M E M O R A N D U M

TO: Marin County Planning Commission

FROM: Immanuel Bereket, Senior Planner

RE: Sharp Appeal of Bolinas Community Land Trust Coastal Permit

AGENDA: Item No. 4

DATE: November 14, 2019

The purpose of this memorandum is to provide additional correspondences to the Planning Commission staff received since the publication of the staff report. Enclosed, you'll find an e-mail correspondence from Don Smith, in support of the proposed project, and a letter from John Sharp, in support of the appeal to deny the proposed project.

ATTACHMENTS:

1. Email correspondence from Don Smith, dated Tuesday, November 12, 2019
2. Letter from John Sharp, dated Thursday, November 14, 2019

Bereket, Immanuel

From: Don Smith <dons@lmi.net>
Sent: Tuesday, November 12, 2019 12:08 PM
To: Bereket, Immanuel
Subject: November 18th hearing

Dear Planning Commissioners,

This regards your hearing next Monday, November 18th, on the Bolinas Community Land Trust's (BCLT's) proposed affordable-housing project on Overlook Drive. I am distressed that this important and badly needed project is being appealed despite the fact that it has already undergone far more scrutiny than numerous private building projects previously approved without appeal in this same zoning area, some having more living space, being two-storey instead of one, and occupying more of the lot than this project's mere 11%. For, in addition to obtaining Coastal, Building, Septic, and Water District permits, BCLT has held numerous public meetings describing the project, has made plans available to the public, and has been available for questions and comments all along and well beyond what townsfolk ask, or could expect to obtain, from a private party. Also, a biological assessment was done, seldom required within residential zoning and adding considerably to the cost of the project and inevitably requiring higher rent from the tenants, all because the project abuts a catchment ditch surrounding a sewage spray-field, as do all of the other houses on the same side of Overlook Drive. The goal of this well designed project is to serve our lower-income residents, who are frequently forced out of town by rent increases. This fact makes it particularly disturbing to me that the project is being selectively challenged.

This project meets all of the regulatory criteria, which are very familiar to me because I went through it all building my own house five blocks away, and because I have served on the Board of Directors of the Bolinas Community Public Utility District (BCPUD) for the past 16 years. Indeed, the appeal's objections come across to me as desperate attempts to quash a perfectly reasonable project based on a handful of neighbors wanting two and a half lots of somebody else's residentially zoned land to be held as open space for their enjoyment. The "traffic" from a house and second unit will of course be negligible. The "wetland" is a ditch in a sewage-treatment facility. The water allotted by BCPUD follows the standard moratorium formula. The septic capacity is far larger than the water allotted to the property. What exactly is the problem here? I implore the Commission to support the Deputy Zoning Administrator's decision and approve this valuable project.

Sincerely, Don Smith
PO Box 67, Bolinas

Law Offices of
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Telephone: (415) 479-1645
Facsimile: (415) 295-7020

November 14, 2019

County of Marin
Planning Commission
Chair David Paoli and Members of the Commission
3501 Civic Center Drive Room 308
San Rafael, CA 94903

Re: Bolinas Community Land Trust Coastal Permit and CEQA Exemption: Hearing Date November 18, 2019, 1:00 P.M.

Dear Chair Paoli and Members of the Commission:

This office represents several residents of Bolinas Mesa ("Appellants"), as identified in the staff materials for the Deputy Zoning Administrator hearing held on June 13, 2019. Please include those materials as well as this correspondence in the Administrative Record of proceedings with reference to application P2228. Please provide the undersigned with any and all additional correspondence, notices or other materials to be included in the Administrative Record.

INTRODUCTION

The applicant, Bolinas Community Land Trust ("BCLT") owns multiple lots on Bolinas Mesa, including the subject lot (500 Overlook), the Tacherra property, and two others, both on Aspen Road. (See attached maps, and related graphics consisting of 16 pages, depicting BCLT's holdings). While not part of this appeal, approvals have been granted for development at 430 Aspen and appellants understand that BCLT intends to develop additional lots on the Mesa, within a radius comprising approximately 6.5% of the Mesa.

Every property in the radius is burdened by constraints associated with water supply and septic capacity. Similarly, all the properties are constrained by limited means of ingress and egress; that is, Mesa Road and Terrace Ave., which are connected by Overlook Road upon which several appellants reside.

All of BCLT's properties are subject to the Bolinas Gridded Mesa Plan. All are in the Coastal Zone.

The above constraints are important insofar as the cumulative impacts arising from the level of density sought in BCLT's development plans have not been addressed as required under the California Environmental Quality Act (see below).

AFFORDABLE HOUSING

Appellants are not opposed to BCLT's project per se, nor are they opposed to affordable housing in Bolinas and West Marin; however, as more particularly described below, affordable housing mandates, including those set forth in applicable statutory and case law as well as the County of Marin's affordable housing program do not compel or allow the County to abnegate its police powers to address areas of environmental concern and other quality of life issues affecting those residing or working in a given neighborhood.

The approval granted by the Deputy Zoning Administrator of June 13, 2019 is, at best, premature. While Appellants recognize that affordable housing creates mandates which change the face of land use planning in local jurisdictions, said jurisdictions, including the County of Marin, are not divested of their abilities and requirements to ensure that existing neighborhoods and zoning districts are not impacted in such a way as to place in jeopardy the health and safety of neighbors of any given project. For reasons stated herein, Appellants respectfully request that the County require further study, including proper CEQA review (see below). Such review is consistent with the provisions of Government Code Section 65852.2, cited in your staff report.

In the decision of *Harris v. City of Costa Mesa* 25 Cal.App.4th 963 (1994), an owner applied for a conditional use permit to build an accessory dwelling of 1,199 sf. The zoning administrator approved the plan. Neighbors appealed to the Planning Commission which denied the permit. The owner appealed to the City Council which affirmed the denial of the permit.

The denial was reversed in the Superior Court. In overturning the Superior Court's reversal, the Court of Appeal referenced Section 65852.2, its construct and its mandate to local jurisdictions to allow for the creation of affordable housing. Nevertheless, the Court of Appeals supported the decision, which was based upon incompatibility of the structure with the area, size, location, additional building on the property, impact it would have on property improvements within the neighborhood and lack of character with the rest of the neighborhood. The Court stated:

> "Sufficient evidence to support those determinations can be found in the presentations by the neighbor coalition which opposed the project ... expert testimony on these issues is not necessary. It is appropriate and even necessary for the agency to consider the interest of neighboring property owners in reaching a decision whether to grant or deny a land use entitlement, and the opinions of the neighbors may constitute substantial evidence on this issue."

Similarly, as addressed below, much required study remains to be done in order for proper legal findings and evidentiary standards to be met.

CATEGORICAL EXEMPTION IS MISAPPLIED

Constraints associated with limited access to the Mesa, septic capacity, water availability and the sensitive nature of the Mesa environment operate to compel environmental review of BCLT's proposals as set forth in Appellants' petition for appeal and prior correspondence which is incorporated herein by reference.

The above-described constraints are important insofar as the cumulative impacts arising from the level of density sought in BCLT's development plans have not been addressed as required under the California Environmental Quality Act CEQA). (see below).

Notably, the Bolinas Gridded Mesa Plan, from its inception in 1984, recognizes the dangers inherent in future development, associated with the cumulative impacts of such development. Quoting the Plan:

" The purpose of this plan is to protect the fragile environment of the Mesa from the *documented negative cumulative impact* (emphasis added), of improper drainage and development as well as to provide a plan for the possibility of safe and orderly future development. Resolving the current problems related to drainage, sewer and water are given the highest priority". (Page 4, Bolinas Gridded Mesa Plan, adopted by the Planning Commission September 24, 1984, Marin County Board of Supervisors November 27, 1984 and California Coastal Commission March 27, 1985).

In its staff report for this hearing, staff cites *Berkeley Hillside Preservation v. City of Berkeley* (2015), 60 Cal. 4th 1086, a seminal California Supreme Court decision pertaining to categorical exemptions from CEQA and exceptions to categorical exemptions. Although inapposite in its result, the *Berkeley* decision is instructive with regard to CEQA standards. In particular, cumulative impacts under the "fair argument standard" are to be considered in conjunction with whether or not categorical exemption can apply, or whether exceptions thereto should be recognized in compelling further environmental review.

Here, the very statement of purpose under the Gridded Mesa Plan, which uses the language "documented negative cumulative impact" in direct contact with potential future development of the Mesa establishes more than a fair argument that further evaluation must be given to potential environmental impacts including, without limitation, the wetlands adjacent to the subject site, the history of degradation of roads on the Mesa, septic and water considerations and the impact of traffic and circulation associated with the project and future projects contemplated by BCLT in the constrained area defined by BCLT's holdings.

Moreover, in its laudable efforts to create future affordable housing opportunities, BCLT works with the community to acquire additional properties, such that the interests of both the affordable housing community and those seeking to protect environmental quality of life values would be well served by at least an initial study under CEQA as referenced in this appeal.

As stated in the *Berkeley* decision, "whether a particular project presents circumstances that are unusual for projects in an exempt class is an essentially factual inquiry". (60 Cal. 4th 1086, 1115). The court stated that the agency (here, the county) must affirm findings under the Public Resources Code and CEQA regulations if there is any substantial evidence to support the findings. Appellants submit that, on the face of the Bolinas Gridded Mesa Plan, among other operative documents, more than substantial evidence exists to demonstrate that the unusual circumstances exception to categorical exemption exists.

REQUIRED FINDINGS FOR APPROVAL CANNOT BE MADE

While the lack of CEQA review, in and of itself, is a basis to deny the pending application, the purported findings supporting approval are flawed, for lack of substantial evidence supporting them and contravene the California Supreme Court's mandate as set forth in, without limitation, *Topanga Association for a Scenic Community v. County of Los Angeles* (1974), 11 Cal. 3d 506. In the Topanga decision, the court found abuse of discretion where an administrative decision is not supported by findings or the findings are not supported by the evidence, as required under California Code of Civil Procedure 1094.5. Here, the findings cited at pages 4 through 8 of the staff report suffer from the lack of evidence required, and findings to be articulated, to "bridge the analytic gap," as contemplated in *Topanga* and other applicable case law.

For example, finding 8 is circular in its reasoning; that is, the finding effectively states that the project is consistent with the goals and policies of the Bolinas Gridded Mesa Plan because, to paraphrase, it is consistent with identified land-use policies. No factual underpinning is stated, nor does the record reflect that such facts exist.

Moreover, the Staff Report says that the water supply is not an issue since BCPUD approved BCLT 's application. Nowhere do they mention that the application is approved for a limited number of gallons for the entire property. The Staff Report does not look further than approval of the application for the water meter. BCPUD's allowance is for 2,700 cubic feet of water per meter per three (3) month period. Given the proposed density of the development on its own, and taken together with other developments mentioned above, a serious potential adverse environmental impact arises with respect to whether it can realistically be expected that BCPUD's limitation is achievable, given the number of potential users under the proposed density at the development site.The question of enforcement, to-wit: what will happen when the residents of this development are unable to stay within unrealistic water allowances? Given the finite nature of resources on the Mesa, including water and septic capacity, the unenforceability of findings and conditions as currently articulated in the record is of enormous concern to appellants.

POTENTIAL PROJECT ALTERNATIVES EXIST WHICH WOULD ADDRESS BOTH AFFORDABLE HOUSING NEEDS AND CUMULATIVE ENVIRONMENTAL CONCERNS

Transferred Development Rights.

Notwithstanding Appellants' concerns, Appellants are supportive of affordable housing and Bolinas. Appellants note a viable mechanism under County code to address Appellants' environmental concerns while serving the essential goals of creating and sustaining affordable housing in West Marin.

Transfer of Development Rights ("TDRs") is a zoning mechanism that allows for conservation of land by redirecting development that would otherwise occur on the land (the sending area) to a receiving parcel or parcels suitable for denser development. In Marin County, the TDR program is codified at Chapter 22.34 of the Marin County Code. As stated in Section 22.34.010 the chapter "...provides for a transfer of development rights (TDR) process that can allow the relocation of potential development from areas where environmental or land use impacts could be severe, to other areas where those impacts can be minimized, while still granting appropriate development rights to each property."

As further set forth in Chapter 22.34, there are specific requirements for the approval process and findings that must be made—including that the TDR be necessary to conserve the site from which the density is proposed to be transferred.

Given the long-standing record of concern with environmental impact that the proposed affordable housing development would have on the site; and that the community desires to have any future development restricted and conserved—it appears that the TDR program would be a

"win-win" for both the County and the Community. It would allow for an accommodation for affordable housing on a receiving site; as well as addressing the density impact concerns regarding the current proposed site. Appellants are hopeful of a collaborative effort among BCLT, the County and themselves, to seek to identify and establish receiver sites, while respecting the long history of environmental stewardship by the County and the Bolinas community.

CONCLUSION

Too much remains unknown at present about the long-term impacts of the proposed project. Moreover, as it stands, the findings intended to support approval of the coastal permit are not supported by evidence sufficient to allow the community to rely on any approval, or conditions thereto. While all involved parties seek to further the interests of affordable housing, approval of the project at this juncture, in their reliance upon Government Code Section 65852.2, or other affordable housing statutes, would amount to an abrogation of the County's responsibilities under CEQA, County Code, the Coastal Act and the Gridded Mesa Plan.

For these reasons, Appellants respectfully request that the Commission sustain their appeal and deny the project pending further study. Appellants further request that the proposed Categorical Exemption be denied.

Appellants and their counsel will be present at the hearing of November 18, 2019.

Very truly yours,

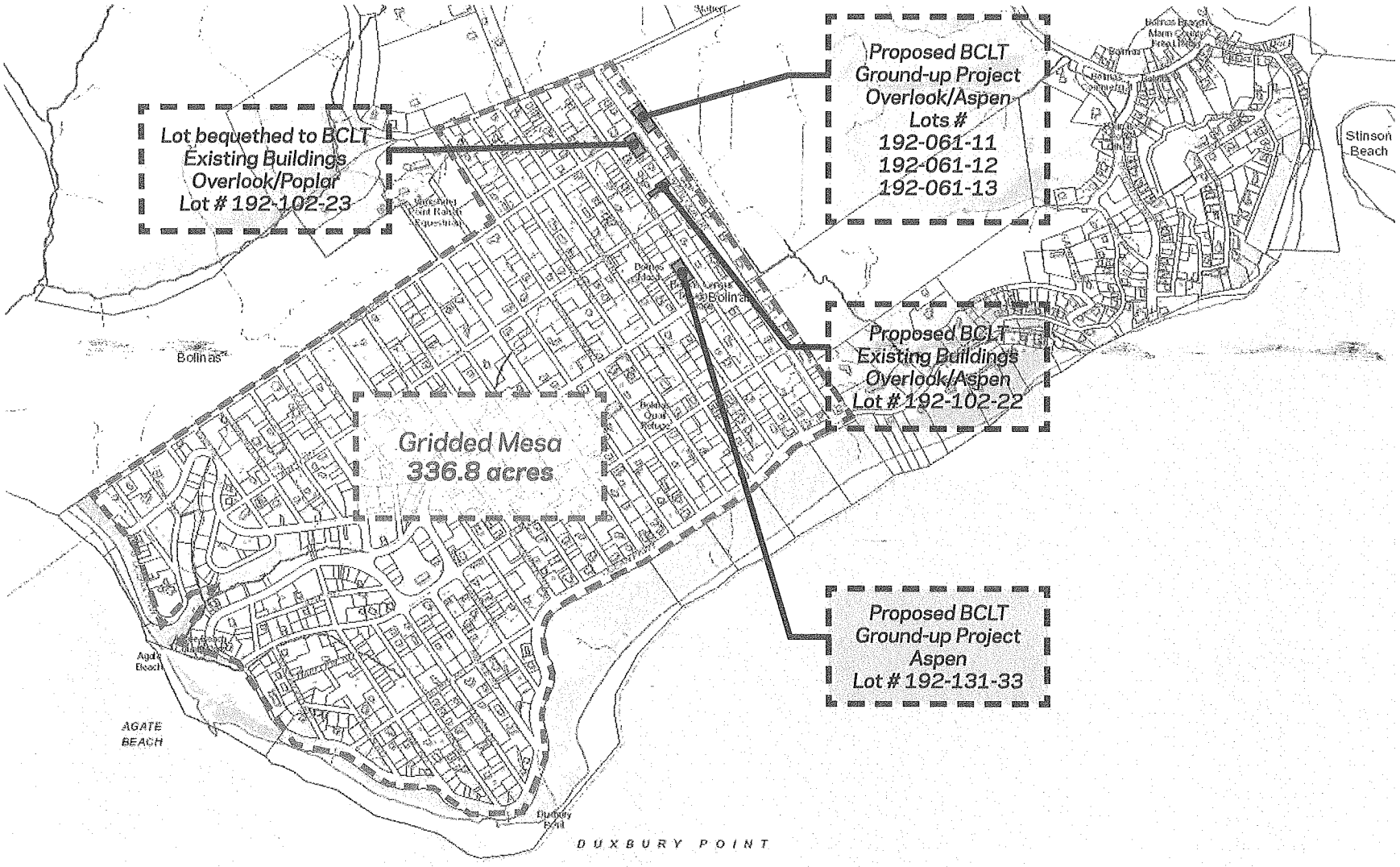
LAW OFFICES OF JOHN E. SHARP

John E. Sharp

JES/kh
cc: Clients

draft 2018.05.04

PROPOSED BOLINAS COMMUNITY LAND TRUST (BCLT) PROJECTS IN GRIDDED MESA



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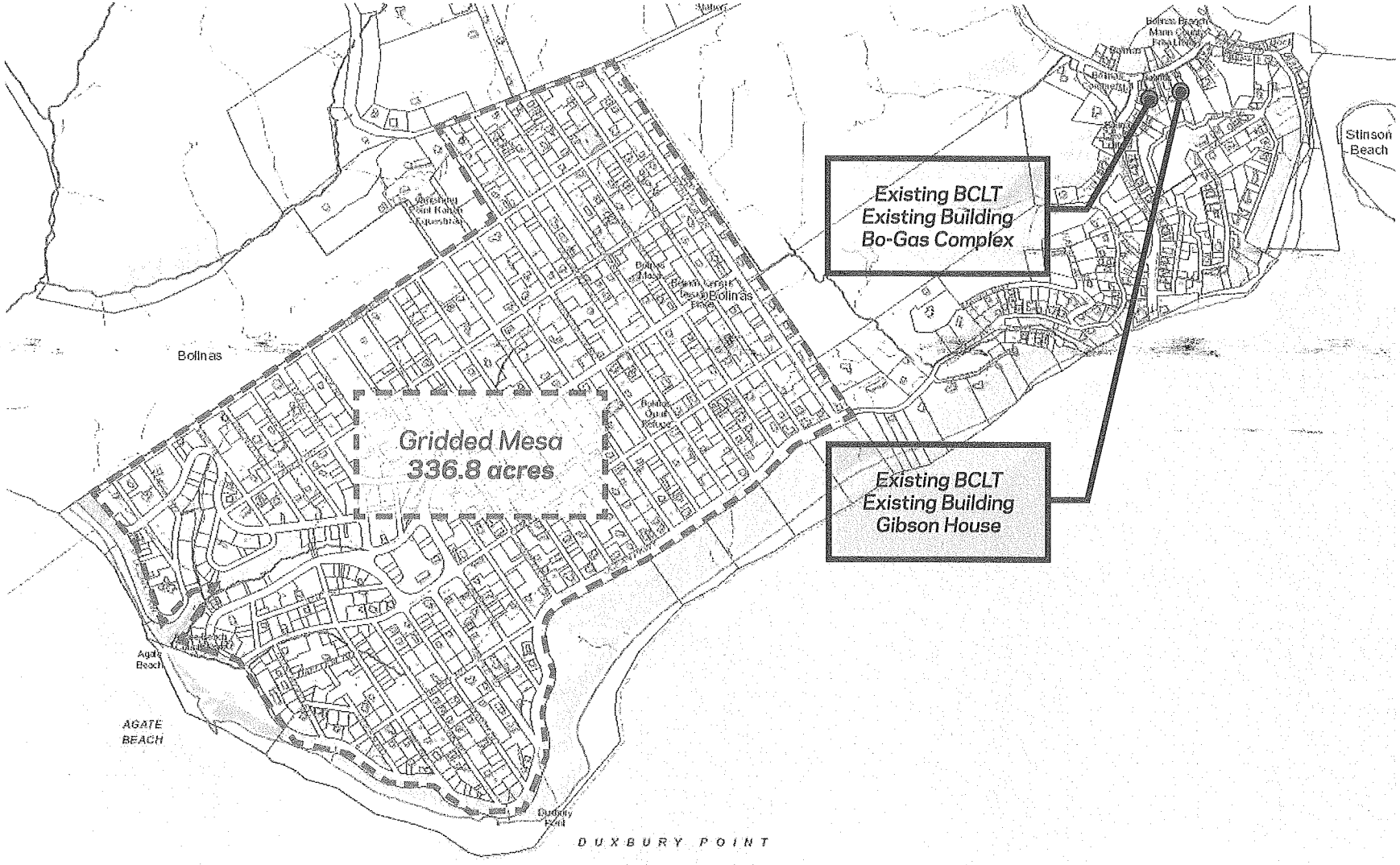
CURRENT BOLINAS COMMUNITY LAND TRUST (BCLT) PROJECTS IN COMMERCIAL ZONE



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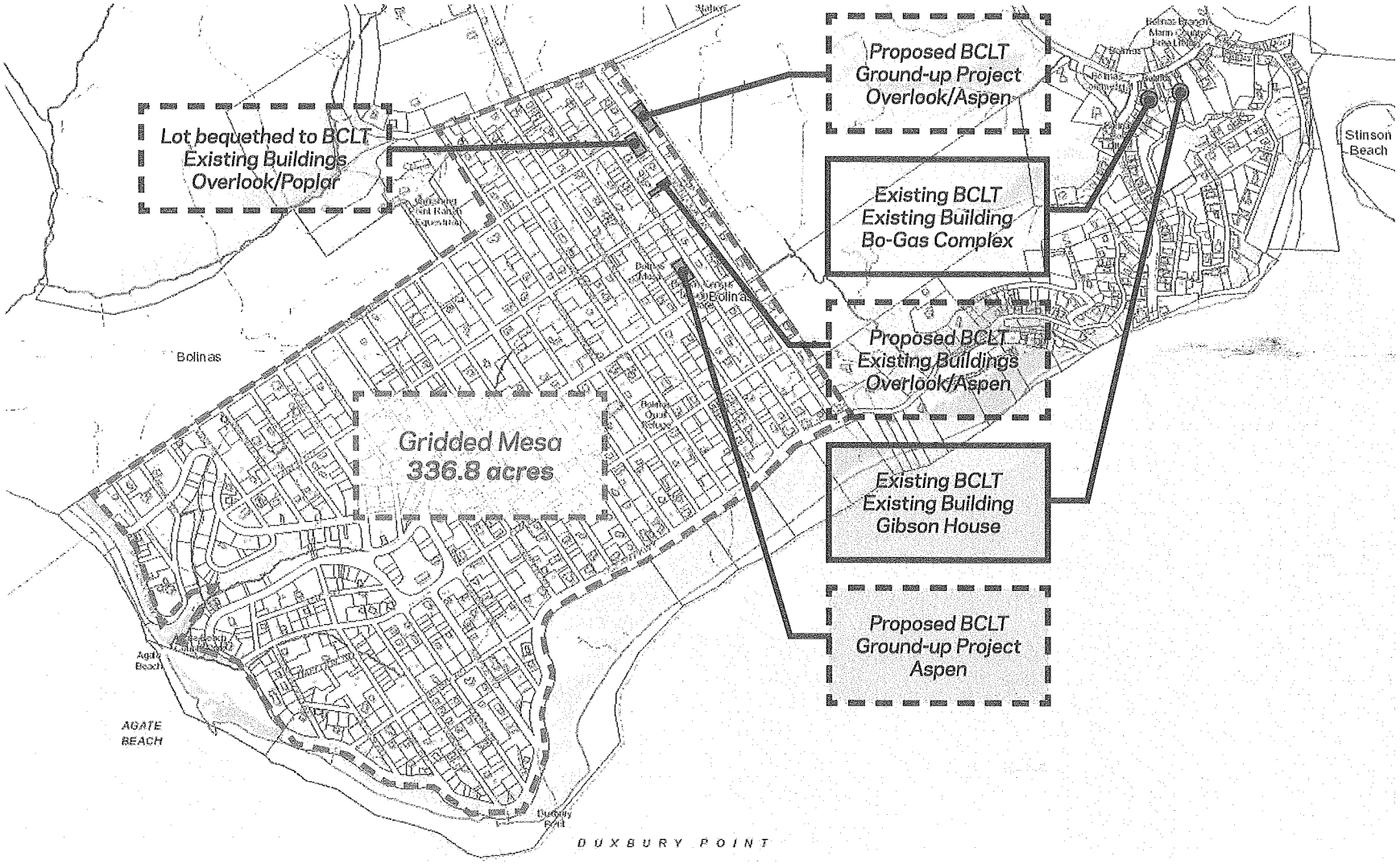
CURRENT AND PROPOSED BOLINAS COMMUNITY LAND TRUST (BCLT) PROJECTS



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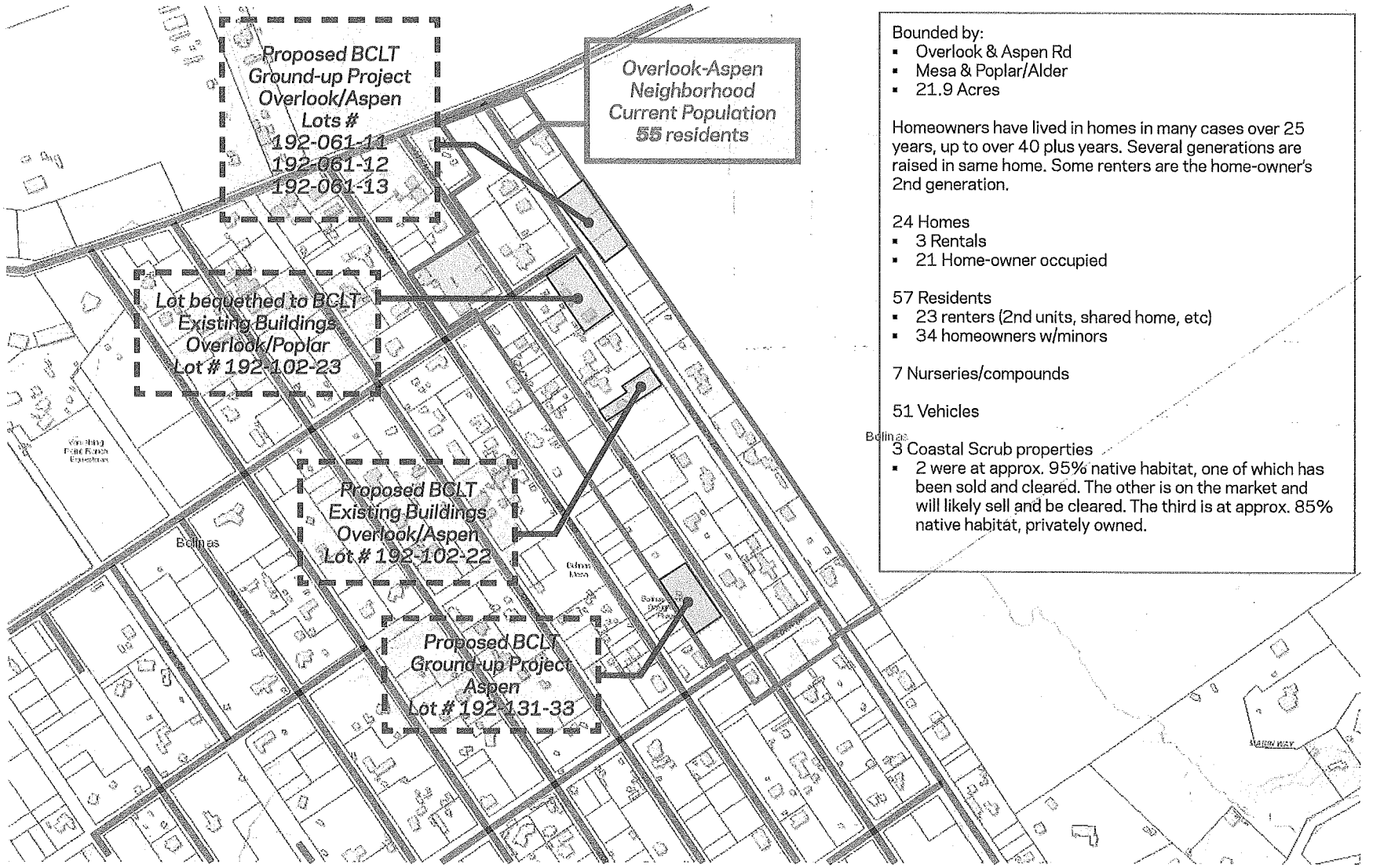
OVERLOOK-ASPEN NEIGHBORHOOD INFORMATION



Bounded by:
- Overlook & Aspen Rd
- Mesa & Poplar/Alder
- 21.9 Acres

Homeowners have lived in homes in many cases over 25 years, up to over 40 plus years. Several generations are raised in same home. Some renters are the home-owner's 2nd generation.

24 Homes
- 3 Rentals
- 21 Home-owner occupied

57 Residents
- 23 renters (2nd units, shared home, etc)
- 34 homeowners w/minors

7 Nurseries/compounds

51 Vehicles

3 Coastal Scrub properties
- 2 were at approx. 95% native habitat, one of which has been sold and cleared. The other is on the market and will likely sell and be cleared. The third is at approx. 85% native habitat, privately owned.

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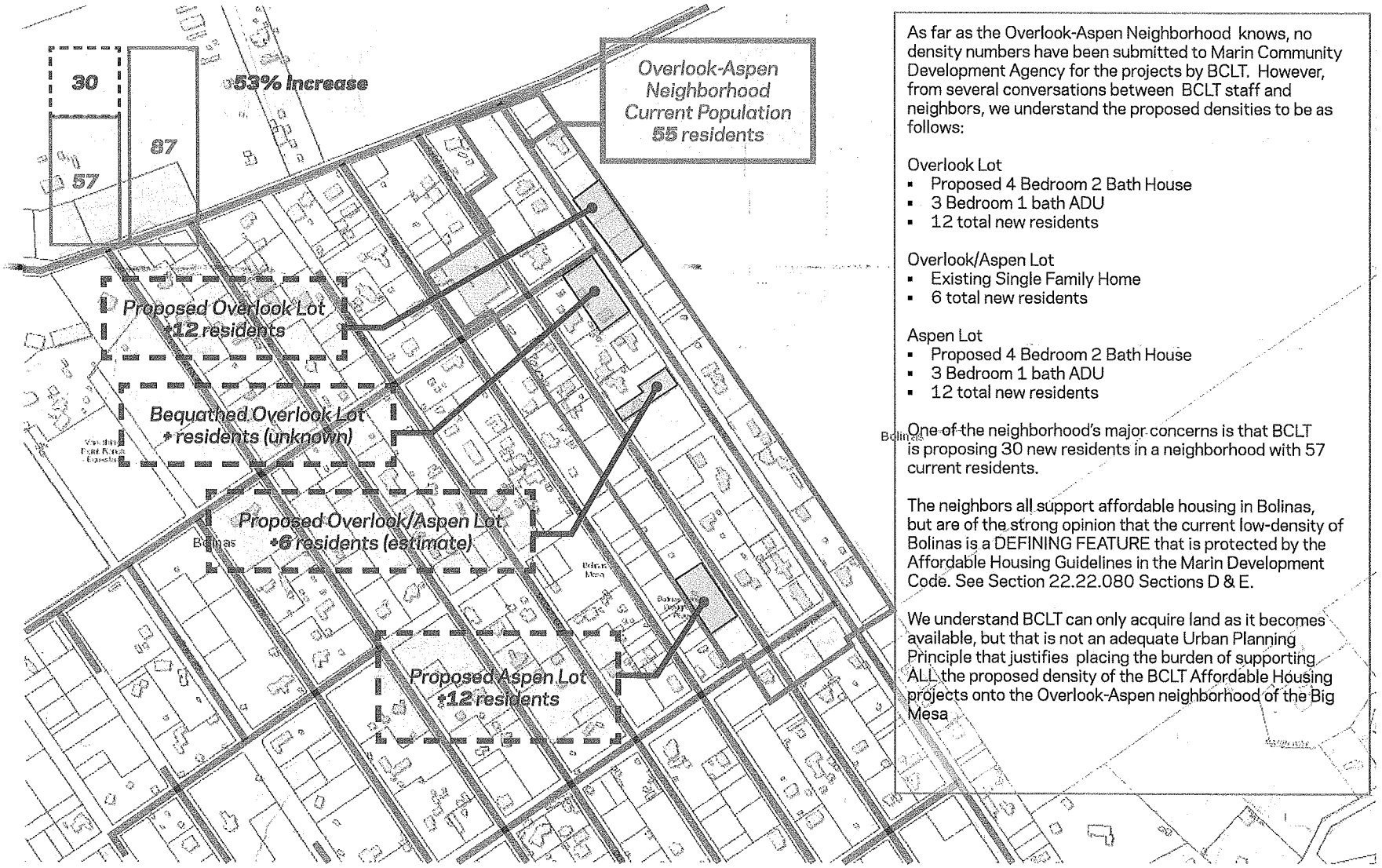
PROPOSED ADDITIONAL RESIDENTS OF BCLT PROJECTS



As far as the Overlook-Aspen Neighborhood knows, no density numbers have been submitted to Marin Community Development Agency for the projects by BCLT. However, from several conversations between BCLT staff and neighbors, we understand the proposed densities to be as follows:

Overlook Lot
- Proposed 4 Bedroom 2 Bath House
- 3 Bedroom 1 bath ADU
- 12 total new residents

Overlook/Aspen Lot
- Existing Single Family Home
- 6 total new residents

Aspen Lot
- Proposed 4 Bedroom 2 Bath House
- 3 Bedroom 1 bath ADU
- 12 total new residents

One of the neighborhood's major concerns is that BCLT is proposing 30 new residents in a neighborhood with 57 current residents.

The neighbors all support affordable housing in Bolinas, but are of the strong opinion that the current low-density of Bolinas is a DEFINING FEATURE that is protected by the Affordable Housing Guidelines in the Marin Development Code. See Section 22.22.080 Sections D & E.

We understand BCLT can only acquire land as it becomes available, but that is not an adequate Urban Planning Principle that justifies placing the burden of supporting ALL the proposed density of the BCLT Affordable Housing projects onto the Overlook-Aspen neighborhood of the Big Mesa

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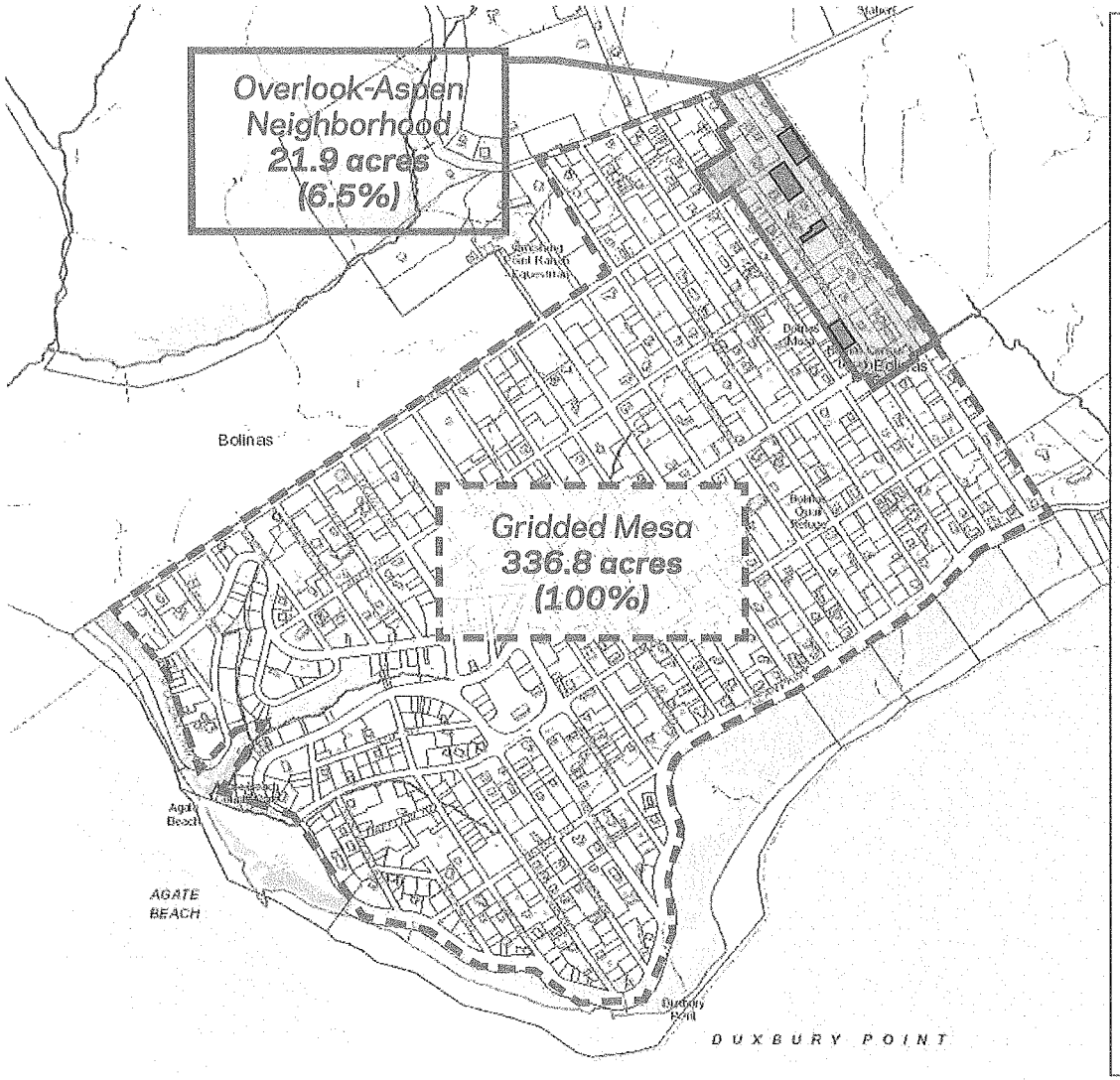
SUMMARY OF COMMUNITY ASSESMENT OF BCLT PROPOSED DEVELOPMENTS



BCLT IS ACTING AS A HOUSING DEVELOPER IN BOLINAS. THEY SHOULD ADHERE TO ESTABLISHED URBAN PLANNING GUIDELINES, THE MARIN DEVELOPMENT CODE, AND CEQA REGULATIONS.

THE BROAD SCOPE OF BCLT'S MESA PROJECTS REQUIRE BCLT TO UNDERTAKE DETAILED ENVIRONMENTAL IMPACT REPORTS FOR EACH DEVELOPMENT SINCE THEY WILL HAVE NEGATIVE EFFECTS ON:

- BIOLOGICAL RESOURCES
- LAND USE/PLANNING
- TRANSPORTATION/TRAFFIC
- UTILITY/SERVICE SYSTEMS
- NOISE

BCLT IS PROPOSING A 53% INCREASE IN POPULATION DENSITY FOR A 6.5% AREA OF THE GRIDDED MESA WITHOUT SEWER SYSTEMS, LIMITED WATER, AND UNIMPROVED GRAVEL ROADS.

ACCESSORY DWELLING UNITS ARE ALLOWED FOR EXISTING SINGLE FAMILY HOMES, BUT NEW MULTI-FAMILY HOUSING PROJECTS ARE MEANT FOR MORE DENSE ZONING THAN BOLINAS.

HOUSING AND GOOD LAND USE PLANNING ARE NOT MUTUALLY EXCLUSIVE

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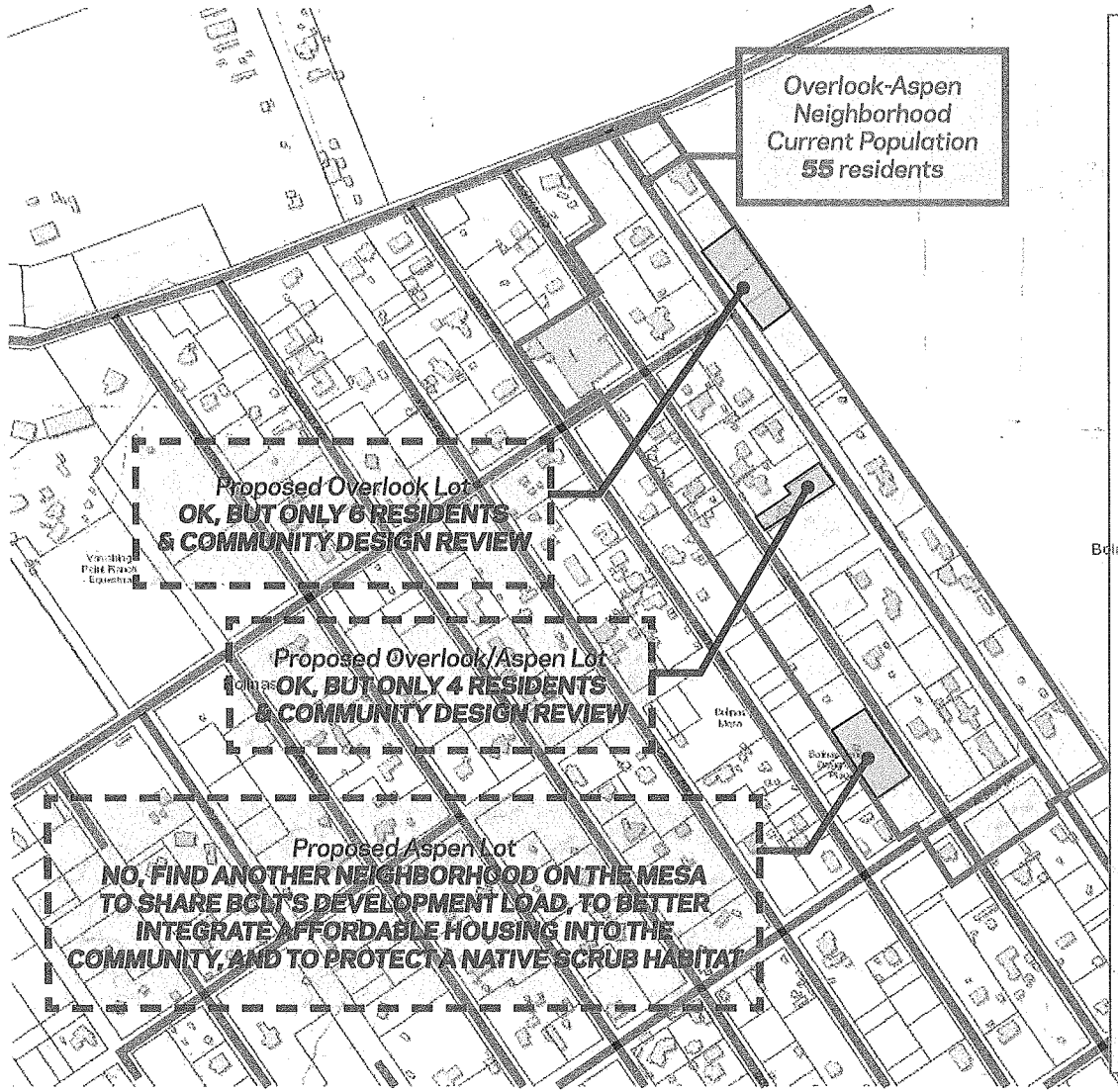
COMMUNITY CONCESSIONS FOR BCLT PROPOSED DEVELOPMENTS



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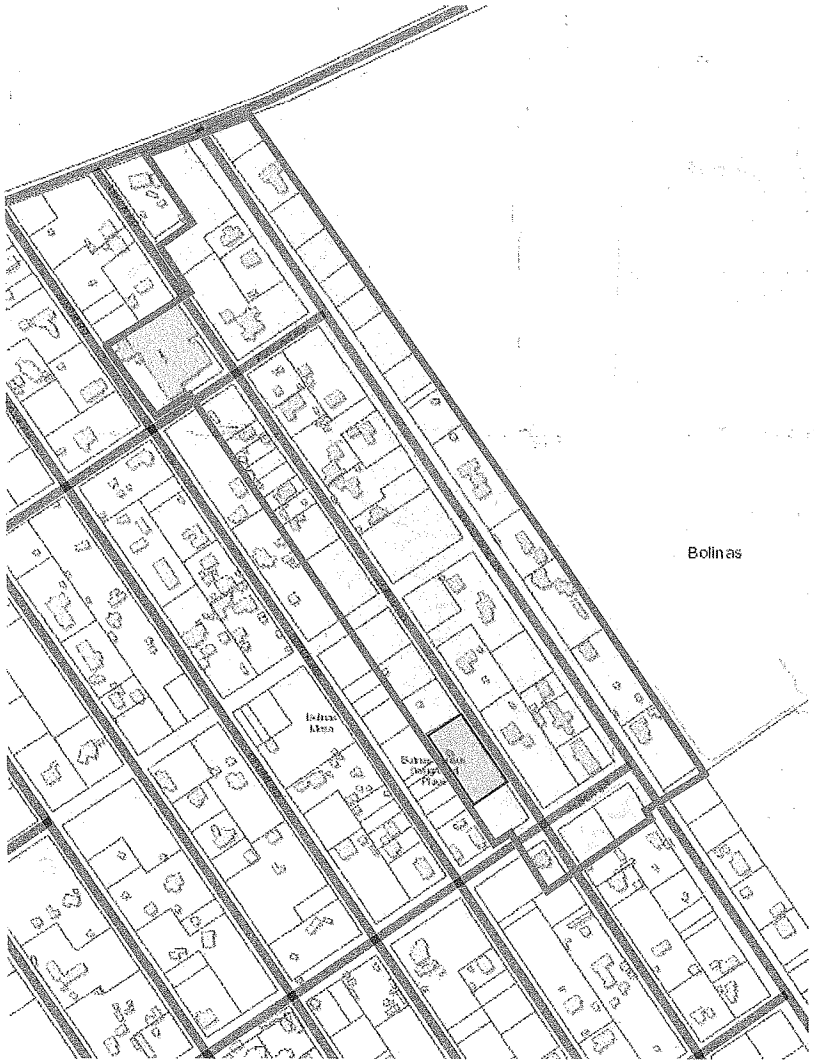
draft 2018.05.04

LOT 192-131-33 - NATURAL RESOURCE WITH COASTAL SCRUB ENVIRONMENT



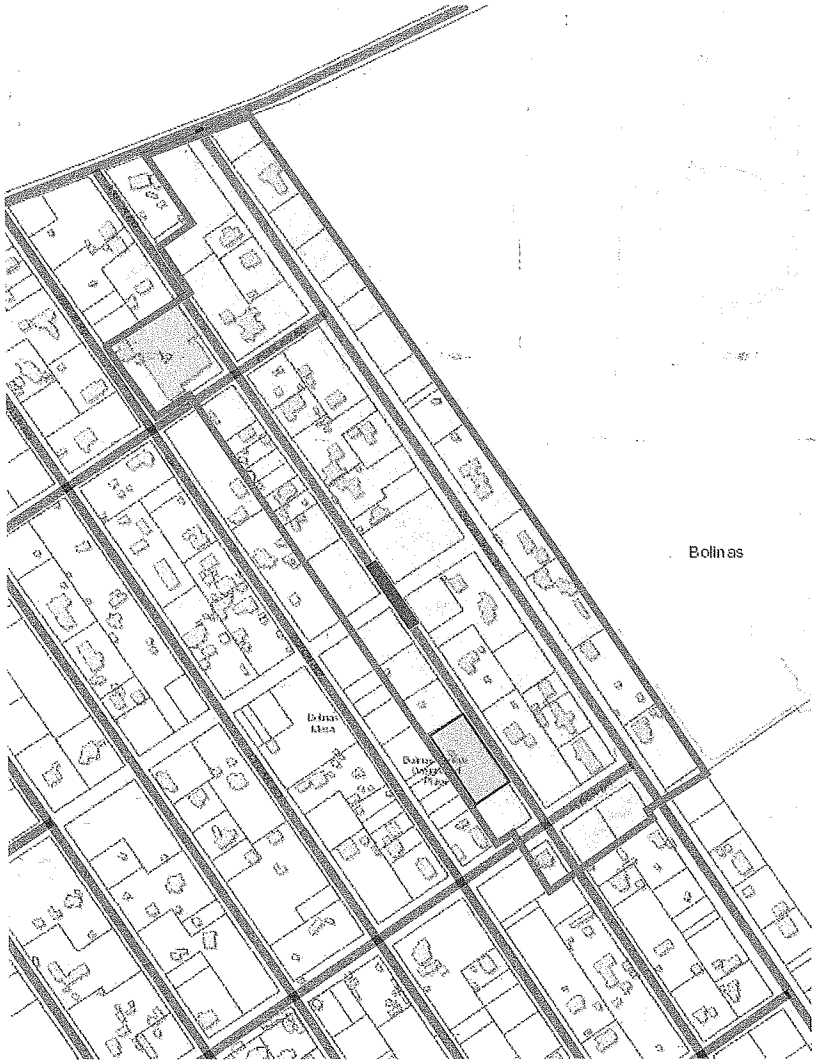
LOT 192-131-33 ON ASPEN RD

NATURAL BEAUTY OF LOT & UNIMPROVED GRAVEL ROAD

NATURAL BEAUTY OF LOT & UNIMPROVED GRAVEL ROAD

draft 2018.05.04

DEVELOPMENT WILL HAVE NEGATIVE IMPACT ON TRANSPORTATTION AND TRAFFIC



UNIMPROVED PORTION OF ASPEN RD

PHOTO OF UNIMPROVED PORTION OF ASPEN RD

PHOTO OF UNIMPROVED PORTION OF ASPEN RD

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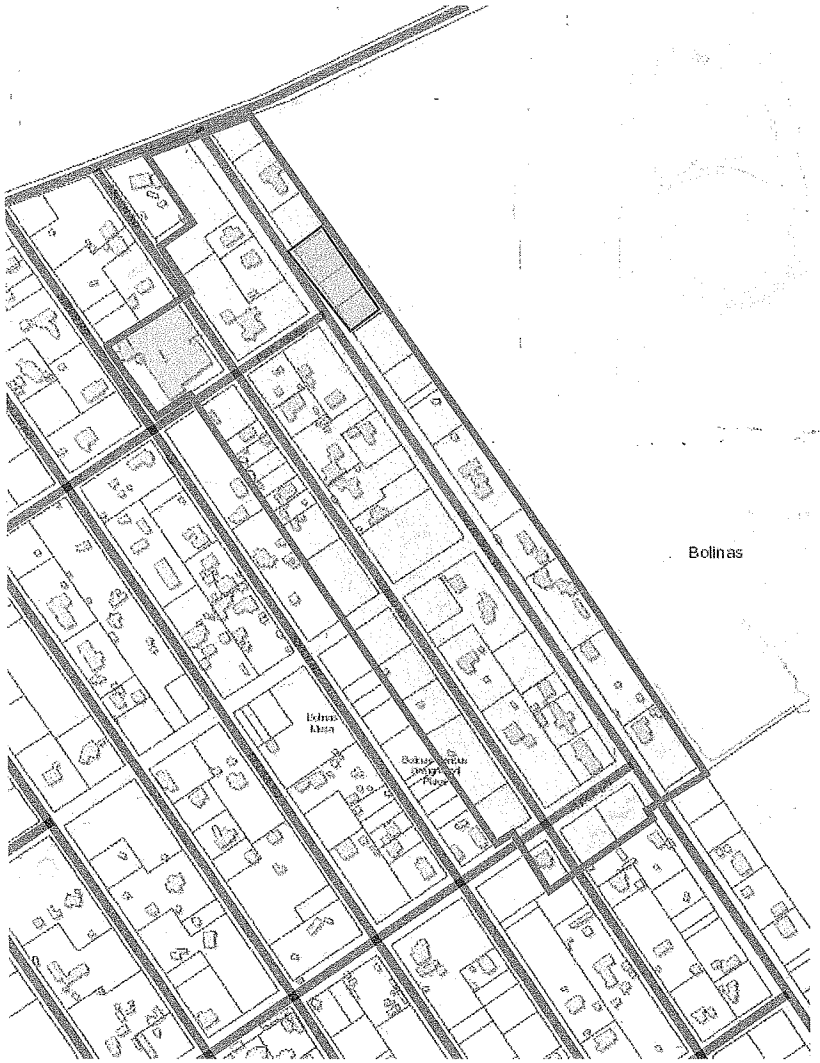
LOTS 192-061-11,12,13 - CLEARED PRIOR TO LOT MERGER OR PLANNING APPROVAL



LOTS 192-061-11,12 & 13 ON OVERLOOK DR

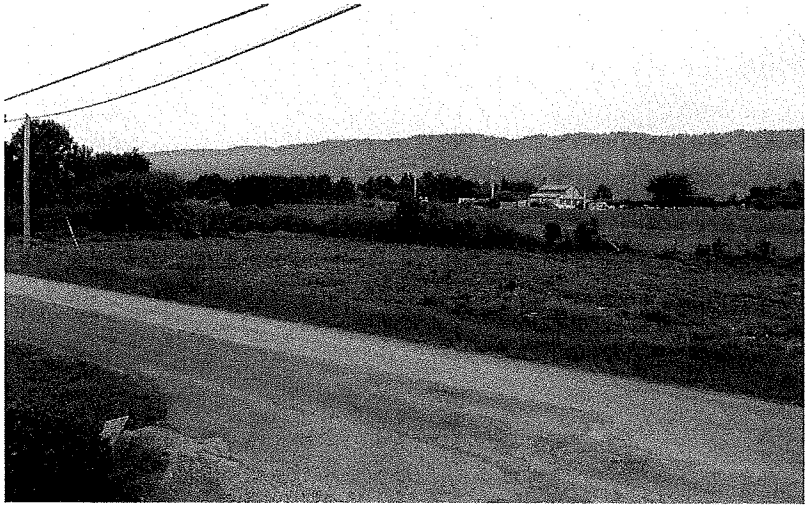


PHOTO OF LOTS 192-061-11,12 & 13 ON OVERLOOK DR

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draft 2018.05.04

PLANNING CODE 22.22.080 - E. DESIGN & CHARACTER OF AFFORDABLE HOUSING

location, size, accessibility to public transportation, and other services, consistent with sound community planning principles and shall be devoid of contaminants and other hazardous wastes. The offsite location must include either a greater number of inclusionary units than required on-site or the same number of inclusionary units that are affordable to a lower income level.

2. **Lots.** The applicant may dedicate suitable real property to the County or its designee to be developed for affordable housing by the County, or a profit or nonprofit, private or public applicant. The off-site property shall be located in the same planning area, and shall be appropriately sized and zoned for development equivalent to or more than the residential units that are not created on-site. The property shall be offered in a condition that is suitable for development, including appropriate access and services, consistent with sound community planning principles and shall be devoid of contaminants and other hazardous wastes.

3. **In-lieu fee.** The applicant may pay an in-lieu participation fee based on 125% of the requirement of Section 22.22.090 (Inclusionary Housing Standards – Lot Creation). The review authority shall apply the lowest preference to the payment of an in-lieu fee for compliance with the requirements of this chapter.

22.22.080 – General Affordable Housing Standards

A. **Eligible occupants.** All affordable housing units shall be sold or rented to Income Qualifying Households, at income levels established pursuant to the applicable affordable housing requirement, as certified by the County or its designee.

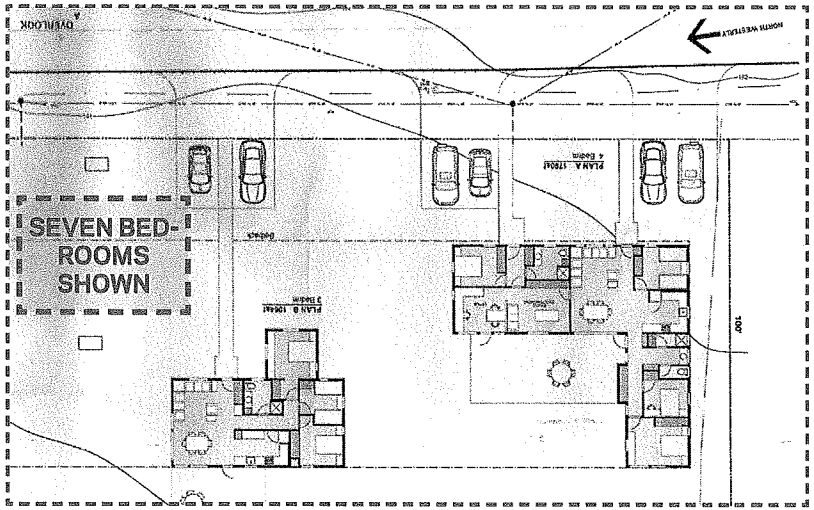
B. **Income restriction.** All affordable housing units shall be income-restricted in perpetuity, unless the review authority reduces the term of the affordability requirement to reflect the maximum term that is permitted by Federal or State financing sources.

C. **Affordable unit cost.** Required ownership units shall be affordable to households at 60 percent of the Area Median Income, adjusted for household size. Any affordable rental units proposed by an applicant shall be offered at an affordable rent not exceeding 30 percent of the gross income of households earning at most 50 percent of Area Median Income, adjusted for household size. The housing unit prices shall be established by the County or its designee and shall be based on the number of bedrooms. See Article VIII for definitions of Affordable Ownership Cost, Affordable Rent and Area Median Income.

D. **Location of affordable housing units.** All required affordable housing units on-site shall be disbursed throughout the development. This requirement may be modified for cause by the review authority.

E. **Design and character of affordable housing units.** Required affordable housing units shall contain on average the same number of bedrooms as the market rate units in a residential development, and shall be compatible with the exterior design and use of the remaining units in appearance, materials, amenities, and finished quality. Residential units constructed on behalf of, or funded by a public entity, must comply with the Department of Justice's *Standards for Accessible Design and other relevant state and federal requirements for accessibility.*

PAGE FROM THE MARIN PLANNING CODE



BCLT PARTIAL PROPOSED PLAN ON OVERLOOK LOTS 192-061-11,12 & 13

PHOTO OF LOTS 192-061-11,12 & 13 ON OVERLOOK DR

draft 2018.05.04

PLANNING CODE 22.22.080 - D. LOCATION OF AFFORDABLE HOUSING UNITS

location, size, accessibility to public transportation, and other services, consistent with sound community planning principles and shall be devoid of contaminants and other hazardous wastes. The offsite location must include either a greater number of inclusionary units than required on-site or the same number of inclusionary units that are affordable to a lower income level.

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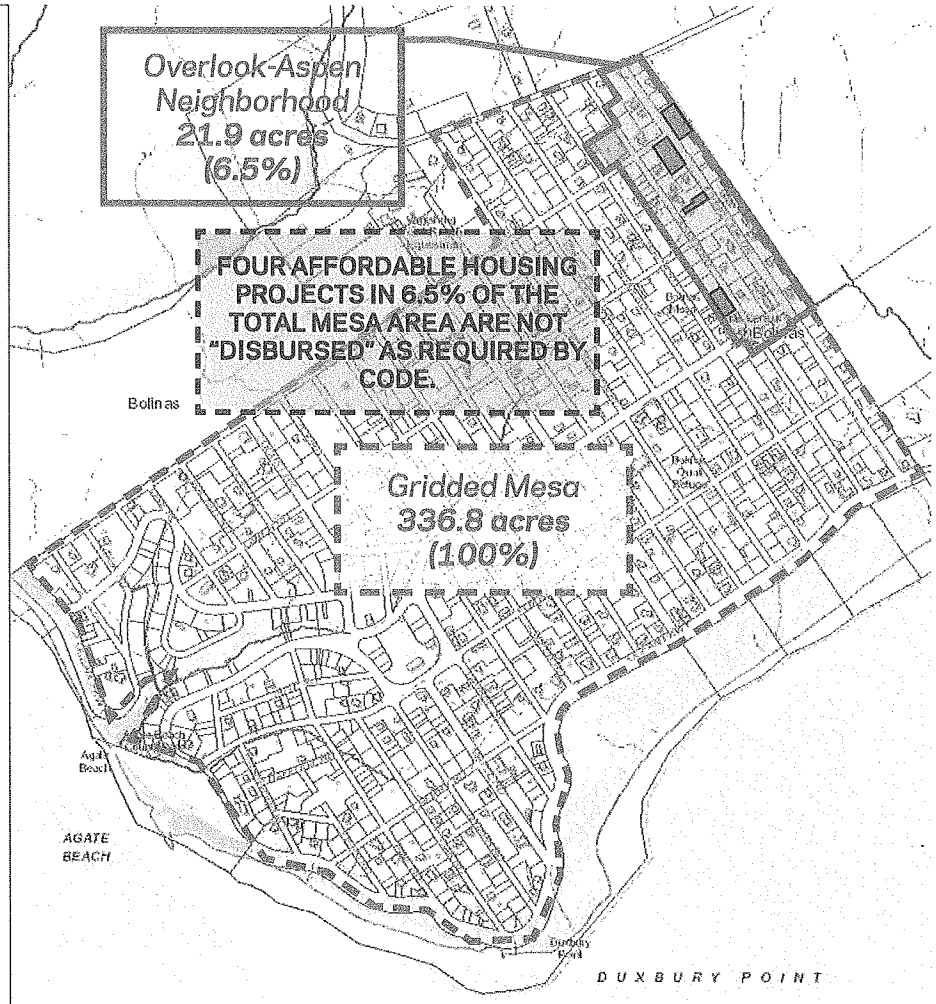
D. **Location of affordable housing units.** All required affordable housing units on-site shall be disbursed throughout the development. This requirement may be modified for cause by the review authority.

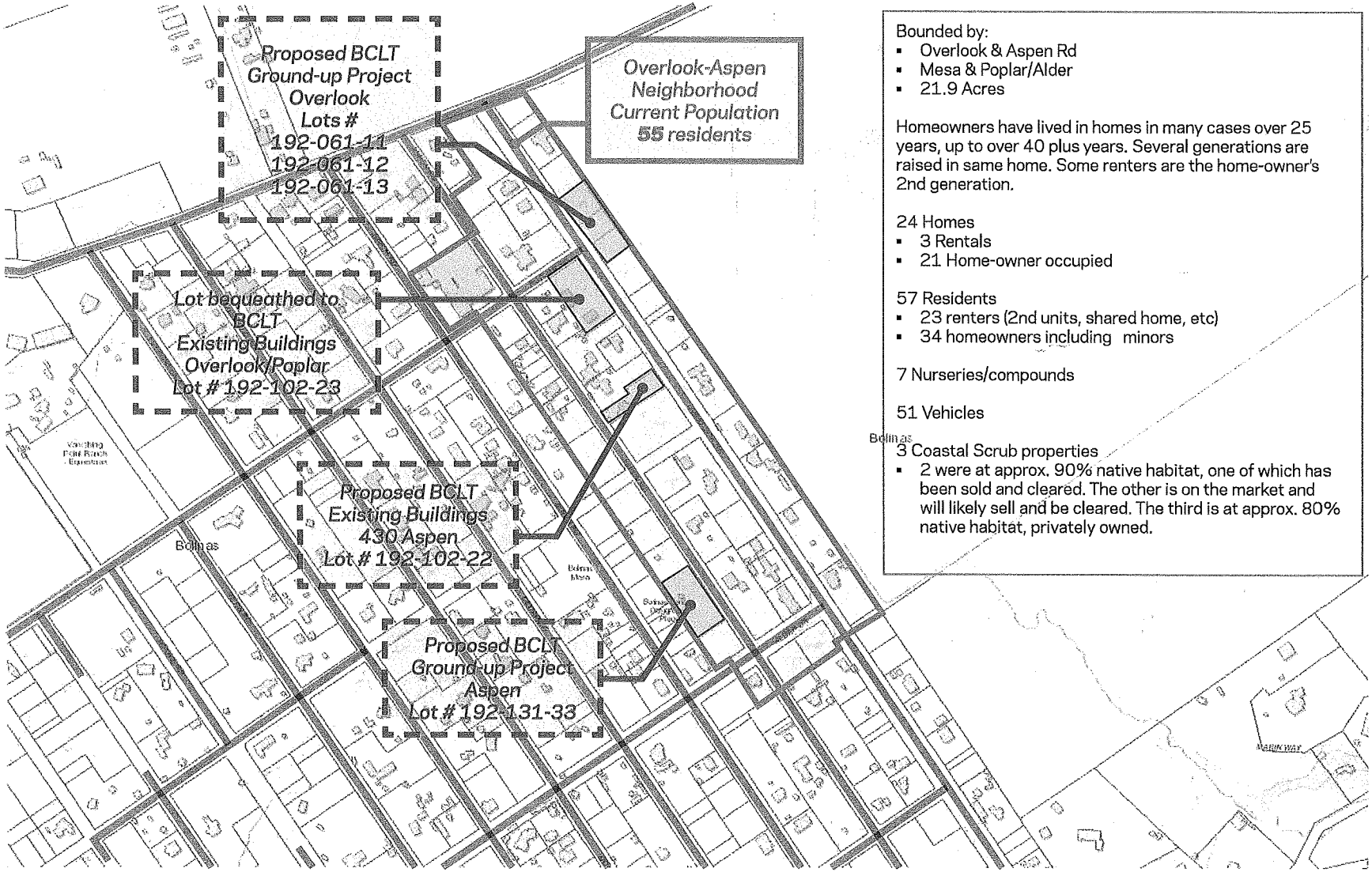
E. **Design and character of affordable housing units.** Required affordable housing units shall contain on average the same number of bedrooms as the market rate units in a residential development, and shall be compatible with the exterior design and use of the remaining units in appearance, materials, amenities, and finished quality. Residential units constructed on behalf of, or funded by a public entity, must comply with the Department of Justice's *Standards for Accessible Design and other relevant state and federal requirements for accessibility.*



PAGE FROM THE MARIN PLANNING CODE

2018.05.18

OVERLOOK-ASPEN NEIGHBORHOOD INFORMATION



Bounded by:
- Overlook & Aspen Rd
- Mesa & Poplar/Alder
- 21.9 Acres

Homeowners have lived in homes in many cases over 25 years, up to over 40 plus years. Several generations are raised in same home. Some renters are the home-owner's 2nd generation.

24 Homes
- 3 Rentals
- 21 Home-owner occupied

57 Residents
- 23 renters (2nd units, shared home, etc)
- 34 homeowners including minors

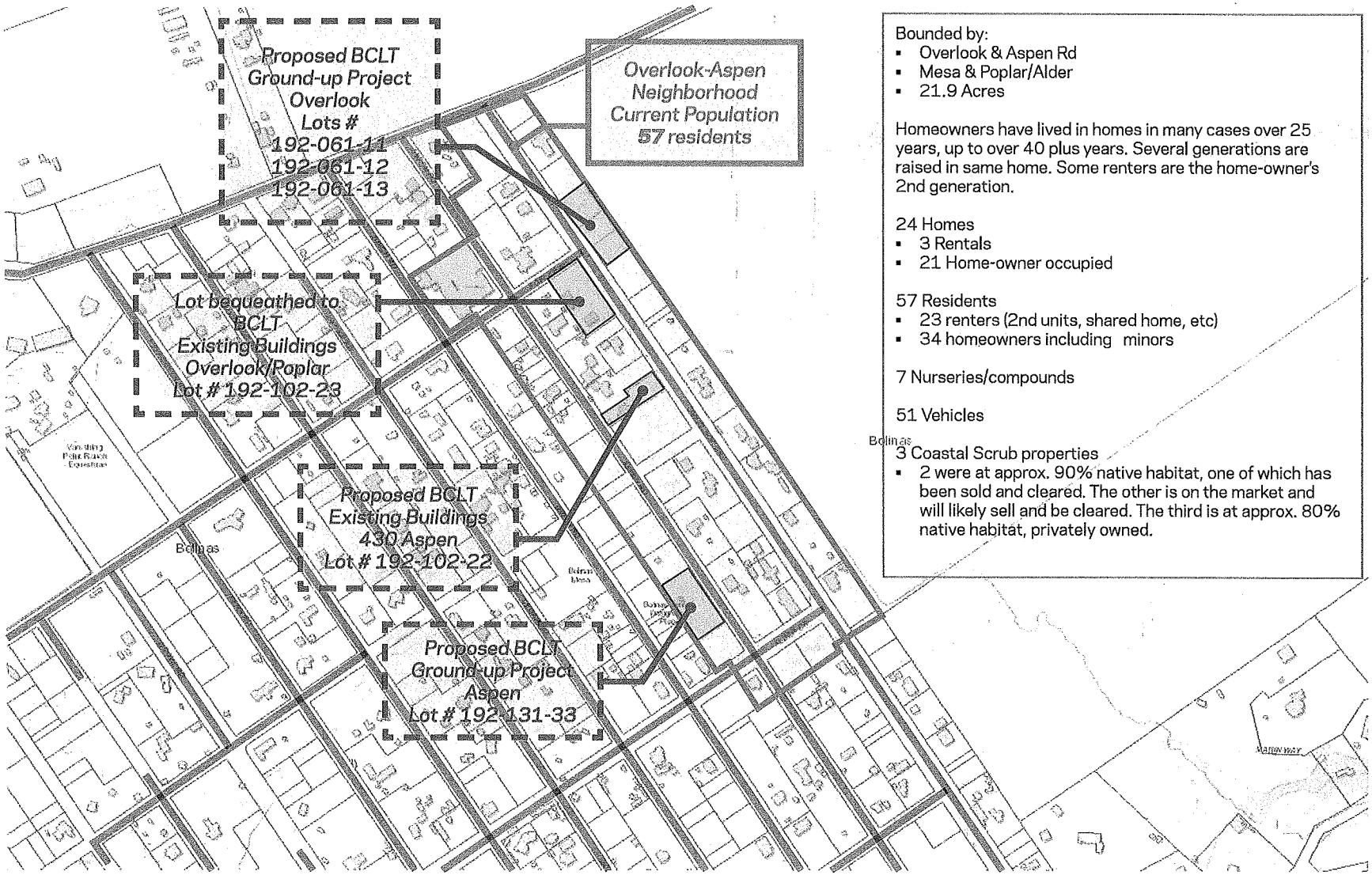
7 Nurseries/compounds

51 Vehicles

3 Coastal Scrub properties
- 2 were at approx. 90% native habitat, one of which has been sold and cleared. The other is on the market and will likely sell and be cleared. The third is at approx. 80% native habitat, privately owned.

2018.06.06

OVERLOOK-ASPEN NEIGHBORHOOD INFORMATION



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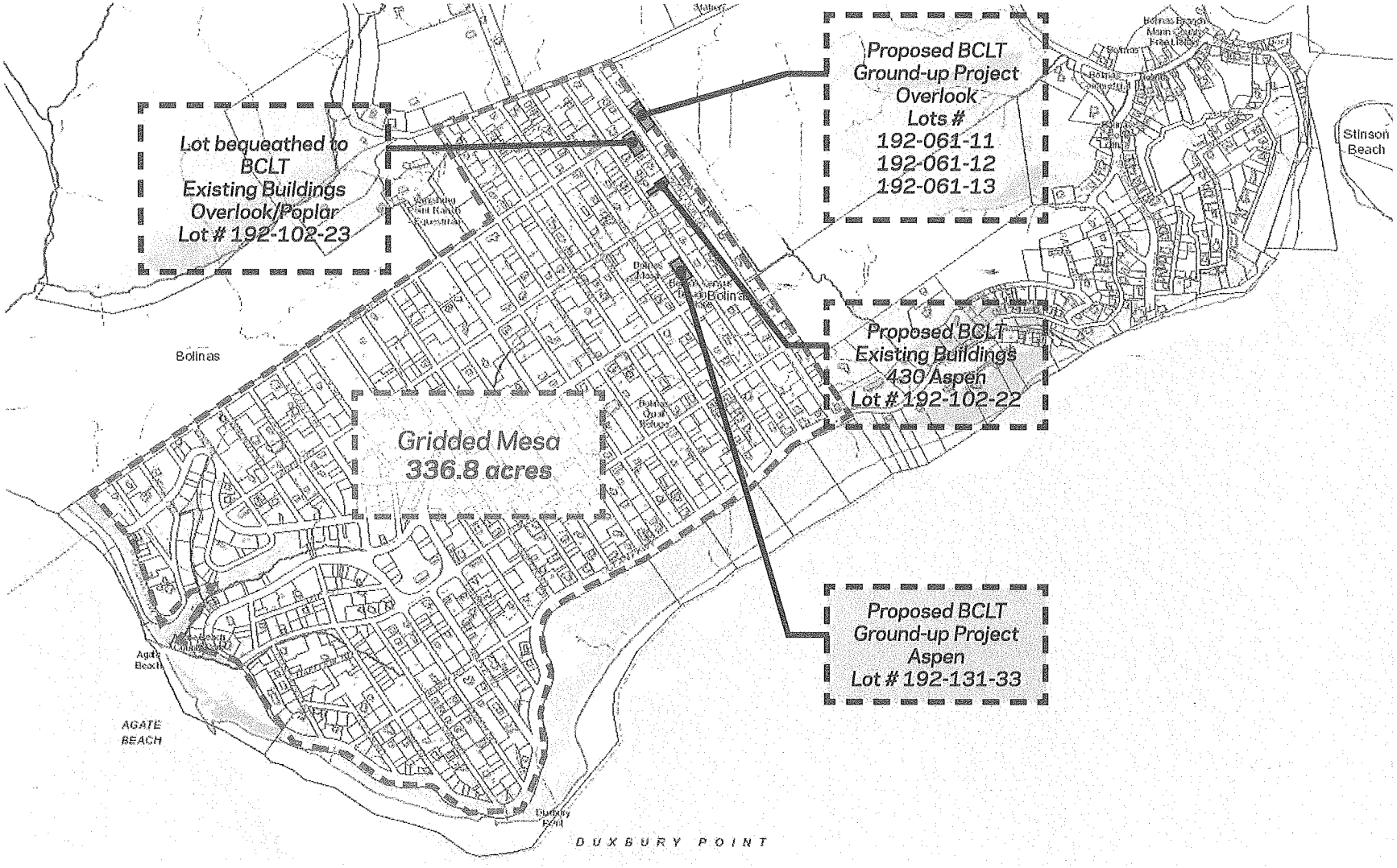
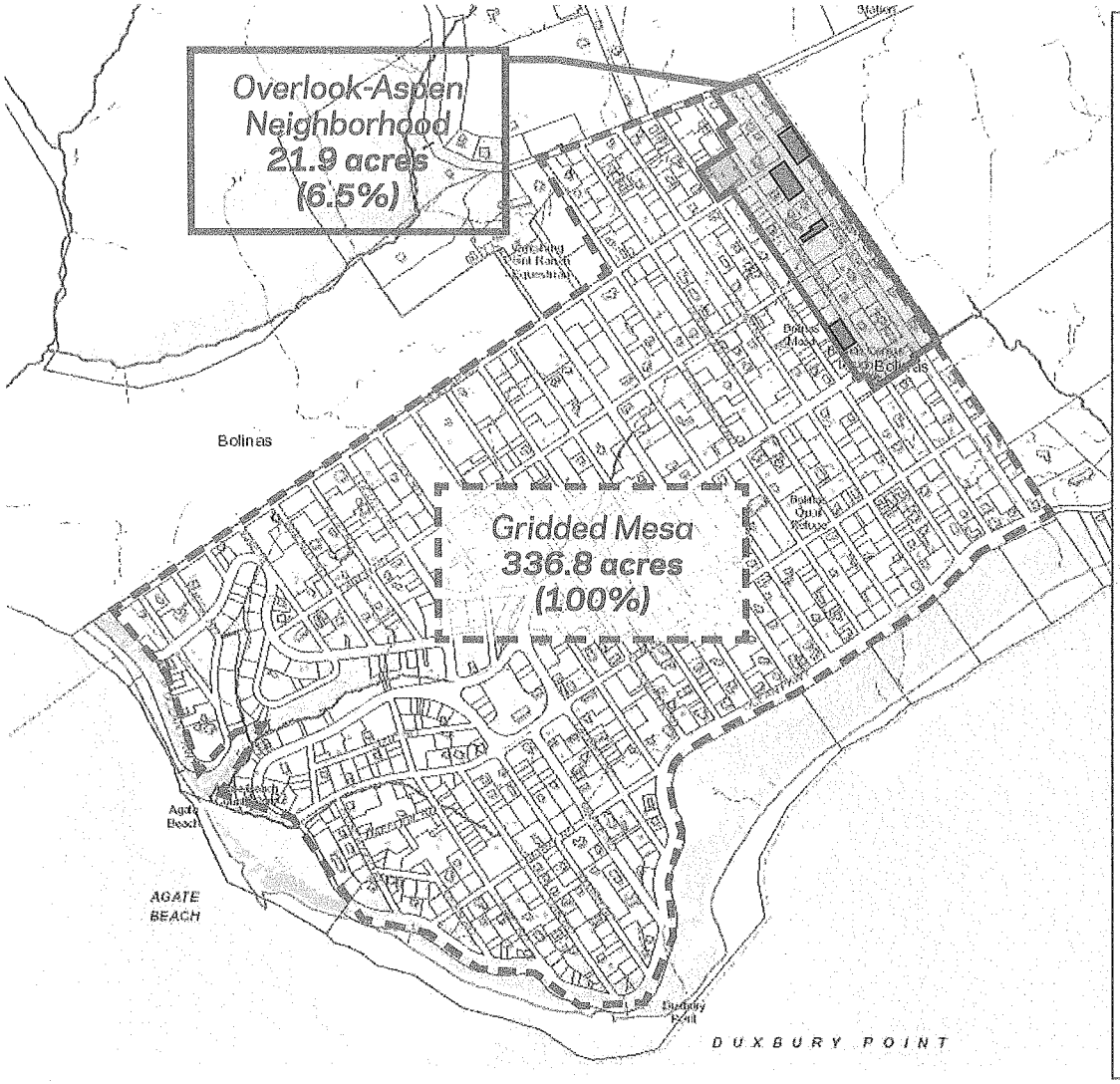
2018.05.18

PROPOSED BOLINAS COMMUNITY LAND TRUST (BCLT) PROJECTS IN GRIDDED MESA



2018.05.18

SUMMARY OF COMMUNITY ASSESSMENT OF BCLT PROPOSED DEVELOPMENTS



BCLT IS ACTING AS A HOUSING DEVELOPER IN BOLINAS. THEY SHOULD ADHERE TO ESTABLISHED URBAN PLANNING GUIDELINES, THE MARIN DEVELOPMENT CODE, AND CEQA REGULATIONS.

THE BROAD SCOPE OF BCLT'S MESA PROJECTS REQUIRE BCLT TO UNDERTAKE DETAILED ENVIRONMENTAL IMPACT REPORTS FOR EACH DEVELOPMENT SINCE THEY WILL HAVE NEGATIVE EFFECTS ON:

- BIOLOGICAL RESOURCES
- LAND USE/PLANNING
- TRANSPORTATION/TRAFFIC
- UTILITY/SERVICE SYSTEMS
- NOISE

BCLT IS PROPOSING A 53% INCREASE IN POPULATION DENSITY FOR A 6.5% AREA OF THE GRIDDED MESA WITHOUT SEWER SYSTEMS, LIMITED WATER, AND UNIMPROVED GRAVEL ROADS.

HOUSING AND GOOD LAND USE PLANNING ARE NOT MUTUALLY EXCLUSIVE