



MEMORANDUM

Community Development Department

To: Mayor Beaty, City Council members and Planning Commission members
From: Brian Martin, Long Range Planning Manager
Date: July 22, 2021
Subject: Covenants, conditions and restrictions and limits on middle housing

This memo provides background information regarding how covenants, conditions and restrictions, often referred to as CC&Rs, can limit where additional housing types can be built in Beaverton.

This is particularly relevant for the Housing Options Project, which is considering where and how to allow additional housing types in the city's residential areas. Housing types under consideration include duplexes, triplexes, quadplexes, townhouses and cottage clusters as well as small courtyard apartments and other plexes. In addition, state law (2019's House Bill 2001) requires Beaverton to allow the first five housing types listed in the previous sentence on most lots where single-detached homes are allowed in the city.

Covenants, conditions and restrictions are rules that govern how people can use their property in the future. They are "agreements between private parties rather than between a governmental entity and a homeowner. Thus, a homeowners association or a single homeowner can enforce a covenant against another homeowner, rather than a city or county enforcing a zoning ordinance against a private citizen."¹

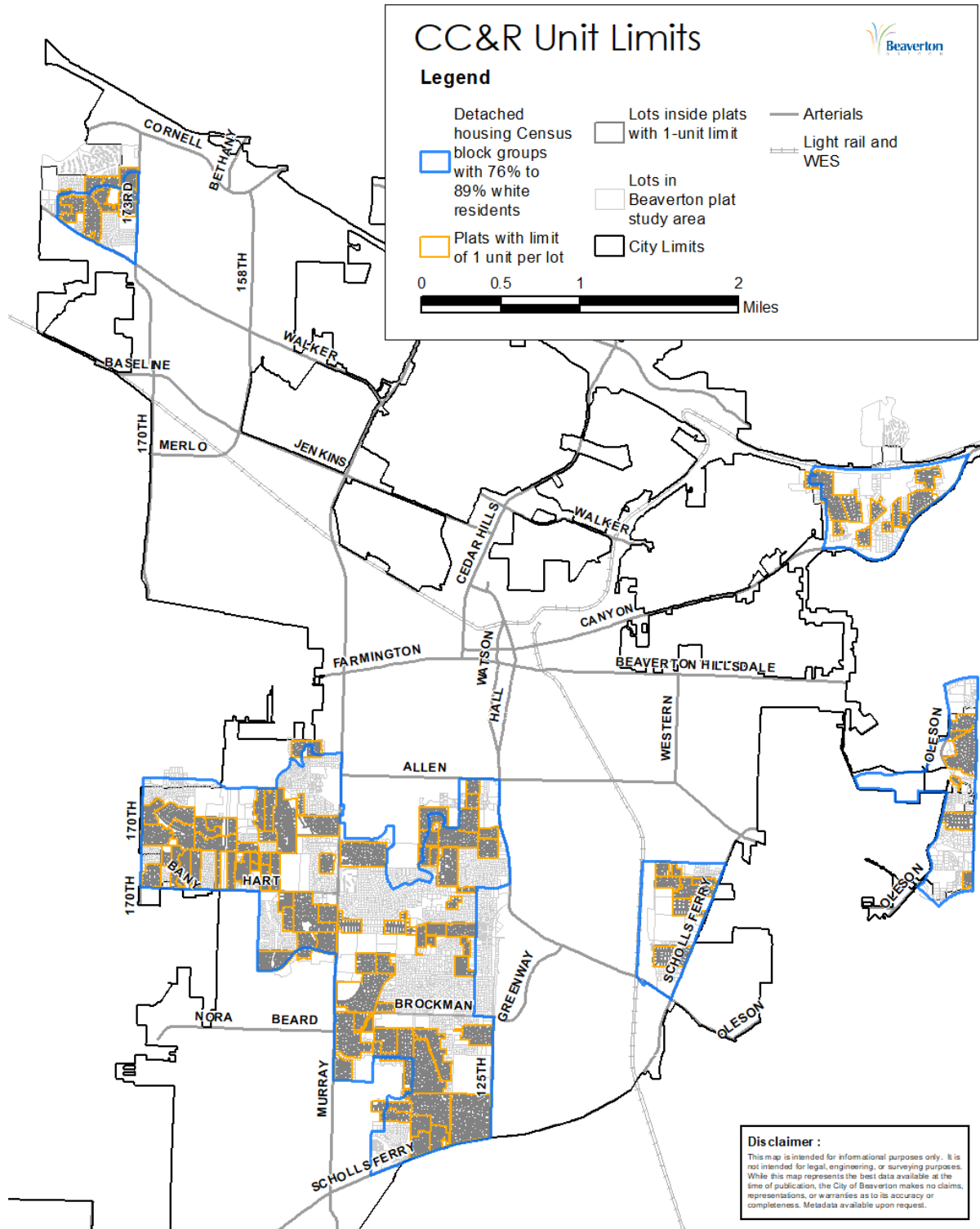
CC&Rs often cap housing at one unit per lot

City staff reviewed 185 plats² that are now in the City of Beaverton to see if they limit the number of housing units that can be built on each lot. Of those reviewed, about **73 percent of the plats, covering about 55 percent of the lots, in the study area included a restriction (as part of the attached CC&Rs) that only one single-family detached house could be built on each lot.** Figure 1 shows the locations where the restrictions were found.

¹ "CC&R Basics." Findlaw, 19 Feb. 2020, www.findlaw.com/realestate/owning-a-home/cc-r-basics.html.

² Plats are documents filed with Washington County that record land divisions.

Figure 1: CC&R study citywide



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See the end of this document for close-up versions of the map.

Even if the city changes its zoning to allow more than one housing unit per lot, the limitations found in the CC&Rs, if enforced, would prevent more than one housing unit from being constructed.

House Bill 2001 prohibits new CC&R documents from being enforced if they would allow a single-family dwelling on a lot but prohibit duplexes, triplexes, quadplexes, townhomes and cottage clusters and accessory dwelling units. The law does not affect the CC&Rs in place prior to Jan. 1, 2020.

Methodology

Given the large number of plats in the city and limited staff time, staff focused on a study area to investigate the potential effects of covenants, conditions and restrictions on housing variety.

Staff selected plats 2 acres and larger within residential areas with mostly single-family zoning that were previously identified as geographic areas with high levels of segregation (in these 13 Census block groups, the percentage of residents who identify as white ranges from 76 percent to 89 percent).³ The blue line in Figure 1 shows the boundaries of the segregated neighborhoods.

Staff then requested these plats from Ticor Title Company. As of early July, the title company had provided 185 out of 226 plats. Staff reviewed the 185 plats to answer one question: Does the plat have covenants, conditions and restrictions that limit the number of homes to one per lot?

Some caveats:

- City staff reviewed the CC&R documents briefly and did not conduct a complete review or legal review. Some of the documents were quite long and have been modified over time, so it is possible the provisions do not still apply in every single case.
- City staff members do not know and did not research whether the property owners or homeowners associations are still enforcing the CC&Rs or whether they would enforce the CC&R limitations.
- Some of the plats provided by the title company did not have CC&Rs attached. It is possible that CC&Rs exist for those plats, and some plats had references to CC&Rs that were not attached.
- It is possible that some of the CC&Rs have expired or have been discontinued and city staff is unaware that they are no longer in effect.

³ U.S. Census Bureau, 2010, Washington County, Oregon.

- A few plats included a limit of one housing unit per lot but exempted certain lots within the subdivision and allowed them to have duplexes or triplexes. This applies to 50 lots out of 4,611 that are within the plats that have the one-unit limitation. On the map, those 50 lots show up as having the one-home limitation.

Other findings

Although available resources limited the scope of the staff review of the 185 plats, the CC&Rs did include other covenants, conditions and restrictions that could make middle housing more difficult or make housing more expensive and exclusive. These provisions include:

- Minimum cost of home (found in older plats from the 1930s and 1940s, so the minimum home cost would not be a problem today).
- Minimum house size (with a general range of 1,200 square feet to 2,000 square feet).
- Minimum parking requirements, including requiring garages, including in some cases garages for a minimum number of cars (often two and sometimes three).
- Minimum lot area (one example is a minimum of 7,000 square feet, which would prevent townhome lots).
- Maximum height (such as one or two stories) that could prevent stacked duplexes, triplexes or quadplexes or minimum height (such as 2 or 2.5 stories) that could prevent lower-cost one-story duplexes, triplexes or cottage cluster with one-story buildings.
- Design and appearance requirements that could make construction or remodeling more expensive or less welcoming to different cultural communities, including specifications regarding materials, landscaping and the legality or placement of clotheslines. In addition, many appear to have discretionary reviews by architectural review committees that would provide the potential for inequitable treatment of residents.

In addition, staff found five plats in West Slope that contain racist covenants, conditions and restrictions. (West Slope was developed before such racist covenants were declared unenforceable.) They are pasted below.

- Benz Park, Third Addition

(c) No persons of other than the Caucasian race shall own any part of said property or use or occupy the same as residents, except that persons of other races may be employed by residents to perform services on the premises and that this covenant shall not prevent occupancy by domestic servants of a different race or nationality employed by an owner or tenant;

- Copel Park

2. No persons of other than the Caucasian race shall own any part of said property or use or occupy the same as residents, except that persons of other races may be employed by residents, to perform services on the premises, and that this covenant shall not prevent occupancy by domestic servants of a different race or nationality employed by an owner or tenant.

- Copel Park, First Addition

6. No person of any race other than those of the Caucasian or White race, shall own any part of said property or use or occupy the same as a residence, except that persons of other races may be employed by residents to perform services on the premises and that this covenant shall not prevent occupancy by domestic servants of a different race nationality employed by an owner or tenant.

- Hillcrest

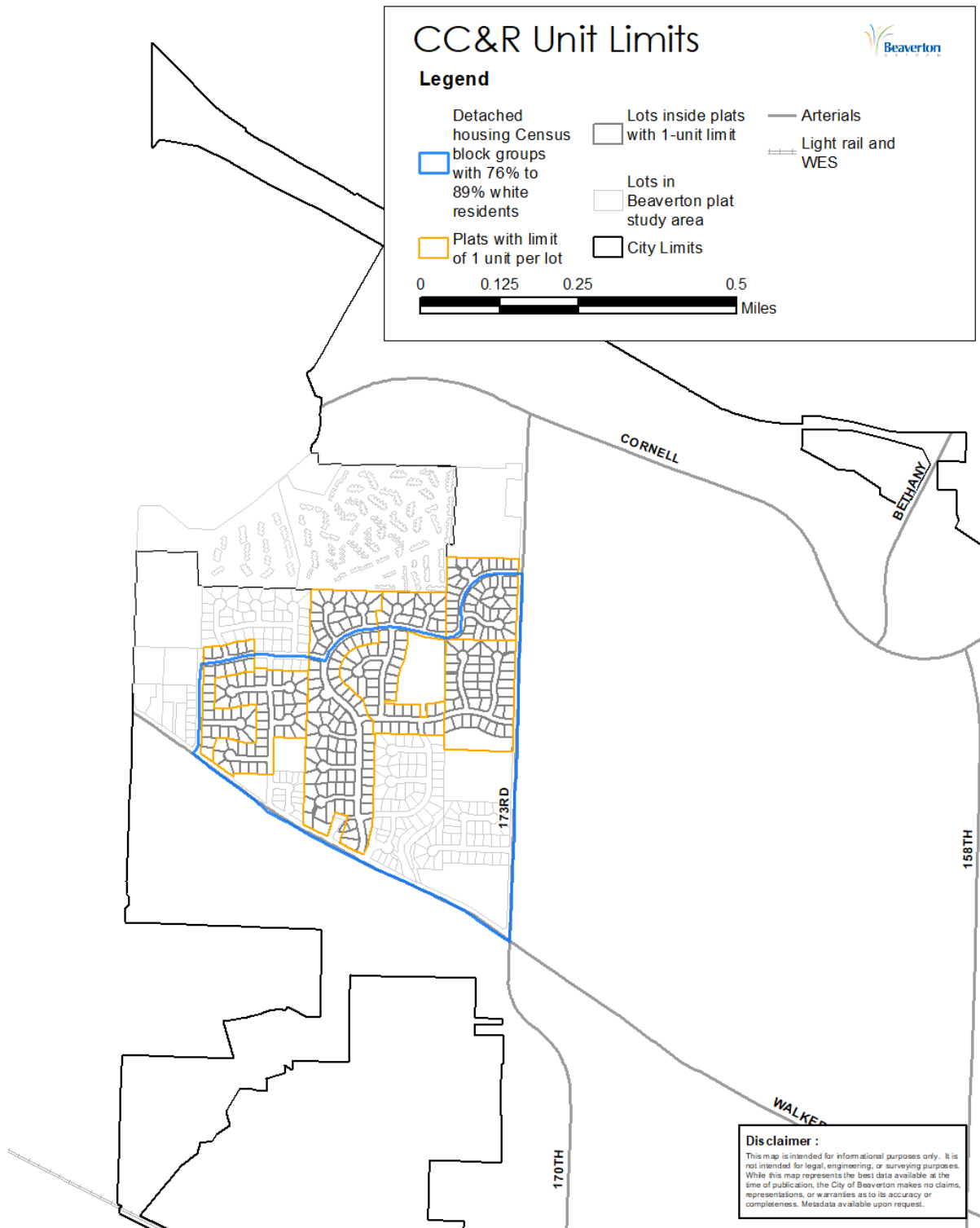
That the property herein described is sold and conveyed subject to the following restrictions, which shall be binding upon the Purchasers, their heirs and assigns forever: (1) that this property is to be used for residential purposes only; (2) that this property is not to be sold to, leased, rented, or tenanted by any person or persons of African descent; (3) no dwelling house to be built hereon shall cost less than Thirty-five Hundred Dollars (\$3,500.00);

- Laurmac Park

5
No persons of any race other than the Caucasian race shall use or occupy any building or any lot, except that this covenant shall not prevent occupancy by domestic servants of a different race domiciled with an owner or tenant.

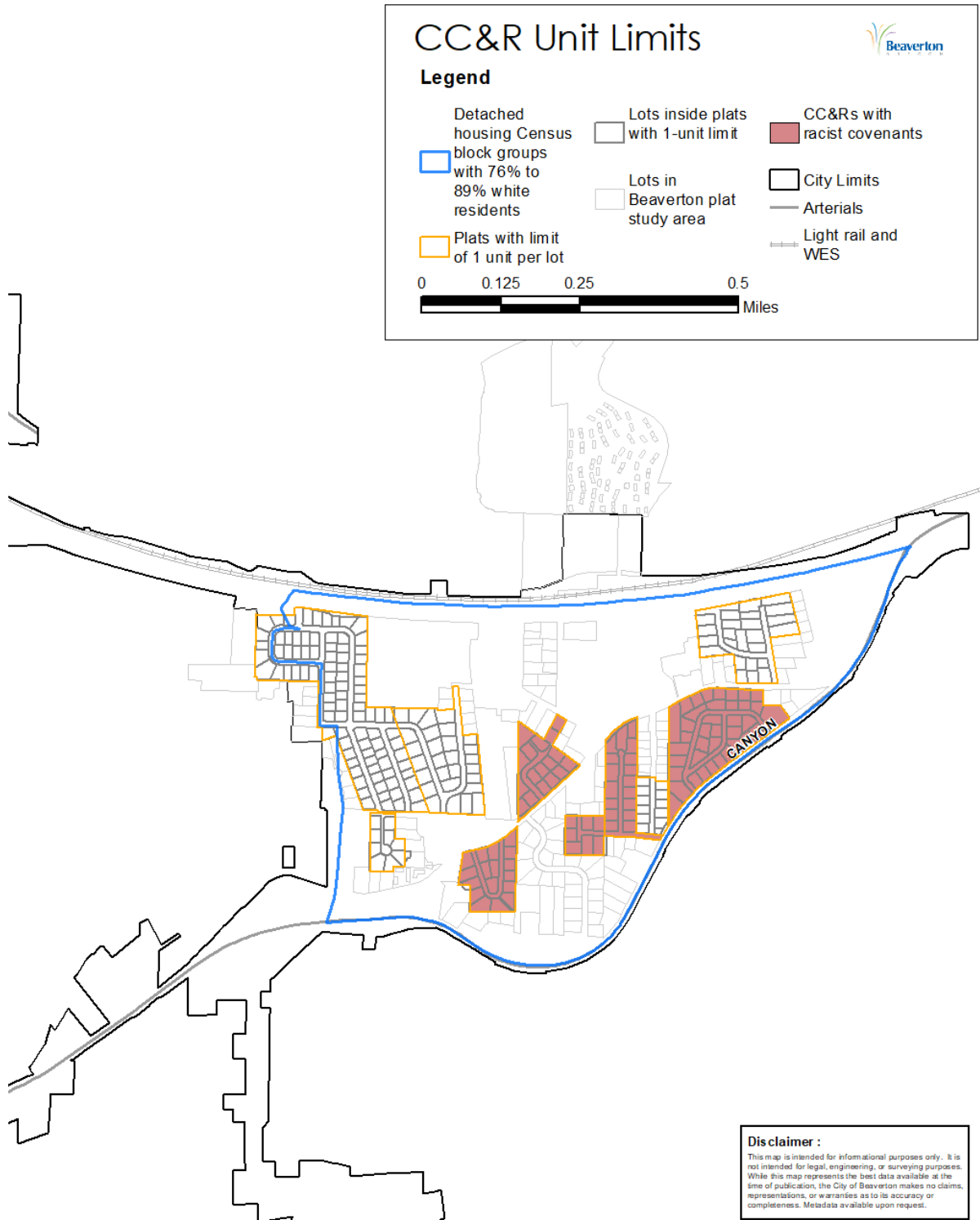
The U.S. Supreme Court in 1948 declared unenforceable covenants, conditions and restrictions that excluded people from buying or living in homes based on race. These racist covenants cannot be enforced through the courts.

Figure 2: CC&R study - northwest part of city



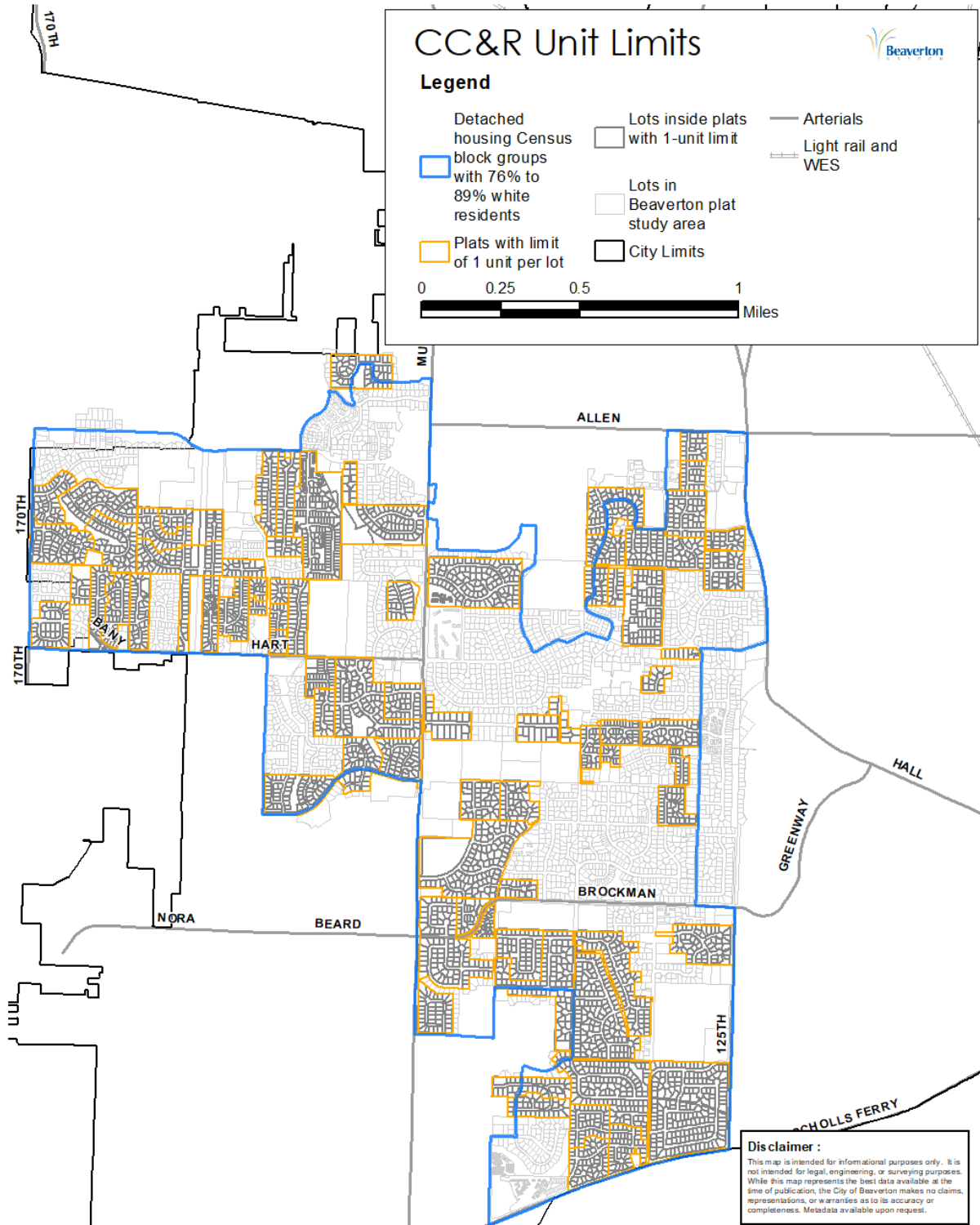
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Figure 3: CC&R study - northeast part of city



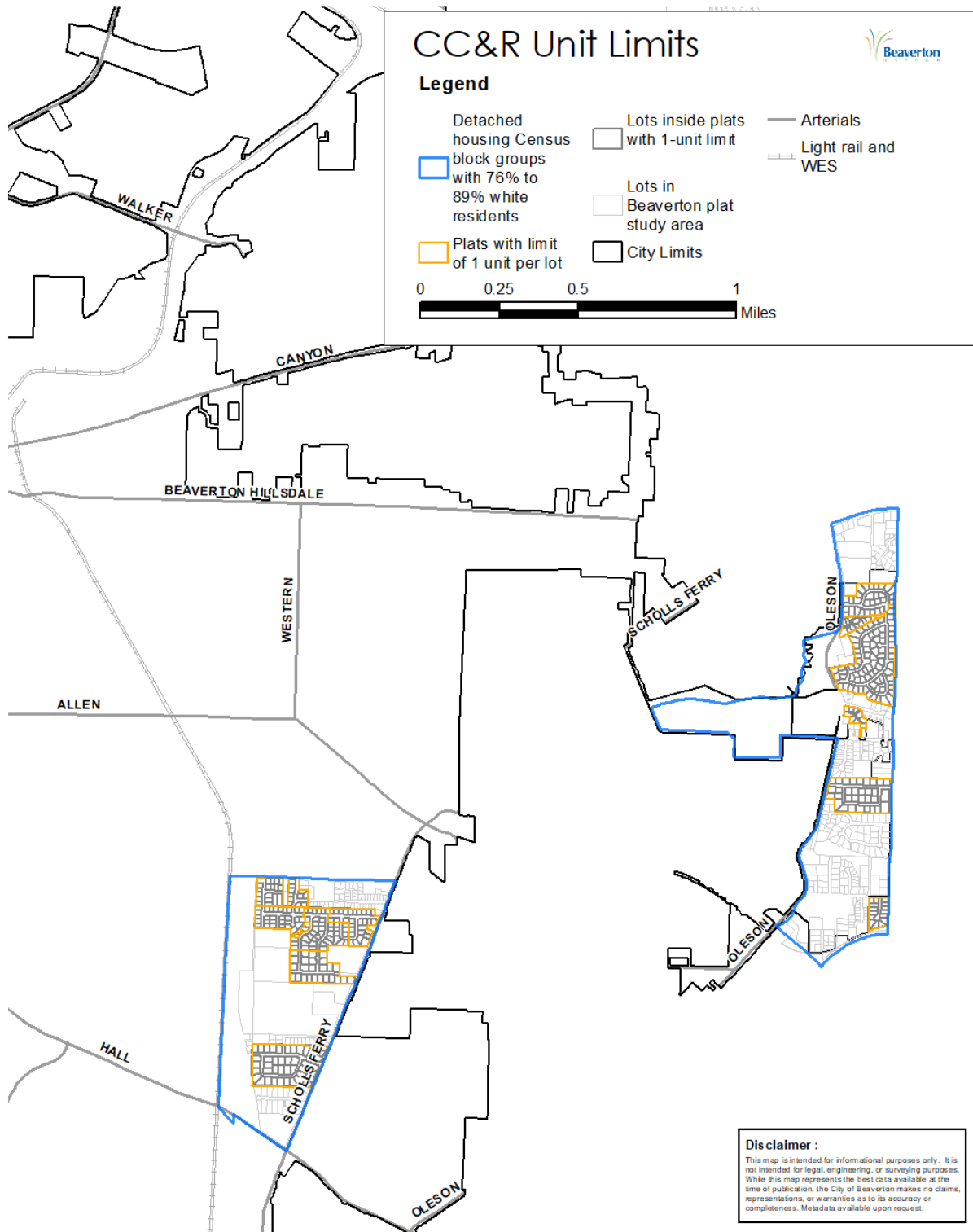
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Figure 4: CC&R study - southwest part of city



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Figure 5: CC&R study - southeast part of city



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