

City of Sacramento

Legislation Text

File #: 2020-01512, **Version:** 1

Title:

Greenbriar Pavement Overwidth Reimbursement Agreement [Published for 10-Day Review 04/01/2021]

File ID: 2020-01512

Location: Greenbriar/Northlake Community, District 1

Recommendation:

Pass a Motion approving a reimbursement agreement to provide \$3,435,086 in construction excise tax credits for pavement overwidth to Greenbriar development.

Contact: Lucinda Willcox, Program Manager, (916) 808-5052; Ryan Moore, Director of Public Works, (916) 808-6629, Department of Public Works

Presenter: None.

Attachments:

- 1-Description/Analysis
- 2-Overwidth Reimbursement Agreement
- 3-Greenbriar Roadway Map
- 4-Excerpt from Greenbriar Finance Plan

Description/Analysis

Issue Detail: On May 30, 2017, the City Council adopted the Greenbriar Project (now known as Northlake) and related documents, including the Development Agreement and Finance Plan. This project encompasses 577 acres, 2,956 housing units and other non-residential and public uses.

The North Natomas Finance Plan (NNFP), adopted in 1995, defined an “Overwidth Reimbursement Program,” whereby developers were reimbursed for construction costs for that portion of roadways exceeding two lanes. This program was specifically defined in the NNFP but was never adopted as a citywide program. The overwidth program was funded through the Overwidth Capital Improvement Program (CIP), whereby the City dedicated funding as part of the annual budget into this program from the Major Street Construction Fund (Fund 2007) based on funding available after other City needs were met. Revenues from this fund derive from a Construction Excise Tax that is collected on

all new development citywide as prescribed in Chapter 3.36 of the City Code. Note that the Construction Excise Tax is a general tax enacted in 1978, not a development impact fee. As it applied to the building valuation tables published by the International Conferences of Building Officials, which were superseded by the State Building Code in 2008, it is based on project valuation (construction costs) frozen at 2008 levels, meaning the tax is not increasing with inflation and its spending power is reduced every year.

According to the Greenbriar/Northlake applicants, the Greenbriar development intended to include a similar overwidth reimbursement program as is described in the North Natomas Finance Plan; however, there is no reference or definition of an overwidth reimbursement program in either the Greenbriar Development Agreement or Greenbriar Finance Plan, other than a single reference in one table of the Finance Plan (Attachment 3) that lists \$3,250,086 in overwidth reimbursement for “backbone infrastructure,” including Elkhorn Boulevard, Street 1 (Waterside Drive), and Meister Way.

Under provisions of the Greenbriar Development Agreement, “the City commits to making a good faith effort to adopt and implement the Development Fees and Public Financing Mechanisms as set out in the Financing Plan. . . .” As a result, City staff recommends providing for reimbursement of the \$3.25 million referenced in the Finance Plan, despite the lack of any program definition in the Greenbriar Finance Plan. In addition, staff recommends reimbursement of \$185,000 for soft costs related to the roadways. Note that rather than reimbursement, the applicants have requested credits against the tax rather than waiting until enough funding is collected for reimbursement - an option permitted under City Code section 3.36.010F. This would be the first time this approach has been used, as development in North Natomas has always waited for taxes to be collected prior to reimbursement. Staff agreed to support this request; with the condition that a maximum of 60% of the tax be credited on each building permit so the City has some tax revenue coming in to address citywide needs.

Policy Considerations: Sacramento City Code Section 4.04.020 and Council Rules of Procedure (Chapter 7, Section E.2.d) mandate that unless waived by a 2/3 vote of the City Council, all labor agreements, and all agreements greater than \$1,000,000 shall be made available to the public at least ten (10) days prior to City Council action. This contract was published for 10-day review on April 1, 2021 as required.

Resolution 2020-0398, adopted by the City Council on December 8, 2020, provided that “in order to maximize available local transportation funding availability to leverage state and federal grant funds, when adopting new Finance Plans, the City will not include overwidth reimbursement to be paid for with Construction Excise Tax.” Since the Greenbriar Finance Plan was adopted prior to this action, it does not apply in this instance.

Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Act (CEQA): The City Council approved program-level entitlements for the Greenbriar Development Project in 2008. As part of that process, on January 29, 2008, the City Council certified the EIR for the project and adopted the Mitigation Monitoring Program (Resolution No. 2008-053). On May 30, 2017, the City adopted an Addendum to the Final Environmental Impact Report and Mitigation Monitoring Plan for the Greenbriar development. Roadway construction subject to reimbursement under this agreement were covered under those environmental documents.

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The developer will be constructing the roadway facilities in connection with the development. As the developer appeared to have an expectation of overwidth reimbursement, acting in good faith, staff recommends reimbursement in the amount of \$3,250,086 as included in Table 4 of the Finance Plan, plus an additional \$185,000 in soft costs.

Financial Considerations: Approval of the Reimbursement Agreement would provide for reduction in construction excise tax revenues until \$3,435,086 in credits from building permits in Greenbriar (Northlake) have been used. This will result in a reduction in revenue that the City uses to support citywide transportation projects, primarily as leverage for state and federal grants. Based on construction estimates provided by the developer, tax revenues available for city transportation projects will be reduced by \$300,000 to \$800,000 a year for the next five to six years. This funding would have provided the City the opportunity to leverage \$8 to \$12 million in additional grant funds.

Administration of the tax credits by the Community Development Department will result in some administrative costs to track and implement the tax credit program; it is presumed these costs will be covered through building permit costs.

Local Business Enterprise (LBE): Not applicable.

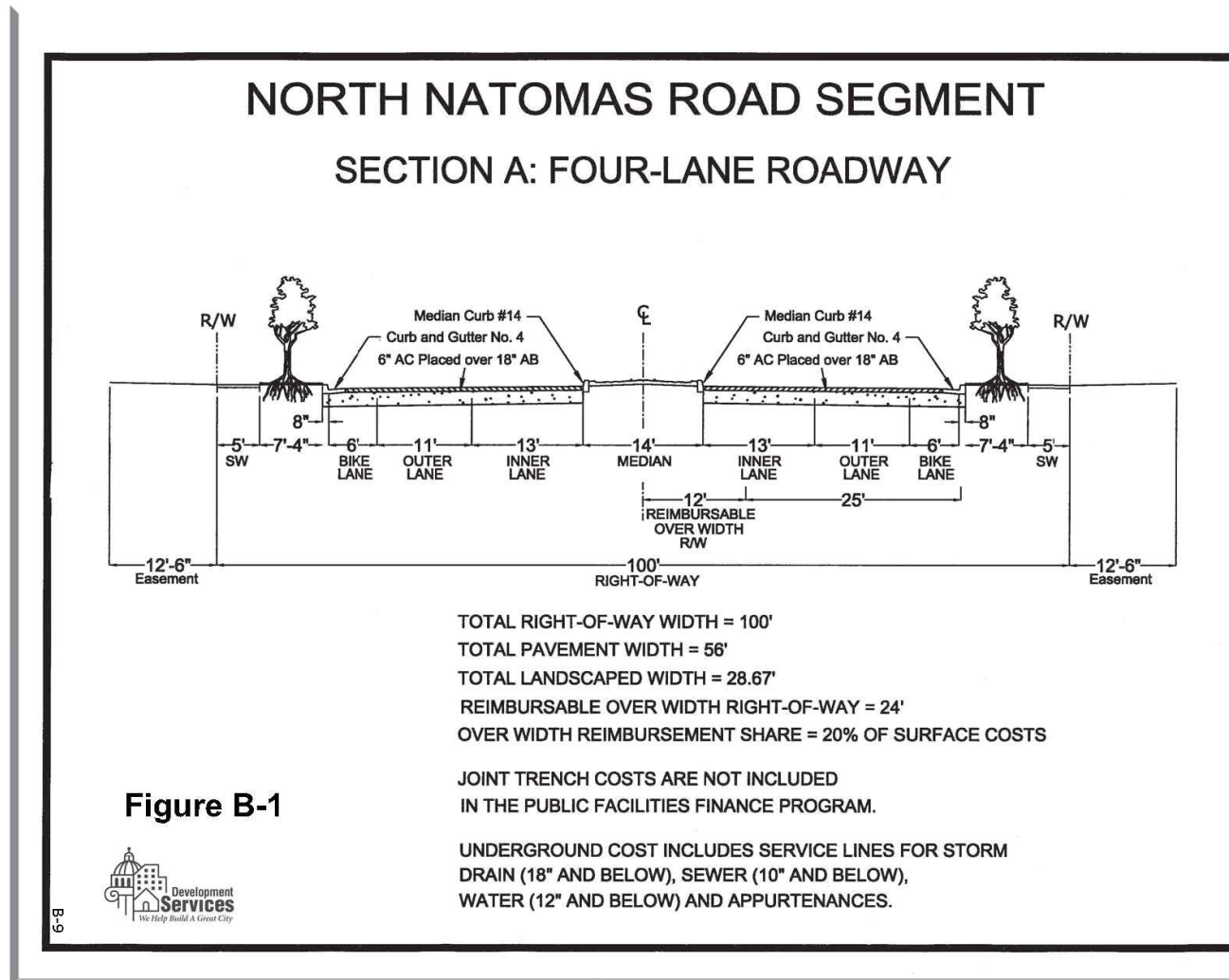
Background: The Greenbriar Project (now known as Northlake) is located on approximately 577 acres of land in the northwestern most part of the city, west of I-5.

On May 30, 2017, the City Council approved various entitlements for the project to allow for the future development of 2,956± residential units (2,428± single-unit dwellings and 528± multi-unit dwellings), three commercial sites, open space/habitat buffers, open space/freeway buffers, six park sites, a community center, a lake/detention basin, a light rail station and park and-ride facility, school site, and various landscape corridors and related facilities. The City Council also

approved adoption of an Addendum to the Final Environmental Impact Report (EIR) and Mitigation Monitoring Plan, the Development Agreement between the City of Sacramento and The Greenbriar Project Owner LP; and the 2017 Greenbriar Finance Plan.

Overwidth Pavement Reimbursement Program

The North Natomas Finance Plan (NNFP), adopted in 1995, included a program that provided for reimbursement for costs of roads when they exceeded two lanes in width, as illustrated through an excerpt from the Finance Plan as shown below.



To implement this requirement, as part of its preparation of the annual citywide capital improvement program (CIP), the City created an Overwidth Pavement Reimbursement Project and funded it with revenues from the Major Street Construction Fund after consideration of the funding needed for other City projects. The Major Street Construction Fund is funded by revenues from a Construction Excise Tax on building permits.

In 1978, in response to Proposition 13 limitations, the City established the Construction Excise Tax

(Chapter 3.36 of the City Code). This is a tax (not an impact fee) on building permits intended to provide for construction of major streets. Under the Code, “all of the taxes are placed in the “major street construction fund” ... and shall be expended for the acquisition of land and interest in land for, and the construction, reconstruction, replacement, widening, modification, and alteration (but not for maintenance and repair), of existing and proposed streets in the city.....”

There is a provision under the Code that allows the city to “enter into an agreement with the person proposing the improvement for such person to accomplish the construction which would usually be funded by the major street construction fund using his or her own financing, to be reimbursed by the city when adequate funds become available in the major street construction fund. In lieu of payment of all or a portion of said tax, the city may enter into an agreement to grant a credit against such tax to any person who constructs improvements which would usually be paid from the major street construction fund.” It appears to be this provision that resulted in the Overwidth Pavement Reimbursement Program as included in the North Natomas Plans in 1995.

Between 1996 and 2008, the City entered into overwidth reimbursement agreements for a cumulative total of \$13 million. The largest individual reimbursement was \$2.1 million; most were below \$1 million.

Since 2008, the City has not entered into any new overwidth reimbursement agreements. Several conditions have changed that affect continued implementation or expansion of an overwidth reimbursement program.

- During the recession and North Natomas flood moratorium, development drastically declined and there were no major new roadways constructed in North Natomas
- In 2009, the New Measure A program replaced the original Measure A program. Under the original program, Measure A provided \$10 to \$20 million annually in discretionary transportation capital funding. With the New Measure A program, the City receives \$2 to \$2.5 million in capital funding that is limited to bike/pedestrian and safety projects. As a result of reductions in discretionary funding, the Major Street Construction Fund is the primary source of funding to deliver City transportation priorities and is the primary source of local match that is required to leverage state and federal grants.
- With the adoption of a new building code, the Construction Excise Tax was frozen in 2008 values as it is linked to the former Building Code. As a result, this tax no longer rises with inflation, so its spending power decreases as construction costs escalate.
- In 2017, in response to lack of funding to address citywide and cumulative transportation impacts from new development, the City adopted a new citywide Transportation Development Impact Fee (TDIF). Most new growth areas, including North Natomas and Greenbriar, are not

subject to the fee as they pay local impact fees instead, while infill areas pay both TDIF and the construction excise tax.

- The Major Street Construction Fund is the primary source of local grant match requirements for state and federal funds, where these funds can leverage four times their amount in grant funding. As a result, the City Council adopted Resolution 2020-0398 on December 8, 2020, with a policy that overwidth reimbursement would not be included in finance plans in the future.

Greenbriar Finance Plan

When the Greenbriar Finance Plan was adopted in 2017, it included an assumption of \$3.25 million in overwidth reimbursement in one table in the document. Unlike the North Natomas Finance Plan, no overwidth program is defined or explained in the Finance Plan or Development Agreement.

In order to facilitate development, the Greenbriar developers requested to receive tax credits rather than wait for reimbursement and to include a provision for soft costs in addition to construction costs

Staff agreed to recommend an agreement that includes tax credits. The recommended agreement is for the \$3.25 million stated in the Finance Plan plus an additional \$185,000 in soft costs.