

Exhibit 2

**Final EIS, Appendix C.
ANILCA Determination, pp. C-1 to -18**

Appendix C. ANILCA Determination

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I. INTRODUCTION

The Forest Supervisor of the White River National Forest (WRNF) has accepted an application from Berlaimont Estates LLC (applicant), wherein the applicant is requesting an easement for improved access to their 680-acre private property just north of Edwards, Colorado. This property is entirely surrounded by National Forest System (NFS) lands. Such “landlocked” properties are known as inholdings. The applicant asserts, and the WRNF agrees, that the agency is legally obligated to provide access to the Berlaimont property across NFS lands. More precisely, Section 1323(a) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) requires the Forest Service to provide access to private inholdings adequate to secure the owner reasonable use and enjoyment of that inholding property. Implicit in this requirement is the need for the agency to make a determination as to what constitutes “adequate access.” Documenting that determination is the purpose of this paper.

The Forest Supervisor is the “authorizing officer” for any future authorization for access to the Berlaimont Estates inholding property. When an authorizing officer must determine what constitutes adequate access, statutory law, agency regulations, and case law provide guidance. A specific sequence of steps is necessary in order to reach a final determination of adequacy that is consistent with the law. These steps include [1] understanding the relationship between ANILCA and NEPA (the National Environmental Policy Act), [2] determining whether the applicant’s proposed land use of their private inholding constitutes a “reasonable use” (by considering contemporaneous uses of similarly situated lands and other relevant criteria), and [3] determining what level of access adequately secures that reasonable use, and therefore must be granted in order to comply with ANILCA.

Each of these steps is explored in greater detail below as they relate to the Berlaimont Estates Access Route project.

II. THE RELATIONSHIP BETWEEN ANILCA AND NEPA

ANILCA’s requirement to provide adequate access across NFS lands to private inholdings is codified in agency regulations at 36 CFR § 251 Subpart D. [See Addendum A.] These regulations provide guidance for implementing the statute’s intent.

36 CFR § 251 Subpart D defines “adequate access” as:

*a route and method of access to non-Federal land that provides for reasonable use and enjoyment of the non-Federal land consistent with similarly situated non-Federal land **and** that minimizes damage or disturbance to National Forest System lands and resources. (36 CFR § 251.111) [emphasis added]*

In other words, the agency must provide adequate access for reasonable use, and do so in a manner that minimizes adverse impacts to Forest resources.

36 CFR § 251 Subpart D further elaborates:

*[The authorizing officer, prior to issuing any access authorization, must also ensure that] the route is **so located and constructed as to minimize adverse impacts** on soils, fish and wildlife, scenic, cultural, threatened and endangered species, and other values of the Federal land. (36 CFR § 251.114(f)(2)) [emphasis added]*

First, the WRNF closely followed the direction given throughout Subpart D to determine what constitutes a reasonable land use and adequate access to secure such use. Then, the WRNF used the NEPA environmental analysis process to select a specific route location and construction design that best minimizes adverse impacts while still meeting the legal mandate to provide adequate access.

As a point of emphasis, it was necessary to determine what constitutes adequate access *prior to* conducting the NEPA analysis of specific route locations in order to avoid potentially wasting valuable time and resources by evaluating alternatives that would not satisfy ANILCA.

In short, the WRNF relied upon the ANILCA “adequate access” mandate to define the range of alternatives analyzed in the NEPA process.

III. REASONABLE USE OF PRIVATE PROPERTY

According to the ANILCA statute and U.S. Code of Federal Regulations (CFR), access to a private inholding is adequate if it secures the owner reasonable use and enjoyment of their property. This means the authorizing officer must first consider whether the proposed use of the private inholding is reasonable.

Statute and CFR do not explicitly define “reasonable use,” but CFR does provide the following guidance when determining if a proposed use is reasonable:

*...The authorizing officer shall determine what constitutes reasonable use and enjoyment of the lands based on **contemporaneous uses made of similarly situated lands in the area and any other relevant criteria.** (36 CFR § 251.114(a)) [emphasis added]*

Thus, the authorizing officer must make a reasonable use determination by following the CFR’s guidance to consider “similarly situated lands” and “any other relevant criteria.” However, in addition to not defining “reasonable use,” statute and CFR also do not define “similarly situated.” The guidance provided is to consider “contemporaneous uses” of such lands “in the area.” This leaves room for discretion on the part of the authorizing officer, and relevant case law demonstrates that the courts have acknowledged the appropriateness of such discretion. In a previous case involving ANILCA access, the 10th Circuit Court of Appeals stated:

The regulation on which [this case] relies does not define what constitutes “similarly situated” property, and it thus vests the Forest Service with considerable discretion in determining the particular properties that should be taken into account in deciding whether to issue special use permits. (High Country Citizens Alliance v. United States Forest Service (10th Cir. 2000) No. 97-1373 (202 F.3d 835))

For this Berlaimont Estates project, the authorizing officer must consider if the specific land use proposed by the applicant is reasonable. As expressed in their 2014 SF-299 application, the applicant is proposing to develop their 680-acre private inholding as a year-round residential community comprised of 19 “high end” single-family residential units (plus up to nine accessory dwellings), with each unit individually located on a 35-acre platted parcel, thus resulting in a development density of one dwelling unit per 35 acres.

A. Similarly Situated Lands

1. Methodology

A list of existing properties that might be similarly situated to Berlaimont was developed through a comprehensive search utilizing geographic information systems (GIS), as well as taking into consideration properties mentioned by the applicant in their application materials and specific suggestions received from the public during the external scoping process. The GIS search started within the general local vicinity of the Berlaimont property, then expanded outward throughout the rest of the Eagle-Holy Cross Ranger District, and eventually into neighboring ranger districts on the WRNF and adjacent national forests. This effort resulted in a list of 23 existing properties to be evaluated for potential similarly situated status.

It is important to note that the appearance of a particular property on this list does not mean that the agency has already determined that it is similarly situated to the Berlaimont property. Rather, it simply means that the property was evaluated to see if it is (or is not), in fact, similarly situated.

Addendum C (Similarly Situated Analysis Figures) displays maps of the various existing properties.

For the Berlaimont Estates project, the 23 existing properties on the list were analyzed against the following five key characteristics described below. Existing properties that did not match these characteristics would not allow for a valid comparison to the Berlaimont property, and therefore, were determined to be not similarly situated.

1. True inholding surrounded by NFS lands

- Relevant because the Berlaimont property is a true NFS inholding (entirely surrounded by NFS lands), which is the key defining characteristic that triggers the ANILCA mandate to provide adequate access. In this regard, any existing property which is not a true NFS inholding is fundamentally dissimilar to Berlaimont from an ANILCA perspective.

2. Property is not:

- within a Wilderness Area
 - Relevant because 36 CFR § 251.114(g) mandates additional considerations by the Forest Service which may impose greater limitations on acceptable uses and modes of access simply due to a property’s location within a Wilderness Area. In other words, a land use which may be reasonable on an inholding property surrounded by general NFS lands, may be determined to be unreasonable on a Wilderness Area inholding specifically because of its location within Wilderness.

- within a Roadless Area
 - Relevant because 36 CFR § 294 Subpart D mandates additional considerations by the Forest Service which may impose greater limitations on acceptable uses and modes of access simply due to a property's location within a Colorado Roadless Area. In other words, a land use which may be reasonable on an inholding property surrounded by general NFS lands, may be determined to be unreasonable on a Roadless Area inholding specifically because of its location within a Roadless Area.
 - surrounded by habitat for threatened, endangered, or sensitive (TES) species
 - Relevant because Section 7 of the Endangered Species Act mandates consultation by the Forest Service with the U.S. Fish & Wildlife Service, which may require additional planning and result in greater limitations on land uses and modes of access simply due to a property's location within habitat for a threatened or endangered species. In other words, a land use which may be reasonable on an inholding property surrounded by general NFS lands may be determined to be unreasonable on an inholding surrounded by TES habitat specifically because of its location within that TES habitat.
3. Property size
- Relevant because certain land uses that are possible on larger properties are simply not physically possible on smaller properties. One cannot evaluate whether Berlaimont's proposed land use (a large lot subdivision with nearly 20 residences) is reasonable by comparing it to existing properties where that same proposed use is physically impossible due to insufficient acreage.
4. Less than 3 miles to a paved state or county road
- Relevant because a broader range and intensity of land uses are typically found on properties that are within close proximity to a paved road than on properties located many miles from a paved road. Thus, a given land use may be reasonable for an inholding property within a short distance from a paved road, while that same land use may be unreasonable for an inholding situated deeper within the National Forest.
5. Parcels are ≥ 35 acres
- Relevant because the Berlaimont property's designated zoning classification under Eagle County Land Use Regulations is "Resource" and therefore it cannot be developed at a density greater than one dwelling unit per 35 acres. Thus, any existing properties developed at a density of greater than one dwelling unit per 35 acres cannot speak to the validity to Berlaimont's proposed land use, since a higher density of development is not a legally available option to Berlaimont.

Note: According to the County's land use regulations, "[t]he purpose of the Resource (R) zone district is to maintain the open rural character of Eagle County and to protect and enhance the appropriate use of natural resources and agricultural uses in the County including water, minerals, fiber and open land. This is accomplished

by limiting residential development to very low-density single-family uses on lots of thirty-five (35) acres or larger...”

Once similarly situated existing properties have been identified, it is necessary to determine if any of those similarly situated properties are being used in a manner similar to what is proposed for Berlaimont (i.e. consideration of “contemporaneous uses” as specified in CFR). Such a land use on an existing similarly situated property would demonstrate that the Berlaimont proposal is not unprecedented, and therefore may be a reasonable use.

2. Findings

Using the five key characteristics listed in Section III.A.1, 23 existing properties were evaluated to see if they could reasonably be described as similarly situated to Berlaimont. The values assigned to each characteristic for each existing property are presented in Addendum B (Table for Analysis of Similarly Situated Lands). The 23 properties used in this evaluation were chosen through an exhaustive GIS search, or were suggested by the applicant in their application materials or by the public during the scoping period.

Addendum B reveals that several of the existing properties have some characteristics in common with the Berlaimont property. However, all but one of the 23 existing properties were determined to be not similarly situated to Berlaimont because they did not match all of the key characteristics described above. More specifically, all but one of the existing properties were either (1) not a true inholding, (2) were surrounded by a Wilderness Area, a Roadless Area, or TES species habitat, (3) had an overall acreage that was too small, (4) were more than 3 miles from the nearest paved road, or (5) contained parcels wherein most or all are smaller than 35 acres. In fact, several existing properties possessed multiple characteristics that rendered them dissimilar to the Berlaimont property.

Importantly, one of the existing properties in particular satisfies all five characteristics and is therefore similarly situated to the Berlaimont property. This approximately 635-acre residential development is known as the Lichen Ranch subdivision, and it sits at an elevation of 8,800 feet, surrounding Lake Agnes in northwestern Grand County, 45 miles north of Berlaimont. Lichen Ranch is a true inholding—a private property surrounded entirely by NFS lands. (These NFS lands are under the administrative management of the Yampa Ranger District of the Medicine Bow-Routt National Forest.) The entire property is within two miles of U.S. Highway 40. Access to Lichen Ranch is via a single National Forest System Road (NFSR 254) authorized via a FLPMA easement granted to the Lake Agnes Property Owners Association. The Operating Plan for this easement spells out the easement holder’s responsibilities for snow removal, plowing and road maintenance. Lichen Ranch’s acreage is divided into 18 parcels, 16 of which are equal to or greater than 35 acres. A review of the Grand County Assessor’s website shows that 14 of the 18 parcels are listed with a 2018 “actual value” over \$1 million.

Lichen Ranch—a true NFS inholding subdivision with multiple residential parcels ≥ 35 acres, upscale homes with property values exceeding \$1 million, and a snowplowed Forest Road allowing year-round use by wheeled vehicles—clearly demonstrates that the Berlaimont proposal is not an unprecedented land use for an NFS inholding in Colorado.

B. Other Relevant Criteria

1. Methodology

In addition to reviewing similarly situated properties, CFR states that the authorizing officer may also take into account other factors which could be relevant to determining whether the proposed use of a private inholding is reasonable. This analysis of other relevant criteria is an opportunity to consider certain factors which are not well-suited for a direct parcel-to-parcel comparison within the similarly situated analysis described above, but are nonetheless still helpful when weighing the reasonableness of the proposed land use. In the case of Berlaimont, such considerations focus on consistency with (a) various characteristics of the local area, and (b) state and local laws.

a) Characteristics of the Local Area

- Human presence on public lands within the Interstate 70 viewshed
- The current character of the Edwards-Avon-Vail metro area
- Proximity to Deer and Elk Severe Winter Ranges and Winter Concentration Areas
- Proposed density of development
- Proposed water supply infrastructure

b) State and Local Government Laws and Decisions

- Colorado state law regarding subdivisions
- Eagle County zoning classification
- Eagle County Variance from Improvement Standards (VIS)

2. Findings

a) Characteristics of the Local Area

- *Human presence on public lands located within the Interstate 70 highway viewshed*

Does the Berlaimont proposal constitute a departure from existing and historic uses on public lands within the Interstate 70 viewshed in Eagle County? No, it does not.

Human presence upon (and use of) the NFS lands on either side of the heavily-traveled Interstate 70 corridor through Eagle County is considerable and has been the norm for many decades, with certain uses of these public lands—such as homesteading, ranching, and logging—long preceding the development of the interstate highway itself. Adding the proposed 19 homesites within this section of the Interstate 70 viewshed is consistent with the types of human activities that have occurred on and around these front-country public lands for quite some time.

- *Character of existing residential developments within the Edwards-Avon-Vail metro area*

Does the Berlaimont proposal constitute a departure from the character of existing residential developments within the Edwards-Avon-Vail metro area in Eagle County? No, it does not.

As envisioned by the applicant, the Berlaimont development would consist of high-end luxury homes, and would be strictly residential in nature, with no commercial activities planned. Because of their close proximity to the popular resorts of Vail and Beaver Creek, upscale residential developments are already common in the Edwards-Avon-Vail area, and in

that regard Berlaimont does not mark a dramatic departure from other nearby existing upscale residential developments such as Mountain Star (Avon), Cordillera (Edwards), Creamery Ranch (Edwards), and Red Sky Ranch (Wolcott), among others.

- *Proximity to Deer and Elk Severe Winter Range and Winter Concentration Areas*
Does Berlaimont's close proximity to Severe Winter Range and Winter Concentration Areas for mule deer and elk constitute a departure from other existing residential developments' proximity to these areas? No, it does not.

As revealed through a GIS analysis of the four datasets for mule deer and elk Severe Winter Ranges and Winter Concentration Areas (developed by Colorado Parks and Wildlife), no fewer than 18 existing residential developments/subdivisions in Eagle County are located partially (or, in some instances, mostly) within these areas, including noteworthy parts of Cordillera North and South (Edwards), Creamery Ranch (Edwards), Wildwood (Avon), Beaver Creek/Bachelor Gulch (Avon), Red Sky Ranch (Wolcott), Bellyache Ridge (Wolcott), Eagle Ranch (Eagle), Castle Peak Ranch (Eagle), Buckhorn Valley (Gypsum), and Cotton Ranch (Gypsum).

- *Proposed density of development*
Does the Berlaimont proposal constitute a departure from the development densities currently found in existing residential subdivisions in the surrounding area? No, it does not.

The final plat of the Berlaimont property (approved and recorded in 2011) subdivided the property into nineteen 35-acre parcels. Such density (one dwelling unit per 35 acres, plus nine accessory dwelling units) is not a dramatic departure from other residential developments in the area, and is actually lower than other existing developments nearby such as Cordillera (Edwards), Singletree (Edwards), and Wildridge/Wildwood (Avon).

- *Proposed water supply infrastructure*
Does Berlaimont's proposal for water supply infrastructure place a greater burden on NFS land than other residential developments in the local area? No, it does not.

The applicant has stated in their 2014 SF-299 application materials that all water supply needs for the proposed development of Berlaimont will be fulfilled with their existing water rights, and the Water Court decree (08CW158) shows that all envisioned water supply infrastructure components (diversion points, ditches, springs, ponds) are located on their private lands, thereby avoiding the need to construct water supply facilities on surrounding NFS lands.

b) State and Local Government Laws and Decisions

When taking into consideration the positions of the State of Colorado and Eagle County regarding development projects generally – or the Berlaimont proposal specifically – it is important to note that when making a reasonable use determination, the USFS authorizing officer is under no obligation to maintain consistency with (or show deference to) state or local positions regarding

the proposed development. In *Rocky Mountain Wild v. Dallas* [2017, Civil Action No. 15-cv-01342-RPM], the U.S. District Court for the District of Colorado states:

The Forest Service is specially charged with unique duties to consider the public interest specifically with regard to private activities affecting National Forest System lands. [The local government] has its own interests with regard to permitting or regulating development. It cannot be assumed that those interests coincide.

In accordance with this direction, the USFS authorizing officer will not subordinate his own independent judgment of what constitutes reasonable use of the Berlaimont property to any other entity or agency.

Nonetheless, when evaluating Berlaimont’s proposed use, it is still informative to review any state and local laws, regulations, and decisions that pertain to the development of the property, and use that information as additional data points to consider during an independent determination of reasonableness by the Forest Service.

- *Colorado state law regarding subdivisions*

Is the Berlaimont proposal inconsistent with existing Colorado state law regarding subdivisions? No, it is not.

In 1972, the Colorado legislature passed Senate Bill 35 (codified as Colorado Revised Statute 30-28-101), requiring county governments throughout the state to create subdivision regulations guiding the subdivision of land. Normally, the subdivision review process involves a local government evaluating maps and site design plans to ensure appropriate traffic, water/sewer, and other infrastructure will be included in the development. However, SB 35 included an exemption from subdivision regulations for any subdivided land that resulted in parcels of 35 acres or more. Thus, the subdivision of the Berlaimont property into multiple 35-acre residential parcels is not an inherently unlawful pattern of land use and development under Colorado state law.

- *Eagle County zoning classification*

Is the Berlaimont proposal inconsistent with existing local government zoning regulations? No, it is not.

With regards to local zoning, the Berlaimont property is zoned as “Resource” (Eagle County Land Use Regulations, Article 3, Section 3-210). Section 3-300 of the County’s LUR’s states that single-family dwelling units and accessory dwelling units on parcels of 35 acres or larger within the Resources zoning district are a “use by right”, meaning that the use is entirely consistent with the purpose of the zoning district and, under certain circumstances, is allowed without the need for further review and approval by the County’s Planning Commission or Board of County Commissioners.

- *Eagle County Variance from Improvement Standards (VIS)*

Did the Eagle County Board of County Commissioners find that the Berlaimont road proposal qualified for a variance from certain land use regulations? Yes, they did.

Although developments with 35-acre parcels are exempt from Eagle County's subdivision regulations (per the State law described above), the County's LUR's explain that such developments must still comply with County regulations "*...regarding access, wildfire hazard mitigation, visual impact mitigation, building and fire code compliance and other off-site impact mitigation as determined necessary by the Board of County Commissioners for the protection of the environment and the health, safety and welfare of the residents and visitors of Eagle County.*" (Eagle County Land Use Regulations, Article 5, Section 5-280.B.2.a)

It was in this context that Berlaimont had to seek a variance from the County's Roadway Standards for their proposed access road. Section 4-620.J.9.c(4) of the LUR's states that driveways cannot serve more than three units. Access routes serving more than three units must meet the County's Roadway Standards. Therefore, Berlaimont's proposed road required a variance related to (a) the requirement for dual access from the development to the public roadway system, (b) the frequency (interval spacing length) of emergency vehicle turnaround areas, and (c) road design standards for horizontal curve (switchback) geometry. Through the County's public hearing process, the Eagle County Board of County Commissioners granted the variance to Berlaimont in January 2014, stating in their resolution that "*...the hardship to the Applicant from denial of the variances outweighs the adverse impact on the health, safety and welfare of persons affected and the adverse impact on the land affected.*" [Resolution No. 2014-001; File No. VIS-4398]

Although the granting of such a variance is not a direct approval by the County of the proposed land use itself, it demonstrates that County officials found Berlaimont's requested variance to have technical and legal merit.

NOTE: Even though the County has already approved a variance for road design for the applicant's preferred route, the Forest Service is not bound by the County's approval when making an independent determination of the reasonableness of a proposed use of private property, adequate access, or specific route selection. This independence also extends to the decision-making process during the NEPA evaluation.

C. Determination of Reasonable Use

Importantly, although the USFS authorizing officer must determine whether the applicant's proposed use of their private property is reasonable, he/she is directed by agency policy to avoid using such a determination as a de facto means of regulating or controlling private property use.

Except as authorized by law, order, or regulation, Forest Service policies, practices, and procedures shall avoid regulating private property use. (Forest Service Manual 5403.3)

Avoid regulation of private lands when considering and authorizing access to those private lands. (Forest Service Manual 2730.3)

It is with such direction in mind that the WRNF Forest Supervisor makes the following determination:

The applicant is proposing to use their 680-acre private inholding to develop a residential community consisting of 19 homesites (with nine accessory dwelling units), each on a 35-acre parcel. The analysis detailed in Section III.A shows that one existing property/development is "similarly situated" (the Lichen Ranch subdivision in Grand County) with a current land use that is almost identical to what is proposed by Berlaimont. Thus, that property confirms that Berlaimont's proposed land use is not unprecedented. The "other relevant criteria" examined in Section III.B further show that the proposed use (a) is consistent with human activities on and around NFS lands within the I-70 viewshed, (b) is consistent with the character of other upscale residential developments in the Edwards-Avon-Vail area, (c) is consistent with regards to proximity to Severe Winter Range and Winter Concentration Areas for mule deer and elk, (d) offers a lower proposed density of development than other nearby developments currently sharing a property boundary with NFS lands, (e) anticipates a water supply infrastructure wherein no facilities will be constructed on NFS lands, and (f) is consistent with Colorado statutory law and Eagle County zoning regulations.

Thus, based on findings in Sections III.A and III.B that demonstrate both precedent and consistency, the applicant's proposed development is a reasonable use of their private property.

The following flowchart provides a simplified graphic representation of the process described above in reaching a reasonable use determination.

Is Berlaimont's Proposed Use Reasonable?

[36 CFR 251.114(a)]

Proposed Use: 19 luxury homes, each on a 35-acre parcel within a 680-acre inholding

Similarly Situated

Other Relevant Criteria

Precedent?

(Direct parcel-to-parcel comparison)

- 23 existing properties considered
- Five characteristics used for comparison to Berlaimont property
 1. True NFS inholding
 2. NOT...
 - within Wilderness Area
 - within Roadless Area
 - surrounded by TES habitat
 3. Property size (close to 680 Ac)
 4. Less than 3 miles to paved road
 5. Parcels are ≥ 35 acres
- One of the 23 existing properties is actually Similarly Situated to Berlaimont property
 - Lichen Ranch (aka Lake Agnes)
 - Existing use is almost identical to Berlaimont's proposed use
 - 16 of 18 parcels ≥ 35 Ac
 - Inholding residential community with multiple high-end luxury homes
 - Year-round wheeled-vehicle access across NFS with USFS easement
 - Proves that Berlaimont proposal is not unprecedented

Consistency?

(Generally consistent with...)

Character of local area

- Historic land uses/activities on Fed estate
 - homesteading, ranching, logging
- Current character of surrounding/nearby communities
 - Many luxury/upscale residential communities in existence
- Proximity to CPW deer/elk winter ranges
 - several existing communities located within severe winter ranges & concentration areas
- Development density
 - several existing communities actually have much higher density of development (DU per Ac)
- Water supply
 - all infrastructure for Berlaimont proposal located on private property

Laws/Regulations

- State laws
 - 35-acre parcels exempt from subdivision regulation under state law
- County zoning
 - Use By Right under current zoning
- Variance from certain road standards
 - Granted by County in 2014

Due to established precedent and consistency,
Berlaimont Estates' proposed land use is a reasonable use

Therefore, under the law, Berlaimont is entitled to
adequate access to secure such land use

IV. ADEQUATE ACCESS – DETERMINING WHAT IS REQUIRED FOR ACCESS TO THE BERLAIMONT PROPERTY

Per 36 CFR § 251.114(f)(2), adverse impacts on Forest resources are to be minimized through route location and construction. As explained in Section II, the effort to minimize adverse impacts is most appropriately assigned to the NEPA analysis, and thus it is the NEPA analysis which serves as the tool for identifying specific route locations (alignments), road design features, and construction methodologies that best minimize adverse impacts.

Unlike the NEPA analysis, determining adequate access as mandated by ANILCA does not require identification of a specific route location or construction methodology. Rather, it requires identifying certain characteristics that must apply to any/all potential route location(s) or construction methodologies in order to constitute adequate access. In the case of the Berlaimont proposal, these “characteristics of adequacy” include:

- The specific area of the private property that must be reached by the access route

Access that facilitates connectivity to the usable part of the Berlaimont property is necessary

Why? The WRNF has determined that the applicant’s proposed development of the property is a reasonable use. Consequently, any access route that does not facilitate connectivity to the useable part of the property would be nonfunctional and insufficient, and, therefore, inadequate. This approach—carefully distinguishing between “adequate access” versus “any access”—is supported by previous case law (*Breaker v. United States* [D. Minn. 2013] and *Nelson v. United States* [N.D. Ga. 1999]).

- Seasonality of use (i.e., Does the reasonable use of the private property require year-round access? Must that access route accommodate use by highway-legal wheeled-vehicles? Must the route be snowplowed throughout the winter?)

Year-round access is necessary

Why? The WRNF has determined that the applicant’s proposed use of the property as a year-round residential development is a reasonable use, thus making year-round access necessary.

Year-round access for highway-legal, wheeled-vehicles is necessary

Why? Because upon determining that Berlaimont’s proposed use is reasonable (19 year-round homesites with full, modern infrastructure—electricity, telecommunications, indoor plumbing, etc.), it would be unreasonable to limit access to such a development to only over-the-snow vehicles (OSVs) or non-motorized means for several months each year. The proposed development at Berlaimont has the potential to serve as residents’ year-round primary residences, and thus the types of motor vehicles that are reasonably expected to access such residences are different than the type of vehicles considered reasonable for accessing a recreational cabin, hunt camp, or other primitive-type dwelling unit intended only for seasonal/intermittent use.

Snow-plowing in winter is necessary

Why? Because if year-round access for highway-legal wheeled vehicles is necessary (as explained above), then typical winter conditions in the Berlaimont area dictate that snow-plowing is necessary, lest road use by highway-legal wheeled-vehicles be rendered impossible for potentially several months each year.

V. CONCLUSION

To summarize, **Section II** explains how the WRNF employed the NEPA environmental analysis process in relation to legal mandates under ANILCA.

Section III explains the methodology of analysis and findings for determining if the proposed use of the private property is reasonable. As called for in agency regulations, a review of contemporaneous uses of similarly situated lands in the area was conducted, followed by a review of other relevant criteria.

For similarly situated properties, 23 existing properties in the area were examined and compared to the proposed Berlaimont development across five key characteristics. The similarly situated analysis identified one property (the Lichen Ranch subdivision in Grand County) as similarly situated to the Berlaimont parcel. Lichen Ranch's land use is almost identical to Berlaimont's proposed use, thereby showing that Berlaimont's proposed use is not unprecedented for an NFS inholding in the area.

For other relevant criteria, Berlaimont's proposed use was considered in the context of consistency with various characteristics of the surrounding area as well as consistency with state and local laws. This analysis showed that the Berlaimont proposal is consistent with several of the characteristics of the surrounding area, including historic and current land uses, types and densities of development, and proximity to wildlife habitat. Additionally, Berlaimont's proposed use is consistent with State and local laws and local government decisions regarding development of private property.

The identification of a clear precedent (an existing inholding property with a near-identical land use), coupled with a demonstration of general consistency with the surrounding area and state/local laws, confirms that Berlaimont's proposed land use is reasonable, per the process prescribed in 36 CFR § 251 Subpart D.

Following the determination that the proposed use of the Berlaimont property is reasonable, **Section IV** discusses what constitutes "adequate access" to secure that reasonable use of the property. Section IV defines the basic characteristics of adequacy, thereby leaving the specific route alignment and construction methodology to be determined by the NEPA analysis. Characteristics of adequacy include an access route that connects to the usable part of the private property, and year-round access by highway-legal wheeled vehicles, enabled by snowplowing. This is the nature of access that the WRNF must provide in order to comply with the Federal ANILCA statute and associated agency regulations.

**Addendum A.
Relevant Statute and Administrative Regulations**

Statutory Language

94 STAT. 2488 PUBLIC LAW 96-487 – DEC. 2, 1980

ACCESS

SEC. 1323. (a) Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary shall provide such access to non-federally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System.

CFR Language (Agency Regulations)

36 CFR § 251 Subpart D—Access to Non-Federal Lands

§ 251.110 Scope and application.

(a) The regulations in this subpart set forth the procedures by which landowners may apply for access across National Forest System lands and the terms and conditions that govern any special use or other authorization that is issued by the Forest Service to permit such access.

(b) These regulations apply to access across all National Forest System lands, including Congressionally designated areas, and supplement the regulations in subpart B of this part, and in parts 212 and 293 of this chapter. The regulations of this subpart do not affect rights-of-way established under authority of R.S. 2477 (43 U.S.C. § 932); rights-of-way transferred to States under 23 U.S.C. § 317; access rights outstanding in third parties at the time the United States acquired the land; or the rights reserved in conveyances to the United States and in other easements granted by an authorizing officer of the Forest Service. Except for the aforementioned rights-of-way, currently valid special-use authorizations will become subject to the rules of this subpart upon expiration, termination, reversion, modification, or reauthorization.

(c) Subject to the terms and conditions contained in this part and in parts 212 and 293 of this chapter, as appropriate, landowners shall be authorized such access as the authorizing officer deems to be adequate to secure them the reasonable use and enjoyment of their land.

(d) In those cases where a landowner's ingress or egress across National Forest System lands would require surface disturbance or would require the use of Government-owned roads, trails, or transportation facilities not authorized for general public use, the landowner must apply for and receive a special-use or road-use authorization documenting the occupancy and use authorized on National Forest System lands or facilities and identifying the landowner's rights, privileges, responsibilities, and obligations.

(e) Where ingress and egress will require the use of existing Government-owned roads, trails, or other transportation facilities which are open and available for general public use, use by the landowner shall be in accordance with the provisions of part 212 of this chapter.

(f) The rules of this subpart do not apply to access within conservation system units in Alaska which are subject to title XI of the Alaska National Interest Lands Conservation Act (16 U.S.C. § 3101), except for access to inholdings authorized by section 1110(b) of that Act.

(g) Where there is existing access or a right of access to a property over non-National Forest System land or over public roads that is adequate or that can be made adequate, there is no obligation to grant additional access through National Forest System lands.

§ 251.111 Definitions.

In addition to the definitions in subpart B of this part, the following terms apply to this subpart:

Access means the ability of landowners to have ingress and egress to their lands. It does not include rights-of-way for power lines or other utilities.

Adequate access means a route and method of access to non-Federal land that provides for reasonable use and enjoyment of the non-Federal land consistent with similarly situated non-Federal land and that minimizes damage or disturbance to National Forest System lands and resources.

Congressionally designated area means lands which are within the boundaries of a component of the National Wilderness Preservation System, National Wild and Scenic River System, National Trails System, and also National Monuments, Recreation, and Scenic Areas within the National Forest System, and similar areas designated by Federal statute.

Landowner(s) means the owner(s) of non-Federal land or interests in land within the boundaries of the National Forest System.

§ 251.112 Application requirements.

(a) A landowner shall apply for access across National Forest System lands in accordance with the application requirements of § 251.54 of this part. Such application shall specifically include a statement of the intended mode of access to, and uses of, the non-Federal land for which the special-use authorization is requested.

(b) The application shall disclose the historic access to the landowner's property and any rights of access which may exist over non-federally owned land and shall provide reasons why these means of access do not provide adequate access to the landowner's property.

(c) The information required to apply for access across National Forest System lands under this subpart is approved for use under subpart B of this part and assigned OMB control number 0596-0082.

§ 251.113 Instrument of authorization.

To grant authority to construct and/or use facilities and structures on National Forest System lands for access to non-Federal lands, the authorized officer shall issue a special-use authorization in conformance with the provisions of subpart B of this part or a road-use permit. In cases where Road Rights-of-way Construction And Use Agreements are in effect, the authorized officer may grant an easement in accordance with the provisions of part 212 of this chapter.

§ 251.114 Criteria, terms and conditions.

(a) In issuing a special-use authorization for access to non-Federal lands, the authorized officer shall authorize only those access facilities or modes of access that are needed for the reasonable use and enjoyment of the land and that minimize the impacts on the Federal resources. The authorizing officer shall determine what constitutes reasonable use and enjoyment of the lands based on contemporaneous uses made of similarly situated lands in the area and any other relevant criteria.

(b) Landowners must pay an appropriate fee for the authorized use of National Forest System lands in accordance with § 251.57 of this part.

(c) A landowner may be required to provide a reciprocal grant of access to the United States across the landowner's property where such reciprocal right is deemed by the authorized officer to be necessary for the management of adjacent Federal land. In such case, the landowner shall receive the fair market value of the rights-of-way granted to the United States. If the value of the rights-of-way obtained by the Government exceeds the value of the rights-of-way granted, the difference in value will be paid to the landowner. If the value of the rights-of-way across Government land exceeds the value of the rights-of-way across the private land, an appropriate adjustment will be made in the fee charged for the special-use authorization as provided in § 251.57(b)(5) of this part.

(d) For access across National Forest System lands that will have significant non-Forest user traffic, a landowner may be required to construct new roads or reconstruct existing roads to bring the roads to a safe and adequate standard. A landowner also may be required to provide for the operation and maintenance of the road. This may be done by arranging for such road to be made part of the local public road system, or formation of a local improvement district to assume the responsibilities for the operation and maintenance of the road as either a private road or as a public road, as determined to be appropriate by the authorizing officer.

(e) When access is tributary to or dependent on forest development roads, and traffic over these roads arising from the use of landowner's lands exceeds their safe capacity or will cause damage to the roadway, the landowner(s) may be required to obtain a road-use permit and to perform such reconstruction as necessary to bring the road to a safe and adequate standard to accommodate such traffic in addition to the Government's traffic. In such case, the landowner(s) also shall enter into a cooperative maintenance arrangement with the Forest Service to ensure that the landowner's commensurate maintenance responsibilities are met or shall make arrangements to have the jurisdiction and maintenance responsibility for the road assumed by the appropriate public road authority.

(f) In addition to ensuring that applicable terms and conditions of paragraphs (a) through (e) of this section are met, the authorizing officer, prior to issuing any access authorization, must also ensure that:

- (1) The landowner has demonstrated a lack of any existing rights or routes of access available by deed or under State or common law;
- (2) The route is so located and constructed as to minimize adverse impacts on soils, fish and wildlife, scenic, cultural, threatened and endangered species, and other values of the Federal land;
- (3) The location and method of access is as consistent as reasonably possible with the management of any congressionally designated area and is consistent with Forest Land and Resource Management Plans or the plans are amended to accommodate the access grant, and;
- (4) When access routes exist across the adjacent non-Federal lands or the best route as determined by the authorizing officer is across non-Federal lands, the applicant landowner has demonstrated that all legal recourse to obtain reasonable access across adjacent non-Federal lands has been exhausted or has little chance of success.

(g) In addition to the other requirements of this section, the following factors shall be considered in authorizing access to non-federally owned lands over National Forest System lands which are components of the National Wilderness Preservation System:

- (1) The use of means of ingress and egress which have been or are being customarily used with respect to similarly situated non-Federal land used for similar purposes;
- (2) The combination of routes and modes of travel, including nonmotorized modes, which will cause the least lasting impact on the wilderness but, at the same time, will permit the reasonable use of the non-federally owned land;
- (3) The examination of a voluntary acquisition of land or interests in land by exchange, purchase, or donation to modify or eliminate the need to use wilderness areas for access purposes.

Addendum B.
Table for Analysis of Similarly Situated Lands

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Determination of Minimum Requirements for Access to Berlaimont Estates in accordance with ANILCA

Addendum B - Table for Analysis of Similarly Situated Lands

	= basic characteristics not used to determine if similarly situated to Berlaimont																					
	= key characteristics used to determine if similarly situated to Berlaimont																					
	= values that are potentially similar to the Berlaimont proposal																					
	= values that are not similar to the Berlaimont proposal																					
Common Name	County and City ¹	Location ² (T/R/S)	Property Use	Private property contains multiple residential units / parcels ¹²	Proximity to NFS lands ⁷	Access to private property is across NFS lands		Private parcels are served by shared road(s) across NFS land ¹³	Does the property have year-round wheeled vehicle access?	Year Round Snowplowed Access	Access Road				Private property contains terrain/topography that may provide challenges to development and/or internal traffic circulation (Specify whether access already exists to each topographically isolated part of the property)	True NFS inholding or not? (yes or no)	The private parcel is in wilderness? ¹⁴ (yes or no)	The private parcel is in a Roadless Area? (yes or no)	The private parcel is surrounded by NFS lands which are identified as habitat for Federally-listed TES species? ¹⁶	Property Size (acres) ⁴	<3 miles to paved state or county road ³	≥35 acre parcels
						uses an open NFSR road or an off-system private road ¹⁰	private property is served by one access route or multiple access routes ¹¹				FS Road # ³ (TMP roads if avail; otherwise local roads)	Length (ft) ⁴	Width (ft) (estimated surface width using GIS)	Surface ⁵								
Berlaimont (PROPOSED)	Eagle County, Edwards	T4S, R82W, Sec. 29	Residential	Yes 19 residences, plus 9 accessory units	Surrounded entirely by WRNF	Both (as proposed)	1 route	Yes	Yes	Yes	NFSR 774 NFSR 780	5.4 miles	26 ft	Paved	Yes	Yes	No	No	No	680	Yes as the crow flies	Yes
Mountain Star	Eagle County, Avon	T4S, R82W Sec. 35 & 36; T5S, R82W, Sec. 18.2	Residential	Yes (62 separate parcels within subdivision)	WRNF borders 5,400 ft on N and 11,000 ft on E	Access is not across NFS lands; access is via Brush Creek Rd (local rural) or Metcalf Rd (local urban)/ Wildwood Rd (local rural)	Access is not across NFS lands	Yes	Yes	Yes	NA (local rural/urban roads)	3,275 ft	30 ft (2 lanes painted)	Paved	unable to determine from GIS analysis	no	No, not in wilderness	No, not in a roadless area. Roadless area borders on north and east side.	No	1,300	Yes	No
Cordillera	Eagle County, Edwards	T5S, R83 Sec. 1, 2, 9-21; T5, R82W Sec. 6; T4S, R82W Sec. 31 & 32	Residential	Yes (657 residential parcels)	WRNF borders 8,700 ft on W 9,300 ft on N	Access is not across NFS lands; access is via Squaw Creek Rd (local rural) from State Hwy 6	Access is not across NFS lands	Yes	Yes	Yes	NA (local rural/urban roads)	7,000 ft to spur, 3,000 ft & 13,000 ft to Central & SW properties, respectively	30 ft (2 lanes painted)	Paved/ Dirt	unable to determine from GIS analysis	no	No, not in wilderness	No, not in a roadless area. Roadless area borders for 8,700 ft	No	5,836	Yes	No
Wildridge	Eagle County, Avon	T4S, R82W Sec. 2 & 35	Residential	Yes (391 residential parcels)	WRNF borders 13,500 ft on N, S and W borders	Access is not across NFS lands; access is via Nottingham and Metcalf Rd (local urban) from I-70	Access is not across NFS lands	Yes	Yes	Yes	NA (local urban roads)	4,700 ft on Metcalf rd.	30 ft (2 lanes painted)	Paved	unable to determine from GIS analysis	no	No, not in wilderness	No, not in a roadless area. Roadless area borders for 3,500 ft	No	550	Yes	No
Homestead	Eagle County, Edwards	T5S, R82W Sec. 4, 5, 8, 9	Residential	Yes (488 residential parcels)	WRNF adjacent to subdivision	Access is not across NFS lands; access is via Edwards Village Dr (local urban) from I-70	Access is not across NFS lands	Yes	Yes	Yes	NA (local urban roads)	Access from Hwy 6	35 ft (2 lanes painted)	Paved	unable to determine from GIS analysis	no	No, not in wilderness	No, not in a roadless area.	No	515	Yes	No
Singletree	Eagle County, Edwards	T5S, R82W Sec. 3, 4; T4S, R82W, Sec. 33, 34	Residential	Yes (820 residential parcels)	WRNF borders 20,500 ft on N and E borders	Access is not across NFS lands; access is via Berry Creek Rd (local urban) from I-70	Access is not across NFS lands	Yes	Yes	Yes	NA (local urban roads)	500 ft; Access from I-70	30 ft (2 lanes painted)	Paved	unable to determine from GIS analysis	no	No, not in wilderness	No, not in a roadless area.	No	835	Yes	No
Highland Meadows at Castle Peak	Eagle County, Eagle	T4, R84, Sec. 21, 22, 23, 27	Residential	Yes (26 residential parcels)	BLM borders 32,000 ft on S, E, W borders	Uses BLM road	1 route	Yes	Yes	(Yes)	(NA) crosses BLM	11,000 ft to I70; 9,000 ft dirt, 2,000 ft paved; 4,500 ft across BLM	30 ft (2 lanes painted) and 20-25 ft dirt segment	Paved/ Dirt	unable to determine from GIS analysis	no	No, not in wilderness	No, not in a roadless area.	No	1,300	Yes	Yes
Rim Rock Canyon Ranch	Grand County, near Kremmeling	T1N, R79W, Sec. 1	Residential	No, single property	Surrounded by BLM, Arapaho NF 4.5 miles away	Uses BLM road	1 route	NA	?	(Yes)	(NA) crosses BLM	28,000 ft to Hwy 40 on dirt road, of which 7,300 ft is across BLM	25 ft on dirt road; 15 ft on private drive	Dirt	unable to determine from GIS analysis	no	No, not in wilderness	No, not in a roadless area.	No	38.5	No 3.9 miles	? One parcel, larger than 35 acres
Target Lake Road Association	Pitkin County, 5 miles SE of Aspen	T10S, R84W, Sec.34; T11S, R84W, Sec. 3	Residential	Yes (2 parcels)	WRNF surrounds parcel	Access is across NFS lands, but direct access is from State Hwy and uses private dirt roads within parcel	2 route	Yes, road is State Hwy	(Yes)	Yes	State Hwy 82	Access from Hwy 82	35-40 ft (2 lanes painted)	Paved	unable to determine from GIS analysis	No. Already has access via state hwy	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	165	Yes	? Two parcels, larger than 35 acres
Highland Ranch	Pitkin County, 5 miles SE of Aspen	T11S, R85W, Sec. 2; T10S, R85W, Sec. 35	Residential	Yes (20-25 parcels)	WRNF surrounds parcel	Access is across NFS lands, but direct access is from county roads and uses private dirt roads within parcel	3 routes	Yes, Castle Creek Road (158.1 is shared dirt road)	(Yes)	Yes (Castle Creek Rd)	9-15.1 (Castle Creek Rd), 1-158.1 (Conundrum Creek); both county roads	Off of Castle Creek Rd	25-30 ft paved; 15-20 ft dirt	15.1 Paved, 158.1 Dirt	unable to determine from GIS analysis	No. Already has access via county road.	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	220	Yes	1 of 18 parcels are >35 acres
Woody Creek Road (East and West)	Pitkin County, 5 miles SE of Aspen	T9S, R84W, Sec.22, 27, 28, 29	Residential	Yes (5+ and 5+ structures)	WRNF surrounds parcel	Access is across NFS lands, but direct access is from county road and uses private dirt roads within parcels	1 route	Yes, Woody Creek Rd	? (No)	(Yes)	1-18.1 (Woody Creek Rd/ Lenado, county road)	Off Woody Creek Rd	20-25 ft	Dirt	unable to determine from GIS analysis	No. Already has access via county road.	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	60 and 435	3 miles to paved portion of Woody Creek Rd)	Yes but not all parcels are more 35 acres according to Pitkin County assessor data
Frying Pan Road (North and South)	Pitkin County, 2.5 miles W and 4 miles SW of Meredith	T8S, R83W, Sec.17, 20, 21	Residential	Yes (5+ and 10+ structures)	WRNF surrounds parcel	Access is across NFS lands, but direct access is from county road and uses private dirt roads within parcels	2 routes	Yes, Frying Pan Road	(Yes)	Yes	3-4.1 (Frying Pan Road. county road)	Off of Frying Pan Road	25-30 ft (2 lanes painted)	Paved	unable to determine from GIS analysis	No. Already has access via county road.	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	158 and 162	Yes	North is not >35 acres for 3 parcels, south is one parcel >35 acres according to Pitkin County assessor data
North Fork Road	Pitkin County, 4 miles S of Meredith	T8S, R83W, Sec.22	Residential	Yes (10+ structures)	WRNF surrounds parcel	Access is across NFS lands, but direct access is from county road and uses private dirt roads within parcel	1 route	Yes, North Fork Road (North Fork Loop and Spur are shared dirt accesses)	(Yes)	(Yes)	3-48.1 (North Fork Road, county road)	Off of North Fork Road	20-25 ft	Dirt	unable to determine from GIS analysis	No. Already has access via county road.	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	316	Yes	No
Saints John Townsite	Summit County, near Montezuma	T5S, R76W, Sec 34	Summit County Open Space	Property has structures and a care taker, but no permanent resident; no plans to assert ANILCA access right on Sts John Rd. ¹⁷	WRNF surrounds parcel	Uses FS road	1 route	No	?	No	5-275.1	6,500 ft across FS (from the Town of Montezuma)	15-20 ft	Dirt	unable to determine from GIS analysis	yes	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	9.9	No, 9.9 miles to Town of Montezuma	No
Tailor Lode -Breckenridge	Summit County, Breckenridge	T6S, R78W, Sec. 34, 35	Residential - pending construction	No, single property	WRNF surrounds parcel	Uses gated FS road	1 route	NA	No	No	5-3.18	9,700 ft across FS SUP	20-25 ft	Dirt	unable to determine from GIS analysis	yes	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	10.3	Yes	No
Montezuma Heights	Summit County, near Montezuma	T6S, R76W, Sec 2	Residential	Yes (18 parcels)	WRNF surrounds parcel	Uses FS road (Webster Pass Rd)	1 route	Yes	?	Yes	5-5.1 (County Rd 5) and 5-285.1 (CR 285/ Webster Pass Rd)	8,000 ft (from the Town of Montezuma); 2,500 ft to CR 5 on NFS road Webster Pass Rd	CR 5: 10-25 ft; Webster Rd: 15-20 ft	Dirt	unable to determine from GIS analysis	yes	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	20	Yes	No
Lottie Millsite	Summit County, Deer Creek Drainage	T6S, R76W, Sec 3; T6S R76W, Sec. 10	Residential/ Cabin	No, single property; ANICLA access was granted by FS ¹⁷	WRNF surrounds parcel	Uses FS road	2 route	NA	No	No (part of agreement not to plow)	5-5.1	15,000 ft	15-20 ft	Dirt	unable to determine from GIS analysis	yes	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	25	No	No
Aaron Carnahan Property	Summit County, North Fork Swan River Drainage	T6S, R77W, Sec 19	Residential/ Cabin	No, single property; ANICLA access was granted by FS ¹	WRNF surrounds parcel	Uses FS road and off-system private road	1 route	NA	No	No (part of agreement not to plow)	5-354.2C and D (closed to the public)	10,500 ft on NFS roads, 1,000 ft on private road	15-20 ft	Dirt	unable to determine from GIS analysis	yes	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	41.7	No	? One parcel, larger than 35 acres
Fulford	Eagle County, South of Eagle	T6S, R83W, Sec.23 & 24	Residential/ Cabins	Yes (67 residential parcels)	WRNF surrounds parcel	Uses FS road	1 winter, 1 summer access routes	Yes	No	No - Winter access by snowmobile	4-400.2, 4-415.1, 4-418.1	64,500 ft	20-25 ft	Paved/ Dirt	unable to determine from GIS analysis	yes	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	60	No	No

Addendum B - Table for Analysis of Similarly Situated Lands

	= basic characteristics <u>not</u> used to determine if similarly situated to Berlaimont																					
	= key characteristics used to determine if similarly situated to Berlaimont																					
	= values that are potentially similar to the Berlaimont proposal																					
	= values that are <u>not</u> similar to the Berlaimont proposal																					
Common Name	County and City ¹	Location ² (T/R/S)	Property Use	Private property contains multiple residential units / parcels ¹²	Proximity to NFS lands ⁷	Access to private property is across NFS lands		Private parcels are served by shared road(s) across NFS land ¹³	Does the property have year-round wheeled vehicle access?	Year Round Snowplowed Access	Access Road				Private property contains terrain/topography that may provide challenges to development and/or internal traffic circulation (Specify whether access already exists to each topographically isolated part of the property)	True NFS inholding or not? (yes or no)	The private parcel is in wilderness? ¹⁴ (yes or no)	The private parcel is in a Roadless Area? (yes or no)	The private parcel is surrounded by NFS lands which are identified as habitat for Federally-listed TES species? ¹⁶	Property Size (acres) ⁶	<3 miles to paved state or county road ⁹	≥35 acre parcels
						uses an open NFSR road or an off-system private road ¹⁰	private property is served by one access route or multiple access routes ¹¹				FS Road # ³ (TMP roads if avail; otherwise local roads)	Length (ft) ⁴	Width (ft) (estimated surface width using GIS)	Surface ⁵								
Piney 88 - Allen Heinrich	Eagle County, North of Vail	T4S, R81W, Sec. 12	Residential/ Cabin	No	WRNF surrounds parcel	Uses FS road and off-system private road	1 route	NA	No	No	7-700.1 and 7-701.1	60,500 (8,500 ft from 701.1)	15-20 ft	Dirt, Private road easement	unable to determine from GIS analysis	yes	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	85	No, 10 miles to beginning of 700.1	One parcel, >35 acres.
Piney Lake - Denver Water Board	Eagle County, North of Vail	T4S, R81W, Sec. 12 and 13	Leased to Piney Lake Ranch	No, does have ranch and cabins to rent	WRNF surrounds parcel	Uses FS road	1 route	NA	No	No	7-700.1 and 7-701.1	52,000 ft from Red Sandstone Rd.	15-20 ft	Dirt	unable to determine from GIS analysis	yes	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	86	No, 10 miles to beginning of 700.1	? One parcel, larger than 35 acres
Homestake Creek	Eagle County, near Red Cliff	T7S, R81W, Sec.23	Residential/ Cabin	No, single property	WRNF surrounds parcel	Uses FS road	1 route	NA	?	No	7-703.1	22,704 ft across FS	20-25 ft	Dirt	unable to determine from GIS analysis	yes	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	153.4	No, 4.3 miles	? One parcel, larger than 35 acres
Taylor Gulch	Eagle County, Tennessee Pass	T8S, R80W, Sec. 2, 3	Residential	Yes (35 parcels) (overlapping mining claims)	WRNF surrounds parcels	Road managed under USFS Special Use Permit	1 route	Yes	Yes	Yes	731.1	5,000 (from Hwy 24)	15-20 ft	Dirt	unable to determine from GIS analysis	yes	No, not in wilderness	No, not in a roadless area.	No Critical Habitat, but generally surrounded by lynx habitat	255	Yes	No
Lichen Ranch / Lake Agnes	Grand County, 25 miles S to Kremmeling	T5N, R82W, Sec. 27, 28, 33, 34	Residential	Yes (18 parcels)	Medicine Bow-Routt NF surrounds parcel	Uses FS road	1 route	Yes	Yes	Not sure - need local info from local FS colleague	County Road 186/254.1 (NFS Road), Hwy 40;	8,000 ft from US Hwy 40	20-25 ft	Dirt	unable to determine from GIS analysis	yes	No, not in wilderness	No, not in a roadless area.	No	635	Yes	Yes

Notes:

1 - Google Earth and County websites.

2 - County GIS Parcel Query Tools for Eagle, Summit, Grand, Pitkin counties.

3 - Forest Service Travel Management Plan data (TMP_Alt_GM_Final geodatabase).

4 - Forest Service Travel Management Plan data (TMP_Alt_GM_Final geodatabase).

5 - Google Earth and Forest Service Travel Management Plan data (TMP_Alt_GM_Final geodatabase).

6 - Forest Service Surface Ownership (ALP_SurfaceOwnership_extract.shp) and County GIS Parcel Query Tools for Eagle, Summit, Grand, Pitkin counties.

7 - Forest Service Surface Ownership (ALP_SurfaceOwnership_extract.shp) and BLM Colorado Statewide Land Ownership (co Ist_07252016) (co Ist_07252016.shp).

8 - US Forest Service National Dataset: Wilderness Status (S_USA.WildernessStatus geodatabase).

9 - Google Earth and Forest Service Travel Management Plan data (TMP_Alt_GM_Final geodatabase).

10 - Forest Service Travel Management Plan data (TMP_Alt_GM_Final geodatabase).

11 - Forest Service Travel Management Plan data (TMP_Alt_GM_Final geodatabase).

12 - Google Earth and County GIS Parcel Query Tools for Eagle, Summit, Grand, Pitkin counties.

13 - County GIS Parcel Query Tools for Eagle, Summit, Grand, Pitkin counties.

14 - US Forest Service National Dataset: Wilderness Status (S_USA.WildernessStatus geodatabase).

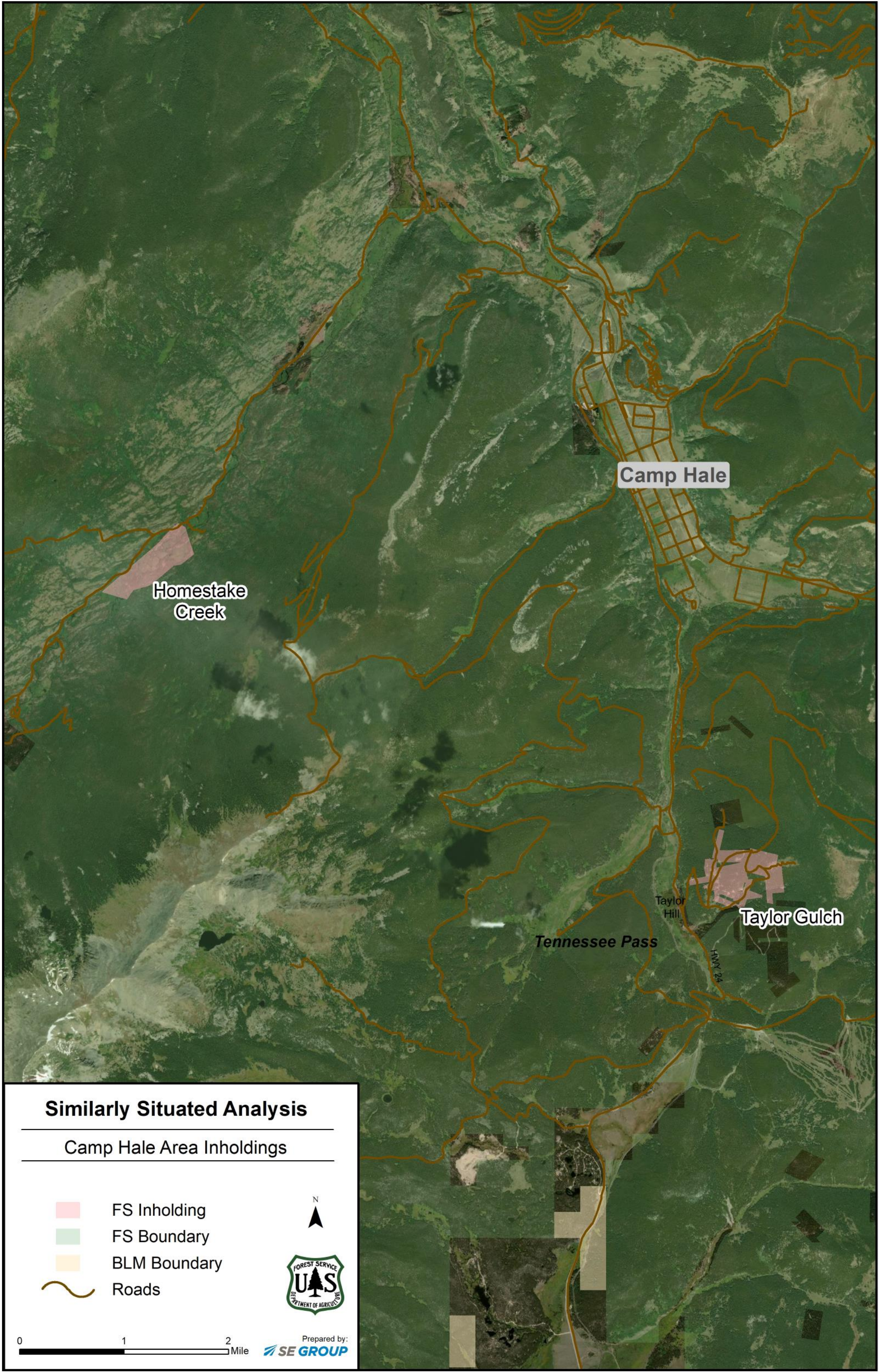
15 - White River National Forest geospatial data: Colorado Roadless Rule (Roadless_Areas.shp).

16 - White River National Forest geospatial data: Lynx Habitat (wrnf_lynx_habitat.shp, LynxHabitat_InterimMapping032111.shp), US Fish and Wildlife National Dataset: Critical Habitat (CRITHAB_LINE.shp, CRITHAB_POLY.shp).

17 - Conversation with Paul Semmer (Community Planner White River National Forest Dillon Ranger District, Retired) on February 2, 2017.

Addendum C.
Map Series – Analysis of Similarly Situated Lands

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Similarly Situated Analysis

Camp Hale Area Inholdings

-  FS Inholding
-  FS Boundary
-  BLM Boundary
-  Roads



0 1 2 Mile

Prepared by:
SE GROUP



To Breckenridge

Similarly Situated Analysis

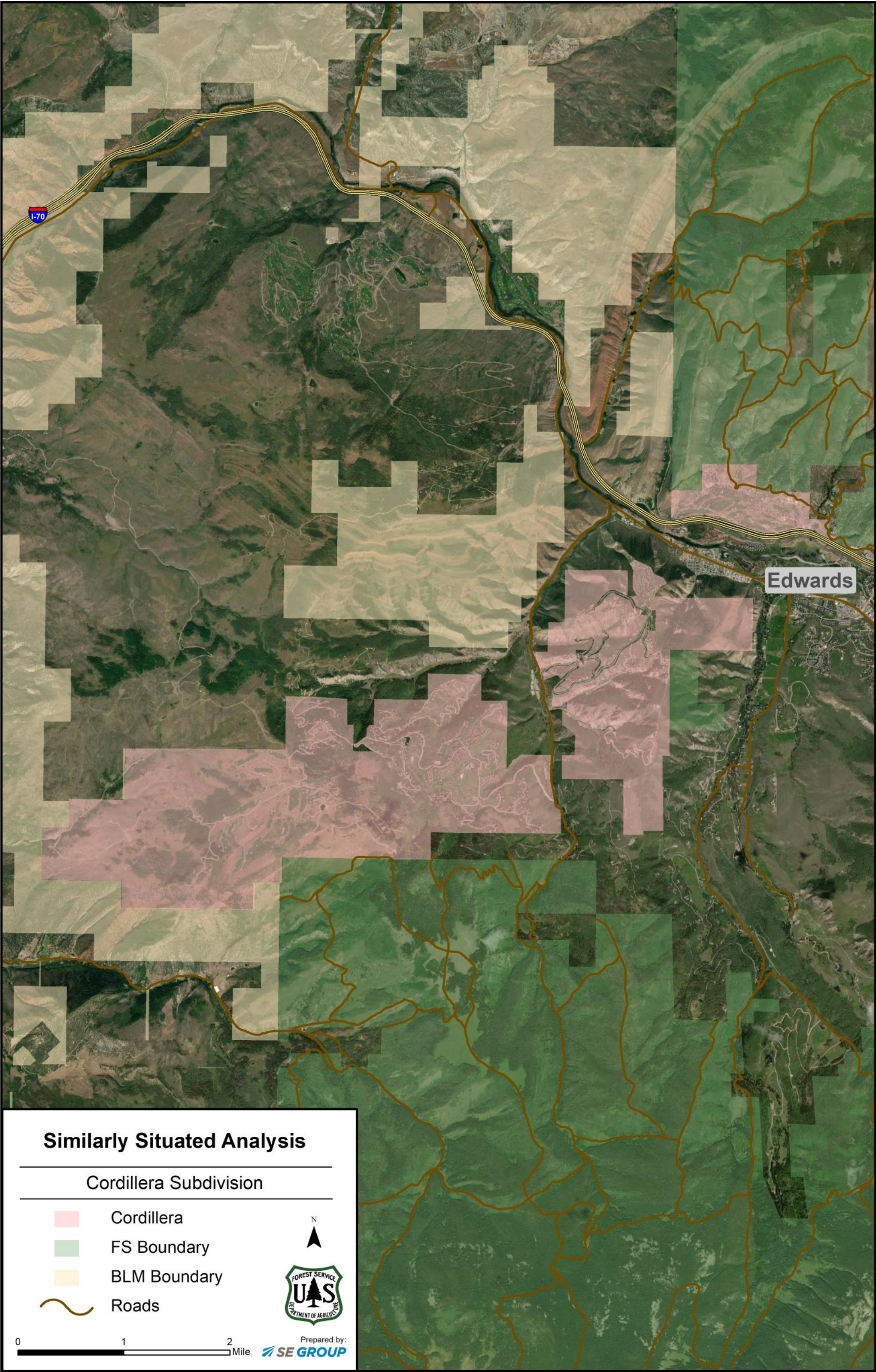
Carnahan Inholding

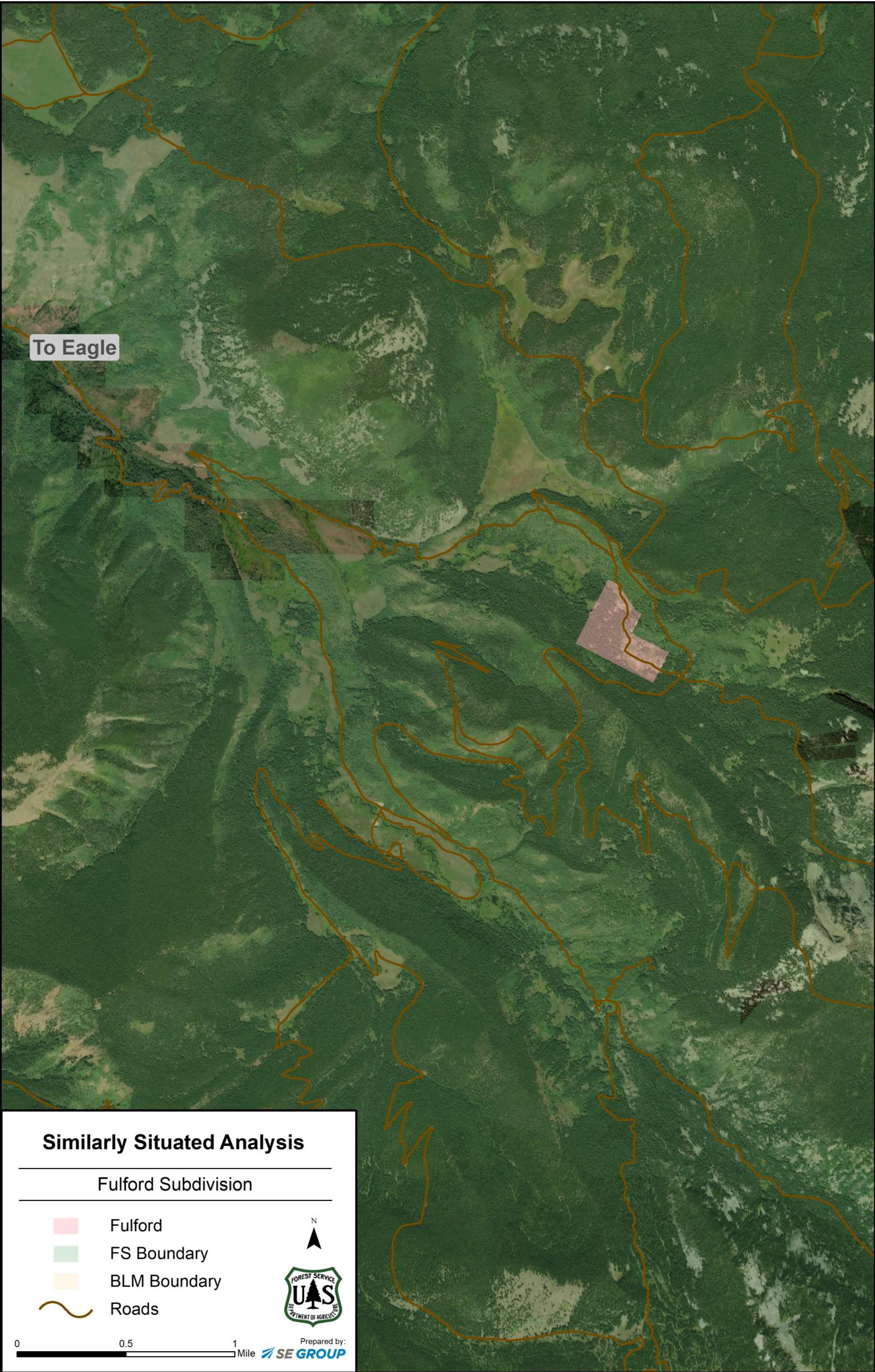
- Carnahan
- FS Boundary
- BLM Boundary
- Roads



0 0.25 0.5 Mile

Prepared by: SE GROUP





To Eagle

Similarly Situated Analysis

Fulford Subdivision



Fulford



FS Boundary



BLM Boundary



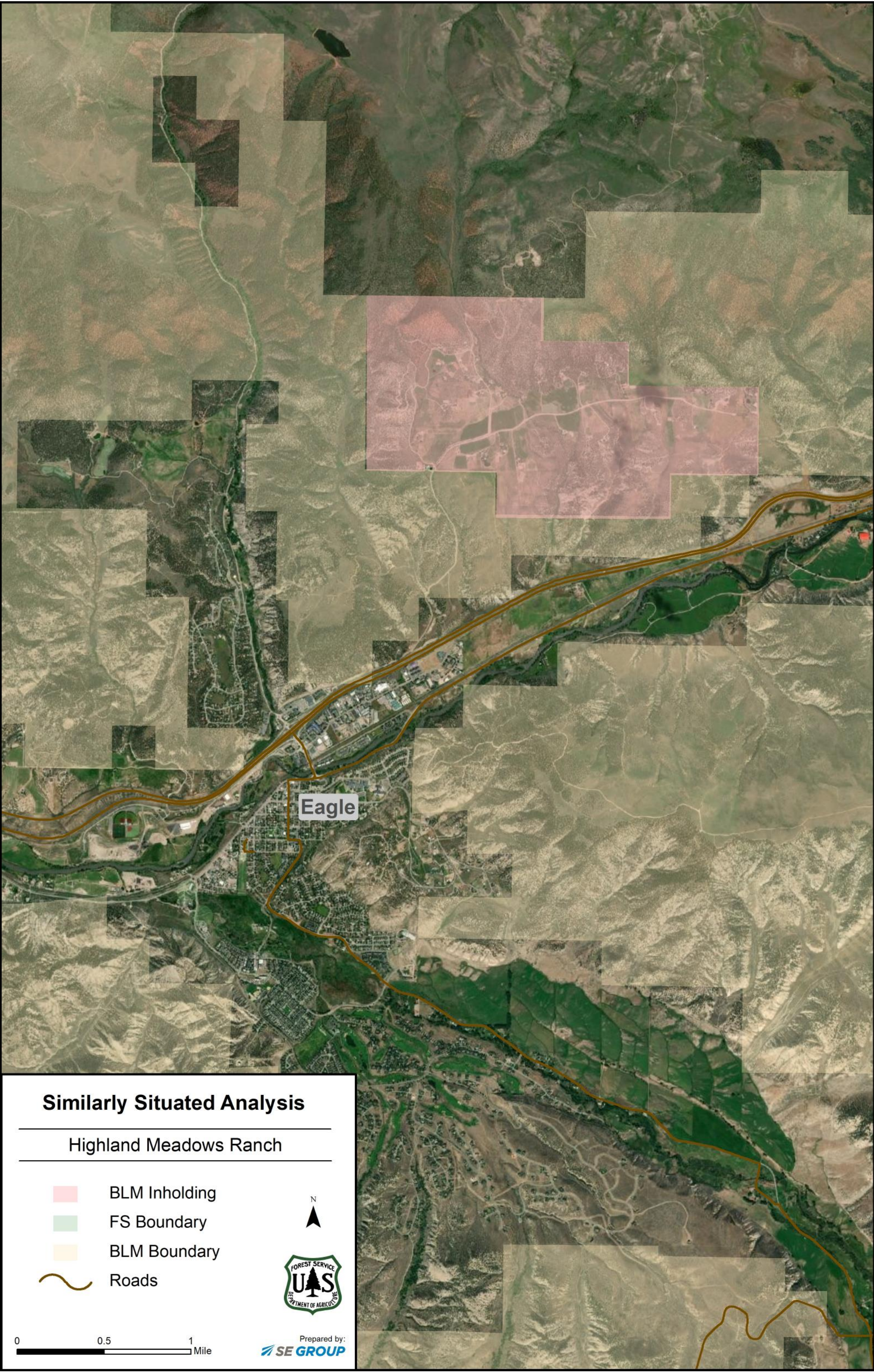
Roads



0 0.5 1 Mile

Prepared by:

SE GROUP



Similarly Situated Analysis

Highland Meadows Ranch

-  BLM Inholding
-  FS Boundary
-  BLM Boundary
-  Roads



Prepared by:
 SE GROUP



Edwards

Similarly Situated Analysis

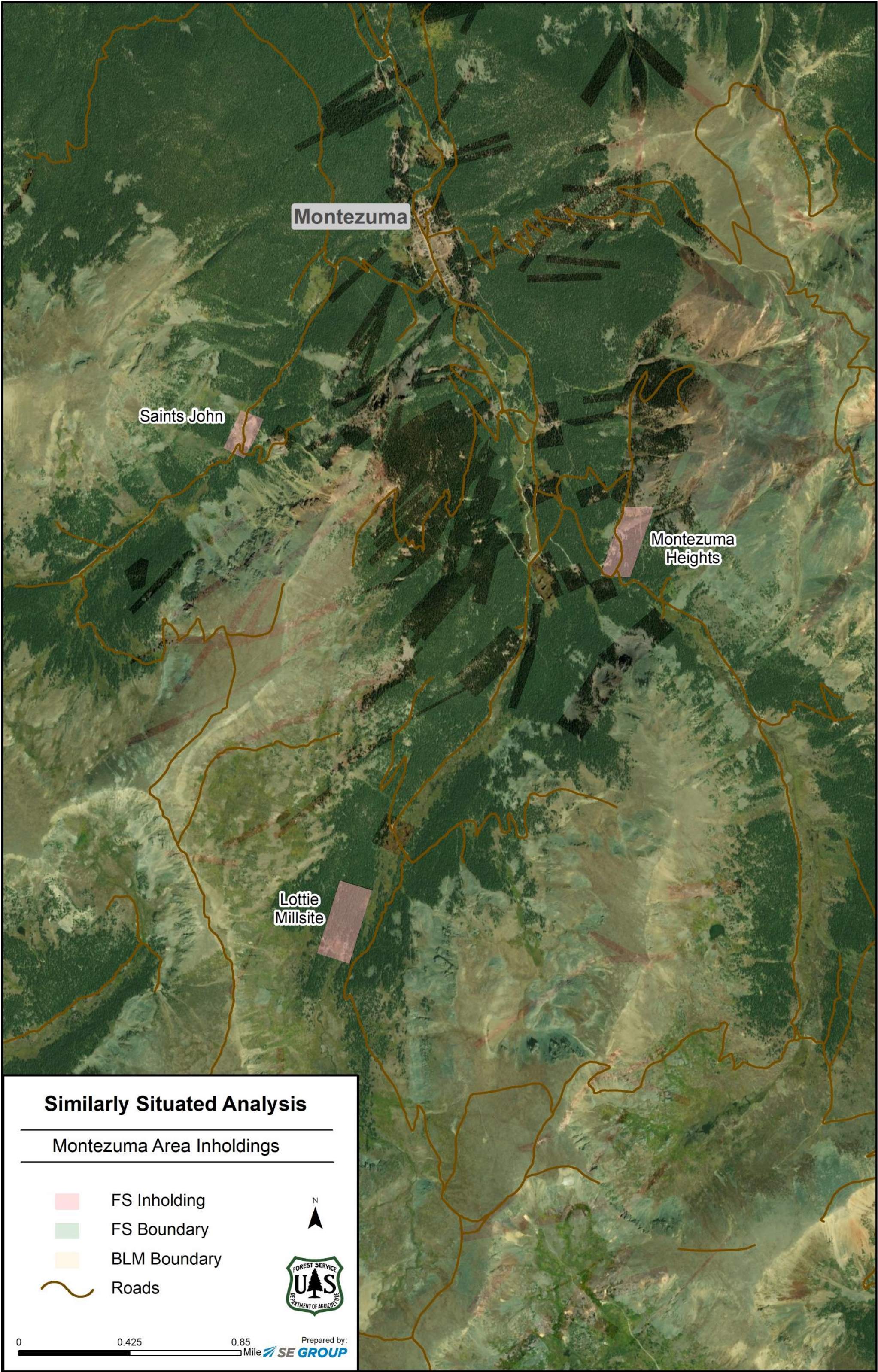
Homestead Subdivision

- Homestead
- FS Boundary
- BLM Boundary
- Roads



0 0.25 0.5 Mile

Prepared by: SE GROUP



Similarly Situated Analysis

Montezuma Area Inholdings

- FS Inholding
- FS Boundary
- BLM Boundary
- Roads





Similarly Situated Analysis

Mountain Star Subdivision

- Mountain Star
- FS Boundary
- BLM Boundary
- Roads



0 0.5 1 Mile

Prepared by: SE GROUP



Similarly Situated Analysis

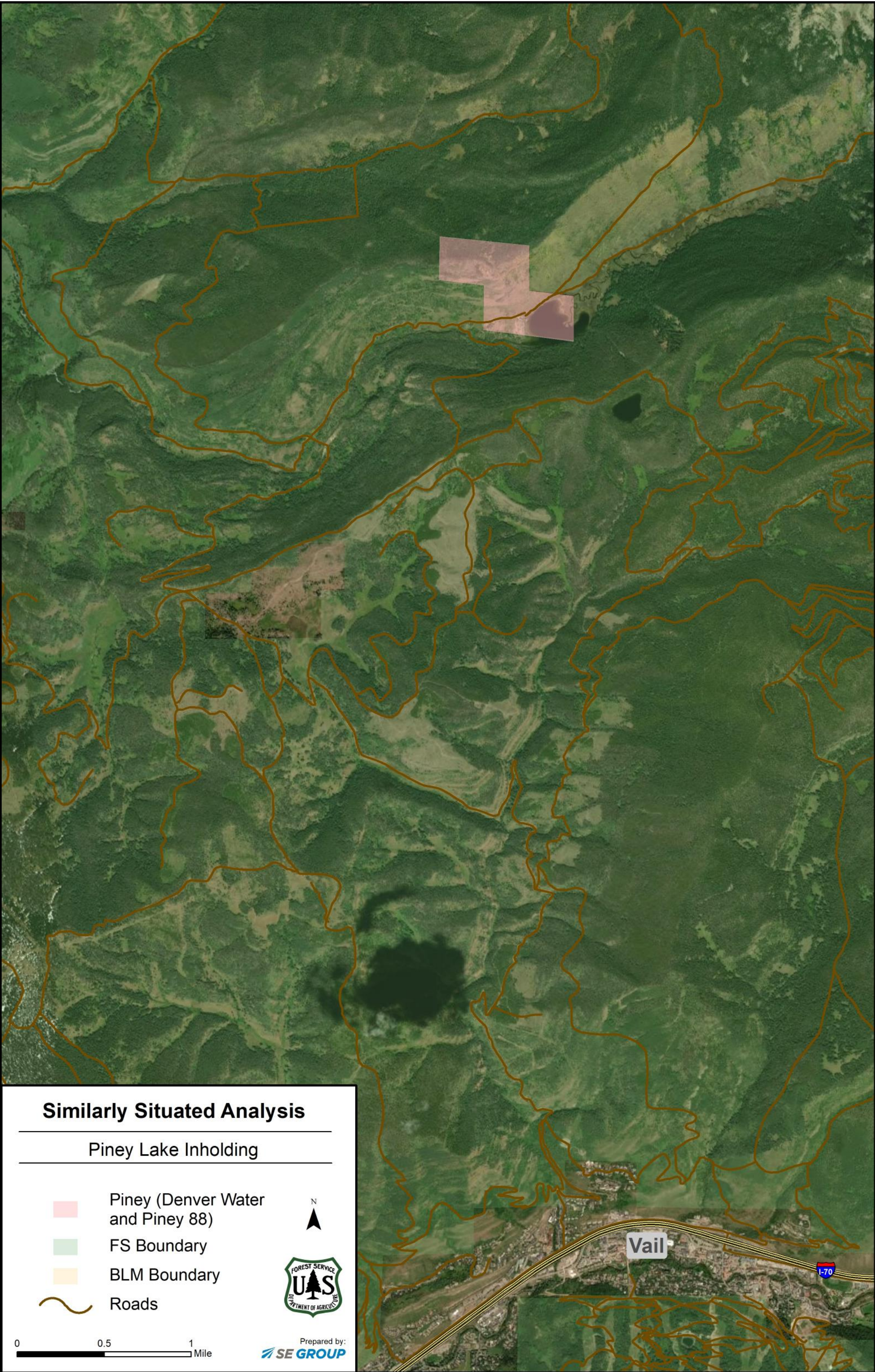
Muddy Pass

-  Muddy Pass Inholding
-  FS Boundary
-  BLM Boundary
-  Roads



0 1 2 Mile

Prepared by:

Similarly Situated Analysis

Piney Lake Inholding



Piney (Denver Water and Piney 88)



FS Boundary



BLM Boundary

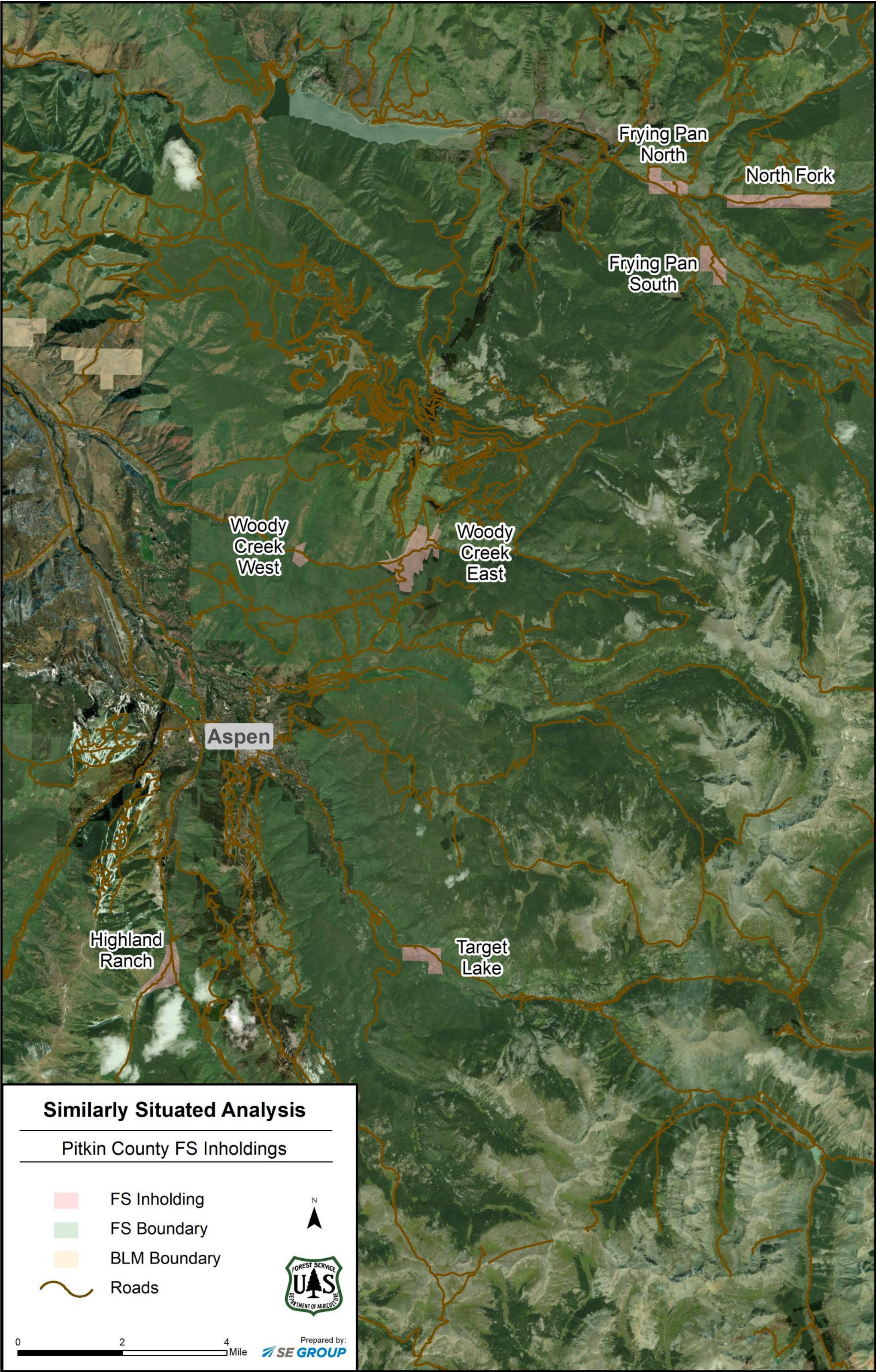


Roads



0 0.5 1 Mile

Prepared by:
SE GROUP





To Kremmling

Similarly Situated Analysis

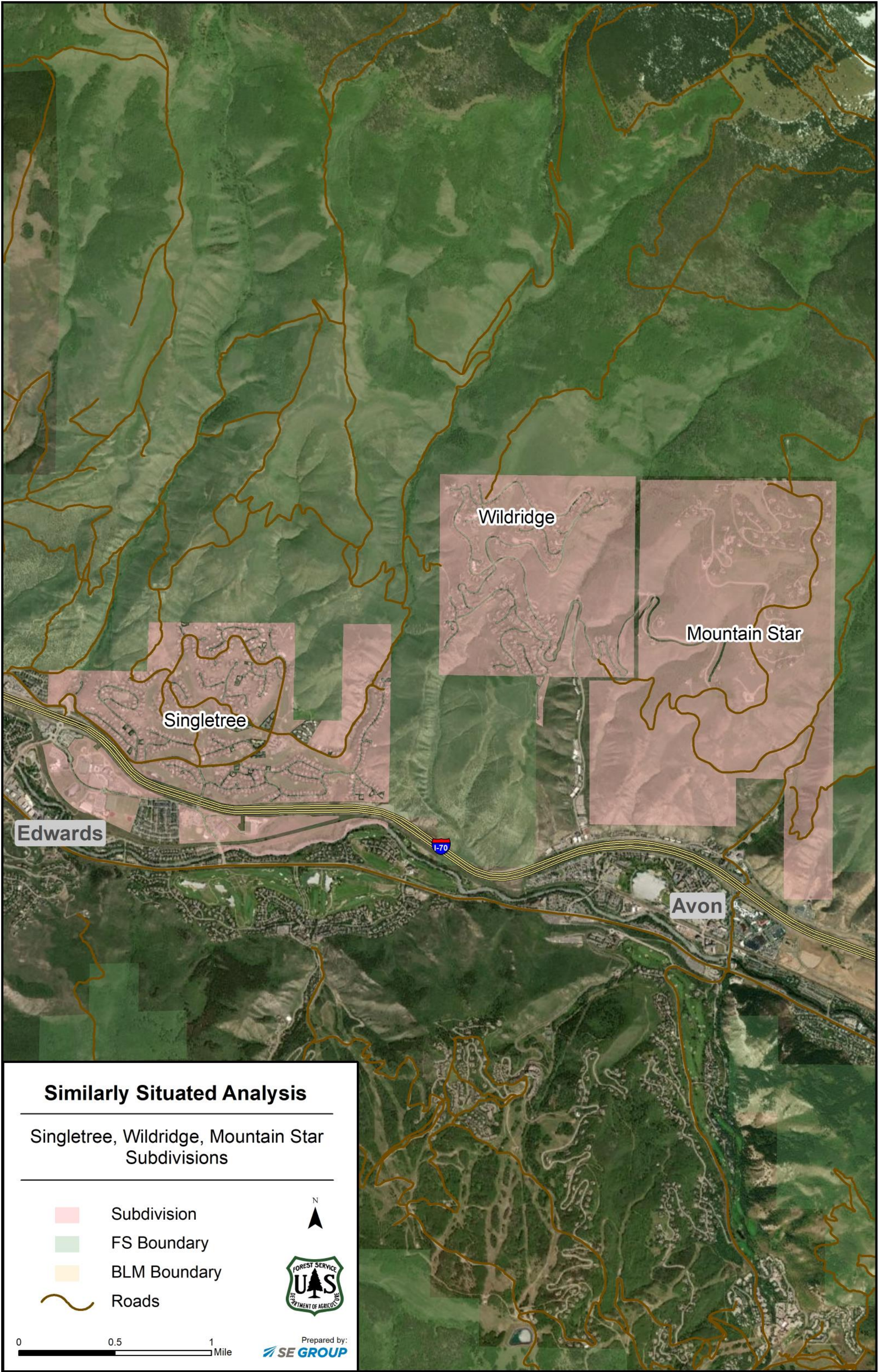
Rim Rock Ranch

- Rim Rock Ranch
- FS Boundary
- BLM Boundary
- Roads



0 0.2 0.4 Mile

Prepared by: SE GROUP



Similarly Situated Analysis

Singletree, Wildridge, Mountain Star Subdivisions

- Subdivision
- FS Boundary
- BLM Boundary
- Roads



Prepared by:
SE GROUP



Similarly Situated Analysis

Tailor Lode



Tailor Lode



FS Boundary



BLM Boundary



Roads



0 0.25 0.5 Mile

Prepared by: SE GROUP



Aspen

Similarly Situated Analysis

Target Lake Road Inholding

- FS Inholding
- FS Boundary
- BLM Boundary
- Roads



0 0.5 1 Mile

Prepared by:
SE GROUP



Similarly Situated Analysis

Wildridge Subdivision

- Wildridge
- FS Boundary
- Roads



0 0.25 0.5
Mile

Prepared by:
SE GROUP