

PILOT AGREEMENT

THIS PILOT AGREEMENT (the "**PILOT Agreement**") is made and entered into as of the ____ day of April, 2019, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY ("**MDHA**") and Buffalo Trail, 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 3711 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 240 unit apartment project, known as Buffalo Trail, 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:

Tax Year	In-Lieu of Tax Payment
1	\$27,000
2	\$28,350
3	\$29,768
4	\$31,256
5	\$32,819
6	\$34,460
7	\$36,183
8	\$37,992
9	\$39,891
10	\$41,886

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 \$113 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, 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: James E. Harrison
Title: Executive Director

BUFFALO TRAIL, LP

By: [Signature]
Title: Manager

FILED WITH THE METROPOLITAN CLERK

Elizabeth Waites

Date

EXHIBIT A

COMMENCING AT A CONCRETE MONUMENT FOUND (ID: CUMBERLAND IRON NASHVILLE) IN THE EAST RIGHT OF WAY LINE OF OAKWOOD AVENUE, SAID MONUMENT BEING LOCATED N 07°11'46" E A DISTANCE OF 1207.72 FEET FROM THE CENTERLINE INTERSECTION OF SAID OAKWOOD AVENUE AND TRINITY LANE; THENCE LEAVING SAID RIGHT OF WAY LINE WITH THE ANTIOCH MISSIONARY BAPTIST PROPERTY, RECORDED IN DEED BOOK 8660, PAGE 769, AS FOLLOWS: N 06°03'23" E A DISTANCE OF 44.57 FEET TO A 1/2" IRON PIN FOUND (ID:THORNTON); THENCE S 83°24'37" E A DISTANCE OF 150.20 FEET TO A 1/2" IRON PIN SET, SAID IRON PIN SET BEING THE TRUE POINT OF BEGINNING OF THIS TRACT; THENCE ACROSS THE PARENT TRACT, AS FOLLOWS: WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 327.44 FEET, WITH A RADIUS OF 777.72 FEET, WITH A CHORD BEARING OF N 15°29'54" W, WITH A CHORD LENGTH OF 325.03 FEET TO A 1/2" IRON PIN SET; THENCE WITH A COMPOUND CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 227.30 FEET, WITH A RADIUS OF 777.72 FEET, WITH A CHORD BEARING OF N 35°55'58" W, WITH A CHORD LENGTH OF 226.50 FEET TO A 1/2" IRON PIN SET; THENCE N 44°17'00" W A DISTANCE OF 58.74 FEET TO A 1/2" IRON PIN SET; THENCE N 43°19'43" W A DISTANCE OF 59.16 FEET TO A 1/2" IRON PIN SET; THENCE WITH A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 97.39 FEET, WITH A RADIUS OF 542.56 FEET, WITH A CHORD BEARING OF N 38°31'00" W, WITH A CHORD LENGTH OF 97.26 FEET TO A 1/2" IRON PIN SET; THENCE WITH A COMPOUND CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 92.40 FEET, WITH A RADIUS OF 485.48 FEET, WITH A CHORD BEARING OF N 27°37'24" W, WITH A CHORD LENGTH OF 92.26 FEET TO A 1/2" IRON PIN SET; THENCE WITH A COMPOUND CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 34.31 FEET, WITH A RADIUS OF 2183.85 FEET, WITH A CHORD BEARING OF N 19°37'48" W, WITH A CHORD LENGTH OF 34.31 FEET TO A 1/2" IRON PIN SET IN THE SOUTH LINE OF SHEPARDWOOD SUBDIVISION, RECORDED IN PLAT BOOK 6900, PAGE 753; THENCE WITH THE SAID SOUTH LINE OF SHEPARDWOOD SUBDIVISION, AS FOLLOWS: N 74°39'10" E A DISTANCE OF 858.49 FEET TO A 1/2" IRON PIN FOUND (NO ID); THENCE S 82°03'53" E A DISTANCE OF 57.56 FEET TO A 1/2" IRON PIN FOUND; THENCE WITH THE UPSIDE, LLC PROPERTY, RECORDED IN QC-20160502-0042972, AS FOLLOWS: S 06°04'38" W A DISTANCE OF 100.23 FEET TO A 1/2" IRON PIN SET; THENCE S 81°55'22" E A DISTANCE OF 192.48 FEET TO A CONCRETE MONUMENT FOUND IN THE WEST RIGHT OF WAY LINE OF ELLINGTON PARKWAY; THENCE WITH SAID WEST RIGHT OF WAY LINE OF ELLINGTON PARKWAY, AS FOLLOWS: S 09°53'03" W A DISTANCE OF 956.27 FEET TO A CONCRETE MONUMENT FOUND; THENCE S 08°51'34" E A DISTANCE OF 50.85 FEET TO A 1/2" IRON PIN FOUND (NO ID); THENCE LEAVING SAID RIGHT OF WAY LINE ATLANTIC MINI STORAGE #7 PROPERTY, RECORDED IN QC 20060510-0054636 N 83°50'21" W A DISTANCE OF 129.00 FEET TO A 1/2" IRON PIN FOUND (ID: THORNTON); THENCE N 84°10'40" W A DISTANCE OF 12.77 FEET TO A 1/2" IRON PIN FOUND (NO ID); THENCE N 05°40'40" E A DISTANCE OF 29.46 FEET TO A 1/2" IRON PIN FOUND (NO ID); THENCE N 83°37'24" W A DISTANCE OF 15.05 FEET TO A 1/2" IRON PIN FOUND (NO ID); THENCE S 05°58'49" W A DISTANCE OF 29.55

FEET TO A 1/2" IRON PIN SET; THENCE ACROSS THE PARENT TRACT N 83°59'11" W A DISTANCE OF 296.09 FEET TO A 1/2" IRON PIN SET IN THE SAID ANTIOCH MISSIONARY BAPTIST PROPERTY; THENCE WITH SAID ANTIOCH MISSIONARY BAPTIST PROPERTY, AS FOLLOWS: N 06°00'49" E A DISTANCE OF 74.83 FEET TO A 1/2" IRON PIN FOUND (ID: THORNTON); THENCE N 83°24'37" W A DISTANCE OF 49.91 FEET TO THE POINT OF BEGINNING, HAVING AN AREA OF 735,677 SQUARE FEET, 16.89 ACRES, MORE OR LESS.

Together with all improvements therein and thereon and all tenements, hereditaments, easements, appurtenances, rights, privileges and immunities belonging or related thereto, including without limitation a 30' wide joint access and utility easement extending over Seller's property between the south Property boundary and Pittway Drive and being more particularly described as follows:

BEING A PART OF LOT 1, OAKWOOD DEVELOPMENT PLAT, BEING PART OF THE ROBERT E. JOHNSON PROPERTY, RECORDED IN DEED BOOK 11281, PAGE 340 IN REGISTER'S OFFICE OF DAVIDSON COUNTY, TENNESSEE, AND BEING PART OF THE 5TH COUNCIL DISTRICT, NASHVILLE, TENNESSEE, AND MAY BE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1, OAKWOOD DEVELOPMENT PLAT, THENCE WITH THE COMMON LOT LINES OF LOT 1 AND LOT 2 N 83°59'11" W A DISTANCE OF 15.08 FEET TO A POINT, SAID POINT BEGINNING THE TRUE POINT OF BEGINNING OF THIS EASEMENT; THENCE LEAVING SAID COMMON LOT LINES ACROSS SAID LOT 1, AS FOLLOWS: S 21°17'54" W A DISTANCE OF 2.87 FEET; THENCE S 20°12'05" W A DISTANCE OF 126.21 FEET; THENCE S 08°44'39" W A DISTANCE OF 49.00 FEET; THENCE S 17°50'13" W A DISTANCE OF 25.08 FEET TO A POINT IN THE RIGHT OF WAY LINE OF PITTPWAY DRIVE; THENCE WITH SAID RIGHT OF WAY LINE OF PITTPWAY DRIVE N 72°09'47" W A DISTANCE OF 30.00 FEET; THENCE LEAVING SAID RIGHT OF WAY LINE ACROSS SAID LOT 1, AS FOLLOWS: N 17°50'13" E A DISTANCE OF 22.70 FEET; THENCE N 08°44'39" E A DISTANCE OF 49.62 FEET; THENCE N 20°12'05" E A DISTANCE OF 124.49 FEET; THENCE S 83°59'11" E A DISTANCE OF 31.00 FEET; WHICH IS THE TRUE POINT OF BEGINNING, HAVING AN AREA OF 6,000 SQUARE FEET, 0.14 ACRES.

**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: Buffalo Trail, LP

Project Name: Buffalo Trail

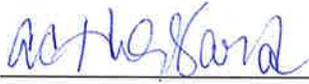
Location of the Project: 3711 Dickerson Pike
Nashville, TN 37207

Name of the Federal Program to which the applicant is applying: 4% LIHTC

Name of Certifying Jurisdiction: MDHA

Certifying Official of the Jurisdiction Name: Angela Hubbard

Title: Director of Community Development

Signature: 

Date: 5/31/18



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: **Buffalo Trail (3711 Dickerson Pike)**
260 multi-family residential units
All units proposed affordable to households earning below 60% AMI

Zoning: Specific Plan-Residential (SP-R) 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.

Land Use Policy: Conservation (CO) is intended to preserve environmentally sensitive land features through protection and remediation.

T3 Suburban Mixed Use Corridor policy 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 Suburban Neighborhood Evolving policy 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.

Project Details: The proposal includes 260 multi-family residential units, a leasing office/clubhouse, a pool and open space areas. Each of the 10 proposed garden-style buildings will have 2 and 3 three bedroom units. Five of the structures will be 3 stories in height and 5 will have a 3/4-story split. The leasing office/clubhouse will be located at the southwestern portion and orient to Dickerson Pike. Associated surface parking will have a total of 475 parking spaces. Site access will be from Dickerson Pike and include a gated entrance. A secondary access point, for emergency access only, will be located at the northeastern portion of the site, by Building H, connecting to Tuckahoe Drive. This plan incorporates useable open space areas such as a dog park and open space between Buildings A and B. The plan provides open space for stormwater mitigation adjacent to Building C and west of Building A.

An internal network of sidewalks and crosswalks will connect principal entry points of each building to proposed public sidewalks on Dickerson Pike. All internal sidewalks shall be a minimum of 5 feet in width.

Major and Collector Street Plan: The east side of Dickerson Pike, where the site is located, lacks sidewalks. New sidewalks will be installed, according to standards of the Major and Collector Street Plan which requires them to have a minimum width of 12 feet and a planting strip with a minimum width of 8 feet. In addition to sidewalk improvements along site frontage, sidewalk improvements will extend south to the existing Metropolitan Nashville Public Schools (MNPS) bus stop and the existing Nashville Metropolitan Transit Authority (MTA) bus stop.

Planning Department Analysis: The site is located at 3711 Dickerson Pike, 455 feet south of Westchester Drive and on the east side of Dickerson Pike. Existing site conditions include a single-family residential structure and mostly vacant land. Surrounding land uses include single-family residential uses east of the site in the Hedge Hill and Kemper Heights subdivisions; commercial uses north, south and west of the site along Dickerson Pike. North Fork Ewing Creek is located at the northwestern portion of the site.

This plan will provide 260 multi-family residential units which will provide an additional housing option within the immediate area. Layout of this development is consistent with the suburban character of the established development pattern within the immediate area. Site users will have access to existing transit service on Dickerson Pike. The sidewalk network in the immediate area will be improved with the installation of new sidewalks consistent with standards of the Major and Collector Street Plan. New sidewalks will provide site users with pedestrian access to Dickerson Pike as well as to the existing Metro Nashville Public Schools bus stop and Metro Transportation Authority bus stop south of the site. This development will also serve as an appropriate transition area between the single-family residential land uses east of the site and the more intense commercial uses along Dickerson Pike.

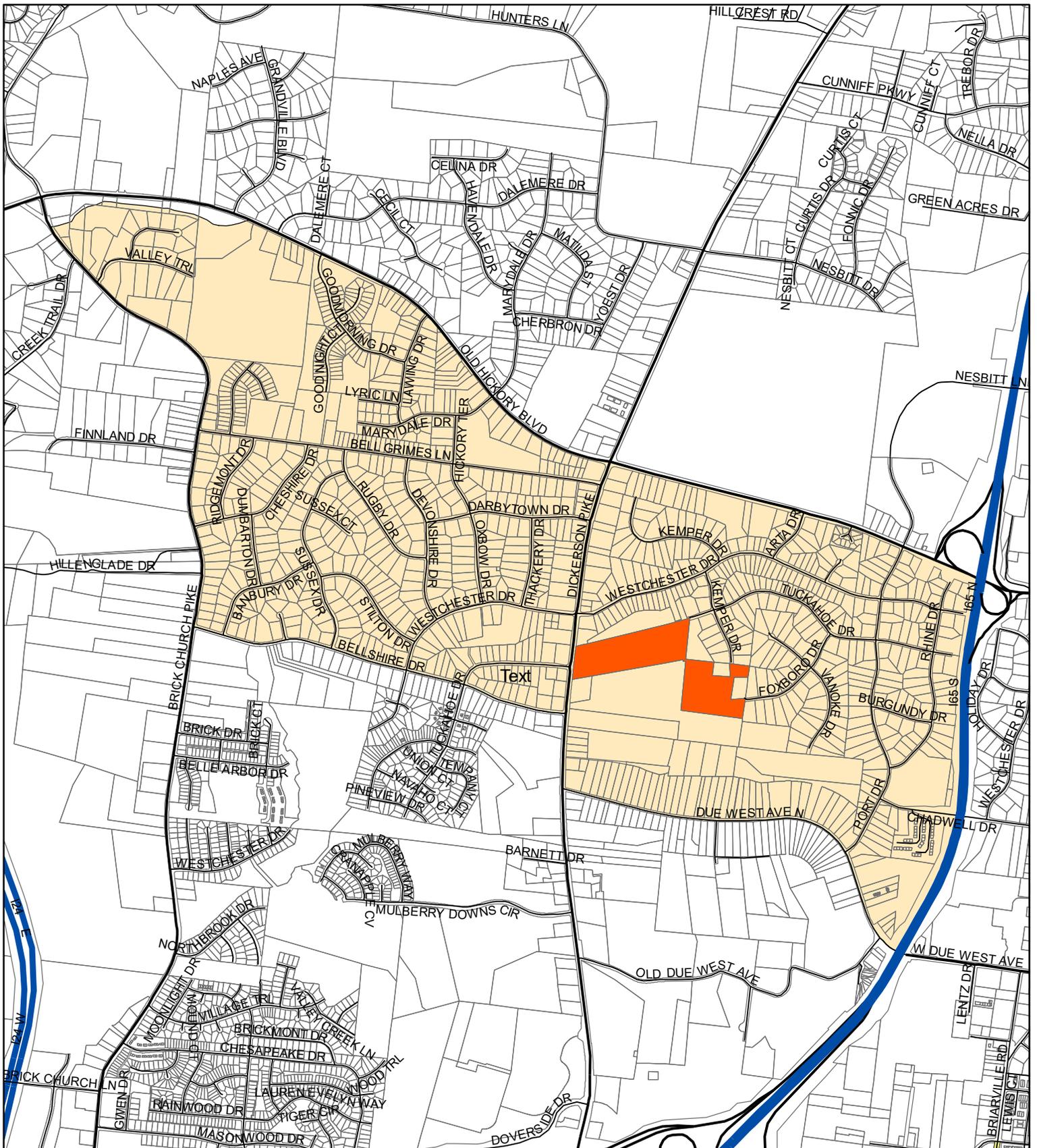
Planning Determination: Policy areas on this site support the proposed residential uses of the plan. Conservation policy on the site consists of North Fork Ewing Creek which will be preserved by this development. Suburban Mixed Use Corridor policy encourages a pedestrian realm consisting of sidewalks and bikeways that are designed and operated to enable safe, attractive, and comfortable access and travel for all users. This is accomplished by providing onsite sidewalk improvements along site frontage and offsite sidewalk improvements south to an existing school bus stop and an existing public transit bus stop. T3 Suburban Neighborhood Evolving policy encourages increased housing diversity, higher density and greater connectivity than classic suburban development which this SP provides. This development provides increased housing choice by introducing multi-family housing along a major corridor in an area that consists primarily of single-family residential development. This plan serves as a transition between more intense commercial uses along Dickerson Pike and single-family residential uses east of the site.

The proposed development is consistent with T3 Suburban Neighborhood Evolving, T3 Suburban Mixed Use Corridor policy and Conservation policies of the Nashville Next general plan. This development will provide opportunities for additional housing choice and improved pedestrian, bicycle and vehicular connectivity within the surrounding area.

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

See attached map.

Federally Subsidized Multi-Family Projects within Census Tract 047037010901



- Low Income Tax Credit Project
- Map 041, Parcel 076

