

Communication from Public

Name: Winston Stromberg
Date Submitted: 09/03/2024 07:29 AM
Council File No: 20-0789-S2
Comments for Public Posting: Dear Councilmembers, Please see the attached correspondence, which was also emailed to the Council.

Stromberg, Winston (LA)

From: Stromberg, Winston (LA)
Sent: Tuesday, September 3, 2024 7:27 AM
To: 'councilmember.Krekorian@lacity.org'; 'councilmember.Yaroslavsky@lacity.org'; 'councilmember.hernandez@lacity.org'; 'councilmember.blumenfield@lacity.org'; 'contactCD4@lacity.org'; 'councilmember.padilla@lacity.org'; 'councilmember.rodriquez@lacity.org'; 'councilmember.harris-dawson@lacity.org'; 'councilmember.price@lacity.org'; 'cd10@lacity.org'; 'councilmember.park@lacity.org'; 'councilmember.lee@lacity.org'; 'councilmember.soto-martinez@lacity.org'; 'councilmember.kevindeleon@lacity.org'; 'councilmember.mcosker@lacity.org'
Cc: 'hydee.feldsteinsoto@lacity.org'; 'kevin.james@lacity.org'; kenneth.fong@lacity.org; Osama Younan; 'david.michaelson@lacity.org'; 'K. Hekmat'; Starrett, Cindy (LA); Arnone, James (LA); 'John Peterson'
Subject: LA City Council, Sept. 4, 2024, Mtg., Item 22, Motion re Wilshire Gayley Project - CF 20-0789-S2
Attachments: 9-3-24 Wilshire Gayley Letter to City Council - CF 20-0789-S2.pdf

Good morning, Honorable Councilmembers.

Please see the attached correspondence regarding the proposed Motion set for tomorrow's (Sept. 4) City Council agenda, item 22, regarding the Wilshire Gayley project. (CF 20-0789-S2).

Very truly yours,

Winston P. Stromberg

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September 3, 2024

VIA EMAIL

Council President Paul Krekorian
Councilmember Katy Yaroslavsky
Honorable City Councilmembers
Los Angeles City Council
200 N Spring St.
Los Angeles, CA 90012

Re: September 4, 2024, City Council Agenda **Item 22**: Motion Addressing Wilshire Gayley Project, 10955 Wilshire Blvd. (**CF 20-0789-S2**)

Dear Honorable Members of the City Council:

On behalf of our client Wilshire Gayley, LLC, we ask Councilmember Yaroslavsky to reconsider, and urge the full City Council to **reject**, the flawed and inappropriate Motion introduced by Councilmember Yaroslavsky on August 28, 2024 (“Proposed Motion”), which seeks to rescind a prior motion adopted by the City Council. Recission of this prior City action would further hinder delivery of 250 much needed new housing units in Westwood through construction of the long-ago planned and approved Wilshire Gayley project (“Project”). The Project, which has a recorded final vesting tract map and entered plan check with the Department of Building and Safety (“LADBS”) in 2018, has been overwhelmingly supported by community residents as well as former Councilmember Koretz who, unlike Councilmember Yaroslavsky, was not also a member of the board of the Los Angeles County Metropolitan Transportation Authority (“Metro”).¹

Adoption of the Proposed Motion would benefit Metro and possibly endanger the City of Los Angeles. The Proposed Motion paints an inaccurate picture of the facts, omitting critical information about the history of the Project, which is suffering from a multi-year delay caused by Metro blocking issuance of the Project’s permits because Metro failed to take the Project into account when designing its Westwood/UCLA station on adjacent property owned by UCLA. Despite the Project’s good faith efforts to reach consensus with Metro on mutually feasible design approaches, Metro has stalled the Project for over three years, at the same time that the

¹ The City Council unanimously approved Councilmember Koretz’s motion regarding the Project on September 6, 2022 (the “2022 Motion”). The Proposed Motion also erroneously references a prior motion introduced in October 2021; that motion was superseded by the adoption of the 2022 Motion and its Council File has expired. (See CF 20-0789-01.)

City's housing shortage was worsening and the City acknowledged the pressing need for more housing.

During this time, Metro accelerated its own design process and is now seeking to shift the entire burden onto Wilshire Gayley to change its already plan checked Project to solve for Metro's glaring errors. To that end, the Proposed Motion wrongly suggests that Wilshire Gayley is the one to blame for permitting delays, when Wilshire Gayley provided all relevant data about the Project to Metro starting in 2020 when Metro requested such plans. In actuality, Metro's actions and refusal to take any accountability for its design failure to acknowledge the existence of the Project have made it impossible for Wilshire Gayley to proceed.

The 2022 Motion, which is attached to this letter as **Exhibit A**, contains an accurate summary of the history of the Project and the entitlements the City approved for the Project many years ago. Metro has known about the Project for over fifteen years, commenting on its Draft EIR and expressly considering the existence of the Project when Metro did its own EIR for its Purple Line Extension project in 2012. When the Metro Board approved its Purple Line Extension, it expressly rejected an "off-street" option for the proposed Westwood/UCLA station because the subway tunnel would have been routed under the Wilshire Gayley property, in conflict with the Project. Instead, Metro approved a station location under Wilshire Boulevard, with the main subway portal and associated facilities on the adjacent UCLA "Lot 36" property.

Wilshire Gayley submitted a building permit application for the Project to LADBS in February 2018. Moreover, Wilshire Gayley reached out to Metro and held multiple coordinating meetings in early 2018 to ensure Metro was fully aware of the Project. Despite Metro's knowledge of the Project, it did not ask Wilshire Gayley to provide Metro with the Project's design plans at that time. Instead, Metro moved the location of its station portal facilities just eight feet away from the Wilshire Gayley property line, to a location where its underground structure would inevitably be impacted by the Project.² Then, when it came time for Metro to hire a contractor and do detailed engineering plans for the station facilities, they made a critical error. Metro failed to accommodate the structural loads of the fully approved Project into the design of its station, even after Wilshire Gayley provided extensive Project design information to Metro starting in 2020.

Since the beginning of 2020, Metro has been blocking Wilshire Gayley's efforts to obtain permits from LADBS, taking the position that Wilshire Gayley has the responsibility to determine whether its Project will impact Metro's proposed station, despite the fact that the City approved the Project long before Metro began moving forward with its Purple Line Extension. In late 2021, Metro and Wilshire Gayley agreed to retain a third-party engineer to study any potential impacts from the Project on the station so that Metro could correct any deficiencies to

² Metro should have requested the Project's architectural and engineering design plans from Wilshire Gayley in 2018, when it knew Wilshire Gayley had applied for a building permit and before Metro had selected a design-build contractor to complete the design and build the station. If Metro had requested the plans and told Wilshire Gayley that it needed them so its design could accommodate the Project, we would not be in the situation we are today, and the 250-unit residential building would already have been built.

the design implicated by such impacts, but after the study was completed Metro demanded an even more detailed analysis. As the engineers undertook that further analysis, which Metro funded at a total cost of over \$500,000, Metro raced to excavate for the station as quickly as it could, bracing its giant hole in the ground to keep the surrounding soil in place by transferring all of the pressure onto the adjacent Wilshire Gayley property.³

Just two months ago, after Metro spent nearly a year reviewing and commenting on the third-party analysis, Metro asserted to Wilshire Gayley that the Project would negatively impact Metro's station by putting pressures on the station walls that exceeded the specifications Metro had provided for the station design. But then Metro told Wilshire Gayley that Metro will not make changes to its design to correct the problem, and that it is Wilshire Gayley's responsibility to bear the brunt of Metro's massive design flaw by redesigning its own Project at its own expense. Wilshire Gayley has already paid several million dollars to the City in permitting fees and Quimby fees, and now is being told its Project is not to Metro's liking. Metro's abuse of power violates its obligations to design its station in accordance with its own Metro Rail Design Criteria, disrespects the actions of the City of Los Angeles and the Westwood community in approving much-needed housing adjacent to the planned transit station, and is harmful to the City as well as to the Project.

As the City Council's adopted 2022 Motion stated, "Metro has the capability and responsibility to conduct its own analysis and make any necessary refinements to its Westwood/UCLA station design to ensure its construction and operation meets all public safety requirements." This remains true to this day. Metro can correct its problem now and still open the station in time for the 2028 Olympics. Moreover, the Proposed Motion's implication that "Metro has constructed a significant portion of its planned station" is not correct. Just a few days ago, Metro's project manager reported that "The final design continues and is approximately 97% complete. At the Westwood/UCLA station, the main station box excavation . . . was completed. Subgrade preparation and invert rebar work has begun."⁴ Thus, it is clear that "a significant portion" of the station has not yet been constructed.

The Proposed Motion is also troubling because the interests of the City of Los Angeles in creating new housing should be considered in this situation, not the self-serving interests of Metro. The City should not be serving as Metro's proxy to support Metro's one-sided and overreaching position. The City should be supporting the development of new housing that the City has already approved, not harming it.

³ Because of the pressure that Metro's support of excavation (i.e., shoring) design puts on the Wilshire Gayley property, Wilshire Gayley has been forced to spend a significant amount of money revising its own excavation plans to Metro's satisfaction. For nearly three years, Metro has refused to sign off on those plans, too, claiming they are not strong enough to withstand the load that Metro's own actions have put on Wilshire Gayley's property.

⁴ Purple (D Line) Extension Transit Project Section 3 July 2024 Monthly Project Status Report, available at <https://libraryarchives.metro.net/DPGTL/StatusReports/2024-july-westside-purple-line-extension-section-3.pdf>.

Despite Metro's blockade on issuance of the Project's building permits, Wilshire Gayley has obtained all required clearances for the permits, with the only hold-up being LADBS' request for updated information about the Project's ability to proceed safely with the adjacent construction of the Metro station. Unfortunately, as noted above, this information cannot currently be obtained because Metro refuses to correct the problem of its own making.

Because of Metro's ongoing delay and refusal to fix its errors, Wilshire Gayley was forced to seek and obtain from LADBS an extension of its plan check application, which LADBS approved in this past May. We urge the City not to help Metro continue to block this important housing Project, thereby creating potential financial liability for the City. To the best of our knowledge, Metro has not offered to indemnify the City for any such potential costs, though the Proposed Motion is clearly written for Metro's benefit.

Rather than moving forward with this Motion, we hope that Councilmember Yaroslavsky will urge Metro to solve these issues and make possible the development of this much-needed Project to help revitalize the Westwood community. Our client would very much appreciate the opportunity to meet with the Council office, which obviously has excellent access to Metro. Recognizing that our client had no choice but to file litigation against Metro, Metro then asserted that the City was also a necessary party to such litigation, so we would also welcome inclusion of the City Attorney's office in any such meeting.

In sum, the City Council should reject the Proposed Motion. In the alternative, to ensure that a full hearing can be held about the issues raised in the Proposed Motion, we recommend that the Council refer the motion to the Planning and Land Use Committee (or another appropriate Council committee) for further consideration and to provide Westwood stakeholders the opportunity to be heard.

Very truly yours,



Winston Stromberg
of LATHAM & WATKINS LLP

cc: Hydee Feldstein Soto, City Attorney
Kevin James, Office of the City Attorney
Kenneth Fong, Office of the City Attorney
Osama Younan, Los Angeles Department of Building and Safety
David Michaelson, Counsel to the Mayor
K. Hekmat, Wilshire Gayley, LLC
Cindy Starrett, Latham & Watkins LLP
Jim Arnone, Latham & Watkins LLP
John Peterson, Peterson Law Group
Laura Lake
Sandy Brown
Steve Sann

LATHAM & WATKINS LLP

EXHIBIT A

MOTION

TRANSPORTATION

Beginning in 2010 and over the past decade, the City has approved land use entitlements for the development of apartments on property located at 10951-10955 Wilshire Boulevard and 1151-1157 Gayley Avenue in the Westwood community, known as the Wilshire Gayley project, with strong support from residents and businesses. The project has been pursuing building, grading, shoring, and other permits from LADBS since 2018, and has nearly completed clearances required to pull permits and begin construction.

The Los Angeles County Metropolitan Transportation Authority (Metro) is currently building the Purple (D Line) Extension Transit Project, including construction in Council District 5, along Wilshire Boulevard in Westwood. The construction involves lane closures and other traffic control measures, and is impacting and will continue to impact residents and businesses in Council District 5 for many years. Metro has requested cooperation and priority processing from the City for its project requests.

The Purple Line Extension project includes the proposed Westwood/UCLA station, with a station portal structure located on UCLA-owned property directly adjacent to the Wilshire Gayley property. Because funding for Metro projects comes from public sources, Metro's consideration of the impacts of the Purple Line Extension project on communities, businesses, and other stakeholders, including previously approved projects in the City of Los Angeles, is critically important.

The Wilshire Gayley project was initially approved before the Purple Line Extension project, as set forth in Vesting Tentative Map No. 70935 and the vesting zone change adopted in 2010 as Ordinance No. 181487. Metro recognized the existence of the Wilshire Gayley project in the EIR/EIS for the Purple Line Extension project, which Metro certified in 2012.

Wilshire Gayley and Metro have been working cooperatively on traffic control and construction management to ensure that disruption to residents and businesses in the Westwood area is minimized. However, even though the Wilshire Gayley project was approved first, Metro has asserted that the City must not issue Wilshire Gayley's construction permits until the project conducts certain technical analysis due to its adjacency to Metro's planned Westwood/UCLA station.

As a result of disputes over the extent of Metro's authority to compel the City not to approve permits for a project on private property, and Metro's continued position that LADBS should not issue permits, Metro and Wilshire Gayley agreed to hire a third-party consultant to conduct the technical analysis requested by Metro.

In early 2022, after obtaining information and plans for the Wilshire Gayley project and the Westwood/UCLA station, a third-party consultant conducted the analysis. During this time, Wilshire Gayley determined that Metro may have designed the structure of the Westwood/UCLA station without taking the future Wilshire Gayley project into account.

Now that an additional year of delay has occurred to complete the third-party analysis, Metro now claims that the analysis is insufficient and still insists that the City should not issue permits for the Wilshire Gayley project. In addition, Metro has asserted that the developer must sue the City and Metro to resolve the matter; when the developer sought judicial relief against Metro, Metro filed a motion insisting that the City must be brought into the case because the permits Metro has refused to clear are City permits.

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Metro has the capability and responsibility to conduct its own analysis and make any necessary refinements to its Westwood/UCLA station design to ensure its construction and operation meets all public safety requirements. As the Wilshire Gayley project was approved first, this analysis and any appropriate design responses should be the responsibility of Metro as a public agency using public funds, and not of a private project, and Metro should conduct such analysis without asking the City to further delay the completion of the permitting process for the Wilshire Gayley project.

Metro's continued refusal to allow the Wilshire Gayley project to proceed threatens this important, long-planned and approved project, which has a Vesting Tentative Map that is set to expire in July 2023. This would result in a substantial loss to the City, including additional tax revenues, job and housing opportunities for residents, and the support of a future economic resurgence in Westwood Village.

I THEREFORE MOVE that the City Council instruct the Department of Building and Safety to remove the requirement that Metro issue clearances for the Wilshire Gayley project's construction permits because the project was approved prior to the Purple Line Extension, and has conducted technical analysis and provided plans and other project information to Metro to enable Metro to assess and determine whether any modifications to the design of the Westwood/UCLA station are necessary to account for the project.

I FURTHER MOVE that the City refrain from imposing any additional permitting requirements on the Wilshire Gayley project related to the presence of the Metro station adjacent to the Wilshire Gayley property.

PRESENTED BY: 
PAUL KORETZ
Councilmember, 5th District

SECONDED BY: 

ORIGINAL