

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

PENN COMMUNITY DEFENSE FUND, 251 WEST
30TH STREET RESIDENTIAL TENANTS
ASSOCIATION, 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.
IAS Part

**VERIFIED PETITION
AND COMPLAINT**

Oral Argument Requested

Petitioners-Plaintiffs Penn Community Defense Fund, 251 West 30th Street Residential Tenants Association, City Club of New York, and ReThinkNYC (collectively “Petitioners”), by their attorneys, Emery Celli Brinckerhoff Abady Ward & Maazel LLP and Charles Weinstock, for their Verified Petition and Complaint against Respondents-Defendants New York State Urban Development Corporation (“UDC”) d/b/a Empire State Development (“ESD”) and New York State Public Authorities Control Board (“PACB”) (collectively “Respondents”), allege as follows:

1. This is a hybrid Article 78 proceeding/declaratory judgment action challenging ESD’s decision to approve a general project plan (“GPP”) overriding New York City’s zoning laws and granting more than 18 million square feet of development rights to the private owners of eight parcels surrounding Penn Station (“Development Sites”).

2. The GPP is one component of a larger plan to overhaul the station. No one questions that the station—grim, squalid, and dangerous—is in desperate need of an overhaul.

But ESD's plan distorts the impacts it would have on both the neighborhood and the City as a whole and fails in its stated objectives.

3. According to ESD, the primary purpose of the GPP is to support and generate "essential revenue" to help fund the "Master Plan" for Penn Station: (1) reconstructing the existing station ("Penn Reconstruction"), (2) potentially expanding the station south across 31st Street ("Penn Expansion"), and (3) implementing certain related transit and public realm improvements. Ex. A at 1.¹ Yet ESD refused to answer *any* of the questions that could establish that the project would actually serve that purpose. Consequently, ESD's approval of the GPP was arbitrary and capricious and in violation of the applicable laws.

4. Moreover, ESD severed the environmental review of the GPP from the environmental review of the Master Plan as a whole. In the language of environmental law, it "segmented" the review of the Master Plan, which is a violation of the New York State Environmental Quality Review Act, N.Y. ECL § 8-0101 *et seq.* ("SEQRA").

5. Finally, ESD failed to establish that it had authority to approve the GPP under the New York Urban Development Corporation Act, N.Y. Uncons. Laws § 6252 *et seq.* ("UDCA"). ESD incorrectly claimed that (i) the GPP qualifies as a "Civic Project" under UDCA, and (ii) the GPP Project Area ("Project Area) is "blighted" and therefore the redevelopment qualifies as a "Land Use Improvement Project" under the statute.

6. In fact, the GPP fails to qualify as a Civic Project because ESD did not make "adequate provision" for the payment of the Penn Station project costs. It also fails to qualify as

¹ References to "Ex." are to the exhibits attached to the October 26, 2022 Affirmation of Charles Weinstock.

a Land Use Improvement Project because none of the Development Sites is blighted under UDCA's definition of that term.

7. Petitioners—civic organizations and the residential tenants of a building that would be demolished under the GPP—ask the Court to find that: (1) ESD's approval of the GPP and the accompanying Final Environmental Impact Statement ("FEIS") under SEQRA was arbitrary and capricious, an abuse of discretion, and in violation of applicable laws; (2) ESD violated SEQRA by segmenting the review of the Master Plan; and (3) the GPP does not qualify under any of the UDCA project categories eligible for ESD assistance.

8. Petitioners also ask the Court to declare that the Public Authorities Control Board ("PACB"), the state panel charged with overseeing ESD's capital projects, did not have the authority to issue a resolution permitting ESD to enter into a revenue-sharing agreement with New York City in connection with the GPP.

JURISDICTION AND VENUE

9. This Court has jurisdiction under CPLR §§ 3001 and 7801–7806.

10. Venue lies in New York County under CPLR §§ 506(b) and 7804(b) because the material events took place there.

11. This Verified Petition and Complaint was filed within 120 days of ESD's approval of the FEIS on June 30, 2022, its affirmation of the GPP on July 21, 2022, and PACB's adoption of the PACB Resolution on July 27, 2022.

PARTIES

12. Petitioner Penn Community Defense Fund is an organization whose members support challenges to the GPP and are committed to finding a better way to pay for the

rehabilitation of Penn Station. One member lives in a building that would be demolished under the GPP.

13. Petitioner 251 West 30th Street Residential Tenants Association represents the tenants living at 251 West 30th Street, a 16-story mixed-use building that would be demolished under the GPP. The tenants support this action. The association was one of eight organizations that filed two sets of Comments and Objections opposing ESD's Draft General Project Plan and Draft Environmental Impact Statement ("Comments and Objections").

14. Petitioner City Club of New York is a 130-year-old organization dedicated to the promotion of thoughtful urban planning that responds to the needs of all New Yorkers. The City Club was also a signatory to the two sets of Comments and Objections.

15. Petitioner ReThinkNYC is a civic organization that promotes innovative thinking about the future of transportation, infrastructure, land use, and governance in New York City and the surrounding region. ReThinkNYC was also a signatory to the two sets of Comments and Objections.

16. Respondent New York State Urban Development Corporation, doing business as Empire State Development, is a public benefit corporation promoting economic development in the State. It has the authority to issue bonds, grant loans and tax exemptions, acquire private property, exercise eminent domain, and override local laws in order to support its projects. ESD is the umbrella organization for UDC and New York's other principal economic development financing entity, the Department of Economic Development.

17. Respondent New York State Public Authorities Control Board is a state panel overseeing twelve public benefit corporations, including the UDC, and must approve all financing and construction projects by those corporations. Under Public Authorities Law § 51, it

may not approve them unless it finds that “there are commitments of funds sufficient to finance the acquisition and construction of such project.” Although the Governor appoints all five members, four appointments are based on recommendations from the majority and minority leaders of the State Assembly and Senate.

FACTS

Penn Station

18. Penn Station is the busiest transportation hub in North America, serving the National Railroad Passenger Corporation (“Amtrak”), the New Jersey Transit Corporation (“NJ Transit”), and the Metropolitan Transportation Authority (the MTA”) Long Island Railroad. It will also serve the New Haven line of the MTA’s Metro-North Railroad when the Penn Station Access Project is completed.

19. The station is part of a larger transportation complex that includes Moynihan Train Hall, three adjoining subway stations, the PATH train, and a web of transit entrances and corridors. Currently, the station has 21 tracks and 11 platforms. Amtrak owns the station, and leases space to NJ Transit and the MTA. Madison Square Garden (“MSG” or the “Garden”) owns the land above street level.

The Project Area

20. The Project Area is bounded at its widest point east-west by Sixth and Ninth Avenues, and at its widest point north-south by West 30th and 34th Streets. In addition to Penn Station, Moynihan Train Hall, and the Garden, the area includes the historic James A. Farley Building and Equitable Life Assurance Company Building, and two commercial towers, Penn 1 and Penn 2, owned by Vornado Realty Trust (“Vornado”). The remaining buildings in the Project Area are on the Development Sites.

21. The dotted red line in the FEIS site plan (attached as Appendix) defines the Project Area. Moynihan Train Hall, Penn Station, Penn 2, and the Garden are in blue. The Farley Building, the Equitable Building, and Penn 1 are in gray. The eight Development Sites are in yellow:

22. According to the GPP, Vornado owns or controls the property designated on the site plan as Sites 4, 5, 7, and 8. It also controls six of the eleven lots on Site 6, and holds a master lease on a seventh.

The Project Plan

23. The GPP is “a comprehensive mixed-use redevelopment initiative” that would allow approximately 18.3 million gross square feet of building floor area. It would consist primarily of Class A commercial space, but would also include some retail, community facility, hotel, and residential space. Under the maximum permitted commercial development scenario, more than 78 percent of the new square footage would be office space.

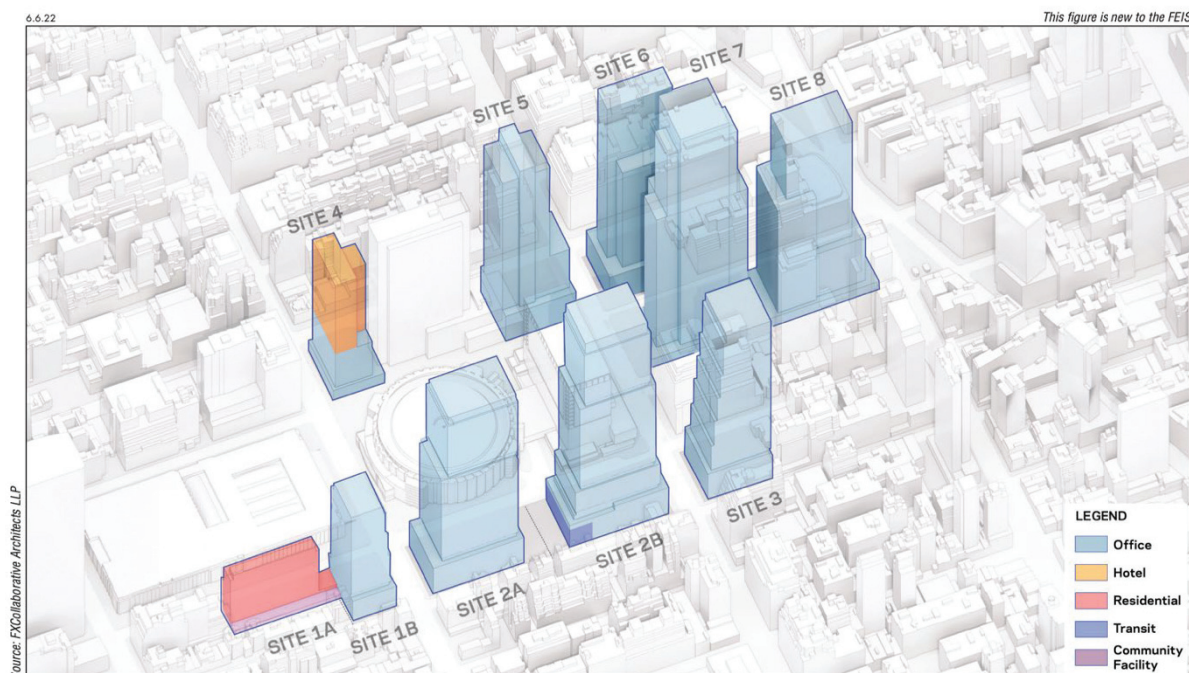
24. ESD would acquire Sites 4–8 by negotiated purchase or eminent domain. It would lease Sites 4, 5, 7, and 8 back to Vornado, and it expects to lease Site 6 to Vornado as well. The GPP contemplates that, at some point in the future, Vornado would demolish the buildings on those sites and build the towers in the “illustrative massings” below. *See infra* ¶¶ 28, 30.

25. If Penn Station is expanded to the south, ESD and/or its railroad partners would also acquire Sites 1–3 by negotiated purchase or eminent domain; demolish the existing buildings to permit construction of the underground Penn Expansion, which would add up to 12 tracks; and lease the sites to one or more developers to build the towers in the same illustrative massings.

26. The City’s zoning laws would be replaced by use, bulk, and density rules set out in the GPP’s Design Guidelines, increasing the permitted development on the eight sites by 133 percent.

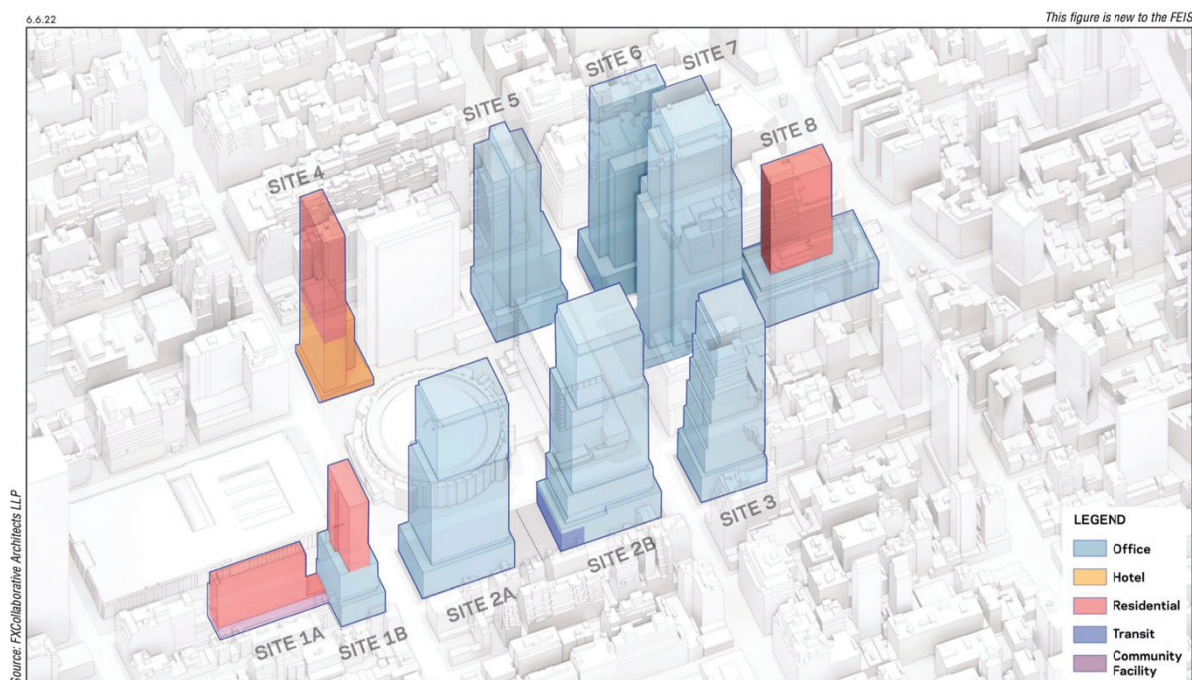
27. The “illustrative massings” show the maximum permitted development under the two scenarios set out in the Design Guidelines—“Commercial” and “Residential.” In both, six of the towers—on Sites 2A, 2B, 3, 5, 6, and 7—would be over 900 feet tall (as would the Site 4 tower under the Residential Scenario and the Site 8 tower under the Commercial Scenario). Because the Design Guidelines do not impose height limits (except for the midblock portion of Site 1), the buildings could be taller and thinner than those shown in the massings.

28. The first figure below represents the maximum permitted development under the Commercial Scenario, which would include a community facility (purple) on Site 1A; a hotel (orange) on Vornado’s Site 4; a new station entrance (dark blue) on the first floor of the tower on Site 2B; and 542 residential units on Site 1A, of which 163 would have to be affordable (red). The rest—light blue—would be office space:



29. The major difference between the Commercial and Residential Scenarios is that the latter would allow—but not require—an additional 439 residential units (132 affordable) on Site 1B, and an additional 1,256 residential units (377 affordable) on two of the Vornado Sites, 4 and 8 (in red again).

30. The following figure represents the Residential Scenario with the maximum residential development:



31. The GPP also contemplates transit improvements to existing subway stations, new entrances on the Development Sites to both subway stations and Penn Station, and below-grade pedestrian corridors. In addition, the GPP would provide public realm improvements on the eight sites, including wider sidewalks and new public spaces. These plans are now being developed by ESD in consultation with a Public Realm Task Force.

32. These massings assume that the Penn Expansion will go forward but, in fact, this is contingent on a preliminary determination by the U.S. Department of Transportation (“USDOT”) that Site 2 is the “preferred location” for an expanded station. Even then, the Penn

Expansion would have to go through federal administrative review processes, including an environmental review by USDOT under the National Environmental Policy Act of 1969 (“NEPA”), 42 U.S.C. § 4331 *et seq.*

33. If USDOT does not go forward with the Penn Expansion, Vornado will become the only certain beneficiary of the GPP.

34. ESD has engaged Vornado as a *de facto* partner in the development of the GPP, in a manner inconsistent with the public interest and the development of a proper master plan for Penn Station.

35. ESD has presented no architectural plans for the Penn Reconstruction, only illustrative renderings commissioned by the MTA, which have not been approved by either Amtrak or NJ Transit.

36. ESD has not presented renderings of the Penn Expansion.

Funding Penn Station

37. ESD and its partners expect to model the division of financial responsibility for the Penn Reconstruction and Penn Expansion on the Gateway Tunnel program—50 percent of project costs would be paid by USDOT (including Amtrak’s contribution), and 25 percent each would be paid by New York and New Jersey.

38. The New York Legislature has already appropriated \$1.3 billion as part of the State’s contribution. The amount that New York would be required to contribute far exceeds \$1.3 billion.

39. ESD has provided no basis for its claim that the GPP would generate sufficient revenue to make up the difference.

40. Neither the GPP nor the FEIS supplied a reasonable estimate of what the Penn Reconstruction and Penn Expansion would cost.

41. Neither the GPP nor the FEIS established any financial commitments from any of its partners—Amtrak, NJ Transit, the MTA, and USDOT—to help pay for those project costs.

42. Neither the GPP nor the FEIS provided a rational revenue plan or revenue estimate for the GPP.

43. Neither the GPP nor the FEIS provided a realistic timetable for when the proposed towers would be built and, therefore, when revenue for the station would become available.

44. The developers of the Development Sites are under no deadline to begin construction of the buildings, and current social and economic conditions—the rise of work from home and a growing oversupply of Midtown commercial office space—will discourage owners from beginning construction for decades. That, in turn, would delay revenue beyond the period required to finance the Penn Reconstruction and the Penn Expansion.

45. ESD's consideration of the funding for the station did not include consideration of the other components of the Master Plan.

46. ESD did not demonstrate that adequate provision had been made to pay New York's share of the costs of redeveloping and potentially expanding the Penn Station.

UDCA

47. ESD failed to demonstrate that the GPP qualifies as either a Civic Project or a Land Use Development Project.

48. There is no need for a civic facility within the area in which the project is to be located.

49. If the Penn Expansion does not go forward, the entirety of Penn Station would remain outside the area in which the project is to be located.

50. The GPP does not include adequate provision for payment of the cost of rebuilding, expanding, and maintaining Penn Station.

51. The GPP does not assure adequate light and air.

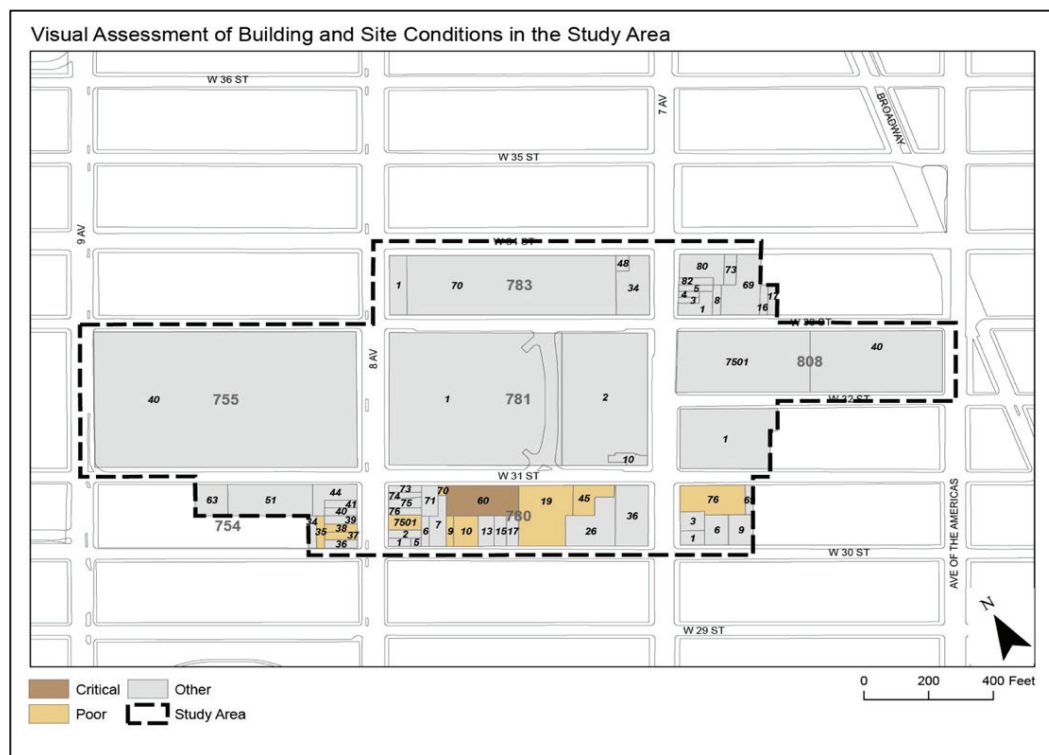
52. ESD also failed to demonstrate that the GPP qualifies as a Land Use Improvement Project.

53. Neither the Project Area nor the Development Sites are “substandard and insanitary,” or otherwise “blighted” within the meaning of UDCA.

54. The Project Area is anchored by several well-regarded and well-maintained structures, including the new Moynihan Train Hall; Madison Square Garden, whose owners completed a \$1 billion renovation of the arena; the commercial buildings Penn 1, Penn 2, and the Farley Building, all owned by Vornado and midway through a \$2.4 billion modernization; and eight structures that are either listed or eligible for listing in the National and State Registers of Historic Places.

55. ESD’s Neighborhood Conditions Study found that only seven percent of the land in its Study Area (“Study Area”) (coterminous with the GPP Project Area), and only eight of the area's 61 lots, were in "poor" or "critical" condition. The only building deemed to be in "critical" condition, the Penn Station Service Building, is owned by Amtrak.

56. The following diagram overlays these lot conditions onto ESD’s site plan:



PACB and the Current Status of the Project

57. On June 30, 2022, the ESD Directors approved the FEIS, and on July 21, 2022, they approved the GPP.

58. PACB did not approve the GPP.

59. PACB did not find that the GPP would provide commitments sufficient to pay New York State's share of the costs of the Penn Reconstruction and Penn Expansion.

60. On July 27, 2022, PACB issued a resolution ("PACB Resolution") authorizing ESD to enter into a binding agreement with New York City that would allocate Payments in Lieu of Taxes ("PILOT"), one of the revenue sources ESD proposed in the GPP, between the City and the State.

61. ESD has not entered into any such agreement with the City.

62. The only PILOT agreement the two parties have entered into is a non-binding Letter of Mutual Agreement, dated July 18, 2022 ("PILOT Letter"), which "does not create or

give rise to any contractual or other legally enforceable rights, obligations or liabilities of any kind.”

FIRST CAUSE OF ACTION

Article 78 – Arbitrary, Capricious, and Legally Deficient Determination
(against Respondents ESD and PACB)

63. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

64. CPLR § 7803(3) prohibits agency determinations that are “arbitrary and capricious,” “an abuse of discretion,” or “affected by an error of law.”

65. For the reasons set forth above, ESD’s approval of the FEIS and the GPP and PACB’s approval of the PACB Resolution were arbitrary and capricious, abuses of discretion, and affected by errors of law.

66. The FEIS, the GPP, and the PACB Resolution should be deemed null and void.

SECOND CAUSE OF ACTION
SEQRA – Unlawful Segmentation
(against Respondent ESD)

67. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

68. SEQRA § 8-0109 requires that a State agency proposing an “action” must undertake an environmental review of the potential consequences of the action.

69. The statute requires that the review consider the *entire* action.

70. With exceptions not relevant here, 6 N.Y.C.R.R. § 617 prohibits an agency from conducting “segmented” environmental reviews of individual components of the same action as if they were “independent, unrelated activities.”

71. The “action” in this case was the Master Plan.

72. ESD unlawfully segmented this action by severing the environmental review of the GPP from review of the Master Plan as a whole.

73. The FEIS should be deemed null and void.

THIRD CAUSE OF ACTION
UDCA – Civic and Land Use Improvement Projects
(against Respondent ESD)

74. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

75. UDCA § 10 prohibits ESD from undertaking the “acquisition, construction, reconstruction, rehabilitation or improvement of a project” unless it falls under one of the project categories set out in UDCA §§ 6-9.

76. The GPP does not fall under any of these categories.

77. Under UDCA § 10(d), a project cannot qualify as a Civic Project unless the applicant demonstrates that (1) there is the need for a civic facility “in the area in which the project is to be located,” (2) the project will be located within that area, (3) “adequate provision has been, or will be, made for the payment of the cost of acquisition, construction, operation, maintenance and upkeep of the project,” and (4) the GPP assures “adequate light [and] air.”

78. There is no need for a civic facility within the area in which the project is to be located.

79. If the Penn Expansion does not go forward, no part of Penn Station would be within the area in which the project is to be located.

80. The GPP would not assure adequate light air.

81. The GPP does not qualify as a Civic Project.

82. Under UDCA § 10(c)(1), a project cannot qualify as a Land Use Improvement Project unless “the area in which the project is to be located” is 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.”

83. The Development Sites are neither currently, nor in danger of becoming, a substandard or insanitary area, and are not impairing or arresting the sound growth and development of the City.

84. The GPP does not qualify as a Land Use Improvement Project.

85. The GPP does not qualify under any of the other permitted project categories in UDCA.

86. The GPP should be deemed null and void.

FOURTH CAUSE OF ACTION
Public Authorities Law § 51
(against Respondent PACB)

87. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

88. Public Authorities Law § 51(1) requires ESD to obtain PACB approval in order “to make any commitment, enter into any agreement or incur any indebtedness for the purpose of acquiring, constructing, or financing any project.” ESD’s application must state the “terms” and “conditions” of the financing,

89. Public Authorities Law § 51(3) prohibits PACB from granting that approval unless it finds that “there are commitments of funds sufficient to finance” the proposed project.

90. In its application to PACB for approval to enter into the PILOT agreement, ESD did not state the terms and conditions of the GPP financing.

91. In its application to PACB for approval to enter into the PILOT agreement, ESD did not demonstrate that there are commitments of funds sufficient to pay New York State's share of the costs of the Penn Reconstruction and the Penn Expansion.

92. The terms set out in the non-binding PILOT Letter would compromise ESD's ability to secure the required commitment of funds.

93. By nevertheless issuing the PACB Resolution, PACB violated Public Authorities Law § 51.

94. The PACB Resolution should be deemed null and void.

**FIFTH CAUSE OF ACTION
CPLR § 3001 – Declaratory Judgment
(against Respondents ESD and PACB)**

95. Petitioners repeat and reallege the preceding paragraphs as though fully set forth herein.

96. The parties have justiciable controversies about the legality of the FEIS, GPP, and PACB Resolution, and the meaning and effect of the PACB Resolution.

97. As a result, the Court should issue a judgment making the declaration set forth below in Paragraph (b) of the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Petitioners request that the Court enter a judgment:

- a. Annuling and vacating ESD's approvals of the FEIS and the GPP and PACB's approval of the PACB Resolution;
- b. Declaring that (1) ESD's approval of the FEIS violated SEQRA § 8-0109 and 6 N.Y.C.R.R. § 617; (2) ESD's approval of the GPP violated UDCA § 10; and

- (3) PACB's issuance of the PACB Resolution violated Public Authorities Law § 51;
- c. Ordering ESD to deliver by hand a copy of the judgment to the last-known address of the owners of the Development Sites, including the owners of individual parcels on those sites;
 - d. Awarding Petitioners their costs and fees in connection with this proceeding/action as the Court may determine; and
 - e. Awarding any other relief that the Court deems just and proper.

New York, New York
October 26, 2022

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL LLP



Richard D. Emery
Nick Bourland

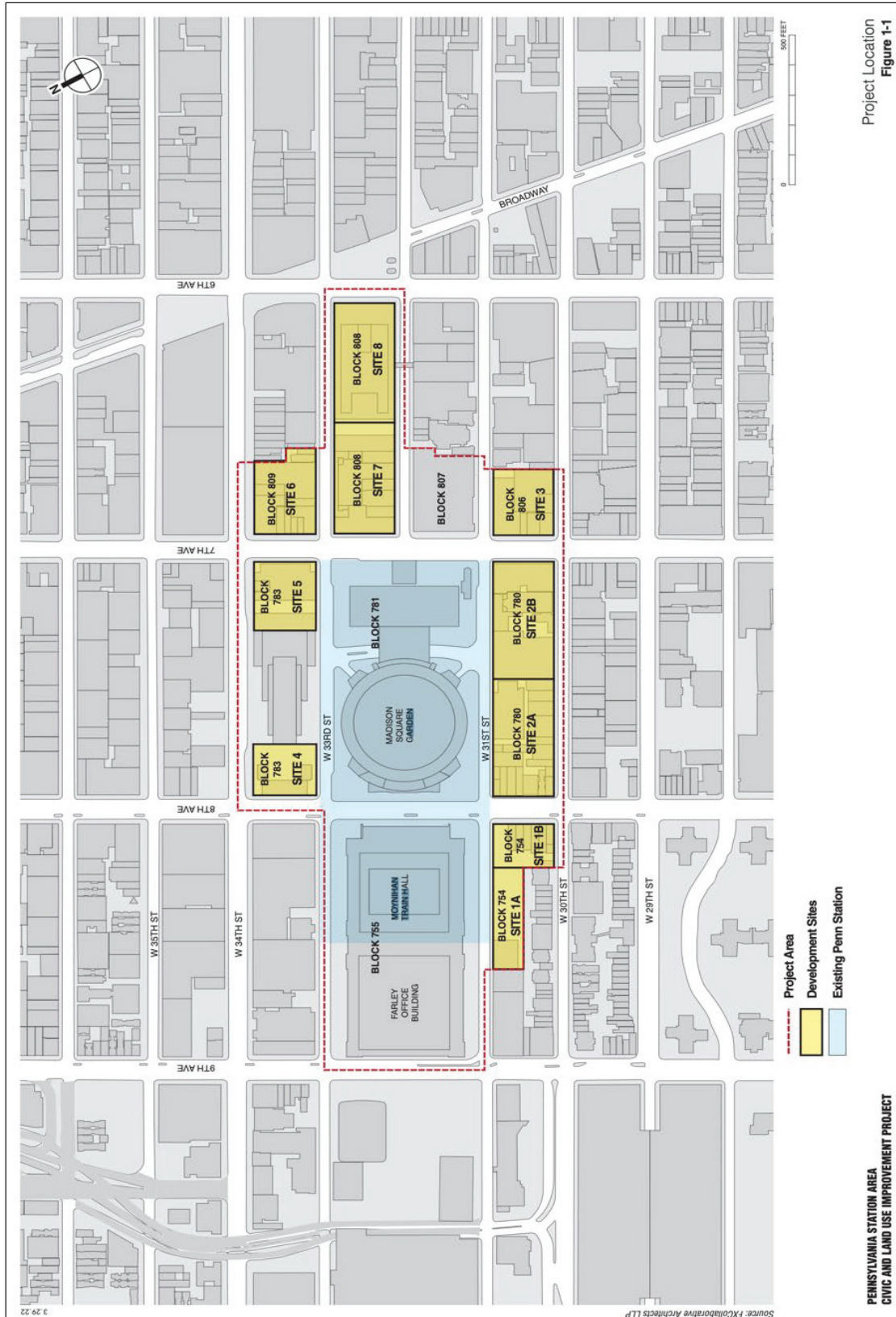
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APPENDIX



Project Location
Figure 1-1

SUPREME COURT OF THE STATE OF NEW YORK
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VERIFICATION

State of New York)
) ss:
County of New York)

Samuel Turvey, duly sworn, deposes and says:

I am the chairperson of ReThinkNYC, one of the Petitioners-Plaintiffs in this
action/proceeding. I have read the attached Verified Petition and Complaint, and know its
contents to be true, except for matters alleged upon information and belief. As to those
matters, I believe them to be true.


SAMUEL TURVEY

Sworn to before me this October 26, 2022

NICHOLAS R. BOURLAND
NOTARY PUBLIC-STATE OF NEW YORK
No. 02BO6402332
Qualified in New York County
My Commission Expires 12-30-2023

NOTARY PUBLIC