

PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 14th day of August, 2018, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and 300 E Webster Street Holdings, L.P. (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 owns land located at 300 East Webster Street, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to rehabilitate a 274 unit apartment project, known as Hampton Terrace, 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 rehabilitation 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 rehabilitate 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 rehabilitation 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:

Tax Year	In-Lieu of Tax Payment
1	\$136,846
2	\$140,927
3	\$145,155
4	\$149,509
5	\$153,995
6	\$158,614
7	\$163,373
8	\$168,274
9	\$173,322
10	\$178,522

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 \$499 per unit in Tax Year 1 and will increase by a rate of three percent (3%) annually for the duration of the 10-year period. 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, 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 (authorized August 14, 2018 by MDHA) 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: _____

300 E Webster Street Holdings, L.P.

By: 300 E Webster Street Holdings, GP, LLC
Its: General Partner

By: _____

Name: Rusty Lawrence
Its: President

FILED WITH THE METROPOLITAN CLERK

Elizabeth Waites

Date

EXHIBIT A

Being a parcel of land lying in the 11th Civil District of Davidson County, Tennessee, and being all of Lot 13 and part of Lot 12, Montague Subdivision, as recorded in Book 421, page 129, Register's Office for Davidson County, and being a part of Webster's Resubdivision of Lots 3, 12 and 13 (plat unrecorded) more particularly described according to a survey prepared by Barge, Waggoner & Sumner, Inc., Engineers, dated May 18, 1964, as follows:

Beginning at an iron pin in the center of East Palestine Blvd., 120 feet East of the intersections of the center lines of East Palestine Blvd. and Milliken Bend Road; thence, with the center line of East Palestine Blvd. North 55 deg. 00' West, 147.12 feet to an iron pin; thence North 65 deg. 27' West 422.67 feet to the intersection of the centerline of East Palestine Blvd. with the centerline of Liberty Circle; thence in a northwesterly direction with the centerline of Liberty Circle, along a curve to the left having a radius of 459.84, central angle of 77 deg. 40' 43", long chord of 576.67 feet bearing North 14 deg. 19' 48" West, 623.43 feet to a point; thence leaving Liberty Circle North 21 deg. 37' East 112.24 feet to a point; thence generally downstream with Gibson Creek, South 63 deg. 00' East 127.00 feet to a point; thence South 81 deg. 30' East 240.00 feet to a point; thence South 51 deg. 00' East 51.00 feet to a point; thence South 75 deg. 00' East 269.00 feet to a point; thence North 74 deg. 45' East 156.00 feet to a point; thence South 81 deg. 30' East 149.00 feet to a point; thence South 20 deg. 30' East 56.00 feet to a point; thence South 83 deg. 30' East 121.00 feet to a point; thence leaving Gibson Creek with a wire fence

South 35 deg. 15' West 834.00 feet to a point of beginning, containing 12.35 acres, more or less.

Being the same property conveyed to Martin Levy, Trustee, by deed from J. R. Coarsey, S. Ralph Gordon, Martin Levy, Lewis E. Gaines, Joe Gaines, Miller G. Kimbrough, L. Roy Kavanaugh, Willard R. Perlen and Max Komisar, of record in Book 4211, page 282, Register's Office for said County.



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: March 30, 2018
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: **Hampton Terrace (300 East Webster Street)**
274 multi-family residential units
All units proposed affordable to households earning below 60% AMI

Zoning: Multi-Family Residential (RM20) is intended for single-family, duplex, and multi-family dwellings at a density of 20 dwelling units per acre.

Land Use Policy: 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.

T3 Suburban Neighborhood Maintenance (T3 NM) is intended to maintain the general character of developed suburban residential neighborhoods. T3 NM areas will experience some change over time, primarily when buildings are expanded or replaced. When this occurs, efforts should be made to retain the existing character of the neighborhood. T3 NM areas have an established development pattern consisting of low- to moderate-density residential development and institutional land uses. Enhancements may be made to improve pedestrian, bicycle, and vehicular connectivity.

Project Details: The project consists of a 15 multi-family residential buildings with 274 units on 12.35 acres of land located at the northeast corner of E Webster Street and E Palestine Avenue, approximately 1,200 feet east of the intersection of Gallatin Pike and E Webster Street. Existing site conditions include 15 multi-family residential buildings, usable open space, surface parking and pedestrian connectivity throughout the site. The site is bordered by E Webster Street on the west, E Palestine Avenue on the south, K C Court on the east and single-family homes on the north. The existing buildings are low-rise flats that were built in 1965. Each building is 2 stories in height with some having a 2/3 story split. Open space areas are located adjacent to each building. Surface parking spaces are perpendicular to each private

drive which loops around and down the center of the site. The existing multi-family residential buildings serve as affordable multi-family housing. This project proposes interior renovation to existing buildings and does not have a site plan as site modifications are not proposed. Existing shared walkways provide pedestrian access throughout the site between each building, open space and to sidewalks along East Palestine Avenue and East Webster Street.

Major and Collector Street Plan: This project is located on East Webster Street and East Palestine Avenue, neither of which are listed in the Major and Collector Street Plan. Sidewalk improvements are not required for this site. Existing public sidewalks, 5 feet in width, exist along both streets.

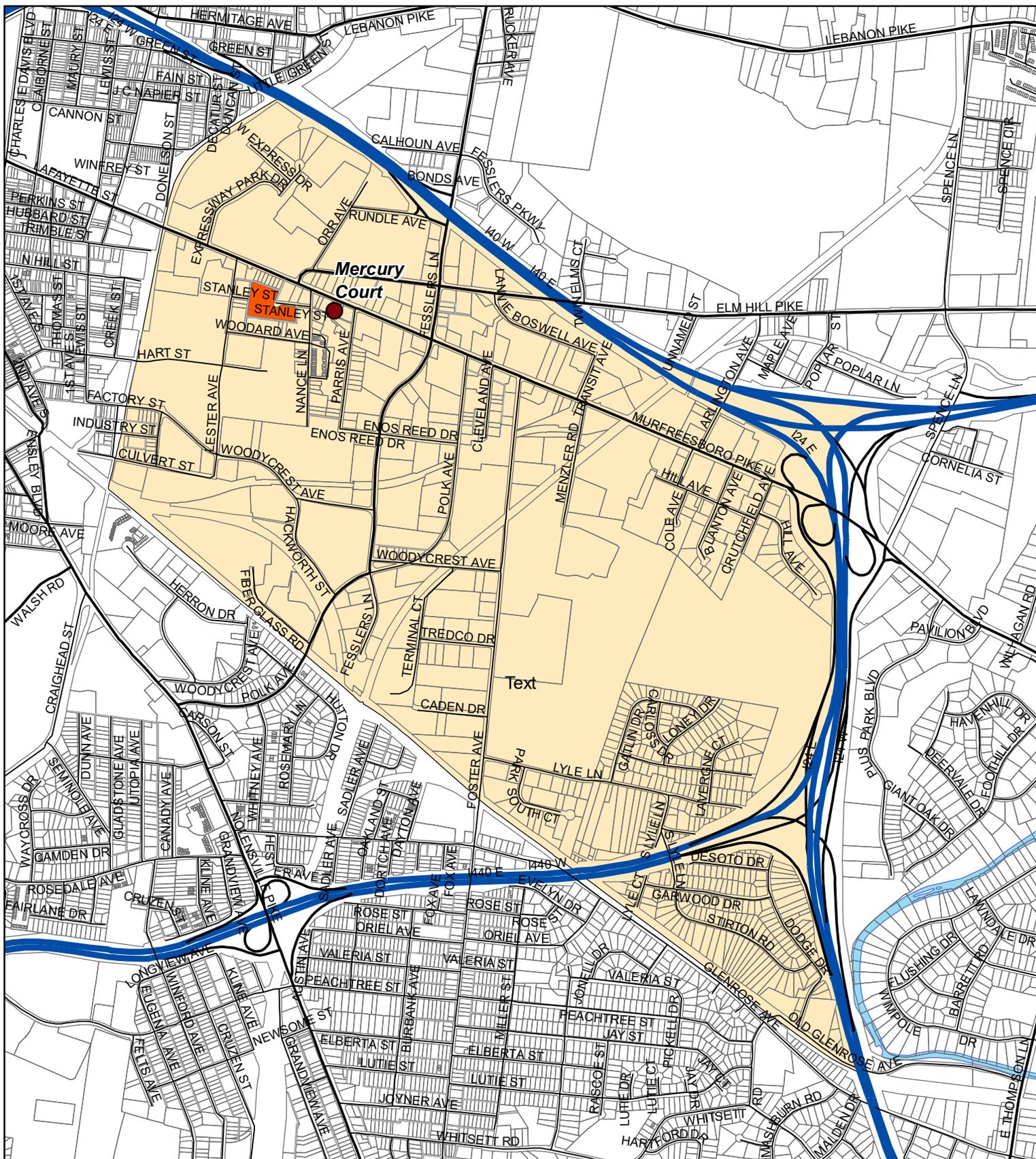
Planning Department Analysis: Multi-family residential is a permitted use under the existing Multi-Family Residential (RM20) zoning district. Suburban Neighborhood Maintenance (T3 NM) policy supports multi-family residential as a land use in areas where it already exists and is consistent with established neighborhood character. The established pattern of development of the immediate area consists of multi-family residential west of the site and one and two-family residential south and east of the site. Nearby commercial uses are located along Gallatin Pike. Onsite Conservation policy consists of a stream buffer area along the north site boundary and is proposed to remain undisturbed by the project. MTA provides bus service on Gallatin Pike which has an existing bus stop approximately 1,200 feet away from the site. Access to existing transit service will provide site users with transportation choice.

Planning Determination: This project will maintain the existing character of development given that only interior modifications to the existing building will be made and the existing stormwater buffer area will not be disturbed. The project is consistent with the NashvilleNext adopted general plan and the community character policy for the area (T3 Suburban Neighborhood Maintenance).

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

See attached map.

Federally Subsidized Multi-Family Projects within Census Tract 047037015900



Low Income Tax Credit Project	# of Units
Mercury Court	20

- Low Income Tax Credit Project (All)
- Parcel 10601007300
- Property with LIS
- Census Tract



0.3 0.15 0 0.3 Miles