

PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the ____ day of July, 2022, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and WCO Dickerson Flats Apartments, 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 3551, 3557, and 3561 Dickerson Pike, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to construct a 167 unit apartment project, known as Dickerson Flats, 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	\$31,073
2	\$32,034
3	\$32,995
4	\$33,985
5	\$35,004
6	\$36,055
7	\$37,136
8	\$38,250
9	\$39,398
10	\$40,580

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 \$186 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.

EXHIBIT A

Legal Description

TRACT I (3557 and 3561 Dickerson Pike):

Land located in the 8th Councilmanic District of Nashville, Davidson County, Tennessee on Dickerson Pike near Due West Avenue. Being Lots 51-53 on the Map of M.M. Cuniff's Due West Valley Acres (not of record) and being more particularly described as follows:

Beginning in the easterly right-of-way of Dickerson Pike at a northwesterly corner of Woodbine Community Organization, Inc. property of record as Instrument No. 20191021-0107566, Register's Office of Davidson County (R.O.D.C.), said point of beginning being the southwesterly corner of the subject tract and having Tennessee State Plane Coordinate (NAD 83) values of North 700,417.91, East 1,745,090.98;

Thence with said right-of-way northwesterly with a curve to the right 298.92 feet to a southwesterly corner of William D. Willcutts property of record as Instrument No. 20141223-0117511, R.O.D.C., said curve having a radius of 11,420.00 feet, a central angle of 01° 29' 59" and a chord of 298.91 feet at North 01° 51' 00.5" West;

Thence with the southerly boundary of said Willcutts property South 83° 18' 04" East, 272.04 feet to the westerly boundary of GML, Inc. property of record in Deed Book 5055, Page 161, R.O.D.C. (TRACT III);

Thence with said westerly boundary of GML TRACT III South 14° 56' 37" West, 298.36 feet to an iron rod in the northerly boundary of the abovementioned Woodbine Community Organization, Inc. property;

Thence with said northerly boundary North 83° 23' 08" West, 184.82 feet to the beginning.

Containing 67,675 Square Feet or 1.55 Acres, more or less.

Being the same property conveyed by G.M.L., INC., a Missouri corporation, who took title as GML, Inc., a Missouri corporation, to Woodbine Community Organization (WCO), Inc., a Tennessee nonprofit corporation, by Special Warranty Deed of record in Instrument No. 20211102-0146664, in the Register's Office for Davidson County, Tennessee.

TRACT II (3551 Dickerson Pike):

Approximately 4.04 acres being more particularly described as follows:

Land in Davidson County, Tennessee, being the westerly parts of Lot Nos. 1, 2 and 3 on the Plan of A.C. Webb's Subdivision of the Demoville Tract, as of record in Plat Book 974, Page 27, Register's Office for Davidson County, Tennessee, described as follows:

Beginning in the center of Dickerson Pike at the corner of Lot Nos. 3 and 4; thence with the line between said two lots, South 88 deg. 15' East 686 feet to an iron pin and 15 inch elm at the

southwest corner of the property conveyed to Nathan Curry Smith, Jr. and wife, Jean Owen Smith, by deed from Maude A. J. Smith and husband, of record in Book 2103, Page 67, said Register's Office; thence with Smith's westerly line North 17 deg. East 267 feet to a 10 inch elm, Smith's northwest corner in the northerly line of Lot No. 1; thence with the northerly line of said lot, North 87 deg. 15' West 792 feet to the center of Dickerson Pike; thence with the center of said Pike, South 10 deg. East 272.8 feet to the beginning.

Being the same property conveyed by Nashville Christian Advancement Academy, Inc., a Tennessee corporation, to Woodbine Community Organization (WCO), Inc., a Tennessee nonprofit corporation, by Warranty Deed of record in Instrument No. 20191021-0107566, in the Register's Office for Davidson County, Tennessee.



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

Memo

To: MDHA
From: Metropolitan Nashville Planning Department
Date: July 7, 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: **Dickerson Flats (Parcels 05000005900, 05004001400, 05004001500)**
117 multi-family residential units and five detached group homes to
accommodate 50 individuals
Income and rent restricted units, some units targeting 60% AMI

Zoning: Commercial Service (CS) is intended for retail, consumer service, financial, restaurant, office, self-storage, light manufacturing and small warehouse uses.

Single-Family Residential (RS10) requires a minimum of 10,000 square foot lot and is intended for single-family dwellings at a density of 3.7 dwelling units per acre.

Policy: T3 Suburban Mixed Use Corridor (T3 CM) is intended to enhance suburban mixed use corridors by encouraging a greater mix of higher density residential and mixed use development along the corridor. T3 CM areas are located along pedestrian friendly, prominent arterial-boulevard and collector-avenue corridors that are served by multiple modes of transportation and are designed and operated to enable safe, attractive, and comfortable access and travel for all users. T3 CM areas provide high access management and are served by highly connected street networks, sidewalks, and existing or planned mass transit.

T3 Suburban Neighborhood Evolving (T3 NE) is intended to create and enhance suburban residential neighborhoods with more housing choices, improved pedestrian, bicycle and vehicular connectivity, and moderate density development patterns with moderate setbacks and spacing between buildings. T3 NE policy may be applied either to undeveloped or substantially under-developed “greenfield” areas or to developed areas where redevelopment and infill produce a different character that includes increased

housing diversity and connectivity. Successful infill and redevelopment in existing neighborhoods needs to take into account considerations such as timing and some elements of the existing developed character, such as the street network, block structure, and proximity to centers and corridors. T3 NE areas are developed with creative thinking in environmentally sensitive building and site development techniques to balance the increased growth and density with its impact on area streams and rivers.

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 comprised of three parcels on the east side of Dickerson Pike, south of the intersection of Dickerson Pike and West Due West Avenue. The parcels have a cumulative acreage of 5.7 acres. Two of the three parcels are zoned Commercial Services (CS) and the other parcel is split zoned CS along Dickerson Pike and Single-Family Residential (RS10) at the rear of the site. The surrounding parcels are zoned CS, RS10, RS10, and Multi-family Residential (RM2). The surrounding land uses include non-residential along the corridor, and single-family to the north, east, and south.

The site plan submitted shows three multi-family structures on the western portions of the site and five detached structures at the southeast portion of the site. According to the application materials, the multi-family structures will accommodate 117 multi-family units to be income and rent restricted at 60% AMI or less. The five detached structures are intended to function as group homes, to accommodate 50 individuals in “shared living supportive housing units.” The site plan shows a proposed new public road through the site which was approved by a concept plan heard at the Planning Commission in 2021. A development plan and final plat are still required for approval.

Planning Department Analysis:

The review of the Planning Department is focused on the proposed development against the intent of the policies on the site. A technical review from a site layout, subdivision regulations, and permitted land uses was not completed with this review. All proposed uses will need to be verified by the Codes Department prior to or with building permit submittals.

There are three policies on the site; the Suburban Mixed Use Corridor (T3 CM) Policy corresponds with the portion of the site zoned CS, the Suburban Neighborhood Evolving (T3 NE) Policy corresponds with the portion of the site zoned RS10, and the last policy, Conservation (CO), is on various portions of the site as a result of stream buffers, and slopes primarily ranging from 15 percent to 25 percent.

The intent of the T3 CM Policy is to enhance suburban mixed use corridors by encouraging a greater mix of higher-density residential and mixed use development along the corridor, prioritizing higher intensity mixed use and commercial uses at intersections with preference given to residential uses between intersections; creating buildings that are compatible with the general character of suburban neighborhoods; and a street design that moves vehicular traffic efficiently while accommodating sidewalks, bikeways, and existing or planned mass transit. The proposed development in this policy provides high intensity residential development, consistent with the policy.

In order to bring this site closer into compliance with the T3 CM policy guidance, Planning would recommend the following changes: orienting the buildings, including entrances, to the street or an open space and placing the parking behind or next to the building, and in a manner that breaks up large expanses of pavement, and provides safe pedestrian movement.

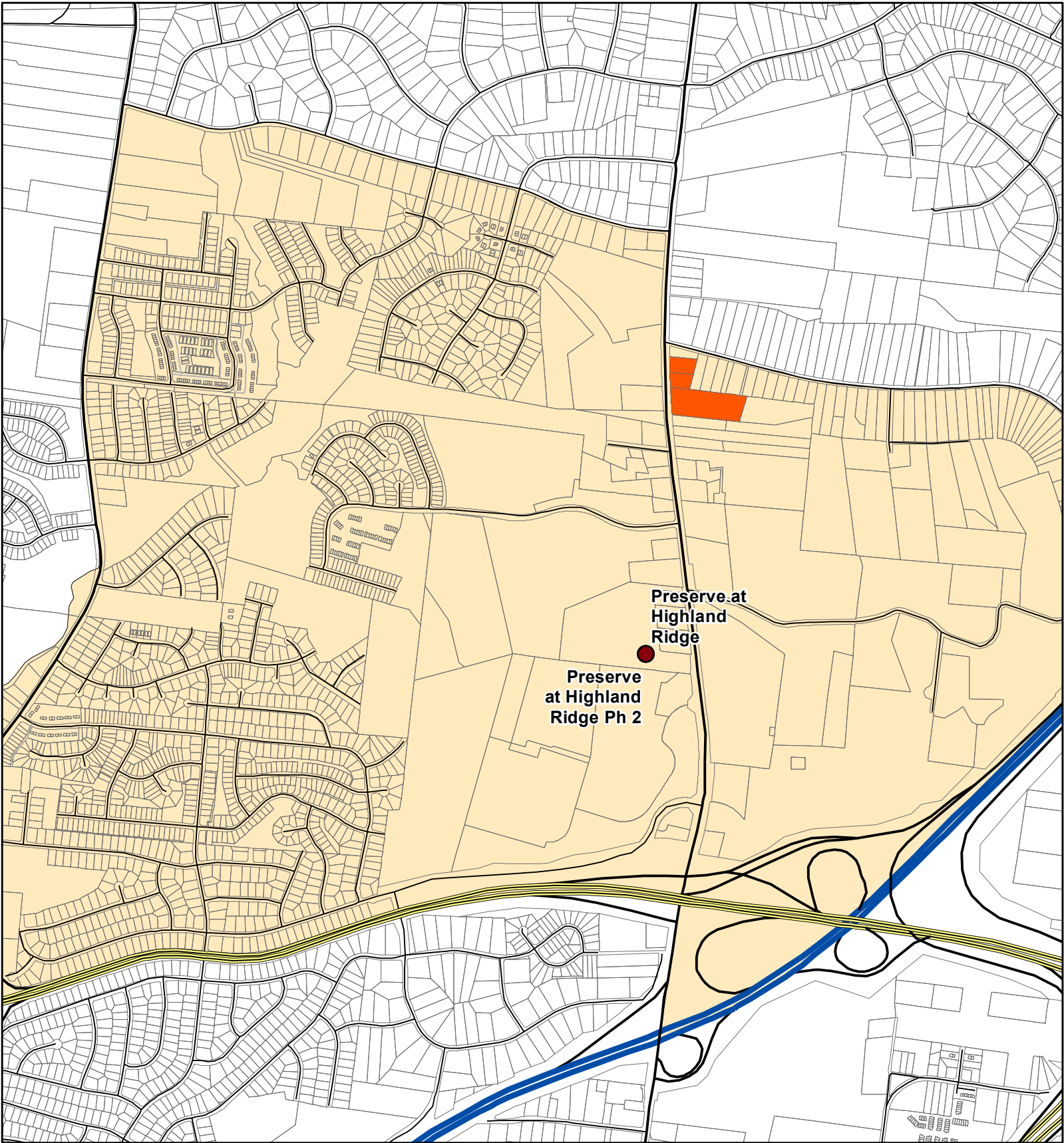
The portion of the plan in the T3 NE Policy is proposed to be developed with detached residential structures. This is consistent with the goals of the policy to be developed in suburban residential patterns, but at higher densities and with greater housing variety than classic suburban neighborhoods. The proposed plan shows detached residential structures with minimal setbacks oriented to a new public street. These lots will be required to comply with all necessary subdivision and zoning regulations if developed under the existing zoning.

Planning Determination: The proposed development on the site is consistent with the goal of the policies on the site to provide residential development at a suburban level along a corridor and increased housing opportunities in an evolving policy. Additional modifications to the site plan could be made to bring the development closer to policy guidance. Overall, 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.

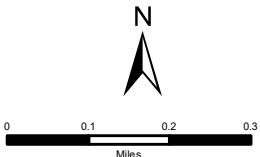
Federally Subsidized Multi-Family Projects
within Census Tract 47037010903



Low Income Tax Credit Project	# of Units
Preserve at Highland Ridge	261
Preserve at Highland Ridge Ph 2	31

Low Income Tax Credit Project

Map 050 Parcels 59, Map 05004 Parcels 14-15



**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: WCO Dickerson Flats Apartments, LP

Project Name: Dickerson Flats

Location of the Project: 3551 Dickerson Pike
Nashville, TN

Name of the Federal
Program to which the
applicant is applying: 9% LIHTC

Name of
Certifying Jurisdiction: MDHA

Certifying Official
of the Jurisdiction
Name: Emel Alexander

Title: Director of Community Development

Signature: 

Date: 6/17/22