

PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 19 day of October, 2022, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and HV Land Co, 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 plans to acquire land located at 8101 McCrory Lane, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to construct a 251 unit apartment project, known as Clarksville Pike, 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 (10th) 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 1st 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 (10th) **Tax Year**, in Lieu of Tax Payments shall be as follows:

1	\$37,650
2	\$38,780
3	\$39,943
4	\$41,141
5	\$42,375
6	\$43,647
7	\$44,956
8	\$46,305
9	\$47,694
10	\$49,125

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 \$150 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 (10th) Tax Year, Owner shall provide to MDHA an annual report not later than September 1st 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 (10th) 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

HV Land Co, LP

By: 

Title: Managing Member of Sole General Partner

FILED WITH THE METROPOLITAN CLERK

Austin Kyle

Date

EXHIBIT A

Parcel 2 (Section 1)

BEING A PARCEL OF LAND IN THE SECOND CIVIL DISTRICT, THIRTY-FIFTH COUNCILMANIC DISTRICT, DAVIDSON COUNTY, TENNESSEE, LYING SOUTH OF McCrory Lane AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 3/4" IRON PIN FOUND IN THE SOUTH RIGHT OF WAY LINE OF McCrory Lane, SAID IRON PIN BEING THE NORTHWEST CORNER OF THE JETTON & LEVAN PROPERTY, RECORDED IN DEED BOOK 20020619 0074300; THENCE LEAVING SAID RIGHT OF WAY LINE WITH THE SAID JETTON AND LEVAN PROPERTY S 25°52'31" W A DISTANCE OF 911.61 FEET TO A 3/4" IRON PIN FOUND; THENCE ACROSS THE PARENT TRACT, AS FOLLOWS: S 25°50'45" W A DISTANCE OF 292.00 FEET; THENCE S 84°56'23" W A DISTANCE OF 646.96 FEET; THENCE N 48°28'23" W A DISTANCE OF 670.56 FEET; THENCE N 57°22'35" E A DISTANCE OF 576.36 FEET; THENCE S 89°21'58" E A DISTANCE OF 301.35 FEET; THENCE N 64°57'14" E A DISTANCE OF 157.47 FEET; THENCE N 35°48'31" E A DISTANCE OF 539.63 FEET TO A POINT IN THE SOUTH RIGHT OF WAY LINE OF McCrory Lane; THENCE WITH SAID SOUTH LINE, AS FOLLOWS: WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 15.58 FEET, WITH A RADIUS OF 1454.37 FEET, WITH A CHORD BEARING OF S 73°45'01" E, WITH A CHORD LENGTH OF 15.58 FEET TO A 1" IRON PIN FOUND; THENCE S 74°00'34" E A DISTANCE OF 258.48 FEET TO A 3/4" IRON PIN FOUND; THENCE N 15°58'21" E A DISTANCE OF 4.97 FEET; THENCE S 74°18'49" E A DISTANCE OF 167.88 FEET TO THE POINT OF BEGINNING, HAVING AN AREA OF 23.51 ACRES, MORE OR LESS.

BEING DESCRIBED ACCORDING TO A SURVEY PREPARED BY KENNETH A. BAU, RLS# 2019, WITH YOUNG-HOBBS AND ASSOCIATES, DATED 01-25-2021, LAST REVISED 06-29-2021, YHA PROJECT # 251-20.

BEING part of the same property conveyed to McCrory Land, LLC, a Tennessee limited liability company by Special Warranty Deed from Biltmore Ridge, LLC, a Tennessee limited liability company, of record in Instrument No. 20210713-0093899 in the Office of the Register of Deeds for Davidson County, Tennessee.

Certification of Consistency with the Consolidated Plan

U.S. Department of Housing
and Urban Development

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan.
(Type or clearly print the following information:)

Applicant Name: _____

Project Name: _____

Location of the Project: _____

Name of the Federal
Program to which the
applicant is applying: _____

Name of
Certifying Jurisdiction: _____

Certifying Official
of the Jurisdiction
Name: _____

Title: _____

Signature: *Emel Alexander* _____

Date: _____



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
Planning Department
Metro Office Building
800 President Ronald Reagan Way
Nashville, Tennessee 37210
615.862.7150
615.862.7209

Memo

To: MDHA
From: Metropolitan Nashville Planning Department
Date: October 18, 2022
Re: Planning Commission Recommendation for PILOT Agreement

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: **HV Land (Parcel 14000021600, 0 McCrory)**
Multi-family development, 251 units income and rent restricted
Averaging 60% AMI

Zoning: Mixed Use Limited (MUL) is intended for a moderate intensity mixture of residential, retail, restaurant, and office uses.

Multi-Family Residential (RM2) is intended for single-family, duplex, and multi-family dwellings at a density of two dwelling units per acre.

Overlay: Planned Unit Development Overlay District (PUD) is an alternative zoning process that allows for the development of land in a well-planned and coordinated manner, providing opportunities for more efficient utilization of land than would otherwise be permitted by the conventional zoning provisions of Title 17. The PUD district may permit a greater mixing of land uses not easily accomplished by the application of conventional zoning district boundaries, or a framework for coordinating the development of land with the provision of an adequate roadway system or essential utilities and services. In return, the PUD district provisions require a high standard for the protection and preservation of environmentally sensitive lands, well-planned living, working and shopping environments, and an assurance of adequate and timely provision of essential utilities and streets. *The PUD, commonly referred to as the Biltmore PUD, was approved for a wide range of residential units and non-residential uses across the PUD site.*

Policy: T3 Suburban Community Center (T3 CC) is intended to enhance and create suburban community centers that serve suburban communities generally within a 10 to 20 minute drive. They are pedestrian friendly areas, generally located at prominent intersections that contain mixed use, commercial and institutional land uses, with transitional residential land uses in mixed use buildings or serving as a transition to adjoining Community Character Policies. T3 CC areas are served by highly connected street networks, sidewalks and existing or planned mass transit leading to surrounding neighborhoods and open space. Infrastructure and transportation networks may be enhanced to improve pedestrian, bicycle, and vehicular connectivity.

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 site is approximately 23.5 acres located on the south side of McCrory Lane, south of Interstate 40. The property is currently undeveloped. The surrounding parcels are zoned MUL, RM2, and single-family residential (RS40). The surrounding parcels are primarily large parcels, mostly undeveloped with some properties developed with single-family residential uses.

The site plan submitted shows six multi-family structures throughout the site with associated leasing space and amenity areas. The unit mix includes 100 one-bedroom units, 82 two-bedroom units, and 69 three-bedroom units for a total of 251 units. All units are income and rent-restricted using income averaging of 60 percent of area median income (AMI). Unit amenities include walk-in closets, balcony/patio, garbage disposals, and spacious units. Site amenities include a clubhouse, exercise room, on-site management, on-site maintenance, bike storage and common area Wi-Fi. A final site plan for the PUD is currently under review with the Planning Department.

Planning Department Analysis:

There are two policies on the site. The first policy on the site is Suburban Community Center (T3 CC). The intent of the T3 CC policy is to create and enhance suburban community centers encouraging their development or redevelopment as intense mixed use areas that are compatible with the general character of suburban neighborhoods as characterized by the service area, development pattern, building form, land use, and associated public realm. Residential only developments are supported when the surrounding properties are lower intensity residential uses.

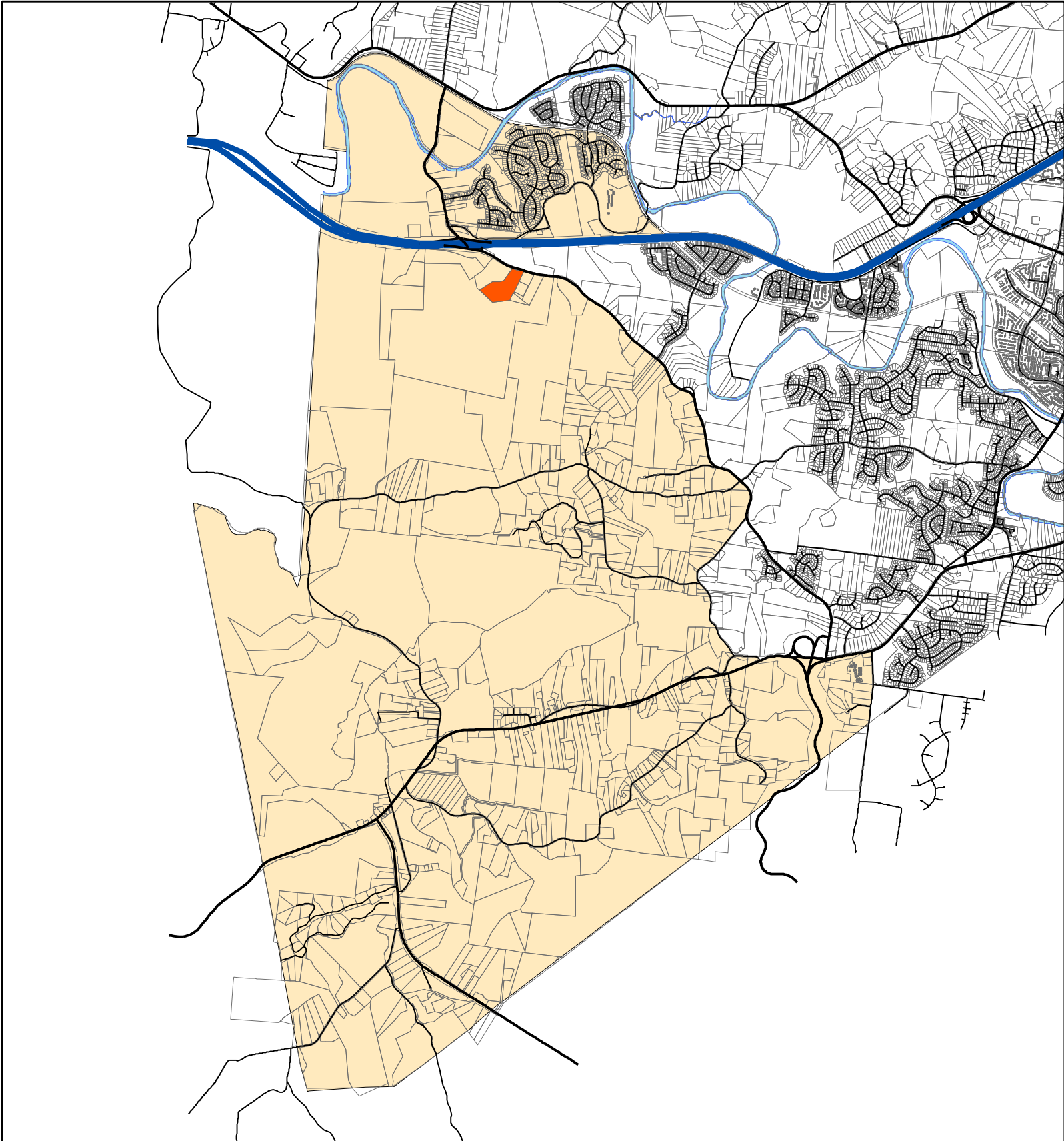
The second policy on the site is Conservation (CO) which is applied to the portions of the site with existing streamways and steep slopes ranging from 15 percent to 25 percent. The proposed site plan shows units distributed in a way that appears to minimize disturbance of the natural features. When there are Suburban and Conservation policies on the site, the policy guidance states that developing the site is a balancing act between permitting development while still focusing on preservation of the site.

Planning Determination: The proposed development on the site is consistent with the policies on the site. 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 47037018302



● Low Income Tax Credit Project

■ Map 140 Parcel 216

N

0 0.25 0.5 0.75 Miles