



DEVELOPMENT OVERSIGHT
COMMISSION

CITY OF SACRAMENTO
CALIFORNIA

915-I STREET
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SACRAMENTO, CA
95814

January 22, 2008

Tina A. Thomas, of Counsel
Remy, Thomas, Moose and Manley, LLP
455 Capitol Mall, Suite 210
Sacramento, CA 95814

Dear Ms. Thomas;

The Development Oversight Commission (DOC) has received your letter dated December 19, 2007 addressing your concerns about the City Planning Commission's actions regarding the Greenbriar Project. The DOC discussed this item during the January 7, 2008 meeting and decided to forward your concerns to City Council for direction as the appropriate body having oversight over the City Planning Commission. We have also forwarded this item to all Planning Commission members. In addition, we have asked staff to report back regarding your concerns in 30 days.

We will continue to update you regarding any response or outcomes regarding your letter.

Thank you for bringing these concerns and feedback to the Development Oversight Commission.

Sincerely,

Roger Valine
Chair, Development Oversight Commission

Encl

Development Oversight Commission
1/22/08
Response to Tina Thomas, of Counsel
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Cc: Mayor Heather Fargo
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Councilmember Sandy Sheedy
Councilmember Steve Cohn
Councilmember Robert King Fong
Councilmember Lauren Hammond
Councilmember Kevin McCarty
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Commissioner John Packowski
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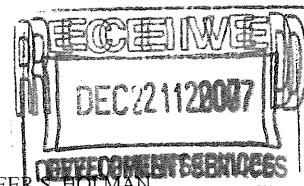
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BRIAN J. PLANT
OF COUNSEL

December 19, 2007

City of Sacramento
Development Oversight Commission
915 "I" Street, 2nd Floor
Sacramento, California 95814

Dear Mr. Abrahams, Mr. Fuerst, Mr. Malinowski, Mr. Holloway, Mr. Starkweather, Mr. Valine, Mr. Packowski, Mr. Nunan, and Ms. McBurney:

The City's Planning Commission considered the proposed Greenbriar project (project) at public hearings held on October 11, 2007 and November 8, 2007. At the November 8th hearing, the Planning Commission took its final action and voted to recommend denial of the proposed project. We are writing on behalf of the project applicant to express our sincere disappointment in the Commission's recommendation. We believe that the Commission's deliberations and determinations exhibited a lack of understanding of the Regional Transit Master Plan, the SACOG Blueprint, and the MTP Funding process. Moreover, the Commission seemingly dismissed the fact that four regional agencies, including the Sacramento Area Council of Government (SACOG), Regional Transit (RT), Sacramento Metropolitan Air Quality Management District ("SMAQMD"), and Sacramento Local Agency Formation Commission (LAFCo), have each expressed support for the project. Such unanimous endorsement is relatively uncommon for projects of this size, and certainly reflects the fact that the applicant has worked very closely with regional agencies throughout the approval process and has adequately addressed each of their concerns.

We feel strongly that the Planning Commission should be well-versed in regional plans and policies, and should take seriously a project's consistency with such plans and policies. Moreover, the Commission should give great weight to input from regional agencies, as those agencies apply concentrated attention to various aspects of project proposals to ensure such proposals satisfy the best interests of local communities and the region as a whole. To do otherwise is to ignore the years of collective cooperation

between cities, counties, and regional agencies toward designing regional land use and planning documents, and to discredit the expertise offered by agency staff. The purpose of this letter is to stress the importance of regional planning, to demonstrate the project's consistency with regional plans, to underscore the clear regional support for the Greenbriar development, and to express our strong feeling that the Planning Commission is fundamentally obligated to uphold the principles of the Blueprint and other regional planning documents that were designed to guide responsible development within the Sacramento Region.

Consistency With The Blueprint and Support from SACOG

The Sacramento Area Council of Governments (SACOG) adopted the Sacramento Region Blueprint Transportation and Land Use Study Preferred Blueprint Scenario (Blueprint) in December 2004. The Blueprint is a vision for long-term land uses within the Sacramento region that promotes compact, mixed use development over the type of lower density, sprawling land uses emblematic of past regional growth and development. The overall goal of the Blueprint is to advocate more efficient land use planning that reduces vehicle miles travelled, minimizes greenhouse gas emissions and thereby addresses local contributions to global warming.

Blueprint's principles were intentionally applied in the design of the Greenbriar project. For example, the project incorporates a wide variety of housing types (13 different lot and affordability configurations), and the development will be compact (i.e., efficient use of land resources by providing medium and high density residential land uses on more than half of the site). Moreover, the project has been planned as a transit oriented development (TOD) centered around a proposed light rail transit station with a full complement of commercial and institutional (K-6 elementary school) uses. The project site also provides more than 25% of the gross area dedicated to parks, open space and habitat.

The Executive Director of SACOG, Mike McKeever, provided strong testimony at the Planning Commission hearing on October 11, 2007 in support of Greenbriar as the type of project that is consistent with the SACOG Blueprint. Indeed, the project will provide for needed housing immediately adjacent to the Metro Air Park employment center projected to accommodate nearly 40,000 jobs at buildout and will encourage the use of alternative transportation modes between Natomas and Downtown Sacramento – both key Blueprint principles. Moreover, Mr. McKeever, who oversees the development of the Metropolitan Transportation Plan, stressed the importance of Greenbriar as an integral component to the success of the DNA line. He stated before the Planning Commission on October 11, 2007:

We think it is very critical that we get as much ridership into the DNA corridor as we can. We looked very carefully at the need for that train to make the system work in the future. We concluded that we have a very significant need for it and we need to make it work, *and this project is an important part of it.* (emphasis added)

Mr. McKeever also shared similar comments in an October 11, 2007 letter addressed to the City of Sacramento Planning Commission:

Greenbriar will have 2,367 dwelling units within ½ mile of the light rail station, *46% higher than the average of all stations in the current system.* In fact, it would have more housing close to transit than all but eleven of the existing 52 stations.

Greenbriar would generate about 37% more boardings than the average of the 14 stations on [the DNA] line, and *10% of the approximately 20,000 daily boardings for the entire line.* (emphasis added)

According to Mr. McKeever, market competition for development – whether infill or urban edge – does not function simply within city boundaries; it operates at a much greater geographic scale. He emphasized that not only is there enough anticipated long-term demand for housing to warrant planning for both urban edge and infill development within the city, but that enough exists within and adjacent to the greater six-county region that to avoid developing a site such as Greenbriar could exacerbate pressure to develop outside of the region. The fundamental point stressed by Mr. McKeever by his letter and through his testimony is that it is dangerous to assume delaying the approval of the Greenbriar project will enhance efforts to develop urban infill projects because other extra-regional market forces may attract development interest outside of the city and region, thereby making it more difficult, not less, to develop successful infill projects. In other words, avoiding timely approval of urban edge development within the city doesn't mean it's replaced with a proportional interest in urban infill development, or interest in any development even within the same region.

Mr. McKeever further testified that opposing a Blueprint project like Greenbriar could stimulate non-Blueprint development in surrounding counties which, in turn, would likely increase vehicle miles traveled as commuters buy homes located further from Sacramento metropolitan employment centers. This type of leap-frog development is, as stated by Mr. McKeever, “the biggest threat to the success of the Blueprint.” In his concluding remarks before the Commission on October 11th, Mr. McKeever warned:

I think that the risk of not building projects like this will stimulate leap frog development farther out is much greater than proceeding with projects like this will dampen infill in North Natomas. . . . Believe me, if the word gets out that projects like [Greenbriar] are not approvable, the pressure in the markets and in the politics with the people who have placed their bets much further out gets intense.

Despite this overwhelming support from SACOG and the clearly articulated consequences of disregarding the Blueprint, the Planning Commission recommended denial of the project. In the deliberations preceding the Commission's decision, and following Mr. McKeever's testimony regarding the ridership generated by Greenbriar, one commissioner opined that Greenbriar residents would not likely be "the type of people who ride RT." Similar concerns were expressed by other commissioners. These opinions, however, are unsubstantiated and contrary to the express testimony offered by Mr. McKeever. Mr. McKeever appeared before the Commission to provide expert testimony as Executive Director of SACOG – the fact that his expert testimony was disregarded in favor of personal opinion is extremely troubling.

The Commission's recommendation sends a clear signal to the development community, city officials and other regional governing bodies, that it does not hold in high regard project consistency with the Blueprint. Recommending denial of projects such as Greenbriar, that clearly adhere to the Blueprint principles, serves to undermine the important work of SACOG – including the months of community input – in developing a more responsible manner in which to plan new communities, preserve natural resources and eventually enjoy an improved quality of life in the region. As stated by Mr. McKeever, if Blueprint projects like Greenbriar are not approvable, developers will shy away from infill development within the City and search for opportunities in outlying areas. It is therefore imperative that the Planning Commission understand the consequences of rejecting Blueprint developments such as Greenbriar.

Consistency with LAFCo Policies and Support from LAFCo and City

Beginning in 2005, the City of Sacramento and Sacramento LAFCo initiated a streamlined environmental review and approval process intended to help expedite project entitlements based on Greenbriar's unique project characteristics and policy consistency. These include the following:

1. Project design as a transit oriented development (TOD) and compatibility with SACOG's recently completed Blueprint Preferred Growth Scenario and the Smart Growth Principles advanced by the City-County Natomas Joint Vision

Memorandum of Understanding;

2. Extension of RT's proposed Downtown-Natomas-Airport (DNA) light rail line through the project, the incorporation of a station site centrally located within the project, and RT's interest in remaining competitive for scarce federal funding;
3. The project's ability to accommodate expected population growth in addition to that which would be served by urban infill according to the City's General Plan Update estimates; and,
4. The unique geography of Greenbriar, bordered on three sides by existing and developing urban uses, including the North Natomas Community Plan, and the 1,900-acre Metro Air Park light-industrial office complex that will ultimately employ 38,000 workers immediately west of the project.

The City of Sacramento has formally acknowledged each of these as reasons why Greenbriar "is a unique application and should be treated accordingly" relative to efficient processing and timely approval consideration.

In a letter dated July 25, 2005, addressed to Sacramento LAFCo Executive Director Peter Brundage, then City of Sacramento Interim Planning Director Carol Shearly explained how each unique project characteristic justified LAFCo's consideration of concurrent processing of a sphere of influence amendment and annexation. Sacramento LAFCo, at its August 3, 2005 hearing, responded affirmatively to the City's suggestion for concurrent processing, and on November 1, 2005 the Sacramento City Council unanimously approved three resolutions, setting in motion concurrent sphere of influence and annexation processing.

Nearly two years later, on September 19, 2007, LAFCo conducted a public hearing on the Greenbriar Sphere of Influence Amendment, Municipal Services Review, and Environmental Impact Report (collectively, the SOI Amendment"). At the hearing, Mike Wiley from RT and Mike McKeever from SACOG delivered strong testimony in support of Greenbriar as a Blueprint project, and also as a key component to the funding and success of the DNA line. Commissioner Yee noted that "Greenbriar is located at a point where it's logical to become part of the City of Sacramento...it is an infill project... ." Mr. Yee also acknowledged that Greenbriar will contribute to the DNA line, and further stated that "Greenbriar is a perfect example of what we call smart growth. Because it's very consistent with the principles [] embodied in the Blueprint." Similarly, Commissioner Fong characterized the potential Greenbriar development as "a logical, orderly path for urbanization," and a project which is "critical...for the City of Sacramento." And Commissioner Peters stated that Greenbriar is "a logical expansion of

the City's boundaries" and referred to the project as classic "infill." Similarly, Commissioner Miklos, who has been a member of SACOG for over 10 years, said that Greenbriar is a "perfect example" of Blueprint planning. After considering all public testimony, LAFCo approved the SOI Amendment. LAFCo's decision sends an important message. In the context of the Greenbriar project, LAFCo is acting as a co-lead agency with the City; thus its continued support of the project is something that the City's Planning Commission should not take lightly.

Consistency With The RT Master Plan and MTP Funding Process and Support from RT

RT is currently pursuing a variety of sources to fund the construction of the DNA light rail line. For example, RT has been involved in the lengthy Federal Transit Administration (FTA) New Starts funding process, which requires a showing that the light rail line will serve areas with densities that support transit and generate ridership. The Greenbriar project will support this funding by providing appropriate residential densities along the DNA line and adjacent to a proposed station site. As substantiated through oral and written testimony from RT, the population density provided by the project will help make construction and efficient operation of the light rail line a reality. In a letter submitted to the City on November 1, 2005, Dr. Beverly Scott, the then-General Manager and CEO of RT, expressed RT's support for the project as one that will significantly improve the region's competitiveness for federal dollars in extending light rail to the Sacramento International Airport. In her presentation to Sacramento LAFCo on August 3, 2005, Dr. Scott explained the following:

I am here this evening specifically because the land use decisions that are made regarding the Greenbriar area and *the timing* of those decisions weigh heavily on the ultimate fate of the Downtown Natomas Airport light rail extension project.

The connection between our region's DNA project and the Greenbriar area is a real one. It is not contrived and it is not over blown. The direct connection between transit supportive existing land use and future patterns, and the success or lack of success of major capital transit investments and fixed guideway transit systems, like the DNA, is absolutely real. It is also true that today, 50% of the project justification rating for all federal transit funding for rail projects is based on land use criteria.

So the land use decisions that are made in our region, particularly along our planned high capacity transit corridors and specifically within ¼ mile of planned rail and or bus rapid transit stations are not only critical to

ridership, but have also become absolutely critical to the federal transit administration's ultimate decisions about these projects. (emphasis added)

Similarly, in a joint letter to the Planning Commission, dated October 24, 2007, from Regional Transit's Interim General Manager, Mike Wiley and SACOG's Executive Director Mike McKeever, it is made abundantly clear that given the schedule for Congressional reauthorization of the Federal Transportation Bill, it is critical that Greenbriar be approved as soon as possible. According to the letter:

We expect [the Federal Transit Authority] to complete their [rail project] recommendations in mid to late fall, 2008. That means that we will be actively advocating with them through 2008 to include the DNA line on their recommended list. *That process will start in a few short months. . . . Proceeding with Greenbriar now is an important component of helping the City and region to compete in very stiff competition for federal funding for this project.* (emphasis added)

At the Planning Commission hearing on October 11, 2007, Fred Arnold, director of real estate for Regional Transit, also testified in favor of the project. According to Mr. Arnold, "without projects like [Greenbriar] being approved, the DNA project in itself without having the ridership and the land use application and connections for ridership, would not meet the current FTA standard for cost-effective modeling." To that end, Greenbriar is "key to the success of having this [DNA] project compete on a national basis and be financially competitive and produce enough ridership." Mr. Arnold concluded his statements by saying that Greenbriar is "a model, quite frankly, of what we want to see other developers achieve and accomplish within a transit-oriented development project."

Paul Marx, the incoming Planning Director for Sacramento Regional Transit, had similar remarks at the Planning Commission hearing on November 8, 2007. At that hearing, Mr. Marx discussed the importance of the Greenbriar project in the context of securing funding for the DNA line. Particularly, in order to qualify for federal funding RT must provide evidence of "sufficient potential ridership within a reasonable time frame north of Natomas, north of the river." And, regarding the need to show that ridership, "the tim[ing] is fairly critical." Mr. Marx also addressed the project's ability to provide the necessary ridership, stating that the Greenbriar community "is close enough to downtown Sacramento to provide the downtown feeling that people want, but it is far enough and integrated enough in its design that they can get a sense of neighborhood. And that seems to be what the market mandates."

This region's association of governments and public transit operator obviously agree that Greenbriar is a unique and essential land plan necessary to facilitate the successful extension of light rail. It is also very clear that both agencies agree the project should be approved without further delay. Despite the strong endorsement from RT, however, several of the Planning Commissioners flatly ignored testimony regarding funding for DNA and the need for ridership. For example, at the November 8th hearing, one commissioner stated that, in the Commissioner's opinion, the additional ridership "won't come from this [Greenbriar] development; it has to come from the surrounding area as well." In addition, the same commissioner expressed doubt that Greenbriar residents would actually use regional transit. Similarly, another commissioner stated that he "[has] to disagree with SACOG and RT" because the DNA line is years away from crossing the river. And one commissioner, testifying as a member of the public after recusing himself from participation as a member of the Commission, stated he does "not believe the DNA line will emerge as a high priority for this community ... I do not believe we [] need the airport line or that it is absolutely necessary." With due respect to the commissioners, their testimony on the record is unsupported and in direct contrast with the express testimony provided by Mike McKeever, Paul Marx, Bev Scott, and Mike Wiley – each experts in the area of regional transit, not to mention public polling that clearly identifies a strong support for the DNA light rail extension.¹ The disconnect between regional support for the project and the Commission's recommendation is striking, and certainly is disconcerting for those who have worked on, and continue to advance the provision of alternative transportation options in our region.

Consistency With SMAQMD Protocol and Support from SMAQMD

As stated in its October 29, 2007 letter to the City, the Sacramento Metropolitan Air Quality Management District supports the Greenbriar project because it offers "many air quality-friendly elements." SMAQMD notes that "[t]he mixed-use design, density, and transit features are consistent with Blueprint, which is one of the key planning tools designed to limit the air quality and transportation impacts of projects in the Sacramento region." Moreover, SMAQMD recognizes that the project "is an essential step toward ensuring the Downtown-Natomas-Airport Regional Transit light rail line

¹ / In 2004, the Sacramento Bee reported that "a solid majority of those polled said they consider it a priority to extend light rail to Sacramento International Airport and to Elk Grove." (Bizjak, *Poll: 71% willing to extend county transportation tax* (January 7, 2004) Sacramento Bee, <http://dwb.sacbee.com/content/news/story/8058248p-8990933c.html>.) Further, a report prepared for the Sacramento Transportation Authority in 2006 concluded that the DNA light rail extension to the airport was "strongly supported by Sacramento County residents" citing a poll establishing that 62% of Sacramento County residents favored the light rail extension. (Robert Waste & Associates, *Work Plan: Developing Future STA Transportation Funding Options* (February 9, 2006), <http://www.sacta.org/pdf/agendas/2006/feb09/02090614AT.pdf>, p. 3.)

implementation.” SMAQMD’s support for the project echoes the sentiments expressed by SACOG and RT.

SMAQMD director Larry Greene reiterated the District’s endorsement at the November 8, 2007 Planning Commission hearing, where he unequivocally stated that the District supports the project. Mr. Greene further stated that the project complies with the District’s protocol for evaluating health risks associated with land uses adjacent to major freeways, although the District disagrees over some technical aspects of the health risk assessment prepared for the project. In conclusion, Mr. Greene noted that the “project meets the Blueprint’s protocols [and] supports transit,” and further stated that the project has an “air quality mitigation plan which we [the District] have approved.” In fact, the Greenbriar Master Air Quality/TSM Plan approved by SMAQMD demonstrates that the project will result in overall air quality emissions reductions to at least 15% below comparable projects through application of a variety of mitigation measures. In addition to the Master AQ/TSM Plan, the environmental consultant for the project is currently preparing a stand-alone report that both identifies the project elements that serve to reduce operational emissions and calculates the emissions reduction percentage that will be achieved through project design and the AQMP. We expect that this report will show that the project actually achieves a reduction in emissions that is greater than 15%. This report will be submitted to the Sacramento Metropolitan Air Quality Management District upon completion, which is expected to be in advance of the City Council hearing.

Notwithstanding the strong support expressed by Mr. Greene, the Commission seemed to disregard SMAQMD’s written and oral testimony. The commissioner testifying as a member of the public after recusing himself from acting on this project, stated his belief that due to “serious health issues” we should not “be approving housing so close to freeways [or] near airports.” Other commissioners testified that they agreed with the majority of comments made by that commissioner, which would presumably include the rejection of the SMAQMD approved protocol. The Commission’s apparent rejection of SMAQMD protocol, and its disregard for SMAQMD’s testimony in support of the project, is at odds with the regional cooperation advocated by the City. Again, the disconnect between agency testimony and Commission action is striking and, frankly, unsupported by the record of proceedings.

* * * * *

The Planning Commission’s recommendation on the Greenbriar project exhibits an apparent disconnect between project review and regional planning, and appears to be out of synch with the will of both regional agencies and the Sacramento City Council. We respectfully request that your Commission endeavor to better educate the Planning Commission regarding regional planning and policies, and to stress the importance of

input from regional agencies with expertise in certain areas. In addition, we believe that the Commission should adhere to policies that favor equity in testimony, particularly with regard to the time allotted to members of the public versus agency representatives. As one example, at the October 11, 2007 hearing, Mike McKeever was asked to quickly conclude his remarks and was only granted additional time to speak when he reminded the Commission that he had been waiting "five hours and two nights" to speak on behalf of SACOG. Yet members of the public were routinely given extensions of time, and in fact the commissioner testifying as a public member at the November 8th hearing was allowed to speak in excess of the time typically allotted to speakers based on his request as a sitting member of the Planning Commission. A more equitable approach would better serve the Commission, project applicants and members of the public.

Thank you for your attention to this matter. Please contact me or Ashle Crocker if you have any questions or concerns. Thank you again for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tina Thomas".

Tina A. Thomas

Cc: Mike McKeever
Larry Greene
Peter Brundage
Mike Wiley