

Legal Authorities in Reconstruction of the World Trade Center Site

Michael B. Gerrard
Arnold & Porter
399 Park Avenue
New York, New York 10022
(212) 715-1190
Michael_Gerrard@aporter.com

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Port Authority of New York and New Jersey's authority over site

N.Y. Unconsol. L. §§ 6601 et al. – Enacted in 1962; authorizes Port Authority to construct World Trade Center

N.Y. Unconsol. L. § 6612 – “So long as any facility constituting a portion of the port development project shall be owned, controlled or operated by the port authority (either directly or through a subsidiary corporation incorporated for any of the purposes of this act), no agency, commission or municipality of either or both of the two states shall have jurisdiction over such facility nor shall any such agency, commission or municipality have any jurisdiction over the terms or method of effectuation of all or any portion thereof by the port authority (or such subsidiary corporation) including but not limited to the transfer of all or any portion thereof to or by the port authority (or such subsidiary corporation).”

Original authority of Port Authority to construct World Trade Center upheld: Courtesy Sandwich Shop, Inc. v. Port of New York Authority, 12 N.Y.2d 379, 240 N.Y.S.2d 1 (1963), app. dism. 375 U.S. 78 (1963)

Port Authority is not subject to National Environmental Policy Act (NEPA). Brooklyn Bridge Park Coalition v. Port Authority, 951 F.Supp. 383, 393 (EDNY 1997). Status of Port Authority under SEQRA has not been litigated.

In July 2001 the Port Authority signed 99-year leases with the Lawrence Silverstein group for the office space at the entire WTC site, and with Westfield for retail space (450,000 square foot existing mall with right to expand by an additional 150,000 square feet)

Empire State Development Corporation

New York State Urban Development Corporation Act, Chapter 174 of the Laws of 1968:

Section 12 – “The corporation shall have the right to exercise and perform its powers and functions through one or more subsidiary corporations.”

Section 16 – UDC (currently doing business under the name Empire State Development Corporation) shall consult and cooperate with municipalities; but where compliance with local laws “is not feasible or practicable”, it may elect not to follow them.

Lower Manhattan Development Corporation created by ESDC board on November 5, 2001 to oversee revitalization of Lower Manhattan south of Houston Street.

ESDC subject to SEQRA but not to ULURP. Wein v. Beame, 43 N.Y.2d 325; East 13th Street Community Ass’n v. New York State Urban Development Corp., 189 A.D.2d 352 (1st Dep’t 1993).

National Environmental Policy Act

42 U.S.C. §§ 4321 et seq.

Applicable to World Trade Center site because, inter alia, of role of Federal Emergency Management Agency.

FEMA activities at site under NEPA: www.fema.gov/mit/ep/assess.htm

Principal issues to be resolved in planning process

Amount and mix of office, retail, institutional, memorial space at site

Design of office, retail, institutional space

Design of memorial

Transportation improvements, including linkages to surrounding neighborhood as well as to rail systems

Zoning of World Trade Center site

I. Western portion of the WTC site is in the C6-4 district (where a maximum floor area ratio (FAR) of 10.0 is allowed).

II. Eastern portion is in the C5-3 district (with a maximum FAR of 15.0, the highest of any district). N.Y.C. Zoning Resolution § 33-122.

III. FAR might not be enough to build 110-story buildings, though available plaza bonuses could add significant height, N.Y.C. Zoning Resolution § 33-14. as could arcades. N.Y.C. Zoning Resolution § 33-15. Still additional bonuses are available since the site is within the Special Lower Manhattan District. N.Y.C. Zoning Resolution § 91-23.

IV. Zoning amendment, added in 1998, provides that in this district, any portion of a new building above 300 feet cannot have a horizontal dimension, measured in any direction, exceeding 175 feet. N.Y.C. Zoning Resolution § 91-34. (Each of the twin towers was 209 feet on a side, with a diagonal dimension of 295 feet.)

Construction of Battery Park City Landfill

Portion of landfill was created from material excavated from World Trade Center in late 1960s. This was prior to the enactment of Federal Water Pollution Control Act of 1972, Section 404 of which would have required a dredge and fill permit from the Corps of Engineers. The landfill ordinarily would have required a permit from the Corps under Section 10 of the Rivers and Harbors Act of 1899, but the relevant portion of the Hudson River was declared nonnavigable by Congress in 1968. 33 U.S.C. § 59c-1.