



**National Trust for  
Historic Preservation**  
*Save the past. Enrich the future.™*

SENT VIA EMAIL to [empirestation@esd.ny.gov](mailto:empirestation@esd.ny.gov)

January 7, 2022

Empire State Development  
633 Third Avenue, Floor 37  
New York, NY 10017

**Re: Comments on the General Project Plan for the Pennsylvania Station Area Civic and Land Use Improvement Project**

To Whom It May Concern:

We are writing on behalf of the National Trust for Historic Preservation (“National Trust”) to provide comments on the General Project Plan (the “Plan”) for the Pennsylvania Station Area Civic and Land Use Improvement Project (the “Project”) being proposed by the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”). The Project proposes to largely demolish nine Manhattan tax blocks (the “Project Area”) with the purpose of “transform[ing] a substandard and insanitary area in and around Penn Station into a revitalized, high-density, sustainable, and transit-oriented mixed-use district that incorporates civic facilities, including substantial improvements to the subway stations surrounding Penn Station and the connecting below-grade passageways leading to and from Penn Station.” However, the majority of buildings in the Project Area have been determined to be in good to good/fair condition.<sup>1</sup>

While we agree that parts of the Project Area could benefit from revitalization (particularly the subterrains of Penn Station), we strongly oppose the Plan’s proposal to demolish several city blocks and build new, high-rise construction. The ESD’s approach is hauntingly reminiscent of the failed “urban renewal” strategy of the 1960s. In fact, the pre-pandemic plan to build new office towers seems painfully dated and irrelevant now. Many of the goals of the Project can be achieved through a more thoughtful plan that combines rehabilitation of historic structures, narrowly targeted and appropriate demolitions, and possibly areas of new construction that will not have the devastating adverse effects proposed by the Plan to at least thirteen National Register-eligible and two National Register-listed historic buildings, including the Penn Station Service Building, St. John the Baptist RC Church Complex, the Stewart Hotel, and the Former Equitable Life Assurance Company building.<sup>2</sup> The National Trust, therefore, strongly encourages the ESD to fundamentally rethink this Project before continuing and initiating demolition. We also offer more specific comments and concerns on the Plan below.

Congress chartered the National Trust in 1949 as a private, nonprofit organization to “facilitate public participation” in historic preservation, and to further the purposes of federal historic preservation laws. 54 U.S.C. § 312102. With the strong support of over one million members and

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<sup>1</sup> Empire State Complex Neighborhood Condition Study (February 2021), pg. 48. Available at: <https://esd.ny.gov/sites/default/files/Empire-Station-Complex-Neighborhood-Conditions-Study-FINAL-2021-02-03.pdf>.

<sup>2</sup> Draft Environmental Impact Statement (February 2021), pg. 8-3 to 8.4. Available at: <https://esd.ny.gov/sites/default/files/ESC-o8-Historic.pdf>.

supporters nationwide, the National Trust works to protect significant places representing our diverse cultural experience by taking direct action and inspiring broad public support. In addition to our Washington, D.C. headquarters, the National Trust has staff throughout the country, including in the New York City area. The National Trust regularly participates as a consulting party in Section 106 reviews under the National Historic Preservation Act and participates in other environmental reviews under the National Environmental Policy Act and similar state laws.

### **1. The Project is Subject to Federal Environmental Review Processes.**

Both the Plan and the Draft Environmental Impact Statement (“Draft EIS”) acknowledge that the Project will require reviews under Section 106 of the National Historic Preservation Act (“NHPA”), the National Environmental Policy Act, and, likely, Section 4(f) of the Department of Transportation Act.<sup>3</sup> The Plan attempts to segment the Project into the “revitalization” of the Project Area and a second project, which is the reconstruction and expansion of Penn Station. These projects, however, are related and, as such, must be reviewed and analyzed as a single project under the federal review processes. ESD may not segment out a portion of the project to circumvent the federal review processes—particularly when it is a “likely event that the potential southward expansion of Penn Station becomes a project that receives federal funding or is dependent on federal approvals”.<sup>4</sup>

Section 106 of the NHPA requires that adverse effects be considered that are “reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.”<sup>5</sup> Therefore, ESD or the lead federal agency must assess the adverse effects of the entire project, not just a segment of the Project. Given the complexity of the entire Project, we strongly recommend that ESD work with the various federal agencies involved to identify a lead federal agency that shall be responsible for “fulfilling [the federal agencies’] collective responsibilities under section 106” and to ensure that the various federal review processes are coordinated.<sup>6</sup>

### **2. Demolition of Historic Resources in the Project Area Will Violate the Anticipatory Demolition Provisions of the NHPA, and Puts at Risk the State’s Ability to Receive Federal Funding and Approval in the Future.**

Given the expectation that the Project will receive federal funding in the future, and will require federal approvals, we want to remind ESD and the involved federal agencies that demolishing historic properties prior to conducting Section 106 review may jeopardize the ESD’s ability to

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<sup>3</sup> See Draft EIS, pg. S-22 (“[A]lthough the sites where a proposed expansion of Penn Station would be located are included within ESD’s General Project Plan boundaries, the siting, planning, property acquisition, and construction of the Penn Station expansion on Sites 1, 2, and 3 would be subject to separate actions and approvals by or for the involved public transportation agencies and would be subject to environmental review under the National Environmental Policy Act and Section 106 of the National Historic Preservation Act.”); Plan at pg. 2 (“If forthcoming planning and federal environmental review activities result in the selection of a preferred alternative that would expand Penn Station to the south of the existing station, additional rail infrastructure would be built ....”); Plan at pg. 10 (“Subject to further planning and applicable federal approvals ....”).

<sup>4</sup> Plan at pg. 18.

<sup>5</sup> 36 C.F.R. § 800.5(a)(1).

<sup>6</sup> 36 C.F.R. § 800.2(a)(2).

obtain federal permits and funding for the Project. Section 110(k) of the NHPA, which is known as the “anticipatory demolition” provision, states that:

*Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section [106] of [the NHPA], has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the [Advisory Council on Historic Preservation], determines that the circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.*

54 U.S.C. § 306113 (emphasis added); *see also* 36 C.F.R. § 800.9(c). The demolition of historic resources in the Project Area (for example, the National Register-listed Hotel Pennsylvania) prior to the initiation of Section 106 review will require the lead federal agency to comply with the “anticipatory demolition” requirements of Section 110(k) of the NHPA. Accordingly, we urge the ESD to refrain from any demolitions of historic structures until the completion of the federal review processes.

**3. The Public Comment and Review Process to Date Has Been Fast-tracked in a Manner that Provides Only Limited Opportunities for the Public to Comment and for the ESD to Meaningfully Consider Comments.**

More generally, the National Trust has concerns with the manner in which the ESD has fast-tracked the review processes and public comments to date. This is a massive project that, as proposed, will have devastating adverse effects on historic resources and historic viewsheds (including those of the Empire State Building, a National Historic Landmark), among others. The ESD should provide ample time for the public to submit written comments and should review and respond to those comments to engage with the public in a meaningful way. To date, it appears that the ESD is going through the motions of a review process to check the boxes and move on, without really being responsive to the public comments received.

**Conclusion**

We thank you for considering the National Trust’s comments. The National Trust looks forward to continuing to participate in the state and federal review processes for this Project. Should you have any questions, please feel free to contact Seri Worden at 917-774-1030 or [sworden@savingplaces.org](mailto:sworden@savingplaces.org) or Anne Nelson at 202-588-6142 or [anelson@savingplaces.org](mailto:anelson@savingplaces.org).

Sincerely,



Seri Worden  
Senior Field Director



Anne E. Nelson  
Senior Associate General Counsel

cc:

Sharyn Lacombe, Colleen Vaughn, and Katherine Zeringue,  
U.S. Department of Transportation

Jaime Loichinger, Advisory Council on Historic Preservation  
Daniel Mackay, Deputy State Historic Preservation Officer, New York  
Peg Breen and Andrea Goldwyn, New York Landmarks Conservancy  
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