National Forest under the National Forest Management Act.

**Determination of Public Benefits**

As required in 36 CFR 254.3(b), I determined the public interest is well served through this exchange as described in the Selected Action. When considering the public interest, I evaluated the following factors:

*The resource values and public objectives served by the non-federal lands equal or exceed the resource values and the public objectives served by the federal lands.*

The Selected Action will acquire key wildlife habitat, including the upper Cole Creek watershed, provide for reduction of complex ownership patterns that will help consolidate NFS lands, eliminate 1.6 miles of landline boundaries that will contribute to management efficiency, and result in a 132.22± acre net increase in NFS lands.

In addition, it is anticipated that the Selected Action will substantially improve management effectiveness and reduce costs associated with special use administration of complex ski area permits and recreation use.

I have reviewed the appraisal report and determined the Federal and non-Federal lands identified for exchange has been appraised in accordance with federal standards. The Federal and non-Federal lands were appraised in accordance with federal standards. Based on the approved appraisal reports, the estimated total market value of the Federal lands is $2,462,000 and the estimated total market value of the non-Federal lands is $2,440,000. The values of the lands exchanged either shall be equal, or if they are not equal, the values shall be equalized by cash payment. A cash equalization payment of $14,000 from AG/JMA, to the United States of America, will bring the exchanged lands to equal value as required by law. The land exchange will be completed on the basis of equal market values. Overall, resource values of the acquired non-Federal lands are equal to or exceed the resource values of the Federal lands conveyed in the Selected Action.

*The intended use of the Federal lands identified for exchange to AG/JMA will not conflict with established management objectives on other NFS lands in the area.*

Current landownership in the RLMR Special Use Permit boundary consists of intermingled NFS and private lands. This land pattern was created through homestead and patented mineral claims in the early 1900’s. The intermingled NFS and private lands in the analysis area are complex to manage effectively, both for the Forest Service and for AG/JMA.
The Forest Service manages the NFS lands in the analysis area for multiple purposes under the Forest Plan. The Plan goals and objectives for the analysis area are primarily for recreation but also include providing for healthy forests, wildlife and quality water on NFS lands. Fire protection and management of the road and trail system in the area are also important considerations.

The non-Federal lands to be acquired are located within the Custer Gallatin National Forest. The non-Federal parcels considered for exchange are isolated and surrounded by Federal lands. AG/JMA’s desire is to consolidate their private lands in the area. The non-Federal land will continue to be used for ski area and recreational purposes and will not substantially conflict with established management objectives on adjacent federal lands.

The Red Lodge Mountain land Exchange will consolidate land ownership and reduce future management costs.

Acquisition of the non-federal lands meets Forest Plan objectives, and will further consolidate public land ownership. This will benefit long-term management effectiveness in most program areas including recreation, fire protection, and vegetation management. It will protect important wildlife habitat, and water quality values.

The Red Lodge Mountain Land Exchange will enhance recreational trail opportunities.

The Selected Action will improve administrative and public access to NFS lands and more non-motorized trails will become available for public recreation use. The Selected Action will also ensure that reasonable, uncontested public and agency access exists to NFS lands, and that recreational trail opportunities will be enhanced. The Forest Service will continue to manage and maintain all existing system roads in the project area under the direction and guidance of the 2008 Beartooth Travel Management Plan FEIS.

The Red Lodge Mountain Land Exchange supports the economic viability of ski area.

The exchange of lands will consolidate ownership of both the private and the NFS lands in this area, provide for more logical and efficient management of these lands in the future, and support the long term economic viability of the ski area. The proposed action would accommodate private sector objectives, including land consolidation and foreseeable infrastructure upgrades, thereby contributing to the long-term sustainability of the ski area and help support long term economic viability of the City of Red Lodge.

The Red Lodge Mountain Land Exchange protects key wildlife habitat.

The exchange of lands will protect key wildlife habitat, including the upper Cole Creek watershed which includes stands of Whitebark Pine and Cole Creek which is an unimpaired watershed.
CONSIDERATION OF ISSUES IDENTIFIED THROUGH PUBLIC COMMENT

During the scoping process, the public expressed some concerns and posed several questions regarding the proposal and analysis. Comments resulting from internal and external scoping were evaluated by the Forest Service resource specialists to identify potential issues and concerns. Topics identified as important to members of the public and/or to the Forest Service include:

- Change of the character of the ski area associated with improving the base area.
- County permitting requirements associated with future development of the ski area.
- Ski area upgrades and potential to draw business away from downtown Red Lodge.
- Permanent easements for public trail access on proposed Ranger Trail #107.
- The effects of increased recreational use on wildlife movement patterns and behavior.
- Long-term status of special use permittees and lessees located on the Federal lands.
- Protection of riparian habitat and wetlands on the Federal lands.

The IDT team identified twelve issues, and considered these issues throughout the analysis process. These included:

**Land Resources**: Permanent easements for public trail access will be pursued by the U.S. and AG/JMA on those segments of proposed Ranger Trail #107 that cross State and Palisades Livestock lands. Existing Federal special use permits and leases would be affected by the proposed action.

**Mineral Resources**: The non-Federal lands have a split mineral estate with outstanding mineral rights. The proposed action could impact mineral resources.

**Recreation, Public Access, Roads and Trails**: The preservation and enhancement of public recreational opportunities in the project area, including winter sports, hiking, biking and horseback riding, are among the objectives of proposed action.

**Vegetation**: The project area sustains a variety of vegetative types, including open meadows and stands of Douglas-fir, lodgepole pine, Engelmann spruce, subalpine fir and white-bark pine. Certain sensitive plant species have the potential to be present in the project area and could be impacted by the proposed action.

**Timber and Fuels**: Timber stands and varying degrees of fuel loads occur within the project area. The proposed action could impact timber and fuel management.

**Noxious Weeds**: Certain noxious weed species occur along established trails, roads, and in other portions of the project area. The proposed action could impact invasive weed distribution.

**Wetlands, Riparian and Floodplains**: Wetlands, riparian zones and floodplains associated with Cole Creek and Willow Creek, occur in the project area and could be impacted by the proposed action through a net loss in wetland and riparian habitat.
**Water Quality and Soils:** The proposed Ranger Trail # 107 corridor crosses various perennial creeks and intermittent streams, the soil and water quality of which could be effected by the proposed action.

**Fisheries and Aquatics:** Perennial streams, such as Cole Creek and Willow Creek, are located within the project area and could be impacted by the proposed action. The proposed Ranger Trail # 107 corridor also crosses East Fork West Red Lodge Creek, Burnt Fork, Harney Creek, Ellis Creek, Hogan Creek, and Thiel Creek, which are perennial watercourses.

**Wildlife:** Wildlife species present in the project area are diverse and could be impacted by the proposed action, which includes increased public recreational activities.

**Special Status Species:** Threatened and endangered species and Forest Service Sensitive and Management Indicator Species, comprising both animals and plants, have the potential to be present in the project area and could be impacted by the proposed action.

**Cultural Resources:** Cultural resource surveys identified a limited number of cultural resources in the project area, including segments of the historic Old Ranger Trail, which could be impacted by the proposed action.

**Socioeconomics and Environmental Justice:** Recreational activities associated with the ski area contribute economically to the City of Red Lodge. The proposed action and subsequent land uses that occur within the project area could further impact the local economy.

**ALTERNATIVES STUDIED IN DETAIL**

The range of alternatives is somewhat limited by the unique nature of the land exchange process. A proposed exchange package is typically assembled through discussions and negotiations that result in a balanced combination of parcels acceptable to the landowner (AG/JMA) and the Forest Service. During the initial stages of assemblage, Forest Service resource specialists evaluate the exchange’s feasibility based upon anticipated public benefits. When a land exchange proposal is considered mutually acceptable, the parties draft and execute an ATI. Alternatives to the proposed action are considered during the initial phases of environmental analysis. The exchange proposal analyzed in this EA comprises lands and conditions that received initial concurrence by AG/JMA and the Forest Service.

The Forest Service resource specialists determined that two alternatives: 1) no action, and 2) proposed action, would adequately identify and resolve any conflicts or impacts associated with resource issues.

I considered two alternatives including the No Action alternative for the proposed land exchange. Chapter II of the EA describes the alternatives in detail, including mitigation measures.
Two alternatives were considered in detail: No Action, and the Proposed Action. I considered how well the No Action and the Proposed Action would address the Purpose and Need. I also considered how each alternative would best serve the public objectives and resource values. I gave full consideration to the opportunity to achieve better management of federal lands and resources, to meet the need of State and local residents and their economies, and to secure important objectives.

One other alternative was identified and then eliminated from detailed consideration. Forest Service policy on land exchanges requires consideration of a direct purchase alternative (FSH 5409.13 – Land Acquisition Handbook). This alternative was considered but eliminated from further analysis, because the Forest Service lacks sufficient funding to purchase the non-Federal parcels and purchase of these lands would not compete well for funding sources the Forest Service receives for purchases. Also, the landowners (AG/JMA) have indicated they do not intend to sell their lands to the U.S. Rather, AG/JMA seeks to acquire the Federal lands of equal value in exchange for those non-Federal lands proposed for exchange to the U.S. A direct purchase alternative would also fail to achieve landownership consolidation goals for AG/JMA.

No other alternatives were considered, due to the lack of those available to the Forest Service that would adequately address the purpose and need of the proposed action. Following are the alternatives considered in detail.

**No Action**

The National Environmental Policy Act (NEPA) requires consideration of a No Action Alternative (40 CFR 1502.14d), with which Proposed Actions will not occur. This alternative provides a baseline of comparison to aid in determining the significance of issues and effect of the Proposed Action.

In the No Action alternative, the proposed Red Lodge Mountain Land Exchange would not be completed. The Forest Service would withdraw from the exchange process.

**Proposed Action**

This alternative is the Proposed Action described in the EA. It was developed to meet the Purpose and Need and address the issues raised during scoping.

Under the Proposed Action alternative, the proposed Red Lodge Mountain Land Exchange would be completed in accordance with law, regulations and policy. The acquired lands would become part of the Custer Gallatin National Forest and be managed under the Forest Plan, and any future revisions.

Table 2 summarizes the effects of the alternatives that I considered in making a decision.
Table 2 – Comparison of the effects of the alternatives.

<table>
<thead>
<tr>
<th>Resource topic</th>
<th>No Action alternative</th>
<th>Proposed Action alternative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal lands 250.23± acres</td>
<td>The Federal lands would continue to be managed by the Forest Service, with existing privately owned ski area improvements operated under the Term Special Use Permit. Improvements and enhancements would occur under the current landownership pattern. Private communication sites and transmission lines would remain under existing Forest Service communication site leases and special use permits. The Federal Mineral estate would remain intact with the Federal lands. Management of the NFS lands would require additional survey work and coordination due to the privately held lands within the Forest boundary. The Forest Service would lose the opportunity to acquire additional public land acres.</td>
<td>The Federal lands would be conveyed to AG/JMA, including lands that sustain ski area improvements. Improvements and enhancements would occur under the revised land-ownership pattern. Existing communication sites and transmission lines would be converted to new private arrangements with AG/JMA. Certain wetlands and riparian habitat along Willow Creek and a perennial spring would be conveyed with protective restrictions. AG/JMA would manage timber and fuels in cooperation with the Forest Service. The federal mineral estate would be conveyed with the surface lands.</td>
</tr>
<tr>
<td>Resource topic</td>
<td>No Action alternative</td>
<td>Proposed Action alternative</td>
</tr>
<tr>
<td>----------------</td>
<td>-----------------------</td>
<td>----------------------------</td>
</tr>
<tr>
<td><strong>Non-Federal lands</strong>&lt;br&gt;382.45± acres</td>
<td>The non-Federal lands would remain under private ownership. Habitat protection and public access would remain subject to private landowner management objectives. Continued ski area operation and limited ski area improvement foreseeable.</td>
<td>The non-Federal lands would be added to the Custer Gallatin National Forest. Habitat and watershed (i.e. Cole Creek) protection would be under Forest Service management. Continued ski area operation and limited ski area improvement would be authorized under a modification of the Term Special Use Permit. A split mineral estate, comprising one-half of the minerals, would be conveyed to the U.S. by AG/JMA. If AG/JMA is successful in acquiring the partly-severed mineral estate prior to, or after closing the exchange, the doctrine of after-acquired title will be used in the deed(s) from AG/JMA to the U.S. The U.S. would receive a 132.22-acre net gain in NFS lands and wildlife habitat.</td>
</tr>
<tr>
<td><strong>Proposed Ranger Trail #107</strong></td>
<td>Proposed Ranger Trail #107 as a connected backcountry trail opportunity would likely be eliminated with there being no public access across certain private lands.</td>
<td>Proposed Ranger Trail #107 would be pursued. AG/JMA will attempt to acquire and grant trail easements across private lands. DNRC would grant a trail easement directly to the U.S., with the cost paid by AG/JMA. The U.S. would reserve a trail easement across Federal lands.</td>
</tr>
<tr>
<td><strong>Proposed RLM Uphill Trail #108</strong></td>
<td>The proposed trail would not be necessary to access NFS lands. Public access to the Grizzly Peak area would remain unchanged.</td>
<td>A trail easement would be reserved by the U.S. to ensure permanent public access along the proposed trail corridor to NFS lands in the Grizzly Peak area.</td>
</tr>
<tr>
<td><strong>Willow Creek Trail #105 &amp; Nichols Creek Trail #110</strong></td>
<td>Existing trail conditions and public trail access would remain unchanged.</td>
<td>Public trail easements would be reserved by the U.S. to ensure continued access along the existing trail corridors.</td>
</tr>
<tr>
<td><strong>Forest Road #21479 &amp; Forest Road #21479C</strong></td>
<td>Existing road conditions and administrative road access would remain unchanged.</td>
<td>Road easements would be retained by the U.S. to ensure continued access along existing corridors crossing the Federal land.</td>
</tr>
</tbody>
</table>
PUBLIC INVOLVEMENT

Legal notice of the proposed Red Lodge Mountain Land Exchange was published in the *Billings Gazette* (newspaper of record for the Custer National Forest) for four consecutive weeks, (February 6th, 13th, 20th and 27th, 2015).

The Forest Service included the proposal in the “Custer Gallatin National Forest Schedule for Proposed Actions” (SOPA) starting with the April 2015 edition. This schedule is mailed four times a year to approximately 230 persons, organizations, agencies, and Tribal Governments interested in activities on the Custer Gallatin National Forest. The project list has continued to identify the proposal since that time, to notify the public of its status. The Forest Service sent notification letters and maps to inform the Montana Congressional delegation, Governor, Carbon County Commissioners, and eight Native American Indian Tribes in February, 2015.

Public scoping was conducted from February 6th to March 23rd, 2015. The Forest Service mailed a scoping letter to over 65 federal, state, and local agencies, landowners, lease holders and permittees, and individuals and organizations interested in, or potentially impacted by, the proposed land exchange. The scoping letter included a discussion of the proposed land exchange, maps of the Federal and non-Federal lands, and notice of a public meeting.

Three written comments and five electronic (email) comments were received during scoping. Two comments were also provided to the Beartooth Ranger District by telephone. No comments were received from the Montana Congressional delegation, the Governor, or Native American Tribes. The Carbon County Commissioners commented by letter.

An “open house” style public meeting was held by the Beartooth District Ranger at the Red Lodge Senior Citizens Center February 26, 2015, (5:00 pm - 6:30 pm), to review and discuss the exchange proposal with interested parties. Approximately 20 people attended. No written comments were received. Those present expressed general support for the proposed action.

Internal scoping involved consulting with key Forest Service staff and resource specialists on the Beartooth Ranger District and in the Forest Supervisor's Office. An Interdisciplinary Team (IDT) was created to coordinate the scoping process and assist in identification of issues and development of alternatives in response to the issues.

Based upon the responses received during scoping, the IDT prepared a list of issues to be analyzed in the EA. The issues and concerns are detailed in Chapter II- Resource issues Identified, and are examined individually by alternative in Chapter III – Affected Environment and Chapter IV – Environmental Consequences.
On June 27, 2016, legal notice of the EA was published in the *Billings Gazette*. A letter providing notice of availability of the EA was also mailed to members of the public and agencies who indicated interest in the project during the scoping period. The EA was made available for a 30-day public review and comment period and was also available on the Custer Gallatin National Forest’s website.

**Consideration of Public Comments on the Draft EA**

Three comments were received during the 30 day public review period. One comment expressed overall support for the project and improving access to public lands. Two of the comments received were considered and addressed as follows:

**Comment One: Western Lands Project**

The Pre-Decisional EA has failed to discuss the impacts of additional ski area developments that are likely to occur because of this proposed exchange. The Final Environmental Impact Statement (FEIS) for the Red Lodge Mountain Master Development Plan (RLM-MDP) is 20 years old. The current state of scientific knowledge and 20 years of impacts and changes to the project area dictate impacts of additional development should be revisited and discussed in the EA.

The statement that there would be no reasonably foreseeable development of the Federal land beyond that addressed in the 1996 FEIS does not describe what constituted it in 1996 and neglects to identify whether the impacts are different now than what was projected in 1996.

**Response One:**

The 1996 FEIS for the RLM-MDP specifically analyzed the environmental effects of all of the approved components contained within it as reasonably foreseeable development. Additional or new development would be proposed actions beyond those actions already approved, or by changing one of those components in the approved action that would require additional analysis, or by new information such as the listing of an endangered species that would have bearing on the approved RLM-MDP.

The FEIS for the RLM-MDP was approved in 1996. In compliance with NEPA regulations at 40 CFR 1502.9(c), the Responsible Official is required to review the decision if new information or changed circumstances have arisen. This circumstance has occurred three times, and the subsequent review of the Decision and attendant FEIS and conclusion of the findings of the review include:

April, 2001 - Review and Documentation of New Information Regarding Red Lodge Mountain Ski Area Master Development Plan, listing of Canada Lynx. No changes to the RLM-MDP.
December, 2005 - 18.1 Review and Documentation of New Information Regarding Red Lodge Mountain Ski Area Master Development Plan and Ski Area Term Special Use Permit, new 40 year term permit. The new 40 year term permit for Red Lodge Mountain Ski Area was approved January 6, 2006, which required the ski area to update the implementation schedule for the approved components of the RLM-MDP which are a part of the Special Use Permit.

No additional or new developments were added to the RLM-MDP. The implementation schedule documented the completed components of the RLM-MDP and those that remain as those reasonably foreseeable.

August, 2010 - DECISION NOTICE AND FINDING OF NO SIGNIFICANT IMPACT, (DN/FONSI) Environmental Assessment for the Proposed Grant of an Easement and Proposed Reconstruction of Red Lodge Mountain Ski Area Road No. 21479, changed MDP approved funicular/gondola component to four season road for access to mid-mountain development on private land (analyzed as a connected action in the FEIS). DN/FONSI approved Reciprocal Access Agreement and exchange of easements across federal and private land to provide changed access to mid-mountain development. No additional or new developments were included in this EA.

This clarifying language was added to the EA. The approved components in the 1996 FEIS for the RLM-MDP are those reasonably foreseeable which have been analyzed in subsequent reviews. The public is able to evaluate whether this proposal is in the public interest and the impacts of the reasonably foreseeable development.

Comment Two: Yellowstone Radio Club

The EA did not disclose the impacts associated with not having the .360 repeater available to the area it serves including potential for loss of life and property, reduced law enforcement capability, loss of effective weather reporting services, ineffective communications at Red Cross shelters and hospitals, and loss of contact with outside responders needed to assist in emergency and disaster events. The EA did not disclose the hardship and negative impacts that would be forced upon YRC to physically locate facilities to another suitable site. The EA is silent in regarding alternative sites for communication purposes that may be available on USFS lands.

Response Two:

The no action and the proposed action both disclose the permit holders will remain in place and use will continue. None of the alternatives considered in the analysis propose removal of electronic site permit holders. Therefore, disclosing impacts associated with removal of electronic site permit holders is beyond the scope of the proposed action. The cost of future operations is unknown other than that initial terms offered by AG/JMA will

Red Lodge Mountain Land Exchange
be similar to those previously held under permit from the USFS. Continued use of the electronic site by the former permit holders will be granted at implementation of the exchange.

Loss of the use of the site is speculative and not reasonably foreseeable. Evaluating other alternative locations such as the Grizzly Peak Electronics Site which was declassified as an electronic site in 1993 is beyond the scope of the proposed action.

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

I have reviewed the direct, indirect, and cumulative effects of the proposed activities documented in the EA, BA, BE, and Project File for the Red Lodge Mountain Land Exchange, and I have determined the implementation of the Proposed Action results in a finding of no significant impact.

I have reviewed the provisions of 40 CFR 1508.27 (b) in terms of the project context and intensity relationships in determination of project significance and it is my decision that an Environmental Impact Statement (EIS) is not necessary and will not be prepared for this project. My rationale for not preparing an EIS includes:

1. **Context** - The setting of the proposal is in a localized area with implications only for the immediate area. The selected action is consistent with the management direction, standards and guidelines outlined in the Forest Plan, as amended.
2. **Intensity** - The intensity of activities in the selected action are outlined below.

   a. **Consideration of both beneficial and adverse impacts.** Impacts associated with the alternatives are discussed in Chapters III and IV of the EA. The actions would not have significant impacts on resources. Impacts from the selected action are not unique to this project. Previous projects have had similar activities with no significant effects. I conclude that the beneficial and adverse effects of the selected action are not significant in the context of the proposed and cumulative effects.

   b. **Consideration of the effects on public health or safety.** No issues concerning public health and safety were raised by the public or through internal review. There are no hazardous materials or substances present on either the federal or non-federal land. The project does not involve National Defense or Security. Therefore, I have concluded that the selected action will have no significant effects on public health and safety.

   c. **Consideration of unique characteristics of the geographic area.** The analysis identified no adverse impacts to any unique geographic area, historical features, parklands, prime farmlands, wild and scenic rivers or ecologically critical areas.
In the Selected Action, there will be a net gain of approximately .26 acres in wetlands and floodplains. The Selected Action is expected to maintain riparian wetland habitats within conveyed lands and will result in protection of acquired lands. It will also benefit wildlife habitat. See EA, Chapters III and IV.

d. **Consideration of the degree to which the effects on the quality of the human environment are likely to be highly controversial.** Land exchanges and connected actions are not precedent setting actions with significant effects. There are no scientific disputes over the likely effects of this project. These types of activities have been an accepted and ongoing practice on the Custer Gallatin National Forest and throughout the Forest Service for several decades or longer. Therefore, I conclude that the environmental effects of the decision will not be controversial.

e. **Consideration of the degree to which effects are uncertain or unknown.** The selected action is similar to many past actions. Effects of this action will be similar to the effects of similar, past actions. Land adjustments and connected actions have occurred on the Custer Gallatin National Forest for several decades. The analysis was conducted using the best available information to estimate the effects of this decision. Based on the results of past actions, combined with professional insight, there are no known effects to the human environment that are highly uncertain or involve risk as a result of implementing this proposal. Due to past similar activities and Forest Plan monitoring, the effects and risks are well understood.

f. **The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about future consideration.** The implementation of a land exchange is not precedent setting with significant effects. The land exchange program has been an established program nationally and locally for decades. I conclude that this action does not establish precedence for future actions with unknown risks to the environment.

g. **Consideration of the action in relation to other actions with individually insignificant but cumulative significant effects.** Cumulative effects of the selected action and other past, ongoing, and reasonably foreseeable actions are not expected to be significant (EA, Chapter IV; Project File). The scale of activity creates minimal individual effects as well as minimal cumulative effects when added to the existing situation. Administrative use will not result in any measurable degree of cumulative effects. A Biological Assessment (BA) has been completed concluding the selected action *May Affect But Is Not Likely to Adversely Affect* on any threatened or endangered species. A Biological Evaluation (BE) has been completed concluding the selected action will have *No Impact* on any sensitive species. This action is not related to other actions that will result in cumulative significant impacts.
h. Consideration of the degree to which the action may adversely affect districts, sites, highway structures, or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources. Cultural resource surveys have been conducted on all Federal lands to be exchanged, with negative results. The selected action will not affect any site, structure or object. No sites that are eligible for listing in the National Register of Historic Places or that may be scientifically, culturally or historically significant will be affected. Based upon this information, I conclude that the Selected Action will not cause loss or destruction of significant scientific, cultural, or historic resources. Montana State Historic Preservation Office concurred with these findings.

i. Consideration of 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 of 1973. As noted previously above, threatened, endangered, or sensitive wildlife or plant populations will not be adversely affected by this decision (EA, BA, and BE).

j. Whether the Proposed Action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. I have reviewed the EA, BA, BE and Project File, and have determined the Selected Action complies with all applicable Federal, State and local laws, regulations and requirements for protection of the environment.

FINDINGS REQUIRED BY LAW, REGULATION AND AGENCY POLICY

My decision is consistent with all laws, regulations and agency policy. Findings required by major environmental laws are summarized below. Compliance with other laws, regulations and policies are listed in the EA, the project file and the Forest Plan.

National Forest Management Act (16 USC 1600 et seq.). The National Forest Management Act (NFMA) and accompanying regulations require several specific findings be documented at the project level. I reviewed the Proposed Action with the IDT and documented the following findings:

Consistency with Forest Plan (16 USC 1604(i)). The Forest Plan, sets management direction for the Custer portion of the Custer Gallatin National Forest by establishing forest-wide goals, objectives, standards and guidelines, as well as goals, standards and guidelines for individual management areas. Implementing projects consistent with this direction moves toward the desired future condition described in the Forest Plan. Forest Plan direction provides the sideboards for project planning. In addition, NFMA requires all resource plans to be consistent with the Forest Plan (16 USC 1604 (i)). The Custer
National Forest Plan’s management direction for land ownership (Ch II, 10. Lands, p. 32) states “Ownership adjustments will be made Forest-wide to improve the efficiency and effectiveness of resource management of NFS lands, and interests in lands, for public benefit.” The EA demonstrated that the land exchange included in the Selected Action would have public benefits, and therefore, are consistent with Forest Plan goals and objectives.

**Sensitive Species** - Federal law and direction applicable to sensitive species include NFMA and the Forest Service Manual. In making my decision, I considered the projected effects on sensitive species (EA, Chapters III and IV). A Biological Evaluation was prepared to assess effects to sensitive species. It found that implementation of the Selected Action will have *No Impact* on any sensitive species. I find that the Selected Action complies with applicable direction for sensitive species.

**Wetlands and Flood Plains - Executive Orders 11990 and 11988.** Under the Selected Action, the Custer Gallatin National Forest would realize a net gain of 0.26 acres of wetlands and floodplains. Therefore this alternative fully complies with the Executive Orders.

**Endangered Species Act** (16 USC 1531 et.seq). Under Section 7 of the Endangered Species Act, each federal agency must ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of any threatened or endangered species. The Selected Action *May Affect But Is Not Likely to Adversely Affect* Canada Lynx or their critical habitat and Grizzly Bear. There are no plants listed as threatened or endangered in the area.

**Migratory Bird Treaty Act.** Upon review of the information regarding neotropical migratory birds in the wildlife report, I conclude the red Lodge Mountain Land Exchange will not result in a loss of migratory bird habitat or be an extirpation threat to any migratory birds.

**Hazardous Substances.** The Forest Service conducted a records review and field examination of the federal and non-federal lands for evidence of contamination by hazardous or potentially hazardous substances, in accordance with Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA Superfund Act, 1980), as amended by the Superfund Amendments and Reauthorization Act (SARA, 1986), and the Community Environmental Response Facilitation Act (CERFA, 1992). No evidence was found that hazardous or potentially hazardous substances have been used, stored for one year or more, released, or disposed of on the federal or non-federal lands.
Environmental Justice - Executive Order 12898. The Selected Action was assessed to determine whether it would disproportionately impact minority or low-income populations, in accordance with Executive Order 12898. No impacts to minority or low-income populations were identified during scoping or the effects assessment.

National Historic Preservation Act. Cultural resource overviews and surveys have been completed for the analysis area. No known cultural resources will be affected by the Selected Action.

Treaty Rights. The Federal government has trust responsibilities to Tribes by a government-to-government relationship to insure their reserved rights are protected. Consultation with the Tribes throughout project planning helps insure these responsibilities are met. The Forest Service consulted with the eight Tribes during the analysis process. The intent of this consultation is to stay informed about tribal concerns regarding the American Indian Religious Freedom Act and other tribal issues. All treaty rights will be maintained.

ADMINISTRATIVE REVIEW

The Red Lodge Mountain Land Exchange was scoped under the provisions of 36 CFR 218. Any individuals, entities, or organizations who submitted specific, written comments in response to scoping conducted under 36 CFR 218 or provided comments to the Environmental Assessment (EA) would be considered to have standing to object under 36 CFR 218, subparts A and B and may file an objection [36 CFR 218.5(a)]. Issues raised in objections must be based on previously submitted timely, specific written comments regarding the project, unless based on new information arising after the designated comment opportunities.

Written comments are those submitted to the responsible official or designee during a designated opportunity for public participation provided for a project. Specific written comments should be within the scope of the proposed action and have a direct relationship to the proposed action and must include supporting reasons for the responsible official to consider them (36 CFR 218.2).

A written objection, including attachments, must be filed via mail, express delivery, or hand delivery to: USDA Forest Service, Objection Reviewing Officer, Northern Region, 26 Fort Missoula Road, Missoula, MT 59804.

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

Objections may also be submitted via FAX to 406-329-3411 or via email to appeals-northern-regional-office@fs.fed.us.
For electronic submissions, the subject line should contain the name of the project being objected (Red Lodge Mountain Land Exchange Project). An automated response will confirm receipt of the objection. Should the sender not receive an automated response confirming receipt of the objection, it is the sender’s responsibility to ensure timely receipt by other means. Electronic objections must be submitted in Microsoft Word, Word Perfect, or Rich Text Format (RTF). In the case where no identifiable name is attached to an electronic submittal, a verification of identity will be required. A scanned signature page is one way to provide verification.

Objections must be submitted within 45 calendar days following the publication of the project Legal Notice in the Billings Gazette newspaper. The publication date in the newspaper of record is the exclusive means for calculating the time to file an objection. Those wishing to object should not rely upon dates or timeframe information provided by any other source. The regulations prohibit extending the time to file an objection. The objection must contain the minimum content requirements specified in 36 CFR 218.8(d) and incorporation of documents by reference is permitted only as provided in 36 CFR 218.8(b). It is the objector’s responsibility to ensure timely filing of a written objection with the reviewing officer pursuant to 36 CFR 218.9. All objections are available for public inspection during and after the objection process.

At a minimum an objection must include the following [36 CFR 218.8(d)]: (1) The objector’s name and address, with a telephone number, if available; (2) a signature or other verification of authorship upon request (a scanned signature for email may be filed with the objection); (3) when multiple names are listed on an objection, identification of the lead objector (verification of the identity of the lead objector shall be provided upon request); (4) the name of the project (i.e. Red Lodge Mountain Land Exchange Project), the name and title of the Responsible Official, and the name(s) of the National Forest(s) and/or Ranger District(s) on which the project will be implemented; (5) a description of those aspects of the project addressed by the objection, including specific issues related to the project if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; suggested remedies that would resolve the objection; supporting reasons for the reviewing officer to consider; and (6) a statement that demonstrates connection between prior specific written comments on the particular project or activity and the content of the objection.

If no objection is received, implementation of this Decision may occur on, but not prior to, five business days from the close of the objection filing period.

**IMPLEMENTATION DATE**

Implementation of the land exchange will not occur for a minimum of 50 days (45-day objection period opportunity and 5-day stay if no objection is received) following publication of the legal notice of objection in The Billings Gazette Billings, MT. If an
objection is filed, the reviewing officer’s response is due within 45 days (can be extended up to 30 more days). Implementation may begin immediately after the response.

CONTACTS

Records of the environmental analysis are available for public review at the Custer Gallatin National Forest Supervisor’s Office, 10 East Babcock Avenue, Bozeman, MT, at the Beartooth Ranger District Office, 6811 U.S. Highway 212, or on the Custer Gallatin National Forest’s web site (http://www.fs.usda.gov/main/custergallatin/home)

MARY C. ERICKSON
Forest Supervisor
Custer Gallatin National Forest

Date