STATE OF NEW YORK
SUPREME COURT NEW YORK COUNTY

DEVELOP DON'T DESTROY (BROOKLYN), INC., COUNCIL OF BROOKLYN NEIGHBORHOODS, INC., ATLANTIC AVENUE BETTERMENT ASSOCIATION, INC., BROOKLYN BEARS COMMUNITY GARDENS, INC., BROOKLYN VISION FOUNDATION, INC., CARLTON AVENUE ASSOCIATION, INC., CENTRAL BROOKLYN INDEPENDENT DEMOCRATS, by its President Lucy Koteen, CROWN HEIGHTS NORTH ASSOCIATION, INC., DEAN STREET BLOCK ASSOCIATION, INC., DEMOCRACY FOR NEW YORK CITY, INC., EAST PACIFIC BLOCK ASSOCIATION, INC., FORT GREENE ASSOCIATION, INC., FORT GREENE PARK CONSERVANCY, INC., FRIENDS AND RESIDENTS OF GREATER GOWANUS, PARK SLOPE NEIGHBORS, INC., PROSPECT HEIGHTS ACTION COALITION, by its President Patricia Hagan, PROSPECT PLACE OF BROOKLYN BLOCK ASSOCIATION, INC., SOCIETY FOR CLINTON HILL, INC., SOUTH OXFORD STREET BLOCK ASSOCIATION, AND SOUTH PORTLAND BLOCK ASSOCIATION, INC.

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules,

- against -

EMPIRE STATE DEVELOPMENT CORPORATION, FOREST CITY RATNER COMPANIES, LLC,

Respondents.

Index No.

RJI No.

PETITIONERS' MEMORANDUM OF LAW

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Dated: October 16, 2009

Preliminary Statement

Petitioners submit this memorandum of law in support of their Petition seeking the annulment of various actions taken by respondent Empire State Development Corporation ("ESDC") in September 2009 to approve a Modified General Project Plan ("MGPP") for the Atlantic Yards project in the Prospect Heights section of Brooklyn.

ESDC's actions violated the State Environmental Quality Review Act ("SEQRA") NYS Environmental Conservation Law §8-0101 *et seq* by failing to identify the relevant areas of environmental concern and taking a hard look at the potential impacts when it determined that a Supplemental Environmental Impact Statement (SEIS) was not required before approving the MGPP.

ESDC also violated the Urban Development Corporation Act (UDCA) McKinney's Unconsolidated Laws §6251 et. Seq, when it reiterated its 2006 findings that the approval of the project as a Land Use Improvement Project (LUIP) met the statutory requirement that the project included a plan for the "reconstruction and reconstruction" of the designated blighted area when in fact there is no meaningful plan or assurances in place that the majority of the project, contained in Phase II, will be built for decades if at all.

ESDC's violations were founded upon its failure to address the fact that the project sponsor, Forest City Ratner Companies (FCRC) had abandoned its 2005 agreement with the Metropolitan Transportation Authority (MTA) for the purchase of the rights to the Vanderbilt Yards, the below-grade rail yard serving the Long Island Railroad, and struck a new agreement in June 2009. The new deal nullified FCRC's commitment from an immediate cash purchase of all of the real property interests for $100 million to an initial payment of just $20 million for the land necessary for the arena and installment payments for the balance of the rights extending

over 20 years to 2030, with the option for FCRC to abandon the project at various points with minimal financial penalties.

By ignoring the fundamental changes brought about by the new MTA transaction and other clear evidence that completion of the project would extend decades, if ever completed at all, ESDC undertook an artificial environmental review under SEQRA that was based upon a project completion in 2019 instead of 2030 or later. That artificial study date, that was contrary to the existing agreement with the MTA and statements by ESDC and FCRC officials, was used to support the conclusion that there would be no significant environmental impacts in 2019 that were any different from the 2016 completion year studied in the FEIS.

The artificial completion date also is contrary to the overriding stated purpose of the project which is to eliminate blight. The MGPP adopted by the ESDC provides no guarantee that Phase II of the project will ever be completed or that it will be completed in a timely fashion. It recognizes that the development of some of Phase II could be delayed for a period of time and provides that one or more of the blocks will be used as a surface parking lot to benefit the Barclays Arena. ESDC's action ignores the fact that without a clear plan and provision for completion of the project in a timely manner, the blighting conditions and influence of the Vanderbilt Yards will continue and not be removed. Thus, rather than eliminating blight, the project will make the blighting conditions permanent.

STATEMENT OF FACTS

The full accounting of the relevant facts can be found in the Petition and the accompanying Affirmation of Jeffrey S. Baker.

ARGUMENT

Point I

ESDC Violated SEQRA by Failing to Prepare a Supplemental Environmental Impact Statement

The standard of duty for a lead agency under SEQRA, and the standard of review for the courts, is well established,

> courts may, first, review the agency procedures to determine whether they were lawful. Second, we may review the record to determine whether the agency identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination. Court review, while supervisory only, insures that the agencies will honor their mandate regarding environmental protection by complying strictly with prescribed procedures and giving reasoned consideration to all pertinent issues revealed in the process.

Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d 400, 417, 503 N.Y.S.2d 298, 305 (1986).

Once a project has obtained its necessary approvals and the lead agency has completed the SEQRA process by issuing its statement of findings, the SEQRA process is completed. However, when there are changes proposed to the project and new or amended approvals are necessary, the obligations of the lead agency under SEQRA are revived and the agency may not approve the project again without fulfilling its SEQRA obligations as the amended approval is an "action" under SEQRA.

The SEQRA regulations recognize that in certain circumstances changes to the project, changes in circumstances or material new information may require the preparation of a Supplemental Environmental Impact Statement (SEIS). The regulations state:

> Supplemental EISs.

> (i) The lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from:
>
> [a] changes proposed for the project; or
>
> [b] newly discovered information; or
>
> [c] a change in circumstances related to the project.
>
> [ii] The decision to require preparation of a supplemental EIS, in the case of newly discovered information, must be based upon the following criteria:
>
> [a] the importance and relevance of the information; and
>
> [b] the present state of the information in the EIS.
>
> [iii] If a supplement is required, it will be subject to the full procedures of this Part.
>
> (6 NYCRR 617.9[a][7]).

Under the facts present in the case at bar, there exist changes proposed for the Project as well as changes in circumstances related to the project (6 NYCRR 617.8[a][7][i][a], [a][7][i][c]. ESDC identified the changes as primarily involving changing of the acquisition of the real property for eminent domain purposes from a single phase acquisition to a multi-phase acquisition. ESDC also stated that due to litigation and the economic downturn, the project commencement date had been extended from the previous estimated date of 2016 to 2019. Therefore, ESDC prepared a "Technical Memorandum" that considered the potential for changed adverse environmental impacts associated with the three-year delay and concluded that all of the potential impacts had been previously considered, that there were no further adverse

environmental impacts and no additional mitigation necessary, and thus, an SEIS was not required.

However, ESDC ignored the changed terms resulting from the new agreement between FCRC and the MTA which allowed FCRC to extend the time for full acquisition of the rail yards parcels until 2030 and that, since that agreement required payment for the air rights of each specific parcel before title could be transferred, the construction of the final parcel would not even begin until 2030. Therefore, the analysis in the Technical Memorandum of a 2019 completion date was factually incorrect and understated the potential impacts by understating the project build date by more than a decade.

A substantially longer time for the completion of the project results in a different build-date year analysis that forms the foundation of the environmental analysis. The prolonged construction period for the Project will in turn create greater construction impacts due to a longer construction period. The City Environmental Quality Review ("CEQR") Manual states that for actions with lengthy construction periods, it may be appropriate to examine additional areas of environmental concern in addition to those examined for most projects: traffic related impacts, air quality and noise (CEQR Manual 3S-1). Those additional areas to be examined under the present circumstances for the lengthy construction period include: land use and neighborhood character; socioeconomic conditions; community facilities; open space; historic resources; and infrastructure (*Id.*).

The decision to prepare an SEIS as a result of newly discovered information must be based upon: (a) the importance and relevance of the information and (b) the present state of the information in the EIS (*Matter of Riverkeeper, Inc. v Planning Bd. Of the Town of Southeast*, 9 NY3d 219, 231 [2007], *citing* 6 NYCRR 617.9[a][7][ii]). This is a fact-intensive determination

and the lead agency has discretion to weigh and evaluate the credibility of the reports and comments submitted to it (*Matter of Riverkeeper*, 9 NY3d at 231). The same standard of review of an agency determination under SEQRA applies to that of the lead agency's determination regarding the necessity for an SEIS: whether the agency identified the relevant areas of environmental concern, took a hard look at them, and made a reasoned elaboration of the basis for its determination (*Id*.).

"The purpose of an SEIS is to account for new information bearing on matters of environmental concern not available at the time of the original environmental review" (*Coalition Against Lincoln West, Inc. v Weinshall*, 21 AD3d 215, 223 [1st Dept. 2005], *lv to appeal denied* 5 NY3d 715 (finding that the information contained in updated studies related to a ramp closure did not identify any significant impacts not identified or considered in the original FEIS and therefore the decision to not require an SEIS was upheld).

In this instance ESDC's analysis fails for the most basic error, the failure to properly consider the changes in the project and identify the relevant areas of environmental concern. The MGPP, Technical Memorandum and the briefing memorandum submitted to the ESDC Board of Directors makes absolutely no mention of the new deal with MTA. There is no recognition that FCRC is not committed to complete the purchase of Vanderbilt Yards until 2030. And while numerous public comments submitted to the ESDC on the MGPP brought that omission to the attention of ESDC, the summary of comments prepared by ESDC staff completely omits those facts. (Baker Aff. ¶¶ 14-16). [1]

[1] Instead, ESDC took a bizarrely narrow view of its obligations. It discounted all comments about how MTA had negotiated new terms of the sale. ESDC's response to comments stated:

> There were also a number of comments related to the MTA's approval of the modified business terms and changes to the proposed LIRR improvements. This document has been prepared to address comments directed to ESDC and, therefore, does not address comments related to the MTA approval process. (Exhibit F. p. 4)

The issue of the applicable completion date is not a matter of speculation, nor is it a matter of opinion presented by project critics. The basis for the 2030 completion date is FCRC's own agreement with MTA. (Baker Aff. ¶¶ 5-7; Ex. B to Baker Aff.) The fact that FCRC is not obligated to complete the purchase of the Vanderbilt Yards rights until June 2030 is incontrovertible. It is also beyond contention that ESDC officials have publicly stated that completion of the project would likely take decades, (Baker Aff. ¶ 17). Nevertheless, none of ESDC's documents reference the 2030 date or the likelihood of decades for project completion. Instead, ESDC apparently relies upon the report by KPMG that the real estate market might be able to create the demand and absorb the project and thus a 2019 completion date is "not unreasonable". However, the KPMG report makes no mention of the terms of the MTA deal, presenting a fundamental flaw in its analysis and its conclusion that the 2019 completion date is "not unreasonable." (Baker Aff. ¶ 16)

In so determining, ESDC noted that FCRC had already made a substantial investment in the project in terms of acquisition costs, soft costs and preliminary construction activities. Therefore it assumed that FCRC would proceed through both phases of the project in a continuous and uninterrupted fashion and "can be expected to seek to recognize a return on those expenditures as soon as possible". (Exhibit F; Comment responses #10, p. 7). ESDC's analysis, apparently in reliance on the KPMG report, was not a careful analysis but more a case of wishful thinking, and erroneous assumptions, which ignored salient facts.

As noted in the Kahr report, while FCRC may have made substantial expenditures to date, it had taken significant steps to reduce its exposure by negotiating a new MTA deal to

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The comments on the MTA terms were not limited to whether the terms met MTA's legal and fiduciary obligations, but concerned how the new terms affected ESDC's determinations. The illegality of MTA's agreement with FCRC is the subject of separate litigation. *Montgomery v. Metropolitan Transportation Authority*, (Supreme Ct, New York County, Index No. 09/114304).

dramatically reduce its upfront payment and extend payments for 20 years. That plan permitted FCRC to avoid making any payments for the Phase 2 properties until 2012 and avoid any significant annual payments until 2016.

Furthermore, ESDC's assumption that FCRC would be eager to recoup its investment had little or no relation to the completion of Phase 2. Since FCRC was able to postpone any further expenditure for the real property rights to Vanderbilt Yards, it would only be looking at the completion of some or all of Phase 1 to obtain a return on its investment. There was absolutely no analysis of FCRC's return on investment for Phase 1 or any analysis of the costs incurred in relation to Phase 2, which would indicate any imperative for FCRC to proceed in a rapid and continuous fashion with Phase 2. (The purpose of the new phased condemnation schedule is also to significantly reduce FCRC's upfront payments for eminent domain compensation.)

The only analysis prepared on ESDC's behalf was the KPMG report, which found that it was "not unreasonable" to expect the market could absorb the units, if built, within 10 years. However, the KPMG report primarily found that there would be a demand for the affordable housing elements, not a surprising conclusion given the high cost of housing in New York City and the need for affordable housing. Even the Kahr report agreed with that conclusion. However, as noted in the accompanying Affidavit of Joshua Kahr who reviewed the KPMG report, KPMG did not undertake an independent analysis and did not do a realistic projection of the market's ability to absorb 4,000 units of market and luxury housing in an area that already has a surplus of such housing. (Kahr Aff. ¶¶ 8-10) KPMG never addressed the obvious issue of how, in a mixed-use development, FCRC could finance the construction of buildings where the market rate and luxury units were selling far more slowly than the affordable units. Private

financing would not be available for the development of those buildings at the anticipated rate if the market rate units were not being absorbed.

ESDC relied upon a sleight of hand to avoid considering the reality of the expected time frame for the project. In its summary of comments and responses it looked only at the changes in the MGPP to identify factors that could impact the timing of the project. But the new terms with the MTA were not mentioned in the MGPP and thus ESDC simply pretended that material fact was irrelevant or did not exist. On the off chance that ESDC's purposeful head-in-the-sand approach meant that it was truly unaware of the changed MTA terms and FCRC had not bothered to inform ESDC, Petitioners' comments brought that information to ESDC's attention. Nevertheless the comments of the petitioners and other members of the public were ignored by the ESDC.

ESDC also ignored the Kahr analysis of a 2006 KPMG report which considered the financial viability of the project. Among other findings, Kahr noted that current and projected rental and sale prices for the units were far below what were projected as necessary in 2006 for a viable project and that rates would not rise to the necessary levels for at least 10 years.[2] According to Kahr, the overly optimistic 2006 projections were materially affected by the current recession resulting in a significant drop in sales prices and rents which made it even more unlikely that the project could be built in the accelerated fashion projected in the MGPP.

Mr. Kahr's review of the 2006 KPMG report also highlighted its unrealistic expectation of expected sales and rental prices for the development. While the Kahr Report had initially reviewed the 2006 KPMG report which relied on sale prices of $850 per square foot and found that unrealistic when 2009 prices did not exceed $600/SF (Exhibit D, p. 23), the expectation in

[2] Kahr did not comment on the 2009 KPMG report because that was not provided to ESDC until September 16, 2009 and was only released as a result of a Freedom of Information Law request on or about October 7, 2009.

the undisclosed 2009 KPMG report that prices would more than double to $1,220/SF by 2015 was completely without reasonable foundation. (Kahr Aff. ¶ 16).

ESDC's decision to ignore Petitioners' comments, particularly the Kahr report, cannot be excused as a rational choice amongst competing views. ESDC has not provided any evidence that it even considered the Kahr comments or made any attempt to reconcile or respond to the comments. Obviously the KPMG report cannot be used as a counter to the Kahr report as there is no evidence that it was even tasked to evaluate that report and the Kahr report considered broader issues than those considered by KPMG. And as demonstrated by the Affidavit of Mr. Kahr, had the KPMG report been made available for public comment before ESDC took final action, the ESDC would have learned how that report was fatally flawed.

ESDC's own decision document contains an implicit recognition that the project will take many decades to complete. The Project Leases Abstract includes the basic terms for the Non-Arena Development Leases for the parcels associated with the 16 towers. The basic structure is that ESDC will lease each parcel to an FCRC affiliate until the building is completed at which point it will be purchased by the entity owning the building. However, the abstract states that if the improvements are not completed, the leases will terminate "no later than the 25th anniversary of the vacant possession of the Arena Block and any other properties acquired in the first taking." (Exhibit E, p. 2 of Exhibit D therein) Therefore, by ESDC's own terms, FCRC would have until at least 2035 to complete the buildings in Phase II. Having agreed to these basic terms, it is incomprehensible how ESDC can claim that it is reasonable to expect the project to be completed in 2019.

The truth is that in its rush to approve the MGPP, ESDC was determined to avoid preparing an SEIS because to do so would be a time-consuming process, which would reveal

unpleasant truths about the project. The only way to avoid an SEIS was to maintain the fiction of only a three year delay in the project and a determined analysis to support the conclusion that three years would not present significant changes from those considered in the FEIS. If ESDC were to be honest and consider impacts and background growth conditions extending more than a decade longer, it would be forced to recognize that there would be substantial changes and an SEIS would be necessary.

ESDC's Technical Memorandum purports to present a thorough analysis of the potential changes in the environmental impact analysis for each of the areas considered in the FEIS all of which are based on the 2019 completion date. In one section the Technical Memorandum considers the potential impacts from a further delay due to economic conditions. That situation is treated as unlikely and not given detailed consideration. For the majority of the areas of relevant concern studied, there is no year proposed for consideration. Instead, it was assumed that if the project was delayed, all other projects in Brooklyn would be similarly delayed and thus the background growth would remain constant and the assumptions of impacts for 2019 would stay steady into the indefinite future. For traffic and parking potential impacts, a specific five year delay was considered, again reducing the projected growth rate due to the presumed negative economic conditions.

However, the premise that all other development in Brooklyn would, inevitably, be delayed at the same pace as Atlantic Yards, is patently false. As explained by Kahr, Atlantic Yards is a project at a scale incomparable to anything ever proposed in Brooklyn and faces basic infrastructure and development costs not found in more conventional projects. Therefore capital will be much more available to the smaller projects as investors will be concerned about the heightened risks associated with Atlantic Yards. The smaller projects will be developed quicker

and be established well before the 20 years or more it will take to complete Atlantic Yards and they will add to the background levels upon which the burdens of Atlantic Yards will be added. (Ex. D, p. 15) ESDC and KPMG ignored Kahr's conclusion that Atlantic Yards will be a less attractive investment opportunity and thereby conducted an environmental analysis based on a faulty premise.

ESDC engaged in the classic violation of SEQRA. While it identified the relevant area of environmental concern—might the delay in the project result in significant adverse environmental impacts?—it failed to take a "hard look". A hard look would have seen that FCRC would not be completing the purchase of the rail yards until 2030 and only then beginning construction of the last buildings. A hard look would have seen that rather than being reasonable and rational, an assumption that the project would be completed by 2019 was an exercise in unwarranted optimism contradicted by every other indicator. A hard look would have seen that the project had significantly changed by extending the completion date more than 20 years and a supplemental EIS was needed. ESDC failed to take that hard look.

POINT II

ESDC HAS VIOLATED THE UDCA BY NOT ASSURING THAT A PLAN IS IN PLACE TO ALLEVIATE THE ALLEGED BLIGHT

The New York Urban Development Corporation ACT ("UDCA") permits ESDC to undertake only specific, enumerated types of projects. ESDC designated the Project at issue here in a "land use improvement project" (LUIP) under UDCA § 6253(6). The sole statutory purpose of a land use improvement project is the clearance and rehabilitation of a "substandard or insanitary area", defined as

> a slum, blighted, deteriorated or deteriorating areas, or an area which has a blighting influence on the surrounding area, whether residential, non-residential, commercial, industrial, vacant or land in highways, waterways,

> railway and subway tracks and yards, bridge and tunnel approaches and entrances or other similar facilities.

UDCA § 6253(6).

In order to sponsor a "land use improvement project" for a particular area, ESDC must determine either that the area is substandard or insanitary "or is in danger of becoming a substandard or insanitary area and tends to impair or arrest the sound growth of the municipality." McK. Uncons. Law of NY, §6260(c)(1) (emphasis supplied).

ESDC must also find that:

> That the project consists of a plan or undertaking for the clearance, replanning, reconstruction and rehabilitation of such area and for recreational and other facilities incidental or appurtenant thereto;
> McK. Uncons. Law of NY, §6260(c)(2)

As currently presented the MGPP only assures that part of Phase I of the project will be developed – the arena and one of the buildings. While the majority of the language in the MGPP is unchanged from the 2006 MGPP, as noted above, the 2009 MGPP ignores the new deal struck by FCRC with the MTA in June 2009 and the fact that FCRC is not contractually committed to purchasing the entire rail yard and thus does not have the financial incentive to complete the project in a timely manner or at all.

As pointed out in the comment letter submitted on behalf of petitioner Develop Don't Destroy Brooklyn, Inc. ("DDDB"), (Ex. C) the entire justification for the LUIP is eliminating the blight on the Vanderbilt Yards and the blighting influence those yards have on surrounding blocks. Throughout the 2006 review and in the subsequent litigation, ESDC has strenuously argued that it carefully studied the area and that absent initiation of the project the area would not redevelop and would remain blighted, particularly due to the below-grade rail yard. Since FCRC has until 2030 to complete the MTA purchase, the full project would not be completed until sometime later; or, since FCRC could, and likely would decide by 2016 to cease annual

payments before they became significant, it could abandon the project, leaving ESDC without a plan for the redevelopment of the area.

ESDC gave the comment only a glancing acknowledgement and a meaningless response. In its summary of comments and responses, the entirety of ESDC's coverage of the subject consisted of::

> Comment 26: Without commitments to build Phase II, the Project fails to meet the basic elements of the findings necessary for a Land Use Improvement Project or a Civic Project.
>
> Response: The Project documentation will obligate the developer to complete the entire Project in accordance with the MGPP.
>
> (Exhibit F, p. 14)

ESDC staff did not accurately summarize the comment and failed to inform the ESDC Board about the prospect that most or all of the Phase II area could remain undeveloped for an extended period of time and result in the continuation of the blighting conditions. ESDC's sole response is that Project documentation will include some obligations for the developer to complete the project. However, nowhere in the MGPP or elsewhere in the documents presented to the ESDC Board is there any mention of either requiring such an obligation or what those obligations would be. Nor are any guarantees likely to be given or have any meaning since FCRC is already permitted by the terms of the MTA deal to postpone completion of payment until 2030.

The only reference to the guarantees are found in the attachment to the September 17, 2009 memo (Ex. E) to the ESDC Board which has a very brief summary of the Development Agreement to be entered into between ESDC and FCRC affiliates. That summary says that FCRC will be obligated to construct improvements of at least 4,470,000 gross square feet, exclusive of the arena. It also says that FCRC must provide 2,250 affordable housing units;

however, that "obligation" is subject to the availability of government subsidies for affordable housing.

There are a variety of flaws with these supposed guarantees, besides the most glaring as to what form the guarantees will take and how the guarantees will be enforced. First, there is no timeframe set forth in this section for when the project will be completed. There is no statement that FCRC will be obligated to complete in the project in 2019, 2024 or even after 2030.

Second, the requirement that FCRC build at least 4.4 million square feet of improvements is a commitment to only build less than two-thirds of the Project in the MGPP. Excluding the arena, the MGPP proposes building improvements totaling 7,125,000 gross square feet consisting of housing, office, commercial and hotel space. The number guaranteed in the Development Agreement is approximately 37% less than the amount included in the MGPP. ESDC has not provided any explanation as to why the guarantee should only include less than two-thirds of the amount of the MGPP. Nor has there been any discussion of what that reduced amount would include, whether it would still alleviate the blight or produce any approximation of the economic benefits and costs of the reduced project, which is another driving force for the LUIP findings.

Third, throughout the MGPP, the FEIS, the Technical Memorandum and all other documents prepared by ESDC, there has never been any discussion that the affordable housing elements of the Project, a prime justification for its size and ESDC's involvement, is contingent upon the availability of government subsidies. While there has been a recognition that FCRC would seek available subsidies, their availability was never a precondition to the provision of the affordable housing. If that had been a condition, the documents would have to consider the likelihood of their availability and potential impacts to the City and State if all or most of the

available subsidies were dedicated to Atlantic Yards. Nor is there any analysis of delays to the Project while the developer waits for subsidies to be made available in part or at all.

Petitioners recognize that for the purposes of this case, it must be assumed that the area is blighted , pending a decision by the Court of Appeals to grant the motion for leave to appeal in *Develop Don't Destroy v. Urban Dev. Corp*, 59 A.D.2d 312. If that is the case, then ESDC is bound to develop a real plan for the rehabilitation of that blight, otherwise the blighting conditions of the Vanderbilt Yards and Block 1129 will continue to hinder redevelopment of the area. ESDC has not identified or provided any requirement that the project will be completed at all or will be completed by 2019 and thus, without any consideration of the impacts, ESDC has acquiesced to a continuation of the blighting conditions indefinitely. Rather than reconsider the project and the MGPP in a manner that was less ambitious and actually realistic and achievable, so that blight could be remedied, ESDC has ignored the issue and essentially assured that the blight will be permanent.

Conclusion

For the foregoing reasons, the Petition should be granted and ESDC's approval of the 2009 Modified General Project Plan should be annulled

Dated: October 16, 2009

Respectfully submitted,

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