

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

PENN COMMUNITY DEFENSE FUND, 251  
WEST 30TH STREET RESIDENTIAL  
TENANTS, CITY CLUB OF NEW YORK, and  
RETHINKNYC,

Petitioners-Plaintiffs,

- against -

NEW YORK STATE URBAN  
DEVELOPMENT CORPORATION d/b/a  
EMPIRE STATE DEVELOPMENT and NEW  
YORK STATE PUBLIC AUTHORITIES  
CONTROL BOARD

Respondents-Defendants.

Index No.: 159154/2022

Motion Seq. No.:

Assigned to  
Justice Lucy Billings  
IAS Part 41

**MEMORANDUM OF LAW ON BEHALF OF  
THE NATIONAL TRUST FOR HISTORIC PRESERVATION,  
THE NEW YORK LANDMARKS CONSERVANCY,  
AND THE PRESERVATION LEAGUE OF NEW YORK STATE  
AS PROPOSED *AMICI CURIAE*  
IN SUPPORT OF PETITIONERS-PLAINTIFFS**

Andrea C. Ferster, Esq.  
8 Beebe Pond Road  
Canaan, NY 12029  
(202) 974-5142 (phone)  
(202) 669-6311 (cell) e-mail:  
andreaferster@gmail.com  
NY Attorney # 5920293

Elizabeth S. Merritt, Deputy General Counsel\*  
Christopher Cody, Associate General Counsel\*  
National Trust for Historic Preservation  
600 14<sup>th</sup> Street NW, Suite 500  
Washington, DC 20005  
emerritt@savingplaces.org  
ccody@savingplaces.org  
(202) 588-6035

\* Not admitted to the New York bar

**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	iii
PRELIMINARY STATEMENT .....	1
STATEMENT OF INTEREST.....	1
ARGUMENT.....	3
I. ESD has Failed to Establish that the General Project Plan Qualifies as a “Land Use Improvement Project” Under the UDCA .....	3
A. The GPP Area is Not Insanitary.....	4
B. The GPP Area is Not Substandard.....	5
1. The Physical Condition of the GPP Area is Not Substandard.....	5
2. There are Positive Economic Conditions in the GPP Area .....	7
II. The Court Must Intervene in this Irregular and Extreme Case. ....	9
A. ESD’s Blight Designation is Irrational and Baseless.....	9
B. ESD’s Designation of the GPP Area as Blighted Establishes a Dangerous Precedent .....	10
C. The Court Must Intervene to Prevent Irreversible and Imminent Harm.....	11
III. The GPP Area Contains Many Significant Historic Resources that Would be Destroyed or Harmed by the GPP. ....	13
A. The GPP Calls for Eight Historic Properties to be Completely Demolished.....	13
1. Gimbel Brothers Skybridge, 101-139 West 32nd Street .....	13
2. Penn Station Service Building, 242 West 31st Street.....	14
3. Fairmont Building, 239-241 West 30th Street.....	15
4. St. John the Baptist Roman Catholic Church Complex, 207-215 West 30th Street .....	15
5. Penn Terminal Building, 370 Seventh Avenue .....	16

6.	Stewart Hotel, 371-377 Seventh Avenue.....	16
7.	Hotel Pennsylvania, 401 Seventh Avenue.....	16
B.	The GPP Threatens Serious Harm to Many Additional Historic Properties.....	17
1.	Former Equitable Life Assurance Company Building, 393 Seventh Avenue .....	17
2.	Fur Craft Building, 242-246 West 30th Street.....	18
3.	Loft Building, 144-154 West 30th Street .....	18
4.	St. Francis Roman Catholic Church Complex, 129-143 West 31st Street .....	18
5.	St. Michael’s Roman Catholic Church, 414-424 West 34th Street .....	19
6.	23rd Police Precinct Station House, 134-138 West 30th Street .....	19
	CONCLUSION.....	20
	APPENDIX - Photos of Historic Resources Proposed for Demolition	

**TABLE OF AUTHORITIES****Cases**

<i>Committee to Save Cleveland's Huletts v. U.S. Army Corps of Eng'rs</i> , 163 F. Supp. 2d 776 (N.D. Ohio 2001) .....	12
<i>Develop Don't Destroy v. Urban Dev. Corp.</i> , 2008 N.Y. Slip Op. 30104, 2008 N.Y. Misc. LEXIS 7645 (Sup. Ct., N.Y. County), <i>aff'd</i> , 59 A.D.3d 312, 874 N.Y.S.2d 414 (2009) .....	5-6, 9
<i>Gabe Realty Corp. v. White Plains Urban Renewal Agency</i> , 195 A.D.3d 1020, 151 N.Y.S.3d 143 (2d Dep't 2021) .....	4
<i>Goldstein v. N.Y. State Urban Dev. Corp.</i> , 13 N.Y.3d 511, 893 N.Y.S.2d 472, 921 N.E.2d 164 (2009) .....	9
<i>Goldstein v. Pataki</i> , 516 F.3d 50 (2d Cir.), <i>cert. denied</i> , 554 U.S. 930 (2008) .....	6, 8-9
<i>Kaur v. New York State Urban Dev. Corp.</i> , 15 N.Y.3d 235, 907 N.Y.S.2d 122, 933 N.E.2d 721, <i>cert. denied</i> , 562 U.S. 1108 (2010) .....	4-5, 8
<i>Kelo v. City of New London</i> , 545 U.S. 469 (2005) .....	20
<i>Yonkers Community Devel. Agency v. Morris</i> , 37 N.Y.2d 478, 373 N.Y.S.2d 112, 335 N.E.2d 327 (1975) .....	4, 13

**Statutes**

49 U.S.C. § 303(c) .....	12-13
54 U.S.C. § 306113 .....	12
54 U.S.C. § 312102(a) .....	1
New York Urban Development Corporation Act ("UDCA"), Chap. 174, Laws of 1968, N.Y. Unconsol. Law § 6252 <i>et seq.</i> .....	3
UDCA § 3(12) .....	3, 5
UDCA § 10(c)(1) .....	3, 19

**Other Authorities****Court Documents**

Affirmation of Charles Weinstock (Oct. 27, 2022), Ex. J .....	5
Petitioners'-Plaintiffs' <i>Memorandum of Law in Support of Verified Petition and Complaint</i> .....	9
<i>Memorandum of Law of Respondent-Defendant N.Y. State Urban Devel. Corp. in Opposition to the Article 78 Petitions</i> .....	10-11

*Respondent-Defendant N.Y. State Public Authorities Control Board's Memorandum of Law in Support of Its Cross-Motion to Dismiss the Petition* ..... 12

### **Books**

DAVID W. DUNLAP, *FROM ABYSSINIAN TO ZION: A GUIDE TO MANHATTAN'S HOUSES OF WORSHIP* (Columbia Univ. Press, 2004) ..... 18-19

NORVAL WHITE, ELLIOT WILLENSKY, & FRAN LEADON, *AIA GUIDE TO NEW YORK CITY* (OUP USA, 5th ed. 2010) ..... 16

### **Online Sources**

Jen Carlson, *The Oldest Phone Number in NYC*, The GOTHAMIST, (July 2, 2014) (available at <https://gothamist.com/arts-entertainment/the-oldest-phone-number-in-nyc>) ..... 17

Castle Coalition, *50 state report card: Tracking Eminent Domain Reform Legislation Since Kelo* (Aug. 2007) (available at [https://ij.org/wp-content/uploads/2015/03/50\\_State\\_Report.pdf](https://ij.org/wp-content/uploads/2015/03/50_State_Report.pdf)) .... 20

Carl Elefante, Insights, <https://carlelefante.com/insights/the-greenest-building-is> ..... 11

Empire State Development, Pennsylvania Station Area Civic and Land Use Improvement Project, Final Environmental Impact Statement ("Final EIS") (June 2022) (available at <https://esd.ny.gov/penn-station-area-final-environmental-impact-statement-feis>) ..... 14-20

Empire State Development, Pennsylvania Station Area Civic and Land Use Improvement Project, General Project Plan ("GPP") (July 21, 2022) (available at <https://esd.ny.gov/sites/default/files/Exhibit%20%20-%20Modified%20General%20Project%20Plan.pdf>) ..... 3

Christopher Gray, *STREETSCAPES: The Penn Station Service Building; A 1908 Structure Survives A 'Monumental Act of Vandalism'*, NEW YORK TIMES (Aug. 20, 1989) (available at <https://www.nytimes.com/1989/08/20/realestate/streetscapes-penn-station-service-building-1908-structure-survives-monumental.html>) ..... 15

Historic American Buildings Survey ("HABS"), Pennsylvania Station, New York Terminal Service Plant, 250 West Thirty-first Street, New York County, NY (No. NY-5471-A) (available at <https://www.loc.gov/pictures/collection/hh/item/ny1785>) ..... 14

Claire Leaden, *New York City's Century-Old Hotel Pennsylvania Is Currently Being Demolished*, SECRET NYC (Jan. 31, 2022) (available at <https://secretnyc.co/hotel-pennsylvania-nyc-demolition>) ..... 12

Patrick McGeehan, *Funding for Penn Station Plan Could Fall \$3 Billion Short, Report Says*, NEW YORK TIMES (July 13, 2022) (available at <https://www.nytimes.com/2022/07/13/nyregion/penn-station-renovation-funding.html>) ..... 12

National Trust for Historic Preservation, <i>Older, Smaller Better: Measuring how the character of buildings and blocks influences urban vitality</i> (May 2014) (available at <a href="https://forum.savingplaces.org/act/research-policy-lab/older-smaller-better">https://forum.savingplaces.org/act/research-policy-lab/older-smaller-better</a> ) .....	7, 19-20
New York City Landmarks Preservation Commission, Landmark Designation, <a href="https://www.nyc.gov/site/lpc/about/landmark-designation.page">https://www.nyc.gov/site/lpc/about/landmark-designation.page</a> .....	14
New York State Library, 1938 Report of NY Constitutional Convention Comm., vol. 6, part 2, (available at <a href="https://nysl.ptfs.com/#!/s?a=c&amp;q=*%26type=16%26criteria=field11%3D1301505%26browse5_ss%3D%22V06:Problems%20Relating%20to%20Bill%20of%20Rights%20and%20General%20Welfare%22%26b=0">https://nysl.ptfs.com/#!/s?a=c&amp;q=*%26type=16%26criteria=field11%3D1301505%26browse5_ss%3D%22V06:Problems%20Relating%20to%20Bill%20of%20Rights%20and%20General%20Welfare%22%26b=0</a> ) .....	8-9
New York State Parks, Recreation and Historic Preservation, National Register, <a href="https://parks.ny.gov/shpo/national-register">https://parks.ny.gov/shpo/national-register</a> .....	14
Preservation League of New York State, Penn Station Neighborhood One of New York’s “Seven to Save” (May 16, 2022) (available at <a href="https://static1.squarespace.com/static/5ce6e114ce7798000182c79f/t/62819ab9150bbf76d8b0bb90/1652660922140/penn+station+neighborhood+STS+announcement+pr.pdf">https://static1.squarespace.com/static/5ce6e114ce7798000182c79f/t/62819ab9150bbf76d8b0bb90/1652660922140/penn+station+neighborhood+STS+announcement+pr.pdf</a> ) .....	3
Ilya Somin, <i>New York’s Ultra-Broad Definition of “Blight” Continues to Enable Eminent Domain Abuse</i> , REASON; THE VOLOKH CONSPIRACY (Dec. 30, 2022) (available at <a href="https://reason.com/volokh/2022/12/30/new-yorks-ultra-broad-definition-of-blight-continues-to-enable-eminent-domain-abuse">https://reason.com/volokh/2022/12/30/new-yorks-ultra-broad-definition-of-blight-continues-to-enable-eminent-domain-abuse</a> ) .....	20
VHB, Inc., Empire Station Complex Neighborhood Conditions Study, Feb 2021 (updated July 2022) (“Conditions Study”) (available at <a href="https://esd.ny.gov/sites/default/files/GPP-Exhibit-E-Empire-Station-Complex-Neighborhood-Conditions-Study-with-Addendum_0.pdf">https://esd.ny.gov/sites/default/files/GPP-Exhibit-E-Empire-Station-Complex-Neighborhood-Conditions-Study-with-Addendum_0.pdf</a> ) .....	4, 6-8

### **PRELIMINARY STATEMENT**

The National Trust for Historic Preservation, the New York Landmarks Conservancy, and the Preservation League of New York State submit this *amicus* brief in support of Petitioners-Plaintiffs and in opposition to the Respondents-Defendants' adoption of the General Project Plan ("GPP") for the Pennsylvania Station Area Civic and Land Use Improvement project. Respondents' GPP seeks to take and demolish a substantial area of midtown Manhattan, notwithstanding that the area in question is economically successful and contains numerous irreplaceable historic buildings. Respondents justify this taking with an irrational and baseless blight declaration, which, if upheld, would expand the state's authority to take private property for economic redevelopment to a virtually unlimited degree and set a concerning precedent nationally. The proposal revives the discredited concept of "urban renewal" that ravaged American cities during the mid-20th century and is a clear abuse of the blight designation.

While the brief focuses on the architectural heritage of the relevant area and the Respondents' indefensible blight arguments, *amici* also fully support and concur with the additional arguments put forth by the Petitioners.

### **STATEMENT OF INTEREST**

The *amici* offer a national, state, and local perspective on architectural heritage and the misuse of blight arguments to undermine the character and integrity of historic communities.

The National Trust for Historic Preservation in the United States ("National Trust") is a private charitable, educational, non-profit corporation chartered by Congress in 1949 to further the historic preservation policy of the United States, and to "facilitate public participation" in the preservation of our nation's heritage. 54 U.S.C. § 312102(a). The National Trust is headquartered in Washington, D.C., and has 27 historic sites open to the public. With more than

one million members and supporters around the country, the National Trust works to protect significant historic sites and to advocate for historic preservation as a fundamental value in programs and policies at all levels of government. The National Trust is moved to involvement in this case because of the extreme and unjustified blight declaration upon which the GPP is predicated, which targets historic resources that should be the basis for continued economic activity, rather than recognizing historic resources as significant economic and social assets, all of which represents a return to the failed policies of urban renewal that targeted historic areas.

The New York Landmarks Conservancy, Inc. (the “Conservancy”), founded in 1973, is a non-for-profit organization committed to preserving and protecting New York’s unique architectural heritage through advocacy, financial, and technical programs. Over the last fifty years, the Conservancy has advocated for preservation in New York and provided support to safeguard landmark homes, businesses, non-for-profits, and religious institutions. The Conservancy is often consulted by City and State agencies to opine on the architectural, historical, and cultural significance of sites and their ability to be restored and sustained. The Conservancy is of the opinion that sites within the GPP area have both architectural and cultural significance and should be preserved; the Conservancy speaks when New York heritage and communities are placed at risk, as here, by unfettered development.

The Preservation League of New York State (“Preservation League”) is New York’s statewide nonprofit focused on investing in people and projects that champion the essential role of preservation in community revitalization, sustainable economic growth, and the protection of New York State’s historic buildings and landscapes. Founded as a nonprofit organization in March 1974, its purpose is to communicate preservation ideals and help shape federal, state and local policies to encourage the protection, sensitive use, and creative reuse of historic properties.



The Preservation League is the only statewide preservation organization providing comprehensive and predominantly pro bono services to those who wish to identify, preserve, protect, reuse, and promote historic resources. The Preservation League included the Penn Station Neighborhood in its biennial “Seven to Save” endangered properties list in 2022 due to the negative impacts on historic buildings and structures in the General Project Plan.<sup>1</sup>

### **ARGUMENT**

#### **I. ESD has Failed to Establish that the General Project Plan Qualifies as a “Land Use Improvement Project” Under the UDCA**

Approval of the GPP in part relied upon certification of the GPP as a “Land Use Improvement Project” under the Urban Development Corporation Act (“UDCA”), Chap. 174, Laws of 1968, N.Y. Unconsol. Law § 6252 *et seq.*<sup>2</sup> The Empire State Development Corporation (“ESD”) reasoned in its approval that the GPP qualifies as a “Land Use Improvement Project” because the subject area is blighted,<sup>3</sup> which statute defines as “a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area and tends to impair or arrest the sound growth and development of the municipality”. UDCA § 10(c)(1). The UDCA further defines “a substandard or insanitary area” as “a slum, blighted, deteriorated or deteriorating area, or an area which has a blighting influence on the surrounding area.” *Id.* § 3(12).

The area impacted by the GPP is not blighted by any reasonable definition of the term; rather, the area contains many significant historic resources and hosts consistent and substantial

---

<sup>1</sup> Preservation League of New York State, Penn Station Neighborhood One of New York’s “Seven to Save” (May 16, 2022) (*available at* <https://static1.squarespace.com/static/5ce6e114ce7798000182c79f/t/62819ab9150bbf76d8b0bb90/1652660922140/penn+station+neighborhood+STS+announcement+pr.pdf>).

<sup>2</sup> Available at <https://www.nysenate.gov/legislation/laws/UDA>.

<sup>3</sup> See Empire State Development, Pennsylvania Station Area Civic and Land Use Improvement Project, General Project Plan (“GPP”), at pg. 28-29 (July 21, 2022) (*available at* <https://esd.ny.gov/sites/default/files/Exhibit%2020-%20Modified%20General%20Project%20Plan.pdf>).

economic activities. ESD's discretion to declare an area blighted is not unlimited.<sup>4</sup> ESD's finding in the GPP is an extreme abuse of that discretion; ESD's blight designation here is so unreasonable, unsubstantiated, and arbitrary, that judicial intervention is required.

**A. The GPP Area is Not Insanitary.**

ESD has not made a reasonable showing that the GPP area is "insanitary," as required by the UDCA. In fact, the GPP's own "Empire Station Complex Neighborhood Conditions Study" (the "Conditions Study")<sup>5</sup> proves the opposite. The Conditions Study evidences an absence of insanitary conditions within the GPP area. *See* Conditions Study, Pg. 55, ¶ 2 (noting that requests submitted to the New York City Department of Health and Mental Hygiene "did not indicate any insanitary conditions and these reportings are unlikely to represent a significant environmental concern.").

The Conditions Study also documents that inquiry with the Fire Department of New York ("FDNY") regarding violation notices and orders in the GPP area since 1987 only yielded common and minor violations. *Id.* at Pg. 55, ref. *Appendix 1*. As of 2020, any such violations had been addressed, and FDNY had no record of abnormal environmental hazards in the area. *Id.* at Pg. 55, ¶ 5. The reality of the GPP area directly contrasts with the conditions described in justification of the blight designation in *Kaur v. New York State Urban Dev. Corp.*, 15 N.Y.3d 235, 907 N.Y.S.2d 122, 933 N.E.2d 721, *cert. denied*, 562 U.S. 1108 (2010), where the relevant conditions report "found that many of the buildings in the Project site had deteriorated facades

---

<sup>4</sup> "[C]ourts are required to be more than rubber stamps in the determination of the existence of substandard conditions in urban renewal condemnation cases. The findings of the agency are not self-executing. A determination of public purpose must be made by the courts themselves and they must have a basis on which to do so." *Yonkers Community Devel. Agency v. Morris*, 37 N.Y.2d 478, 485, 373 N.Y.S.2d 112, 335 N.E.2d 327 (1975); *accord*, *Gabe Realty Corp. v. White Plains Urban Renewal Agency*, 195 A.D.3d 1020, 1022, 151 N.Y.S.3d 143 (2d Dep't 2021).

<sup>5</sup> VHB, Inc., Empire Station Complex Neighborhood Conditions Study, Feb 2021 (updated July 2022) (available at [https://esd.ny.gov/sites/default/files/GPP-Exhibit-E-Empire-Station-Complex-Neighborhood-Conditions-Study-with-Addendum\\_0.pdf](https://esd.ny.gov/sites/default/files/GPP-Exhibit-E-Empire-Station-Complex-Neighborhood-Conditions-Study-with-Addendum_0.pdf)).

and that several of the buildings had been sealed by the New York City Fire Department because of unsafe conditions. It also discovered widespread vermin on the streets . . . .” *Id.*, 15 N.Y.3d at 250. Clearly, no similar public health nor environmental issues exist within the GPP that could reasonably qualify the area as “insanitary” within the meaning of UDCA § 3(12).

**B. The GPP Area is Not Substandard.**

ESD has likewise failed to make a reasonable showing that the GPP area is “substandard” and the Conditions Study contains compelling evidence to the contrary. Fundamentally, ESD asserts that the GPP area is substandard due to the nature and condition of its building stock and its relative economic performance. However, as detailed below, the Conditions Study shows that the area’s building stock is not “a slum, blighted, deteriorated or deteriorating,” as required under UDCA § 3(12), and ESD’s own economic analysis confirms that the area is economically viable.

**1. The Physical Condition of the GPP Area is Not Substandard**

The Conditions Study lists any building code violations and general building conditions throughout the study area. In total, only 8 of the 61 lots studied were alleged by ESD to be in poor condition, and only one, the Penn Station Service Building (owned by Amtrak) is alleged to be in critical condition.<sup>6</sup> Expressed as percentages, only 13% of the lots in the GPP area are alleged to be in poor condition, and only 1.6% of the area is alleged to be in critical condition, meaning that more than 85% of the GPP area lots are *not* alleged to be physically substandard.

The condition of the GPP area directly contrasts with the facts in the so-called *Atlantic Yards* redevelopment cases, in which a blight designation was upheld where 86% of the land and 70% of the lots qualified as blighted. *See Develop Don’t Destroy (Brooklyn) v. Urban Devel. Corp.*, 2008 N.Y. Misc. LEXIS 7645 (Sup. Ct. N.Y. Co. 2008), *aff’d*, 59 A.D.2d 312 (1st Dep’t

---

<sup>6</sup> Affirmation of Charles Weinstock (Oct. 27, 2022), Ex. J, Fig. E-3.

2009); *Goldstein v. Pataki*, 516 F.3d 50, 60 (2d Cir.), *cert. denied*, 554 U.S. 930 (2008). The ratios of allegedly blighted to non-blighted buildings are literally inverted here, when compared to the *Atlantic Yards* facts, which demonstrates the preposterous nature of this blight claim. The GPP area, with only a small minority of buildings in physically poor or critical condition – only 14.6% at most – cannot reasonably be considered a physically blighted area.

ESD additionally alleges that the GPP area is physically substandard due to the area's average building age and the preponderance of non-optimal lot utilization.<sup>7</sup> In the experience of the *amici*, those two characteristics are often interrelated, are not indicative of blight, but rather of neighborhood diversity in America. One-third of the buildings in the GPP area were constructed prior to 1920.<sup>8</sup> Another 20.7% of the buildings in the GPP area were constructed between 1921-1950, and only 3 out of its 58 buildings were built after 1980.<sup>9</sup> In sum, the GPP area is comprised almost exclusively of buildings that are more than 42 years old, over half of its buildings are more than 70 years old, and one-third are more than 100 years old. The diversity of age, style, size, and use of buildings in the GPP area contribute to the historic character of this neighborhood and the uniquely diverse character of New York City.

It is unsurprising and normal for buildings of these diverse vintages to be of a smaller scale than contemporary construction. It is likewise unsurprising and entirely normal for the underlying zoning of these parcels to now exceed the buildings built on them. These are natural characteristics of historic areas, and extensive research has proven that smaller, older buildings are essential for healthy cities. Research confirms that established neighborhoods with a mix of older, smaller buildings perform better than districts with larger, newer structures when tested

---

<sup>7</sup> Conditions Study, *supra* note 5, at Pg. 42 and 49.

<sup>8</sup> *Id.* at Pg. 49, Table E-6.

<sup>9</sup> *Id.*

against a range of economic, social, and environmental outcome measures.<sup>10</sup> In the experience of the *amici*, just because an area has an older, smaller building stock should not justify its classification as blight. To do so ignores the proven value of historic buildings and impugns architectural heritage as inherently substandard.

## **2. There are Positive Economic Conditions in the GPP Area**

ESD's economic analysis likewise demonstrates that the GPP area is not substandard. The Conditions Study records numerous measurements of positive economic conditions within the area, and even economic growth. For example, from 2000-2020, Class A office space in the GPP area had a 96.5% occupancy rate. Such an exceptional level of use and occupancy does not support a determination that the area is substandard; to the contrary, the figure proves that businesses are attracted to this area, and have been consistently attracted to it for decades. The Conditions Study also records that between 2000-2020 the per-square-foot cost of Class A commercial real estate in the area grew from \$395 to \$933, a gain of 136.2%.<sup>11</sup> Overall, the economic data in the Conditions Study shows consistent gains and growth in the GPP area throughout the 21<sup>st</sup> century. The only negative economic data point in the entire Conditions Study is a -1.3% growth rate for rental values (scaled for inflation) from 1997-2017.<sup>12</sup> The fact that the commercial rental growth rate declined minimally does not justify a claim that the GPP area is blighted, especially when that fact is accompanied by extensive and conclusive evidence that the GPP area is economically successful.

ESD's argument that the GPP area is blighted is based primarily on a comparative

---

<sup>10</sup> National Trust for Historic Preservation, *Older, Smaller Better: Measuring how the character of buildings and blocks influences urban vitality* (May 2014) (available at <https://forum.savingplaces.org/act/research-policy-lab/older-smaller-better>).

<sup>11</sup> Conditions Study, *supra* note 5, at Column 11.

<sup>12</sup> *Id.* at Pg. 59, Table F-2, Column 4.

analysis of commercial real estate within the GPP area (the “Penn Station Study Area”) and three other areas near transit hubs in Manhattan: the Grand Central Area, Times Square Area, and World Trade Center Area.<sup>13</sup> This analysis is both extremely limited and fundamentally flawed. Such a limited economic analysis – one study comparing only three study areas to the subject area of the GPP, and only evaluating one building class – is insufficient evidence to serve as the primary justification for a blight designation.<sup>14</sup> Further, ESD’s economic analysis is inapposite, a false comparison that applies an impossible comparative standard to the GPP project area.

It is undisputed that Penn Station is a drastically inferior transit facility compared to the other three transit hubs studied. ESD’s comparative methodology thus necessarily results in an unreasonable comparison between the GPP area and other inherently superior areas. By the same methodology, any area in New York could be declared blighted simply by selectively comparing it to nearby areas that economically outperform it. Fundamentally, just because three areas around transit hubs in Manhattan have seen substantial growth in recent years does not mean that other areas near transit hubs that have seen lesser growth are blighted.

Even within the prejudicial framework of ESD’s comparative analysis, the economic data in the Conditions Study clearly shows that the GPP area is not blighted. The area enjoys high occupancy rates and consistent economic growth, and ESD has not asserted that it impairs normal economic growth in the vicinity. While the definition of blight has been significantly expanded since “the dire circumstances of urban slum dwelling described by the *Muller* court in 1936, and which prompted the adoption of article XVIII at the State Constitutional Convention two years later”, an area with the positive economic characteristics of the GPP area cannot

---

<sup>13</sup> *Id.* at Pg. 56.

<sup>14</sup> In *Kaur v. New York State Urban Devel. Corp.*, 15 N.Y.3d 235, 907 N.Y.S.2d 122, 933 N.E.2d 721 (2010), the Court required two independent studies to evaluate a disputed blight claim.

reasonably be declared economically blighted.<sup>15</sup> *Goldstein v. Pataki*, 516 F.3d at 60.

## II. The Court Must Intervene in this Irregular and Extreme Case.

### A. ESD's Blight Designation is Irrational and Baseless

In *Goldstein v. N.Y. State Urban Dev. Corp.*, 13 N.Y.3d 511, 893 N.Y.S.2d 472, 921 N.E.2d 164 (2009), the Court opined that a “hypothetical case” existed where judicial intervention to overturn a blight designation would be appropriate “where the physical conditions of an area might be such that it would be irrational and baseless to call it substandard or insanitary.” *Id.*, 13 N.Y.3d at 527 (internal citations and quotations omitted). While the facts in *Goldstein* did not merit judicial intervention, the case before the court here is such a case: it involves exactly the “irrational and baseless” blight designation anticipated in *Goldstein*.

In *Goldstein*, 86% of the land and 70% of the lots in question qualified as blighted. The majority of the project area, 63%, had in fact been designated as blighted for more than 40 years.<sup>16</sup> By contrast, here, even ESD only asserts that 14.16% of the buildings in the GPP area are physically blighted, and ESD's principal argument that the area is economically blighted is merely that the GPP area has seen slightly less growth over the past 25 years than three high-growth areas near Manhattan transit hubs. Beyond that, ESD seems to suggest that the GPP area is blighted because of its historic buildings and affordability.

This specious case is what was envisioned by the court in *Goldstein* as necessary cause for judicial intervention. Based on the preceding arguments and those in the Petitioners'-Plaintiffs' *Memorandum of Law in Support of Verified Petition and Complaint*, amici assert that

---

<sup>15</sup> See 1938 Report of NY Constitutional Convention Comm., vol. 6, part 2, at 636-639.

<sup>16</sup> “Significantly, petitioners concede that the majority of the Project area is blighted, as they are not challenging the blight designation under ATURA as to 63% of the site, which has stood for nearly 40 years.” *Develop Don't Destroy v. Urban Dev. Corp.*, 2008 N.Y. Slip Op. 30104, at 36-37 (Sup. Ct., N.Y. County), *aff'd*, 59 A.D.3d 312, 874 N.Y.S.2d 414 (2009).

it would be irrational and baseless to declare the GPP area blighted, and we urge the Court to vacate the Defendants' decisions. If the approval of the GPP is not reversed, the precedent would imperil vast swathes of the State of New York, including innumerable historic and architecturally significant resources, rendering them vulnerable to eminent domain actions based on similarly thin justifications. If a successful commercial area with numerous irreplaceable historic assets, limited physical defects, consistent economic growth, and a high occupancy rate can be deemed blighted, and destroyed without judicial intervention, what alternate set of facts is there that would merit judicial reprieve?

**B. ESD's Designation of the GPP Area as Blighted Establishes a Dangerous Precedent**

Arguments that ESD offers to support the GPP's blight designation are pernicious and merit judicial correction. For example, ESD argues that the GPP area is blighted in part because of "the fact that the last major building in the area was completed 50 years ago and since that time buildings constructed in the area account for only 3 percent of the area by acreage and less than 2 percent by gross building square footage."<sup>17</sup> Since the age at which buildings become National Register of Historic Places ("NR") eligible is 50 years old, ESD is effectively arguing that historic districts are inherently blighted.

ESD also equates blight with issues within the public realm, specifically "substandard conditions of Penn Station; the substandard conditions of other elements of the public realm, including poorly located subway entrances, narrow sidewalks and poorly designed plazas and streetscapes."<sup>18</sup> The dilapidated condition of a public facility and its related interfaces with public realm are not reasonable cause to condemn entirely separate private property, some of it

---

<sup>17</sup> *Memorandum of Law of Respondent-Defendant N.Y. State Urban Devel. Corp. in Opposition to the Article 78 Petitions*, Pg. 8.

<sup>18</sup> *Id.*



blocks away, as blighted. Were this argument accepted, any project improving a sub-standard public facility could take and redevelop swaths of unrelated private property in the vicinity.

Many of ESD's contentions regarding specific buildings are similarly flawed and insufficient. For example, ESD consistently argues that the demolition of certain historic buildings within the GPP is warranted in part because they have poor energy efficiency grades.<sup>19</sup> This argument ignores the fact that sustainability gains achieved by the most energy-efficient modern buildings take multiple decades to offset the negative impacts of demolition, and that "the greenest building is the one already built".<sup>20</sup> ESD also repeatedly cites minor, common conditions like inoperable fire alarms, damaged windows, and other easily repairable issues as justification for the demolition of entire historic buildings.<sup>21</sup> ESD fundamentally offers no clear, much less convincing, evidence that the GPP area is blighted, and its arguments, if unchecked by the Court, would establish a virtually unlimited definition of blight.

### **C. The Court Must Intervene to Prevent Irreversible and Imminent Harm**

The approval of the GPP enables substantial irreversible and imminent harms that the Court must intervene to prevent. The GPP authorizes large-scale eminent domain actions and the demolition of multiple historic properties to further a project that likely cannot be completed as currently proposed. Alarming, the GPP appears to be moving forward, even without securing the GPP's approval by the New York State Public Authorities Control Board ("PACB"): "[T]o reiterate: PACB has not been presented with, considered, or approved the GPP; and the PACB Resolution expressly provides that future acquisition or development of any site at which members of Petitioners allegedly reside will be 'subject to required governmental

---

<sup>19</sup> *Id.* at Pg. 9-10.

<sup>20</sup> Carl Elefante, Insights, <https://carlelefante.com/insights/the-greenest-building-is>.

<sup>21</sup> *Memorandum of Law of Respondent-Defendant N.Y. State Urban Devel. Corp. in Opposition to the Article 78 Petitions*, at Pg. 9-10.

reviews and approvals, including without limitation approval by the PACB’.”<sup>22</sup>

ESD has likewise not secured any federal permits for this project despite it requiring significant federal funding.<sup>23</sup> Troublingly, the GPP’s proposed treatment of the historic properties in the GPP area could well delay or preclude the granting of federal funding or approval for the rehabilitation of Penn Station. For example, Section 110(k) of the National Historic Preservation Act (“NHPA”) requires federal agencies to deny funding or approval if the agency concludes that the demolition of historic resources occurred prior to the application, with the intent to avoid consideration of preservation alternatives.<sup>24</sup> Section 110(k) provides that “a federal agency may not grant a permit to an applicant who has already adversely affected historic property.”<sup>25</sup> The demolition that is underway at the Hotel Pennsylvania, and the many other demolitions proposed in the GPP, creates the risk of exactly this type of future denial of funding and approvals, based on anticipatory demolition addressed by Section 110(k).<sup>26</sup>

Additionally, any federal transportation funding or approval that is needed for the rehabilitation of Penn Station would also require compliance with Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303(c). Section 4(f) requires that agencies avoid the “use” of historic resources resulting in an adverse effect, unless there is no “feasible and prudent alternative.” *Id.* Combined with the consultation protections established in Section 106 of the

---

<sup>22</sup> *Respondent-Defendant N.Y. State Public Authorities Control Board’s Memorandum of Law in Support of Its Cross-Motion to Dismiss the Petition*, at Pg. 19.

<sup>23</sup> “State officials have estimated New York’s share of the cost of renovating and expanding the station to be between \$7.5 billion and \$10 billion. New York has agreed to pay about one-fourth of the total costs, with the rest to be supplied by the federal government, Amtrak, and New Jersey.” Patrick McGeehan, *Funding for Penn Station Plan Could Fall \$3 Billion Short, Report Says*, NEW YORK TIMES (July 13, 2022) (available at <https://www.nytimes.com/2022/07/13/nyregion/penn-station-renovation-funding.html>).

<sup>24</sup> See 54 U.S.C. § 306113.

<sup>25</sup> *Committee to Save Cleveland’s Hulets v. U.S. Army Corps of Eng’rs*, 163 F. Supp. 2d 776, 792 (N.D. Ohio 2001).

<sup>26</sup> See Claire Leaden, *New York City’s Century-Old Hotel Pennsylvania Is Currently Being Demolished*, SECRET NYC (Jan. 31, 2022) (available at <https://secretnyc.co/hotel-pennsylvania-nyc-demolition>).

NHPA, these laws threaten the ability to obtain federal funding or approvals needed for the rehabilitation of Penn Station due to the GPP's proposed harmful treatment of historic properties.

Despite their lack of approval from the PACB or any federal entity, and the certain challenges such approvals would face, the harms of the GPP will be inflicted upon the Penn Station neighborhood without judicial intervention. Proceeding with the GPP threatens the possibility of a federally supported rehabilitation of Penn Station and could easily result in an outcome where significant historic buildings are taken and demolished to enable a project that is subsequently abandoned. The Court is able to prevent this very realistic scenario from occurring.

The Court is fully empowered to reverse ESD's approval of the GPP: "[C]ourts are required to be more than rubber stamps in the determination of the existence of substandard conditions in urban renewal condemnation cases. The findings of the agency are not self-executing. A determination of public purpose must be made by the courts themselves and they must have a basis on which to do so." *Yonkers Community Devel. Agency v. Morris*, 37 N.Y.2d at 485. The *amici* ask the Court to exercise this authority and invalidate the ESD's approval of the GPP due to the irrational and baseless nature of its blight designation. The Court must do this because ESD has failed to offer sufficient evidence that the GPP area is blighted, and imminent, irreversible harm will occur if ESD is allowed to proceed.

**III. The GPP Area Contains Many Significant Historic Resources that Would be Destroyed or Harmed by the GPP.**

**A. The GPP Calls for Eight Historic Properties to be Completely Demolished**

*Amici* highlight the significant, irreplaceable historic resources that would be harmed or destroyed by the GPP. Eight historic properties would be demolished, including the following:

**1. Gimbel Brothers Skybridge, 101-139 West 32nd Street**

The Gimbel Brothers Skybridge is eligible for the New York State Register of Historic Places (“SR”) and the NR<sup>27</sup> under Criterion C in the area of architecture. It is a rare, high-quality, architect-designed skybridge by the firm Shreve and Lamb, architects of the Empire State Building. The Art-Deco, three-story copper-clad bridge was completed in 1911 and was originally part of the Gimbel Brothers Department Store. The skybridge is ornamented with pilasters and panels containing diamond and square patterns, and is likely also historically significant for its association with the Gimbel Brothers Department Store, one of Midtown Manhattan’s grand shopping emporiums of the early twentieth century.<sup>28</sup>

## **2. Penn Station Service Building, 242 West 31st Street**

The New York City Landmarks Preservation Commission (“LPC”) has determined that the Penn Station Service Building is eligible for New York City Landmarks (“NYCL”) designation.<sup>29</sup> The building is also SR and NR eligible, and is historically significant for both its architecture and engineering.<sup>30</sup> The building was built in 1908 as an integral component of the original Pennsylvania Station complex, serving as a “power generator and control center for the station, its tracks and signal systems.”<sup>31</sup> The five-story Classical structure was designed by McKim, Mead & White, the architects of the original Pennsylvania Station. Made of the same granite as the original Pennsylvania Station, the grand structure is the last remnant of the

---

<sup>27</sup> To qualify for the State and National Registers of Historic Places, a building must be at least 50 years old and satisfy one or more established criteria, such as architectural significance or association with historically significant persons and events. To qualify for designation as a NYC landmark a building must be at least 30 years old and have a special character, or special historic or aesthetic interest or value as part of the development, heritage or cultural character of the city, state or nation. See <https://parks.ny.gov/shpo/national-register> and <https://www.nyc.gov/site/lpc/about/landmark-designation.page>.

<sup>28</sup> Empire State Development, Pennsylvania Station Area Civic and Land Use Improvement Project, Final Environmental Impact Statement (“Final EIS”), Ch. 8, at Pg. 8-33 (June 2022) (available at <https://esd.ny.gov/penn-station-area-final-environmental-impact-statement-feis>).

<sup>29</sup> *Id.* at pg. 8-13.

<sup>30</sup> *Id.*

<sup>31</sup> Historic American Buildings Survey (“HABS”), Pennsylvania Station, New York Terminal Service Plant, 250 West Thirty-first Street, New York County, NY (No. NY-5471-A), pg. 1 (available at <https://www.loc.gov/pictures/collection/hh/item/ny1785>).

grandeur of that original station. In 1989, the New York Times called the building a “little-noted element of the old station ... a monumental building in its own right.”<sup>32</sup>

### **3. Fairmont Building, 239-241 West 30th Street**

The Final Environmental Impact Statement (“EIS”), prepared by ESD for the purpose of the GPP, records that the Fairmont Building is SR and NR eligible: “[T]he Fairmont Building is significant under Criterion A in the areas of commerce and industry and under Criterion C in the area of architecture.”<sup>33</sup> The six-story brick and mortar Classical Revival commercial building was completed in 1923. The base of the building is notable for its large showroom windows, and classical details include four floors of loggias above the base, each with a different order, a unique frieze, and a unique treatment of the plinth supporting the columns.

### **4. St. John the Baptist Roman Catholic Church Complex, 207-215 West 30th Street**

St. John the Baptist Roman Catholic Church is SR and NR eligible: “[T]he church meets Criterion C as an example of Gothic-inspired ecclesiastical architecture. The LPC has also determined that the church is likely eligible for NYCL designation.”<sup>34</sup> The Church was built in 1872 by famed American architect Napoleon LeBrun, designer of several prominent New York Catholic churches and commercial buildings. The spire was completed in 1890 by William Schickel. The sandstone Gothic-style church is set back from the street and raised on a base, creating a unique and valuable streetscape condition. Its ornate façade includes Gothic arches, trefoil tracery, and a rose window. According to the AIA Guide of New York City, “The

---

<sup>32</sup> Christopher Gray, *STREETSCAPES: The Penn Station Service Building; A 1908 Structure Survives A Monumental Act of Vandalism*, NEW YORK TIMES (Aug. 20, 1989) (available at <https://www.nytimes.com/1989/08/20/realestate/streetscapes-penn-station-service-building-1908-structure-survives-monumental.html>)

<sup>33</sup> Final EIS, *supra* note 28, Ch. 8, pg. 8-14.

<sup>34</sup> *Id.*

interior, of white marble, radiates light. Worth a special visit.”<sup>35</sup>

#### **5. Penn Terminal Building, 370 Seventh Avenue**

The Penn Terminal Building is SR and NR eligible under Criterion C for its architecture.<sup>36</sup> The Penn Terminal Building was designed by Sommerfeld & Steckler and completed in 1920. It is an imposing 17-story Neo-classical brick and limestone building with large plate glass storefront windows on the ground floor and elaborate cast iron windows on the second and third floors. According to the Final EIS, “the building retains excellent integrity.”<sup>37</sup>

#### **6. Stewart Hotel, 371-377 Seventh Avenue**

The Stewart Hotel is SR and NR eligible, under Criterion A for its association with commercial development around Penn Station, and Criterion C for its architectural design. In a letter dated December 14, 2020, LPC determined that it also is likely eligible for NYCL designation.<sup>38</sup> Originally known as the Governor Clinton Hotel, (named for New York’s first governor, George Clinton), the Italianesque style brick and stone 25-story hotel was designed by Murgatroyd & Ogden with George B. Post & Sons in 1929. The hotel was the first new hotel to be built in the vicinity of Penn Station since the completion of the Hotel Pennsylvania ten years earlier.<sup>39</sup> The three-story stone supports an asymmetrical building with decorative brickwork on the faced terminating in setback penthouses.

#### **7. Hotel Pennsylvania, 401 Seventh Avenue**

The Hotel Pennsylvania is SR and NR eligible, significant under Criterion A for its

---

<sup>35</sup> Norval White, Elliot Willensky, & Fran Leadon, AIA Guide to New York City, pg. 238 (5<sup>th</sup> ed. 2010).

<sup>36</sup> Final EIS, Ch. 8, at pg. 8-13 to 8-14.

<sup>37</sup> *Id.* at pg. 8-14.

<sup>38</sup> *Id.* at pg. 8-15.

<sup>39</sup> *Id.*

association with commercial development around Penn Station, and under Criterion C for its architectural design.<sup>40</sup> The building was designed by McKim, Mead & White, designers of the original Pennsylvania Station, and reflects the grandeur of that original transportation complex. Set back 15 feet from the building line, in response to the old Penn Station colonnade that faced it, the 22-story brick and stone Classical-Revival style opened in 1919 to serve Penn Station. The hotel was a center for the Big Bands in the 1930s, hosting legends like Duke Ellington and Glenn Miller, and it was home to one of, if not *the* oldest phone number in New York City.<sup>41</sup> The hotel closed in April 2020, and demolition is underway.<sup>42</sup>

## **B. The GPP Threatens Serious Harm to Many Additional Historic Properties**

The following historic resources may suffer significant adverse effects if the GPP proceeds. These historic buildings are vital to the area and counter the assertion that the area is blighted. Potential adverse effects include the risk of cracking or settling from construction vibrations and possible damage to foundations from blasting; accumulation of dust; augmentation of noise; potential loss of light for residents; and street and sidewalk closures, potentially harming local businesses.

### **1. Former Equitable Life Assurance Company Building, 393 Seventh Avenue**

The Former Equitable Life Assurance Company Building is SR, NR, and NYCL eligible under Criterion A for its association with commercial development around Penn Station and Criterion C for its architectural design.<sup>43</sup> This handsome, 26 story Renaissance Revival Style

---

<sup>40</sup> *Id.* at pg. 8-16.

<sup>41</sup> See Jen Carlson, *The Oldest Phone Number in NYC*, The GOTHAMIST, (July 2, 2014) (available at <https://gothamist.com/arts-entertainment/the-oldest-phone-number-in-nyc>).

<sup>42</sup> In addition to the foregoing, an eighth historic property, the Lithuanian Alliance of America (“LAA”) at 307 West 30th Street, would also be demolished.

<sup>43</sup> Final EIS, Ch. 8, pg. 8-17.

building has a solid 15-story base topped by a stone cornice with corner lanterns, and three setbacks from the street. It is monumental compared to surrounding buildings.

## **2. Fur Craft Building, 242-246 West 30th Street**

The Fur Craft Building is SR and NR eligible under Criterion A for its association with commercial development around Penn, and also under Criterion C for its architectural design.<sup>44</sup>

Henry I. Oser designed this classical 14-story building in 1925-26. Its rusticated stone base supports upper floor setbacks, and it features a double height arched entrance, Corinthian pilasters, and support pedestals holding large fox sculptures.

## **3. Loft Building, 144-154 West 30th Street**

The Loft Building is SR and NR eligible under Criterion A, for its association with commercial growth in the area.<sup>45</sup> Sugarman and Berger designed this 20-story Art Deco building in 1925-26. Stylized piers and pinnacles add a Gothic character to this brick and stone structure. The three-story stone-clad entrance enframement has a foliate design with two small fox heads above the entrance.

## **4. St. Francis Roman Catholic Church Complex, 129-143 West 31st Street**

The St. Francis Roman Catholic Church Complex is SR, NR, and NYCL eligible under Criterion C for its architectural design.<sup>46</sup> Henry Ehrhardt designed St. Francis Church in 1891-92 in a Renaissance Revival Style. The church features yellowish brick, red stone trim, a pedimented temple front porch, and a recessed mosaic of St. Francis above the pediment. Stone columns support the brick and stone entablature. A five-story, subdued Renaissance-Revival

---

<sup>44</sup> *Id.* at pg. 8-26.

<sup>45</sup> *Id.* at pg. 8-25; David W. Dunlap, FROM ABYSSINIAN TO ZION: A GUIDE TO MANHATTAN'S HOUSES OF WORSHIP, pg. 231 (Columbia Univ. Press, 2004).

<sup>46</sup> Final EIS, Ch. 8, pg. 8-23.



monastery was constructed on the East side of the church in 1908-09. A three-story school was erected on the west side of the church in 1911-12.

**5. St. Michael's Roman Catholic Church, 414-424 West 34th Street**

St. Michaels Roman Catholic Church is SR, NR, and NYCL eligible under Criterion A for its association with the area's historic development and Criterion C for its architecture.<sup>47</sup> Napoleon LeBrun designed St. Michael's in a Romanesque Revival style in 1907. It is composed of limestone walls, rock-face ashlar arches and column capitals carved in the spirit of 11<sup>th</sup>-century France. Ironically, an earlier St. Michael's on West 32nd Street was taken down in 1906 for construction of the rail yard leading to the new Penn Station. At a reported cost of \$1 million, the railroad numbered every stone and the church was reconstructed at its present site.<sup>48</sup>

**6. 23rd Police Precinct Station House, 134-138 West 30th Street**

The 23rd Police Precinct Station House is SR, NR, and NYCL eligible under Criterion A for its association with civic development, and Criterion C for its architectural design.<sup>49</sup> R. Thomas Short of Harde & Short built this castle-like station house in 1907-08. Four stories high plus a mezzanine story, the Medieval Revival style building has a prominent base of light gray rusticated granite arranged as simulated towers; a central automobile entrance with an arched Guastavino tile vault, and upper stories faced in buff ironspot Roman brick, that terminate in a bold bracketed cornice and crenellated roof parapet.

The depth and breadth of historically significant resources in this area contribute to the architectural heritage and culture of New York City. Given the well-documented economic value of historic buildings, their preponderance in the GPP area is persuasive evidence that the

---

<sup>47</sup> *Id.*

<sup>48</sup> David W. Dunlap, FROM ABYSSINIAN TO ZION, *supra* note 48.

<sup>49</sup> Final EIS, Ch. 8, pg. 8-24.

area is not “sub-standard” per UDCA § 10(c)(1).<sup>50</sup> There are also numerous examples of successful adaptive reuse of historic buildings like these in Manhattan, including 1 Wall Street, 6 West 38<sup>th</sup> Street, and the Moynihan Train Hall and Offices; they demonstrate that intact historic resources within the GPP area have economic value and potential for adaptive reuse.

### **CONCLUSION**

Since the landmark Supreme Court case *Kelo v. City of New London*, 545 U.S. 469 (2005), 44 states have enacted laws to restrict governmental takings for the purpose of economic redevelopment.<sup>51</sup> New York is one of the rare states that has not done so, and its overly permissive posture toward governmental takings is a national extreme.<sup>52</sup> This situation contributes to the present case, where an irrational and baseless blight designation seeks to justify taking and destruction of a historic, economically successful area of midtown Manhattan.

The *amici* ask the Court to overturn ESD’s approval of the GPP and require that a meaningful degree of actual blight exist before an area is designated blighted. The economic data in the Neighborhood Conditions Study and the images included in Appendix A conclusively show that the GPP area is not blighted. To allow ESD to declare otherwise is simply incorrect. The Court has the power to correct such a clear and fundamental misapprehension, especially given the immense scope of the GPP and proposed demolition of irreplaceable historic resources.

Dated: February 21, 2023

Canaan, New York

---

<sup>50</sup> See *Older, Smaller, Better*, *supra* note 10.

<sup>51</sup> See Castle Coalition, *50 state report card: Tracking Eminent Domain Reform Legislation Since Kelo* (Aug. 2007) (available at [https://ij.org/wp-content/uploads/2015/03/50\\_State\\_Report.pdf](https://ij.org/wp-content/uploads/2015/03/50_State_Report.pdf)).

<sup>52</sup> See Ilya Somin, *New York’s Ultra-Broad Definition of “Blight” Continues to Enable Eminent Domain Abuse*, REASON; THE VOLOKH CONSPIRACY (Dec. 30, 2022) (available at <https://reason.com/volokh/2022/12/30/new-yorks-ultra-broad-definition-of-blight-continues-to-enable-eminent-domain-abuse>).

Respectfully Submitted,



---

Andrea C. Ferster, Esq.  
68 Beebe Pond Road  
Canaan, NY 12029  
(202) 974-5142 (phone)  
(202) 669-6311 (cell)  
E-mail: andreaferster@gmail.com  
NY Attorney # 5920293

Elizabeth S. Merritt, Deputy General Counsel\*  
Christopher Cody, Associate General Counsel\*  
National Trust for Historic Preservation  
600 14<sup>th</sup> Street NW, Suite 500  
Washington, DC 20005  
emerritt@savingplaces.org  
ccody@savingplaces.org  
(202) 588-6035  
\* not admitted to the New York bar

**WORD COUNT CERTIFICATION**

As required by the Uniform Rules for the Supreme Court § 202.8-b, I certify that this brief complies with the 7,000-word limit for briefs. Using Microsoft Word word count feature, I have determined that this brief contains 6,341 words.



---

Andrea C. Ferster, Esq.  
68 Beebe Pond Road  
Canaan, NY 12029  
(202) 974-5142 (phone)  
(202) 669-6311 (cell)  
E-mail: andreaferster@gmail.com  
NY Attorney # 5920293

**APPENDIX: PHOTOS OF HISTORIC RESOURCES PROPOSED FOR DEMOLITION**

**Table of Contents**

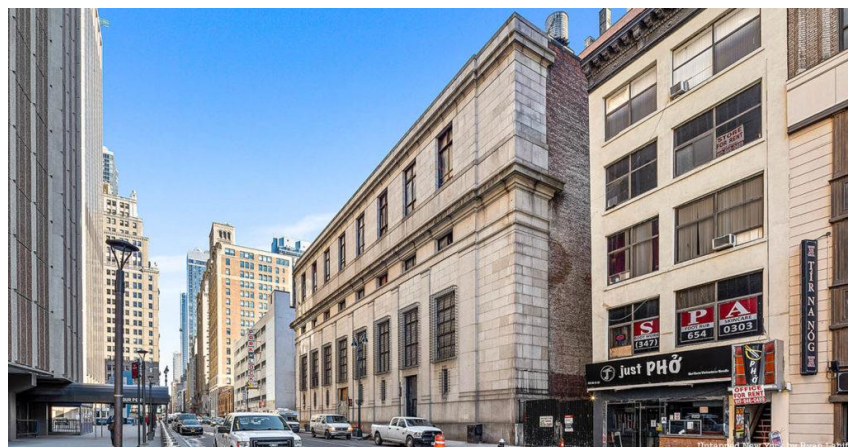
- (#1) Gimbel Brothers Skybridge, 101-139 West 32nd Street
- (#2) Penn Station Service Building, 236-248 West 31st Street
- (#3) Fairmont Building, 239-241 West 30th Street
- (#4) Penn Terminal Building, 370 Seventh Avenue
- (#5) Stewart Hotel, 371-377 Seventh Avenue
- (#6) Hotel Pennsylvania, 401 Seventh Avenue
- (#7) St. John the Baptist Roman Catholic Church Complex, 207-215 West 30th Street

Gimbel Brothers Skybridge  
Shreve and Lamb, 1911  
101-139 West 32nd Street





Penn Station Services Building  
McKim, Mead & White, 1908  
242 West 31st Street



Untapped New York by Ilka Müller

Fairmont Building  
J.M. Heatherton, 1923  
239-241 West 30th Street

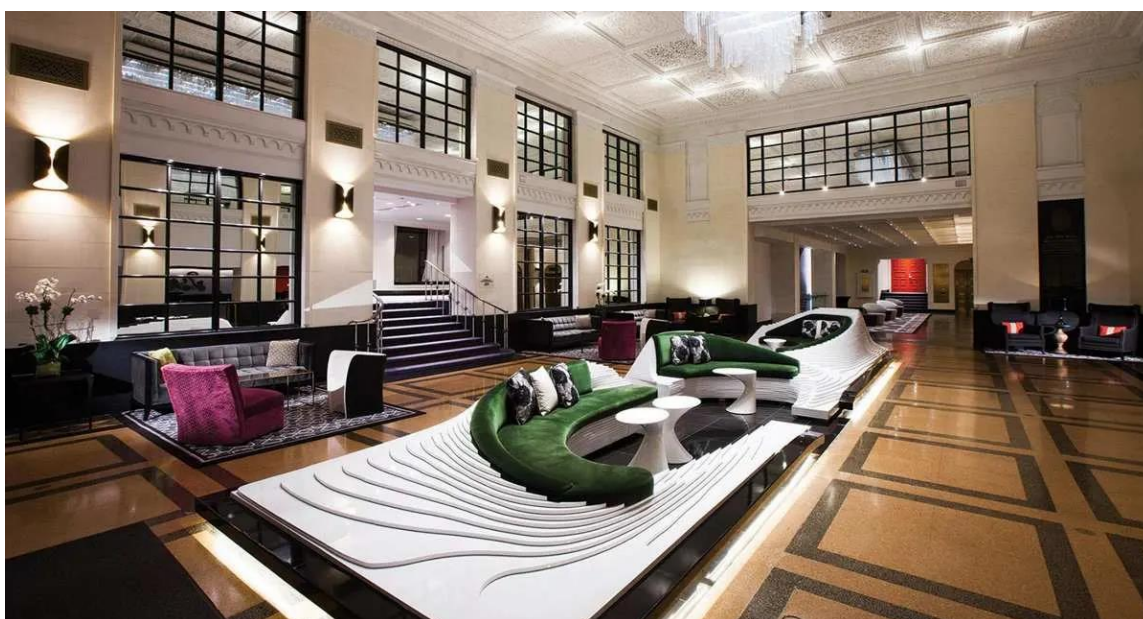




Penn Terminal Building  
Sommerfeld & Steckler, 1920  
370 7th Avenue



Stewart Hotel  
Murgatroyd & Ogden with George B. Post & Sons, 1929  
371-377 7th Avenue





Hotel Pennsylvania, already being demolished  
McKim, Mead & White, 1919  
401 7th Avenue



St. John the Baptist Roman Catholic Church Complex  
Napoleon LeBrun, 1872  
207-215 West 30th Street

