

## RESOLUTION NO. RS2021-

### **A Resolution authorizing the Metropolitan Development and Housing Agency to negotiate and enter into a PILOT Agreement and accept payments in lieu of ad valorem taxes with respect to a multi-family housing project located at 101 Factory Street, known as Chestnut Hill.**

WHEREAS, Tennessee Code Annotated 13-20-104 ("the Act") authorizes a Metropolitan Government for which a housing authority is created to delegate to such housing authority the authority to negotiate and accept payments in lieu of ad valorem taxes ("In Lieu of Tax Payments") from the housing authority's lessees operating low-income housing tax credit property ("LIHTC Property") upon a finding that such payments are deemed to be in furtherance of the housing authority's public purposes; and

WHEREAS, the Metropolitan Development and Housing Agency ("MDHA") was created pursuant to state law and is the housing authority for the Metropolitan Government; and

WHEREAS, by Ordinance No. BL2015-1281 as amended by Ordinance Nos. BL2016-334 and BL2016-435 (the "LIHTC Ordinance"), the Metropolitan Council (i) authorized MDHA to negotiate and accept In Lieu of Tax Payments from qualified lessees of LIHTC Property owned by MDHA and (ii) approved MDHA's program for determining qualifications and eligibility for such In Lieu of Tax Payments, a copy of which was attached to the LIHTC Ordinance (the "PILOT Program"); and

WHEREAS, the Metropolitan Council approved an annual tax abatement not to exceed \$2,500,000; and

WHEREAS, a balance in the amount of annual funding available for LIHTC's is currently \$563,611 after accounting for the following projects: Poplar Bend (\$440,861), Riverwood Tower (\$31,616), Chippington Towers (\$405,929), Shelby House (\$242,296), 900 Dickerson (\$412,413), Fairgrounds Site C (204,329), Richland Hills (198,945).

WHEREAS, ECG Chestnut Hill, LP ("Owner") plans to acquire land located at 101 Factory Street (the "Project Site"); and

WHEREAS, Owner has proposed that an apartment project consisting of approximately 204 units restricted to individuals and families earning 60% or less of the Area Median Income (AMI) utilizing income averaging, known as Chestnut Hill, be constructed on the Project Site by Owner and operated as a LIHTC Property (the "Project"); and

WHEREAS, the Board of Commissioners of MDHA has approved MDHA's taking title to the Project Site for the purpose of facilitating an in lieu of tax agreement with the Owner, a copy of which is attached hereto as Exhibit A (the "PILOT Agreement") and authorized the Executive Director of MDHA to take all actions on behalf of MDHA to (i) take title to the property, (ii) lease the Project Site and the Project to Owner, (iii) enter into the PILOT Agreement, and (iv) submit the PILOT Agreement to the Metropolitan Council for approval as required by the Act and the PILOT Ordinance; and

WHEREAS, the PILOT Agreement has been submitted to the Metropolitan Planning Commission which has recommended approval and provided a list of other LIHTC properties in the census tract; and

WHEREAS, MDHA has certified that the Project is consistent with MDHA's Consolidated Plan for Nashville-Davidson County and that there are no other PILOT agreements in effect in the same census tract of the Project Site; and

WHEREAS, those portions of the Project and the Project Site owned by MDHA will be exempt from ad valorem taxation pursuant to Tennessee Code Annotated 67-5-206; and

WHEREAS, the Owner has agreed to make annual PILOT payments payable to the Metropolitan Government in accordance with the attached PILOT Agreement; and

WHEREAS, the value of the project when completed is estimated to be \$25,924,326 based on an income evaluation of the Project and its corresponding tax credits;

WHEREAS, for the purpose of the \$2,500,000 annual cap set forth in the PILOT Ordinance, the difference between the annual in lieu of tax payment payable under the PILOT Agreement and the projected real property ad valorem taxes that would otherwise be payable with respect to the Project in the first tax year after completion of the Project is \$322,957; and

WHEREAS, MDHA's entering into the PILOT Agreement to facilitate the Project is in the interest and welfare of the citizens of the Metropolitan Government and will further MDHA's public purposes by providing financial incentives for construction and rehabilitation of affordable housing units through the federally sponsored low income housing tax credit program resulting in a positive impact on the supply of affordable housing in Davidson County; and

WHEREAS, MDHA has submitted the PILOT Agreement to the Metropolitan Council for approval as required by the Act and the PILOT Ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: That the Council of the Metropolitan Government finds that MDHA's entering into the PILOT Agreement and acceptance of payments in lieu of ad valorem taxes with respect to the Project Site and the Project is in furtherance of the MDHA's public purpose of providing for and facilitating an adequate supply of affordable housing and in furtherance of the other public purposes described above.

Section 2: That the PILOT Agreement and the Project comply with the PILOT Ordinance and the PILOT Program.

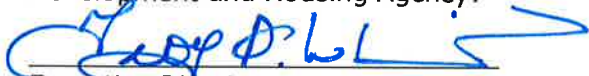
Section 3: The Council of the Metropolitan Government finds that for the purpose of the \$2,500,000 annual cap set forth in the PILOT Ordinance, the difference between the annual in lieu of tax payment payable under the attached PILOT Agreement and the projected real property ad valorem taxes that would otherwise be payable with respect to the Project in the first tax year after completion of the Project is \$322,957.

Section 4: That the Council of the Metropolitan Government hereby approves the terms of MDHA's PILOT Agreement with the Owner in the form attached as Exhibit A.

Section 5: That this Resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED by Metropolitan

Development and Housing Agency:

  
Executive Director

INTRODUCED BY:


\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO AVAILABILITY  
OF FUNDS:

DocuSigned by:  
  
79E88C7F7ECT4RZ  
Finance Director

Member(s) of Council

APPROVED AS TO LEGALITY OF  
FORM AND COMPOSITION

DocuSigned by:  
  
DC0880081B84CA  
MDHA Attorney

## PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 27 day of October, 2021, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and ECG Chestnut Hill, LP (the “**Owner**”).

### WITNESSETH:

WHEREAS, MDHA is a public body and a body corporate and politic organized under the Tennessee Housing Authorities Law, Tenn. Code Ann. §13-20-101, et seq., (the “**Act**”);

WHEREAS, §13-20-104(f) of the Act provides that a metropolitan government may delegate to a housing authority the authority to negotiate and accept in lieu of ad valorem taxes (“**In Lieu of Tax Payments**”) from a party that operates a low income housing tax credit (“**LIHTC**”) property, as such term is defined in the Act (a “**LIHTC Property**”) on property leased by such party from a housing authority;

WHEREAS, MDHA is the housing authority, as defined in the Act, for the Metropolitan Government of Nashville and Davidson County, Tennessee (the “**Metropolitan Government**”);

WHEREAS, by Ordinance No. BL2015-1281 as amended by Ordinance No. BL2016-334 (collectively, the “**PILOT Ordinance**”), the Metropolitan Government (i) authorized MDHA to negotiate and accept In Lieu of Tax Payments from lessees of LIHTC Property owned by MDHA, and (ii) approved MDHA’s program for determining qualifications and eligibility for such In Lieu of Tax Payments (the “**PILOT Program**”);

WHEREAS, Owner controls land located at 101 Factory Street, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to construct a 204 unit apartment project, known as Chestnut Hill, on the Project Site and operate it as a LIHTC Property (the “**Project**”);

WHEREAS, MDHA is authorized by law and has deemed it necessary and desirable to acquire the Project Site for the purpose of facilitating the Project in accordance with the PILOT Program, the PILOT Ordinance and the Act;

WHEREAS, the Board of Commissioners of MDHA approved MDHA’s purchase of the Project Site and authorized the Executive Director of MDHA to take all actions on behalf of MDHA to undertake the following:

- (A) acquire the Project Site;
- (B) enter into a lease with Owner pursuant to which Owner will (i) lease the Project Site and the Project from MDHA with MDHA having the right to cause Owner to purchase the Project Site and the Project from MDHA upon expiration of the tenth (10<sup>th</sup>) Tax Year, (ii) construct the Project on the Project Site, and (iii) by recorded agreement, commit to operate the Project as a LIHTC Property in accordance with the requirements of the Internal Revenue Code and the Tennessee Housing Development Agency (“THDA”) for a minimum period of fifteen (15) years after the Project is complete (the “**Project Lease**”);
- (C) enter into this PILOT Agreement;
- (D) submit this PILOT Agreement to the Metropolitan Planning Commission to obtain a recommendation of approval or disapproval, as envisioned by the PILOT Ordinance;
- (E) submit this PILOT Agreement to the Metropolitan Council of the Metropolitan Government (the “**Metropolitan Council**”) for approval as required by the PILOT Ordinance; and
- (F) take such other action and execute such other documents as the Executive Director deems necessary or desirable to facilitate construction of the Project and the transactions described above consistent with this PILOT Agreement, the Act, the Project Lease, the Metropolitan Ordinance and the PILOT Program (including MDHA’s application and policies and procedures related thereto).

WHEREAS, MDHA intends to acquire the Project Site from Owner and will concurrently enter into the Project Lease; and

WHEREAS, Owner has agreed to make In Lieu of Tax Payments with respect to the Project as described herein.

NOW, THEREFORE, for and in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, and as an inducement to Owner to construct the Project and operate the Project as LIHTC Property, MDHA and Owner agree as follows:

1. With respect to Project Site and the real property component of the Project, Owner shall make In Lieu of Tax payments to MDHA who will then remit the payment to the Metropolitan Government, as follows:

(a) The In Lieu of Tax Payments shall be equal to the Applicable Ad Valorem Taxes, as defined below, through and including the calendar year in which the construction of the Project is completed.

(b) Commencing on January 1<sup>st</sup> of the calendar year following the year in which the Project is placed into service (“**Tax Year 1**”) and each tax year subsequent to the Tax Year 1 (Tax Year 1 and each subsequent tax year being referred to herein as a “**Tax Year**”) through the tenth (10<sup>th</sup>) Tax Year, in Lieu of Tax Payments shall be as follows:

1	\$18,000
2	\$18,540
3	\$19,096
4	\$19,669
5	\$20,259
6	\$20,867
7	\$21,493
8	\$22,138
9	\$22,802
10	\$23,486

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Subject to Section 1(e) below, the In Lieu of Tax Payments shall be fixed and shall not fluctuate with the amount of the assessment for the Project Site or the Project or the tax rate in effect for any Tax Year. The amount of the In Lieu of Tax Payments is approximately equal to \$88 per unit within the Project, with a three percent (3%) annual increase. In Lieu of Tax Payments for each Tax Year shall be paid when due but in any event not later than the date on which the Applicable Ad Valorem Taxes would become delinquent.

(c) After the tenth Tax Year, this Agreement shall expire and Owner shall pay 100% of the Applicable Ad Valorem Taxes.

(d) The term “**Applicable Ad Valorem Taxes**” shall mean any real property ad valorem taxes that, but for ownership of the Project Site and the Project by MDHA, would have been due and payable to the Metropolitan Government pursuant to Tenn. Code Ann. § 67-5-102 with respect to the Project Site and the Project.

(e) Notwithstanding anything contained herein to the contrary, if THDA or the IRS determines that the Project is not in compliance with LIHTC requirements and is therefore not operated as a LIHTC Property at any time during a Tax Year, and Owner has failed to cure such default within any specified cure period, Owner shall pay 100% of the Applicable Ad Valorem Taxes with respect to such Tax Year.

(f) Notwithstanding anything contained herein to the contrary, Owner shall pay 100% of the Applicable Ad Valorem Taxes for the periods before Tax Year 1 and after Tax Year 10, if the Project Lease is in effect during such periods.

2. Commencing in Tax Year 1 and in each Tax Year subsequent through the (10<sup>th</sup>) Tax Year, Owner shall provide to MDHA an annual report not later than September 1<sup>st</sup> of each Tax Year containing the following information:

(a) The value of the Project, as estimated by the Owner;

(b) The date and remaining term of the Project Lease;

(c) The amount of In Lieu of Tax Payments payable in such Tax Year;

(d) The date in which the Project is scheduled to return to the regular tax rolls and be eligible to pay 100% of the Applicable Ad Valorem Taxes following the tenth (10<sup>th</sup>) Tax Year;

(e) A calculation of the Applicable Ad Valorem Taxes for such Tax Year that, but for ownership of the Project Site and the Project by MDHA, would have been due and payable to the Metropolitan Government pursuant to Tenn. Code Ann. § 67-5-102 with respect to the Project Site and the Project;

(f) A copy of the Owner's most recent Annual Certification as submitted to THDA, certifying compliance with LIHTC requirements; and

(g) A copy of any monitoring or compliance reports provided by THDA to the Owner during such Tax Year.

3. Commencing with Tax Year 1 and each Tax Year thereafter, Owner shall pay to MDHA a monitoring and reporting fee to be set by MDHA but not to exceed five percent (5%) of the amount In Lieu of Tax Payment due with respect to such Tax Year (the "Annual MDHA Fee"). The Annual MDHA Fee shall be paid not later than fifteenth (15) day of such Tax Year. Unpaid amounts shall bear interest at the rate of four percent (4%) in excess of the average prime rate of interest published from time to time by the Federal Reserve or similar commonly accepted reporting organization if the Federal Reserve ceased to publish such information. Owner's failure to pay the Annual MDHA Fee within thirty (30) days after written notice from MDHA shall constitute a default under this PILOT Agreement in which event Owner shall pay 100% of the Applicable Tax Rate for such Tax Year instead of the In Lieu of

Tax Payment set forth above.

4. Owner's payment of the In Lieu of Tax Payments shall satisfy the requirement in Tenn. Code Ann. § 67-5-206(a) that MDHA pay the Metropolitan Government for services, improvements or facilities furnished by the Metropolitan Government for the benefit of the Project.

5. This PILOT Agreement may not be assigned to any party other than the assignee of the lessee's interest under the PILOT Lease pursuant to an assignment that is made in accordance with the PILOT Lease, including MDHA consent requirements, if any, specified therein. Each permitted assignee shall assume Owner's obligations under this PILOT Agreement concurrent with the assignment of the PILOT Lease.

6. This PILOT Agreement shall be construed in accordance with the laws of the State of Tennessee, and if any one or more of the provisions of this PILOT Agreement shall be held invalid, illegal or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, legality or unenforceability shall not affect any other provision hereof, but this PILOT Agreement shall be construed the same as if such invalid, illegal or unenforceable provision had never been contained herein. This PILOT Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

7. This PILOT Agreement is subject to and conditioned upon (i) approval of this PILOT Agreement by the Metropolitan Council as required by the PILOT Ordinance, (ii) Owner's satisfaction of all conditions and requirements imposed by MDHA in connection this PILOT Agreement or the transaction contemplated herein, (iii) MDHA taking title to the Property and entering into a mutually acceptable Project Lease, and (iv) THDA's approval of the Project and allocation of low income housing tax credits, to the extent such approval or allocation has not been received as of the date of this PILOT Agreement.

8. MDHA shall remit all In Lieu of Tax Payments received in connection with the Project and/or the Project Lease to the Metropolitan Government within fifteen (15) days of receipt.



IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the day and date first above written.

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY

By: 

Title: Executive Director

ECG Chestnut Hill, LP

By: 

Title: Managing Member of ECG Chestnut Hill, GP, LLC

FILED WITH THE METROPOLITAN CLERK

\_\_\_\_\_  
Elizabeth Waites

\_\_\_\_\_  
Date

## EXHIBIT A

Being a tract of land in the 17th Council District, Nashville, Davidson County, Tennessee. Said tract being bounded on the north by the southern Right of Way (ROW) of Factory Street, bounded on the east by G. Kevin King as recorded in Instrument Number 201506110055126, Register's Office of Davidson County, Tennessee (RODC), bounded on the south by the northern ROW of Culvert Street, and bounded on the west by the eastern ROW of Geysler Street. Said tract being described as follows:

POINT OF BEGINNING being a found concrete monument lying on the southern ROW of said Factory Street and being the northwest corner of said King; thence leaving said ROW and along the common line of said King South  $05^{\circ}05'23''$  West 325.87 feet to a set iron rod with cap lying on the northern ROW of said Culvert Street; thence along said ROW of Culvert Street with the following: North  $78^{\circ}27'44''$  West 505.75 feet to a set iron rod with cap; thence with a curve to the right having an arc length of 36.45 feet, a radius of 25.00 feet, a central angle of  $83^{\circ}32'40''$  and having a chord bearing and distance of North  $36^{\circ}41'24''$  West 33.31 feet to a found concrete monument lying on said eastern ROW of Geysler Street; thence along said ROW of Geysler Street with the following: North  $05^{\circ}04'56''$  East 489.24 feet to a found  $5/8''$  iron rod; thence South  $83^{\circ}47'57''$  East 9.24 feet to a found  $1/2''$  iron rod; thence North  $06^{\circ}12'03''$  East 59.24 feet to a found iron rod with cap; thence with a curve to the right having an arc length of 81.94 feet, a radius of 40.00 feet, a central angle of  $117^{\circ}22'27''$  and having a chord bearing and distance of North  $64^{\circ}53'16''$  East 68.35 feet to a found  $3/8''$  iron rod and lying on said southern ROW of Factory Street; thence along said ROW of Factory Street with the following: with a curve to the right having an arc length of 84.44 feet, a radius of 547.96 feet, a central angle of  $08^{\circ}49'46''$  and having a chord bearing and distance of South  $52^{\circ}00'37''$  East 84.36 feet to a found concrete monument; thence South  $47^{\circ}35'44''$  East 462.03 feet to a found iron rod with cap; thence with a curve to the left having an arc length of 21.17 feet, a radius of 597.96 feet, a central angle of  $02^{\circ}01'43''$  and having a chord bearing and distance of South  $48^{\circ}36'36''$  East 21.17 feet to the point of beginning.

Tract contains 256,429 square feet or 5.89 acres. Bearings based on Tennessee State Plane Coordinate System. Said Tract being described according to a survey by L. Brandon Lambert, TRLS# 2828, of Datalyst Design Group, 5100 Tennessee Ave., Nashville, TN 37209, dated September 14, 2020, Project No. 554920020.



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY  
Planning Department  
Metro Office Building  
800 Second Avenue South  
Nashville, Tennessee 37201  
615.862.7150  
615.862.7209

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# Memo

**To:** MDHA  
**From:** Metropolitan Nashville Planning Department  
**Date:** October 6, 2021  
**Re:** Planning Commission Recommendation for PILOT Agreement

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This memo fulfills the Planning Commission obligations as outlined in the MDHA Housing Tax Credit PILOT Program General Program Description which was attached as Exhibit A to BL2016-435. The memo consists of two parts.

## **PART I: RECOMMENDATION ON GENERAL PLAN CONSISTENCY**

**Project:** **Chestnut Hill – 101 Factory (Parcel 10508024900)**  
204 multi-family residential units  
All 204 units income and rent restricted to 60% of AMI

**Zoning:** Specific Plan-Mixed Residential (SP-MR) is a zoning district category that provides for additional flexibility of design, including the relationship of streets to buildings, to provide the ability to implement the specific details of the General Plan.

**Policy:** T4 Urban Mixed Use Neighborhood (T4 MU) is intended to maintain, enhance, and create urban, mixed use neighborhoods with a development pattern that contains a variety of housing along with mixed use, commercial, institutional, and even light industrial development. T4 MU areas are served by high levels of connectivity with complete street networks, sidewalks, bikeways, and existing or planned mass transit.

Conservation (CO): is intended to preserve environmentally sensitive land features through protection and remediation. CO policy applies in all Transect Categories except T1 Natural, T5 Center, and T6 Downtown. CO policy identifies land with sensitive environmental features including, but not limited to, steep slopes, floodway/floodplains, rare or special plant or animal habitats, wetlands, and unstable or problem soils. The guidance for preserving or enhancing these features varies with what Transect they are in and whether or not they have already been disturbed.

### **Project Details:**

The 5.9 acre subject site is located on the south side of Factory Street, east of Lewis Street. The site is currently vacant. The site has frontage along three streets. The northern property line abuts Factory Street, the western property line abuts Geyser Street, and the southern property line abuts Culvert Street.

The proposed site plan shows vehicular entrances on Factory Street and Geyser Street. The proposed units are located in three buildings on the site. Two buildings front Factory Street and the third building is

located on the southern portion of the site, fronting Geyser Street and Culvert Street. Surface parking is located interior to the site.

The proposed development would consist of 6 studio units, 50 1-bedroom units, 102 2-bedroom units, and 46 3-bedroom units for a total of 204 units. All units would be income and rent restricted to 60 percent of area median income (AMI). Project amenities include a clubhouse, community room, dog park, fitness center, and on-site maintenance and management.

**Planning Department Analysis:** The Specific Plan (SP) zoning on the site was approved in 2021 under Case Numbers 2020SP-048-001 and BL2021-601. The approved plan includes 204 units in 3 buildings across the site. The plan submitted with the application material is consistent with the approved preliminary SP plan.

The primary policy on the site is Urban Mixed-Use Neighborhood (T4 MU). The intent of the policy is to maintain, enhance, and create urban, mixed-use neighborhoods with a diverse mix of moderate to high density residential, commercial, office, and light industrial land uses. The proposed development is consistent with the intent to provide moderate to high-density residential development. The site is located south of the Trevecca Nazarene campus and near several corridors, providing access to services, transit, and employment opportunities.

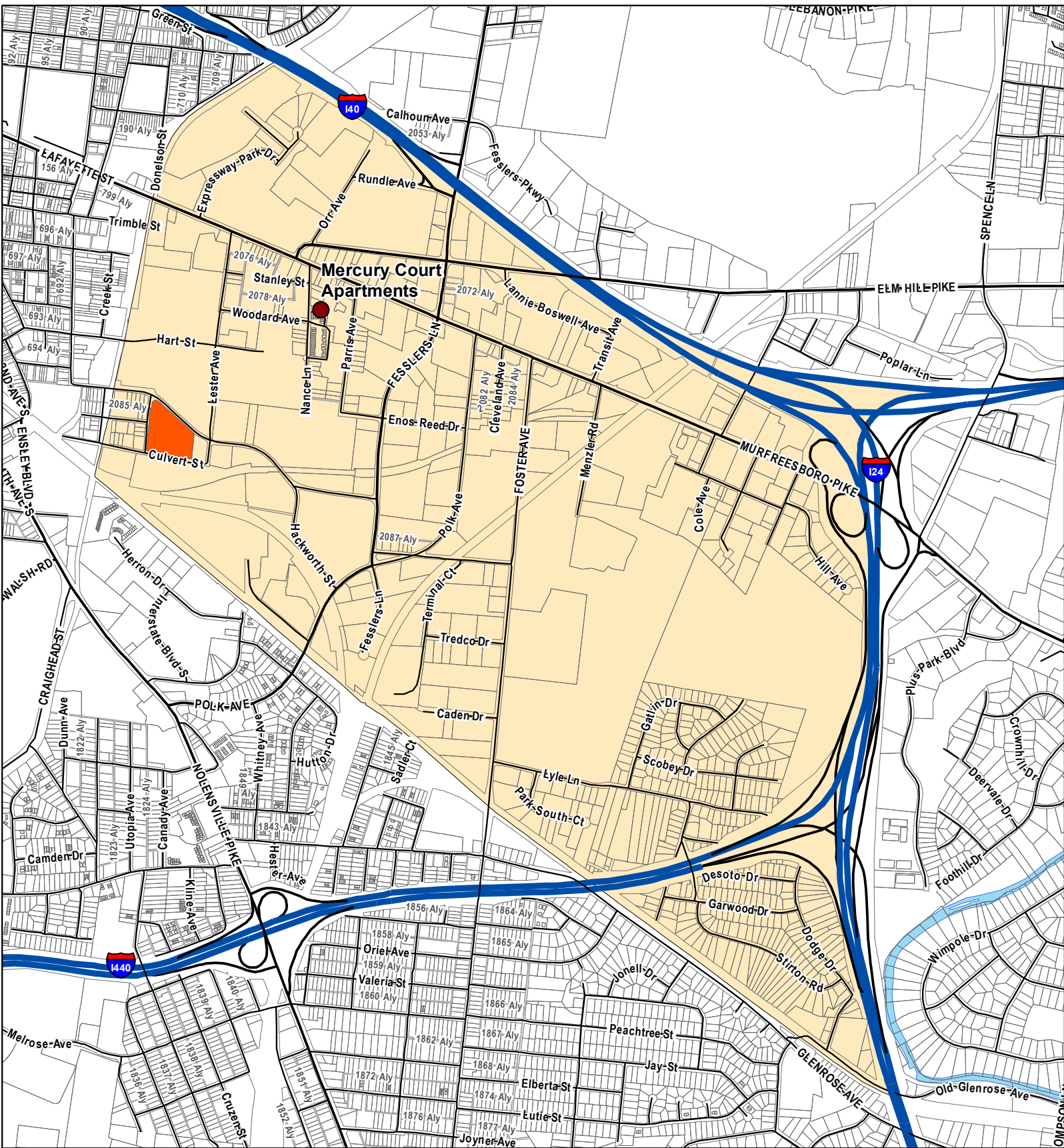
The Conservation (CO) Policy on the site is limited to small areas of slope, not likely to be negatively impacted by the proposed development.

**Planning Determination:** The proposed unit count is consistent with approved SP plan and the policy on site to create high density residential. This project is consistent with the NashvilleNext adopted general plan and the Community Character Policies.

## **PART II: LIST OF FEDERALLY SUBSIDIZED MULTI-FAMILY PROPERTIES WITHIN THE CENSUS TRACT**

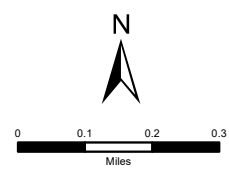
See attached map.

# Federally Subsidized Multi-Family Projects within Census Tract 47037015900



Low Income Tax Credit Project	# of Units
Mercury Court Apartments	20

- Low Income Tax Credit Project
- Parcel 10508024900



**A Resolution authorizing the Metropolitan Development and Housing Agency to negotiate and enter into a PILOT Agreement and accept payments in lieu of ad valorem taxes with respect to a multi-family housing project located at 101 Factory Street, known as Chestnut Hill.**