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# INTERGOVERNMENTAL RELATIONS AND URBAN DEVELOPMENT POLICY - THE POLITICS OF THE HACKENSACK MEADOWLANDS LEGISLATION

by

O'BRIEN BOLDT

A dissertation submitted to the Graduate Faculty in Political Science, in partial fulfillment of the requirements for the degree of Doctor of Philosophy, the City University of New York.

1972

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This manuscript has been read and accepted for the Graduate Faculty in Political Science in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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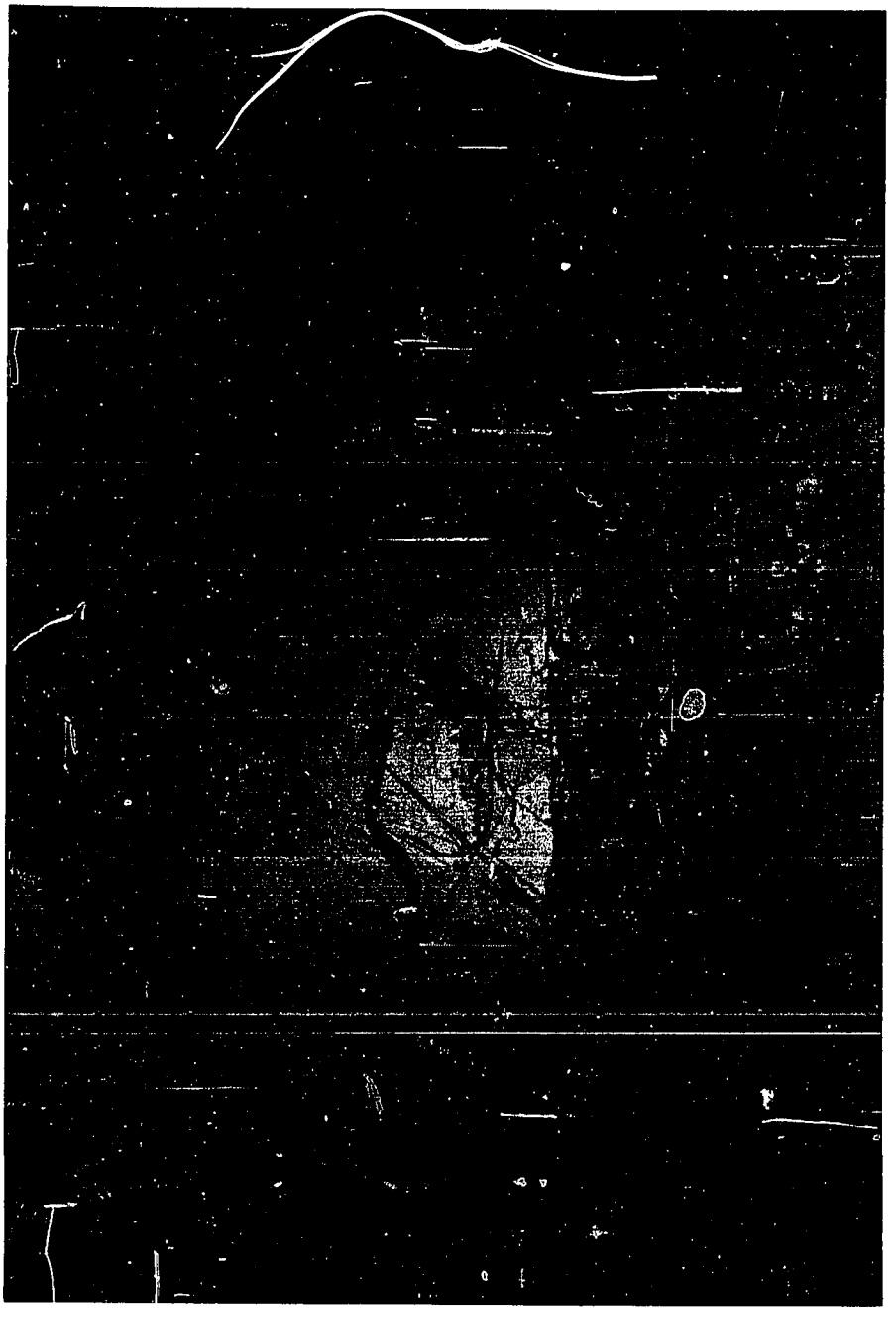

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# INTRODUCTION

## The Intended Significance of the Study

This study is motivated and shaped by a specific policy conviction; that new powers of state action in urban development are needed.

Senate Bill No. 477, by which the 1968 New Jersey Legislature created the Hackensack Meadowlands Development Commission, is a "success story" in legislating such powers; the study undertakes to analyze its history as a case study of how its passage was realized.

The argument to be developed here is essentially that a New Cities program is urgently needed as a major element of an overall strategy to deal with the threatening problems of American cities, and the corallary argument that the states must play a pivotal role if there is to be such a program. (The argument does not pretend to present a complete and adequate urban strategy; it acknowledges, in fact, that it fails to deal with some of the most difficult questions, e.g. how to maintain the economic and social viability of the central



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cities, and accomplish their physical modernization. It does say that current patterns of metropolitan growth aggravate the problems of the center, whereas channelling much of the growth into New Cities would afford significant relief of some of the center's problems.)

Some Dimensions of the Cities' Crisis

Only a summary description of the "urban crisis" will be essayed here, with the caveat that such a description cannot hope to state adequately the many elements and complexities of the problem.[1]

The most obvious and dangerous dimension of the cities' crisis is racial. Great numbers of blacks, particularly in the years since 1940, have moved from the rural South to the center city ghettoes. Their containment and concentration, their heightened needs and increased dependence in an urban setting, white society's unwillingness to accommodate those needs and the consequent mounting black resentment and militancy, white/black antagonism in many areas of conflict and competition, white flight to the suburbs - all these are potent elements in the urban crisis. The great and growing numbers of poor blacks in the cities, and their conditions, together with white attitudes about blacks, may thus be seen as

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[1] An exhaustive exploration is provided by the Hearings of the Subcommittee on Executive Reorganization of the U.S. Senate Committee on Government Operations, chaired by Senator Ribicoff, on The Federal Role in Urban Affairs in 1966 and 1967.

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a root cause of the crisis.

Another root cause is the obsolescence of urban design; the buildings, streets and open spaces of the older central cities, and their functioning, have become less and less satisfactory because of huge and rapid metropolitan growth and great technological changes, particularly those motor vehicles have brought. This design obsolescence is manifest in the congestion and the sprawling disorganization which characterizes metropolitan growth.

A third root condition - the political fragmentation and stratification of most large metropolitan areas - greatly aggravates the effects of the others. This contributes to the helplessness of the center city government, and the balkanization of the suburbs.

There are other elements which might be termed "causes" - the sweep of technology which wipes out other modes of livelihood, the destruction of the sense of community in mass urban centers, the increasing rigidities of 'the system' which does well by those who find a place in it but blocks off the access of millions of others to property or job rights and thus to the means to provide for their own needs.

The problem may also be summarized in terms of some of the resulting conditions:

(1) The center city has become a trap for poor people and especially poor blacks. (Poverty is the central element

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of the problem, and nearly half of the ten million poor in the central cities in 1964 were black.[1]) The city provides a wretched, tension-laden environment, and no longer provides the training and job opportunities which offer a way out.

(2) By a self-reinforcing process, the city is becoming less and less acceptable to people with enough income to afford the suburban alternative; racial fears and frictions amplify the dissatisfaction of white middle-income families with city housing, neighborhoods and institutions, especially schools; as some white families escape to the suburbs, the city's tax base is diminished and the frictions are intensified for those who stay; more leave; the families who replace them are poorer and have greater needs for public help; as the city struggles to meet these rising demands from shrinking resources, the remaining middle-class families feel that they are paying more and getting less; more leave.

(3) Metropolitan "sprawl" : in the outlying areas growth occurs in an irrational, wasteful pattern, using land badly and driving land costs up; the residents of many of the small political jurisdictions in the suburbs often suffer poor transportation and inefficient government, and are pinched by the cost of public services. There is a relentless and rapid destruction of open space and recreational opportunities, and a spoilage of natural resources.

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[1]National Advisory Commission on Civil Disorders, Report (Washington, 1968) P. 359

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(4) Congestion and constriction: there is severe and growing congestion of movement as outward growth multiplies the gross volume of movement. There is increasing costliness of development as increasing distances put a rising premium on convenience, suburban zoning practices restrict the use of available land, and land-owners capitalize on the resulting scarcity. The mode of growth requires the destruction of earlier development for intensified development or to provide public and commercial facilities for enlarging populations. These factors interact to limit the capability of the suburban areas to accommodate growth, and increase the costs of doing so. The total effect is severe constriction of the needs of the whole metropolitan population for new housing and the associated services, and for modernization of what exists.

Associated with the constriction, of course, is the systemmatic exclusion of blacks and other minorities, and lower income families generally, from the newer areas.

(5) Another facet of the process is the growing inability of local units of suburban government to govern adequately, as sprawling growth creates urban entities whose size and needs e.g. for water supply and waste disposal embrace areas far wider than the established municipal boundaries.

Finally, it is useful to analyze the crisis of the cities in terms of some of the basic functions of urban centers, and the breakdown of the ability of American cities to perform those functions.

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In the function of employment and production, the poor and unskilled have continued to come to the central cities, but the market for their labor has been increasingly stagnant, because many jobs, particularly in manufacturing, have been moving out. There is a mismatch of supply and demand, both in skill levels and in locations.[1]

The inability of American urban society to provide sufficient decent housing is one of its most serious failures. The failure is manifested both in the abuse and deterioration of a large part of the existing housing stock in the central cities, and the insufficient volume of new housing at reasonable prices or rentals.

School budgets on a per student basis are lower in the cities[2] and educational quality is regarded as correspondingly lower. The needs of ghetto children, in particular, are much greater than past generations, but the fiscal squeeze on the cities has severely limited their willingness to meet the price of these needs. Race and class factors aggravate the deficiencies of the ghetto schools.[3]

The deficiencies of present-day urban transportation are so generally recognized there is no need to spell them out.

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[1]Louis F. Buckley,"The Manpower Revolution in the Central City" printed in the Federal Role in Urban Affairs Hearings, op. cit., Part 8, p. 1775

[2]Advisory Commission on Intergovernmental Affairs, op. cit. p. 26

[3]This is powerfully documented in the National Commission on Civil Disorders Report, op. cit., p. 425 ff.

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There is likewise a consensus that the cities are failing to fulfill other vital functions, such as, to facilitate happy association and a sense of community, to provide ample and varied recreation, to protect and promote the public health, to foster an environment favorable to artistic and cultural expression, to insure security for persons and property, to foster convenience and amenity.[1]

Finally, involved in all the functions which have been named, and necessary for their performance, is the provision of a competent administration of public matters, by means of an accountable and responsive government. And the cities today are clearly unable to provide this. The central weakness is the lack of a unified jurisdiction over the functional urban area; closely correlated is the inability to command enough resources to do what needs doing.

These weaknesses are manifest in each of the major functional areas which have been cited. The division of the metropolitan area into many political jurisdictions in itself contributes strongly to the shift of new jobs to the urban fringe, (because of tax differentials). Most of the vacant land needed to help meet the housing needs of people in the central cities lies outside them, subject to autonomous suburban zoning controls which force economic segregation. The flight of many middle-class white families to separate suburban

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[1] See especially, testimony of Sen Robert Kennedy, Federal Role in Urban Affairs Hearings, op. cit. Part 1, p. 25 ff.

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school jurisdictions is a key element of the educational crisis of the cities. The failure of transportation is ipso facto, a failure of government. There is no mechanism for unified land-use planning which could minimize and simplify essential movement; and the fragmentation of responsibility for transportation among many separate, competing private and public jurisdictions renders them impotent to provide an ample and convenient transportation system.

The solution of the problems which have been enumerated requires that housing, transportation and community services be planned and developed, and tax policies be applied, as part of a coordinated strategy for the urban area as a whole. Obviously the central city, lacking jurisdiction, cannot do this; and in fact the relation between the city and the suburban ring around it is antagonistic and competitive. Parochial sentiment within existing local jurisdictions has in several instances defeated efforts to create new metropolitan jurisdictions.

New Cities as a Line of Solution

Several recent American studies have urged a New Cities program as part of the nation's response to its urban problems.[1]

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[1] Advisory Commission on Intergovernmental Relations, op. cit. , Ch. VI
American Institute of Planners, New Communities: Challenge for Today, (Washington, 1968)
National Committee on Urban Growth Policy, The New City, (Frederick A. Praeger, 1969).

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Though the various advocates do not all have exactly the same things in mind, some of the basic common denominators of the New Cities concept are:

(1) each undertaking to seek the creation of a complete city, including industry and business to support and serve its population, as well as schools, public services and cultural institutions.

(2) unified control of basic planning and development decisions for the entire community project.

(3) undertakings on the scale of full-sized communities, (generally of 5,000 or more population, and ranging up to 1,000,000).

(4) a sponsorship, financing and governing mechanism to accomplish the systemmatic, phased and coordinated execution of the full development plan.

(5) early and middle-stage development designed as integral parts of the matured city.

(6) the complete whole conceived at the outset; there is a commitment to a specific limit of ultimate size. (Some recent European new towns planning leaves ultimate size open-ended.)

Discussion of the siting of New Cities generally emphasizes their value in locations where they would provide a logical alternative to growth by "sprawl" of existing metropolitan areas; the locations of Columbia, Maryland and Reston, Virginia are based on this concept, being in practical commuting range of both Washington and Baltimore. The New Cities concept could also be realized, of course, on sites outside the orbit of any existing major city.

If we group the elements of the urban crisis into two classes - aspects of the decline of the central cities, and the difficulties and deficiencies of growth at the fringe -

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then it is clear that the projected advantages of New Cities relate mainly to the latter. It is argued that they could accomplish growth at lower dollar cost and provide a better quality of life.

The approach by its nature attacks two of the problems which were identified as "root causes" of the urban crisis: political fragmentation and the concomitant lack of governmental means to plan urban growth; and the obsolescence of urban design and plant. The New City approach proposes to make a clean start and lay out the design for a city with a clear idea of the form and function of its developed parts. The approach, likewise, conceives that the city to be created will be a single political unit, with jurisdiction over its hinterland as well; it will be able to command essential resources, protect and maintain its natural environment, control development which affects it, and meet its own future needs for expansion. Alternatively, New Towns development is conceived as taking place within a governmental scheme of unified regional control.

The New Towns approach is not, in any direct way, an attack on the other "root causes" that were cited - racism, the concentration in the center city ghettoes of poor blacks lacking viable skills, and the blockage of access of the urban poor to property and job rights. There is no inherent reason why New Towns would accommodate more blacks, or more low-income families than suburban growth. A case could be made for the opposite probability. The most logical and likely employer

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in a New Town is a strong and growing corporate giant with the capability for planned growth in large, well-defined increments. It is just such a company which can best afford and is most likely to hire well qualified, well homogenized Americans. Also, by definition, the New Town will have no old housing stock to start with, so it will be able to house only those families who can afford new housing.

Yet a much more optimistic estimate can be argued. If the creators of a New Town, and those who define the terms for public aid to it, are committed to create a more open and inclusive community, then the New Town may provide a far more friendly environment for innovation. The New Town is - in promise - the climate of a new start, in which those who stake out their claim in virgin territory are free to define for themselves, the style of life and the purposes of life they want to achieve.

One witness told a Senate committee studying the urban crisis:

> If the Negro is ever to break out of the segregated core of our central cities in any numbers, he will have to leave the city and leap over the suburban ring which is closed to him by heavy costs and racial prejudice. The only conceivable way of escape is to new towns.[1]

There is the clear possibility that New Towns can succeed in doing what seems very hard to do in the suburbs: develop themselves as an inclusive society repudiating racism.

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[1]Joseph Lyford, Federal Role in Urban Affairs Hearings, op. cit. , Part 6, p. 1330.

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In the suburban situation, whatever has been the norm is therefore sacrosanct. Even though the rules of the game as practiced in the housing market may be unfair, most suburban residents reason that it would somehow be unfair to one's neighbors to change them. But in the New Town explicitly committed to inclusiveness, there need be no such inhibition; those opposed are free not to join in the venture.

Floyd McKissick strongly supported a new towns program as part of the answer to the needs of the urban ghettoes; in particular he pointed to the possibility that new towns could offer access to a decent life for blacks who are now migrating from rural poverty to ghetto dependency.[1]

A New Towns program could open a new "frontier" for those excluded from a place in the highly structured system of property and job rights in which most of the sunny places in the present urban scene are pre-empted by wealthy and middle-class whites.

The "frontier" analogy is apt in several senses: opening up of a new space in which latent energy, now blocked by metropolitan congestion and costliness or hobbled by parochial restraints, could create new homes and workplaces; opening up work opportunities for people now blocked from them, and so creating favorable conditions for learning and using new skills;

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[1]Ibid., Part II, p. 2293.

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uncorking a pioneering spirit and encouraging whole-hearted efforts to test and prove innovations, including new patterns of organizing work.

There is need for a cautionary note with these hopeful thoughts. Dr. Constantin Doxiades told the "Federal Role" hearings:

> If the new town is far away ... it does not help the core city in any way ... also because then the central city receives the leftovers. In this way we are strengthening segregation, economic, social and racial segregation. I think that this movement of new towns, unless it becomes part of an overall plan for major areas, can be very, very dangerous. (Part 8, p. 1795)

American New Cities Experience to Date: What's Lacking?

Some timid and ineffectual beginnings toward federal encouragement of a New Cities program were incorporated in 1966 and 1968 legislation[1]; somewhat stronger provisions are incorporated in the Housing and Urban Development Act of 1970 (P1 91-609).

The accomplishments of New Towns efforts in the United States to date are not impressive. The cited 1968 study of the Advisory Committee on Intergovernmental Relations listed 52 new community projects currently under way, having projected populations ranging from 10,000 to 300,000. Their aggregate target population was 3,900,000 but as of March 1968 these projects had actually produced only 47,000 housing units, which would correspond to a population of about 188,000. The great

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[1]Section 1004 of Title X of the National Housing Act, added by amendment in 1966; "New Communities Act of 1968", Title IV of Housing and Urban Development Act of 1968, (PL 90-448)

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preponderance of these projects were in warm-weather states and many of these appear to be oriented toward specialized needs and markets, i.e. for retirement and vacation homes. (pp. 77-8)

The experience in a number of other nations is much more impressive. England, in particular, has a history of large accomplishment in building New Towns.

> 14 new towns were started in the late '40's and by the end of 1968 half a million people had gone to live in them. Only one more was started in the 1950's, but since 1962 another 13 have been launched... by the end of the century the combined populations of these 28 new towns will be more than 3 million of an expected total population of 65 to 70 million.[1]

Other European nations, in particular Sweden, Finland, Holland and Israel, have built new towns on a significant scale. Developing nations on every continent have built sizable new towns and cities.

Given the magnitude and urgency of American needs for housing and urban expansion, the widespread dissatisfaction with the consequences of "sprawl", and the demonstrated American capacity for initiative, bold venture, and large-scale organization , our failure to date to implement the New Towns concept on a sizable scale begs for an explanation.

Nearly all of the New Towns projects in England and Europe have been public enterprises, under nationally supervised planning controls. All of the American efforts since World War II have been private enterprises, operating in a

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[1] The New City, op. cit. Wyndham Thomas, "Britain's Postwar Achievement", p. 103.

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vacuum of public development policy or planning. They have not had the power of eminent domain, nor the help of substantial public expenditure of subsidy, nor the authoritative power to control or coordinate vital related development decisions such as highway locations, provision of schools, etc.

I venture the assertion that the basic difficulty is an ideological hang-up. We are confronted with a problem which by its nature requires vigorous government initiative, direction and control for an adequate solution. Yet this would mean assertion of government power in an area which, through most of our history, has been a preserve of private decision - and a favorite preserve for the pursuit of private gain.[1] So we are profoundly inhibited from learning what the European experience has to teach us.

The recent studies cited of American efforts to build new towns agree on the main weaknesses that have been manifested.[2] The following paragraphs summarize these weaknesses, and develop the argument that they stem from the inherent and necessary limitations of private action.

(1) Entrepreneurs must lay out very large sums - typically $25 million to $100 million - and must wait a very long

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[1]For copious documentation of instances where land speculation was the motivating and directing force of city planning and development, see John W. Reps, The Making of Urban America. (Princeton University Press. 1965)

[2]Ch. IV of the A.C.I.R.'s Urban and Rural America, esp. pp. 87-105; the A. I. P. 's New Communities: Challenge for Today, esp. pp. 23-27; the National Committee on Urban Growth Policy's The New City, esp. pp. 114-115.

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time, typically 12 to 15 years, before the outlay can be recovered and profits realized. And the money invested in the pioneer phase of new town development - assembling the land and putting in roads and utilities - runs very serious risks. The hazards of running out of development capital before the proceeds begin to flow is rated one of the most difficult problems of the private new towns entrepreneurs. It is thus difficult to attract investment capital into the field.

Government underwriting of the risks is an ingredient in everyone's New Towns recipe. But, is it not more to the point to say that the burden of risk is so great largely <u>because</u> we leave to be decided by private gamble what should be established by public decision? Surely it is not in the public interest that a question of such consequence as where a city will be built, should be delegated to private decision; nor can it serve the public weal that such great uncertainty should attend the success of the undertaking.

(2) Land assembly on the requisite scale is a difficult and chancy matter for a private developer. Given the high degree of public interest in a sound choice of site and in its acquisition at reasonable cost, it is logical to call the power of eminent domain into play. But to say this is to repeat that we are dealing with a decision which is properly a public decision.

(3) The basic planning decisions for new communities involve important public policy issues; deciding these on the

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basis of private investment considerations may produce socially disastrous results.

As The New City puts it:

> privately developed new towns ... by definition must serve the market, which tends to fill them with housing for middle- to upper- income families rather than the poor.[1]

But public policy has a big stake in directing new town development toward provision of housing for the full income spectrum; likewise, in the issue of ethnic and social inclusiveness versus "homogeneity".

(4) Many of the decisions in developing a new town will shape the lives and choices of all the people in a whole community for a long future, and therefore they should be amply represented in the decision process. The private enterprise sponsor is inherently unsuited and unqualified to fulfill many aspects of this responsibility, yet much of it falls on him in the present American policy framework. For example, he confronts local governments which aren't geared to exercise the sophisticated planning controls appropriate to large-scale comprehensive development. But it should not be left to the private developer himself to fill this gap, since he is himself a party at interest. Nor is he the right man for the job of battling for the public interest against the opposition of local government which may be weak, timid, parochial, rigid, inept, corrupt, excessively conservative, or whatever. Most important of all, the decision to build a new community must be implemented by many decisions of public finance; private developers

[1] National Committee on Urban Growth Policy, op. cit., p 115

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are neither geared nor empowered to make these decisions, but in the new community situation developers are likely to be dealing with units of government which can't handle the assignment either.

Finally, the private developer cannot be charged with the primary responsibility for sound development of new communities, because he lacks the resources and scope of authority to make the big decisions of regional policy which provide a framework and basis for evaluation of proposals to develop particular kinds of communities in particular places.

* * *

The broad conclusion which flows from this analysis is that we cannot realize the full promise of the New Towns concept unless we create appropriate new instruments of public planning, initiative and control, particularly at the federal and state levels.

Emerging Public Policy

There is a high degree of concurrence in the three recent studies which have been cited, that a national new communities program should be developed, and also on what some of its key elements must be:

(1) a national policy regarding urban growth.

(2) federal insurance of development company debentures for land purchase and improvement.

(3) new public or quasi-public enterprise institutions for choosing and developing sites.

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(4) new instruments of public planning and control, at the appropriate regional level, to deal with large-scale new community development.

There are three existing programs for federal aid to new community development - Title X of the National Housing Act, legislated in 1965 and amended in 1966, the "New Communities Act of 1968" which was Title IV of the Housing and Urban Development Act of 1968, and Title VIII of the Housing and Urban Development Act of 1970. Neither of the first two has been very productive. They provide principally for federal guarantees of land purchase and development debt, but made no provision either for development of a national urban growth policy, nor for the creation of new types of agencies, vested with public power and accountability, to perform those functions of planning, control and initiative most heavily freighted with a public interest.

The 1970 legislation proveded more comprehensive financing support, and for longer terms. It did call for articulation of a national growth policy; but except for a national Corporation authorized to undertake New Community demonstration projects on federal land, it made no provision for the creation of new types of agencies. There is insufficient data as yet to evaluate the effect of the 1970 bill. Some of its apparent implications are discussed in Chapter XXV.

The three studies cited were unanimous in stating, and emphasizing, the vital need to <u>have</u> a national policy regarding urban growth. The A.I.P Task Force statement goes furthest in stating what the scope of a national growth policy should be, and is frankest in exploring the implications of

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such a policy. In spelling out the need for a "national settlement policy" its report in effect calls for the definition of broad national social and economic policy goals, and their implementation through national settlement, transportation, housing, resources, education, health and welfare policies - in sum, then, national planning, albeit of a flexible and permissive character compatible with the federal system and the American style.

There are, of course, very many different ways in which federal policy-making, assistance, and standard-setting may be structured and related. It is also quite conceivable that a federal agency or federally-chartered corporation(s) might play an active development role.

There are also many alternative ways for the siting and building of individual communities to be set up. The several steps in the process - broad-guage planning, specific site selection and purchase, site development planning, land improvement work, private building and public building, could conceivably be consolidated or divided in several different ways. Public policy might be exercised by tools of guidance, or by more direct action. Town, county and state agencies might create or oversee development agencies, or collaborate in various arrangements. And various devices for private-public collaboration are possible.

There is a need for new types of agencies to exert planning and development control, to make the necessary ar

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decisions and commitments of public finance, and to open the way for new residents to assume governing power.

Study and experimentation on all these questions is just beginning.

Federal legislation, when it comes, will stimulate action by state and local government and the private sector - and shape it too. But irrespective of when or how the Congress acts, certain basic issues and probabilities are clear. New Cities cannot be built in the air, they must be built on particular areas of land, each of which is part of the territory of one of the states. Site designation raises the most important issues of public policy - issues in which the states have vital concerns, and which are squarely in the jurisdiction of state rather than national government. None of the current proposals for federal initiatives would alter any of this. (Even proposals to build New Cities on federal lands would not escape sovereign authority of state government over "police power" issues in development.)

Most discussions of New Cities legislation consider federal implementation first, then the role of the states. But the following discussion focusses on the states, and gives only incidental consideration to the federal role. The reason for this emphasis is that the argument being developed here is mainly concerned with the states' role. But there is a bonus in this approach: it illuminates how crucial is the part that states should play in a New Cities program.

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## A Key Role for the States

The case for a key role for the states can be simply stated in three propositions:

(1) The designation of sites for a New Cities program is freighted with such great and broad public consequences that it should be controlled by public officials accountable to the entire area affected.

(2) Site designation should be made in accordance with a sound plan, developed in an ample regional framework.

(3) The state is the level of government best fitted, in the American federal scheme, to perform the basic planning and to control the site designations for New Cities.

The case for a key state role becomes even stronger if the need to employ the power of eminent domain for assembly of New Cities sites is considered. But it is important to recognize that the primary justification for a state role is based on the public stakes in sound planning, and that this argument stands on its own merits. Accordingly the question of eminent domain will be developed separately, below.

The case for the first proposition - that siting a New City should be a public decision - has been stated in preceding pages.

The second proposition - that site designation should be made in accordance with a sound plan, developed in an ample regional framework - is of the essence of the New Cities concept and its justification. It is so generally accepted a proposition, at least among those professing to make informed

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utterances, that there should be no need here to develop detailed argument in support of it. Many may ignore it, or seek to subvert it, evade it, or bend it to special purposes, but virtually no one disputes it.

Yet, note well that the main burden of the argument rests on these two propositions, which only need to be stated to seem self-evident. Given these as premises, the identification of the states as the level of government best suited to plan and site New Cities follows right on by a comparatively simple process of elimination.

A "fully ample framework for planning" of New City sites must encompass the region on which the city will logically draw for population, the region of its ecological dependence and impact, and its prospective economic orbit, i.e. the area within which its needs and outputs of goods and services will vitally affect the market. Of course, these areas would be broadly overlapping.

Existing municipal jurisdictions are of course incapable of such planning; their inadequacy to secure regional needs is the very problem at issue.

Is adequate planning possible within the framework of a county's jurisdiction? There are few states in which county governments are vested with sufficient power, in the first place; and in the second place it seems unlikely that a single county will very often embrace the full extent of a New City

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and its environs.* More typically, the county is itself part of a larger urban region. The New York Metropolitan region embraces 17 counties ( in three states ). The Hackensack Meadows, the geography on which this study focusses, lie across two counties and touch two others. In any planning for New City sites, it is unreasonable to expect county officials to have a reliable perspective on the relation of the whole and the parts of an urban region; almost inevitably they would have a competitive interest in bringing some uses into the county and keeping others out, for reasons having no relation to functional suitability.

The question of the best level for planning for new towns and cities, from the point of view of rational administration, narrows down to a choice among four alternatives:

multi-county regional districts within the state

state

interstate regions

federal

However, there is no need (here, at least) to argue the relative merits of the first two of these choices. They are two different forms of state action; either one can be put in business by an act of a state legislature; neither one can be

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* This depends on the size of the projected new city, of course. Many contempory "new communities" are in effect "bigger and better subdivisions" which project populations of 15,000 to 75,000. (See for example, Table 41, p. 78, in the A.C.I.R.'s Urban & Rural America.) There is no inherent reason why adequate planning for such communities could not be performed at the county level.

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initiated without such an act. It is thus the state's choice, whether it wants to exercise its power through separate regional instruments around the state, or by a single state unit.

The most consequential and clear issue is drawn between the federal and state levels. There are some important arguments on the side of planning by federal agencies. Many elements of the planning problem cannot be seen whole and in true perspective except in the framework of a national view, or a multi-state regional view. Item: how to project the migration and settlement pattern of poor blacks still in the rural South? Item: future development of the Missouri River Valley and the effect on its configuration, resources and economic potential. State boundaries are more likely to run down the middle of the paths of commerce and development, than to follow watershed boundaries up in the hills, so they are often an impediment to rational planning.

But the disadvantages of federal planning are probably fatal. The most basic and important is legal-political. The primary tool of public authority to control the siting of new urban development is the power to permit or prohibit the development of specific land areas for specified uses: zoning. This is an exercise of the "police power". It belongs to the states. The federal government could not exercise it over land development except by sufferance of the states. And even if such an "invasion of states' rights" could be constitutionally justified, it is politically inconceivable. There is too much at

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stake to expect the states to abdicate their power in this area. Congressmen have strong ties to state and local politics, and Congressional action consistently reflects this. We can expect that federal action will not challenge state power to plan, but will seek to devise ways to achieve national purposes through state power.

The argument that something "can't be done" for legal or political reasons need not be respected if there are compelling social reasons to do it, and no viable alternative methods. But that is not the case here. Indeed, something must be done; but the states can do it, and there are plausible reasons to think that perhaps they can do it better.

There is, I believe, a wide consensus on some of the disadvantages in giving federal agencies a dominant voice in decisions which are locally consummated for local purposes (e.g. schools, houses, hospitals.) Federal power and process is remote from the scene it affects. It is ponderous and exasperating in its ways, with an elaborate hierarchy generating complex procedures which must be cleared through many layers. It is difficult for the best-intentioned of federal functionaries to achieve flexibility of policy to fit local conditions. Federal-level politics sometimes afford strong leverage to obstructive forces which may have no potency in some individual states.

The obverse of all these considerations, of course, read as advantages of planning by states. They clearly hold the constitutional power; there are no major legal obstacles

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to be cleared, (although the states have delegated zoning power to the localities, which will not yield even a part of it without a sharp political struggle.) The states' contact with their localities is generally close enough to enable a realistic appreciation of conditions and of the consequences of decisions.

But what of the argument that state boundaries are not an adequate planning framework? We ignore this at our peril, but it does not render the states incompetent. In the first place, many prospective New City locations would not have interstate impact.* Secondly, there is no reason to assume that planners working at the state level would be incapable of giving due consideration to interstate considerations; and beyond this, a variety of ways of interstate cooperation and coordination could be developed. And with respect to broader national and regional questions, we can seek the definition at the federal level of policies and goals (e.g. migration, urban-rural balance, resource conservation and development) which would serve as a guiding framework for planners at the state level.

Perhaps the ideal arrangement, for optimal rationality of the planning results, would be planning by interstate regional agencies. How to bring such agencies into existence is

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*To secure a rough measure of this, the locations of 65 major American cities were measured, and 45 of them, it was determined, lie 25 or more miles from the nearest state boundary. There seems to be no reason to expect that, on the average, areas meriting consideration as New City sites would be more likely to be near state boundaries.

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a challenging question which is not the focus of this study. Certainly it should be an important aim of federal policy. But such agencies do not now exist, and in their absence the states appear to be the best-qualified level of government for the job under discussion.

To say this is not at all to say that the states are even moderately well tooled up for such an assignment at present. Land-use and development planning has become a fairly strong function in many American cities and towns, but generally it is weak at the state and county levels.

The distinction between site designation and site development is of vital importance in the line of argument that has been developed. Whether development should be carried out by private, quasi-public or public agencies, is another important issue which is raised by the New Cities concept. But it is an issue which this discussion can legitimately by-pass even though it has important points of contact with the question of site designation. This is so because (1) the argument for location planning and site designation by a state agency is based on reasons which hold true irrespective of the nature of the agency undertaking development (although they are more compelling if the developer is a private enterprise), and (2) the assignment of siting power to a state agency would not foreclose any of the options as to the nature of the developing agency.

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There are many conceivable ways in which responsibility for initiative in selecting a New City site and for approval of sites might be structured, in relation to developers. One extreme might be a public agency from which developers would be required to obtain prior planning approval for large-scale undertakings, exercising its role in a passive fashion by review of each application on an ad hoc basis. At the other extreme might be a state agency playing a strong role of affirmative direction and initiative, developing a highly specific plan of proposed sites, exercising control over site assembly, and possibly contracting the development of a new town in a number of separate segments by different developing firms. One possible model is the relation of an urban redevelopment agency to private redevelopers; the former, having assembled a site, formulates a land-use development plan and standards, and solicits bids from developers; the latter submit a proposal to purchase a part of the area for a specified sum to develop it in a specified way, consistent with the agency's overall plans.

As soon as we begin to examine the problem of site designation, the question of eminent domain is seen to be a key issue. It is conceivable that New Cities could be built on a significant scale in the U.S. without using the power of condemnation for site assembly, but the arguments for bringing this power into play are strong.

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At the most obvious level, lack of the power of eminent domain makes site selection subject to the will and whimsy of the existing owners of undeveloped property. Planning considerations would invariably play second fiddle to the chancy questions of which owners were willing to sell for a fair price, which owners wanted an exorbitant price, and which ones just wanted to stay put. The warping effect of these considerations on planning would be greater, the larger the projected city. New Cities development is certain to be seriously hobbled if it must operate under this handicap. It will not be possible to select the sites best suited for development, it will not be possible to develop the sites selected in the best way, and it may be that under these limits it will not be possible to develop a viable community at all.

All these considerations apply if we assume private initiatives in site selection; but if a public agency is to exercise affirmative powers of site designation, then the need for eminent domain is inescapable.

Site designation by a public agency must be a deliberate and public process. There can be no place for the shrewd tactics of private assembly which are so dependent on speed, secrecy about one's intentions, and flexibility to alter them to fit the bargaining situation which develops. Yet without such tactics there is no practical possibility of persuading all the owners in an area voluntarily to surrender their titles. The creation of a New City will create tremendous

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appreciation in the value of particular sites. Any owner with a properly developed acquisitive instinct will want to capture as much as possible of that appreciation for himself. But an anarchic reign of greed is utterly incompatible with rational planning and procedures or viable economic development of a New City.

The argument is made here that a strong public role in planning for New Cities sharpens the necessity for the use of the power of eminent domain. But in the actual evolution of events it may be the other way 'round: it seems likely that the practical need for rational and certain assembly will make itself felt first, and will generate demands that New City construction be declared a necessary public purpose, so that condemnation may be employed for site assembly. That would almost certainly bring in its train, an enlarged and more affirmative public role of direction and control.

Is there a realistic possibility, in <u>political</u> terms, that a strong state role can be legislated and fulfilled? The dissertation's underlying concern is with this question; it seeks to analyze a particular legislative struggle, which involved the establishment of state power to plan the urban development of a large area. It seeks to mine this experience for such lessons as may be useful toward the passage of similar legislation in other states and other situations.

For the purpose of this introductory essay it is pertinent to sketch in broad outline the nature of the political

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problems posed by the concept of a strong state role in New Cities planning, and to take note of some of the probable political tendencies.

There are certain obvious political obstacles to a strong state role in a New Cities program. The concept collides jarringly with the ideological respect, bordering on reverence, for private property rights in American society; this powerful rationale supports the right of the owner to reap the full benefit of land value appreciation if he is shrewd enough to know how. The number who identify with this kind of profit stake is very large, since so many families own at least a little property. Property owners in an area designated for a new city would probably benefit more than if it passed them by, even under eminent domain. But property owners as a class, and especially rural town owners of sizable parcels, would probably be hostile to the principle of giving the state the power to decree a New City in undeveloped areas.

Similarly local officials may be expected to oppose the principle that the state may, by legislative or executive fiat, establish a new jurisdiction to plan and govern an extended area encompassing, and effectually obliterating, several existing jurisdictions. Yet some such drastic change in governance is clearly implied in the concept of empowering a state agency to designate New City sites.

Perhaps the biggest political hurdle to New Cities

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legislation may be the feeling of legislators representing city and suburban areas that the energies of growth should not be siphoned off in new directions but should be applied to the rebuilding or enlargement of the areas already built.

The political hazards are therefore severe. At the same time the case for a New Cities program is urgent and compelling. It seems safe to predict that the issue will be joined in the state legislatures early in the '70's; it is impossible to predict the outcome with any confidence. But there are some probabilities worth noting.

(1) The power of designation of New City sites will be the subject of intense and complex political competition.

(2) The "little guys" in enterprises related to development are likely to fight for the status quo; they know the game of subdivision approval but feel they might be cut out of any place in "New Towns".

(3) Big corporate entities seeking a role for themselves in massive rationalized development will back the New Towns concept but will seek to confine public planners to a very limited, permissive role.

(4) New City siting decisions, by whatever authority and procedure, will be shaped both by planning and political considerations.

(5) Corporate New City proposals for specific sites, developed in the present framework of public non-policy, will produce increasingly strong citizen reactions concerned about

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conservation and pollution, and typically seeking to divert development to "someplace else". These reactions will collide with others who favor the development proposals. Increasingly, those who challenge the proposed sites will press the argument that New City choices should be planning choices of public agencies.

(6) Because there is increasing recognition that planning is both a source of power and a method to use power effectively, people in the executive departments of state governments - from governors through department heads to staff planners - will recognize and develop the advantages of the planning style. This will be a key point at which the power and career stakes of individuals coincide with the objective stakes of broad sections of the public. The desire and ability of state planners to plan, and the arguments they advance for doing so, will become significant factors in the total political equation.

As a very broad prediction, if the New City idea makes any headway at all, there will be a political struggle over the application of a permissive versus an initiative form of public planning. But either way, new state agencies and powers seem essential.

Relevance of S. 477 to the Issue Posed.

New Jersey Senate Bill No. 477, enacted on November 25, 1968 to create the Hackensack Meadowlands Development Commission, vested in a semi-autonomous new agency the authority to

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plan, commission and finance reclamation works, and to adopt and enforce land-use development controls, affecting an area of 19,600 acres encompassing parts of 14 municipalities in two counties. The area involved is strategically located at the heart of the nation's largest metropolitan region and is subject to intense urbanizing pressures to serve the growth needs of that region. Some two years after its creation, the Commission announced a Master Plan which envisioned development of 1400 acres in housing for some 185,000 persons, industrial development of 4,300 acres, 5,450 acres to be left open for recreational and conservation purposes, and some 3000 acres in public, commercial and other use, including a major mass transit transfer terminal. (Some 5600 acres of existing development would continue.)[1] Total employment in the projected development is estimated to be considerably more than 200,000.[2]

The legislation was highly relevant to the issue posed for this study, in that it (1) was an act of the sovereign power of the state (2) which created a new agency and vested it with powers of land-use control which had previously been delegated to the separate municipalities; (3) at issue was the public interest in the optimal development of an area spreading

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[1] Hackensack Meadowlands Development Commission, Hackensack Meadowlands Comprehensive Land Use Plan, (Lyndhurst, N.J., 1970) pp. 38-44.

[2] Ibid. The report's estimate of 200,000 future employment (p. 39) does not include prospective employment in commercial, transportation or special use areas.

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over many existing jurisdictions, and the contention that this could not be achieved by existing procedures and within the existing fragmentation of powers, but required a new, unified entity mandated to plan the area's coherent, integrated development in logical relation to the larger surrounding region.

At the same time, there were several aspects of the Hackensack Meadows situation which were unique, so it can by no means be taken as a model of the play and balance of interests which will be typical in situations where extension of state powers over new urbanization is proposed. Most obvious is the fact that the Meadows are an undeveloped area closely surrounded by an intensely developed urban region; the municipalities affected collectively had sizable population, and much of the land affected had active prospects for profitable development. Secondly, the Meadows were defined by certain physical characteristics - low elevation and mucky soil - which were obstacles to development and required a regional solution, of a massive and expensive character. Thirdly, title to a great part of the Meadows area was in dispute, between the State of New Jersey on one hand, and private owners and municipalities on the other; this unusual situation created strong and complex cross-currents of purpose and interest.

Another special dimension was introduced because the United States Army Corps of Engineers has jurisdiction over crucial engineering aspects of the situation, and also offered the most promising line of access to funds for the

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expensive works along the Hackensack needed for comprehensive reclamation. This, of course, established a point of powerful leverage. Federal leverage by reason of dollar power is not atypical, of course, but in this situation its position was specially strategic.

Because S. 477 was, in its main outlines, highly relevant to the issue of new structures and broadened purposes in the exercise of state power over development, this dissertation has undertaken to look at the bill's history as a case study of the political forces brought into play around this issue. The purpose of the analysis is to ask, what does the experience tell us about the support forces that can be mustered, and how they can be used to good effect? It further asks, what does the experience show about what motivates the forces of opposition, how they respond and perform, and how they can be dealt with? In sum, the study is asking why and how were the proponents able to secure passage, and what does the experience tell us that may be useful in securing passage of laws of similar nature and import? At another level the study is asking, what does the experience tell us of the need for deeper institutional change?

Analytic models

The study is not explicitly designed either to test the validity of any particular model of the political system or to employ particular tools or patterns of analysis suggested by a particular model. The very form in which the purpose of

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the study has been stated, of course, - "what support forces were mobilized.." etc., indicates that the problem was defined in categories provided by the interest group model.

There was repeated occasion in the course of the research to take note of the correspondence - or lack of it - between the apparent actual process and some of the major alternative models of analysis. These observations are summarized in Chapter XXII.

The dissertation does not pretend to contribute anything toward the determination of which of these models is more useful for analysis, or better serves the purpose of seeing clearly the nature and significance of events. To state the major thesis of the study in terms of models, it seeks to explore in detail the nature of the interests at stake in a particular situation, and the manner in which these interests were represented in the political process; and in its findings it seeks to demonstrate the great imbalance between representation of broad general stakes and narrow, particular ones.

But it is necessary to emphasize that any effort to see the political process at the state level in New Jersey in terms of interests and interest groups is hobbled by the downright inadequacy of the political structures and processes at that level. (The same probably holds true for the other states in general.) These defects are manifest in extremely scanty information and blurred perceptions among the legis-

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lators themselves, in the very low visibility of state issues for the state's people, and in the fitful course of policy development, characterized by long intervals of sluggish inattention and occasional bursts of hectic, confused activity in a crisis atmosphere. To say that nobody knows what is going on, is technically an overstatement, but it sums up the way group interests are represented in the New Jersey political process: even though some are represented much better than others, none of them are represented very well because the process is so faulty.

Method of Study

The major questions of method to be settled were,

(1) what events to study? and,

(2) by what procedures?

The original intention of the study plan was to focus attention mainly on the 1968 legislative struggle; the analysis of the preceding events was to be essentially introductory in treatment, setting the stage for the 1968 events.

But examination of the documentary materials and discussion in the early interviews forced the realization that the result that was achieved in 1968 was deeply rooted in attitudes, perceptions and concepts which had been formed in the course of some 17 years. More than that, the very terms in which the issue was posed in 1968 were defined by events of earlier years. Thus it became clear that it just would not be possible to get a good understanding of why the various

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participants acted as they did - or failed to act - without a good understanding of the situation, the attitudes and the alignments that had developed by earlier events.

Accordingly the focus of the study was changed to examine fully the formative events as well as the actual birth of the bill.

The method of the study combined documentary research and interviews. The relative importance of these was quite different for the earlier years than for the 1968 events. For the former, considerable documentary material was found, and it became clear that in general it yielded much more satisfactory material for that period than interviews; the Meadows issue developed in a protracted, tedious and repetitive way and one result is that scarcely anyone has a clear recollection of the sequence of events, of who participated in which events, what the particular issues and resolutions were on any particular occasion, etc. This made for difficulty enough in restructuring the climactic events of the legislative battle; for the earlier events, the recollections of most of the participants were so foggy as to be of very little value.

The relevant events prior to 1968 extended over some 14 years; they focussed around the creation and activity of agencies, commissions, committees and the like, which generated a large volume of studies, reports, memoranda and correspondence. For the most part this material is widely scattered, and more often than not is filed in helter-skelter fashion.

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To gain access to most of it involves special arrangements rather than routine procedures. Nevertheless, in the aggregate it provides substantial basis for answers to the main questions pursued.

For the 1968 events, however, interviews were the primary reliance of the research. This had to be so, mainly because the nature of the 1968 struggle - a tug of war for the votes of individual legislators - did not generate many documents. Even the official record of proceedings on the floor of the Senate and the Assembly tells only the motions and the roll-call of votes; there is not even a summary record of debate. And there is no record at all of unofficial events, largely because the legislators want it that way. The Republican Party enforces strong party discipline on the floor of both houses; all the real debate is done in caucus, and it is a strict party protocol that this debate is confidential. Members are instructed that they may not even disclose how other members voted in caucus, much less who said what. Most of the other events leading to decisions are verbal in nature - strategy sessions, conferences staged to resolve differences, personal conversation soliciting the support of an individual legislator. And more often than not they involve considerations and commitments which may not be in any way culpable but still could cause political trouble for someone if put in writing.

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Accordingly, material developed by interviews was essential to flesh out the events and pressures revealed by news clippings, the Senate Committee hearings, the successive drafts of the bill itself, and the official Assembly and Senate minutes for 1968.

A total of 46 individuals were interviewed in the course of the research. This included nearly all of those, perhaps a dozen or so, who could be considered "key participants" in the 1968 events. The interviewees included 17 legislators, 6 local officials, 14 in appointive or staff roles, and 9 others including planners, attorneys, property owners, and professionals of one or another category who played an active role. Appendix I presents the list of those interviewed.

The Major Themes

The basic question pursued was, what were the forces that were apparent on behalf, respectively, of the broad public interests, especially regional and statewide interests, and of private, particular and local interests?

Two major themes emerged as the study took form:

(1) the formless, fortuitious character of the forces available to realize the broad public stakes in planned development of the Hackensack Meadowlands - or, restated, the crucial problem that there is no adequate agent to articulate the broad public interest in regional-scale planning of urban development, and mobilize support.

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(2) the strong links between local governmant and land owners and developers, particularly industrial developers; and the formidable defensive power of local officials in the political system; as a consequence the structure of government itself serves narrow interests and obstructs broader ones.

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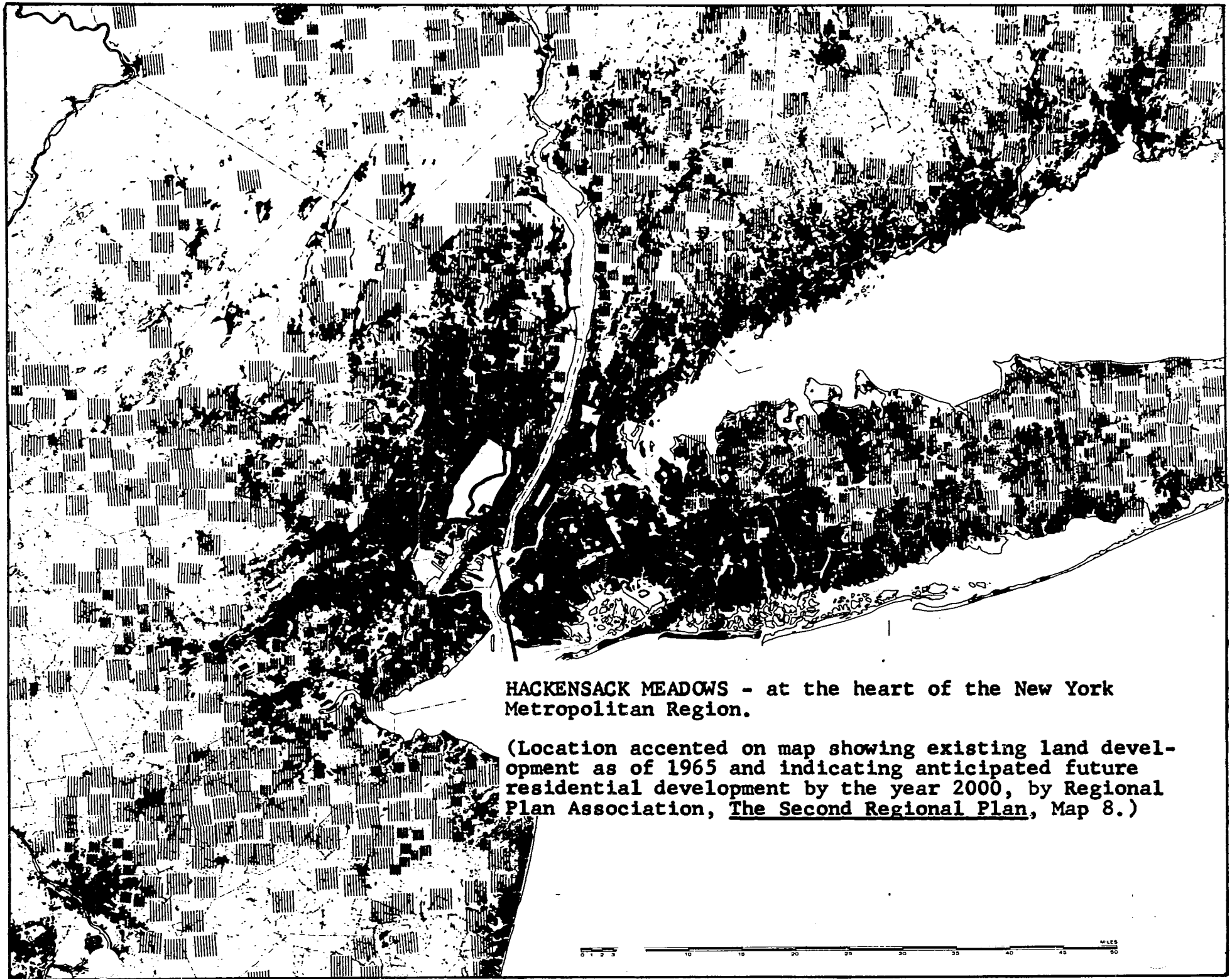
MAP I



HACKENSACK MEADOWS - at the heart of the New York Metropolitan Region.

(Location accented on map showing existing land development as of 1965 and indicating anticipated future residential development by the year 2000, by Regional Plan Association, The Second Regional Plan, Map 8.)

# CHAPTER I : THE MEADOWS AND THEIR SIGNIFICANCE

## The Terrain

The Hackensack Meadows lie just west of the Palisades, parallel to Manhattan Island from The Battery to 125th Street. (Map I, facing this page.) Seven miles long and four wide, they comprise some 20,000 acres.[1] But despite their strategic location, they are undeveloped or very poorly developed because of their physical nature. Their swampy soil is spongy and compressible; in some locations bedrock lies beneath 200 feet or more of mucky subsoil.[2] Being generally at sea-level, they are subject to complex water dynamics. The tide elevation rises and falls an average of six feet, twice every twenty-four hours. The Meadows provide a drainage basin for a large watershed encompassing the Hackensack River and many creeks. And they are subject to flooding above normal high tides, particularly when hurricane winds combine with the flood runoff from heavy rains.

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[1]The area in the jurisdiction of the Hackensack Meadowlands Development Commission is approximately 18,000 acres, as stated in the Commission's "Master Plan, First Stage" (nov. 1969) p. 1. However, this land does not include a sizable surrounding fringe of land, originally meadows, that has been filled and developed. C.C. Vermeule's figure of 20,045 acres is authoritative for the larger area. (In Geological Survey of New Jersey: Annual Report of the State Geologist for the Year 1896, p. 289.)

[2]Hackensack Meadowlands Development Commission, op. cit., p. 15.

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Given this combination of factors, utilization of the meadows land poses formidable difficulties. Either an extraordinary depth of fill is required to compress the soil, provide a satisfactory bearing surface and raise the grade to a level safe from flood, or major engineering works (dikes, tidal gates, pumps, flood run-off areas) are needed to keep out the tides and make it safe to build without deep fill.

It was because of these considerations that very little development took place in the Meadows until the end of World War II, other than rail crossings and freight yards. But by 1960, it was apparent to those who cared to look and think about it, that progress was closing in on the Meadows. Industrial demand for land was rising rapidly; the supply of land in the core of the New York Metropolitan region, suited and zoned for industrial use, was rapidly being taken up. Highway construction and the pattern of growth increased the strategic advantage of the Meadows location; and engineering knowledge both of fill techniques and tidal closure had developed reclamation methods that had not been available before.

It is of signal importance to understand additionally that the Meadows are not a vast, neatly defined area of more or less uniform elevation and subsoil. They present broad, flat vistas of cattails and marshgrass, but this is deceptive. Ground elevation is below high tide here, above it there. The depth to bedrock varies greatly. Consequently many

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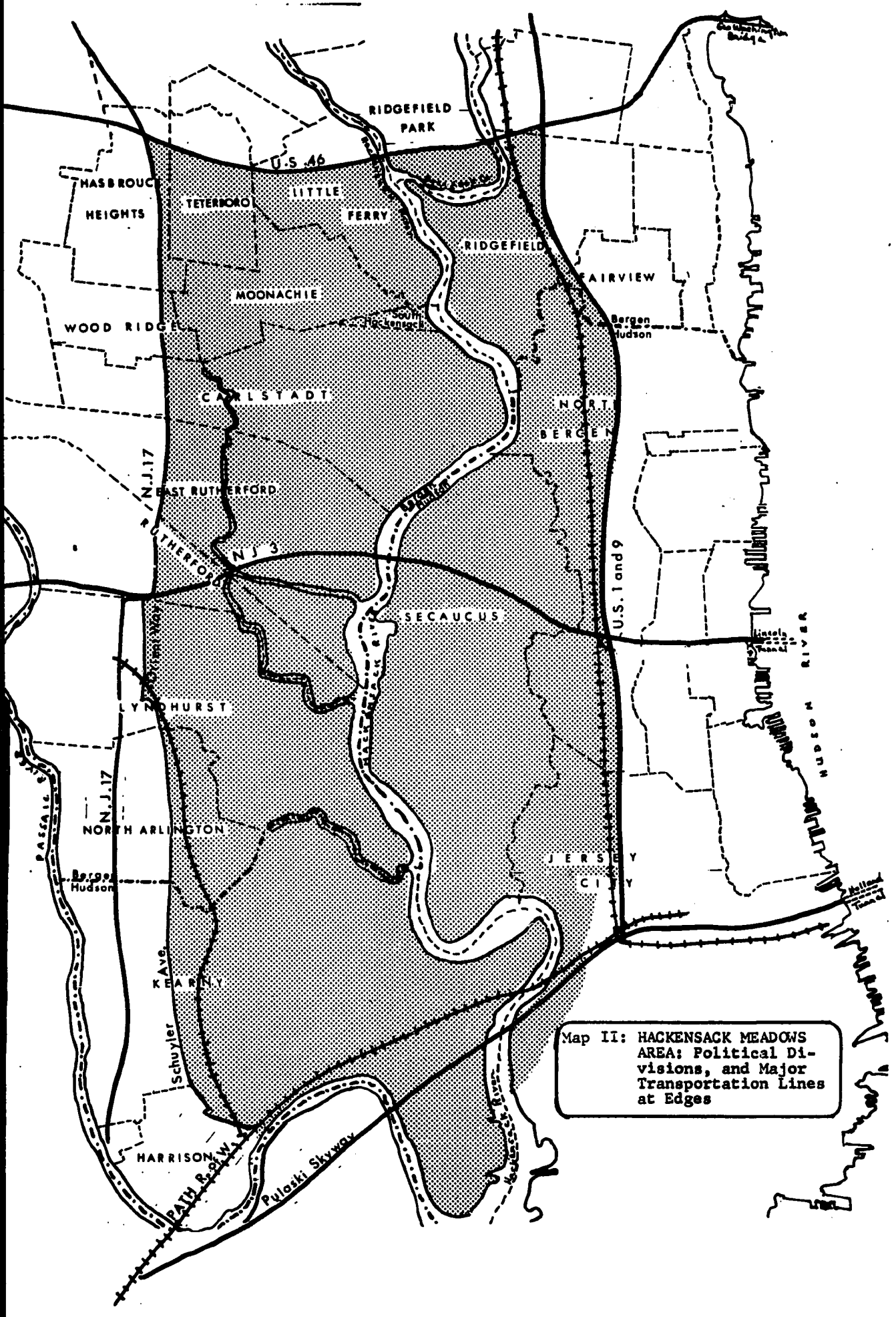


Map II: HACKENSACK MEADOWS AREA: Political Divisions, and Major Transportation Lines at Edges

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parts of the Meadows, particularly along its edges but in other spots as well, are much more cheaply and easily developed than others. Also, there is no precise, self-evident natural boundary of the Meadows. Major transportation lines developed along the Meadows edge serve fairly well to outline the area generally thought of as the Hackensack Meadows: State Highway 46 on the north, the Erie-Lackawanna tracks parallel to U.S. Highway 1-9 on the east, a belt of rail lines crossing from Jersey City to Newark on the south, and the approximate line of Schuyler Avenue, continued north by State Highway 17, on the west. (See Map II, facing this page.)

The territory of the Meadows is divided among eighteen municipalities, fourteen of them in Bergen County and four in Hudson County. (Map II.) The situation and stakes of these municipalities vis-a-vis their Meadows areas varies for each town. Three of them - Secaucus, Moonachie and Teterboro, - lie entirely within the Meadows area. Secaucus, with an area of 3904 acres in the middle of the Meadows, is centered on some low hills which rise up from surrounding marshland. Moonachie, located toward the north end of the Meadows, consists mainly of flat land slightly above the level of mean high tide. Teterboro, in the northwest corner of the Meadows area, has achieved notoriety as an industrial "tax haven". Its 1960 resident population was only 22, but most of its area was developed in industrial and airport use,

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which accounted for virtually all of the town's real property value of over $29,000,000.[1]

Two other towns, Carlstadt and East Rutherford, have "panhandles" extending into the upland on the west, but most of their land area lies in the Meadows. For the rest of the towns, half or more of their land area is upland, most of which was developed between 1900 and 1950. Until recent years these towns have tended to think of their meadowlands territory as having only marginal value and importance.

Yet the location of the Meadows gives them great potential importance, particularly for industry. A planning report prepared in 1959 for a group of Meadows towns conveys this ably:

> The industrial potential of the meadows is determined by its exceptionally advantageous location in the heart of the Port of New York and the metropolitan market area, astride the major rail, road, water and air transport facilities serving regional, national and international markets. The New York-North - eastern New Jersey metropolitan area constitutes the greatest concentration of population, economic activity and consumer purchasing power of any contiguous urban region in the nation. .....(The Meadows) extend along a north-south axis, thereby intercepting all the major rail lines, and most of the major highways which radiate out from the Port of New York on an east-west axis. ...Within the area of the Hackensack meadows is located electrical generating capacity of over a million kilowatt hours while traversing the meadows are the major natural gas pipelines serving the metropolitan area. ... On the northern reach of the meadows is Teterboro Airport. On its southern end is Newark Airport. Relative to waterborne traffic, general cargo facilities are available along the west shore of the Hudson as well as in

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[1] Bergen County Board of Taxation.

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> Newark Bay. ...This concentration of facilities, plus the fact that within a 10-mile radius of the meadows lives a diversified labor force of over 2.5 million workers, epitomize its locational advantages.[1]

The Question of Ownership

The complex issue of disputed title claims is a major element of the overall situation.

As of the 1950's, a highly ambiguous situation prevailed. On the one hand, the meadowlands towns without exception showed the Meadows property as either in municipal or private ownership, and in no way acknowledged the existence of a conflicting State claim. Most of the local officials and citizens interested in meadowlands matters at this time seem actually to have been unaware that the State of New Jersey had a claim.[2] On the other hand, the basis for the State's claim of original ownership was firmly established in New Jersey law, for anyone who cared to look.[3] A series of controversies, hearings, reports, court rulings and legislative actions over the latter half of the 19th century had

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[1]Passaic Valley Citizens Planning Association: Hackensack Meadows Master Plan Series No. 3: Land Use and Transportation Plan. (Report to the Meadowlands Regional Planning Board; Clifton, N.J., 1959) pp. 7-8

[2]James McCoy, interview; Ernest Erber, interview.

[3]Robeson, G. M., Attorney General of New Jersey, Opinion Concerning Riparian Rights (State Library, Trenton, 1867) ; New Jersey Commission to Investigate the Granting of Riparian Lands, Report ...1907 (State Library, Trenton) ; Sisselman vs. N.J. State Highway Dept., Decision of Appellate Division, published as appendix to Annual Report, 1960-61 of Meadowlands Regional Development Agency.

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culminated in a Legislative Committee Report in 1907 which confirmed what adjudication had clearly established: that original title to tide-flowed lands was vested in the State, and that no private claim resting on a contrary basis was valid. The same report noted that since 1891 the New Jersey Riparian Commission had exclusive power to sell or lease these lands.[1] In later years the New Jersey Legislature made changes in the name and status of the agency having this responsibility; from the mid-forties up to the present it has been vested in the Resource Development Council, an autonomous appointive body within the New Jersey Department of Conservation and Economic Development.

But it does not appear that the State had ever surveyed and specified the areas which it owned under this doctrine. (When it finally undertook to do so in 1969, the inherent difficulties of the task were formidable. "Mean high tide" is a statistical abstraction; ambiguities bedevil the effort to mark the line where it falls on the land, especially where the terrain is extremely flat and the ground texture is rough and spongy. And these difficulties were compounded by the effects of many man-made changes such as dumping and land-fill, ditching, diking, highway construction, etc.)

The fact that the Meadows were widely regarded as ...

[1] N.J. Commission to Investigate the Granting of Riparian Lands, op. cit., p. 33 ff.

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unusable is generally credited as a major reason why scarcely anyone bothered themselves for decades over the question of whether there was a conflict between private and public title claims. No doubt this was a factor, but it would be naive to accept it as the whole explanation.

The Resource Development Council, explicitly charged with the custody of the State's riparian lands, appears for decades to have followed a policy of never affirming the State's claim unless asked. But some private claimants did seek title grants from the State agency, and at least three major grants of Hackensack Meadows tracts were made in the period from 1920 to 1960.[1] In the nature of such matters, it is not credible that title company officers and attorneys active in title matters in the area would have been unaware of these actions; neither could they have been indifferent to the questions they implied for other private claims. If the agency charged by the State with guarding its riparian

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[1] New Jersey Commission to Study Meadowlands Development, table titled "Hackensack Meadowland Cases", 5. p., listing grants by the Resource Development Council, and grant applications pending before it, for Hackensack Meadowlands tracts; and accompanying map; 1964. (Files of the Hackensack Meadowlands Development Commission.) List shows grant of approximately 333 acres in Kearny to Morris & Essex Railroad, 1924, and grant of 665 acres in Lyndhurst to Bellemead Development Corporation in 1947. Grant of approximately 830 acres in Secaucus is indicated on map but not included on list; this is property of Hartz Mountain Company and date of grant is believed to be circa 1930.

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domain was a sleeping dog, it seems clear that many of the private title claimants had no desire to rouse him. Some of these claimants almost certainly were aware of the conflict and we must assume that they deliberately avoided raising the issue, on the theory that the State's claim would be weakened by the passage of time if it stayed silent while private claimants paid taxes, perhaps conveyed to new owners, and in some cases filled the land and built on it.

In the period from 1930 to 1950, several of the towns were active in foreclosing tax delinquent Meadows properties which appeared on their rolls as privately owned, and subsequently auctioning them. A 1959 planning study for five South Bergen towns estimated that in the late 'forties, nearly half of their Meadows land had been publicly owned, but by 1958 the figure was only 17 per cent.[1] (The study commented that many tracts had been sold cheap by the towns for short-sighted reasons.) The State's Resource Development Council did not assert its title claim in any of these proceedings.

Title companies appear to have ignored the State's possible claim in many instances, furnishing insurance where there was no State grant in the chain of title.

In sum, the title situation was thoroughly fouled up, and there seems to have been no one who was willing to call

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[1] Passaic Valley Citizens Planning Association, Hackensack Meadows Master Plan Series No. 4: Financing and Administration, (Clifton, N.J., 1959). p. 4

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Map III. LAND USE, 1964 & 1969

(print provided by Hackensack Meadowlands Development Commission)

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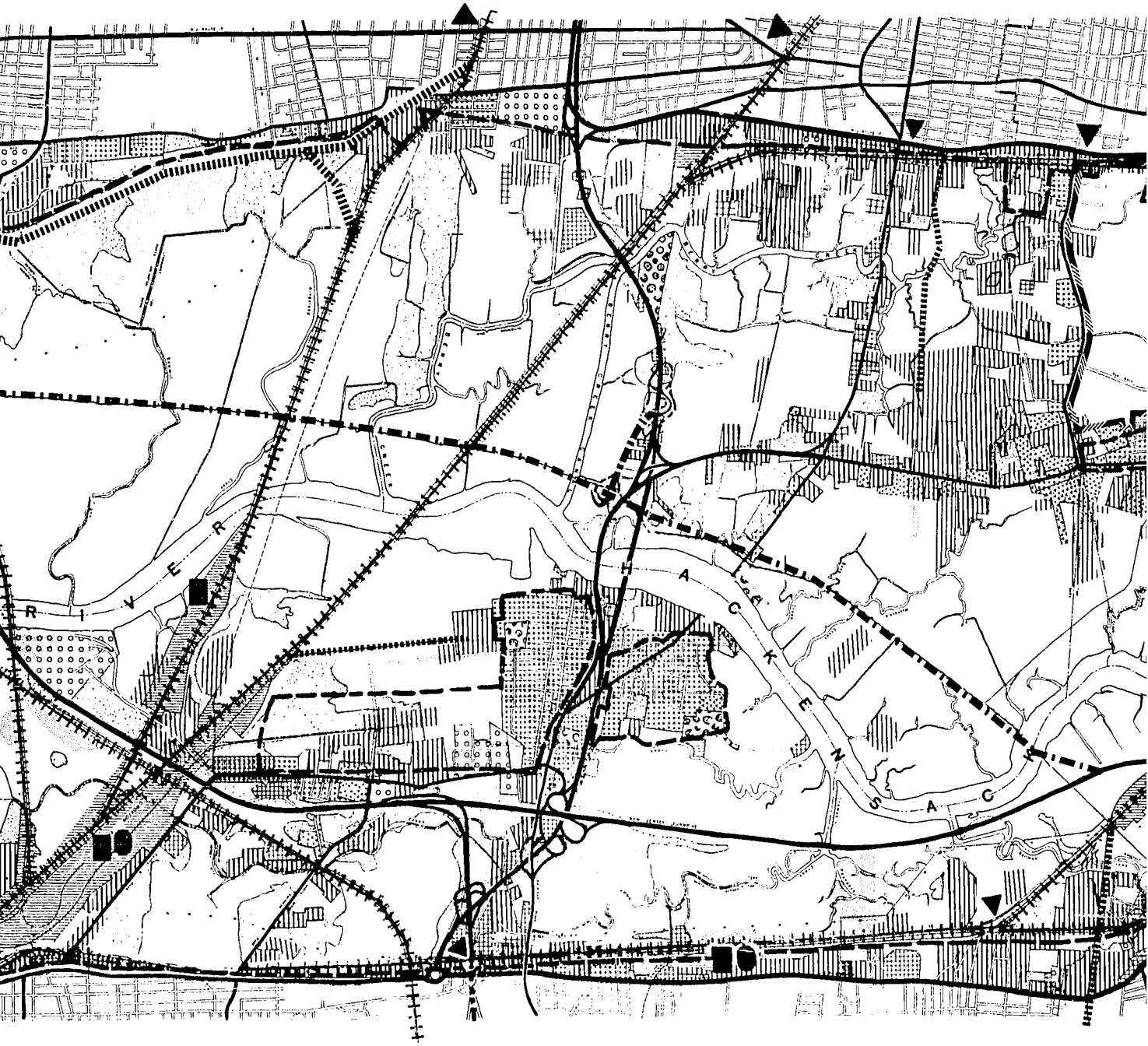


LEGEND

RESIDENTIAL

RESIDENTIAL-COMMERCIAL

COMMERCIAL

INDUSTRIAL

PUBLIC-SEMI-PUBLIC

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# NEW LAND DEVELOPMENT, 1964-1969

## HACKENSACK MEADOWLANDS

NOTE: RED OVERPRINT INDICATES 1964-1969 DEVELOPMENT

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attention to the latent conflict and its enormous potential for confusion and difficulty. Why this was so and whether there was culpability, is not clear. What is clear, and striking, is that virtually no voice was raised to assert the public's stake in these lands for some fifty years.

Development and Use

One result of the difficulties in defining the extent of the Meadows area is that various past studies have used different boundaries, and precise data on trends and comparisons are therefore hard to come by. The extent and pattern of development and use of the Meadows can be stated in broad brush terms, however. Roughly two-thirds of the gross area was vacant land in 1960, nearly 90 per cent of this being unreclaimed marsh, the rest vacant filled land or farm land.[1] Thus, even at that time, a third of the gross area was developed, and by virtue of its very scattered pattern this development considerably shaped future development possibilities. (In the period 1960-1963 about 500 more acres were brought into development,[2] producing the land-use pattern shown in black on Map III, facing this page. The development in the period 1964-1969, shown in red, absorbed another 900-plus acres.[3])

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[1] Div'n of State & Regional Planning, N.J. Dept. of Conservation & Economic Development, Hackensack Meadows Comprehensive Plan, Technical Report 2B: Land Use and Development Trends, (prepared for Meadowlands Regional Development Agency; Trenton, 1965 ), Introduction, and Figure 2b-3, P. 16.

[2] Ibid

[3] Hackensack Meadowlands Development Commission, op. cit., p. 11.

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Except for homes in the older parts of Secaucus, Moonachie and Little Ferry, the development was virtually all industrial or commercial. Much of it was economically marginal or of a pariah character, such as auto junkyards and chemical processing industries emitting noxious wastes. Virtually the entire Meadows area was zoned for industry, generally on a most permissive basis.[1]

The railroads secured extensive holdings for rights-of-way and freight yards in the 19th century, and also acquired some large holdings along their rights-of-way which they had held in their undeveloped state.

There was little road development until the 1930's. N.J. Highway S-3 crossing the Meadows westward from the Lincoln Tunnel, was begun in the '30's and finished after World War II; and the New Jersey Turnpike, completed in the '50's, claimed a wide right-of-way running generally north-south. The criss-crossing tangle of highway, rail and utility lines became the most prominent aspect of the Meadows landscape.

The Meadows had also been used for decades as an area for garbage and trash dumping, amateur and professional. Much of the past fill had been accomplished this way, and the rate of dumping was growing rapidly as the surrounding area became fully built-up, increasing the garbage output and closing out alternative dumping sites.

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[1]Division of State and Regional Planning, op. cit.

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Most of the Meadows land was in large holdings; close to the margins and the older settlements within the Meadows, there was much more fragmented ownership.

The following distribution was tabulated in 1964:[1]

| | Number of owners | Gross Acres |
|---|---|---|
| Parcels under 4 acres | 505 | 563 |
| Parcels 4 to 50 acres | 218 | 2,972 |
| Parcels over 50 acres | 57 | 11,776 |

In general, the land least accessible and most handicapped for development by low elevation and boggy soil, was in very large holdings, typically 100 up to 500 acres.

The Problem of Reclamation[2]

"The key to the future of the Meadows rests entirely on the feasibility and success of reclamation."[3] Thus, pithily, the first contemporary reclamation study put a vital point which has often been obscured in subsequent discussion.

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[1]Division of State & Regional Planning, ..Comprehensive Plan, Technical Report 2C: Land Ownership and Assessed Valuation, Introduction. The study covered vacant or partially developed but not fully developed areas. It noted that there had been only slight change in the ownership pattern since 1960.

[2]"Reclamation" is an ethnocentric misnomer for the concept of making the Meadows over into terra firma, which they never have been till now. Since the term has total currency it is employed here; the writer's objection is entered for the record. "Reclaiming" and "claiming" will be used interchangeably.

[3]PVCPA, Hackensack Meadows Master Plan Series No. 2: Reclamation Plan (1958), p. 1.

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The factors which have blocked the development of the Meadows while all the region around it has been urbanized, are physical: low-lying land, the rise and fall of tides, the river's flow, and unstable soil. Thus the question,"is there a practical engineering solution?" is primary.

In the 19th century the Meadows swallowed up several million dollars worth of efforts expended on various dredging and diking schemes which failed to take one or another hazard into account: muskrats burrowing under dikes, iron dike cores designed to block muskrats slowly sinking to the deeps, and the like. Another massive dredging effort foundered in the 1920's.[1]

But competent engineering authorities appear to have been in agreement for some several decades that the problem could be solved if tackled on a comprehensive scale. C.C. Vermeule executed a survey and report for the state in 1896[2] in which he proposed reclamation of the whole area of the Newark and Hackensack Meadows by banking and pumping; he stressed the importance of a single agency for execution and control. The New Jersey Legislature set up a Meadowlands Reclamation Commission in the '20's, which after elaborate studies

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[1]These efforts are summarized in PVCPA, Hackensack Meadows Master Plan Series No. 4, Ch. III.

[2]C.C.Vermeule, Geological Survey of New Jersey: Annual Report of the State Geologist for the Year 1896, "Drainage of the Hackensack and Newark Tide Marshes", p. 289 ff.

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recommended a program of engineering works with an estimated cost of half a billion dollars.[1] The proposals of the Regional Plan of New York and Environs in 1929,[2] and of the New Jersey State Planning Board in 1941,[3] were both based on the premise that the feasibility of reclaiming the Meadows had been established..

A paradox of the Meadows situation was that although the problem they presented was primarily an engineering one, most of the difficulty and thus most of the attention centered on the political problem that was posed. A strong motive for positive action was inherent in the basic situation: great benefit could be realized by a program of engineering works - dikes, dams, etc. Some 17,000 vacant acres in the heart of the New York metropolitan area could thereby be rendered fully usable. The development that could be realized would be at once better, more complete and less costly than would result from the fragmented, haphazard and badly flawed process of gradual reclamation by dumping and fill along the margins.

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[1]As cited in Passaic Valley Citizens Planning Association, Hackensack Meadows Master Plan Series No. 4, op. cit., p. 29

[2]As cited in Passaic Valley Citizens Planning Association, Hackensack Meadows Master Plan Series No. 3., op. cit, p. 2.

[3]Ibid.

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Common-sense evaluation of very raw proximate cost and benefit estimates produced a consensus on the above general proposition among the participants with engineering and planning competence. Yet it was also true that the engineering problem was very complex, involving many variables of purpose, method and cost, and its solution therefore was not susceptible of statement as a clear, simple proposition.

It was nevertheless clear, prima facie, that the works of any adequate engineering program would be integrated in character and regional in scope, and would therefore require for their execution, an agency of government capable of regional action.

Except for the State itself, there was no such agency in existence. New Jersey county governments are constitutionally weak, and dependent on the State Legislature for any broadening of powers; besides, the Meadows presented a bi-county problem. The State, furthermore, was inhibited from assuming responsibility and initiative because to do so would involve many decisions ordinarily within the province of local government; in New Jersey this inhibition was particularly strong because the notion of "home rule" is something of a sacred cow in the State's political folkways.

Thus the potential for a great benefit by a program of engineering works affecting the Hackensack estuary posed a basic political problem: working through the political process, how could there be created a suitable mechanism of government to make and execute the decisions to realize this potential?

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The question was a more complex matter than simply setting up an agency fitted to do a clearly defined job. The question, "which engineering solution would be best?", could not be answered until an agency able and empowered to answer it was brought into being. Even to define the alternative engineering solutions fairly precisely and estimate their respective costs and benefits was very difficult in the absence of a governmental "client" with the power and ability to commission such work and to specify some of the parameters.

There thus developed a widespread sense of the need to solve the political problem first, and this problem proved very difficult and controversial. One peculiar result of these factors was a tendency to see the political problem itself as primary and central, and to lose sight of the primary engineering requirements. It was not always recognized that accommodation of the "political realities", carried beyond a certain point, could insure the defeat of the basic purpose of regional reclamation and development.

## THE STAKES

There were three major <u>issues</u> at stake in the struggle which developed over the Meadows in the '60's:

- who owned the land?

- would the Meadows be reclaimed and developed in comprehensive or in fragmented fashion?

- if it be comprehensive, would controlling decisions be made by spokesmen of local or of regional interests?

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**The first and second questions are basic issues on their face. The third came into focus as the key political issue to be resolved in devising the constitution of an agency for comprehensive reclamation and planning.**

Different groups, of course, had different stakes in these issues. The principal parties at interest were:

(1) the private title claimants, with industrial land developers constituting a special class among them, and title insurance companies having a closely allied interest.

(2) business men and professionals with a direct stake in development activity, such as contractors, brokers, lawyers, bankers and mortgage brokers, architects and engineers, etc.

(3) municipal officials of the Meadows towns.

(4) the State as a power entity.

(5) the State as its people with respect to shared statewide interests, such as State revenue, economic prosperity, etc.

(6) residents of the Meadows towns.

(7) other residents, in a series of widening concentric rings, with a range of broad and overlapping interests in how the resources of the Meadows are utilized; this broad group also including tomorrow's people.

It is also useful, even though redundant, to note the categories of benefit (or harm) involved in the stakes:

- wealth, most particularly and measurably the potential for appreciation of land values, and the incidence of dollar benefits and costs of alternative policies.

- power, particularly the power to decide whether and where reclamation works will be built, and the power of deciding which land will be developed for which use, (zoning and development control).

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- utility and amenity - the underlying stakes for present and future inhabitants of the region, in the complex issues of how well the development and utilization of the Meadows will serve the housing, transportation, water supply, sanitation, recreation and other needs of people who live and work in the area.

In the following discussion, the issue of title will be discussed first, and then the issues of whether and how comprehensive reclamation and development should be undertaken, will be discussed together, noting the stakes involved for each of the interest groups.

The Title Stakes

From the point of view of the private title claimants, the issue of whether they or the State held title was paramount. But it was a fluke of history that the question should have arisen and become entangled in the larger question of Meadows reclamation. From the point of view of the questions which motivate this study, it is an irrelevancy. The question of who owns the Meadows has no real bearing on the merits of the main question, of whether they should be reclaimed and developed in a comprehensive style. And a question of this sort is only rarely involved on a major scale in metropolitan growth decisions.[1]

[1]There is a somewhat similar ideological question which may arise in future policy struggles: should society act, by one or another means, to capture for public benefit the lion's share of the land value appreciation generated by urban development? But the Hackensack Meadows experience did not present that issue in clear form, nor does it appear that the history can be mined for any useful lessons about the politics of that issue.

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Yet this question of title was so important to the private claimants that it dominated their concerns and actions at every stage of the struggle; and on the other hand, in the peculiar circumstances of this history it gave the State a special leverage which it would not ordinarily have in an issue of State power to shape urban development. So of course, this question cannot be ignored; it must be taken into account, at every stage. But the effort will be to treat it as a factor in the larger equation, rather than as a question with its own intrinsic importance.

The stakes in the title conflict were clear and enormous. Given the Meadows location, and the forces at work in the industrial land market, somebody was going to realize an enormous windfall. To put the matter in the starkest light, it is quite within the parameters of actual experience for someone to have purchased some marshy Meadows acres for $50 an acre or so soon after World War II, thereafter holding and waiting, paying relatively modest taxes, until 1968 when they could entertain realistic hopes of selling the same marshy acres for $50,000 an acre or so. The table on page 54 shows 57 owners claiming parcels over 50 acres in size, which thus developed values up in the millions. Not all of these were undeveloped land, nor did all of them have clouded titles. But it is evident that there were a number of private claimants for whom huge profit prospects were jeopardized by the title dispute.

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It is important to note that several of the towns were themselves claimants of very large tracts. The City of Kearney, with a large Meadows area, claimed more than two-thirds of it - 1,974 acres - in municipal ownership; Lyndhurst claimed 605 acres, North Bergen 225, Secaucus 209, North Arlington 198, East Rutherford 190, Rutherford 142.[1]

Title insurance companies, of course, had a heavy defensive stake; to the extent that they had insured private titles, chickens would come home to roost if the State's claim were upheld.

Whom do we see on the other side - the State as a power entity or the State as the collective interests of its people? So far as the question of title is concerned, this seems to be a highly subjective matter. Private title claimants tended to see the State's claim as an outrageous "grab" attempt by a rapacious tyrant. But the Department of the State government most intimately concerned had been passive and accommodating toward private claims; the issue of the State's claim was raised and pushed very belatedly, by attorney's on the Governor's personal staff and in the Attorney General's office who seem to have been motivated by a sense of professional obligation to protect the public interest entrusted to them. The State's interest in riparian (tide-flowed) lands, incidentally, had been appropriated by an act of the New Jersey

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[1] Division of State & Regional Planning, Comprehensive Plan, Technical Report 2C, Figure 2C-3.

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Legislature in 1903 to the support of a State Fund for the Support of the Public Schools.

A rough estimate of the dollar stake of the people of New Jersey in the conflict over title to Hackensack Meadows property can be had by multiplying $50,000 by 7000 acres; (no pretense of accuracy is offered, but there have been recent sales at the $50,000-an-acre level, and the area affected by the State's claim to tide-flowed land was at least a third of the Meadows.) The resulting figure, $350,000,000, is slightly more than the amount of a State bond issue voted in 1968 after much travail to remedy some long neglected construction needs of State institutions and colleges. The potential value of disputed tide-flowed lands, State-wide, is generally reckoned to be in the billions;[1] exactitude is not possible since the area involved has not yet been measured.

In appraising what was at stake in the title conflict, it would be unrealistic to say that private title claimants were in jeopardy of total loss of their interest. Statewide, a sizable number of claimants were affected.[2] They were a very mixed bag, which however included many individuals with relatively small holdings who had held their properties and

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[1] An editorial in The Record (Hackensack), April 26, 1968, says property worth $2.5 billion is involved.

[2] "It was estimated by specialists in the title insurance field that between 50,000 and 60,000 individual property owners in New Jersey have been affected by the State's possible claims". Peter Dorn, Secretary, New Jersey State Chamber of Commerce, text of 1966 speech.

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paid taxes on them for a long period, in complete good faith. There were also some industrial establishments with similar standing. Should the courts find for the State, there would surely be strong pleas for relief, by one means or another, of the private hardship such a finding might occasion; and almost surely these pleas would be accommodated to some extent.

However, it is also clear that some claimants would have a much weaker basis of appeal to public sympathy than others, and thus a greater risk of loss. For example, a claimant who had bought vacant land cheap and held it, was likely to be classed as a "land speculator", and an entrepreneur by that name is not deemed so sweet. An "industrial developer" would be somewhat better off semantically, the more so to the extent that there was industrial development in being to show for his efforts; but he nevertheless would stand to have much of the cream skimmed off his profit expectations if it should turn out that the State, rather than he, was the legal beneficiary of the value appreciation already realized on land he claimed but had not yet developed. (This was the situation several industrial developers found themselves in as the title conflict neared resolution; they had obtained quitclaims enabling them to develop individual parcels for specific industrial clients, but the bulk of the land they claimed was still undeveloped and subject to State claim.)

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## The Stakes in the Reclamation Decision

The basic argument for a comprehensive program of reclamation works was that this would make it possible to bring the entire Meadows area into development more rapidly and much more cheaply than by the method of fill. This premise, per se, appears generally to have been accepted without dispute.

On the face of it, then, private title claimants as a class stood to gain a great deal by a comprehensive reclamation program. But there were significant factors working to inhibit their support for such a program. They did not by any means have equal shares in the prospective advantages of a reclamation program; land that was comparatively high in elevation and/or near the margins could be brought into development comparatively cheaply and soon; land that was lower and nearer the river could perhaps never be reclaimed except by elaborate works. Then there was the vast uncertainty surrounding the reclamation proposal: When if ever would it be done? by whom? and how would the costs be assessed? These uncertainties gave strong talking points to those who felt they had little to gain from reclamation; and they engendered a non-commital caution among those who might stand to gain much. Most important, however, was the overriding preoccupation of the private claimants with the title question, and this applied most strongly to those claimants who stood to gain the most from a program of reclamation works.

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The private claimants generally had less at stake in the question of how a reclamation and development agency should be constituted. On balance they probably saw more advantage in a scheme giving a strong voice to local interests. But it is more to the point that this issue was so far down on their list of priorities as to be nearly out of sight.

Concerning the stakes of all the parties in this "constitutional" issue excepting only the local and state officials, it should be said that few of the participants saw or cared very much what was at stake. This study will develop the argument that the question was extremely important for two reasons. First because the capability of the agency would be compromised by a federal structure dominated by local interests. Second because the planning decisions of such a structure would be likely to slight many regional interests. But by and large, this issue did not appear as a vital one to the parties at interest other than the involved officials.

The sizable assortment of business and professional people who serve development activity in various ways had an obvious stake in a reclamation program if it would enlarge and accelerate Meadows development. However, this complex of interests has not generally been a coherent force in American pressure politics, nor was it so in this history. To the extent that individuals in this category did play a role, their attitudes appear to have been strongly shaped by their participation in local government and by their identification with

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municipalities and companies who were their established clients.

Local municipal officials had sharply conflicting stakes. On the one hand, a reclamation works program could bring an infusion of state and federal money, and private investment capital, and generate new development, wealth, importance and power for the towns. Also, a comprehensive regional program of planned development could bring solution to many of the vexing and threatening problems of development which, as these officials so often experienced, were beyond the control of local government. Their localities had a big stake in all the potential public benefits of a comprehensive approach; (these are spelled out fully in later pages of this chapter). But such an approach also posed threats: it would require local officials to surrender much of their autonomous power, particularly over zoning and development decisions. They would be reluctant to do this, if only for reasons of ego. But an even stronger motive was their unwillingness to compromise their right to permit as much new industrial development, as fast as possible, within their boundaries. The rising costs of public services were putting relentless pressure on municipal budgets; several of the towns were actively soliciting industrial "ratables". This concern and this activity created a natural alliance of interests between the officials, and land owners and industrial developers who were ready for action and confident they could manage their own problems

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of reclamation. And together they were in head-on conflict with the objective of a rationally balanced land-use pattern which is basic to the rationale of a comprehensive, planned approach.

The residents of these towns, (other than those owners with special property stakes,) had conflicting stakes which generally parallelled those of the officials. The issue of local autonomy might or might not have strong appeal to their feelings; the promise of new industrial ratables to help pay their tax bills was more sure to engage their sympathy. And on the other hand, these residents had the most at stake in the prospective public benefits of new wealth and of wisely conceived development. It seems reasonable to assume, however, that most of the residents of these towns were more readily sensitized to the pains of today's tax bill than to the pleasures of a prospective better tomorrow.

With respect to the other issue - a federal versus a unitary constitution for a reclamation and development agency - the interest of the local officials was clearly in a federal scheme. The officials certainly have personal power stakes in this question.

Whether there are valid reasons why the issue should also have stirred the citizens of these towns, is hard to judge; but it never appears to have done so. A constitutional question in which the residents of the Meadows towns do certainly have a stake, is the political accountability of the agency created;

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but this is a question which got lost in the shuffle.

The State's Interest in Reclamation

Theoretically, bureaucrats and politicos at the State level would have an imperial interest in promoting the function of regional reclamation and in dominating its exercise. In the actual situation, however, there was no agency in being at the State level which had any sort of an established franchise in action of the kind the Meadows needed, and the personnel of the agency which became involved in the problem seemed, at least at the outset, strongly influenced by the prevailing reverence for home rule.

The State, as the embodiment of the broad general interests of its people, had heavy stakes in reclamation. It also had significant stakes in unitary direction of a reclamation agency which would be sensitive to regional and statewide interest. The interests of the State in economic growth, stronger support for State fiscal needs, and usable land for public needs, overlap so extensively with the functional interests of residents of the region around the Meadows, that they are lumped together in the following analysis. It is important to emphasize and spell out the nature of these public stakes, since they afford the strongest justification for the course of comprehensive reclamation and development in preference to fragmented incremental development.

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The Public Stakes

Many of the values involved might be measured in terms of wealth - a larger number of jobs, higher productivity, larger property wealth providing a higher tax yield, etc. But dollars do not serve adequately to express the dimensions of utility and amenity that are involved.

There is a broad public stake in the realization of more land area to serve pressing needs of metropolitan growth. And the issue of a rational balance of uses is as important in this regard as the quantity of acreage reclaimed. Fragmented incremental development, it is clear, affords no real choice as to use. Inexorably, the prevalence in development of distributive industry and nuisance industry would make the area unattractive to alternative uses, and generate more of the same. The use of large areas for garbage dumping would seriously compromise their suitability for future construction. A comprehensive approach, on the other hand, would open the possibility of determining the overall pattern and balance of land uses by a process of conscious,rational, responsible choice.

Likewise, a comprehensive approach would make possible the development of the area in coherent, well-functioning patterns rather than formless, malfunctioning chaos. This would involve the allocation of related land uses in a logical and convenient relation to each other, and the provision of traffic and transportation facilities in a design that would accomodate the needs of the fully-developed area without congestion.

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(These are large, polysyllabic planners' generalizations but their meaning is brought home with a vengeance to anyone who for example, sweats out a rush-hour traffic jam in a warehouse and factory district that has grown up on dead-end side streets branching off a local commercial main street: Washington Avenue, Moonachie, 1970.)

In any urban development situation, random and poorly-planned growth can produce wretched results and can loose destructive forces. This hazard was especially acute in the Meadows situation. Though physically a single area, and sharing a common problem of development, the Meadows as the marginal growth areas of 18 different towns were subject to extremely fragmented growth forces; and design-wise, the incremental character of this growth, inward from the margins, was producing a thick crust of development at the edges, along congested marginal arteries, tending to make development of each successive layer of the interior progressively more difficult.

In each of the aspects which have been cited, the word "regional" is of pivotal importance, as well as the concept of "planning". The Meadows themselves constitute a physical region; if their use, needs and problems are dealt with in separate geographic slices the result can only be chaos and frustration. From the point of view of reclamation they are one tidal basin. Land-use balance and coherence are concepts which cannot even articulated, much less realized, on a town-by-town basis for the Meadows area. Of course this stems from the

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fact that the basic pattern of economic activity - travel to work, movement of goods, and most of the shopping - is regional rather than localized in character. Meadows development is taking place in response to regional needs. The satisfactoriness of this development must therefore be measured by regional criteria. For the same reasons, "planning" on less than a regional scale is doomed to futility.

This is true with special force of questions of conservation and environmental protection. The wetlands are an ecological entity which will not survive the process of being chopped into separate municipal remnants. The Meadows and uplands towns in the Hackensack watershed are a single region for flood control, drainage, and sewage disposal; they have a common interest in reclaiming the river's waters for recreational use; and these interlocking problems can only be resolved by unified region-wide planning and instruments of coordinated region-wide action.

In terms of traffic and transportation, the Meadows demand a unified treatment not only for their own optimal development but also to realize the potential they offer as free space in which the interlinks, terminals and new trunks essential to coordinated mass transit for Northern New Jersey may be developed.

Nothing more strikingly illustrates the regional character of the pressures on the Meadows than the fact that by

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the mid-'sixties the garbage of more than a hundred municipalities was being dumped in them; and anything which constricted the Meadows' availability for this, or raised the dumping charges, had wide repercussions, economic and political. The dimensions of this problem can only grow; and the capacity of the Meadows to accommodate a solution would seem to be heavily dependent on the development of mechanisms of planning and action on a regional scale.

The problem of garbage likewise illustrates the complex interrelation of the needs to be met. "Sanitary landfill" methods and locations, for example, are related to the problem of river pollution and its control. They are also related to the future suitability of the land for different uses with varying soil requirements. The people of the region have a sizable stake in accommodating these competing claims in some sort of rational harmony; and it seems patent that this cannot be achieved except by sound regional planning ably implemented.

The Stakes Pro and Con: A Summary

If the foregoing analysis has taken into account all the considerations vital to the various interests, it appears that the stakes in opposing comprehensive reclamation and development were considerably outweighed by the stakes in its achievement. No single interest group had a clear and unequivocal stake in opposing it. The strongest of the considerations noted -

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the threat to the autonomous power of local officials to encourage industrial development - could be fully persuasive to them only if they perceived the issue in a myopic perspective. Because even they, and other groups with some identifiable stakes in fragmented action, also had significant, clearly identifiable stakes in the opposite; and in fact, objectively speaking, virtually every one of the groups had more to gain from a comprehensive approach, simply because that approach promised to open up much wider, richer possibilities for the region and all its component elements.

This is not at all the same as saying that support outweighed opposition. Among those with more immediate and direct reasons to be interested, several factors served to dampen support. Myopia, especially among town officials, was a severe handicap; it was hard for them to see beyond the immediate margin of development, beyond their own municipal boundaries, or beyond next year's budget. This difficulty was increased by the great uncertainty and lack of definition about the development that a regional plan would bring: what it would be, where, and when? This uncertainty was probably unavoidable. It reinforced the natural preference for the familiar over the untried. Finally, the title issue had a continuing, pervasive, cross-cutting effect. It operated in ways both obvious and subtle, but rather consistently its effect was to intensify opposition and undermine support.

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On the other side of the equation, the potential for broad public support was limited by the very diffuse character of the public stakes, and the consequent absence of any group with a clear and adequate motive to mobilize support; and by the difficulty of getting anybody to pay attention.

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## CHAPTER II: FIRST INTERMUNICIPAL PLANNING EFFORT, 1955-1959

By the early 1950's some of the Hackensack Meadows towns had built up all of their uplands, and there began to be increasing interest among their officials and business community in bringing more of their meadow lands into development. Some local officials including James McCoy, Borough Clerk of Carlstadt, became interested in the possibility of intermunicipal action to plan and implement reclamation which would make development possible. The idea sparked interest; Harry Adsit, Business Manager of the Passaic Herald News gave the idea strong backing. Fairleigh Dickinson, Jr., president of Becton-Dickinson Co. whose plant lies on the meadows' edge, gave strong personal and financial backing. Both these individuals were associated with the Passaic Valley Citizens Planning Association, an organization which was geared to provide technical planning services as well as to perform a citizen-watchdog-cum-advocate function.

The first formal organization was the Meadowlands Development Advisory Committee (MDAC) which took shape in 1955 after a year of preliminary activity. Five contiguous towns designated representatives (3 each, appointed by the mayors, who were also members ex officio.) Its purpose was to explore and determine the appropriate form for joint action. This led

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to the creation of the Meadowlands Regional Planning Board in 1956, under an enabling statute which permitted municipalities to create intermunicipal planning agencies. Under this law the MRPB was empowered to prepare a Master Plan and adopt related development controls; such action, however, was subject to the ratification of each of the constituent municipalities.

The area of the five participating towns made good geographic sense as a regional unit. (See Map II, facing P. 46; the towns were Carlstadt, East Rutherford, Rutherford, Lyndhurst and North Arlington.) These towns extend east-west from the Hackensack River, over a prominent ridge, to the Passaic River. Among them they encompass virtually all the undeveloped meadowland acreage lying to the west of the Hackensack River in Bergen County. In terms of physical geography, the city of Kearny was an important missing element, since it incorporates a large Meadows area also lying west of the Hackensack River, but in Hudson County. Kearny's participation in MRPB was courted, and its officials were kept informed, but it withheld any commitment. Its area was included, perforce, in reclamation studies.

The MRPB contracted for professional planning studies to be performed by the staff of the Passaic Valley Citizens Planning Association. Over a three-year period, the PVCPA turned out a reclamation plan, a land-use and transportation plan, and a master plan which incorporated the reclamation and development concepts of the first two studies and proposed

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a governmental framework for their financing and administration.

It is fairly obvious that 'reclamation' of the soggy meadows must come first in the sequence of action. But the engineering considerations of reclamation have a primacy in a wider sense too. They dominate the shape and scale of what is possible, and dictate the boundaries of the area within which action must be coordinated.

The basic engineering concept recommended by PVCPA to MRPB was a dike running north-south, near the west side of the Hackensack River. (This and all other approaches designed to close off the meadows from tides in the river, also provided for pumps and reservation of areas for temporary storage of flood waters from heavy rains, in various combinations.) The PVCPA planners favored the placement of a new north-south highway close to the river, the highway embankment to serve as the dike. Their preliminary efforts to get favorable attention for this idea from state officials, however, met little success.[1] They accordingly recommended an alternative, using the existing embankment installed by the Transcontinental Gas Pipeline Company.

These recommendations were embodied in a report dated December, 1958.[2] But at about the same time, MRPB commissioned a separate study of the reclamation engineering problem, by

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[1]Ernest Erber, interview.

[2]Passaic Valley Citizens Planning Association, Hackensack Meadows Master Plan Series No. 2: Reclamation Plan.

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NEDECO, a Netherlands firm of engineering consultants, experienced in Dutch lowlands reclamation work. NEDECO's report is also dated December 1958.[1]

There are some sharp differences in judgment and recommendations in the two reports. For example, the Dutch report challenged the PVCPA's estimates of the amount of fill needed for its plan, and the cost. It is difficult to evaluate many of the points of difference. The only point which appears to have been crucial, however, was not too esoteric. This was the question of the hazard of flood tides, and the margin of safety which should be provided.

In 1953 Holland had a disaster. Unusual storm conditions produced a combination of extreme high tides and "tidal surges" which brought the sea pouring over the top of the dikes, flooding many square miles of reclaimed lowlands. Nearly 3000 people perished and damage was great. The pivotal point of NEDECO's recommendations was the importance of designing to prevent disaster under conditions at the extreme edge of probability.

NEDECO proposed a high dam closing the Hackensack River a short distance above its opening into Newark Bay, with a navigation lock in the dam, together with low dikes along the river, to contain flood runoff during periods of sustained

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[1] Netherlands Engineering Consultants (NEDECO), Report on the Feasibility of Reclaiming the Hackensack Meadows by Means of Closing the Hackensack River. (For MRPB, December 1958)

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high tides below the dam.

A strong point of NEDECO's argument was that a closure dam would keep high tides out of the meadows on both sides of the river, whereas PVCPA's scheme served only the meadows on the river's western side. Thus the cost would produce a much larger benefit.

This introduced a whole new dimension to the political, administrative and planning questions involved. If, indeed, engineering considerations demanded a scheme affecting a much larger area, then means for coordinated action involving a much larger number of towns would be needed.

The professionals of PVCPA did not feel that the NEDECO analysis should control policy. They felt that the proposals they had developed provided a sound basis for practical action at a manageable cost level, and that there was a definite possibility that the five towns of MRPB might each make the needed commitments to joint action, spending and control. But they felt that even this was chancy, whereas an effort to pull some 14 to 18 towns together - embracing Hudson County political problems in the process - would require a whole new start, would lose precious time and would, even so, have very little chance of success.[1]

Their recommendation to the five towns was to go ahead with the reclamation and planning proposals that had been

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[1]Ernest Erber, interview.

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developed for the MRPB area, while at the same time the towns involved should give cooperation and support to action on a wider scale.[1] This probably made sense, but it required that each of five towns make major, binding commitments on the basis of highly sophisticated and complex premises, involving expenditures which political opponents could plausibly attack as unnecessary in the framework of the larger scheme. This was no doubt too much to expect of the municipal decision-making process.

The PVCPA's report to MRPB on land use planning examined a wide range of choices.[2]

It rejected a "New City" approach as "unrealistic, and not in the best interests of overall metropolitan development." It recommended development of the 7000 acres encompassed by its plan as follows:

| | |
|---|---|
| 4640 acres, or 67% , | for industrial use |
| 800 acres | for park |
| 570 acres | for residential |

The PVCPA's 'Master Plan' study for the MRPB took up the question of the governmental structure needed to carry out reclamation and enforce land use development controls. But it can't be said that the question was squarely faced.

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[1]Passaic Valley Citizens Planning Association, Proposed Draft of General Statement and Resolution for Adoption of Provisional Master Plan, Adopted by MRPB Aug. 1960.

[2]PVCPA, Hackensack Meadows Master Plan Series No. 3: Land Use and Transportation Plan.

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In the first place, there were serious differences of view between the planning professionals who wrote the report, and the town officials who were the principal clients; it was a natural consequence that the report raised some of the key questions at controversy without resolving them, particularly the question whether any structure could be effective which left in the individual towns the power to veto proposals or refuse to go along with them. Secondly, the intervention of a State official championing a much wider inter-municipal approach greatly complicated and confused the climate in which the question of structure was considered.

The proposal of the Master Plan report on the matter was simply that the MRPB take formal action adopting the planning proposals as a Master Plan, and that it urge each of the component towns individually to do the same. This, it pointed out, was as far as the MRPB had power to go. It could not do anything to implement the reclamation proposals; it could not incur debt, commit funds, acquire property, or let contracts for the execution of physical work. It could not even administer and enforce the development plan, without the specific authorization of the individual towns.

The PVCPA staff was in the bind of being convinced that the sovereign power of the State over the municipalities

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would have to be invoked, to create an agency with autonomous power to undertake reclamation and probably with superior power of master plan administration.[1] But it knew that the men on the MRPB were very much loath to look that proposition in the eye, because of their close identification with local government. The planners knew also that the officials of MRPB were disposed by their local bias to be optimistic - or at least to pretend to be optimistic - about the prospects for the new, larger intermunicipal agency which the New Jersey Commissioner for Conservation and Economic Development had proposed and was busily promoting; and that they would not be persuaded of any fatal inherent weakness of this approach before they had given it a try.

Therefore, the "Master Plan" report did not make a forthright recommendation that a reclamation and development agency be created by state action, even though that is what the consultants believed was needed. It confined itself to recommending that formal steps of ratification be taken, and calling attention to the important questions which remained unanswered as to how vital action and control powers were to be provided.

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[1] Ernest Erber, interview; James McCoy, interview.

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# CHAPTER III: THE LAUNCHING OF THE MEADOWLANDS REGIONAL DEVELOPMENT AGENCY (1959-1960)

Salvatore A. Bontempo was appointed Commissioner of the New Jersey Department of Conservation and Economic Development by Governor Meyner in 1958. He had been Deputy Commissioner of the Department for two years, and prior to that had been an elected official and political leader in Newark. "Home rule", local initiative and the power of local political leadership had high value in his philosophy of government. He believed in getting things done by persuading local political leaders to get behind them. He was a buoyant, energetic man with a visionary streak, and with faith in the power of enthusiastic persuasion to lead men to high achievement. He inspired warm liking in some people but sharp skepticism in others. His critics believed that his actions were largely shaped by political ambition; and they felt that his ideas regarding development of the Meadows were crudely simplistic, emphasizing the glories and profitability of intensive urbanization but oblivious to other values and concerns.

The Bureau of State and Regional Planning (later raised to Division status) was a component of the department Bontempo headed. Also part of the department is the Bureau of Navigation, and within it, the autonomous Resource Development Council which had jurisdiction over the granting or leasing of state-owned riparian lands. The MRPB and the PVCPA

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staff had consulted with Bontempo's predecessor, Joseph McLean, regarding possible state help with their plans.

However, Bontempo projected himself into the picture in a way which took the PVCPA people completely by surprise, and generated their resentment. Without prior consultation with the MRPB leadership or their planning consultants, he announced in February 1959 that he was calling the mayors of 25 municipalities in four counties, embracing a large area of contiguous meadowlands on Newark Bay and the Hackensack River, into a conference to propose the creation of a single regional development agency to reclaim and develop this area.

The City of Newark had jurisdiction of a large part of the area involved, and already had made considerable headway in developing plans for it. Similar considerations affected meadows land on Newark Bay in the city of Elizabeth. These cities declined to involve themselves in the Bontempo approach. Accordingly, after the first conference of mayors convened by Bontempo, the proposed concept was scaled down to the 18 municipalities having meadows acreage in the Hackensack River estuary.

Bontempo urged that each of the municipalities of the area adopt an ordinance creating a Meadowlands Regional Development Agency as the joint agency of the participating towns. The enabling legislation he proposed they use was the states' Urban Redevelopment Agencies law, enacted in 1949.[1]

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[1]Chapter 306 of the Laws of 1949 (N.J.S.A. 40:55C 1-29.)

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It appears that Bontempo and his key staff people were committed from the outset to the proposition that an agency set up under this law would be a suitable action agency.[1]

He offered the services of his department to perform all the planning work, without cost to the towns. He also stated that the Agency would be eligible for federal grants for planning work, and suggested that federal loans for land development might also be obtained, although acknowledging that federal urban renewal grants would not be available for redevelopment of open land.[2] In conferences, he also pledged the aid of his department to promote aid and cooperation by federal and state agencies.

It is notable that Bontempo's approach was a direct appeal to the mayors. He justified this on a pragmatic basis: the mayors have the political power to generate local support and commit the towns to cooperate for action. The use of this approach had several important corollaries. One was that it seemed unimportant to Bontempo to give a role either to the "influential citizen" types who had been drawn into the MRPB (which included industrialists, publishers and attorneys) or to the planning technicians associated with the PVCPA. Another was that the proposed action agency was to be created

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[1] N.J. Dep't of Conservation and Economic Development, "Program for Establishing Meadowlands Regional Development Agency", (3 pp. mimeographed memorandum, dated March 6, 1959.)

[2] Ibid.

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by voluntary joint local action, not by the sovereign action of the state legislature.

The premises to which Bontempo was committed demanded an approach that was fully palatable to officials with a strong home-rule bias. In a letter of transmittal of an early publication prepared by his Bureau of Planning for the fledgling Agency, Bontempo wrote:

> The Meadowlands Regional Development Agency is a local agency. The State Department of Conservation and Economic Development has provided the staff service for the preliminary steps to get the Agency underway. The time for community action has arrived. The decision to fully utilize the Meadows in accord with its utmost potential rests squarely with the municipalities and the local citizenry.[1]

This tended to elbow aside any objective analysis of the nature of the problem and the appropriate structure to handle it.

Objections by the Planners

The professional planners who had produced the MRPB studies, Ernest Erber and Ralph Field, did pose the issue in these terms, and they were convinced that the MRDA approach would not work.[2] James McCoy, who had become the

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[1] Meadowlands Regional Development Agency, Develop The Meadows (May 1960) p. 2.

[2] Correspondence from Erber to MRPB leaders; ("Confidential Memorandum", 3/11/59, Erber to the five MRPB mayors; letter, Erber to McCoy, 3/25/59, reporting on an exchange of views between Erber and members of Bontempo's staff.) The basic questions were also posed, somewhat less bluntly, in "The Relation of the Five-Town Reclamation Program to the MRDA - Supplemental Report" prepared by the PVCPA (Erber) for the MRPB, and included as part of the Comprehensive Report compiled and distributed by the MRDA on December 1960.

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Executive Secretary of the MRPB, and Fairleigh Dickinson, apparently shared this skepticism.[1] In their experience with a five-town intermunicipal effort, they had found it difficult to get the MRP Board to reach even small decisions. When money was needed the towns had been very slow and stingy about providing it. Dickinson on several occasions had dug into his own pocket to cover vital expenses. Local political rivalries, and changes in municipal administrations, had had a disruptive effect on continuity and commitment of the individual towns to the joint effort. Those who questioned the MRDA approach felt that these difficulties would be proportionately greater in an intermunicipal effort involving 14 to 18 towns.

Of a more fundamental character, however, were the questions they raised regarding the state Redevelopment Agencies statute under which the MRDA proposed to operate: did it in fact provide the needed and appropriate powers; and would not an agency operating under this statute be hamstrung because its decisions would be subject to veto by individual municipalities?

Erber in particular felt the MRDA proposal was fallacious, and stated his objections frankly. When a delegation

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[1]Interviews, Erber, McCoy and Dickinson. McCoy's name is listed as a member of a committee appointed by Bontempo and consisting principally of mayors, which in effect ratified his recommendation that an intermunicipal agency set up under the Redevelopment Agencies law would be appropriate. But his statement in interviews that he was skeptical from the first is supported by correspondence in his files, e.g. letter May 28, 1959 to Fairleigh S. Dickinson, Jr.

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from Bontempo's office visited him, he reported to McCoy,

> I stated that I felt that the Redevelopment Agencies Law under which the State is proceeding has many serious flaws. The most serious flaw is that it provides for an intermunicipal agency instead of for a State agency.[1]

In hindsight he appears to be the only person in the whole situation who saw accurately to the heart of the situation and spoke out clearly. He was likewise cogent and prescient in challenging the argument of the State staff planners that the need at this point was for an "action agency" and therefore the Redevelopment Agencies law should be used. He argued that:

> An action agency is not the first step. Action assumes that plans have been completed...they will have to begin with an elementary fact-finding survey and then go through the planning stage...A 25-town intermunicipal agency would not be an action agency in any case. It would be too disjointed and cumbersome to ever get action..[2]

The Redevelopment Agencies law was designed to create agencies empowered to acquire blighted areas, clear and replan them, and sell them for redevelopment. An agency fitted with the powers of this law, Erber argued, would be poorly equipped to do the things needed to develop the meadowlands. It would have little use for its strongest powers, and would lack the powers it needed most.

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[1] Letter, Erber to McCoy, 3/25/69. Copies of this letter went to members of the MRPB Executive Committee, which included the mayors of the five MRPB towns.

[2] Ibid.

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The use of its power to acquire land would be perhaps illegal, and surely inappropriate and impractical for the meadowlands task. Even though the Agency might declare that the Meadows land was "blighted" because of tide and soil conditions and thus subject to the agency's powers of acquisition by eminent domain, such a finding would surely have been subject to serious legal challenge. For similar reasons, the propriety of grants of federal urban renewal funds to acquire the land was open to question, and federal officials were not encouraging on the point.[1] Nor was the power to acquire land particularly appropriate to the situation. The defects which acquisition is designed to cure - blighted development and fragmented ownership - were not a significant part of the meadows problem. The only justification, then, for using the power of condemnation to acquire land, would be that it provided a way to obtain the necessary planning controls over subsequent development - but that would be a most cumbersome and expensive way to secure this power.

Conversely, an agency established under the Redevelopment Agencies law would be deficient in the key powers it should have, both in kind and in quality. The main powers

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[1] A memorandum titled "Report of the Committee Appointed to Study the Establishment of a Meadowlands Regional Development Agency Under the Provisions of Chapter 306 of the Laws of 1949" dated March 26 1959 states that "Informal discussions with federal officials point to the strong likelihood of federal loans for the carrying out of specific project planning and open land development" but makes no mention of grants.

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the agency would need to do the job, would be the power to undertake public works, specifically dams, dikes, and pumping stations, and the power to exercise controls over private development. Only under a somewhat forced construction of New Jersey's Redevelopment Agencies law, which empowers an agency to "clear any area acquired and install, construct, or reconstruct streets, facilities, utilities and site improvements essential to the preparation of sites for use in accordance with the redevelopment plan"[1], would the agency have the power to undertake reclamation works. With respect to planning power, the agency would have the power to plan and control the use of property it acquired and subsequently conveyed, but it would not have planning and zoning power over other private property benefitted by its reclamation work. Thus it would either have to use the very cumbersome weapon of acquisition of all the meadows, for planning and resale, or forfeit planning control of very large areas.

There were similar questions regarding the financial powers provided by the Redevelopment Agencies law, which specifies that the agency's obligations shall not be obligations of the constituent municipalities, and makes no provision empowering the agency to assess the cost of a project against the properties benefitting from it. Accordingly, the agency would have no resources to secure its bonds except the value of properties acquired. Conceivably, it could operate within

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[1] N.J.S.A. 40:55C-15 (b)

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these restraints, but they were demonstrably inappropriate for the task of reclamation works, which are radically different in character from the renewal of blighted development.

Finally, and perhaps most important, was the charge that the power of the proposed MRDA to act would be fatally compromised by the need for concurrence of each of the constituent municipalities. It seems apparent that many provisions of the Redevelopment Agencies law were written having in mind the operation of an agency within a single municipality. Suitable enough in this context, they are highly unsuitable for an agency which is the joint instrumentality of several towns. Their effect is to require that the governing body of each municipality must find that the area within its boundaries affected by the redevelopment plan is "blighted"; that each municipality must approve a redevelopment plan, after planning board review; and, finally, that the governing body of the municipality may order the agency to "do such acts as may be necessary to comply with the provisions of any redevelopment plan approved by it, or to refrain from doing any acts in violation thereof; " (40:55C, 17-19); and to account to the municipality in detail regarding its activities. In sum, it is clear that the Redevelopment Agencies act gives very strong veto power to each of the constituent towns in an intermunicipal agency.

Forceful as these considerations appear in hindsight, they do not appear to have weighed very heavily in the decision

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that evolved. Over the period from April 1959 to August 1960, 14 towns adopted ordinances to create and participate in MRDA.

Basis of Acceptance of MRDA

A central factor in Bontempo's success, probably, was that he was telling the mayors what they wanted to hear: that the Meadows could be reclaimed by an agency the towns controlled, an agency which would make no infringements on local autonomy - while at the same time the State and the federal government would pick up the tab for all expensive elements - planning and engineering studies, reclamation works, land acquisition, and perhaps a good deal of the site improvement as well.

The MRDA proposal generated a lot of optimistic publicity, which made it a politically attractive thing to tie up to.

With respect to the objections that were raised, it appears that for the most part the typical answer offered was by way of striking an attitude of optimism, and indicating that with the help of political know-how and good will all around, somehow a way would be found to get around the obstacles. The MRDA proponents acknowledged that it would not be possible to get federal urban renewal grants; but they said the prospects were good of getting federal loans for planning studies and open land acquisition under Title I of the 1949 Housing Law. Also, they said, if a strong local demand were effectively mounted, it might be possible to get Congress to

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fund engineering studies of the reclamation job, and then the work itself, by the Army Corps of Engineers.

The NEDECO study of the engineering problem persuaded most of those involved that the proper scope of a reclamation effort should take in meadows on both sides of the Hackensack rather than a lesser area, and that it would be costly and so require State or federal money. This was probably a significant factor in the sentiment which developed to go along with the Bontempo approach and see if he could make it produce what he promised.

Finally, the PVCPA planners and those in the MRPB who shared their skepticism of the MRDA, were not in a position to present a clear alternative. They were just at that point reaching the end of one phase, the planning studies. They were just beginning to wrestle with questions of what sort of agency, equipped with what sort of powers, was needed to move the project into the action phase. The planners faced a difficult and delicate problem here because they knew that an effective solution would require the towns to surrender some of their autonomy. But they knew too, that most of the members of their client agency were not ready to accept that.

One sidelight worth noting is that although Bontempo addressed himself directly to the mayors to secure local adoption of the approach he advocated, when the agency was finally formed the mayors were excluded from membership on it. The

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organic law specifies that "no commissioner of any agency may be an officer or employee of the municipality for which the agency is created ..." (40:55C 7). This was another clause probably written with a municipal rather than intermunicipal agency in mind. The proponents of the MRDA sought to change this by an amendment to the organic law, but were unsuccessful. Subsequently, MRDA formed an Advisory Council composed of the mayors, some of whom participated in many meetings in this capacity.

The MRPB did not formally disband; late in 1960 it resolved to stay in being, in readiness to "act as the planning arm of the MRDA" for the five-towns area at such time as the larger agency's work might advance to the stage that meadows development became feasible and there was a need for exercise of planning controls.

In summary, the MRDA initiative was successfully launched, despite patent structural weaknesses, largely because it appealed to negative concerns: the desire to maintain a local veto, and to avoid expense. For the next two or three years at least, those who wanted to achieve sound utilization of the meadows had either to work through the MRDA or wait for it to demonstrate its incapacity.

MRDA Activity, 1959 Through 1961

Between the time Commissioner Bontempo proposed the agency and its first meeting, 18 months elapsed. Nine of the ten towns which initially joined the agency had adopted the enabling ordinance by August 1959. But Bontempo's office

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didn't push the mayors to appoint commissioners and have the agency convene until a year later.

In the fall of 1959, Bontempo set up a special staff for the Meadowlands project and provided them with a Newark headquarters. Over the next year, this staff did some mapping and data compilation work and some related memoranda, by way of setting the stage for a planning effort to be directed by the proposed agency. This staff also developed an "action program" which was presented to the mayors of the agency towns in August 1960; this program was the basis of the organization meeting held in September 1960, at which six towns were represented.

Alvin Gershen had been a staff member of Bontempo's department and was reportedly the prime mover in conceiving and pushing the MRDA approach.[1] Bontempo made Gershen his appointee to the Agency, and Gershen was elected interim chairman at the September meeting. Charles Nathanson, a planner in Bontempo's department who had participated in the special staff work, was appointed Executive Director. There can be little doubt that the new commissioners regarded the MRDA as "Bontempo's agency" rather than "their agency", given the circumstances and as evidenced by these key personnel decisions.

The "action program" called for four committees: Finance and Fiscal, Administration and Legal, Engineering, and

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[1] Interviews, Gershen and Eugene Schneider.

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Land Use and Planning.

The program specified some vital functions for the Finance and Fiscal committee, including: investigation of methods of financing necessary reclamation and development projects, and methods of assessing costs and distributing benefits.

The Engineering Committee was charged to determine reclamation methods and costs.

The program proposed that each committee report with recommendations in 120 days.

There is no evidence, however, that any of the committees produced substantive recommendations or even study specifications in its assigned area - with the single exception of the by-laws, which were presented and adopted at the agency's second meeting, in January 1961, at which time officers were elected. Gershen was elected chairman. These by-laws also provided that the mayors of the member towns should constitute an Advisory Committee, also to be chaired by the Agency Chairman.

The agency staff presented what it titled "A Comprehensive Report on the Meadowlands" in January 1961. This was a rather pretentious title, since the work had something of a grab-bag quality. It included documents from a variety of sources. Some of them were the product of the agency staff work over the preceding 15 months; this included a considerable amount of map work and data tabulation on land use and land ownership. But most of the material was from other sources,-

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notably, the MRPB reports and the NEDECO reclamation study - and there was no attempt to tie the materials together and give the report an overall coherence. It made no planning or program proposals.

It is interesting to note that this compilation included two reports relating to land ownership which literally ignored each other. One, an 8 page memo titled "Background Report Number 2- Riparian Rights and the Reclamation of the Hackensack River Meadows" unequivocally states that riparian rights in the meadows vest in the State, citing the history of court decisions and legislative acts which firmly establish this. The other, a 27-page memo with full tables and lists of property owners by towns, makes no mention of the State's claim and does not indicate the State of New Jersey to be the owner of any meadowlands property. (The landmark court decision in the Sisselman case, incorporated as part of the report, had been rendered nine months earlier.)

It appears that detailed technical work by the State agency stopped at this point.

There was some agency committee activity in the spring of 1961.

The Land Use Committee met with the MRPB. In the discussion, the Agency spokesmen presented the MRDA as the "action" agency qualified to carry out plans. There was apparently some discussion of the idea that the MRPB's area of jurisdiction should be enlarged to be coterminous with MRDA's, to facilitate

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a teamwork relationship between the two agencies, one as a planning and control unit, the other as an "action" agency. But the meeting left the question of responsibility for planning initiative in a very ambiguous state, with no direction agreed for further action.

The Engineering Committee and Gershen met with the Army Corps of Engineers staff in February 1961 and subsequently worked through New Jersey Congressmen to obtain a federal appropriation for survey work by the Engineers on river navigation, flood control, drainage and land reclamation aspects of the Hackensack estuary.

The agency was also involved, in June 1961, in a consideration of the title question, as detailed below.

Charles Nathanson, MRDA's Executive Director, prepared a report on the agency's first year of activities. It included a section entitled, "Adoption of the New Concept for Developing the Hackensack Meadowlands", which stated:

> One of the most significant achievements during the past year has been the formulation of a new concept for equitably charging the cost and distributing the benefits of reclamation on a regional basis...all the municipalities (must) agree to share in the cost or reclamation equally, based on the extent of the Meadowlands acreage now within their limits, and derive fair benefit on a similar basis in return...The Agency has considered one type of agreement which provides that: (1) each municipality would pay the Agency the excess of all taxes collected.. as compared to those currently being collected. (2) The Agency would reimburse.. the cost of services that the municipality provides the newly developed areas... (3) the surplus revenue

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would then be distributed (among the municipalities on a pro rata basis of meadows acreage)[1]

Although the report heading used the word "adoption", the text makes clear that the idea had been formulated and was under consideration. The concept outlined was essentially the concept which, some seven years and $75,000 later, was to be put forth as the result of a Rutgers study and incorporated in S. 477. (But, the alleged 1961 "adoption" of the concept to the contrary notwithstanding, with a single exception there was no one associated with MRDA who had a good word to say for the concept in 1967 or 1968 when legislation was under consideration.)

Commissioner Bontempo made an unsuccessful bid for the Democratic nomination for Governor early in 1961; in July of that year he resigned his state job to take an appointment as State Department Assistant Secretary for Security and Consular Affairs in the Kennedy Administration. H. Mat Adams, who was appointed to succeed him, did not manifest an active interest in the MRDA. Gershen left the department staff in the fall of 1961 to set up his own planning office; he continued as MRDA chairman. The MRDA, which had met regularly in the Spring of 1961, did not hold another meeting for a year. The absence of a strong push from the State, uncertainty about the title issue and how it would be resolved, and the need to wait and see what would be accomplished as a result of a federal appropri-

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[1] Meadowlands Regional Development Agency, Annual Report, 1960-1961, p. 10-11.

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ation for an Army Corps of Engineers survey of reclamation and related questions, were factors in the lapse of activity.

As a result of lobbying efforts led by Bontempo and Gershen, a $50,000 appropriation was obtained in 1961 for preliminary studies by the Army Corps of Engineers of navigation, flood control, drainage and land reclamation matters in the New Jersey waterways which drain into New York Harbor. The Engineers held a public hearing in Jersey City in December 1961. Most of the testimony related to the problems and potential of the Hackensack River estuary. Gershen testified among others. He stressed two points: (1) the MRDA was qualified to develop a land-use plan and policies which "will represent the combined desires of all municipalities along the Hackensack River". (2) what that plan could and should be, would depend heavily on the nature of public works for "flood control" which, he said, is properly the responsibility of the Army Engineers and should be undertaken by them. He pledged that the MRDA would develop a comprehensive development plan which would yield economic benefits ample to justify the cost of the engineering works involved.

Various other witnesses urged the need for engineering works which would facilitate meadows development.

B. Budd Chavooshian, Director of the Division of State and Regional Planning in the New Jersey Department of Conservation and Economic Development (and Chairman of the Governor's Interdepartmental Committee for State Planning) was among

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those who spoke at the hearing. He affirmed the State's interest in the Meadows development. Also, he said, "..with piecemeal development in process, it is realized with a considerable sense of urgency that the last chance to do the overall job may be at hand."

Yet his testimony documents how heavily the State staff planners were committed at this stage to the sanctity of "home rule":

> ...State officials foresaw that any practical effort... would have to be based on inter-municipal considerations, because even the broad responsibility assumed by State government in the orderly development of its resources does not constitute a satisfactory substitute for the participation of those directly concerned.
>
> A development plan, to be effective, and indeed, to be implemented, must be acceptable to the localities which possess the specific duties and powers of enforcement of land use controls...
>
> We are proud of the way local governments in New Jersey accept their responsibilities. We particularly favor mechanism through which local government units can attain a logical position in the physical growth pattern of their respective areas, and, at the same time, can exercise their responsibilities without curtailment or controls from a higher level.
>
> The techniques derived from the experience of the Meadowlands Agency (MRDA).. will be of great value when applied in other regions where..problems freely cross municipal boundary lines.[1]

A spokesman for the New Jersey Committee of the Regional Plan Association commented that:

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[1]"Statement by M. Budd Chavooshian, Chairman, Interdepartmental Committee for State Planning, To the District Engineer, New York District, Corps of Engineers.. Public Hearing.. Dec. 13, 1961, Jersey City, N.J." (5 pp., mimeo) p. 4-5.

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> ....there should be some significance attached to the fact that a major public improvement, which has such widespread acceptance, has been the subject of so much talk and so little accomplishment over three decades.[1]

He pointed to political rather than engineering problems as the primary block,

> ... above all, the nature, scope and power of the agencies required to do Meadows planning and reclamation.[2]

But he did not voice an explicit challenge of the structural adequacy of the MRDA.

Bontempo had succeeded in channelling the energy and interest which had been developed by the MRPB into support of a larger scheme, and had rallied wider support as well. In doing so he had waved aside questions of the agency's legal and political capacity; but when he left the scene two years later these questions remained and no solutions for them had been identified.

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[1] Regional Plan Association, "Statement ... by Cesar J. Bertheau, Chairman, New Jersey Committee ... Hearing conducted by the Army Corps of Engineers .. Dec. 13, 1961" (3. p. mimeo), p. 3.

[2] Ibid.

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## CHAPTER IV - THE TITLE ISSUE EMERGES

The Sisselman case developed in the late '50's. In 1936, when the State Highway Department decided to construct Route S-3, it requested and obtained a riparian grant from the State's Board of Commerce and Navigation for portions of the right-of-way across the meadows.

In 1943 the Borough of East Rutherford acquired property traversed by S-3 in a tax sale. It subsequently auctioned this property to an industrial real estate development company headed by E. Jerome Sisselman, which took title in 1953. Sisselman subsequently demanded payment from the State Highway Department for the value of the land used in building S-3, and took the matter to court when the Department, citing the State's tideland title, refused. Sisselman based his case on the contention that the land was not tideland, claiming that it had not been tide-flowed prior to construction of mosquito ditches circa 1915. In March 1960, the court denied Sisselman's claim, holding that the preponderance of evidence indicated the land was tide-flowed and always had been.[1]

There were by this time a considerable number of private title claimants who had come to believe that they had good title to property of status similar to Sisselman's. In many cases they held insured titles. The land involved was

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[1] Oral decision of Superior Court Judge Wallace Leyden; reprinted in MRDA's Comprehensive Report on the Meadowlands, op. cit.

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now increasing quite rapidly in value. There were very large areas in the shore and bay area of South Jersey where there had been a similar train of events, bringing into being a substantial land interest of varying degrees of innocence or cunning. Title companies in the area had insured a number of titles of this character. William T. Hiering, an officer of one such company, was a member of the State Assembly - later a State Senator. A large DuPont plant in Salem County had been built on land whose title status was affected by the Sisselman case decision.

The solution which seemed most logical and attractive to private title claimants and those associated with them was for the State to give quit-claim grants on all the disputed land. The matter was further complicated, however, by the fact that in many instances there would be rival claimants for such quit-claims: upland owners, who by precedent in New Jersey law would have first preference in acquiring tidelands fronting their property, and claimants who had purchased tideland properties from towns at public auctions, etc. Since the latter had purchased defective titles, who had prior right to quit-claim rights?

Such questions as this barred the path to any simple and rapid resolution of the problem. Soon after the original Sisselman decision, Hiering and other South Jersey legislators initiated a resolution (J.R.11, June 23, 1960) which both houses passed, creating a Joint Legislative Commission to

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study existing laws relating to "riparian" (shore) lands and to recommend means of resolving problems. This Commission did not hold hearings until November 1961 and did not report until March 1963.

The Sisselman decision was affirmed by the Appellate Division in April 1961.[1]

In June 1961, Commissioner Bontempo convened a meeting of MRDA members and mayors, with staff members of the Bureau of Navigation (which serves the Council which passes on tideland grants) the State Division of Planning, and the Attorney General's office. At this meeting, Gershen as MRDA Chairman requested that the State identify the property to which it believed its title claim applied. The Navigation Bureau chief agreed to examine tax maps of the municipalities and identify the parcels which the State might regard as tidelands.[2]

Such a list was completed two months later.[3] But it had little or no value for clarifying or resolving the conflict, since it did not specify the data or criteria on which the State's claim was based. It became apparent that there was

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[1]Sisselman et al vs. State Highway Department of N.J.; Superior Court, Appellate Division, Docket No. A-769-59. Oral memorandum of decision, reprinted in MRDA, Annual Report 1960-61, p. 53.

[2]MRDA, Annual Report, 1960-61, p. 15.

[3]Peter J. Gannon, Chief, Navigation Bureau, Meadowlands Report: Listing of Properties in which State of New Jersey Appears to Have an Interest in Title Because of Tidal Waterways, (with covering memorandum to Commissioner H. Mat Adams, Aug. 15, 1961) pp. 8-20.

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no reliable survey data at hand to delineate the line of mean high tide in the Meadows. (It is also apparent that the Navigation Bureau chief was still applying a much narrower concept of the State's claim than that asserted by the State's Attorney General.)[1]

Riparian Laws Commission Hearing

In October of the same year, the Legislature's Joint Commission on Riparian Laws held hearings. Gershen testified for MRDA. He indicated that the proposals he presented represented the collective thinking of the MRDA staff, its Legal and Administrative Committee, and the municipal attorneys of the member towns. He asked, in effect, for a procedure which would expedite a definitive and comprehensive determination of the question of title, beginning with a survey by the State to identify its title claim, followed by a fact-finding review leading to a legislative declaration of what are the state-owned tidelands; provisions to expedite judicial settlement of remaining disputes were also proposed. But Gershen also asked that the legislators find a way to validate sales which had been made by municipalities to private individuals.[2]

Gershen occupied a position straddling a cleavage in the support base of his agency that could only grow wider. Initially, two levels of public control - state and town -

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[1]Compare Gannon's covering memo, ibid, with "Background Report Number 2: Riparian Rights and the Reclamation of the Hackensack River Meadows" in MRDA's Comprehensive Report, 1960.

[2]New Jersey Legislature, Joint Study Commission on Riparian Rights, Hearing, Oct. 18, 1961, p. 11.

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were joined in the MRDA. They had a joint concern with favorable development. There were of course very important differences in perspective and priorities; but it was hoped that the magnitude of the reclamation job and the scale of the potential benefits would provide adequate pressure and motive to overcome these differences.

But as the title issue developed, the State and the towns were in a new relation to each other, one of much more basic and irreconcilable antagonism. The State began to see itself, and be seen, as a principal title claimant. The towns were, for much of the acreage (17% of the total, as of 1960) the rival claimant; with respect to the other land, they stood to lose immediate tax revenue if the State asserted its title, and they stood to lose much of their influence and control over the development of this land. Also they had many personal, political and business links with the owners and developers directly threatened by the State's title claim; not least among these links was the fact that the towns had sold the land to the present owners and had courted development.

Gershen's proposals thus, predictably, combined a presumption of the validity of the basic doctrine on which the State's title claim rested, with a solicitude that local applecarts not be upset.

Virtually all of the other witnesses testifying at the hearing on riparian title asked that private title claims be validated, in one way or another. Some proposed a legislative

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declaration vesting title in all private claimants who had paid taxes for 20 years or more. Some simply asked that the anomalies be resolved in ways which would save from hardship all private claimants who had paid taxes or invested in improvements, in good faith.

There was literally no testimony asserting the public's stake in the State's claim, or raising any of the questions which might very properly have been asked to determine whether titles had been acquired and insured with knowledge that the State had a conflicting claim. Although the State-owned riparian lands had been appropriated by the State Legislature in 1894 to be part of the capital of a State Fund for the Support of Free Public Schools, there was no witness testifying for this interest. One small voice was raised for wildlife; the state's director for Fish and Game (another division in the Department of Conservation and Economic Development) pleaded for restraint and conservation in administering state control of the wetlands, as vitally affecting birds, fish and shellfish.[1]

The Hughes Moratorium on Tidelands Grants

The Riparian Laws Commission did not report until the spring of 1963. But soon after Governor Hughes took office in January 1962, a document came to him for his signature from the Resource Development Council in the Department of Conservation

[1] Ibid, p. 43

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and Economic Development. It was a grant of the State's title in 38 acres of land in the bed of a creek traversing a 450-acre parcel of meadowlands in Secaucus and North Bergen. According to his counsel, William Kirchner, Hughes was not familiar with the meadows title question, and asked Kirchner to research it and advise him.

There is certainly occasion to arch an eyebrow very high over the fact that this grant was forwarded to Hughes, at this point in time, with all other requisite signatures inscribed, including specifically those of the Commissioner of the Department of Conservation and Economic Development, and of a majority of members of the RDC. There can be no question that the Commissioner and the Council had been alerted by the end of 1961 to the issues, questions, criteria and high potential stakes involved in meadows title. (Fall, 1959, Department staff study memo; March, 1960, Sisselman case decision; May, 1960, Riparian Laws Commission created; April, 1961, Appellate Division affirms Sisselman; August, 1961, memo by Peter Gannon, Chief, Bureau of Navigation, lists properties in which State claim may apply; October, 1961, Riparian Laws Commission hearings.)

Kirchner, after looking into the matter, advised the Governor not to approve the grant. He was critical of the procedure used by the Council in fixing consideration; it was one, he said, which failed to reflect adequately the rising trend

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of values. But the per-acre consideration approved in this situation was unusually low - only $250 an acre as compared to the $1000-an-acre consideration the RDC usually set. Most important, however, Kirchner raised a question whether the entire tract, not only the bed of the creek traversing it, was subject to State claim of title. His investigation had indicated that much of the tract was tide-flowed; and also that the "owner" had been engaged for several years in filling the land and the bed of the creek![1]

The property was owned by Eugene Mori and Joan Phillips. Mori was, and is, the chief proprietor of the Garden State Race Track, near Camden. It seems fair to assume that he had good political connections. He hoped to develop another race track on the Meadows site.

Kirchner advised the Governor that under the law appropriating State-owned tidelands for the support of the State's school fund, the officials entrusted with their disposition have a legal obligation to charge full economic value for any sale or lease.

Kirchner's advice led to a searching discussion of the whole title question. The upshot was that Governor Hughes

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[1] N.J.State Highway Department, Division of Right-of-Way Acquisition and Title, "Report and Study Concerning Proposed Riparian Grant...to Cromakill Realty Corp. and Eugene Mori et al", April 25, 1962. Typed staff report, 24 pp., files of New Jersey Commission to Study Meadowlands Development. (Now in possession of Hackensack Meadowlands Development Commission.) Also, William Kirchner, interview.

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declared a moratorium on all tidelands grants until the issue of conflicting title claims could be definitely resolved by the courts and/or the legislature. In the wake of the Sisselman decision, title companies were unwilling to insure title to private claimants of Meadows tracts for which the State had made no grant. This and the moratorium policy put a block on many development projects which were afoot. Pressure rapidly developed from the towns for exceptions to the moratorium; the Governor's office then developed a policy of permitting grants only on the basis of specific building plans and a showing of a substantial economic benefit. (A number of grants were made under this policy, which remained in force until 1969, when new procedures created by S. 477 came into effect; most of the grants were relatively small parcels. Some industrial developers, among them Sisselman, were held to parcel-by-parcel grants. The large grant to Mori was never cleared.[1] )

Riparian Laws Commission Report and Proposals

The Legislative Commission to Study Riparian Laws issued a report, with legislative proposals, in March 1963.[2] The Commission's makeup gave heavy representation to the South Jersey counties, where there were large areas of undeveloped tidelands. The Commission chairman, Senator Haines of Burlington,

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[1] Beatrice Tylutki, Assistant Counsel to Gov. Hughes, 1962-68; interview.

[2] N.J. Legislature Joint Study Commission on Riparian Laws, Report and Recommendations, (Trenton, May 6, 1963).

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was a realtor who was also a director of a title company and of a bank. The co-Chairman, Assemblyman Hiering of Ocean County, was a lawyer who was also the Title Officer and Treasurer of a title company and a bank director. The other legislator-members and the two governor's appointees were lawyers. The appointed commission elected as its Secretary, Peter J. Gannon, Chief of the Bureau of Navigation, the man responsible for staff work on tideland grant applications in the Department of Conservation and Economic Development. The transcript of the Commission's 1961 hearings suggests a lively concern for the State's interest on the part of one of the Governor's appointees, but the dominant concern of the Commission appears to have been private development rights.

The Commission's report indicates that after much deliberation - and probably some heated discussion - the members reluctantly concluded that there was no way that the conflict over riparian titles could be resolved in favor of private claimants by a simple legislative fiat. Apparently they explored fully the possibility of solving the matter by setting forth a new statutory definition of the meaning of "riparian". (Probably the basic difficulty was that they were engaged in the futile exercise of trying to change a fact of nature by semantic means; the courts had said that original title to tide-flowed lands vests in the State; and no matter how you redefine "riparian", tidal water is still wet.)

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> No definition of the term riparian lands is given. The reason is that it was the feeling of the Commission that the Legislature could not constitutionally either extend or limit the ownership of the State in the riparian lands by this legislation. Under Article 8, Section 4, Paragraph 2 of the Constitution of 1844 the Fund for the Support of Public Schools was set apart as a perpetual fund, inviolate against invasion or appropriation in any manner by the Legislature. (Emphasis added.) Under Chapter 71 of the Laws of 1894..... all of the tide lands of the State have been placed in the School Fund. Unquestionably in view of...(ruling precedents, here cited. ed.) ... any statute which limited the State's interest in any lands flowed by tidewater as that interest was defined at common law would be unconstitutional..... The Commission has not ignored the request that some clearer and easier to apply in practice definition be given; it simply cannot comply with the request.[1]

The report expressed particular concern with the problem of the respective rights of the "upland owner" - the person owning the upland adjoining any riparian land - and persons occupying riparian lands unlawfully but in good faith. In general, the Commission's proposals affirmed the principle that the upland owner has a preemptive right to secure a riparian grant. But it noted that in many situations the topography is such that the high water mark may be a great distance from the channel of a river, "so that the true upland owner has not purchased his upland with the expectation of securing a riparian grant in front of it,"[2] and proposes that in such cases the State agency charged with the making of grants be authorized to establish a line beyond which preemptive rights

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[1] Ibid, pp. 9-10.

[2] Ibid, p. 12

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will not apply. Another provision proposed that -

> ... persons who are occupying riparian lands under color of title who have improved the same should have a preemptive right as against the upland owner to secure a grant to the lands. Certainly if an upland owner has permitted such improvements to be made it cannot be said that he relied on securing the grant. This provision will permit the persons who have made substantial developments in the meadow lands in good faith to secure good title thereto.[1]

The Commission's bias toward an easy accommodation of private claims is evident not so much in the explicit language of its report and its proposals, as in the report's choice of which issues to discuss and which to ignore. Nowhere is there a discussion of the basic question of whether grants of riparian lands should be made. Does the public have any interests in the disposition of such lands other than receiving full current value? If so, what are they and how should they be evaluated? The report was totally silent on these questions. It did not even discuss the question, by this time a touchy one, of standards and procedures that should be used in setting such prices for grants.

By ignoring these questions while concerning itself at great length about the respective purchase rights of upland owners and persons whose claims are based on defective titles, the report slips into the implicit assumption that the way to clear up the title tangle is for the State to dispose of its land.

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[1]Ibid, p. 13.

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Another section of the proposed statute revision would authorize "quit-claim" grants in appropriate circumstances, by providing that:

> ...in cases in which there is doubt as to the validity of the State's claim in connection with any riparian lands, the Commission may compromise the claim and execute a release at a reduced consideration. This is done at the present time and it is recommended that the practice be given statutory approval(! - ed.) since in many instances definitive proof that lands are in fact riparian lands of the State is lacking and this practice presents a method by which titles to such lands may be cleared.[1]

Noting that "there is no provision under existing law for any person to secure a statement from the State as to its claim to any lands as riparian lands,"[2] the Commission proposed to remedy this by legislating a new procedure, the "certified search".

These proposals seem reasonable enough on their face. But in the context of past policy and current politics, (viz. the makeup of the Commission and the one-sided pleading at its hearing) it seems clear that the hoped-for and probable effect of these provisions in combination would have been that virtually all of the State's valuable riparian lands would be disposed of on the most favorable terms that could be rationalized.

It is noteworthy that the report breathed no word of criticism of the Resource Development Council's administration of its responsibility:

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[1] Ibid, p. 14

[2] Ibid

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> The Resource Development Council has traditionally consisted of persons of high caliber and its activities have been of great assistance to the state.[1]

However, the Commission proposed to do away with the RDC and in its place create a bi-partisan Riparian Lands Commission of five members. Immediately following the above cited language the report says:

> But the obligations on this (Resource Development) Council have been burdensome and under the circumstances it was felt that it was better to create a new commission whose members would be paid $50 per diem and thus would have both the moral and legal obligation of scrutinizing their actions closely in regard to riparian grants.

It is not entirely clear, however, whether the Commission's greater concern was for close scrutiny, or for speedy action in processing grant applications. They made explicit proposals for the latter: grants were to be made by a majority vote of the 5-man Commission, and executed by signature of its Chairman or Vice-Chairman, attested by a Secretary. This would replace the existing procedure requiring signatures of the Governor, the Commissioner of Conservation and Economic Development and the Division chief under him, a majority of the 12 RDC members, and the Attorney General, all attested by the Secretary of State.

> This method of execution is far too complicated and time-wasting to be practical and it appears that at times changes have even been made in grants or leases after they have been signed by 1 or more of these officers, thus raising a question as to the validity of the instrument. (p. 7)

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[1] Ibid, p. 10.

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Granting the faults of the procedure, it is worth noting that the new procedure proposed would have deprived the Governor of any power to contravene a decision of a 3-man majority of an appointive commission. Under this procedure it seems reasonable to assume that the Mori application, for example, would have been granted.

The report makes one significant provision for the protection of interests other than those of grant-seekers: a requirement that public notice be given that application has been made for a grant.

> It is the feeling of the Commission that the making of a grant is a serious matter and that legitimate objections to it should be entertained from the public.[1]

It is a further comment on the quality of the service to the public interest rendered by the established RDC machinery, that there was no provision for public notice of grant applications and proceedings. (It seems an oversight worthy of comment that, under S. 477, there still is none.)

The Commission also proposed that the riparian lands agency be empowered to "stop summarily all work being done unlawfully on riparian lands of the State" and to file liens on such lands when they are being wrongfully occupied.

There are fairly clear traces, in the documents relating to the Riparian Laws Commission, of a sharp conflict within it. The tenor of colloquies between the Commission and witnesses

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[1]Ibid, p. 13.

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at its hearing suggests that the appointees of the Governor raised questions which the legislator-members of the Commission would have preferred to ignore. There was a long delay before the Commission was able to get its report and proposals together; the report[1] notes that four complete drafts of the proposed revision statute were worked over in successive meetings of the Commission. Most significant, however, in the light of subsequent history, is the passage quoted on page 108 above in which the Commission noted, with obvious regret, that there were clear constitutional obstacles to any legislation which would abdicate any of the State's claim of title in tide-flowed land as defined in common law. The names of all the Commission members were attached to its report, and no dissent was filed . Yet one member of the Commission, Mr. Hiering, within a few months sponsored legislation which ignored those constitutional obstacles, and some of the other Commission members voted for that legislation, (as detailed in a later chapter.)

These events clarified the nature of the title snarl and put the State in opposition to private claimants and town officials. These were, of course, the parties with the most vital interests at stake in the question of Meadows development; and from this time forward the first question they applied to any proposal or decision was, what its effect might be on the title issue.

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[1] Ibid, p. 3

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## CHAPTER V: THE MRDA PUT TO THE TEST

The preceding chapter described the development of the title issue from 1959 to 1963. We return here to pick up the main theme of Meadows reclamation and planning.

The authorization obtained in 1961 for a Corps of Engineers survey provided the main impetus for activity which went forward in the next two years. To get survey work under way required that government in the area affected furnish some basic parameters. This operated to bring into sharp focus some of the anomalies of power and responsibility in the situation as it had developed, and to exert pressure for their resolution.

There were so many actors in the events of this period, with such a diversity of stakes and attitudes, that it may perhaps facilitate the exposition to give a brief run-down in advance of the cast of characters.

MRDA Commissioners, somewhat ambivalent in their outlook as between a loyalty to their respective towns and mayors, and their commitment to the MRDA as an entity.

The mayors of the MRDA communities, concerned with their prerogatives vis-a-vis an intermunicipal agency, and varying widely in their commitment to the MRDA project.

Gershen and Nathanson, professional planners who had a heavy psychological investment in the MRDA concept. (Neither any longer had a direct career stake, it appears. Gershen had

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become an independent consultant, and Nathanson was on the Jersey City Redevelopment Agency staff; neither was paid for his work for MRDA.)

The staff planners of the State (principally Chavooshian, head of the Division of State and Regional Planning in the Department of Conservation and Economic Development and Eugene Schneider, in charge of the Bureau of Regional Planning under Chavooshian.) They of course had a career stake in the power and effectiveness of their agency, but appear also to have had a heavy philosophical commitment to the concept of respecting local autonomy and fostering techniques of voluntary intermunicipal cooperation.

The Commissioners appointed by the Governor to head the Conservation/Economic Development Department. H. Mat Adams was a holdover in the job (reportedly somewhat reluctant) throughout 1962 and until May, 1963 when Governor Hughes appointed Robert A. Roe. Neither, it appears, had the commitment to MRDA which Bontempo had had and which the continuing staff people retained, but they were considerably influenced by the latter.

The office of Counsel to the Governor. William Kirchner was in this post in 1962, and Beatrice Tylutki was an assistant counsel. Their main concern was with the State's title stake in the Meadows, and in this regard the MRDA towns had an opposing stake.

The Corps of Engineers, who had had frustrating experience with Passaic Valley towns unwilling to agree on a joint

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planning and decision-making mechanism by which flood control studies could be carried forward. The Corps looked to the State to establish a unified decision-making mechanism within the area of its sovereignty.

The "planning interest", which established an effective presence in the situation through the mechanism of a New Jersey Committee of the Regional Plan Association, for which Ernest Erber became the executive late in 1961. This group principally articulated the interest of elements in the business community in planned growth.

The Governor himself, who became the focal point of the conflicting pressures; Hughes had a highly developed political sense, which made him loath to go counter to the strong desires of a group of local officials.

Though there were all these actors and more in the situation, they nevertheless comprised only a relatively small number of "insiders" and activists; and despite the magnitude of the stakes, there was very low public consciousness of what was happening.

The events resulting from the interaction of the several parties in engineering, planning and title issues had a labyrinthine complexity. Only the salient developments will be outlined here, with no pretense of encompassing all the significant detail.

## A Vital Criterion Established

As a point of beginning, the Corps of Engineers made a projection of the sequence of studies and implementing actions

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that would be involved, and conferred with the State as to who would do what. The Corps wanted to be able to deal with someone at the State level who could synthesize the views of the several State agencies involved. Late in 1961, at a conference in which both Governor Meyner and Governor-elect Hughes took part, it was agreed that Chavooshian as chairman of the Governor's Interdepartmental Committee for State Planning would be responsible to coordinate policy within the State Executive Department. This left unresolved some questions regarding how State and MRDA policy were to be brought into concert, and likewise regarding MRDA vis-a-vis its component towns.

The Corps' projections made it apparent that land-use studies and economic base studies, rather than engineering studies, were the crucial elements of the work that had to be done to arrive at a reclamation and development plan.[1] (The point is apparent from analysis of the documents, although it was not strongly stated by them nor widely appreciated at the time.) The "critical path" lay along the line designating land use studies in a PERT chart prepared by the Corps.[2] And the Corps' summary analysis of earlier studies made it clear that there were several engineering alternatives which varied

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[1]U.S. Army Engineer District, N.Y., Corps of Engineers, "General Data on Jersey Meadows Study" (prepared by Engineer Corps for New Jersey Commission to Study Meadowlands Development, March 17, 1964; 11 pages plus maps and charts) par. II - 23, p. II-6.

[2]Ibid, appended chart

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widely in cost but would yield differing areas of reclaimed land, with differing fill requirements and bearing qualities.[1] Whether the more costly alternatives would be justified depended on what the land would be used for and what would be the land's value in that use.

The "cost-benefit ratio" was a basic criterion premised by the Corps' approach: the plan to be recommended after the studies, would be that combination of reclamation plan and land-use plan which produced optimal benefit, cost considered. But the Corps carried the logic of this approach one step further, and in the situation it was a vitally important step. It put the State on notice that a condition of Federal spending for reclamation work, when it came to that, would be State and local capability to -

> ....accomplish the development of the Meadowland in accordance with the master land use plan to assure the accrual of benefits in the manner used to justify the project.[2]

In other words, the Corps would want to be satisfied that when reclamation works were executed, development would be controlled by an agency with the will and the power to enforce the plan.

The Corps had a more immediate and practical reason as well to want an agency in being with clear-cut power to make decisions for the Meadows area; as it knew from copious

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[1] Ibid, par's. II-19 - II-22.

[2] Ibid, p. 3

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experience, planning can proceed expeditiously to action only if there is a responsible "client" on the scene, willing and able to make the decisions which are called for, at the outset and at many interim stages as well as at the point of major choice and commitment. The Corps had been sharply criticized for imposing its own decisions in many situations; but it had also been frustrated in many others where it had not been possible to nail down decision-making responsbility among the agencies of state and local government involved in its projects.[1]

Initially the Corps intended to carry out the economic base and land-use planning studies directly. The State planners felt that this was likely to result in too narrow and utilitarian an approach. They urged that they should handle this part of the job, and the Corps consented.[2]

But, Who Was the Client?

This, however, did not resolve the question of who was the client. Chavooshian and Schneider, strongly committed to the MRDA concept, worked with Gershen in drawing up an "action program" for MRDA which called, among other things, for Master Plan studies. The MRDA was reactivated in June 1962 after a year's lapse, and a full-dress meeting was arranged in Trenton at which Governor Hughes presented the "action program" and urged the agency to run with it.

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[1]One instance, the effort to get local agreement on flood control plans for the Passaic River Valley, was cited by Governor Hughes in his conditional veto message, Senate Bill No. 477, Nov. 25, 1968, p. 5.

[2]Eugene Schneider, interview

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The program called for:

(1) a survey of tide-lines and topography to fix the State's title claim

(2) cooperation with the Corps of Engineers in their initial soil and water studies

(3) a study to be financed by an HHFA grant of how reclamation costs and benefits of reclamation could be equitably shared under administration by an inter-municipal agency

(4) comprehensive Master Plan Studies

(5) continuation of State-MRDA cooperation.[1]

Accepting this charge from the Governor, the Agency then embarked on the one and only continuous year of activity of its history. However, the program which had been framed in fact presented the MRDA with only one substantial matter for it to decide and act on. It spent the entire year hung up on that matter and never resolved it.

Items 1, 2, 3, and 5 in the "action program" required nothing of MRDA except that it give at least implicit blessing to the undertaking of studies by the State and the Corps. But the execution of item 4, Master Plan studies, required that MRDA perform the role of client, furnishing direction and decision to the State planners who would perform the studies. And this presented a problem. As Chavooshian explained to the Agency, the MRDA as constituted did not have legal power to plan for the Meadows towns. (It is not clear whether he was frank to acknowledge the error of the people on the Bontempo

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[1]MRDA, "Minutes," Special Meeting June 5, 1962.

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team in waving this question aside three years earlier.) Perhaps the best approach, he indicated, would be for each of the constituent towns to pass another ordinance, this time authorizing participation in a regional planning board, under the same statute the MRPB had been based on. Perhaps there was another way; but it was imperative, Chavooshian indicated, that the MRDA produce an answer in order for the Master Plan to be drawn up under inter-municipal direction.[1]

The MRDA Ducks the Question

The incapacity of the MRDA is vividly documented in the minutes of the meetings which followed regularly over the next twelve months. The problem was referred to the Agency's Legal and Administrative Committee. Through the fall, this Committee kept reporting that it had been unable to reach a recommendation. The solution suggested by Chavooshian was surely something less than palatable, because if a new Regional Planning Board were set up, the purpose and powers of the MRDA would be all the more nebulous. In December, Frank Panuzio, a civilian staff officer in the New York District of the Corps of Engineers who has had a continuing responsibility for the Hackensack Meadows project, attended the Agency meeting and made a forceful statement of why an agency able to exercise unified planning powers for the towns, was an imperative requirement for a Federal appropriation for reclamation works. Finally, in February 1963, the Committee reported its recom-

[1]Ibid.

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mendation: a new Regional Planning Board should be set up, by the separate action of each of the towns. From February through May, in effect, the agency struggled with the question of whether it should urge, request, or suggest that the respective Mayors try to get their towns to pass such an ordinance. But it appears that by this time, a number of the mayors had lost all interest, and others were hostile or suspicious. Would the new Planning Board have power to overrule Planning Boards in the individual towns? Only after each town had individually approved the Master Plan, the State advocates argued. Probably this was a reply which satisfied no one; it served to underline the uncertainty that a viable inter-municipal plan could ever be ratified, but it also made clear that the towns would eventually have to surrender their autonomous power of development control. There had also been sharp internal dissension within MRDA: pro- and anti-Gershen feeling (he was displaced as Chairman in July of 1962) pro- and anti-State feeling, and some Republican-Democratic antagonism, although this was never prominent.

Consequently, despite valiant efforts by some of the MRDA participants, notably Mayor Peter Tonner of North Arlington[1] and by Chavooshian and Schneider, the towns made no move to bring a new Regional Planning Board into being.

Robert A. Roe, who was appointed Conservation and

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[1]See especially, Minutes of MRDA meeting of May 15, 1963

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Economic Development Commissioner in May 1963, decided to unstick the situation in a way which did not really resolve the underlying structural and legal questions, but did provide a basis on which the State could set up the planning studies. The idea of a new RPB was set aside. Chavooshian's division would execute the studies; the Land Use Committee of the MRDA would serve as a"review committee" for the planning studies. The State staff would apply for a $100,000 planning grant from the HHFA to cover two-thirds of the projected cost of the studies. The State and the towns would cover the other one-third, the State paying $25,000 and each town paying $2,000. Roe presented this plan at an MRDA meeting on June 26, 1963, and it was assented to.[1] (But five of the towns never ponied up their $2,000.) This arrangement left very cloudy, the question of who was the client. Pro forma, the MRDA's Land Use Committee was. But their authority and mandate were not clear, their technical grasp was low, and their interest slacked off rather quickly. For small decisions the State planners were left to their own devices. As for larger decisions, they had to improvise ways of moving ahead without them; for example, the land-use plan implementation of five alternative sets of controlling parameters were studied.[2] The procedure completely begged the question of what agency would have operative author-

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[1] Minutes, MRDA meeting, June 26, 1963.

[2] Eugene Schneider and Sidney Willis, interviews.

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ity to adopt and implement plans. But all this is getting somewhat ahead of the rest of the story, chronologically, because the studies were not funded and started until mid-1964. Meanwhile, an effort to structure an entirely new approach to the problem had begun on another front.

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# CHAPTER VI: THE MEYNER COMMISSION:

## Creation, Operation, and First Report

In the Spring of 1963, a new initiative for Meadows development was launched by legislation which created a new Study Commission. The initiative constitutes a rather remarkable example of the leverage and effect which a sound, knowledgeable and well-conceived "inside" approach can achieve under favorable circumstances.

Erbest Erber was apparently the prime mover. His role as executive for the RPA's New Jersey Committee began late in 1961. In the course of his earlier work for the MRPB he had developed an intense interest in the Meadows and their potential. The MRDA initiative in 1959 had, in effect, blocked off the line of action he believed was required. Although the sharp questions he raised about the MRDA approach were brushed aside, the subsequent experience fully demonstrated the soundness of his objections.

The New Jersey Committee of the Regional Plan Association consisted principally of men of influential standing in the business community, whose personal perspective and business stakes disposed them to favor long-range planning for orderly, regional development. Its Economic Base Subcommittee, which appears to have been most active in the issues related to the Meadows, included George F. Smith, former Chairman of Johnson & Johnson, former vice-chairman of the New Jersey Turnpike

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Commission, a member of the State Board of Education; Clayton Cronkright, an officer of the Public Service Company of New Jersey principally concerned with industrial development; Albert Acken, executive of the New Jersey Chamber of Commerce; and B. Franklin Reinauer, proprietor of a Bergen County fuel oil company, and active in the county's C. of C.

During 1962, when the live question was how the Corps of Engineers' survey would be implemented, Erber was active in pushing the view that the State should assert active leadership rather than place reliance on the MRDA as an agency for decision and leadership.[1] By the end of the year, it was abundantly evident that the MRDA was floundering in its response to Chavooshian's appeal that it structure a planning cabability. But Erber, and the people associated with him in the RPA's New Jersey Committee, became convinced that the State planners were too hung up on an inter-municipal approach to make a decisive departure from it.[2] And there are indications that the Corps of Engineers was also becoming impatient with the State's unwillingness to rout the MRDA dog from the manger - or at least make it move over.[3] What initiative might open the way to

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[1] Ernest Erber, interview; and Erber files which, inter alia, document contacts with Corps of Engineers and, through Mr. Smith, with Governor Hughes.

[2] New Jersey Committee of the Regional Plan Association, "The Need for State Leadership in Meadowlands Reclamation", policy statement adopted Feb. 21, 1963. (3 pp. mimeo)

[3] Eugene Schneider, interview; and memorandum, Erber to Smith, "Meeting with Army Corps of Engineers Re: Hackensack Meadows" Nov. 21, 1962.

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creation of a new structure, suited to the Meadows problem? Erber took counsel with Harry Adsit (Business Manager of the Passaic Herald-News, who had participated in the formation of the Meadowlands Advisory Committee in 1953) and Bolton ("Boley") Schwartz, veteran Trenton correspondent for the paper who was widely known and respected among the state legislators. The idea they agreed on was a new study commission; this promised a way to identify the problems and the need for a strong State agency, in a style which could focus wide public attention and furnish a strong lead toward legislative action.

Schwartz carried the ball. (It became an open and rather jolly secret in the Legislature that he was the unofficial "sponsor" of Senate Joint Resolution 13.) He needed a resolution drafted; the office of the Governor's counsel, he says, seemed a likely place to get expert advice on that sort of thing.[1] He put his problems to Beatrice Tylutki, then Assistant Counsel, who agreed to do a draft.[2]

The resolution's whereases took note of current dynamic industrial growth in the State and the strategic location of the Meadows to accommodate that growth, and declared that "if reclaimed and redeveloped, the meadowlands of North Jersey would offer 225 million square feet of plant space, nearly ½ million

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[1] Bolton Schwartz, interview.

[2] Beatrice Tylutki, interview; Miss Tylutki says her help was not at the Governor's direction and as she recalls he was not even aware of it.

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job opportunities, and $1-2/3 billion in additional tax ratables. The resolution called for a bi-partisan study commission of nine members, three each to be named by the Governor, the Senate President and the Assembly Speaker, mandated to "make a comprehensive study of the meadowlands of North Jersey for the purpose of developing a long-range comprehensive plan for the reclamation and development of the entire meadowlands area." No specific mandate to study the title issue was given, but the Commission was given blanket authority to study any matter it deemed relevant to its purposes. The geographic area specified for its concern was considerably broader than the MRDA's bailiwick.

Schwartz lined up a strong bi-partisan array of eight sponsors in the Senate (the body had only 21 members) including the Senators of all but one (Hudson) of the counties potentially affected. His savvy and/or standing is manifest in the way the skids were greased for his project. The resolution was introduced on May 10th, without reference, permitting immediate action, which took the form of Senate passage by a vote of 17 to 0. The Assembly passed it a week later, under suspension of the rules, by a vote of 47-0. (Angry suspicion of the purport of SJR. 13 was voiced by some members of the MRDA at a meeting on May 15;[1] but no opposition was mounted.)

From all accounts, the reason for the unanimity of the

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[1] MRDA, "Minutes"; also Eugene Schneider, interview.

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Legislature was not so much that SJR's significance was widely understood and had strong support; rather, it was because Schwartz secured the assent of some key people, who saw it as "all right" and not too important, so the rest of the legislators went along.

Appointments to the Study Commission

In July, Erber wrote Smith and Cronkright proposing that members of the RPA committee submit names to the three officials having appointments to make.[1] He attached a list of proposed names he had drawn up. His primary criteria, besides standing and expertise in some relevant area, were vision, broad perspective and civic commitment. In August, Smith wrote Senate President Ozzard (R., Somerset) and Assembly Speaker Matthews (D., Essex) attaching a list of 19 names, "whose interest, knowledge and experience makes them worthy of your consideration". With one change, this was the list Erber had prepared.

Ozzard subsequently appointed two of the men on this list, Smith himself, and James Sutphen. (Sutphen, Managing Editor of the Bergen Record, and a member of the Bergen County Planning Board, had independently requested appointment through Bergen County Republican channels.[2]) Ozzard also appointed Senator Fox, D., of Essex County.

Assembly Speaker Matthews subsequently also appointed two men on the list Erber had drawn up: William Keith, president

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[1] Erber files.

[2] James Sutphen, interview.

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of a Newark bank who had a background as a professional engineer, and Irving Lloyd Gang, an attorney, who was Chairman of the PVCPA Board and of the Montclair Planning Board. Matthews also appointed William Kirchner, now a New Jersey Bell Telephone Company executive.

Governor Hughes did not name his appointments until December. One of them, former Governor Meyner, was on Erber's list but this probably signifies only that he was an obvious candidate. Another of Hughes' appointments, however, was Harry Adsit, whose name had not been on Erber's list but whose perspective on the Meadows was certainly very close to Erber's. Hughes' third appointment was Harry Callari, head of the Hudson County Mosquito Control Commission.*

The "planning lobby" was thus clearly the dominant influence on the formation of the Commission. This was not too surprising, since SJR. 13 was their initiative; and their proposals for appointments were based on wide knowledge and were very well considered. But it does not appear that there were even any competing influences. Five of the eight men who made

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* Fairleigh Dickinson Jr. was one of the names on the list Erber had prepared. Following the death of Harry Adsit, which occurred before the Commission ever met, Governor Hughes appointed Dickinson to the vacancy; Lloyd Gang says he suggested this appointment to Meyner, who forwarded it to the Governor. William Keith also died very shortly after his appointment, but this vacancy was never filled.

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up the Commission as it ultimately functioned (Meyner, Smith, Gang, Sutphen, Dickinson) were on the list Erber drew up, and none of the other three represented a conflicting point of view. (Kirchner was an active exponent of a comprehensive planning approach; neither Callari nor Fox, I am told, expressed strong policy views.)

Two groups who might have been expected to seek representation were the MRDA and the title interest. But in the summer of 1963, the MRDA went into a virtual state of collapse. Ray Kirwan, elected Chairman at the June meeting, resigned shortly thereafter; there was no quorum at the July Meeting, and there was no meeting, and no action to name a new chairman, for more than a year after that. Most of the towns were resisting the State's proposal that they put up $2000.00 as their share of the cost of planning studies. Privately if not publicly, it appears that many of the MRDA Commissioners and mayors had become convinced of the agency's impotence.[1]

As for the private title claimants and title companies, it appears that they did not anticipate that the new Study Commission would concern itself with the issue of how the meadows title conflict could or should be resolved. Legislation embodying the Riparian Laws Commission proposals was introduced in the Senate in 1963, (S. 286), was amended in committee, and failed to reach a floor vote. The attention of the private

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[1] New Jersey Commission to Study Meadowlands Development, Final Report, p. 27.

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title lobby was apparently focussed on getting a bill to their liking passed in the 1964 session. The Study Commission's mandate did not even mention title problems; in any case, the business leaders and lawyers named to it could hardly have appeared to pose an ideological threat in the eyes of the private title advocates. The data suggests that they didn't try very hard, if at all, to place a representative on the Commission.

The appointment of former Governor Meyner to the Commission deserves a word of comment. Governor Hughes strongly urged Meyner to accept the appointment. There were some obvious advantages, and some less obvious risks. If he accepted, Meyner would be a logical choice for chairman; whatever the Commission produced would, for better or worse, be credited mainly to Meyner and to a Democratic administration. Meyner could be expected to give at least full and fair consideration to the stakes and claims of the intermunicipal agency that had been launched in his own administration. The risk was that he might have too much commitment to it and its advocates; but if he were to join in recommending that a new agency was needed, it would presumably add a lot of weight to the verdict. By the same token, if Meyner were not on the Commission and subsequently opposed its recommendations, he would provide a strong rallying point for opponents.

Organization of the Commission

The Commission held its first meeting in January, 1964.

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It elected Meyner as Chairman, George Smith as Vice-Chairman, and Kirchner as Secretary.

Meyner, it is reported, ran a tight ship, setting a brisk and business-like agenda and a firm and active schedule. The Commission first arranged to hear the views of a number of parties having a role or stake in the situation as it existed. Its agenda for a meeting on January 29 allotted a half hour to a spokesman of the Port Authority (reclamation experience in Port Newark), an hour for a delegation consisting of Roe, Chavooshian, Schneider, Peter Gannon and Anthony Scoppetuolo (Chief and Deputy Chief of the Bureau of Navigation in Roe's department), Gershen and Nathanson; an hour for representatives of the Hudson County Freeholders; a half hour for C. McKim Norton and Erber for the RPA; an hour for a delegation of attorneys representing the private title interest, and an hour for a delegation of Newark municipal officials. A meeting in February heard a group of high-level business and industry spokesmen. In other sessions the Commission talked with a spokesman for the Corps of Engineers, a labor spokesman, and most of the mayors of the MRDA towns.

Very early in the course of its executive sessions digesting these conferences, the Commission arrived at a concensus on some basic premises which guided (and limited) all their subsequent work.

Most basic was the judgment that the MRDA was not a

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suitable structure. Commission members interviewed[1] said this appeared to be clear, prima facie, at the outset, and was reinforced by what a number of the MRDA town mayors said in private sessions. Gershen reportedly made strong representations of MRDA's value, which were received skeptically. Roe, Chavooshian and Schneider appear to have presented a somewhat ambiguous attitude, professing continued faith in the value of the MRDA approach, but emphasizing that the studies of tax-sharing the State was (still in process of) initiating would be of value in devising an improved structure.[2]

But the Commission also decided, very early on, against a clear and radical resolution of the problem of multiple municipal boundaries by the creation of a new municipal entity embracing the Meadows area. Kirchner says he was the primary advocate of this approach, and that Meyner and Smith took a strong position against it. They argued that there would be intense opposition among local officials to the removal from their respective jurisdictions of lands which, they hoped, would be developed with good "ratables", and that this opposition would command widespread sympathy in the legislature.

Another basic decision, reached at a later stage, was not to attempt a major study and plan of Meadows development; but to concentrate instead on what kind of agency was needed to

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[1] Gang, Kirchner, Sutphen.

[2] Commission minutes, meetings of Jan. 29 and March 17, 1964.

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undertake the planning and action involved, and how such an agency could be brought into being. The Commission's mandate was broad enough: "Make a comprehensive study .. for the purpose of developing a comprehensive long-range plan for the reclamation and development of the entire meadowlands area." But it became clear to the Commission that to undertake this would require a large appropriation they might not get, might entangle it in jurisdictional disputes with the MRDA and the State planners, and would not in any case address the crucial problem, which was the lack of an agency with appropriate structure and powers.[1]

The Commission obtained a $50,000 appropriation from the Legislature in April 1964 to carry out its work, without significant opposition.

The Title Issue to the Fore

It was natural that the nature and stakes of the title question would be discussed virtually at the outset of the Commission's deliberations, given the past involvement of Meyner and Kirchner. A presentation of the point of view of the private title claimants, by a delegation of title company attorneys, was put on the agenda of the first hearing. Virtually all the others who appeared also stressed the need for an early resolution of the title tangle. And it was quickly apparent

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[1]Memo, Curtis J. Berger to Robert Meyner, Dec. 23 '64, files of the Commission.

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how the question of ownership cross-cut all other questions and complicated them.

The prominence of the title issue shaped the Commission's selection of Curtis J. Berger to function as its executive. Their criteria were expertise in land law, objectivity vis-a-vis the title question, and standing. Berger, a resident of Englewood, N.J., taught real estate law at Columbia Law School.

Events pushed the title issue to the top of the Commission's agenda. In April 1964, Governor Hughes referred to the Commission for its recommendation, Assembly Bill No. 44,[1] which had been introduced by Assemblyman Hiering and had passed both houses (without dissent!). A. 44 generally corresponded to the legislative proposals of the 1963 report of the Commission on Riparian Laws. Hiering had introduced only a few changes, and they were tucked away in rather obscure little corners of the bill, but they were of enormous consequence. Hiering's version added a new term to the definitions section (Section 2) of the bill: "exempt lands", which were defined to include any land in the State, regardless of riparian character, where record title has been privately held for 30 years and taxes have been assessed for 20 years, and any other lands record title to which is now in any unit of local government. The operative provision

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[1] The text of this bill, and of subsequent Meadows legislation up to and including S. 477, 1968, are assembled in a bound volume titled, Legislative History (Meadowlands) which is available for reference at the New Jersey State Library, Trenton.

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did not appear until the tail end of the bill, in Section 111, which stated simply that "the State have not title to exempt lands". This sweeping legislative declaration would thus have given away to private or municipal claimants, virtually all the disputed land. Another section (29) of the bill provided, in effect, that a private claimant whose record title didn't meet the 30-year test, could obtain a riparian grant for the property for a reduced fee, subtracting from the present value, the amount of any taxes paid and any increment in value after he obtained his record title.

Berger prepared a report on A. 44 which, after intensive discussion by the Commission, was approved and sent to the Governor. The Report noted that the Riparian Laws Commission had concluded that it would be unconstitutional to "either extend or limit the ownership of the State in the riparian lands by this legislation",[1] and comments tartly:

> Despite the unequivocation of a Commission that has been studying riparian laws for three years, the Legislature rejected this view of the Constitutional principle when it added the "exempt lands" paragraph to the 1964 bill. Why it felt it could do so does not appear.[2]

The Report set forth carefully the basis of the constitutional inhibition. A clause of the New Jersey Constitution declares the Fund for the Support of the Free Public Schools

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[1]Commission on Riparian Laws, op. cit. p. 9. The full quotation, specifying the constitutional restrictions, is cited on p. 114 above.

[2]New Jersey Commission to Study Meadowland Development, Report on A. 44, (1964) p. 4.

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to be "inviolate against invasion or appropriation in any manner by the legislature." An 1894 act of the State Legislature had "irrevocably" committed "all the lands under water belonging to the State" to the Fund. The Report stressed that the statute language clearly made the lands themselves a part of the corpus of the Fund.[1]

The Report notes that attorneys for the New Jersey Title Insurance Association had argued in a 1963 title action [2] that the Legislature had the right to change the dedication of these lands from time to time as it saw fit. (The Supreme Court, in deciding the case, had ignored this argument.)[3] The Report attacked the argument as "based on ... a refusal to respect the plain meaning of words" and said:

> Certainly we should expect far more substantial support for legitimizing the give-away proposals of the 1964 Legislature.[4]

The Report also criticized Section 29 of A. 44 providing for the granting of lands at reduced prices to private claimants not served by the "exempt" clauses, as "subject to the same

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[1] Ibid., p. 3. Provisions cited are Article IV, Sec. 7, Para. 6 of the New Jersey Constitution of 1844; Article 8, Sec. 4, Para. 8 of the Constitution of 1947; N.J. Laws 1894, ch. 71, Sec. 1 at p. 123; and N.J. Laws 1903, Ch. 1, Sec. 168.

[2] Ibid., p. 4, citing brief of the New Jersey Title Insurance Association as Intervenor in 1963 appeal of Transcontinental Pipe Line Corporation vs. N.J. Dep't. of Conservation and Economic Development, decided by New Jersey Supreme Court in September 1963.

[3] Ibid.

[4] Ibid.

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constitutional infirmity." And it was critical of some of the procedural reform sections. A. 44's proposal to replace the Resource Development Council with a commission which would have non-reviewable authority to make riparian grants "denies to Governor any direct influence on the policies underlying the disposal of state-owned lands," it declared, and argued that at a minimum, a grant should require the approval of the Commissioner of Conservation and Economic Development, and the review of the Attorney General.[1]

Governor Hughes sat on A. 44 until January 1965 and then vetoed it with a strong message which followed the position of the memo Berger had drafted, and drew heavily on its argument.[2]

Assemblyman Hiering came back to the 1965 Legislature with a new version (A. 605) of the proposal to settle the title conflict by legislating away most of the State's claim. Again, Hughes referred the measure to the Study Commission. By this time the Commission was in the final stages of drafting its report. It had given much time to consideration of the equities in the title dispute, and had evolved agreement on the principles of a method of resolving the dispute which its report would recommend. The doctrine that the State could not legally dispose of its title for less than full value was, of course, fundamental to its position.

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[1] Ibid., p. 5.

[2] "Legislative History", op. cit.

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Accordingly, Berger again drafted, and the Commission approved and forwarded to Hughes, a report. It was much briefer than the preceding year's. After citing the 1964 action, and the Riparian Laws Study Commission report the report stated:

> Under the guise of "defining" riparian lands, A. 605 introduces a totally new, and far more limited concept - one that disregards nearly three hundred years of common law. .... A. 605 would redefine riparian lands to require that the tidal waters be navigable at mean low tide.... and that the landward edge not 'extend further in a landward direction than the top of the adjoining banks as located at mean low tide'. Together, these two changes in the definition of riparian lands would eliminate from the School Fund thousands of Meadowland acres.... any legislative act, including one that simply restates the meaning of riparian lands, is constitutionally void if it deprives the School Fund of assets it now enjoys.[1]

A. 44 had attracted very little public attention. But a major battle developed over A. 605 - a battle which can be more clearly described in the context of the report the Meyner Commission completed that same Spring of 1965.

The Problem of Structure

In the fall of 1964 the Commission engaged the Bechtel Corporation, a California engineering and construction firm with wide experience in large-scale public projects, to do a preliminary survey and analysis of the reclamation and development aspects of the Meadowlands problem. As initially conceived this survey was to lead on to planning studies by Bechtel for the Commission. But it involved Bechtel in an effort to summarize and appraise past and ongoing studies, and this effort brought

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[1] N.J. Comm. to Study Meadowlands Development, "Report on A. 605 (1965 Session)" (3 pp. mimeo) pp 2-3.

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the structural question to the fore, and brought the Commission to realize clearly that the primary need was to resolve this question. At this point the Commission discarded more ambitious plans and decided to bring out a report making basic recommendations regarding resolution of the title dilemna, and regarding the kind of agency needed for reclamation and planning.[1] The Bechtel survey took three months, and they submitted their report in February 1965. The Commission's report, completed in May and made public in June[2], leaned heavily on the Bechtel findings to support their basic structural recommendation. It quoted extensively from passages of the Bechtel Report which criticized the MRDA as an unworkable agency and which criticized the faulty premises and the lack of coordination of the several lines of current planning relating to Meadowlands development. Selections from these quoted passages follow:

> The foremost limitation imposed upon the present studies stems from the predetermination that an intermunicipal agency is the only acceptable type of agency to implement a Meadows development plan... under provisions of other 1949 Redevelopment Agencies Law, it appears unlikely that a Regional Development Agency .. can effectively carry out a plan of any consequence.[3] In a regional development agency, such as MRDA, each munici-

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[1] Memo, Curtis J. Berger to Chairman Meyner, Dec. 23, 1964 (files of the Commission) outlines the dilemma of preparing plans absent a clear structure for their implementation.

[2] N.J. Comm. to Study Meadowlands Development, Final Report (Trenton, 1965)

[3] Ibid, p. 2.

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> pality has absolute power within its boundaries. This actually amounts to a veto power that undoubtedly can undermine the activities of (a) regional agency.[1]

The Bechtel Report is further quoted, detailing the criticism that the same limitation - commitment to the premise of an intermunicipal agency - is a crippling limitation of studies currently being performed by Rutgers University with the aid of a $75,000 Demonstration Grant. "If 18 months, as estimated, are expended to solve the administrative, legal and fiscal attributes of the agency empowered to develop the Meadows, ... the Study should also consider an agency at State level and include a detailed investigation of all the requirements of such an agency."[2]

With regard to the current land use planning studies of the Division of State and Regional Planning, the Bechtel Report was again critical, saying that their commitment to the premise that the plans must be acceptable to local interests was producing undue emphasis on industrial development.[3]

The Bechtel survey is quoted on several other points, the whole adding up to a picture of poorly coordinated activity, and of cross-purposes and ineffectiveness flowing from the prevailing distribution of powers.

Against the background of these criticism, the Commis-

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[1] Ibid., p. 21.

[2] Ibid., p. 82

[3] Ibid.

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sion's recommendations as to structure are brief and simple. The quotation from the Bechtel survey leads into the Commission's statement that:

> The Bechtel study has confirmed our beliefs that present efforts lack both the coordination and direction that is essential for a satisfactory Meadowlands development, and that the present pace of planning activity is too leisurely to prevent private, piecemeal reclamation from causing irreparable harm to Meadowlands potential.[1]

This then provides a strong prologue justifying the Commission's key recommendation:

> ..the formation, at the State level, of a Meadowlands Reclamation Authority, having broad powers to plan, finance, and execute a reclamation and development program.[2]

and its summation:

> ..the best way to insure the orderly development of the meadows is through the trusteeship of a strong, state agency.[3]

But it must be said that the Commission's recommendations were so brief as to neglect a number of the issues they had raised. What has been quoted is virtually all the "Final Report" had to say about what the proposed Authority would do, how it would go about its job, how its powers fit its mandate, how its power and activity would relate to the existing jurisdictions, and what its effect would be on existing and future rights, activities and dollar flows.

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[1] Ibid., p. 27.

[2] Ibid.

[3] Ibid., p. 29

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The further remarks of the report regarding its workings occupy exactly one page.[1]

One paragraph deals with composition of the Authority. The New Jersey Turnpike is cited as a useful model. "Thus, the Meadowlands Reclamation Authority would consist of three members, each appointed by the Governor to staggered five-year terms, ... subject to the advice and consent of the Senate". A Coordination and Technical Advisory Board is proposed, representing the various public and private parties with a stake in the meadows, "to increase liason with the local municipalities and insure a high degree of responsiveness to the many interested groups;" none but advisory powers are indicated.

Another paragraph states that the grant of powers should be similar to the Turnpike Authority - basically the power to float bonds, to buy and sell property, make contracts and build projects. "In addition the Authority would need the power to levy and collect special assessments upon the owners of lands benefitted by a reclamation program".

The final paragraph states that the Authority would be expected to give adequate consideration, like all others, for riparian grants or leases: and to make payments in-lieu-of taxes to municipalities for land holdings which if privately held would be subject to taxation.

The Commission may have had logical reason to find that

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[1] Ibid., p. 28.

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there was no need to go beyond these broad-brush principles in indicating the kind of structure needed for reclamation tasks. These were, after all, broadly analagous to the tasks performed by the Turnpike Authority. But its recommendations do not offer even broad-brush principles regarding the structure needed to formulate land-use plans and administer planning controls; and the Turnpike Authority model is not in the least relevant to this problem. The Commission's recommendations offer nothing at all on this - excepting only the statement that the Authority should have broad powers to plan, finance, and execute a reclamation and development program." The subsequent paragraph dealing with the proposed grant of powers makes specific mention of the powers needed to carry out reclamation works, but it makes no mention of the quite different kinds of powers needed to plan and control the development actions of private property owners.

The questions ignored in the Commission's recommendations were complex ones which were crucial to its mandated mission. Among the most important of these were:

Should the Authority have power to make a land-use plan?

Would this be binding on the municipalities?

Would it administer the corresponding planning controls?

**Would it operate primarily through traditional planning controls - master plan, zoning ordinance and subdivision control - or through the redevelopment agency pattern of actual assembly, fairly detailed land use development aplanning, and resale for development in accord with specified plans?**

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Members of the Commission interviewed were guarded in commenting on the reasons for this, but some points were gleaned. Meyner was wary of the power of localistic opposition. Smith's thinking and emphasis was strongly influenced by his Turnpike experience. He felt that the main thing was to create an agency capable of tackling the reclamation work. To the extent that there was conflict or unresolved problems regarding planning powers, the apparent decision was to resolve them by ignoring them.

There was an effort in April to get the advance approval of the Governor and legislative leaders on a more detailed proposal. Bechtel presented a structure in which a "technical-management firm" would have been assigned a key role in reclamation and development planning.[1] When this scheme was dropped, it left some questions up in the air, which the Commission's report dealt with by skipping over them. The pressure of the current situation to make public its recommendations as a move in the battle over riparian title policy, was a factor in this.

Recommendations re: Title

In dealing with the title question, the report recounts the background of title uncertainty, the efforts to resolve this by A. 44 and A. 605, and the basis of its opposition to these bills: "However urgent the need to solve the titles dispute,

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[1] The Record, April 24, 1965; 12-page chart presentation prepared by Bechtel, in files of N.J. Comm'n. to Study Meadowlands Development.

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unconstitutional legislation is not the answer." But some answer is needed:

> ... the Commission ... realizes that many persons who have acquired interests in Meadowlands, and who have made substantial investments in land and building improvements, have done so unaware that their titles might be infirmed. Such persons have acquired equities that appeal strongly to the community's sense of fair play... One factor that has aggravated title uncertainty is the lack of a suitable judicial procedure for bringing suit against the State to establish ownership..[1]

Accordingly one of the Commission's recommendations was establishment of machinery to enable any claimant to initiate a proceeding which would establish whether, in fact, his title claim was paramount.[2]

With respect to Meadows parcels determined to be State-owned, the report proposed their classification in three categories presenting different classes of equity for consideration: parcels reclaimed and built on by their private claimants; parcels reclaimed but not yet built on; and wholly unreclaimed parcels. The Commission had spent much effort in thrashing out this approach. It proposed that a private claimant who had reclaimed and built on a parcel would be entitled to a lease up to 50 years to continue his present activity, paying rental of 5 per cent of the raw (unreclaimed) land value as of the lease date. (In this and the parallel cases, below, the claimant would alternatively be entitled to apply for a riparian grant;

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[1] Final Report, op. cit., p. 5

[2] Ibid., p. 6.

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the Commission did not propose any modification of the authority of the Resource Development Council to give or refuse such grant.) Claimants of parcels reclaimed (e.g., by fill) but not built on would be entitled to receive a short-term lease based on the present value of the unreclaimed land, and to be reimbursed at the expiration of the lease for the original value of land improvements. In the case of unreclaimed land, claimants would be entitled to licenses to continue their present activities where not incompatible with reclamation and development plans. The proposed new Authority would administer these title determination , leasing and licensing procedures.[1]

The Commission urged that this approach would "accommodate the several interests of the School Fund, private claimants, local municipalities, and the entire citizenry of the State.." - that it would expedite the resolution of the title tangle, provide "far more generous treatment than the law has previously given persons who could not prove their title," minimize initial loss of local tax revenue, and avoid disruption of jobs and payrolls. And reclamation financing would be facilitated because the State agency for reclamation would be able to borrow against the development potential in lands still owned by the School Fund.[2]

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[1] Ibid., pp. 8-12.

[2] Ibid., pp. 14-15.

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## CHAPTER VII: THE MEYNER COMMISSION:

### From "Final Report" to "Supplementary Report"

With regard to the title issue, political attention and energy in 1965 were centered not on the Meyner Commission recommendations but on Assembly Bill 605. The Commission played a significant role in the blocking of that bill in opposition to the very powerful effort that was mounted for it. But the battle was a bitter one, and had some lasting effects on later political alignments on Meadows issues.

In the wake of the Sisselman decision, a well-organized lobby for the title interest came into being. It took the form of the "Ad Hoc Committee on Riparian Lands" of the New Jersey State Chamber of Commerce. By 1964 this group had several dozen participants. Those most prominent in its work were attorneys for title companies, and attorneys for large industrial firms having plants on lands subject to State claim of title under the Sisselman decision. Peter Dorn, Secretary of the State Chamber and its principal lobbyist, served as Secretary of the Ad Hoc Committee.[1]

Assemblyman - later Senator - Hiering worked closely with this committee. Hiering had acquiesced in the 1963 report of the Riparian Laws Commission, of which he was a member, which had concluded that the Legislature could not constitutionally alter the State's interest in tide-flowed land. But the Ad Hoc

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[1] Peter Dorn, testimony, Hearings on S.C.R. 41, ( N.J. Senate Committee on Agriculture, Conservation and Natural Resources, Trenton, Apr. 23, 1968 ) P. 6.

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Committee developed a legal argument to the contrary,[1] on which Hiering staked his subsequent position. The Ad Hoc Committee was the principal architect of all the subsequent efforts at legislation to vacate the State's tidelands claim in favor of private claimants. At the same time, the State Chamber machinery and membership afforded the Ad Hoc Committee a powerful means of rallying influential and relatively broad support. (The New Jersey Title Insurance Association, for example, whose attorneys participated in the Ad Hoc Committee, could not have hoped to exercise nearly so much political clout acting through its own machinery.)

The MRDA had been the vehicle of joint action by Meadowlands town attorneys in 1961 to try to press the State to define its claims. Some of these attorneys were also active on behalf of clients who were private title claimants. Alfred A. Porro Jr., who was at different times attorney for East Rutherford, South Hackensack, and the Carlstadt Sewer Authority, did

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[1]This position had two principal themes: (1) that the rule applied by the court in the Sisselman case, namely that the State had original title to lands flowed by the tide at mean high water, was contrary to widespread usage which had long gone unchallenged by the State, and did not relate properly to the underlying functional justification of riparian rights, of insuring the access of upland owners to navigation and fishing; and so should be replaced by a rule limiting the State's title to lands lying within the banks of navigable streams; and (2) that the Legislature in its wisdom has the right to change the dedication of riparian lands at will. This position was developed in the brief of James L.Lafferty Esq. as counsel for the New Jersey Title Insurance Association, Intervenor, 1963, cited on P. 144 above. Lafferty was one of the organizers of the State Chamber's Ad Hoc Committee. These arguments were put forth in several subsequent Meadows lawsuits, but were never accepted by the New Jersey courts.

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considerable research on Meadows issues and became an active, vocal opponent of the State's claim.[1] Porro became associated with the Ad Hoc Committee in 1964. In late 1964 he and the City of Kearny's attorney, Robert McCurrie, as members of an MRDA committee, drafted a report urging Governor Hughes to sign A. 44, but apparently their efforts to convene a meeting of the Agency to adopt this report were unsuccessful.[2] From this time forward, however, the title issue was a basic element tending to align the towns against the State, and Porro exerted a continuing influence on the town governments to make common cause with private claimants of Meadows titles.

1965: The Campaign for A. 605

In the Spring of 1965 the New Jersey State Chamber of Commerce mounted a strong campaign of lobbying and publicity on behalf of A. 605, which sought by legislative declaration to limit riparian lands to the area lying within the banks of navigable streams. The Chamber's Ad Hoc Committee had developed this approach to the issue, apparently unimpressed with the constitutional objections specified by the Governor in his veto of A. 44. The strategy, it appears, was to intensify heavily the political pressure on the issue. A. 605's proponents sought to justify the bill by arguing that the State's title claim was based on an entirely new concept of "riparian" which it had never

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[1] Alfred A. Porro Jr., interview.

[2] Draft report, MRDA files of Alvin E. Gershen.

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before asserted; that many thousands of home and property owners who had invested their money and paid taxes in good faith for decades were being wrongfully victimized; and that the State's assertion of title was causing industrial development activity to grind to a halt. Members of the State Chamber which included business and industry leaders throughout the State were urged to express support for A. 605; attorneys representing property owners were urged to develop pressure on local officials and through them on legislators on behalf of A. 605.

Governor Hughes and the Meyner Commission wanted the legislators to wait until the Commission's report was complete, and to give consideration to its title proposals as a mode of solution. But the title lobby was not prepared to settle for less than abdication of the State's claim. A. 605 was pushed through the Assembly on May 3 by a 39-10 vote; seven Democrats, three from South Jersey and four from Hudson County, joined a solid Republican majority. Democrats loyal to the Governor's position moved to require that a fiscal note be appended to the bill estimating the amount it would cost the State; this was defeated by a straight party vote.[1]

At this point the Meyner Commission entered directly into the battle. It issued a statement setting forth its position and its draft proposals on the title issue.[2] Hughes cited the Commission's work in urging defeat in the Senate of A. 605,

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[1] Newark News, May 4, 1965.

[2] Ibid.

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though raising questions about some of the Commission's proposals.[1]

The Commission itself addressed a letter to the Senate, sending a copy to each of its members, urging that A. 605 be set aside so that the Commission's own proposals could be considered. After outlining its own approach and its constitutional objections to A. 605, the Commission said:

> We are aware of the pressures being generated by some industrial and commercial leaders for passage of this bill, as reported in newspapers throughout the State. No doubt their support for the measure is an outgrowth of their recognition of the need for some solution..... We respectfully disagree... that Assembly Bill No. 605 is this answer..[2]

The letter was signed by George Smith and Fairleigh Dickinson Jr., as Vice Chairmen, along with Meyner.

The fight over A. 605 caused a head-on collision within the business community, between the "planning lobby" and the title lobby. Erber was active in urging public support by the New Jersey Committee of the RPA for the Meyner Commission's proposals and thus for the defeat of A. 605. Days before the Senate vote, Robert B. Clarkson, then chairman of this Committee, released "A Statement on the Attempt to Give Away the State's Property Rights in Meadowlands".[3] On the same day, Albert Acken, Director of the N. J. State Chamber of Commerce, issued a statement urging passage of A. 605. Acken had been a member of the New Jersey RPA group's Economic Base Subcommittee which George

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[1] Bergen Record, May 5, 1965.

[2] Erber file on Meadowlands.

[3] Ibid.

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Smith had headed, and had joined in urging a strong State role in Meadows development. But the split over title policy was embarassing - especially so since both Newark newspapers paired the releases and conveyed an impression of a personal collision.[1] The conflict generated some hard feeling, and Clarkson, president of a Savings and Loan Association, found himself in a hotter situation than he had anticipated. Erber says that the incident rendered some of the members of the RPA's New Jersey Committee cautious, and that from then on the Committee backed off from vigorous involvement in the Meadows issue.[2]

The Senate passed A. 605 on May 24; after some bruising behind-the-scenes struggle, the bill barely mustered the eleven votes required for passage. Governor Hughes was involved in a re-election campaign that season, and his opponent, State Senator Wayne Dumont, criticized him for not signing it. Hughes voiced concern about giving away vast assets of the School Fund,[3] and sat on the bill until after the election, which he won impressively. In December he vetoed A. 605 on constitutional grounds. His veto message observed that any solution to the meadowlands problem -

> cannot ignore the fact that while some meadowland owners of record have occupied their property for many years and have developed it at great expense, there are also those who have acquired little more than paper title

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[1] Newark News, Newark Star-Ledger, May 23, 1965.

[2] Ernest Erber, interview.

[3] Bergen Record, Sept. 1, 1965.

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> to meadowlands at tax foreclosure sales or by quit-claim deed and who would realize great and perhaps undeserved benefits if a bill like this were approved.[1]

Such public references to the speculative and windfall elements of the title controversy were relatively rare.

Response to the Meyner Commission Report

Several aspects of the Meyner Commission report generated political flak, and Hughes as a candidate was in the line of fire. There is no evidence that the report provoked much reaction other than among property claimants and local officials; and the reaction among the latter was rather diffuse. But all the reaction there was, locally, was negative.

MRDA town mayors were resentful of the Commission's procedure; they felt it had, in effect, ignored their interests and views.[2] They were explicitly unhappy with the structural proposals: the small, powerful, governor-appointed Authority concept and the lack of any local representation with voting power. And they were generally unhappy over the report's title proposals.

The MRDA as such made no response to the report. It was inactive and few of its members or Mayors retained much faith in it. An effort to publish a newsletter describing the "progress" and current status of the Agency failed because the member towns were unwilling to chip in the rather small sum required.[3]

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[1]Quoted in Newark News, Dec. 15, 1965.

[2]Mayor Paul Amico, Secaucus, interview

[3]Sid Willis, interview.

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Mayor Hill of East Rutherford publicly urged the MRDA to dispute the Commission's title proposals, and endorse A. 605; but Gershen told the press that the Agency had taken no position on the bill.[1]

But the mayors of five of the MRDA towns met with Hughes and expressed their objections to the Commission's recommendations; he promised to consult them before any official actions.[2]

Attorney Porro was active in promoting opposition to the Commission report, with emphasis on the title issue, through political and publicity channels.[3]

Hughes was in a bit of a bind, and the issue was good for some political mileage locally. Nelson Gross, a member of the Assembly and running for a Senate seat that fall, criticized the Commission proposals and proposed that the necessary powers for Meadows reclamation and development be vested in the MRDA, to be strengthened by legislation empowering it to act by majority vote of the towns.[4] (A Bergen Record editorial was sharply critical.[5])

Alfred Kiefer, one of the Democratic candidates for

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[1] Bergen Record, June 23, 1965.

[2] Ibid.

[3] Porro files; series of news releases, summer 1965, and statement to County Democratic Organization, Platform Committee, July 29, 1965.

[4] Bergen Record, Sept. 10, 1965.

[5] Ibid. Sept. 18, 1965.

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State Senate, stressed the Meadows development potential in his campaign and urged creation of a strong new agency with local representation.

The election returns furnish no evidence that the issue made any difference whatever to the voters. Hughes, in a big victory, carried in a majority of the Democratic candidates for Senate and Assembly as well, putting the State in full Democratic control for the first time in modern history. The full Democratic slate for Assembly and Senate in Bergen County was elected, the first time this had ever happened. The degree of voter shift to Democratic candidates was just about the same in the MRDA towns as elsewhere.

Meyner Commission's Second Effort: the Mandate:

Hughes' veto message of A. 605 in December said he would ask the new Legislature to call the Meyner Commission back -

> for the purpose of working directly with the Meadowlands Regional Development Authority and the Department of Conservation and Economic Development on the preparation of legislation that will properly satisfy the legitimate interests of all parties concerned.[1]

However, he indicated that he was still not fully in agreement with the Commission's leasing concept, "preferring a conveyance of title for a suitable consideration to those who have made substantial investments."[2]

At this time he voiced a feeling of urgency on the issue:

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[1] Newark News, Dec. 14, 1965

[2] Ibid., editorial, Dec. 15, 1965

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> Every effort must be made to place specific proposals... before the Legislature during the forthcoming session.[1]

But Hughes in fact did not push the issue in 1966. The Meyner Commission though reconstituted in March, did not arrange for conferences with the MRDA and Department of Conservation and Economic Development officials until May. Some members of the Commission were disappointed that Hughes backed off from his initial urgent request that they report as soon as possible with a bill which the Administration could propose to the new Democratic legislature; although ready earlier, the Commission's "Supplementary Report" was not made public until December.

As the Commission described its mandate for this second effort, it was to mediate a conflict of views between the MRDA and the State planners:

> ... the Legislature ... re-established the Study Commission and asked that we implement the (1965) report after consulting with representatives of the Meadowlands Regional Development Agency and the Department of Conservation and Economic Development.
>
> In undertaking this new charge, we decided to achieve two objectives. We would submit a draft bill that could form the basis for concrete legislation. We would try to accommodate the differing views of the two groups with whom we had been asked to consult insofar as accommodation would not vitiate the goals that all who are interested in meadowlands development profess to seek.[2]

But in fact the difference between the views of the two groups named was far less than that between the Commission and

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[1] Ibid., Dec. 14, 1965

[2] New Jersey Commission to Study Meadowlands Development, Supplementary Report, (Trenton, 1966) p. 1.

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local officials; and from a political point of view, Hughes' problem was to get Meyner and his associates to modify their proposals enough to make them locally palatable. The Commission did not fling itself into this effort with any degree of abandon; in the only parlay recorded, Berger representing the Commission met with the MRDA's "Executive Committee" consisting of Gershen, Nathanson, Sidney Willis, (previously on the State Planning Staff, and in 1965 with the Jersey City Planning Board) and two others. MRDA, for its part, had no official meeting throughout 1965 or 1966, raising legal and practical questions of whether it existed or whether anyone had status to represent it. In general the "Executive Committee"'s position was that the Demonstration Study under way by the State in conjunction with Rutgers University hopefully would develop a feasible mode of intermunicipal action, and that "until all the studies now being conducted were completed, judgment should be reserved as to the most workable type of development agency.."[1] But the Meyner Commission had identified a commitment to an intermunicipal approach as a fatal limitation of these studies.[2]

The State officials, for their part, did not have a clear position. The conviction was slowly forming among them that the State must play a strong and probably leading role in whatever agency was created, and that there were important State

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[1] "Notes on meeting of Executive Committee MRDA and Professor Curt Berger", May 24, 1966. Gershen files.

[2] P. 148 above.

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interests, often running counter to specific local interests, which should be vigorously asserted. But the officials closest to the situation, Chavooshian and Schneider, continued to place high value on local representation and participation. Commissioner Roe was reportedly less committed and more skeptical on this point.[1]

Meyner Commission's Second Effort; The Report

The Commission's Supplementary Report restated strongly its recommendation of the need for a strong State agency:

> Central to our conclusion is a belief in the need for a state agency ... In this opinion we have not swerved. We did not believe in June, 1965, and we do not believe in December, 1966, that the financing, engineering, and coordinated administrative effort needed to reclaim thousands of acres - spread among many municipalities... can feasibly rest on an ad hoc, untested and unlikely series of intermunicipal arrangements.[2]

Clearly, the paramount concern of the Commission was to insure the proposed Authority's ability to reach firm, clear decisions on complex matters of great consequence, and bull them through. They did not want to separate the powers and responsibilities involved, nor to establish representation on the decision-making bodies on a federal basis. But the demand for some representation of the local point of view put the Commission under heavy pressure to modify their earlier proposal in this direction.

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[1] Interviews, Eugene Schneider and Sidney Willis.

[2] Op. cit., p. 1.

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Their proposal to resolve this conflict was to separate the function of reclamation from the function of planning and development control. The reclamation function would still be the job of a three-man Authority, appointed by the Governor. Planning and development control would be the responsibility of a separate five-man agency, one member named by the Governor, and two members each by the Bergen County and Hudson County Freeholders.

The Commission's sense of difficulty in accommodating the demands for a local voice, while preserving the essential power and will to realize regional and State goals, is evident in the language of its report; and its reluctance and misgivings are evidenced by several specific points in its proposals.

> Although deciding that land use planning should remain an essentially local responsibility, we were still unwilling to spread that responsibility among the fourteen separate Hackensack municipalities, each privileged to go its own way unmindful of its neighbors and unconcerned for the impact of meadowlands development on the region and the state.[1]

Most pointed of the recommendations in this regard was that the county Freeholders, (rather than the officials or voters of the Meadows towns) would name the planning agency members. The counties constitute a much wider regional base; Bergen County's meadowlands towns in particular are greatly outnumbered by towns to the north. The Commission also specified that:

> Unlike most planning bodies, this agency would not be required to seek local legislative approval of its plan,

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[1] Ibid., p. 3.

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> but consultation with the municipalities ... would precede plan adoption or amendment.[1]

Further, the report pointed to "the nexus that binds reclamation to planning"[2] and warned that "the reclamation authority must not be paralyzed if the separate planning agency fails to act or, having acted, produces a plan that will impair the authority's financing program."[3] Accordingly,

> We would authorize the Governor to replace any of the locally-chosen members if the agency does not discharge its duties expeditiously and in accordance with statute....(and) we have required the planning agency, prior to plan adoption, to procure authority certification as to the plan's financial feasibility.[4]

The Commission also revised significantly its recommendations for machinery to resolve the title tangle: instead of charging its proposed State authority to make an administrative determination regarding contested title claims, it proposed the creation of a Land Titles Court with original jurisdiction in disputes relating to the State's riparian claims; the authority would be charged to survey all meadowlands in the State and indicate the extent of the State's claims.[5]

The Meyner Commission's legislative proposal was silent on one matter of great consequence: the sharing of tax burdens

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[1] Ibid., p. 3.

[2] Ibid.

[3] Ibid., p. 4.

[4] Ibid.

[5] Ibid.

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and benefits. An MRDA report in 1960 had articulated the principle of an arrangement whereby the tax revenues generated by new Meadows development after reclamation, would be used to pay off reclamation costs, and the surplus would be equitably divided among the towns on the basis of new tax burdens generated by development. This concept was the premise of a joint State-Rutgers study which was initially proposed in 1963; but this study had barely gotten under way three years later. Since there were no studied proposals available to it, the Meyner Commission chose to remain silent rather than improvise its own recommendations on the point. It recommended only that reclamation costs could be assessed against the properties benefitted. But it was precisely this question of how reclamation and planning would affect the incidence of new tax burdens and benefits among the towns, which was their greatest concern.

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## CHAPTER VIII - FROM THE MEYNER COMMISSION TO S. 518

Paul N. Ylvisaker was named by Governor Hughes in December 1966 as the head of the newly-created Department of Community Affairs of the State government. Ylvisaker, a political scientist specializing in urban government, had served as an executive of the Ford Foundation for several years and was recognized as an advocate of vigorous and creative leadership at the state level to cope with the intensifying problems of central cities and sprawling metropolitan areas. Ylvisaker's daily trip to Manhattan from his home near Princeton carried him through the Meadows; and his interest in the problem they presented had been sparked when Berger, in 1964, had reviewed the Meyner Commission's assignment with him and had discussed the possibility of Foundation aid to fund planning studies.[1] Ylvisaker's interest in the meadowlands' potential was a factor in his taking the New Jersey post.

Ylvisaker's new department brought together, and restructured, several divisions from other departments, as well as some new operating agencies. It included the Division of State and Regional Planning, shifted from the Department of Conservation and Economic Development; (but the Resource Development Council and the Bureau of Navigation, which had important responsibilities in the meadows, stayed where they were.)

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[1]Letter, Berger to Meyner, Dec. 23, 1964. Files of The N. J. Commission to Study Meadowlands Development.

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In 1965 the Bechtel Report had characterized the State planners as strongly conditioned to an intermunicipal approach. In the next two years these planners, particularly Chavooshian and Schneider, found themselves sharply challenged by the Meyner Commission on the one hand, but unable to elicit constructive and positive responses from the local officials associated with the MRDA on the other hand. Also, these men had a stake in the land-use planning studies and the study of intermunicipal tax-sharing they had launched, financed mainly by grants from the federal Housing and Home Finance Administration; whereas the Meyner Commission had in effect dismissed these studies. Accordingly, the planners' views were out of tune with the Meyner Commission recommendations on several points.

Ylvisaker exerted a decisive influence in getting them to break away from their commitment to an intermunicipal approach and to embrace the concept of a dominant State role.[1]

In January, 1967, Chavooshian wrote Gershen a letter which plainly signalled that the State felt it was time to move on to a new basis. (At the same time, Chavooshian still hoped that the MRDA could be brought into a useful role in a new structure; the State's land-use studies were nearing completion, and Chavooshian's letter pointed to the need for MRDA to respond with specific recommendations.)[2]

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[1] Eugene Schneider, interview.

[2] Letter dated Jan. 19, 1967; Gershen files.

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## Role of the Lord Committee

Another important influence on the legislation that emerged was the Lord Commission on New Jersey Public Policy Problems. This was a sort of "Brain Trust" group which had been formed early in the Hughes administration by Thorn Lord as State Democratic Chairman. This group drew on academic and other talent in the Trenton-Princeton-New Brunswick area to furnish expert advice to the Governor. When it became apparent, in the fall of 1966, that the Meyner Commission's specific legislative proposals would present sticky political and legislative problems, the Governor asked the Lord Committee, as it was usually called, to look at the whole Meadowlands question. The assignment was given to a sub-committee which was headed by Archibald Alexander, Jr., and included Alvin Gershen; another member, Jameson P. Doeg, played a key role in drafting structural recommendations. This sub-committee's exploratory sessions included a number of those, inside and outside of the administration, who had been involved in the Meadowlands issue, including Chavooshian and Schneider, Beatrice Tylutki, Charles Nathanson, Ernest Erber, and Dr. Ernest C. Reock of Rutgers who had principal responsibility for the municipal tax-sharing study.

Alexander feels that the Committee by virtue of its objectivity and freedom from commitment to any involvement in any of the past controversies, was able to exert a valuable influence in moving the State people toward a consensus around a workable position, even though significant differences of

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attitude continued among them.

As a member of the sub-committee, Gershen initially made a strong presentation of the MRDA case, but subsequently concurred in the principle of a dominant State role.[1] The sub-committee did share a consensus that the Meyner Commission had ridden roughshod over the MRDA to an unnecessary and highly impolitic degree; and much of the Lord Committee's deliberations focussed on how an authority could be structured to allow for more adequate representation of local concerns.

Its report, dated March 9, 1967, reexamined the Meyner Commission's decision to split reclamation and planning powers, and pointed to the importance of a unified approach to reclamation and land-use planning. It recommended that there be a single agency, and proposed that either there be strong minority representation of local interests on the agency, or that they be represented by a review board with substantive powers. The Committee's report discussed the range of alternatives for balancing representation of the different levels of interest; this question continued to be a bone of contention over the next twenty months, with several different formulas of representation appearing in draft legislation at different stages.

The Lord Committee pointed to some of the difficult problems relating to the financing of reclamation. The Meyner Commission draft bill had simply provided that the authority would

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[1]Archibald Alexander, Jr., interview.

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assess a share of the reclamation cost to each municipality; it had not indicated how each town's share was to be determined. The problems attached to this had political ramifications; some towns were much more dependent than others on reclamation work to bring meadowlands into development. Should the cost of tidal works be apportioned equally on an acreage basis, without regard to this difference? And there was the closely related problem of tax-sharing, already mentioned. (p. 169 above.) It did not undertake to answer these questions, but simply posing them served to identify the areas where further work was needed to develop the concept of a strong State agency into a practical legislative proposal.

Introduction of S. 518

Early in March Governor Hughes announced that meadowlands legislation was being prepared for introduction later in the spring. Detailed work on a draft did not begin until April, when Ylvisaker summoned a conference which included Chavooshian, Schneider, Clifford Goldman of Ylvisaker's staff and Roger Scattergood of the Division of State and Regional Planning, who had handled the State's end of the joint study with Rutgers on tax-sharing. The conference also included Senator Al Kiefer, who agreed to sponsor the bill. Ylvisaker charged his staff to have a bill ready in three weeks. The Land-Use studies had been developing at a pace which seemed to presume an eternity of tomorrows, and the municipal tax-sharing study was working its way through an

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elaborate schema of data-gathering and theoretical analysis, so the mandate to have a pragmatic product in three weeks' time was something of a shock to the staff planners. The task was completed in about that time, however. It was long - 43 pages, - and complex, and in some of the difficult and innovative areas such as tax-sharing, the need for further definition and clarity was evident.

Kiefer introduced Senate Bill No. 518 on May 15; Ylvisaker and Kiefer held a press conference to describe its provisions. It followed the recommendations of the Lord Committee (which had never been publicized) rather than of the Meyner Commission, on makeup and structure of powers. It provided for a single agency, with the power to plan and carry out reclamation works, and formulate and administer a master plan of land use. The Agency was to be composed of 11 members - four members of the Governor's cabinet, three other citizens appointed by the Governor, and four members named by county and local officials: one each by the Bergen and Hudson County Freeholders, and one each by the Bergen County mayors and the Hudson County mayors of the municipalities in the agency's area of jurisdiction.

On the question of title, S. 518 proposed a new Title Board, quasi-judicial in character, to be established in the Department of Conservation and Economic Development. It charged this Board first to make a prompt survey and public declaration of the lands to which it claimed title; it would then conduct initial adjudication of conflicting claims. It would take over

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the power of issuing grants, leases or licenses. In the most general terms, the bill made provision for the Title Board to make grants or leases to private claimants, "if satisfied that a conveyance will be in the public interest". Under these provisions, it was the expectation of the bill's authors, the Board would probably employ the guidelines and leasing procedures on which the Meyner Commission had focussed much of its attention; but it was not deemed sound to mandate these procedures in the legislation.

Regarding sharing of costs and benefits, S. 518 provided in very general terms that towns would be assured at least as much tax revenues as they were presently getting from meadowlands properties, and would be compensated for service costs generated by new developments; it provided that tax revenues generated by new development or enhanced values would be pooled and that any surplus remaining after meeting services costs, Agency operating costs and debt service for project costs would be distributed among the municipalities on the basis of their proportionate Meadows acreage. But these provisions were quite vague on the specifics of implementation.

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## CHAPTER IX: THE PROGRESS OF S. 518

An important development paralleling the introduction of S. 518 in the Spring of 1967 was the staging of a public "seminar" on Meadows problems late in May by the Meadowlands Institute. Attorney Al Porro had been the prime mover in forming this organization in September 1966. The incorporation meeting took place in his office. He was initially designated its consultant, and subsequently became its counsel. At that time he represented several industrial and development clients with meadowlands stakes. Justin Toomey, president of a Hackensack mortgage and title company, was named President. Other officers were associated with various ownership or development interests.

The organization solicited membership among a wide circle of property claimants, developers, attorneys, construction-related firms, etc. (There was little link between the Institute and local officials at the early stage, except for the considerable overlap resulting from the local business and professional involvement of local officials.) Several hundred companies or individuals paid dues or contributions and received the organization's mailings, but only a small group of leaders were involved in most policy decisions, and Porro had a fairly free hand in his activities publicizing opposition to the State's title claim.[1] He was also engaged to enter an amicus curiae

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[1] Meadowlands Institute, News Release file, Porro offices.

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brief for the Institute on behalf of private title claimants whose cases were scheduled for a February 1967 hearing in the State Supreme Court, from which a definitive decision was expected.

In its appeals for broad membership, the Institute made strong professions of commitment to optimal Meadows development. A membership meeting in December 1966 approved plans for a public information and education program, and in line with this a committee was set up to prepare for an all-day seminar on meadows development problems. This committee did not share Porro's heavy commitment to private title claimants, however. It was headed by Dr. Clair Black, vice-president of Fairleigh Dickinson University, and one of its members was Grace Harris, Executive Director of the Passaic Valley Citizens Planning Association. Ylvisaker was among those invited to attend the seminar. Several organizations agreed to serve as co-sponsor for the event, including The Record of Hackensack, the County Chamber of Commerce and two regional C. of C. units, the State Chamber of Commerce, and several banking, title insurance, mortgage and real estate institutions.

An ambitious program was developed, with workshops on riparian title questions, reclamation problems, and government structure.

S. 518 was introduced a scant two weeks before the seminar and was thus, naturally, a principal focus of its interest. Ylvisaker and Kiefer were the major speakers at its plenary

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session. The seminar drew an attendance of about 200 people of widely varied background, who paid a $10.00 registration fee.

An account of the seminar in The Record observed that it had apparently pieced together considerable bipartisan support for S. 518.[1] Fairleigh Dickinson Jr., who had recently been announced as a Republican Organization choice to run for State Senator in the coming fall campaign, was on the panel of the plenary session. The depth of his past involvement in the meadows was not widely realized. G.O.P. candidates in the 1965 campaign had taken a home-rule, pro-MRDA position, and S. 518 was identified as a Democratic administration project, and therefore many assumed Dickinson would oppose the bill. When he backed it, even though in very general terms and with reservations, it made a considerable impression.

The seminar revealed a sizable latent constituency for some kind of vigorous action to develop the meadows intelligently that had not previously been given the stimulus and the occasion to come together. (Nor was there ever a subsequent occasion.)

Ylvisaker's Role and Influence

Ylvisaker's personality and modus operandi were effective at this stage in rallying support and moderating opposition. He was active at this time in personal contacts with influential individuals in several different sectors - mayors, property owners,

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[1] The Record, May 29, 1967

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developers, county officials, etc. His personal manner was friendly and attractive. His characteristic approach was to seek initially to establish a strong basis of rapport and common agreement, with an articulate and often inspiring appeal to shared positive goals; and to urge the value of seeking agreement on ways to achieve these goals, while expressing an attitude of flexibility and readiness for give-and-take in exploring means.

In the final analysis there is scarcely any evidence that Ylvisaker was able to convert any local officials to advocacy of a state-created regional agency; nor was he able to convert any private property claimants to cheerful acceptance of the primacy of the state's claim. But it appears that he was able to weaken the unity and ferocity of the opposition, and to persuade individuals in both the main sectors of opposition of the value of a unified development plan and the need for a strong State role, and to narrow their opposition to the specific terms of local representation.

Hearings on S. 518

The Committee on Air and Water Pollution and Public Health of the New Jersey Senate held three days of hearings in June on S. 518. The Committee Chairman was Senator Frank J. Guarini, Jr., Democrat of Hudson County. Also a member of the Committee was Senator Ned Parsekian, Democrat of Bergen County.

Altogether 36 persons testified. To summarize the testimony, it is useful to sort the witnesses into three broad categories: officials of the Hackensack Meadows municipalities,

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citizens holding no government office but representing one or another interest group, and state officials together with officials of other public agencies operating above the municipal level and candidates for elective State office.

Within each of these categories, there was a distinctive pattern of agreement and conflict. It must be pointed out that there were two separate issues on which virtually all attention focussed: (1) should a new agency, having the whole meadows region as its jurisdiction, be set up by the state and invested with strong project and planning powers? and (2) how should the title conflict be resolved? The local officials were unanimously opposed to S. 518's proposal of an agency which would supercede local powers in the meadows. Their stated opposition centered on the proposed makeup of the Authority, with a heavy predominance of Governor's appointees. But the real thrust was against the invasion of local powers: of the dozen local officials who testified, only one said he would accept the agency if its composition were shifted to give a greater voice to members who were residents of the towns affected. Most of the local officials, while giving lip service to the idea of unified planning and development control for the region, in effect demanded that any agency established give majority power to members named by the component towns; none would specify willingness to subordinate local powers to a regional decision. Characteristically, none was willing to advance specific alternatives.

Most of the local officials, however, avoided taking a

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strong position on the title question. All of the five who did take a position, argued that the State should vacate its title claim or otherwise accomodate local and private claims; but generally this seemed to be a peripheral aspect of the problem to them.

At the same time it was clear from the testimony that the local officials identified their towns' interests very closely with industrial development in the Meadows, and viewed private developers as the heroes of the situation - (or when they had been active in bringing industry in, they viewed themselves as the heroes.)

In the category of private citizens associated with specific interests, there was much more variety and no such unanimity. Several were primarily concerned to advocate regional development, and several others were concerned to plead the case of private title claims. It is at least as significant, however, that there was not a clear and sharp polarization between these two groups, since several of those most concerned with private title claims endorsed the principle of regional development.

In all, there were ten witnesses in this group. It included spokesmen of the "land interest", title claimants, title insurance company attorneys, and developers; representatives of the "planning interest", and spokesmen for the business community. It is clear that the title issue had operated to relegate the planning issue to a secondary position within the business community and to weaken the support that might otherwise have

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been available within the business community for planned regional development. One typical pattern of testimony combined vigorous championing of legislation to vacate the state's title claim, with a feeble and grudging endorsement of a unified planning approach; two spokesmen of the State Chamber of Commerce followed this pattern. One developer, H. Jerome Sisselman, expressing high personal regard for Ylvisaker, pleaded strongly for private title claims and just as strongly for unified regional development planning. The spokesman for the Bergen County Chamber of Commerce avoided a stand on the title issue and endorsed the bill's planning mechanism; so did the spokesman for the PVCPA and the state legislative representative of the AFL-CIO. Only one witness - Erber - made a strong claim for the public stake in meadowlands titles. In all, five witnesses in this group testified in favor of unified regional planning, two endorsed the principle feebly when pressed for a stand, one double-talked and one opposed the concept.

Among State officials, and candidates for elective state office, eleven favored a strong action and planning agency and one, a fringe-party candidate, opposed it. Seven of these same 12 witnesses supported the bill's provisions for resolving title, while the other five did not mention it.

Another interesting aspect of the testimony is the very weak showing of the "planning interest". The broad public stakes in meadows development are great, but there were not many voices to articulate this interest. If we leave out candidates for

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office and state officials there were only two witnesses - Erber and the state spokesman for organized labor, - who made a strong statement in support of unified planning.

Ylvisaker and his associates did not use the hearings to document convincingly the failure to protect or implement public purposes in the development which was going forward, or to give detailed evidence of the positive potential of a more coherent and rational approach. Ylvisaker's testimony struck an affirmative note but was extremely general. There was no effort to summarize the salient and most relevant findings of the studies which the State Planners had been carrying on for four years.

The testimony of H. Jerome Sisselman on the issue of unified planning versus "home rule" was noteworthy. Sisselman had been the most active and enterprising of several industrial developers in the meadows in the preceding decade. He had developed the East Rutherford Industrial Park, which currently comprised 25 buildings totalling 1.8 million square feet on 109 acres of land. Excerpts from his testimony follow:

> ...The area of 21,000 acres encompassed in this district is just about one-third larger than the City of Newark. So just contemplate it having 18 planning boards, 18 zoning boards and 18 boards of adjustment... There are very few owners of large parcels. Economically, everyone tries to get the most out of a piece of land. They erect a project on a piece of land and then move on. They don't have to think of the damage or harm they've done to themselves or others, because they have no more land left. Under these circumstances, how can it ever be hoped that these 21,000 acres might be developed into a major unified development.

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> Under the present splintered conditions of area development, why should East Rutherford, for example, have to build a playground, a park, recreational facilities and other cultural facilities thus removing such land from the tax ratables for the benefit of all the other 17 communities?
>
> Streets are being laid out in a haphazard manner running in all directions with many dead ends and with minimum width requirements in order to make ingress and egress to small parcels...
>
> SENATOR GUARINI: Would you in essence be against the MRDA as it is operating?
>
> MR. SISSELMAN: It's a waste of time, because you're not going to get 18 municipalities to agree upon anything.[1]

## S. 518's Death and Legacy

The Legislative session adjourned soon after the hearings and did not resume until after the Fall elections. No real effort was mounted to pass S. 518. Ylvisaker, in his hearing testimony and elsewhere, frankly characterized it as a point of departure rather than a finished piece of legislation, and he invited proposals for its improvement. Gov. Hughes did not identify S. 518 as an Administration bill and did not ask for support for it. In the Summer of 1967, the prospects of meadowlands legislation depended considerably on two unknowns which would not be resolved until the Fall: how the elections would affect the makeup of the Legislature, and how the State Supreme Court would decide the meadows title cases it had heard in the Spring.

Ylvisaker during this period made a number of efforts

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[1] N.J. Senate Committee on Air and Water Pollution and Public Health, Hearings on S. 518, (Trenton, 1967) pp 49-50A.

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to establish better lines of communication with some of the Mayors and others who had voiced opposition. In this he had only limited success. At a dinner set up in May by Mayor Healey of Kearny for Ylvisaker to meet with mayors of the MRDA towns, for example, only four other mayors showed up.[1] Though he was able to get on a friendly footing with a number of mayors individually, there was no perceptible shift away from the attitude of suspicion and antagonism toward the meadows bill among the mayors as a group. Meanwhile, there was no concerted effort by the bill's proponents to redraft it to assimilate the criticisms expressed at the hearings.

In the 1967 election campaign, which involved the entire Senate and Assembly, the Meadows issue was generally treated as one which involved more hazards of losing votes than hopes of gaining them. The Bergen County Democratic platform statement placed more stress on placating South Bergen home-rule fears and title claims than on affirming the benefits of regional development and the need for a strong State role.[2] The Republican platform called for legislation to create a "strong authority" but hedged carefully on home rule, calling for development " in consonance with the majority will of the municipalities involved."[3] As a practical result, the issue was put aside

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[1] The Record, May 18, 1967.

[2] Bergen County Democratic Organization, 1967 Platform, p. 57.

[3] Bergen County Republican Organization, "Toward Responsible Government", June 1967, p. 6.

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through the campaign.

Probably the most important aspect of the election campaign for the Meadows issue was that Dickinson, as a Republican Senate candidate from Bergen County, was influential in getting his party's County organization committed to the basic principle the Meyner Commission had enunciated: creation by State law of a new agency with clear and ample power to accomplish reclamation and unified development. Dickinson played host to his Senate running mates at his summer home on Martha's Vineyard in August 1967, where they worked out more detailed agreement on major legislative goals, and Dickinson says he secured a firm understanding with them on support on a Meadows bill. There was no comparable understanding with the G.O.P. Assembly candidates from Bergen, although all of these too voiced support of the party's platform plank on the issue.

But even the Republican candidates' commitment was important internally - in terms of their future action as legislators - rather than in creating an important campaign issue. The Republican candidates did not stress the Meadows theme, and the voters did not show much interest in it.

Among the Democratic candidates, only Senator Parsekian gave the Meadows issue heavy attention. He featured the positive potential of the Meadows for economic development, transportation needs, recreation space and as a State College site, in news releases and campaign literature. But when the votes were in, Parsekian though he ran slightly ahead of his four

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Democratic running mates, was badly beaten along with them. The Republicans took all the Bergen County Senate and Assembly seats, typically by a 3 to 2 plurality. The Republicans gained strong control of both houses of the Legislature. School bussing, unemployment pay to workers on strike, and disaffection of some Democrats over Vietnam were thought by pundits to be factors in the outcome; but no one viewed the Meadows issue as a factor.

Soon after the election, Senator-elect Dickinson indicated to the Governor's office his interest in sponsoring a meadowlands bill acceptable to the Administration in the '68 session. As an alternative, the Administration might have tried to push through a bill in the lame duck session of the Democratic-controlled Legislature which convened in November, but the prospects of this were rather forlorn, since time was short and there were a number of political problems, in addition to the technical deficiences in the bill itself, which would have to be resolved before there could be favorable prospects for S. 518. Ylvisaker and the Governor's office accordingly responded favorably to the Dickinson overture, and began consultations and planning to prepare a revised bill for introduction in the 1968 session.

Senator Guarini made a brief effort to get action on S. 518 in November, but this was on his own initiative with no encouragement from the Hughes administration. As chairman of the committee charged with the bill, he reported out an amended

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version. The purport of the amendments was to change the composition of the proposed Commission to provide a stronger local voice. But the proposal failed to muster enough support to bring it to a floor vote.

Supreme Court Ruling on the Title Issue

Shortly after the election the State Supreme Court handed down a ruling in the case of O'Neill vs. State Highway Department.[1] In addition to extensive briefs by the plaintiff and the State, amicus curiae briefs had been filed by Porro for the Meadowlands Institute, by attorneys for the New Jersey Title Insurance Association, and by the Meyner Commission. The full range of research and argument was thus before the court; and its ruling was regarded as definitive of the principles on which a great number of pending and latent meadows title cases would be decided.

The decision stated that past inaction in the matter by the State could not deprive it of its claim, nor could adverse possession of whatever duration. It affirmed that original title belonged to the State of all land now or formerly flowed by the tide at mean high water. It indicated that the question of State title should be determined by the line of mean high tide, and that it must be shown that the land in fact is or had been tide-flowed. It stated that where the present status of the land is not accepted by one of the parties, the burden of proof will be on him to show that the former status was different -

[1] 50 N.J. 307 (1967).

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for example, to show that roadways, fill or the like have raised land which was formerly tide-flowed above the high tide line; or that conversely, ditches have opened to the tide land formerly not reached by it. For reasons inherent in the physical complexity of the problem, the decision, though establishing criteria of proof, left thousands of potential disputes to be settled each on the basis of its own facts, which in many instances would still be subject to conflicting interpretation on the crucial point of whether a given piece of land is or formerly had been "flowed by mean high tide".

S. 518 had contained provisions to expedite the resolution of these disputes; of particular importance was the provision requiring the State to define the scope of its claim within a stipulated time. Any 1968 Meadows legislation would presumably contain similar provisions. The attorneys for private title claimants and the title companies had to decide whether to acquiesce in the resolution of title disputes on the basis of the tests specified in the O'Neill decision, or to make a further effort to gain a change in the rules by political means; in the closing weeks of 1967 the legislative subcommittee of the Ad Hoc Committee on Riparian Lands of the New Jersey State Chamber of Commerce gave intensive study to a new legislative approach,

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## CHAPTER X: FROM 1958 to 1968 - WHERE THE YEARS WENT

By the end of 1958, Fairleigh Dickinson Jr., Ernest Erber and others associated with the Meadowlands Regional Planning Board were convinced, (on the strength of six years' experience with the voluntary intermunicipal approach which included three years of intensive, well-conceived and ably executed planning studies) that a strong State agency would be needed for the reclamation and unified planning of the Hackensack Meadows. As a consultant to MRPB paid out of Dickinson's pocket, J. Roland Wank, former chief planner for the TVA, drafted a proposed State Reclamation Law. Dickinson took this to Trenton but got a negative reception from then Governor Meyner and his Conservation and Economic Development Commissioner.[1]

Nine full years later, Dickinson as a Senator-elect began working with Democratic administration leaders on the drafting of what proved to be a viable bill. In those intervening years, the scope of the Meadows opportunity was diminished by extensive construction in the more accessible portions of the Meadows, and the costs of achievement increased enormously. Land values skyrocketed from a range of $1,000 an acre to a range of $50,000 an acre. Speculators' acquisitions of municipal land auction bargains had matured into potential multi-million dollar equities, whose holders were prepared to spend heavily and fight bitterly for their stakes.

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[1] Ernest Erber, interview; a copy of the draft proposal is in Erber's files.

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It seems altogether likely that wiser leadership could have ripened the issue of a State meadowlands agency far more rapidly. Had Meyner, for example, evaluated Dickinson's 1958 proposal by the same logic he applied to his task as chairman of the Commission he headed six years later - and had he bid his Commissioner of Conservation and Economic Development forthwith to design appropriate legislation and to promote and bargain for its acceptance by local officials - it seems quite conceivable that something like the Hackensack Meadowlands Development Commission might have been legislated before Meyner left office. Of course, there can be no certainty much less precision in such supposings, but it seems reasonable that what took nine years to accomplish, might quite plausibly have been accomplished in three had certain pivotal judgments been different. Since such a high price was paid for the extra years, it seems worthwhile to review the experience to extract any lessons which might aid the avoidance of similar mistakes in other situations.

The years 1959, 1960, 1961, 1962 and most of 1963 were taken up by the effort to bring an intermunicipal agency into being and bring it to a point of being willing and able to make some significant decisions - e.g. planning appropriations - which the component towns would honor. In mid-1963, after four years in which it had accomplished virtually nothing, the MRDA clearly failed this elementary test. At this point the State planners, who till then had scrupulously honored the fiction that the intermunicipal agency was sovereign and they were

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merely technical servants, began to exercise some autonomy, as agents of the sovereign State, in carrying forward planning studies; but they continued to be fully committed to the proposition that the towns, collectively, still held the power to make the vital decisions.

Given the total unsuitability and incapacity of the machinery, and the extreme ambiguity of authority and responsibility in the situation, it is not surprising that work by the State on land use studies, though critical to the overall scheme, proceeded with agonizing slowness: outlined in 1963, authorized in 1964, funded and executed over the period 1965 through 1967. The Corps of Engineers meanwhile had begun engineering studies in 1962. These too proceeded at an elephantine pace; but the Corps cannot fairly be faulted, since they pointed out early and often that engineering decisions must follow land-use decisions, in terms both of schedule and policy; and they also pointed out repeatedly that the vital ingredient missing from the situation was an agency able and willing to reach land-use decisions and enforce them, and to pay the piper for the concomitant engineering works - or at least to pay the local share.

It is notable that through all these years of clumsy, confused and ineffectual "cooperative effort" by the State and the towns, virtually no money was put up other than federal money ( through the Corps of Engineers and the HHFA) - despite frequent reiteration by most of the participants that there were

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enormous potential economic benefits to be realized. (The State contributed $50,000 of the cost of the land-use and tax-sharing studies; the towns paid in about $12,000.)

Despite the patent weaknesses of machinery and efforts, there was no perceptible movement from 1959 through 1966 within the MRDA towns, nor within the State bureaus most directly involved, toward new structural initiatives to resolve these weaknesses. This resolution was only set in motion by separate initiative in 1963, by those who had been skeptical of the MRDA approach in the first place. It took two more years for the Meyner Commission to articulate, in a forceful and authoritative way, the proposition that the MRDA approach was fatally defective and that a strong State agency was needed. It took two more years to develop a secure consensus for this proposition within the Hughes administration, and it is questionable if this would have been achieved if Paul Ylvisaker had not come into the picture.

Intermunicipal Cooperation a Defective Concept

In the writer's judgment, enormous needless mischief was done by creating the MRDA and entrusting it with primary responsibility for Meadows development. Once in being, MRDA constituted a formidable dog in the Meadows manger, with far greater preemptive and defensive effect than could have been achieved by the disparate yips and yaps of eighteen separate towns.

As a test of the concept of intermunicipal joint action MRDA was badly conceived, for reasons which were clearly iden-

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tified by Ernest Erber at the time. (p. 89 above.) Because an inappropriate enabling law was used, it was vested with inappropriate powers. The lack of a mechanism to reach binding decisions by the vote of a specified majority of representatives was certain to render the organization helpless, given the number of towns involved. The very notion of attempting to realize voluntary intermunicipal concert among 14 to 18 towns was so obviously improbable as to reflect serious discredit on the judgment of those responsible for propagating it. There was not a single successful precedent they could point to, of even a much smaller number of towns dealing successfully with comparable problems by voluntary cooperation.

But it somewhat befogs the real issue to say that the MRDA was not a good test of the intermunicipal concept. The vital point is that the intermunicipal concept is inherently defective as an approach to regional planning and development controls, and this should have been recognized at an early point by the professional planners and administrators at the State level.

A memorandum in the files of the Meyner Commission, from Curtis Berger to the chairman, in discussing whether the Commission should propose the creation of a State agency for the Meadows, observed that "this proposal may be premature, for it assumes something we have not yet demonstrated - that a state agency <u>is</u> best suited to handle Meadows development."[1] The

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[1]Memo dated Dec. 23, 1964, regarding the Bechtel survey then in progress.

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problem that is implied here, is that Berger even then did not feel it was possible to prove in a dispositive way, that the MRDA structure was faulty - even though each of the Commission members interviewed stated that this was evident to them, prima facie, at the very outset of their deliberations. (p. 140 above.) This is cited here to give weight to an assertion which might at first glance seem unsound: that it is virtually impossible to prove by trial-and-error that voluntary intermunicipal machinery will not serve adequately for regional planning. (However much data of past failures there may be, the assertion can always be made that "this time it might work", and there is no logical way to deny such a proposition.) Yet, though it cannot be "proven", it can be convincingly demonstrated by honest and carefully reasoned analysis. And there would seem to be a responsibility among officials and professionals to respect such analysis. Serious commitments of public resources which are based on personal preference, hopes, prejudices or dogma - such as the notion of "home rule" - but which fly in the face of reason and probability, are inherently irresponsible. Where the burden of proof is clear, those on whom it falls should not be permitted to dodge it.

The Basis of the Fallacy

What follows is an analysis to make explicit the nature and basis of the fallacy in the intermunicipal approach.

Local government concerns center on land property - primarily on private property; from one perspective, virtually all

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local government activity is concerned with the protection, servicing, and value-enhancement of the real estate parcels within its boundaries. (Schools are an important exception, but even here, for example, it is neither uncommon nor illogical for proponents of heavy public school outlays in suburban towns to stress the argument that quality schools pay off in high property values.) Paradise, for the local official, is a town where property values keep going up and property tax rates keep going down.

Closely linked is the intense concern of local officials with industrial development in particular, because it allegedly adds more in tax revenues than it demands in municipal service costs. The boast of having attracted new industrial "ratables" is a standard theme of municipal political oratory.

Also, it is a fair generalization that the career stakes and capital worth of most elected local officials are directly linked to local land interests and to industrial development in particular. They own homes in the town. Often they own other property. Normally their public job is part-time with only nominal pay; and more often than not the full-time occupation of the local official is tied closely to the service of local property and its development. The biographical sketches of its 24 Commissioners and mayors in the MRDA's 1960-61 Annual Report[1] document the point:

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[1] op. cit.; 13 pp. following Transmittal Letter.

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| Lawyers | 5 |
| Real estate and mortgage brokers | 4 |
| Development-related business (engineer, contractor, building supplies) | 3 |
| Utility company executive | 2 |
| Government employee | 2 |
| Corporate employee | 3 |
| Business proprietors | 5 |
| School teacher | 1 |
| Union official | 1 |

An observation by Ernest Erber provides a very revealing insight into the resulting perspective and motivation of the local official:

> The municipal level, with its heavy reliance on the property tax, tends to function in the intergovernmental framework as another expression of private interest, rather than public, insofar as the municipality assumes aspects of an entrepreneurial corporation with the property owners as shareholders. Thus, what is fiscally advantageous to a municipality is so quickly and transparently translated into fiscal benefits to property taxpayers that their desires, expressed as pressures on city hall, influence policy with great disregard to the wider public benefits of housing, employment, recreation, regional transportation, clean air and water, visual impact and ecological balance.[1]

The concerns which shape a local official's decisions in running his town do not diminish in their importance for him when he addresses the questions posed by intermunicipal planning ventures. It is not as if he is now attending <u>other</u> interests

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[1]Ernest Erber, unpublished manuscript (Chapter on Planning and Administration of proposed joint-authorship book on Meadowlands) pp. 4-5. Erber files.

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or interests which transcend local considerations in his mind. On the contrary, the use of private land parcels - and thus their income and appreciation prospects - is the pivotal decision with which such planning is concerned. Even though the purposes of such planning transcend municipal boundaries - "regional transportation, clean air and water, visual impact" and the rest of it - these purposes can only be implemented by decisions about which land is to be developed in which way for what use.

Therefore, local officials, and appointees accountable to them, are impelled by the whole gestalt of their position, point of view and interest to be intensely competitive, and to place top priority on the defense of local stakes, when they participate in intermunicipal councils as local representatives.

The normal result to be expected of a body constituted entirely or mainly of such representatives is stalemate, stymie, and logrolling decisions in which broad considerations are seriously compromised by particular interests. The best that can be hoped for from such a body is that occasionally, by intelligent and conscientious bargaining, it may evolve agreement that is reasonably fair among the parties, and is sound and serviceable in the here and now for the common interests of the towns involved.

It is surely too much to expect that, in addition, the decisions reached by intermunicipal log-rolling will also do justice to the interests of people in the immediately surrounding region - in the total metropolitan area - or in the State;

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or that they will adequately consider the stakes of the next generation. Yet such stakes surely have an urgent claim for consideration in the planning of any area, and (as argued on pp. 70 - 73 above) the development of the Hackensack Meadowlands in particular is of great consequence to people over a very wide area.

If municipal units were in fact, legally sovereign, their citizens and their neighbors would just have to put up with the consequences of the lack of a governmental authority embracing the area of common interests - or form a federal union. But since the towns are creatures of the sovereign State, there is no intrinsic reason why the shibboleth of "home rule" should prevail over vital considerations of the public interest in the constitution of mechanisms for regional planning; and the State officials, legislators and politicians who acquiesce in this unreason merit sharp criticism: "imbecile", "cowardly", and "incompetent" are the adjectives which come to mind, given a testy frame of mind.

Conclusions

Some basic conclusions of the analysis can be summarized:

1. It should be recognized as the responsibility of the unit of government encompassing the entire territory concerned, and having constitutional authority to act, to exercise initiative and controlling judgment in creating mechanisms for regional planning where a consensus can be achieved on the need for it.

2. This unit of government - here, the State - should

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be strongly represented in the ruling body of any such mechanism, and its representatives should be expected to play a strong role of initiative and leadership.

3. The body must be so constituted as to be able to act decisively, after due consideration, on the basis of a clear majority consensus.

Neither the MRDA experience, nor the subsequent legislative battle, tells us whether a regional planning and development agency should have a federal or a unitary constitution. (It would seem to be preferable, if not essential, that dominant power in the agency's ruling body should be held by representatives who are answerable to a regional constituency rather than to individual localities.) But the MRDA experience does confirm what common sense tells us: that a voluntary intermunicipal approach to such needs as the Meadows present, is certain to fail; it is the State's responsibility to take note of these needs and create mechanisms to meet them.

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There were, of course, many other failures and mistakes which contributed to the slowness of the polity's response to the challenge posed by the Hackensack Meadows. It is surely conceivable that more clarity, more courage, vision, boldness, honesty, on the part of one or more of the key actors, might have shortened the process. But it is difficult to draw any lessons, other than that furnished by the MRDA, that are clear and have general value. This might have been true even if the

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title issue had not entered in. But there is no question that the title issue greatly confused the whole problem. It increased considerably the friction between local and State interests. It came to dominate local attitudes so that it was more difficult to get people to attend to the governmental problems involved. By the same token, it dominated the attention of the State Legislature with regard to the Meadows. Given these complications, the policy and leadership problems of the Governor's office, for example, were rendered much more difficult, and it is not easy even with the benefit of hindsight to mark out a politically feasible route by which Hughes might have travelled much more rapidly to the point he finally reached in 1968.

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## CHAPTER XI: THE LAUNCHING OF S. 477

It was essentially a partnership of Ylvisaker and Dickinson which led the effort to pass a Meadowlands bill in the 1968 session of the Legislature.

Senator Dickinson was a key man because he strongly wanted a bill and was in a position to secure good Republican support, at least in the Senate.

The idea that a Republican-dominated legislature offered a favorable opportunity for a meadowlands bill was something of a switch. In previous legislative sessions, the G.O.P. had shown itself quite responsive to the wishes of the title companies and private land claimants. (The Democrats, despite Hughes' stand, were only a little less so.) There had been no manifestations prior to 1967, of a disposition among Republican leaders to press the issue of unified development of the Meadows. No doubt the idea was at long last ripe, in the political sense. The cumulative effect of the widely heralded hopes of the MRDA, the two reports of the Meyner Commission, and the S. 518 effort in 1967 was widened public awareness, and broad press support. But probably the most important factor was simply Dickinson's strong personal interest. He grew up in Rutherford, a Meadowlands town, in an era when they were great tranquil, unspoiled reaches of wetlands. He had an active interest and involvement in the Meadows development issue going back at least 13 years. His company's plant is situated on the edge of

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the Meadows, and all the chaotic consequences of piecemeal development had been unfolding before his eyes in the panoramic view from his executive offices.

Dickinson's prestige stood quite high in the Legislature. He is an impressive looking man; his personal style is rather modest but certainly attractive; his image is well-bred, Ivy League, decent, responsible, socially-conscious, personable Establishment. His name and wealth commanded respect. Beyond that, there was implicit a considerable commitment of Republican legislators to support Dickinson on a Meadows bill, in view of the Bergen County party organization's campaign stand. But that stand had been deliberately worded broadly enough that "home rule" advocates could live with it; and Dickinson in the campaign had complied with the party's request to keep the position on the Meadows "flexible". So that while Dickinson could expect support on the general principle of a strong authority, he had no guarantee that he would get full backing if, for example, he proposed a formula of representation to which there was strong local objection.

Thus Dickinson in effect had a commission from his party to develop a Meadows bill; with this in mind, he was assigned the chairmanship of the Senate Committee on Agriculture, Conservation and Natural Resources, which had handled S. 518. But there was also implicit the expectation that he would find a way to mollify or minimize opposition from the sources which

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had attacked that bill.

Ylvisaker was a fully equal partner to Dickinson in leadership of the effort for a Meadows bill. He did not directly command support in the Legislature; a number of Republican legislators in fact, reportedly felt active antagonism to him. But he had the respect, attention, and full backing of the Governor, he was just as strongly set as Dickinson toward the goal of a splendid planning and development achievement in the Meadows, and he had brilliant capabilities of persuasion and leadership. As the head of a new Department he was in a position to see that the drafting of a Meadows bill got the kind of staff support he wanted for it; and he could count on the Governor's help in getting the support of Democratic legislators.

The party lineup in the Senate was 31 Republicans and 9 Democrats; and in the Assembly, 58 Republicans and 22 Democrats. As events developed, Democratic votes were not needed in the Senate, but they became crucially important in the Assembly. In terms of legislative politics, the fact that the leadership of both parties was committed to a Meadows bill was undoubtedly the dominant circumstance favoring its prospects. And the strong commitment of Dickinson and Ylvisaker appear to have been the decisive factor accounting for the commitment of their respective parties.

The S. 477 "Team"

The team which they assembled late in 1967 to develop a bill included Senator Guarini, Beatrice Tylutki representing the Governor, Cliff Goldman, an Ylvisaker aide with legal training,

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Merritt Ierley and Curtis Winston who were aides to Dickinson, and J. Mark Riefer of the staff of the Legislature's Office of Law Revision and Legislative Services, who was assigned as Secretary of the Senate Committee on Agriculture, Conservation and Natural Resources. All of these except for Dickinson and his aides had been involved in the S. 518 effort.

It was aboabout this time that Goldman became the principal ball-carrier on the Meadows bill within the Department of Community Affairs, and Chavooshian and Schneider had much less involvement. The latter were essentially disposed to try to build on the base of the MRDA effort and work for as good a bill as could be achieved by agfeement with the local mayors. Politically and philosophically, they felt it was wrong to legislate a Meadows agency along lines the mayors opposed.[1] Ylvisaker and Goldman, on the other hand, saw the State as sovereign and regarded the creation of an adequate agency as a vital obligation of the State; they wanted local concurrence if possible and were willing to negotiate on many points to get it; but they were prepared to fight for a bill over the mayors' objections if necessary.

Senator Willard Knowlton of Bergen and Assemblyman Herbert Rinaldi, Essex County Republican, played active roles in planning and leading the effort for S. 477's passage after it was introduced, but were not intimately involved at the outset.

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[1] Eugene Schneider, interview.

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Clearly, this was an "inside" group: the Administration and the State department most concerned, two legislators motivated by strong personal conviction rather than any clear stake based on career or constituency interests, legislative aides and technicians. The makeup of this group reflected the very limited base of active, involved support for the legislation they were considering. The strategy they adopted likewise reflected that limited base, and in the process it confirmed an "inside" pattern for subsequent efforts, as against the alternative of seeking to activate a broader base of support.

Approach and Strategy

Agreement on the broad outlines of approach and strategy developed in the early meetings with relatively little friction. There was in the first place, accord that they were constitutionally obliged to uphold the State's title claim; the job of a bill, in this regard, was to provide for expeditious determination of what areas were subject to that claim, and the equitable handling of situations where private claimants had invested in improving such parcels, jobs were at stake, etc. There was agreement that S. 518 was a generally sound start on major principles, but that it should get a thorough working over for technical improvements, particularly with regard to the cost- and benefit-sharing mechanics. And there was agreement that the principal political problems of acceptance revolved around the

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issue of representation for municipal and local interests in Commission decisions.

A basic strategy was also agreed: to set up a strong starting position, and to agree on the points that must not be bargained away, and those that could be used for bargaining.

Two elements which anchored the position were, first, the need for federal dollar aid for reclamation, via the Corps of Engineers, and the concomitant need to satisfy the Corps' criteria for a viable development agency; and second, the constitutional commitment of State-owned land to the School Fund. The first provided a strong, politically persuasive basis to insist that the principle of "home rule" must in this situation be subordinated, and that those who argued that "we can do it ourselves" were shortsighted and threatened to deprive the State of a great opportunity. It thus provided the basis for rejection of any structure which would enable local defensive interests to veto action or dictate its shape. The second provided a firm basis for refusing the inclusion of any language in the draft which would accommodate those who wanted the State to let go cheaply of its claim to tidal lands. (In strict logic, State ownership of most of the land was not vital to the development and implementation of a sound plan. But in practical political terms, it would greatly free the planners from specific pressures; and it was always part of the thinking of the State people involved, that the ability of the proposed commission to finance reclamation works might hinge on its ability to pledge the

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future earning power of the land benefitted by reclamation, as security.)

While there was basic agreement on the need for an agency with clear powers of decisive action, the State people strongly preferred strong representation of the overall State point of view and a strong role for the Department of Community Affairs; and they preferred a unitary to a federal scheme of representation; whereas Dickinson was more favorably disposed to the latter. But there was agreement that there was a wide range of alternative constitutional arrangements that the proponents would be willing to accept, if to do so would significantly mollify local opposition. The same was true of the boundaries of the proposed Commission's jurisdiction.

S. 477's proponents did not envision a major effort to rally wide public support, or to mobilize potential support groups for intensive lobbying activity. This was not so much a considered decision, as one which evolved from the situation. Goldman in an interview said that in the first place, the proponents had limited time and resources for the effort; and publicity and support-building activities, not being of top priority, were improvised as they went along, rather than carefully planned and programmed. In the second place, they were from the first preoccupied with an "inside" strategy, working generally by direct approach to and negotiation with local officials and with key legislators - "key" in the sense of having strong specific interests which had to be satisfied, or being able to deliver

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pivotal votes. The proponents felt that the issue was not one with lively and broad public appeal, and that it would be difficult to muster strong public support for it. The course they followed, accordingly, was to do a limited amount of activity in the way of publicity, speeches, magazine articles and reprints, soliciting of editorial support, the staging of special meetings, etc., with the aim of establishing a climate of high public awareness and an image of strong "public interest" in the legislation, as a favorable setting for the "inside" legislative struggle.

Goldman and Miss Tylutki were given the principal responsibility for the technical overhaul. Major responsibility to lead the effort to resolve the issue of local representation was entrusted to Senator Dickinson, although he received active assistance in this effort from Ylvisaker.

The hatching of the bill was fairly well publicized. The Governor raised the prospect in his annual message. He urged the legislature to enact a suitable bill, declaring that the resulting development would be "the greatest single stimulus to the growth of New Jersey's economy."[1] Dope stories in several area dailies gave indications of the type of constitutional ideas under consideration[2] and editorials urging Meadows action also appeared in January.[3]

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[1]The Record, Jan. 19, 1968.

[2]The Record, Jan. 10, Jan. 17, Jan. 24, Jan. 25; Jersey Journal, Jan. 26.

[3]Hudson Dispatch, Jan. 20; The Record, Jan. 27.

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Political Negotiation in the Drafting Stage

Dickinson and Ylvisaker made very considerable efforts before the bill was introduced to develop a basis of agreement with local officials, and the activity was rather complex. Some of it had started up around S. 518. Sidney Willis, a planner who had gone from the State to the Jersey City Planning Board in 1962* and had represented that city on the MRDA, had been the principal factor in keeping that organization's Land Use Committee alive. In 1967 he was instrumental in having some of that committee's people constitute themselves as an "Ad Hoc Committee to Recommend Revisions in S. 518". Through this committee, he sought to build a bridge between the MRDA point of view and the State. On the point of organization, this committee proposed that the MRDA be reconstituted in appropriate form to exercise the powers of the Review Committee specified in S. 518; more importantly, it proposed that this Committee have power to vote disapproval of master plan proposals, which would require a 4/5th vote by the Commission to over-ride. The Committee identified some other problems of S. 518, particularly in regard to tax-sharing, and made constructive recommendations.

These recommendations were never acted on by the MRDA as a whole. They did provide some of the ideas which went into S. 477; and the proponents of S. 477 were hopeful in January that

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*At the end of 1967, he returned to the staff of the Bureau of State and Regional Planning, and subsequently became its chief when Chavooshian moved up to a post as Ylvisaker's deputy.

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the ideas and attitudes of the Committee members would set the tone of the Mayors' thinking.

Dickinson held a number of private meetings and conferences with local leaders in January, and on February 7 there was a meeting attended by mayors of all the Meadows towns and a number of other concerned individuals, including Gershen and others who had been active in the MRDA, Bontempo, and attorney Porro. Formally speaking, the meeting was called through the MRDA, which had in somewhat irregular fashion reactivated itself at this time; there do not appear to be any minutes recording meetings, election of officers, or appointment of commissioners by the towns; but sometime in 1967 Porro had acquired the designation of MRDA counsel.

At this meeting, the proponents mounted a particular effort to find a basis of agreement with the mayors or at least with a substantial number of them, and they came nearer to success than at any later time.

Gershen joined in the effort to establish a basis of agreement. In an effort to rekindle the enthusiastic affirmative spirit of MRDA's launching, he arranged for Bontempo's attendance.[1]

Members of the Bergen County delegation to the Legislature were invited to this and other meetings Dickinson arranged with the mayors, but only one or two attended; those who later

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[1]Alvin Gershen, interview.

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opposed the bill did not.[1]

Dickinson indicated to the meeting that the issue of the constitution of the proposed Commission was still open for negotiation, and outlined two alternatives. Under one, incorporated in the current draft of the bill, there would be a 9-member Commission made up of the Commissioner of Community Affairs, four appointees of the Governor, and four others appointed by the Governor from recommendations by the county freeholders and the mayors of the towns involved; and there would be a separate committee made up of the mayors, with advisory powers. Under the alternate proposal, the Commission would be smaller, consisting of five members appointed by the Governor, but the Municipal Committee made up of local mayors would have specific power of approval of the Commission's Master Plan proposals; if the mayors voted disapproval, a 4/5th's vote of the Commission would be required to override.

The reaction of the mayors at this meeting was very muted and non-committal. Dickinson after the meeting announced that as a result of sentiment expressed, the alternative Commission proposal providing for veto-and-override, would be put in the bill; but it is clear that while some of the mayors had objected to a mayors' committee with advisory powers only, there had been no consensus of support expressed for the alternative. Only one mayor, McDowall, (R.) of North Arlington, who was also a Bergen

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[1]Assemblyman William Crane, interview.

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County Freeholder, expressed support; the others were silent or expressed reservations.[1]

The difficulty which was to frustrate all efforts to negotiate a basis of agreement with the mayors was apparent in this session and its aftermath. There was, in the first place, no functioning institution through which an effective decision could be reached. The mayors, not being part of the MRDA, were not willing to let the MRDA speak for them. More basic, however, was the fact that there was nothing in the situation that forced any of the mayors to fish or cut bait; the proponents, wanting new action, had to define a proposal. But the opponents were not required to say what they wanted; they had only to ask critical questions and raise objections; and this was much the safer thing to do politically.

Porro from this time on became increasingly active in seeking to lead opinion among the mayors, and the ambiguity of his role highlights the second key factor in the difficulty of dealing with the mayors. Though Porro rather consistently affirmed support for the principle of regional action, the central thrust of his advocacy was always to urge that the towns should oppose the State's title claims. Through the person and role of Porro, the interests of the private title claimants against the State were married to the interests of the officials defending the local autonomy.

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[1] The Record, Feb. 7, 1968.

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There was clearly a latent conflict of interest in Porro's twin roles as counsel to the MRDA and to the Meadowlands Institute. Could he negotiate constructively in good faith for the towns on the issues of structure in the proposed bill, and at the same time serve the best interests of his private clients with big title stakes? The question is given added point by Porro's personality and style of operation; he is a person of high energy and intense involvement, inclines to very activist advocacy rather than professional detachment, and is promotionally and politically oriented.

Porro was a member at this time of the legislative subcommittee of the State Chamber of Commerce's Ad Hoc Committee on Riparian Lands, which was basically opposed to S. 477.[1] If Dickinson and Ylvisaker were able to find a basis of agreement with the mayors it would virtually assure the passage of S. 477. Porro was very active in shaping the attitudes and responses of the mayors throughout 1968, and most of the proponents of S. 477 believe he exacerbated the points of State-municipal conflict and blocked agreement. What were his motives for this, and were they motives fully consonant with the towns' best interests? The fact that no one ever raised these questions in the course of the legislative struggle attests how completely taken-for-granted is the link between local government and local property interests.

It was a natural reflex for the mayors, as political

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[1]Peter Dorn, interview.

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animals, to resist being drawn into negotiation and any kind of commitment which would anger some of their constituents. The apparent strategy of the opponents of a bill, from the time it was introduced, was to exploit this tendency. A meeting of the mayors on March 7 to consider S. 477 was a fiasco for those who hoped for political compromise; virtually the whole session was taken up with the vehement expression of different and cross-cutting objections by different mayors, heavily interspersed with bitter protest of the State's title claims.[1]

From this time till the final vote, although opponents of the bill continued to assert their wish for a sound Meadows plan and the proponents continued to insist on their willingness to parlay further toward a basis of agreement, it seems clear that the key leaders on both sides of the struggle were convinced that the issue would be resolved essentially by political confrontation, in the arena of the Legislature.

## The Title Lobby's Initiative

The title lobby did not make any particular effort to influence the drafting of S. 477. They pursued instead a separate line of action toward their basic goal, which was to set aside the State's riparian title claims in favor of private claimants in as many situations as possible.

The O'Neill decision in November 1967 dashed their hopes

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[1]Summary memo of MRDA members' comments on S. 477, Richard Ginman, Dep't. of Community Affairs, to Sidney Willis, Mar. 8, 1968. (Gershen files).

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of gaining this goal through the courts. The legislative sub-committee of the Ad Hoc Committee on Riparian Lands of the New Jersey State Chamber of Commerce immediately began work on a new legislative attack. They were aware of Dickinson's early discussions with the Hughes administration looking to a 1968 bill; and both Dickinson and the administration were on record opposing abdication of the State's title claims. They recognized that a new bill under this sponsorship would essentially be in competition with any proposal the Ad Hoc Committee might design to resolve the title conflict, and they must therefore press to get their own bill in early.[1]

In the first week of January, the sub-committee abandoned efforts to draft a bill which would redefine "riparian" and agreed on a bold new tack: a constitutional amendment which would simple vacate the State's claim to virtually all the disputed properties. Legally, this offered a big advantage: if it succeeded, it would be a definitive, clean-cut victory, not subject to further challenge in the courts. The procedure required passage first by the Legislature, by a 3/5ths vote in each house, and then a referendum vote in a general election. Strategically, this offered one big advantage and one big hazard. The advantage was by-passing the Governor, who had twice vetoed bills with the same intent. The hazard, obviously, was that the proposal might come under heavy attack in an election campaign and

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[1]Memo, Dec. 19, 1967, Peter Dorn to Ad Hoc Committee on Riparian Lands.

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be defeated by the voters. But the Ad Hoc Committee was confident that they could generate wide sympathy for the private claimants affected by the State's claim.

The sub-committee devoted painstaking work to the wording of the draft resolution, and particularly to the wording in which the issue would be posed to the voters on the ballot.

Senator Hiering introduced the resolution on February 13. Five other Senators sponsored the bill with him, including a Democratic Senator from Middlesex County and another from Hudson County. Identified as Senate Concurrent Resolution No. 41, it proposed to amend the State Constitution by adding a paragraph reading as follows:

> The State by virtue of its sovereignty is the owner of all those lands within the State that at mean high tide lie, or in their natural state would lie, below the waters of the Atlantic ocean, or of the tidal rivers, bays, streams, or inlets within or bounding the State, limited in a landward direction to the line of intersection of the tidal plane of mean high tide with the adjoining banks or shores of said Atlantic ocean or of said tidal rivers, bays, streams, or inlets, or in the event such banks or shores are not visible at mean high tide, to the tops of such banks or shores as located when visible, except for those parcels thereof heretofore conveyed by the State, which conveyances are hereby ratified and confirmed, and those parcels thereof lawfully acquired and held by others by virtue of applicable law of the State. The title to other lands within the State that lie, or in their natural state would lie, below the aforesaid waters, record title to which has been held by any person or legal entity, public or private, or his or its predecessors in title, continuously since July 1, 1891, and which have been assessed for taxes, owned by a municipality, or exempt from real property taxation, or any combination thereof, continuously for the last past 20 years, is hereby established and confirmed in such persons or legal entity, excepting any portions of such lands which the State has heretofore conveyed, which conveyances are hereby ratified and confirmed.

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The language requires extremely careful reading and analysis to grasp its meaning. Note that the opening clause declares that "The State by virtue of its sovereignty is the owner* of all those lands" (below water at mean high tide..) The next sentence begins with the words, "The title to other lands .." but the "other lands" referred to does not mean, other than those specified in the opening clause; it means precisely those lands. Thus, the second sentence gives away to private persons, what the first sentence declares to be the State's, for all parcels meeting the specified tests regarding record title and tax assessments. Secondly, the effect of the phrase "or in the event such banks or shores are not visible at mean high tide, to the tops of such banks or shores as located when visible," is of great consequence entirely separate from the other provisions; it redefines the scope of the State's riparian claim in a way which leaves out enormous areas embraced by the rule specified in O'Neill - something only a highly informed person would realize. Thus, in effect, the amendment vacated the State's ownership of large areas by redefinition, and additionally vacated its ownership of further large areas within the new definition.

If the effect of the amendment itself was something less than self-evident, the wording specified by the resolution to be placed on the referendum ballot - the terms, that is, in which

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*In a resolution to the same effect initiated by the title lobby two years earlier, the opening declaration was, "The State shall have no title by virtue of sovereignty only..." (SCR.26, 1966)

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the issue would be posed to the voters - was downright ingenuous:

| | |
|---|---|
| YES | Shall the amendment to the Constitution to define the ownership of the State in tidelands and to confirm and ratify private ownership of certain tidelands, record title to which has been held since July 1, 1891 and which have been assessed for taxes for 20 years, agreed to by the Legislature, be approved? |
| NO | |

SCR. 41 did not stir much reaction at the time of its introduction. Senator Dickinson, asked to comment on it a couple of evenings later on, expressed his disagreement in a rather diplomatic manner; he said the Meadows' ultimate value would be at least $250,000,000, and he felt that one who held State ofice had an obligation to recognize the State's claim and its value to the public. (The Record, 2/16)

S. 477 Introduced

Senator Dickinson introduced S. 477 and a companion bill, S. 478, at the same session (Feb. 13) that SCR. 41 was introduced. Co-sponsors of the bill included two Democrats - Senator Guarini, and Senator Crabiel of Middlesex; the other Bergen County Senators, and an Essex County Senator.

S. 477 was 61 printed pages long, composed of 103 sections organized as follows:

Part A: Hackensack Meadowland Reclamation and Development Act.

Article 1: Purpose, title and definitions (Secs. 1-3)

Article 2: District boundaries (Sec. 4)

Article 3: Development Commission, organization and powers Secs. 5-6)

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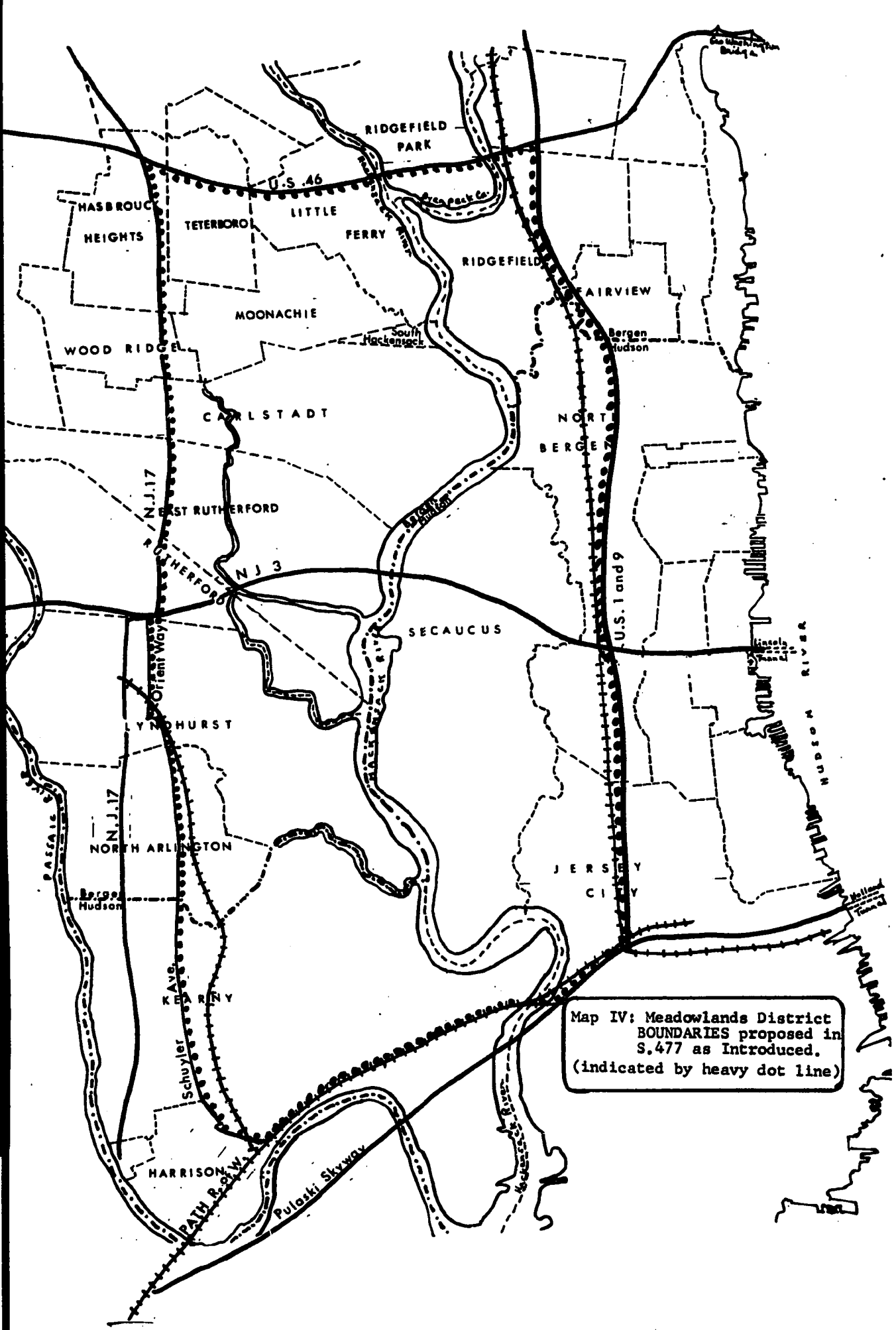


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Article 4: "Municipal Committee", organization and powers (Secs. 6-7)

Article 5: Master Plan and development procedures (Secs. 9-21)

Article 6: Capital Financing (Secs. 22-32)

Article 7: Property Acquired and Held by Commission (Secs. 33-37)

Article 8: Special Assessments (Secs. 38-58)

Article 9: Intermunicipal Tax Sharing (Secs. 59-74)

Article 10: General Provisions (Secs. 75-85)

Part B: Meadowland Riparian Instruments (Secs. 86-102)

Part C: Effective Date (Sec. 103)

A summary of the bill follows, taking particular note of the important changes from S. 518's provisions.

The boundaries of the district (Map IV, facing page) were defined to follow the major bounding highways of the meadows on the north, east and west, and the PATH tracks on the south. This had a fully defensible planning logic, but it also had the effect of placing within the proposed Commission's planning and tax jurisdiction, a very considerable amount of existing development at the Meadows edges - mostly industrial plus some commercial and residential. These boundaries were virtually identical to those marked out in S. 518, and thus ignored criticisms voiced then that the legislation was taking in a larger jurisdiction than was appropriate. The bill's proponents had deliberately left themselves some bargaining room for whittling down these boundaries. Hindsight suggests, however, that in this respect they may have been unwise. The broad boundaries proposed

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gave the bill's opponents a basis to stir up alarm and protest among a much larger number of constituents than would have been the case if existing development had generally been left out. And this protest helped to establish a climate of embattlement which was never dissipated or even much diminished during the crucial battle in the Assembly, even though virtually all the disputed land was removed from the area by the prior Senate Committee amendments.

Makeup of the Commission

Article 3, defining the constitution of the Commission, specified a 5-member commission to include the Community Affairs Commission and four citizens appointed by the Governor; a provision not previously mentioned specified that two of the Governor's appointees must be residents of a constituent town, one in Hudson and one in Bergen. (S. 518 had provided for an 11-member Commission dominated by the Governor's cabinet members and other appointees, but with four members appointed by county or local officials.)

The "Municipal Committee"

Article 4 set up the Hackensack Meadowlands Municipal Committee, to be composed of the mayors of the constituent towns. The Commission is required to submit for the review of the Committee, proposed codes, plans, assessments "and any other matter the Commission deems advisable." The Committee is required to respond within 45 days (or 120 days with respect to Master Plan

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proposals.) A four-fifths vote of the Commission is required to finalize any proposed action which has been rejected by the Committee.

Powers: General

The Commission is empowered: to issue bonds, to buy, lease or condemn any property necessary for performance of its duties; to accept Federal or other public grants; to prepare and implement a master plan; to undertake or contract any project for reclamation or land development; to set standards for landfill; to regulate subdivision and development; and various collateral powers.

Powers of Planning and Development Control

With regard to master plan powers, S. 477 made significant shifts in the Commission's favor as compared with S. 518. Both bills deny to municipalities the power to enact codes inconsistent with codes or plans adopted by the Commission. But where S. 518 gave local governing bodies the power to override Commission objections on local public projects which depart from the Commission's master plan, S. 477 reversed this: a building permit from the Commission is required for any construction in the district, and the Commission may deny a permit for a project not consistent with its master plan. Local governing bodies must submit action on proposed public projects to the Commission, which may disapprove within 45 days, and no local recourse is provided.

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S. 518 had provided fairly strong powers of subdivision control. S. 477 made the Commission's subdivision control powers considerably stronger, mainly by (1) empowering the Commission itself to promulgate subdivision regulations, and (2) empowering the Commission to require that public uses specified by it be shown on subdivision plans, and to "reserve locations and sites for such uses for one year."

Renewal and Redevelopment

The effect of the renewal provisions is to vest the Commission with the extensive powers of New Jersey's urban renewal enabling act (1949) for acquisition, planning, and use and/or resale for directed use, with respect to that very large part of the total area which has low elevation and/or very deep mucky soil.

Real Estate Taxes

Exemption from real estate taxes is provided for property acquired by the Commission. S. 477 added a proviso empowering the Commission to agree to payments in lieu of taxes, in order that towns would not suffer undue loss of revenue as a result of the tax-exempt status of Commission projects.

Assessments

The Commission is given power to create assessment districts to finance a wide range of projects. A three-fold classification scheme of land is used in both drafts. Class 1, private

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land, and class 3, exempt public land, are standard classes; class 2 is a device invented to fit the special circumstances of land tenure in the Meadows - assuming State title to much land which would be expected to be offered eventually for private development. Assessments levied on land in this class are to be paid out of a State revolving fund, and these sums are to be carried as a charge on the land to be incorporated in the eventual sale price (or lease capitalization), the revolving fund to be reimbursed accordingly.

Intermunicipal Tax Sharing

The germ concept was stated in S. 518, but in a way which was difficult to understand and left many points of uncertainty. The drafting of S. 477 provided a thorough reworking which improved and clarified the mechanism. One change of technical importance was providing the mechanics for an equalized basis for computing the tax obligation to the tax pool of the individual towns. Another was the specific provision in the bill for creation of an "intermunicipal account", which procedurally and conceptually clarified the nature and operation of the proposed process under which tax obligations are to be debited, and service and projects costs credited, to the individual towns.

S. 477 also spelled out in explicit language, the concept of "guarantee" payments by the Commission to a municipality to make up ratables lost by any decrease in the value of real property from the date of inception of the tax pool. This

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provision was probably designed mainly for its "merchandising" value in answering objections that the establishment of the Commission's taxing jurisdiction would take away tax revenues from the individual towns. (A provision to the effect that each town would continue to receive the taxes on the full amount of the assessed values existing as of the tax pool inception date, was part of S. 518, but the term "guarantee payment" and the specific mechanics thereof, are new in S. 477.)

The cost and benefit sharing system spelled out in S. 477 works as follows:

Ratables developed or undergoing construction as of October 1968, and the number of residents, persons employed, and school children in the district in 1969, are taken as base figures for computation of subsequent changes. Tax obligations to the "Intermunicipal Tax Pool" are debited to each constituent municipality on the basis of an equalized tax rate and an equalized assessment of all property in the district, applying only to the increment of values since the base date. Credited to each town are:[1]

1. A guarantee payment making up ratables lost by a decrease if any in the value of real property within the district since October 1, 1969 (Sec. 66).

2. A service payment covering growth in the residential, worker and school population since the 1969 base year. Service payments will be based on the per capita service costs of the particular municipality. (Secs. 67 and 68).

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[1] Quoted from "Digest of the Meadowlands Act", N.J. Department of Community Affairs, 1969.

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3. Special project payments covering unusual development projects undertaken by the municipality, deemed to have regional value. Project payments will be negotiated on an ad hoc basis with the Commission. (Sec. 69)

4. A proportion of whatever is remaining in the inter-municipal pool, based on the percentage of unimproved or redeveloped acreage belonging to the municipality within the Meadowlands district. (Sec. 70 (a) )

In operation most of the activity would be in the form of bookkeeping entries rather than actual fund transfers, except for an annual settlement in which the individual towns would pay in the excess of debits over credits, or be paid the excess of credits over debits. In broad theory, towns getting a lot of industrial development and little else would have a debit to settle, and those getting housing and recreational development but not much industry would have a credit balance which the inter-municipal fund would pay them.

Garbage Disposal Provisions

S. 518 had been silent on this. S. 477 as introduced dealt briefly with the question, requiring the Commission to make an annual survey of the extent of use of meadowland for "disposal of solid waste" viv-a-vis the needs for same, and to make due provision for the need for solid waste disposal space and facilities of the State's municipalities.

Title Provisions

S. 477 made two fundamental and politically important changes from the title provisions of S. 518. Whereas S. 518

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had called for a new agency (The Hackensack Meadowlands Title Board) and had vested it with a wide range of powers including those of survey and assertion of the State's claim, the quasi-judicial function of an initial determination with respect to disputed claims, and the powers to make grants or leases of riparian lands which had been vested in the Resource Development Council, S. 477 handled the problem much more conservatively. It realized those added powers which are essential by enlarging the existing powers of the Resource Development Council, giving it a mandate to survey and delineate the State's title claim; it also clarified the rights of different classes of applicants for sale or lease of state-owned lands, and the standards to be used in handling these applications.

The job of adjudication of title disputes is left entirely to the courts; S. 477's brief companion bill, S. 478, declared the need for enlarged court capability in order to handle the large volume of title litigation generated by the riparian issue, and to this end authorized the establishment of six new Superior Court judgeships.

Although S. 477 generally left administration of the Meadowlands with the Resource Development Council, it made provision for the new Commission to have a direct voice in setting the terms for any Hackensack Meadows conveyances or leases the RDC might decide to grant. Sections 94 (b) and 94 (c) establish a 3-member Hackensack Meadowland Negotiation Board, the HMDC and the RDC each to name one member and these two to name the

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third; this Board to have the single function of fixing the consideration for any sales or leases.

S. 477 incorporated changes designed, presumably, to make the leasing provisions more acceptable to those who had made heavy long-term investments in plants, and also to prospective future industrial users. Where S.518 had provided for leases in 10-year terms, renewable for a maximum total period of 50 years, S. 477 provided for longer terms, up to 99 years. It provided for readjustment of lease rentals every 25 years to reflect current land values.

Although SCR. 41 and S. 477 did not directly conflict, they applied very different philosophies and priorities to the Meadowlands; thus the introduction of the two items of legislation on the same day, each after careful preparation and each with strong backing, seemed to presage a collision.

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## CHAPTER XII: SENATE HEARING ON S. 477

Senator Dickinson scheduled a March 26 hearing on S. 477 by his Committee. Lines of support, and more especially of opposition, crystallized in advance of the hearing. There was a rising chorus of competing press releases and resolutions, in which local opposition became more dominant as the date approached. The Record reported speeches by Rinaldi (March 6), Ylvisaker (March 8) and Sutphen (March 17) urging support of the legislation; announcements by the Meadowlands Institute (March 15), Rutherford's Mayor and two Council members, and East Rutherford's Mayor (March 19), North Bergen's Mayor (March 20), the mayors of Hasbrouck Heights and South Hackensack (March 21), and a 6-0 resolution by the Carlstadt Borough Council opposed the bill; the Hudson County Democratic Chairman did likewise, as reported in the Hudson Dispatch, (March 21).

A member of the East Rutherford Planning Board was quoted in The Record (March 21): "I'll be damned if I'll see the State take the land away from white people. I'd rather see it given back to .. the Indians." This was the only public hint of racial fears in relation to Meadows development under State direction.

Releases by the Regional Plan Association's New Jersey Committee (The Record, March 25) and by Freeholder/Mayor McDowell urged the need for a Meadows bill.

The hearing itself was a somewhat muted replay of the

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S. 518 hearings.

This was logical enough on the face of it, and the Chairman requested witnesses to avoid testimony which merely repeated what had been heard in 1967. However, it seems likely that it also reflected a decision on both sides of the struggle that they neither wanted nor expected the hearings to be a crucially important forum. Despite the vigorous pre-hearing activity expressed in resolutions of opposition by local governing bodies, spokesmen appeared for only 7 towns; and on the other side, only five witnesses clearly identified with the State interest appeared.

There was very little discussion of the new provisions on which considerable effort had been spent to make S. 477 more politically acceptable. The one political fact that the hearings clarified - though it had been amply telegraphed by the local actions of the preceding weeks - was that Senator Dickinson, despite his standing, and despite the Republican Party's campaign commitment, had not been able to win any significant degree of acceptance of local political leaders for S. 477, even though he had proffered specific new means of representation of local interests, and had parleyed with them extensively in search for a basis of accord.

Town Spokesmen: A Muted Chorus

Mayor McDowell of North Arlington, also a Bergen County Freeholder, was the only witness identified with local government who had a good word to say for S. 477 as a means to create government machinery suited to develop the Meadowlands. Even he shied away from any defense of the specific plan of represen-

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tation; the basic note he sounded was that only a unified regional agency could do the job, and the appropriate line of action was not to kill the bill, but to negotiate remaining differences. And on the matter of boundaries, he asked that they be redrawn to leave out a big part of the North Arlington territory embraced by the draft bill.

This was what almost all the other local spokesmen asked as well with regard to their own towns. And in virtually every case, they had good talking points because the draft boundaries included considerable existing development.

Unlike McDowell, however, most of the other mayors who raised the boundary issue used the leverage to make much bigger demands; typically they argued that in their particular case, because of rapid Meadows development under local control, they had no need of a regional agency and should not be included in the district at all. (Mayor Sarubbi, North Bergen; Mr. Holland, Secaucus Attorney; Mayor Heinige, Little Ferry; Mr. Muser, Rutherford Attorney; Mr. Deckert, Carlstadt Councilman.)

The other line taken by local government spokesmen was that the principle of "home rule" should not be violated, that they wanted to continue to have separate jurisdiction and should be permitted to. Virtually every spokesman for a town except Mayor McDowell struck this note. Senators Dickinson and Guarini, always most cordial and laudatory of the "very cogent" testimony of the witnesses, tried to lead some of them into a discussion

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of the need for unified regional action to solve some needs; but the witnesses invariably wriggled away from acknowledging any such need and thus being drawn into any discussion of how a suitable agency of government should be structured.

Hudson County spokesmen somewhat soft-pedalled their opposition even though not voicing support. No Kearney spokesman appeared at the S. 477 hearing, whereas Mayor Healey and two others had appeared and opposed the bill the year before. No one spoke for Jersey City; Secaucus sent its Attorney but not its Mayor, in 1968.

Alvin Gershen testified at the hearing on S. 477; he had not testified on S. 518. He endorsed the bill, saying that it embodied virtually all the principles which the participants in the MRDA had agreed on in 1960.

Gershen in his testimony acknowledged that the proposed makeup of the Commission was the result of long study and balancing of competing considerations. He was one of the few witnesses to discuss the merits of S. 477's scheme of representation, and urged the view that the device of the Municipal Committee with a right of veto, requiring a 4/5ths vote of the Commission to over-ride, was a "checks and balances" device well-suited for reconciling different interests. (p. 18A)

He also said that he had been authorized by two of the mayors, Tucci of Moonachie and Pareti of Carlstadt, to say on their behalf that they "in principle subscribe to the principles we jointly did enunciate in 1960." (p. 23A) Aside from

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McDowell's statement, this was the closest any of the mayors was willing to come toward saying that S. 477 was in any degree acceptable.

Mayor Sarubbi of North Bergen testified vehemently that no new agency was needed because industrial development on a large scale was taking place under the separate municipal administrations. He listed recent and current building totalling 3.5 million square feet. He knew just what he was talking about, he indicated, because he was himself the general contractor on four of the projects with a total value of $7,775,000. (pp.23-24)

He told the hearing:

> The progress is here, gentlemen, and I say to you here and now that we object very, very strenuously to this bill in any form. (p. 27)

Private Interest Spokesmen: A Mixed Bag

The five witnesses who voiced the interests of private title claimants, title companies, and developers did not criticize the proposed new instrument of government, and in most instances endorsed the idea of a unified regional agency.

There did not seem to be any clear agreement among these witnesses on emphasis and strategy. Augustus Nasmith who spoke for the New Jersey State Chamber of Commerce urged passage of SCR. 41 as the tidiest and best way to clear up the title question. (p. 88A)

Justin Toomey, appearing as president of the Meadowlands Institute, said:

> There is a great diversity of opinion within the Institute on this bill...(It is the) almost unanimous thinking in our group that a zoning and planning authority

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> that is superior to the municipality is a prerequisite to the proper and orderly development of the meadowlands. ( p. 28A. )

The Institute would not take a position on the governmental structure proposed by the bill vis-a-vis the demand for stronger local representation, Toomey said, but objected to the proposed solution of the title problem. He requested that the title provisions of S. 477 be separated out and enacted promptly.

Porro, speaking as the Meadowland Institute's counsel, concentrated a great deal of his fire on the definition of "riparian lands" employed by S. 477: (Article 1, Section 3-e) to wit:

> "Riparian lands are those lands now, formerly or hereafter flowed by mean high tide, except where such tidal flow is caused by artificially produced changes in land or water elevation.

The employment of this definition, Porro declared, was "unconstitional and unconscionable" (p. 35A) and he said it manifested an imperialistic desire on the part of the State to extend its title claim well beyond what it was justified in doing.

Porro's apparent goal in 1968 was to generate opposition to S. 477, and his characteristic tactic was to make a broad exaggerated charge calculated to frighten many individuals by making them feel that their vital interests were threatened, and to agitate this charge with strong rhetoric and frequent repetition.

Porro's attack centered on the S. 477 definition's use of the word "formerly". He argued, in effect, that this was in

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conflict with the rule used by the New Jersey Supreme Court in the O'Neill case, with the effect of extending the State's claim to much land to which it is not entitled by the O'Neill decision. (p. 33A ff.)

Porro made a great bustling show of grievance on this point even though it is one which careful examination shows to have virtually no substance. This suggests that he was talking more for public effect than for any substantive purpose. The Court in the O'Neill decision had, in fact, held that the State had original title to land flowed by mean high tide, that a riparian owner cannot enlarge his holdings by excluding the tide, and that lands thus artificially appropriated, without State grant, remained the property of the State. The Court also stated that where either party claims the present tidal status of the land is the result of artificial changes, that party has the burden of proof. It seems clear that the definition in S. 477 meant to be and was consistent with the O'Neill decision, and that the bill drafters expected that the determination of title disputes would be guided by the finding and dicta of that decision. (Ylvisaker forcefully testified to that effect: "S. 477 will neither increase nor decrease the State's ownership." (p. 85))

The essential burden of Porro's testimony was that S. 477 was drafted in a way that would change the rules and enable the State to "grab" title to additional lands. And "grab", with all its pejorative force and the fierce defensive response it evokes, was the theme word of the attack on S. 477 which its opponents

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developed.

S. 477 was a complex bill; to understand it clearly and discuss it rationally, it was essential to recognize that it dealt with at least four different areas - title, reclamation works and their financing, taxes, and planning powers - and dealt with each in quite different ways. But in the opposition which developed, these areas and the provisions affecting them were heavily confused, in a manner which served to heighten the fear and anger of all the local interests affected, and to maximize opposition. Those leading the opposition were not loath to foster this confusion.

Porro linked the opposition of local officials to the title question and what he implied was the State's imperialistic attitude:

> I would warn this, however - I don't feel that any plan or any municipal cooperation can be anticipated until there is some definite direction with this title problem because, quite honestly, much of the static that you are getting at this point, in my opinion, from the municipalities is because of the image that the State has created in these municipalities. You must realize that three centuries have gone by without anyone hearing of the State of New Jersey in these meadowlands, and what was the first hello that the State gave these municipalities? That hello was, "we own it; we own the meadowlands." That is the image and this is the psychological block that you are having. (p. 46A)

In the eyes of the aides to Ylvisaker and Dickinson most deeply involved in the legislative battle, it was Porro himself who was most active in propogating the image of a State greedy for land and power, and persuading local interests that S. 477 constituted a State "grab" of the towns' titles, taxes and authority.

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The testimony of H. Jerome Sisselman, the developer of the East Rutherford Industrial Park, was much more one-sided and hostile than his testimony a year earlier. (p. 1A ff) It illustrated two facets of the opposition which developed: the role of the private land claimants, particularly those active in development, in helping to fuel the opposition of local officials, and the manner in which the bill's opponents abetted the great confusion about its provisions.

> The trouble with this bill is that it is conceived with the basis that the State owns or did own all these lands. ( p. 1A )

He complained that the bill failed to direct the State promptly to determine and identify the lands to which it asserts title, and to dispel any cloud now affecting lands it would not claim; (p. 4A),but the bill did have such provisions. He complained that the land determined to be State-owned would not share in assessments for the cost of reclamation projects; (p. 3A), but in fact the bill had detailed provisions for identifying State-owned lands to be committed by the land-use plans to eventual private development, and for financing their share of assessments. (Secs. 39, 40, 51).

Finally, in rather demagogic style, he criticized the bill on the grounds that it would not "guarantee" any future increase in tax income:

> Under this bill you guarantee the municipalities that they will receive the amount of money which they now receive in taxation, but there's no guarantee that I can read in this bill that they will ever see one penny

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> over and above what they are going to get now. This bill does not provide for it. I've read it and re-read it and I read it again today when I heard the statement about this bill. I say this bill has to be drawn for these municipalities to be given guarantees. We have too many autonomous bodies in the State of New Jersey now. (Mentions the Turnpike Authority and the Port Authority) .. They ride rough-shod. They have no respect for the legal rights or anything else. (p. 6A).

Actually the tax-sharing provisions of the bill closely limit the Commission's use of tax proceeds, and require it to turn virtually all back to the municipalities. (Sec. 70). But the inaccuracy of Sisselman's complaint is less the point than his transparent effort to stir the fear among the officials of the individual towns that S. 477 would deprive them of the income from new ratables to be built in the Meadows because the State's new agency would "grab" it.

Max Eisenstein, Executive Vice-President of Empire Development Company which had acquired 800 meadowland acres in 1962, and had subsequently developed about 100 acres of it, testified that it would impossible for his company to pay the current fair market value of the land if a State claim to it were upheld, and that it would be "equally impossible and impractical" for them to pay an annual ground rent based on current fair market value. His statement illustrates how high the stakes had built up in the '60's.

> If we were obliged to pay a fair market value of say $20,000 per acre, which for present purposes is merely an arbitrary figure in order to demonstrate the point, it would be impossible for us to make such a payment which would amount to $16,000,000.00 .. The contention is made that .. we might .. lease the lands .... If we

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> were to arbitrarily use 6 per cent as a capitalized ground rent basis against a hypothetical 16 million dollar value, we would be required to pay $960,000.00 a year in rent for undmproved lands .... (p. 149A-150A)

At another point in his prepared statement Eisenstein said,

> We feel there is something radically wrong with legislation which seeks to deprive a property owner of its fee title without any just compensation, contrary to our American tradition and democratic processes. (p. 145 A).

Nobody at the hearing was rude enough to say so, but Eisenstein's position also exemplified some of the weakest and least defensible aspects of the position of the private title claimants. The title controversy had ripened and was widely-shared knowledge at the time his company closed on its purchase.

One can empathize with the pangs brought on by the prospect of paying $960,000 a year in rent one hadn't counted on paying, but in fact this figure - or whatever figure might actually be determined - reflects demonstrated power to command rental income in competition with other sites. It likewise reflects a dazzling rate of appreciation in value, and Empire can hardly claim that it had earned that appreciation by its own efforts. Empire had bought a lottery ticket with a winning number, but it knew when it bought the ticket that it might be adjudged counterfeit.

The lease provisions were designed to provide a manageable solution to the fiscal difficulty created for an industrial or commercial enterprise which found itself adjudged not to be the owner of its site; presumably it could cover rental charges

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out of current income where the outlay of capital required to buy back the site would be crippling. But the lease provisions did nothing for the individual whose main source of gain was speculative appreciation of the land value. S. 477's lease provisions clearly intended to funnel the fruits of that appreciation into the public treasury, which no doubt could be seen as a most un-American thing to do.

The Public Interest: A Weak Presentation

The presentation of support for the bill was rather weak. In addition to Ylvisaker, only one other State officer, the Deputy State Treasurer, testified, and he managed to say virtually nothing. (p. 38). Former Governor Meyner testified - but was sharply critical on many points and made no mention of what, if anything, there was in the bill that he endorsed. (p. 4). A Port Authority spokesman appeared and again endorsed the principle of a unified regional agency in very general terms. (p. 8A). A spokesman for the Bureau of Government Research at Rutgers testifying with regard to the cost-benefit sharing provisions of the bill uttered some faint praise and quite a bit of learned but equivocal comment. (p. 70A).

The legislative spokesman for the New Jersey AFL-CIO testified again, as he had for S. 518, that sound regional development of the Meadows would be an economic boon, creating new jobs in a favorable location. (p. 67). Ernest Erber testified effectively. (p. 48A). Two witnesses concerned with conservation and air pollution testified, favoring the bill but primarily urging due attention to their concerns.(p. 67A,p. 84A).

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And that was it, on behalf of S. 477.

Ylvisaker's testimony was well-organized, and would no doubt have been persuasive to a disinterested spectator; but it was not documented with factual proofs, and at the points where it came into conflict with statements of some of the bill's opponents, it was by no means self-evident where the truth lay.

The testimony illustrates the heavy reliance of the bill's proponents on the promise of Federal aid via the Corps of Engineers, as the basic response to the "home-rule" objection and the imperative reason to create a regional agency with clear and ample powers. Ylvisaker addressed his statement to the different objections which had been voiced, and "home-rule" was the first point he touched. (p. 81-82). Federal dollars are needed for reclamation work of the magnitude demanded by this particular geography, he said, and the Corps of Engineers will not certify the project unless there is a unified, competent regional agency in being to assure the sound and optimal character of the resulting development.

He rebutted the tax grab accusations in simple and direct terms: as specified in the bill, the individual towns would continue to get the taxes on existing ratables in the Meadowlands district, and, none of the future revenues would be siphoned off to the State, all must be distributed among the towns. ( p. 84).

With respect to the argument that some strategically - located towns might do better on their own than in a joint

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regional effort, he argued that a "regional effort would produce over time a much larger economic pie for all to share." (p. 84).

But some of his basic points were not self-evident; since the bill's opponents were asserting the opposite, the points needed to be documented. The proposition that sound meadows development could bake a much bigger economic pie for all to share, for example, is a proposition which might have lent itself to rather exciting development, and might have provided an effective counter to the opposition's efforts to generate fears about tax losses. The relative costliness and slowness of meadows reclamation by fill as compared to engineering works controlling the river and the tides, is one of the most fundamental and cogent reasons for unified action in the meadows; this could have been documented in a concise yet convincing way, but it was not. And though Ylvisaker used graphic terms to characterize the defects of the existing mode of development, several of the spokesmen for local action insisted that the defects of current development had been grossly over-stated. The defects were there to be documented. Given the stakes in the controversy, it seems fair to say that they should have been read into the record in definitive fashion.

There were many spokesmen, public and private, whom Dickinson and Ylvisaker could have called on to articulate different elements of their case. At least three private title spokesmen attacked the bill's definition of "riparian" as an

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attempt to enlarge the State's claim; it would have been a simple matter to arrange for authoritative legal testimony that the bill had no effect pro or con on anyone's title. Several private title claimants pleaded the hardship and inequity of the State's assertion of title. There was a great deal to be said on the other side, but no one said it. No one spoke for the Resource Development Council. No one spoke for the Fund for the Support of Public Schools. No one highlighted the extremely speculative character of some of the private investments for which piteous pleas were uttered, and the enormous windfall gains that were the stakes.

The testimony of Norman E. Hardy, Deputy State Treasurer, the only other State official to testify, bespeaks a very limp Administration attitude toward the hearings. He said he had difficulty in understanding the in-lieu-of-taxes provisions; (Senator Dickinson said he did too! ) (p. 35). And he said,

> This is not a Treasury Department bill and we don't have much to comment on. I did go through it briefly last night.

The significance of such non-testimony is heightened by the fact that he was the only witness competent to testify regarding the stake of the School Fund in the Meadowlands legislation.

Meyner's surprising testimony commanded most of the next day's headlines, which may be what he had in mind. It was highly critical, generally on very arbitrary and inconsistent grounds. The one consistent theme was that S. 477 was defective.

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because it did not follow the line laid down by the Meyner Commission's Supplementary Report; the radical contrast between his own "Final" and his "Supplementary" recommendations does not seem to have left him with any intimations of fallibility. He characterized the bill as a "planner's dream", (p. 10). He criticized the area defined by S. 477 as too large and asserted that his commission had only considered a jurisdiction confined to State-owned lands, (p. 5); but that simply is not so, his commission having defined its area of concern in terms of area rendered hard to develop because of tide and soil conditions - a different proposition indeed.

He criticized the proposed make-up of S. 477's commission for having five members instead of three, for specifying some local representation, and for the veto power given to a Municipal Committee, (pp. 5-6). In all this, he spoke as if the problems were strictly a matter of "getting a job done": to engineer and execute reclamation. He consistently failed to recognize the development planning aspect of the job.

Meyner criticized the bill for failure to provide a mechanism to define and resolve the title conflict, ignoring the bill's provisions for doing so; in general with respect to title, he spoke as if the main problem would be to accelerate the disposition of State quit-claims to private claimants, ignoring the fact that the Commission he headed had clearly pointed to public advantages in the lease procedure, (p. 12).

From a strictly tactical viewpoint, the almost perfunc-

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tory showing of the bill's proponents at the hearing could easily be justified. They believed that S. 477's fate would be settled by an "inside" legislative struggle, on which the hearings would have little if any impact. Senator Guarini, ranking minority member of the Committee, was the only other Senator present. And an elaborate presentation would probably not even have made much difference in the amount or the slant of the news play given to the hearings.

If the proponents are to be seriously faulted, it is for the failure to communicate the true nature of the bill and its benefits to the folks in the hustings, where the bill's opponents in the following months were so successful in stirring fear and protest based on misconceptions. From that perspective, however, the hearings were an opportunity to establish a solidly documented case, which would have provided a valuable base for later efforts in the wider arena.

In hindsight it is apparent that both the proponents and opponents of the bill, for different reasons, were thinking more in terms of an "inside" strategy than of a broad appeal to public opinion. Consequently the supposed function of the hearing, as a thorough airing and testing of competing views, was largely frustrated.

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## CHAPTER XIII: SENATE AMENDMENTS AND PASSAGE; THE TITLE "PACKAGE"

Immediately after the hearings, Senator Dickinson told a reporter for The Record (March 29) that he was prepared to revise S. 477 to overcome opposition. He indicated the area would be reduced, and local representation would be increased.

These, and provisions regarding the proposed Commission's responsibility for garbage disposal for surrounding towns, were the principal amendments made by the Senate Committee Dickinson chaired.

The garbage issue had been raised in February by Senator William Musto:

> Musto says the Hudson County legislative delegation needs an iron-clad guarantee that communities using the meadows to dispose of garbage now, will be accommodated in the future.[1]

The bill as introduced did contain some brief and very general language on the subject of sanitary landfill, but detailed provisions were added in committee, spelling out the explicit power and obligation of the Commission to provide for solid waste disposal facilities for the towns currently relying on the Meadows for this. In effect these provisions created a new kind of regional public agency for waste disposal.

The waste disposal provisions presumably made some specific enemies among private garbage contractors and local officials since the established arrangements for dumping operations were under municipal permit. Given the growing scarcity of dumping sites, such permits were valuable to the contractors

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[1]Elizabeth Daily Journal, Feb. 21, 1968.

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who got them. The contractors involved typically had close links with local political influentials. Opposition based on these considerations was rumored often in the following months, but it was not overt.

For example, the Borough of Lyndhurst gave dumping rights to Viola Carting Company for a large borough-owned tract. Viola handled Lyndhurst's refuse disposal needs at a favorable rate, but critics charged that he was under-paying for dumping rights.[1] Viola's attorney was Carmine Savino, who had been a Republican State Assemblyman until 1966, was publisher of a group of local papers, and was regarded as a major power in Lyndhurst politics. With Savino's approval, Lyndhurst councilman Peter Russo was elected to the State Assembly in 1967. (Russo subsequently became Mayor of Lyndhurst as well.) Russo, in local office, vigorously defended the Viola contract. He became the most intense and active opponent of S. 477 in the Assembly; but he never focussed his attack on its garbage provisions. Similarly, Savino's newspapers were a major force in fanning local opposition to S. 477, under the general slogan of "grab", but they did not make a major assault on the garbage provisions of the bill.

The Senate Committee amendments also enlarged the Commission from 5 to 7 members; and provided that the six members other than the Commissioner of Community Affairs must be Bergen and Hudson residents, four of them from the constituent towns.

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[1]Interview, Michael Guarino.

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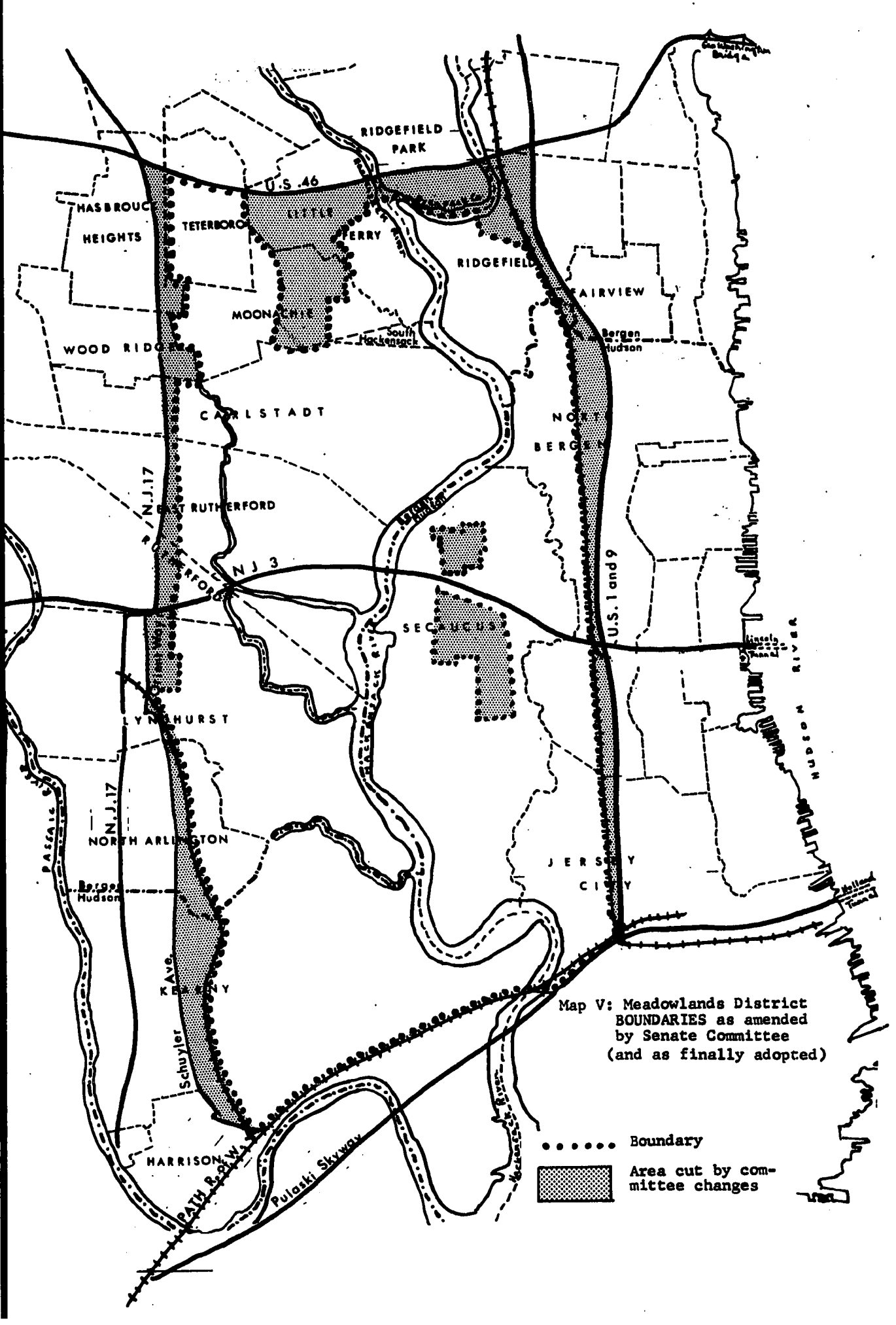


Map V: Meadowlands District BOUNDARIES as amended by Senate Committee (and as finally adopted)

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Thus, on a residence basis, local representation was increased from two of five, to six of seven. (Political party balance and equal representation of the two counties was also provided.) The veto-and-override provision was accordingly modified to permit an override of the Municipal Committee's vote by five-sevenths of the Commission, (instead of four-fifths).

The boundary definition was comprehensively revised, reducing the overall area from approximately 21,000 acres to approximately 18,000 acres. In general, the nature of the revision was to contract the Meadowlands district to leave out developed and partly-developed areas along the margins. The exception eliminated all the portions of four towns which had formerly been in the district, and eliminated sizable portions of eight of the 14 towns remaining in the district. In the case of Secaucus, totally encompassed in the original district, two sizable areas were excepted corresponding to the developed portions of Secaucus north and south of N.J. S-3. (See Map V, facing this page.)

A provision was added exempting from the tax-sharing pool, the completed value of any improvements under way as of the effective date of the act. (Section 65 (a) I-II.)

Development of the Title Package

The title lobby hoped to get SCR. 41 introduced and passed first. S. 477's proponents were eager to prevent this; they recognized that the desire to resolve title problems was

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a strong factor in the Legislature, and one which might be used to gain support for S. 477 and spur action on it; but that this leverage would be lost if the title lobby's proposal was enacted first.

Both sides had muscle. The Meadowlands title issue loomed much larger, relative to other concerns, among legislators from the South Jersey counties, which are relatively undeveloped and where large areas of potentially valuable land were subject to possible State claim; Senator Hiering also asserted that title to thousands of summer homes in the shore area which had been built on filled land was clouded by the O'Neill decision. Counting Hiering, there were nine Republican Senators from South Jersey- one of whom was "Hap" Farley of Atlantic City, generally regarded by the Trenton press corps as the most powerful man in the Senate Republican caucus. In addition, many senators from the rest of the State, on both sides of the aisle, were sympathetic to the private title claimants, as evidenced by previous Senate actions over several preceding years. And the passage of SCR. 41 was a top priority concern of the New Jersey State Chamber of Commerce and the New Jersey Association of Real Estate Boards.

On behalf of S. 477, Dickinson had some potent factors going for him. He had a firm commitment from the rest of the Bergen Senate delegation to support him - at least up to a point - on Meadows legislation. He was chairman of the committee to which both S. 477 and SCR. 41 had been referred, which gave him

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substantial control of the scheduling of hearings, and the timing of Senate Republican caucus consideration of each. He had the high respect of several of his Senate colleagues, and it was recognized that there was substantial, even though intangible, clout in the fairly wide public awareness of the Meadows development issue and strong press support which had been expressed for S. 477.

It was thus soon apparent that S. 477's proponents and SCR. 41's had the capability to stymie each other - especially in view of the rigidly observed protocol of the Republican "conference", i.e. caucus, that all bills must be brought up there and may not be reported to the floor unless a majority of the caucus approves it.

A "deal" to agree to pass them both was a logical solution, but it presented some difficult problems of conscience and justification. Not so much for the SCR. 41's proponents; if that resolution were legislated and then approved in the public referendum, the title lobby would have what it wanted and the several provisions of S. 477 based on different premises would be null. But for S. 477's backers, the possibility that the voters might approve SCR. 41's amendment proposal if it were placed on the ballot, posed serious problems. The proposed commission's fiscal power and political freedom would certainly be weakened if all the State's title claims in the area were forfeit. But the larger issue was the basic public interest involved. SCR. 41 called for the State to relinquish title to

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huge areas, perhaps as much as 252,000 acres, most of it undeveloped land in South Jersey with important ecological and recreational properties. Senator Dickinson put the gross value involved at $2.5 billions.[1] Having been party to an exhaustive study of the issue, he did not think the proposed give-away was sound or justified, and several other Senators had reached the same conclusion.

But it was pretty clear that S. 477 could not be passed unless SCR. 41 was also passed. The way out of the dilemma that was taken by Dickinson and those who shared his views was to vote for the resolution on the basis that it was fair to let the voters decide the issue; but to make it plain in so voting, that they opposed the amendment and intended to work for its defeat in the referendum.

The "title package", as it came to be called, was negotiated in March and April. The main parties to the negotiation were Senators Dickinson, Knowlton, Hiering and Farley. But most members of the Senate were drawn into the discussion and decision to some degree; the "package" was the one aspect of the Meadows legislation in which a majority of the Senate actively participated, (as contrasted with S. 477's provisions regarding structure and operation, for example, which virtually all the other Senators left for Dickinson and Guarini to work out.)

The Hughes administration, not very enthusiastically, acquiesced in the title package, and accordingly refrained from

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[1] The Record, April 24, 1968.

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vigorous opposition. But Hughes and his counsellors were very shrewd indeed - if we assume the course they followed was based on foresight. In rather quiet fashion yet very explicitly, Hughes laid the basis in the Spring of 1968 for the action he would take the following Winter which torpedoed SCR. 41: in April, through the statement of Deputy Treasurer Hardy as the only Administration witness at the hearings on SCR. 41; and in June in a press conference statement to be detailed below.

The Senate Committee hearing on SCR. 41 was held on April 23. There were 15 witnesses, of whom 14 spoke in favor of the resolution. Seven of these were members of the State Chamber's Ad Hoc Committee; local C. of C. spokesmen and some local officials also supported it.

Deputy State Treasurer Hardy put a written statement into the record and said, in an extremely brief statement, that the State was opposed to surrendering the interest in the meadowlands titles of the trustees of the State's Fund for the Support of the Public Schools.

His written statement, however, made a somewhat different point:

> The (Treasury) Department does not object to the intent of the bill. (!) It does object, however, if in its presentation the public is not made fully aware of the effect of the bill.

The statement was somewhat contradictory because at a later point it expressed opposition to the effect of SCR. 41 and preference for the line of resolution charted by S. 477

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and S. 478. But its reference to the question of whether the public would understand the real consequences was more significant, in the light of later events.

The Senate took up and passed S. 477, S. 478 and SCR. 41 on April 29. The vote was 40-0 on the first two - the full Senate membership - and 39-0 on the third. Bergen Republican Senator Woodcock, known as something of a maverick, abstained on SCR. 41; he told a Record reporter he didn't think it was proper to pass the buck to the public on an issue on which the legislators should feel obliged to vote their own convictions, that he didn't think the vacation of title was proper, and that it was too risky to expect the voters to recognize what was at issue, given the way the referendum was worded.[1]

Both Dickinson and Senator Crabiel, Minority Leader, though voting for SCR. 41, said they hoped the public would defeat it. In a brief floor debate, Crabiel declared that speculators had been buying dubious titles to meadowlands acreage on the cheap in hope of great profits if they were permitted to develop the properties, and that SCR. 41 would blanket their claims with those with more legitimate equities.[2]

As a political sidelight, another story in The Record on the same day's events, headlined "Farley Flexes His Muscles", noted that the Atlantic County Senator had secured Dickinson's

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[1]Leon Zimmerman, interview.

[2]The Record, April 30, 1968.

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and Knowlton's support on a bill to exempt farm workers from State minimum wage provisions, as an additional consideration for South Jersey support on S. 477.[1]

The "title package" was a high price for S. 477's proponents to pay for its passage, and they were not happy about it. But the Senate's unanimous action led them to feel that the deal assured the enactment of the bill with no great struggle. They were mistaken in this.

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[1] Ibid.

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## CHAPTER XIV: ASSEMBLY INACTION, MAY AND JUNE

There was an intense struggle over S. 477 in the Assembly in the months of May and June. Much more of an effort was required to gain support for it there, than had been anticipated. It was a complex bill, and poorly understood. South Jersey Assembly members were lukewarm toward the "title package". The Bergen Assembly delegation, it developed, was quite split on the bill; this division was a crucial weakness and it was aggravated by the strong drive mounted by local opposition forces. The bill's proponents were not prepared for this kind of trouble and took a long time to size up their situation and develop the kind of effort it required.

The intensive mobilization of local opposition was the clearest development.

May 1, 1968 - (The Record) - "Two Mayors to Fight Meadowlands Program" - Angelo J. Sarubbi of North Bergen, Thomas J. Jones of East Rutherford promise court fight if bill is passed.... Jones said he had been advised by Attorney Alfred A. Porro that the bill is unconstitutional.

May 3 - (The Record) - "State Assailed over Meadows" - So. Hackensack Attorney Ralph W. Chandless attacks state claims.

May 7 - (The Record) - "Dickinson Bill Attack Mounts" - East Rutherford Mayor Jones summons 11 towns to unite in opposition to Dickinson bill to turn over control of meadowlands to the State.

May 14 - (The Record) - "Jones Spurs Bid to Block Meadow Bill", Jones expressed hope of gaining the support of Assembly Majority Leader Moraites.

May 16 - (The Record) - "Meadows Bill Battle Plans Set" - Carlstadt Council approves 4-prong battle plan: (1) Council petitions Hughes to veto.

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(2) Councilmen will ask Governor to meet with them.
(3) Mayor Pareti to join other mayors in taking action opposing bill.
(4) Council asks Bergen County Board of Freeholders to oppose bill.
North Bergen authorizes attorney to ask Legislature to withhold passage on the basis of legal objections.

May 22 - (The Record) - Ridgefield asks delay of bill to allow town more time to study the proposal.

May 20 - (The Record) - Bergen County and Hudson County towns' officials to contest Dickinson bill in court if Assembly passes it.

May 31 - (The Record) - Little Ferry Mayor Heinege drops opposition to Meadowlands bill; changes in the bill (by Senate Committee) will leave most of the borough's land under local control, he says.

June 3 - (The Record) - Secaucus, Carlstadt and East Rutherford mayors seek meeting with Assemblymen to discuss opposition to proposed Meadows bill in its present form. Have been holding meetings weekly. Other mayors are involved, including those of North Bergen, Rutherford and Moonachie.

June 4 - (The Record) - Citizens opposed to the Meadowlands bill go to Trenton and return with cautious optimism. They were led by North Arlington mayoral candidate Robert Hovde, (Dem.). (That town's Republican Mayor, McDowell, was the bill's only active supporter among local officials.)

This all added up to heavy pressure on the Bergen Assembly members, particularly on Harold Hollenbeck who, along with Russo, represented the district which encompassed all but one of the Bergen towns with land in the proposed new jurisdiction. Russo himself was an active leader in organizing the opposition and was its spearhead in the Assembly.

## The Opposition Drive

The main focus of the opposition - to the extent that

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was focussed - was on the tax issue. The tax-sharing provisions, summarized on pp. 226-227 above, are by their nature tricky, hard to explain, and susceptible of varied interpretations as to their impact. And even if they were crystal clear they would inherently be open to challenge on grounds of equity simply because the final choice among alternative formulas of cost- and benefit- sharing must be to some degree arbitrary, and whatever choice is made will seem unfair in the eyes of some of the parties affected.

There is first of all the question of what values are to be assessed. The bill's drafters decided, all value increments from the effective date of the legislation would be covered by the tax-sharing plan. The issue of the base date was a subject of intense argument. Some towns said they had "held off" development pending establishment of planning machinery, and shouldn't be penalized by the exemption of the recent development that had been fostered in other towns. But the towns with active development under way wanted all development presently in the planning stage, development that had been held up by title problems, etc., to be exempted. The conflict was sharp, with no possibility of a compromise that would satisfy all interests.

Who would do the assessing? The bill left it in local hands, (Sec. 60) under existing law, giving rise to questions of equity if assessors in the different towns do not apply the same standards of value. (There are provisions in existing

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law intended to equalize assessments, but there has been frequent criticism of their effectiveness.) But if a centralized assessment power had been provided it would have raised just as difficult questions and even more outrage.

The tax rate to be used in computing each town's obligation to the intermunicipal tax account was, in effect, an average rate: "The total property taxes .. of all constituent municipalities, divided by .. the aggregate true value of all taxable real property .. located in all constituent municipalities, both within and without the district, in the year preceding.." (Sec. 65 (a) (3).) Assuming substantial differences in tax rates between municipalities, this would presumably mean that the tax obligation of some towns to the intermunicipal fund on account of particular properties, would be substantially higher than the tax levied on those properties by those towns. Yet, short of establishing the Meadows district as a new municipal entity, there was no alternative approach that did not involve comparable anomalies.[1]

The amounts credited to each town on account of increments in its service costs as a result of development in the Meadows district are computed on the basis of that town's per capita level of spending. This too represented a fielder's choice that was bound to be criticized whether this policy or

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[1]This riddle was discussed in detail in the testimony of Dr. Stephen Decter of Rutgers in his testimony at the Hearings on S. 477, op. cit., p. 70A ff.

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the alternative - crediting service costs on the basis of the average per capita spending of the towns - were chosen. The choices embodied in the legislation work to the benefit of the towns with relatively higher levels of per capita spending, and to the benefit of the towns with relatively higher tax rates. (These are not synonomous, though related; a high tax rate may reflect high spending, poor ratables, or both.) The mechanism would have a tendency somewhat to equalize the tax burden falling on residents of towns poor in ratables vis-a-vis those in ratables-rich towns. The choices embodied in the bill could thus be justified in terms of equitable social policy. But in political terms, the point is that they were choices which could be attacked by local officials, addressing their constituents, as hurting "us" and helping "them".

The main attack when the bill was under consideration in the Legislature, however, did not rise to this level of sophistication; its main theme, rather, was the simpler, angrier charge that "the State is going to take the taxes".

The charge could be - and was - pitched at three different levels of sophistication, depending on the audience. At the crudest level the representation was made that the State was going to "grab" and spend all the tax proceeds of Meadows development, and the towns would have to do without. This was just not so, but it was widely enough broadcast and believed to get a lot of people angry, and thus created a hysterical

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climate in which it was difficult to articulate the more legitimate questions, much less answer them. One level above that was the charge that the "State" would use the tax proceeds to finance the expensive reclamation works, and there might not be anything left for the towns to share. This was not correct either; the bill provided for special assessments against Meadows properties to finance such projects, and the expectation was that the Federal government, via the Army Engineers, would foot most of the reclamation bill. But this issue added to the confusion, which was so pervasive that the debate over the bill - even among the principals - rarely reached the third level, that of rational discussion of the real alternatives of impact and equity.

Mayor Thomas Jones of East Rutherford, who played a leading role in opposition at this stage, says that he became convinced, on the basis of answers essayed by the bill's proponents in sessions with the mayors, that no one knew clearly how the tax-sharing provisions would work. There is probably as much truth as poetry in that; not only is the bill complex, but the question of just how assessments would be equalized for the purposes of the intermunicipal accounting, for example, is befogged in ambiguities of the underlying statute law and prevailing practice.[1] (Whether enough would have been accomplished by another year of study, to justify the risks and costs

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[1]William J. Brennan III, attorney for the State, in MRDA vs. HMDC, Bergen County Superior Court, 1970; interview.

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of such delay, is another question.)

But if nobody really knew how tax-sharing would work, many of the opponents didn't really want to know, either.[1] Most of the time the air was rent with cries of "grab", with the issues of title, taxes and autonomy hopelessly scrambled.

In terms of organization the opposition was very loosely structured, involving different groups and with different individuals moving in and out of leadership roles. A number of the mayors were involved more or less continuously; they regarded themselves, and were regarded, as the leaders of the opposition; but they did not achieve real cohesion or continuity. The MRDA was reactivated in somewhat irregular fashion, consisting now almost entirely of active opponents of S. 477, but with little effect. At one point a citizens' group of opponents was launched,[2] but was not sustained.

Al Porro, however, was in touch with all elements of the opposition. As prime mover of the Meadowlands Institute he staged a meeting in June which was used as a sounding board for speeches opposing S. 477 and supporting SCR. 41. As counsel to the MRDA, Porro diligently attended all the sessions of the mayors, gave their problems generous attention, and accepted responsibility for numerous follow-through chores

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[1] Assemblyman Russo at one point reportedly told his colleagues, "I don't know what's in the bill and I don't want to know."

[2] The Record, June 4, 1968

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including the mechanics of publicity. Thus in effect he gained a leading influence, acting as coordinator, catalyst and strategist for the opposition, and particularly for the mayors. In the assessment of one of the aides on the proponents' side, describing one of the key meetings where they sought to negotiate a compromise, Porro "had the mayors on a string". In general, the proponents believe that Porro worked against the acceptance among the mayors of any clear, realistic basis of compromise.

Opposition in the Republican Assembly Caucus

The intensity and near-unanimity of opposition to S. 477 among local officials put Assemblyman Hollenbeck in a tricky position. Politically ambitious (he sought the Republican nomination for the N.J. 9th Congressional District in 1970), he did not want to hurt his good standing in his home base area. But neither was he eager to offend Dickinson or the county leadership. Unlike Russo, he understood the concept of Meadows reclamation and development on a regional scale, and believed in it. He was politically knowledgable and shrewd. His father had been Mayor of one Meadows town, and his uncle of another; both had been involved in the MRPB. A rather likable mixture of youthful cheerfulness and cynicism, a nimble and deft negotiator, he is a legislator who clearly enjoys the role of broker and mediator, and the game of making all parties - on both sides - regard him as a worthy fellow and valuable friend in the situation.

In the Republican Assembly caucus sessions which considered S. 477, Hollenbeck played his role by withholding

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approval and raising questions about particulars of the bill. This, together with Russo's very vehement opposition, made for a tough situation for Assemblyman Rinaldi, who as the chairman of the committee charged with S. 477, had the job of persuading his fellow-Republicans to agree to let the measure go to the Assembly floor for a vote. Considering all factors together that were operating in the Assembly, S. 477's opponents had excellent prospects of killing it there in spite of its unanimous Senate passage.

Procedurally speaking, they did not have to muster enough votes to defeat it. All they had to do was keep it bottled up in caucus. And the caucus protocol provides tremendous leverage to defensive and veto forces. It put the burden on Rinaldi to get 30 of the 58 members to raise their hand at one time and be counted for it. Russo had only to get enough of these wavering in the middle to put off a decision.

The fact that the bill did not have the support of either of the Assemblymen representing the affected district put Rinaldi at a severe disadvantage in trying to get commitments of support from Assemblymen from other counties. For many of them, Russo's violent opposition was sufficient reason to withhold support, under the code of back-scratching.

The fact that the rest of the Bergen delegation was split made it even more difficult to get support elsewhere. Russo got Assemblyman Vander Plaat in his corner; Vander Plaat was a veteran in the Assembly, and also headed an association of

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municipal mayors in Bergen County. He is a strong home-rule advocate. He had been elected by the Bergen Assembly delegation as its leader. His coolness toward S. 477 was influential with three others in the delegation who sat on their hands in the caucus votes: de Korte, Ferrara, and Randall.

Assemblyman Moraites of Bergen was Majority Leader and avowedly an advocate of S. 477, but his position was somewhat ambiguous. He was the Republican choice to oppose Rep. Henry Helstoski in the 9th Congressional District in the coming Fall elections. The proponents of the bill feel that from the outset, Moraites was unhappy at the idea of pushing S. 477 through over local opposition and was concerned that this would boomerang on his coming Congressional bid. Accordingly, they feel, he did not use the full weight of his post on behalf of the bill.

There were, in fact, only four votes in the ten-man Bergen delegation which lined up in support of S. 477. These were Crane, Costa, Volk, and Moraites; and of these, only Crane and to a lesser extent Costa were actively pro and willing to solicit support from Assemblymen from other counties.

The complexity of the bill, coupled with the haste and confusion which attends the New Jersey Assembly's deliberations - and the added measure of ignorance stemming from the circumstance that half the Assembly Republicans in 1968 were freshmen legislators - also worked against S. 477's chances. The Legislature meets only two days a week through the first half of the year and tries to deal with a great volume of business. The other

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five days of the week the legislators are home tending to their full-time professions and to local politics. No legislator pretends to be familiar with all the bills he votes on. Most legislators on most bills take their cue from the party leadership or from some colleague with a particular interest in the matter at hand. A split puts some pressure on those uncommitted to acquire more information and form their own judgment. But most of those uncommitted on S. 477 felt they just didn't have time to dig into this 61-page bill and reach their own decision about its numerous innovations and controversial aspects.

The title issue, finally, produced a very serious cross-cut. The negotiations in the Senate leading to the title "package" did not include members of the Assembly. As the case of Bergen well illustrates, many Assembly members felt under no particular obligation to follow the lead of their Senate counterparts. This was true of the South Jersey Assemblymen, to whom the title issue was very important. They constituted a very sizable bloc; in all, the southern counties (Cumberland, Cape May,Atlantic, Cape May, Cumberland, Salem, Gloucester, Camden, Burlington, and Ocean) plus Monmouth County in central Jersey which includes many shore communities, were represented by 20 Assembly members of whom 19 were Republican. Most of these were heartily in accord with the title lobby's views. Peter Dorn, the principal spokesman on the Trenton scene for the Ad Hoc Committee on Riparian Rights, had acquiesced rather unhappily in the Senate's agreement on the title "package", and did

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nothing to further its acceptance in the Assembly. Virtually the entire South Jersey bloc was playing limp each time the Republican caucus considered S. 477. Senator Farley, a principal negotiator of the "package" in the Senate, prevailed on the two Assembly members of his county to support it, but Hiering's counterpart Assemblymen were slow to do so, and several Assembly members from other southern counties were eager to demonstrate, on this issue, that they were not "controlled" by Farley, as the Trenton press corps often implies them to be.

With all this going against it, S. 477 made very slow headway in the Republican caucus in May and through most of June. Rinaldi sought to bring it up at each session. Each time it was brought up, Russo attacked it vehemently, broadly, and bombastically, as an outrageous rape of honest property owners, taxpayers and municipal home-rule. Rinaldi felt that Russo's attack was so narrow, unbalanced, and unreasonable that if he talked long enough he would discredit his cause. The only certain effect, however, is that Russo made many Assembly members aware of how many questions there were about S. 477 they didn't know the answer to; and Rinaldi felt that under the limited time assigned in each caucus session there never was an opportunity to make a comprehensive presentation and speak to all the questions. As time went by and discussion on S. 477 followed the same script at one caucus session after another, some members became impatient and wanted to hear no more of it.

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Belated Drive by the Proponents

The Republican Assembly caucus obviously controlled the fate of S. 477, and one of the more scandalous ways in which the legislative process in New Jersey thumbs its nose at public accountability is the Republican caucus protocol that its proceedings are not only closed, with no written record, but that they are confidential, and no member may disclose what was said there. Information obtained about the caucus session was accordingly limited, imprecise, and "not for attribution". But the picture that emerges is that when Rinaldi first presented the measure and asked for a caucus vote in May only four or five hands were raised in assent. A news account of the June 3 caucus (The Record, June 4) indicates that there were only 10 votes in favor of bringing S. 477 to the floor.

It was at about this time that the sponsors of the bill began to realize they confronted a serious problem in the Assembly. The Legislature was due to adjourn for the summer after only five more days of sessions, and if S. 477 could not be blasted out of caucus before then, its prospects in the Fall would be dim.

The proponents made an effort to muster the necessary support on June 20, the date of the next to last session. Dickinson, his aides, and Knowlton began to press their claims on the Bergen Assembly members in the name of the party's commitment. Governor Hughes, Ylvisaker, and their aides sought to round up support. An effort was made through South Jersey Senators to get more support for the title "package". Support of

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the 4-member Morris County delegation was secured, partly because it included some strongly pro-conservationist members who were persuaded that S. 477 would save some open land and clean up some of the mess in the Meadows.

Governor Hughes strongly urged passage of the bill in a June 19 press conference. He indicated that his office had "made some approaches" to legislators in the past three days.[1]

Hughes, however, expressed opposition to the title package, at this conference. He said that putting the meadows title referendum on the ballot, along with a number of bond proposals, would be a complicating factor which might defeat the bond issues for housing, hospital and State college construction which were also scheduled for a November vote.

If SCR. 41 were passed, it did not require his signature to go on the ballot as a constitutional amendment resolution. But, Hughes said,

> .. he would vehemently oppose the meadowlands title question and would take the move to court to stop what he called a billion dollar giveaway.[2]

This statement did not attract major attention in the press, and it made so little impression on the Assembly members that none of those interviewed remembered his making it at that time. It may be that those to whom the point was of vital interest, interpreted Hughes' threat as one he would carry out only if SCR. 41 were enacted and S. 477 killed.

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[1] Newark News, June 20, 1968.

[2] Ibid.

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As part of the effort to persuade the Assembly caucus, Senator Dickinson was brought in to make a presentation of S. 477; this required waiver of a hallowed "members only" rule. But according to one Assemblyman, Dickinson's plea "didn't save any souls".

Also, the record does not indicate a very vigorous or comprehensive effort prior to this session. Other than the Hughes press conference on the preceding day, the Meadows issue got virtually no press attention between the June 3 and June 20 sessions, although the proponents were in a position to drum up a lot of interest.

The vote that was reported in the June 20 caucus - only 20 votes to release it to the floor - made it appear that S. 477 was a lost cause.

It was only at this late and desperate stage that the proponents, rather frantically, mobilized an intensive effort to get the bill out of caucus before the summer adjournment.

On very short notice, Senator Dickinson's office undertook to organize a tug-boat tour of the Meadows, and wired invitations to all members of the Assembly to take the trip. The invitations went out on Friday for the trip the following day, but (with the help of a Western Union foul-up of non-delivery) the event was something of a fiasco. Only Rinaldi and two or three others who were already believers showed up. (Such a tour reportedly conveys very powerfully to anyone taking it, the huge physical scope of the opportunity and the dismal

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disorder and foul pollution which characterize present development.)

The efforts of the proponents to rally strong press support were much more successful. Governor Hughes on Friday released a letter addressed to Dickinson, but basically beamed at the Assembly via the press and public, which said that failure of the Republican Assembly to act on S. 477 would be a "tragic and costly mistake", and urged concerted action over the weekend to gain passage of the bill on Monday.[1] This action was strongly played by all the leading North Jersey papers on June 22. The New York Times on the same day also gave the Meadows story a good play, quoting Hughes, Dickinson, and also Erber as a Regional Plan Association spokesman. Strong editorials urging action on the bill were carried over the weekend by The Record, (June 22), The Newark Evening News, (June 23), The Hudson Dispatch (June 24) and The New York Times, (June 24). Dickinson, Ylvisaker, and the Governor as well as their respective aides were actively involved in the effort to get help from the press. Rinaldi credits the vigorous press response with a significant assist, and believes that the Times play, in particular, impressed several Assembly members and made them feel it was a "spotlight issue".[2]

Wheeling and Dealing Wins the Day

But from all accounts, it was most of all the decision

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[1]The Record, June 21, 1968

[2]Assemblyman Herbert Rinaldi, interview

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by S. 477's chief sponsors to bring as much political leverage to bear on the issue as they could, which rescued the bill. Dickinson and Knowlton got help from other Senators to close one important deal, involving Union County votes, and Governor Hughes reportedly gave the assurances that were vital to secure at least three votes.

There were five Republicans in the Assembly delegation from Union County, a suburban-industrial area south of Newark. One of these, Assemblyman Herbert Heilmann, was a Teamsters Union official. He wanted the support of the party leadership in both Assembly and Senate for a bill relaxing the rules governing driver's license revocation, for those for whom driving is part of their job. At least two of his colleagues in the delegation were joined with him in pressing this demand as a condition for their support of S. 477; and the other two, though supporting S. 477 on its merits, joined in asking S. 477's sponsors to accommodate Heilmann's demand.[1] An understanding to this effect was negotiated over the weekend.

The "deal" for the Union County votes was semi-public; its essence was reported in at least three different newspaper accounts. Other trades were made to secure other votes; no one is willing to discuss them frankly, but a picture of their character emerges from hints and scraps of information. It appears

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[1]Assemblyman Hugo Pfalz, interview. Since Hughes vetoed the bill in September, the business appears to have been political stage-play.

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that perhaps three more votes were picked up from Assembly members from central Jersey counties such as Monmouth and Middlesex. The latter county had Republican Assembly members that year but no Republican Senators; the Assemblymen needed Senate sponsorship on a bill relating to a dam project, and Dickinson agreed to provide it. A legislator secured the concurrence of the Governor and a Senator who was concerned, in the appointment of a friend to be counsel to a public agency. Another legislator got the assurance he wanted regarding a building appropriation.

The point, for this study, is not the merits of these decisions, but only the fact that the pivotal votes for S. 477 were cast on the basis of narrow, particular concerns of individual Assembly members which had nothing whatever to do with the merits of the bill.

Even so, it was a very close matter. Several brief sessions of the Republican Assembly caucus were held on Monday June 25, interspersed with Assembly sessions. S. 477 didn't have the votes in caucus at the beginning of the day. Intensive efforts to line up the needed additional votes by persuasion, pressure and trading went on all day. Rinaldi and Ierley recall that they had gone to take a shower in the Capitol basement in the early evening when word reached them from Moraites summoning Rinaldi to another caucus session because the votes were in hand.

Reportedly the vote to clear S. 477 totalled just 30,

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with none to spare, and one of the votes was Hollenbeck's. The caucus understanding involved a substantial compromise: the bill would be cleared to the Assembly floor, but not until the Fall session. And Hollenbeck says there was definite understanding that there were to be further negotiations in the interim to make the bill acceptable to local officials.

Moraites' preference appears to have been an important factor in this outcome. To push for passage at this time would have insured the bitter resentment of the Southwest Bergen officials for whom Russo was a spokesman, and he feared this might cost him crucial votes in his Congressional contest. He hoped that by taking the posture of leading the search for an acceptable compromise he could avoid this without forfeiting support elsewhere. There seems to be a consensus among the bill's leading pr ponents that if Moraites had elected to press hard for S. 477 instead of hedging in this way, the bill could have been enacted in June in the form the Senate had approved.

It is apparent that the title lobby led by Peter Dorn did not push for the "title package" in the Assembly, and that to a large extent the South Jersey delegation took their cue from that. Dorn's tactics appear to have been guided by the hope of getting SCR. 41 without S. 477. With the benefit of hindsight, he appears to have been too greedy. In all likelihood he could have had the "package" enacted in June if he had pushed that way. This would have put the constitutional amendment on the ballot in November 1968, in the shadow of a presi-

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dential contest, and in company with bond issue referenda for which the LWV, teachers and others were organizing "Vote Yes" drives. These would have been favorable circumstances for the title amendment.

The struggle in the Assembly revealed the considerable leverage local opposition could exercise there, particularly in the Republican caucus; and its outcome was only a qualified success, leaving S. 477's ultimate prospects very much in doubt.

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## CHAPTER XV: "COMPROMISE" AND ASSEMBLY PASSAGE

The situation created by the Assembly's June 24 action clearly pointed to some kind of negotiation to render the bill less objectionable to the local officials who were its principal public opponents. Assembly Speaker Moraites told a reporter:

> I want to work out something that can pass and be palatable to all concerned.[1]

The Hughes administration likewise took this tack. at a meeting in the Governor's office attended by three mayors generally friendly to the concept of a regional development agency but opposed to features of S. 477, and also by Assemblymen Moraites and Russo, Hughes urged the mayors to ease their opposition and negotiate specific changes. He assured them that if they did so, he would back them up even to the extent of refusing his signature until the bill was acceptable to them.

The mayors present were not entirely convinced Hughes meant it.[2] But they did not call his bluff. Although there were numerous attempts to set up meetings for negotiation purposes, there never was a bona fide good-faith bargaining session. In part this reflected the difficulty the mayors had in reaching a common position; in part it reflected the continuing conviction of some of the more determined opponents, that they could defeat the bill.

The Congressional fight in the N. J. 9th Congressional

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[1] The Record, Sept. 25, 1968.

[2] Thomas J. Jones, interview. Mayors Amico and Pareti were also present.

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District, which included the Southwest Bergen towns, became the focus of their efforts. The opponents of S. 477 demanded to know the position on the bill of Helstoski and Moraites, and of their respective political allies. This put much more heat on Moraites, since he occupied a key position affecting the bill's fate. Moraites' effort to play a "broker" role on the bill became increasingly difficult, and finally disastrous to him. Political insiders, including newspaper men, were aware of the sort of dance Moraites was doing on S. 477; those favoring the bill were annoyed with him and sought to push him into a stronger commitment to follow through on the G.O.P. platform of a year earlier. One reporter regularly asked Moraites to define his stand on the Meadows bill at political meetings. In the northern towns Moraites would stress his determination to see an adequate bill passed. In the southern towns he stressed his determination to see that the bill was made acceptable to the towns. On one occasion, under heavy fire from opponents of the bill, he explicitly took credit for delaying passage of the bill in order to make changes to satisfy its critics. The press took pains to point this out to the rest of his constituency,[1] and an editorial in The Record criticized him for it.[2]

His opponent, Helstoski, had his home base in South Bergen and was close to the issue. He had been mayor of East

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[1] The Record, Oct. 11, and Newark Evening News, Oct. 22.

[2] The Record, Oct. 14.

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Rutherford, and involved in the MRDA. While he recognized the need and value of a viable regional agency, he did not stick his neck out for S. 477. His tactic was shrewd if not edifying: he asserted that the bill's sanitary landfill provisions carried the threat of making the Meadows a huge garbage dump, and he characterized the proposed Commission as a new "superpower" agency akin to the Port Authority, out of the reach of popular control. The first of these charges, at least, misrepresented the bill's intent, but his position was one which was politically popular at home and did not bring him much censure elsewhere.

Many moderate Republicans sympathetic to Dickinson's bill - a group which included Donald Borg and James Sutphen, Publisher and Managing Editor of The Record, - were angered by Moraites, however. Toward the close of the campaign, The Record, to the surprise of many and to Moraites' dismay, endorsed Helstoski, and specified Moraites' performance on the Meadows issue as one reason. Political analysts had generally regarded Helstoski's chances in the election as poor because of a revision of his district boundaries earlier that year by the Republican-dominated State Legislature, but he just squeaked through.

Opponents of the bill did relatively little in the public arena. And there is no clear evidence that more than a small minority of the voters cared very much about the issue of the Meadows bill, even in Southwest Bergen. But in that area, virtually all who cared were against the bill, they felt strongly,

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and they were on the scene wherever politicians were seeking votes. The local mayors and council members were among the most concerned, and they were political "insiders" with great leverage at election time. Thus the political leaders in county and State offices were made painfully aware of the opposition to S. 477.

Support Effort Is Muted

Some of the bill's proponents wanted a major publicity campaign to be staged in the early Fall to build public support for S. 477. They sensed that intensive efforts by the bill's opponents in the election season was eroding some of their Assembly commitments, and was strengthening the hand of those mayors who were demanding drastic amendments. Senator Dickinson was willing to foot the bill for such a campaign, and Senator Knowlton, Ylvisaker, and Curtis Winston wanted him to do it. Winston drafted a campaign plan but other advisers counseled against it. A professional P.R. firm which served Dickinson in other matters advised it would have little effect. Nelson Gross wanted the issue played down because of the conflict it was generating within party ranks.

Senator Knowlton was pressing hard within the party for support for S. 477, and when Gross asked him to "lay off", angry words were exchanged. Some of Gross's critics later voiced the suspicion that campaign contributions from persons with stakes in private Meadows title claims were a factor in Gross's 1968 reversal of his stance of the year before. It had been his decision in 1967 to feature a pledge to enact a Meadowlands

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bill in the Bergen County Republican Organization campaign platform.

The result of the cross-pressure was not a clear decision in either direction, but instead a rather limited, muffled and uneven effort.

A "Citizens Committee for Meadowlands Development" was set up, headed by a Moonachie Republican friendly to Curtis Winston. A news release announced the organization's plan to circulate petitions supporting S. 477. But this organization was more a P.R. front than a body based on broad public support, and it did not develop wide activity.

Dickinson arranged for the printing of 50,000 copies of a flyer titled "What's Your Stake in the Hackensack Meadowlands?" with the Citizens Committee imprimatur. This was beamed at the Meadows towns and stressed the educational, tax and job benefits of S. 477. But the cross-pressures within the party resulted in holding off the distribution of this until after S. 477 was passed.

Dickinson did, however, make a county-wide mailing during the campaign of a 12-page booklet entitled "The Hackensack Meadowlands - 1968".[1] This made a clear, competent and persuasive statement of the case for S. 477, albeit in a somewhat detailed and low-key way.

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[1]Written by Cliff Goldman, this originally appeared as an article in Jersey Plans, (Vol. XVII, No. 2, Sept. 1968) published by the New Jersey Division of State and Regional Planning (a division of the Department Ylvisaker headed.)

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Some favorable publicity was generated in the Fall. Ylvisaker convened a group characterized as "World Experts" in a press report to discuss the potential of Meadows development in a two-day session at Princeton in September.[1] He made a strong speech to the Bergen County Chamber of Commerce in October, which got very good press play.[2]

There was some activity to stir support; the New Jersey State Federation of District Boards of Education, for instance, announced a resolution of support based on its potential benefit to the School Fund.[3] But this kind of effort was very limited.

Dickinson and his staff, with minimum professional help, took movie footage of current conditions in the Meadows, accenting the pollution, visual blight and ragged development, and added a sound track with Dickinson's commentary. This was shown at a press conference,[4] a television showing was programmed and the film was shown to various local meetings around the State.

But this varied activity fell far short of an intensive and comprehensive campaign. The Meadows issue, broadly speaking, was not prominent in the press or in the public mind during

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[1] The Record, Sept. 29, 1968.

[2] The Record, Oct. 15 and Oct. 21.

[3] The Record, Oct. 14.

[4] The Record, Oct. 22.

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the period of the 1968 election campaign, except in the South Bergen towns.

Dickinson also arranged for an air tour of the Meadows for members of the Assembly. This was scheduled, with ample notice, for the weekend immediately following the November election. It attracted 20 members of the Assembly; the account in The Record (Nov. 11) indicated that most of those who went were already in favor of S. 477, but that the tour may have firmed up some shaky support.

Efforts Toward a Compromise

Local opposition to S. 477 was a headache to political leaders in both parties and they strongly desired to see some compromise worked out. At the same time the leadership in both parties was committed to pass an adequate bill. The situation thus put a great deal of pressure on the mayors to come together and work out a common position of what they wanted. They met frequently through the Summer and early Fall. But two divergent positions developed in these sessions. One was the view that a bill almost certainly would be passed, and the mayors should use their leverage to get the best compromise possible. The other was that the best course was to maintain opposition and avoid stating any terms for compromise. Porro participated in these sessions and generally took a hard line. Hollenbeck took part in several and wanted to bring about a viable compromise. The sessions were private, minutes were not kept, and the recollections of different participants are imprecise and

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conflicting. The overall impression is that most of the mayors accepted the logic of the first view, but they had difficulty in coming to agreement on the specifics of a common position; and this difficulty was amplified by the attitudes of those who didn't want to compromise.

In the Summer and early Fall, it was Ylvisaker who took the principal initiative, on behalf of the bill's proponents, to try to find a basis of agreement with the protesting mayors. Hughes had pledged such efforts to the mayors when the Assembly had deferred till the Fall.

Ylvisaker met with all the mayors individually, and on different occasions met with groups of them. Reportedly several of the one-to-one meetings were promising, but the group meetings got nowhere. The mayors did not have a tight organization, they did not agree, and they fought shy of specifying any clear terms. Ylvisaker became convinced that they were stalling, or at least that some of them were deliberately obstructing agreement among the mayors on any reasonable common position. (Some of the mayors dispute this, and say that Ylvisaker on occasion promised to work out compromise formulas on disputed points, but did not follow through.[1])

By late October, despite many hours of parley, there had been no real progress toward agreement. The bill's proponents intensified efforts to negotiate compromise terms before

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[1]Mayor Paul Amico, Mayor Thomas Jones, interviews.

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the Legislature reconvened in the week following Election Day. One major meeting was staged, and was attended by virtually all of the principals on both sides. But this meeting was a stand-off, with no real bargaining. Ylvisaker set up a second meeting in Newark for November 7 which an advance press report billed as the "major effort" to reach compromise.[1] But most of the mayors boycotted this meeting.

Antagonism to Ylvisaker on the part of several of the Bergen Assemblymen contributed to the failure of these efforts. Ideological and political factors and resentment of Ylvisaker as a "glamour boy" who always got rave press notices, entered into this. They were not eager to see Ylvisaker and Hughes emerge as the heroes of the struggle; they saw no need for Ylvisaker to have a hand in the drafting of amendments. Porro's active participation, pressing hard-line opposition to most of the bill's basic features as "unconstitutional", was another significant factor in the failure of the parlay attempts.

The Drafting of Amendments

Following the collapse of negotiation efforts, events developed in a confused and disjointed way.

The Administration resolved to try to achieve passage of S. 477 as it stood. But the political initiative at this point actually passed from the bill's sponsors. The bill's opponents had gained more leverage since June; they had secured some commitments from some key Bergen Republicans to make the

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[1] Newark News, Oct. 31.

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bill's sponsors accept substantial amendments as the price of passage. The situation and the flow of events placed Assemblyman Hollenbeck in a pivotal role, as the principal agent of a grouping which also included Vander Plaat and least two others in the Bergen Assembly delegation, De Korte and Ferrara. Nelson Gross reportedly also put his weight behind the proposition that amendments responsive to the local opposition should be enacted by the Assembly.[1] Russo was of course to be counted with the other four against any effort to pass the Senate version of S. 477; to the end, he opposed the bill in any form. The ten-man Bergen delegation to the Assembly, all Republicans, controlled the bill's fate in Assembly caucus; five of them were hard votes against the Senate version, and all the other five had accepted the idea of substantial amendments to mollify local opposition.

Hollenbeck had been heavily involved in the late stages of the effort to find a compromise. He was to some extent a spokesman for the mayors - though far more moderate than Russo - and to some extent a mediator between the mayors and Dickinson. When the mayors stayed away from Ylvisaker's final parley effort, Hollenbeck did too. He had, however, tried to get the mayors to agree on amendments which Dickinson would be willing to accept. This effort nearly succeeded but then came apart, he says, largely because Porro balked at some of its terms at the last minute. (Nine of the mayors subsequently joined in a

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[1]Senator Willard Knowlton, Curtis Winston, interviews.

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statement which attacked S. 477 in extreme and quite inaccurate terms,[1] and proposed amendments assigning all development powers to the council of mayors, giving the 7-man body appointed by the Governor advisory powers only. This plan was announced just before the Legislature reconvened, but it was patently unworkable and was not introduced as a bill; it must be regarded as a publicity and bargaining ploy in the legislative struggle.)

Thus Hollenbeck had no commitment from the mayors to support a viable compromise, but he knew intimately at this stage what was on their minds, and he had decisive leverage to demand changes in their name. At least half the Bergen delegation was in his corner; and the June action in the Assembly, he says, had involved a commitment for a further Republican caucus review of the bill and proposed amendments, before clearing it to the floor.

He met early in November with Dickinson and his aides, and it was agreed that he would draft amendments that would accomodate some of the sharpest concerns of the towns. One of these, clearly, was to keep for themselves "ratables" that were currently in the planning stage and might be built within the next year or two. Since much of the current development was taking place along the edge of the Meadows, much of what the wanted in this regard could be accomplished simply by slicing down the proposed district boundaries. Hollenbeck drafted

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[1]Mayors Meadowland Development Committee, "Objections and Recommendations Regarding S. 477." 15 pp., mimeo; unpublished.

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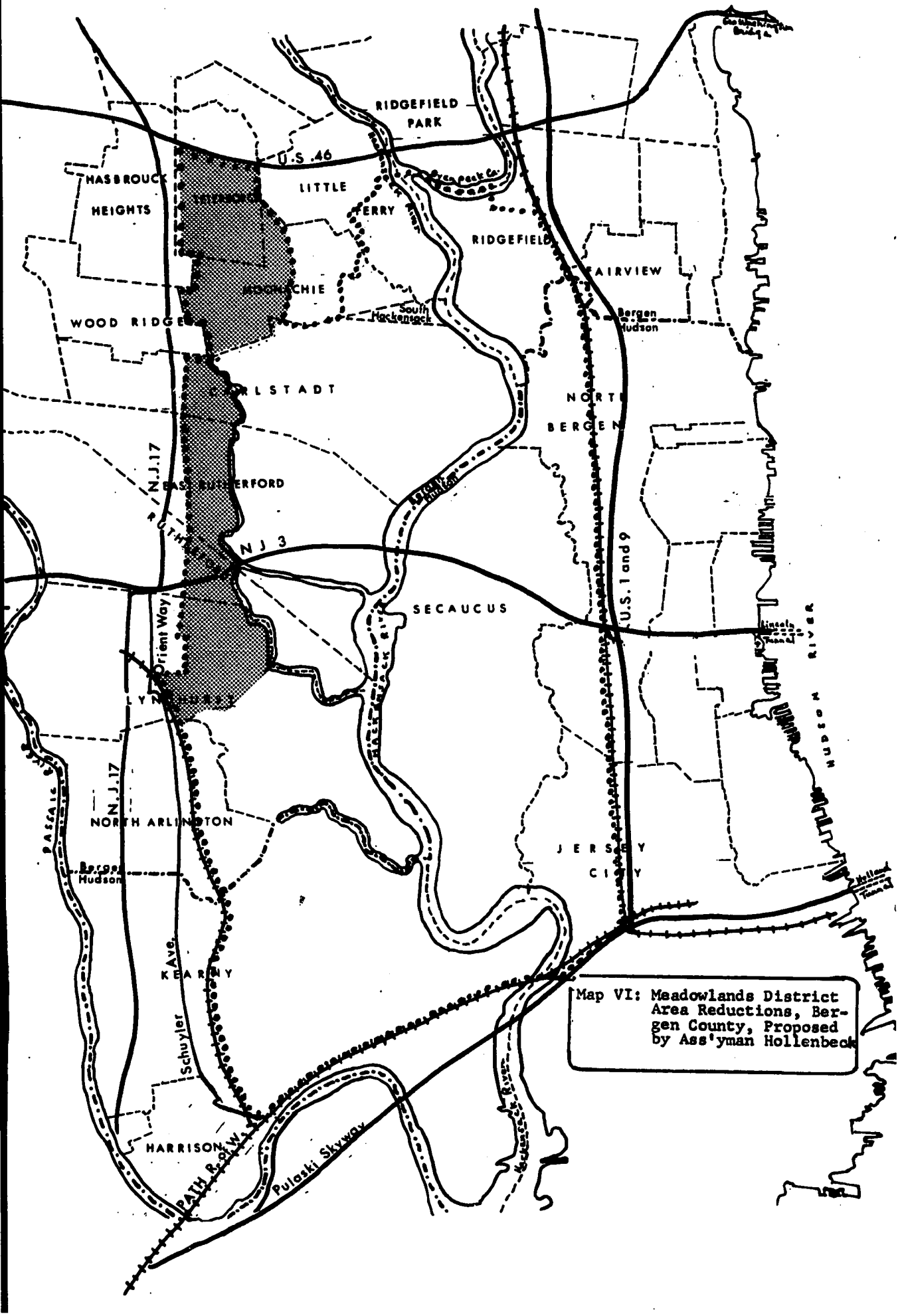


Map VI: Meadowlands District Area Reductions, Bergen County, Proposed by Ass'yman Hollenbeck

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boundary changes affecting the Bergen County towns on the west Hackensack which cut about 2000 acres out of the district. They excluded about two-thirds of the Lyndhurst Meadows area covered by the Senate bill, and about a third of the area in Rutherford, a quarter of the area in East Rutherford, an eighth of the area in Carlstadt, all of Teterboro, and most of the Moonachie area covered by the Senate bill. (Map VI, on facing page.) Dickinson was to meet with Senator Guarini regarding boundary reductions affecting Hudson County towns.

The amendments Hollenbeck drafted also changed the base year for computing increments in population and employment from 1968 to 1969, and deferred for one year (from 1970 to 1971) the first payments to or from the towns through the intermunicipal account. They gave the proposed Municipal Committee a little more muscle, by appropriating $50,000 for its initial operation, empowering it to hire staff, and providing for a liaison committee of its members to act as non-voting advisors to the Commission. Another amendment inserted a preamble statement of the nature and intent of the intermunicipal account, stressing its "guarantee" provisions and the fact that the Commission was not empowered to spend any funds from this account except for the cost of administering the account itself.

There were some additional amendments of very minor consequence. In general, except for the boundary changes, the amendments Hollenbeck drafted were in the nature of talking

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points rather than substantive changes. (The Governor's subsequent conditional veto message left them intact.)

The mayors met on November 11. Hollenbeck outlined his amendments to them, and he says that though there was no formal decision, there was a consensus of sorts among the Bergen mayors that they would acquiesce in the bill, thus amended. (Following this meeting the mayors announced their alternative proposal, mentioned on page 286 above.)

Dickinson, Knowlton and Rinaldi as the leading proponents of the bill in the Legislature were in the middle, during the Fall negotiations, between their fellow-proponents in the Hughes administration on the one hand, and their fellow-Republicans in Bergen County, particularly the Assemblymen, on the other. With the approach of Election Day and then of the reconvening of the Legislature, the pressure mounted, and with it the friction. As Dickinson was pushed to acquiesce in concessions which would resolve the sharp split in his own party, the close cooperation that had been maintained between Dickinson and Ylvisaker went by the boards. Communications deteriorated between S. 477's sponsors in the Legislature, and its administration sponsors, at this critical stage when amendments were being negotiated and drafted. This division was not strictly along party lines, inasmuch as Senator Guarini undertook to play for the Hudson County towns, the same role which Hollenbeck played for the Bergen towns. But neither the Governor's office nor Ylvisaker's was a party to the drafting of amendments

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at this stage.

Dickinson, Guarini, Assemblyman Crane,who had undertaken to champion Dickinson's views on S. 477 in the Assembly, and Mark Riefer, the legislative staff man who had handled drafting and procedural chores on both S. 518 and S. 477 and had developed an intense personal interest in the bill, met in a staff office in the State Capitol on the morning of Friday Nov. 15; the Legislature was to convene at 2 that afternoon. The meeting's purpose was to agree on boundary amendments to quiet opposition to the bill among Hudson County Assembly members.

The Secaucus Exception

They proceeded to incorporate the following further exception in the boundary description (section 4):

> (d) Exception: In the municipality of Secaucus the district shall be limited to lands which, by and large, are less than 4 feet above mean sea level in elevation.

There was no solid rationale for this exception. Later, no one was willing to acknowledge authorship of it or to offer a clear and consistent explanation of its intent and justification. Most if not all of those involved in its drafting apparently believed that the exception applied to land that was either developed or about to be developed.

The area was actually much larger and embraced much more undeveloped land than was initially realized. But quite aside from that, the exception was inequitable and legally vulnerable

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since it employed a criterion for exception - a 4-foot elevation - which had not been applied to any other part of the district. There were three other Hudson County towns which had land for which similar exceptions might logically have been sought. Jersey City's leaders had been silent, but both North Bergen and Kearny officials had requested boundary changes in their talks with Ylvisaker. And there were considerable areas in the Bergen County towns, still included in the district under Hollenbeck's amendments, which would qualify for exception by the criterion of a 4-foot elevation.

The use of the phrase "by and large" made the definition extraordinarily imprecise; all the more so since there was no authoritative survey at hand at the time the definition was drafted, showing just where the line would fall. The drafters acknowledged this problem in a second paragraph of their amendment:

> (e) The Hackensack Meadowlands Development Commission hereinafter established shall, within 120 days of the effective date of this act, cause to be made... a metes and bounds description of the above described area which it shall designate as the district.

The technical difficulties and the degree of administrative discretion implied in this assignment were considerable, and would have invited protracted litigation. For example, where the land was slightly uneven, strict use of the 4-ft. standard would produce a crazy-quilt of inclusions and exceptions; but how to decide <u>how</u> freely to employ the latitude granted by the phrase "by and large"?

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Part of the implied rationale for the use of an elevation standard had to do with the title issue, i.e., such land is clearly not subject to State claim. But this is clearly illogical as a criterion for exception, since the justification of the Act rested on engineering and planning considerations, irrespective of title.

The exception could not be justified by engineering considerations. Superficially, it may have seemed that it could. There was a widespread misunderstanding that only the lands regularly flowed by high tide were in need of engineering works for their reclamation. The Army Corps of Engineers had agonized long over the question of how high a tide they should design against. Their studies showed an historic peak of 8 feet above mean sea level; but they also showed that if the worst recorded conditions of wind, rain and "tidal surge" should occur simultaneously with high tide,the sea would rise 15 feet. Works designed to stem such a tide would be so expensive, and the contingency was so remote, that the Engineers finally settled on a 10-foot standard. Almost all the Hackensack Meadows area lies below this elevation, while almost all the surrounding land lies above it. The 10-foot standard had been employed as a criterion in the boundary amendments made by the Senate committee. From the Corps of Engineers' point of view, all lands below the 10-foot elevation would be benefitted by the tidal protection of the proposed reclamation works, were therefore part of the cost-benefit calculations, and so should be within the planning

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jurisdiction of the agency charged with assuring the realization of the projected benefits. (p. 124 ff., above.)

Equally important, the exception violated the planning considerations which justified the Act. Given the location and size of the area affected, it is obvious that no rational, coherent development plan could be formulated for the Meadows area as a whole which did not encompass this area.

Though the flaws in the Secaucus exception were more obvious, and its consequences larger in terms of area, it should be noted that the boundary changes Hollenbeck drafted affecting Bergen County towns also did serious violence to the engineering and planning logic underlying the Act. This is particularly evident with respect to the large area of Lyndhurst excepted by his changes.

The group which drafted the Secaucus exception was obviously aware of the point on which Governor Hughes was to focus his subsequent criticism: that the boundary changes would impair the viability of the district as a planning and development unit, and thus jeopardize federal funding of the requisite engineering works. They tacked on another paragraph to cover that problem:

> (f) If, in order to insure the approval .. of the Federal government, ... of any reclamation project in the Hackensack Meadowlands, it is necessary to include in any such reclamation project riparian land which is not within the district designated herein, the Commission, upon certifying (the necessity thereof) to the Governor and the Legislature) .. shall be authorized to include in the district, for the purpose of such reclamation project, any riparian land in the Hackensack Meadowlands.

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Quite aside from the wisdom of establishing a district on this basis, the provision quoted was faulty for the purpose it had in mind, since it gave the Commission discretion only to add riparian lands not within the act's designation, whereas considerations of reclamation engineering, planning and development control, and equity in sharing of costs and benefits, require the inclusion of much more than the land flowed by high tide. This language is a striking demonstration of how persistently the riparian question was confused with the reclamation and planning issues.

Aides to Ylvisaker and Hughes got wind of this drafting session, and Beatrice Tylutki tried to gain admittance to it. The drafting party fended off the request, however, and no one in the administration side learned what was being worked out until it was done.

Much later, after the Secaucus exception had been born, declared a monster, and killed , no one was willing to acknowledge paternity. So it has never been possible to establish what motives were at work in the act of conception. The rather sneaky way the deed was done gave rise to resentment and suspicion. But it is not clear whether the action should be attributed entirely to bad judgment, or in part to knavery as well.

Assembly Action and the Governor's Reaction

After the drafting session, Dickinson gave Hollenbeck a copy of the text of the Secaucus exception and asked him to incorporate it with the others. Hollenbeck did so, using scissors

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and paste, because time was so short at this point. Hollenbeck then went to the Republican Assembly caucus, where he described the amendments he proposed, and requested caucus clearance for action on the Assembly floor later in the day, to attach them to S. 477.[1] One Assemblyman says that he criticized the construction of the Secaucus exception. He recalls that the area involved was represented, in a very vague way, as not very large in extent, nor of particular consequence.[2] Several Assemblymen recall that in response to questions someone volunteered that the Secaucus exception applied principally to "a couple of cemeteries", and that the area affected was "about 300 acres".

Miss Tylutki had meanwhile gotten the text of the Amendment. She phoned Sidney Willis in the office of State and Regional Planning and asked him to chart, as quickly as possible, the area affected by the Secaucus exception.

Ylvisaker tried to reach Hollenbeck at this stage, but Hollenbeck had already gone from the caucus to the Assembly session. The procedure there was pro forma; Hollenbeck requested that S. 477 be re-opened for amendment, and then proposed his amendments, both motions being adopted by voice vote. The amended bill was then ready for "third reading" - final adoption - at the next session of the Legislature, the following Monday.

When Hollenbeck left the Assembly at the end of its

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[1]Assemblyman Harold Hollenbeck, interview.

[2]Assemblyman Lee Laskin, interview.

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session, he received a message to come to the Governor's office. He found virtually all the principals there: Hughes, Ylvisaker, Tylutki, Goldman, Dickinson, Guarini, Knowlton, Moraites, Rinaldi, Crane and several others. The rough sketch map Willis had prepared to show the boundary changes was on exhibit. The area affected by the Secaucus exception was in fact very large - about 3000 acres. Few if any of those involved in its drafting had fully understood this and visualized clearly its relation to the whole, and they were somewhat startled.

The deliberate effort to avoid open discussion of the amendments before they were submitted had sparked a good deal of anger on the administration side. The Governor gave forceful vent to his feelings. He criticized the amendments and their authors with intense scorn, showing no favoritism. He insisted that the amendments destroyed the legal, fiscal and planning viability of the bill and must be removed. The fact that an exception of particular benefit to one town was being "slipped in the back door", without opportunity for open scrutiny or weighing of competing claims, provided occasion for harsh criticism for which no one had a very good answer. From all accounts most of the legislators defended their handiwork very lamely, on the ground that the area had to be reduced to get a bill passed and if this involved serious defects they could be corrected in the following session. But the administration people sharply disputed this. Hughes charged Moraites to move quickly to reconvene the Assembly before its members departed

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for the day, to reconsider - and drop - the amendments, and the meeting broke up on this note, but Hollenbeck, who was hotly resentful of Hughes' criticism, says that when they left the Governor's office he persuaded Moraites not to call the Assembly back into session.

Positions hardened over the weekend. Vander Plaat and Hollenbeck persuaded a majority of the Bergen County Assembly members to take a hard line on the amendments. Hughes summoned reporters for a statement urging that the amendments be dropped at the coming Monday Assembly session and said he would veto it as it stood.[1]

The Governor and Ylvisaker were in full concert at this stage of the fight. Ylvisaker was absolutely insistent that the amendments rendered the bill useless and could not be accepted, and Hughes, showing strong respect for his subordinate's judgment, committed himself fully to this position.

Hughes made a last-ditch effort on the morning of the session of Monday, November 18 to persuade the key legislative leaders to reverse their action. He had called in the man heading the Corps of Engineers' New York District, Col. Harvey Jones, and Frank Panuzio, who had been involved in the Hackensack project for at least a decade. They confirmed Hughes' argument that the amendments undercut the conditions the Engineers had always specified: a sound development plan and a unified agency willing and able to carry it out. But the champions of the

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[1]Newark News, Nov. 24, 1968.

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mayors in the Bergen delegation had dug in their heels.

The Assembly adopted S. 477 with the amendments by a vote of 57 to 6. All of those voting against it, and most of those abstaining, were hard-line opponents. The Hughes administration made no great effort to generate "Nay" votes. The vote on the companion bill, S. 478 (authorizing additional judgeships) was about the same. SCR 41 carried by 55 to 13. Here, nine Democrats voted against the title referendum proposal and three more abstained. Four maverick Republican votes were cast against it, including two South Jersey members who opposed a large-scale surrender of the State's claims on conservationist and fiscal grounds.[1]

The amended bill was accepted by the Senate the same afternoon virtually without opposition. Clearly, the Republican leadership at this point was persuaded that it was a matter of accepting the Assembly amendments or getting no bill at all.

Thus, passage of S. 477 with the Assembly amendments was accomplished under circumstances in which the bill's proponents had lost unity and control. Forces quite responsive to local opposition were in the saddle and dictated terms of passage which seriously compromised the bill's purposes.

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[1]Interviews, Assemblymen James Coleman and Barry Parker.

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## CHAPTER XVI: CONDITIONAL VETO AND FINAL PASSAGE

Hughes and Ylvisaker made up their minds promptly on a veto. The New Jersey constitution gives the Governor a powerful tool, the conditional veto, which permits him to return a bill specifying the amendments he requires to make it acceptable to him. The Legislature may instead over-ride the veto, but that requires a two-thirds vote, whereas acceptance of the Governor's conditions requires only a simple majority.

Hughes obtained from the Army Corps of Engineers a letter stating their objections to the Assembly amendments. Though worded very circumspectly, the letter made it quite clear that the changes, in the Engineers' view, created serious practical obstacles to the successful funding and execution of the reclamation engineering works. After setting forth its basic requirements for local cooperation, including assurance by the State of a master development plan backed up by adequate land use controls, and its requirement of a showing of projected benefits which would justify cost, the Corps' letter stated:

> .. the Hackensack Meadowland Development Commission, alone, as it is now proposed in Senate Bill 477, as amended, can no longer satisfy the requirements of local cooperation.
>
> Since under the new legislation the Commission can no longer speak for the individual municipalities whose areas would be excluded by the bill as amended by the Assembly, the only alternative way of achieving local cooperation, including a master plan for development with reasonable certainty of full implementation is an attempt to obtain direct coordination by separate action with these individual municipalities. This, in turn, must be coordinated and made compatible with the State's

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> revised master plan for areas still included under this legislation. Based on our past experience such coordination would be extremely complex and protracted with no assurance that a mutually acceptable master plan for development of the areas and method of implementation of local cooperation would eventually result. Such inability to meet the conditions of local cooperation... would then of necessity result in .. a negative recommendation for Federal participation in any possible improvement to the Meadowlands.[1]

This letter, addressed by Col. Jones to Hughes, was dated November 19, the day following the bill's passage. Hughes and Ylvisaker, with several of their staff aides participating, went to work drafting a strong conditional veto message which the Governor announced at a press conference on November 21. The message was quite long - eleven legal-size pages - and it developed its argument in thorough and powerful fashion. It leaned heavily on the Army Corps of Engineers' letter to document its central thesis: that S. 477 as passed by the Senate created an agency with the capability to qualify the Meadows reclamation project for Federal funding; but the Assembly amendments destroyed that capability.

> The critically damaging amendment was the carving out from the Commission's jurisdiction of some 5,300 acres, almost one-third of the entire acreage of the project. This excision, which was responsive to a few local and special interests, so vitiated the bill as to destroy all prospects of developing the Meadowlands.
>
> As amended, the bill: (1) throws away the opportunity to obtain $300 million in federal flood control and reclamation aid; (2) eliminates the revenue-raising capacity of the Commission itself; (3) thereby creates an ineffective and financially unworkable Commission; (4) raises grave constitutional questions which will lead to endless years of litigation; and (5) grants indefensible windfall benefits to a few special interests at

[1] Letter, Col. Harvey Jones, N. Y. District, Army Corps of Engineers, to Gov. Richard J. Hughes, Nov. 19, 1968.

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> the expense of the municipalities included in the Meadowlands area and of the School Fund, which is dedicated to the service of every community in the State. (p. 3.)

Hughes attacked head-on the argument that the bill "made a start"; his message asserted that -

> .. the amended bill .. is fatally defective .... I refuse to be a party to playing a trick upon the people of this State by raising their hopes for a make believe Meadowlands solution that all of us know in honesty can accomplish nothing whatever, and which, on the contrary, would abort Meadowlands development for years and years to come. (p. 4.)

He went on to spell out the futility of trying to operate under the amended bill, citing portions of the Corps of Engineers' letter quoted on page 298 above, and elaborating in a way which is interesting for the verdict it renders on the concept of voluntary municipal cooperation.

> ... we would be required to start all over. We would have to attempt to (seek) from individual municipalities.. the very kind of cooperation that has always eluded us, and that eludes us even now. The search for such consent would be an idle fantasy. We must face the hard fact that a Meadowlands solution has eluded us for these many years precisely because of the tragically mistaken belief that the necessary local cooperation was "just around the corner". Next year, and the year after, and the year after that ... we would find once again that no one was really refusing to cooperate, that meetings upon meetings were in process, that the "final solution" was, as always, "just around the corner." ( p. 4-5.)

The message cited two other examples of the failure of "local cooperation" in Northern New Jersey:

> One need not look very far to find other projects in northern New Jersey where the failure to obtain the necessary "local cooperation" had blocked important flood control programs. Within the last year alone, we remember flooding of the Passaic River that caused millions of dollars of damage and untold hardship which could

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[1]Gov. Richard J. Hughes, "Senate Bill No. 477", Conditional Veto Message, Nov. 25, 1968.

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> have been prevented if the affected municipalities - at any time in the last three decades - had agreed to any one of almost a dozen plans developed and presented by the Corps of Engineers. Now, more than thirty years and many tragedies later, we are still seeking the necessary "local cooperation" to bring about this essential flood control program.
>
> Our experience with "local cooperation" in respect of water supply is also noteworthy. For many years, some of them desperately drought-ridden, this State has been seeking "local cooperation" to furnish the financial base for pipeline construction from the Spruce Run and Round Valley reservoirs. The "solution" had eluded us and even today we are still tied up in the courts. Yet, if the State had acted firmly in 1958, the pipeline would long since have been constructed.

The message went on to detail the aspects of the amendments which were subject to legal challenge because of their inequitable impact, and made the point that this impaired the Commission's fiscal ability too.

> The clear threat of litigation under these conditions would obviously make it impossible for the commission to sell its revenue bonds in the financial markets. (p. 6.)

Hughes concluded that the amended bill was "worse than useless because it would completely abort Meadowlands development by tying it up in the courts for many years to come." (p. 7.)

The message wound up:

> It is as though New Jersey, a giant in its potential, is being tied down, like Gulliver, by the bonds of local and special interests from which only you can free it... After all the words are spoken and arguments made, these stark and naked facts remain:
>
> 1. Meadowlands development without federal financial support is doomed.
>
> 2. Under Senate Bill No. 477 in its present form that financial support does not and cannot exist.
>
> 3. If my recommendations are accepted by you, Meadowland development is assured. (p. 8.)

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It called on the Legislature to reconsider the bill, and restore the boundaries defined by the Senate version.

Hughes told the press conference, when he announced his veto, that he would make a major issue of the Legislature's failure in the 1969 campaign, if the bill died.

The press reported Hughes' veto message on Friday, Nov. 22nd. It got strong play in all the State's major dailies, and most of them expressed strong editorial support of him in their weekend editions.[1]

But except for press comment, the final battle over S. 477 was fought almost entirely within the legislative arena, in the State Capitol at Trenton, on Monday, the final day of the session. There was virtually no effort by the proponents to lobby over the weekend or to generate any kind of grass-roots pressure on individual legislators.

The legislative sponsors of the bill had met with Hughes and Ylvisaker before the public announcement of the veto. Hughes told them what he planned, and they pleaded with him not to risk it. They didn't think they could swing enough votes to get the Assembly to reverse itself. The problem was worse than that because it would require the affirmative vote of three-quarters of the Assembly membership to permit a vote on the veto conditions on Monday, November 25th, which was scheduled as the last day of

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[1]Articles and/or editorials in The Record, Newark Evening News, Newark Star-Ledger, and Passaic Herald-News on Nov. 22-25 were favorable to the Governor's message. Other papers were also favorable and there was no press opposition at this stage.

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the session. (A bill may not have its second and its third, final, reading on the same day unless given emergency status by a three-fourths vote of the total membership.)

Ylvisaker, however, insisted firmly that the bill was literally worse than useless. He argued that it would be better for the conditional veto to fail, and to start all over the following year, than to accept the risks and faults of the bill as it stood.

There was some doubt among the legislative leaders whether it was even worth making the effort. Senator Knowlton pushed hard for it. He told The Record he was convinced that the Assembly amendments would forfeit the possibility of $300 million in Federal reclamation funding, and that the legislators would have to answer to their constituents for this.[1] Knowlton had consistently argued for a more aggressive effort for the bill in the public forum, and was angered by the degree to which the bill's sponsors had knuckled under to local opposition which he felt had a very narrow base. Moraites, Assembly Majority Leader, was also ready for a showdown fight at this stage. His efforts during the campaign to appease local opposition to S. 477 had cost him dear in other parts of the county, yet had not gained him any votes in South Bergen. He wanted at least to have a legislative success to show for his travail.

In fact, Hughes' veto had left the Republican leaders in the Legislature with virtually no choice. They had neither

[1] The Record, Nov. 22, 1968

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the votes nor the desire to over-ride. To let the bill die would flush mountains of work down the drain. They might not be able to muster the votes to accept the Governor's amendments, but they had to make the effort.

The Senate gave no trouble, accepting the Governor's amendments by a 36-0 vote in the afternoon session.

The Assembly was something else. S. 477's proponents were involved all day in intense, desperate lobbying efforts. Right down to the last minute, however, they did not know if they could make it.

The "emergency" vote presented a frightening hurdle. It required 60 affirmative votes. Seven Assembly members were absent, 73 present. So the bill would be lost if more than 13 members voted "Nay" or abstained. The proponents knew that there were certainly more than 13 Republicans in the Assembly who opposed the bill; they would have to plead strenuously to get several of the bill's opponents, and all of the uncommitted members, to vote the emergency rule as a matter of courtesy.

On top of that, the Hudson County Assembly delegation, all Democratic, presented a problem of crisis proportions. Their help was essential to vote the emergency. But they were very unhappy with the bill. (Three of the eight members of the delegation were absent that day, which in itself made it harder to muster 60 votes for the emergency.) In the closing weeks of the battle, local opposition had gotten the ear of Hudson County boss John Kenny and of the Assembly members. They wanted the Secaucus

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exception, and were unwilling to support the bill without it.

The Hudson delegation, particularly in the Assembly, tends to vote in monolithic fashion on bills where there is an organization line. At this point, Kenny had great leverage, and he leaned on it hard. The bill did not have what Hudson County wanted, and they weren't going to vote for it. There had been persistent reports that the Hudson leadership was trying to wangle a race-track site in the County as part of a deal on the Meadowlands. There is no indication that the administration made any promises on this point. (The currently proposed sports complex site is in Bergen County, on State-claimed land.) There were also rumors that private refuse contractors were influential in turning some Hudson County legislators against the bill.

A tense and angry meeting took place between Governor Hughes and the Hudson delegation together with Kenny. Precisely what Hudson wanted is not clear, but the Governor was unwilling to give it. One Hudson Senator had been promised a judgeship appointment to an associate, however, and Hughes threatened to withhold that if Hudson blocked the bill. The outcome was a compromise: Hudson would give its votes as needed to let the bill to come to a vote, but would not pledge its votes on the bill itself.

That cleared that crisis, but the bill's proponents still did not know if they had the votes either for the emergency or for passage. The aides counting noses for S. 477 could see that the Republicans in the Assembly fell into four classes of roughly

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equal numbers: votes they could definitely count on, votes that were probably leaning toward them, votes that were uncommitted and uncertain, and votes that were definitely opposed.

S. 477 had mustered 30 votes in the Republican caucus at an earlier stage, but that was on the condition that further amendments be negotiated, and it was also with the benefit of at least some leverage on pro-private-title votes through the title "package". Now the Bergen Assembly members who had demanded amendments were alienated. And the State Chamber of Commerce and Real Estate Board lobbyists had what they wanted with no obligation - unless they felt bound by some sort of code - to urge support for the Governor's position; no one says they did so.

A very big part - perhaps half - of the Assembly Republicans were not committed either way. They were listening, watching how others were going, to some extent trading. Most of these Republicans in the middle represented districts not affected by S. 477: industrial-and-suburban counties south of the Hackensack Meadows and north of the shore areas: Essex, Union, Middlesex, Morris, Mercer, Somerset. (Monmouth County, part a shore and part a suburban county, had four Republican Assemblymen who also were uncommitted.)

Another important bloc of votes that was uncertain was the South Jersey group. They were generally not sympathetic to S. 477 and had no urgent reason to support it now. The Republican leadership could appeal to them on the basis of organization responsibility, and an implicit obligation tied to the passage of

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SCR. 41. The opponents could appeal to them on the basis of home-rule and the argument that the terms of the understanding reached in the caucus, were violated by the Governor's veto.

The proponents' greatest advantage was that they could field a considerably larger and more influential force of advocates for the lobbying struggle. They had the Republican Assembly leadership: the Speaker, A.S.Smith of Atlantic County; Majority Leader, Moraites; and the Assistant Majority Leader, Dickey, from Camden County. (The fact that two of these were from South Jersey counties helped considerably in that area.) Two of the Bergen Assemblymen, Crane and Costa, had committed their support to Dickinson, and were actively lobbying for it, as was Rinaldi. They had what appeared to be a very strong consensus in the Senate; and several individual Senators were induced to be active on the final day in urging Assembly members to accept the Governor's conditions. Senator Knowlton was intensely active, as were his and Dickinson's aides. Senator Farley urged some Assembly members to support passage. Other Senators were enlisted to influence individual Assembly members.

And the proponents had the administration's all-out backing. The Governor, Ylvisaker, Miss Tylutki, Cliff Goldman, and some other aides were doing nothing else that day but seeking Assembly votes for S. 477. The resources at their disposal, collectively, were great: the great number of other administrative officers and staff who could be called on for individual contacts, the broad range of patronage, accommodation and

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facilitation levers that could be pressed.

Some of these pressures were invoked, and so were comparable pressures at the disposal of the Republican advocates of the bill in the Legislature, as the aides involved readily acknowledge. They did not disclose any specifics - though insisting that no improprieties were involved - so that it is not clear how many votes were clinched by trades, promises and other pressure. It is clear that the proponents believe their efforts along these lines were essential to the outcome.

The core of the opposition, on the other hand, consisted of three angry Bergen Assemblymen- Russo, Hollenbeck, and Vander Plaat. Their argument, that acceptance of the Governor's amendments meant reneging on their promise to the mayors of an acceptable compromise, and therefore violated the caucus commitment and the principle of home rule, carried heavy weight within the Bergen delegation, all of whose members had been involved in the political infighting in the Fall; and it had strong appeal to some South Jersey members, who also disliked the title implications of S. 477. It was an argument that also had considerable force for the other Republican Assembly members; and the fact that both Assemblymen from the district most affected were opposed, was a very strong aspect of the opponents' position. The weakest aspect, it appears, was that they could not muster a sizable force to solicit support, and they did not have very strong bargaining levers at their command.

But if the proponents had more going for them, what

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they had to accomplish was very difficult, and they were working in a hectic and uncertain situation. By the time the Assembly reconvened after a short break in the early evening, they still did not have the definite support of a majority of the Republican Assemblymen. They could count only about 22 or 23 solid votes.

The Democratic members of the Assembly could be counted on to deliver 18 votes for the emergency and 13 for passage. That meant that 42 Republican votes, out of 55 present, had to be secured for the emergency, and 29 Republican votes had to be secured for passage. The proponents' hopes rested on some 12 to 16 Assembly members who still had not made firm commitments by the time the bill came up on the floor, at about 8 p.m.

One reason for their uncertainty was that they had had to concentrate so much of their efforts on the precarious question of the emergency vote. A number of Assemblymen had agreed to vote the emergency but had held off any promise on the bill itself. A few others had said they would not support the bill, but agreed to let it come to the floor.

The emergency resolution carried by a roll-call of 62 to 1, with 10 abstentions. Assemblyman Vander Plaat was apparently confident that many among the 62 had made up their minds against the bill itself, and he immediately moved to table. But he had miscalculated; there were only 14 votes to table, and 44 against. The "Nays" included the five Hudson Assemblymen who were opposed to passage, and may have included some who were

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leaning against passage; but the vote revealed that the core of committed opposition was very weak.

There was then a brief but angry floor debate on the proposal to accept the Governor's amendments. Russo and Moraites engaged in a shouted exchange. Moraites said that at the time the Secaucus exception had been agreed to, Secaucus officials had represented the area affected to be 300 to 400 acres, instead of 3000.[1] Secaucus is in Hudson County, and distrust of Hudson is pronounced in the rest of Jersey, especially among Republicans. This argument probably influenced some of the Assemblymen to feel that they had no obligation to honor the commitment that had been made to local officials.

When the roll-call was taken on the vote for passage everyone held their breath. Assembly members vote by pressing one of two buttons; one lights up a red light for "nay", the other a green light for "yea" on a display panel; a counter shows the total of each. Few "nays" went up, but the question was whether the "yeas" would reach the magic number of 41. It reached the mid-30's and then inched up slowly and suspensefully. One Hudson County vote - a black Assemblyman from Jersey City - cast a "yea" vote. When a green light flashed over the name of a Middlesex County Republican Assemblyman, there were some startled and angry reactions in the gallery; the man was an employee of the New Jersey State Chamber of Commerce who was being let go. (Although the Chamber lobby was very quiet at this stage, it was generally regarded as favoring defeat rather than passage.)

[1] Newark Evening News, Nov. 26, 1968

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It took about two minutes, observers recall, for the count to climb to the required 41. At that point, a number of those who had been holding off, got on the bandwagon; and reportedly several red lights flashed off and came up green. The final roll call was 54 "yea", 10 "nay", and 9 abstaining. Three of the "yea" votes, however, were cast by Assemblymen whose votes on the earlier roll call had shown them to be opposed to the bill. And the proponents believe that as many as 10 or 11 others finally counted in the "yea" column might instead have abstained if the magic number had never appeared.

The vote on the motion to table is, in general, a more reliable picture of the solid support developed by both sides, (except that it included 5 Hudson County votes "Nay", 4 of whom abstained on passage.) It was 14 "Aye", 44 "Nay". The "Ayes" (opposing S. 477) included 6 Bergen County votes, 2 from neighboring Passaic County, only 4 from South Jersey and only 2 from the big bloc of Assemblymen from non-affected counties. The "Nay" votes (supporting S. 477) included 26 Republicans who must be judged in full support of the bill in that they previously voted the emergency and subsequently voted passage. Four of these were from Bergen, 6 from South Jersey, and 14 from the "non-affected" counties. In sum, then, the proponents gained a small edge of support from South Jersey, and a heavy preponderance of support from the non-affected counties. The urging of the party leadership, intensive buttonholing, some pressure and trading, the public interest stakes, and the strong merits of the Governor's

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fiscal and legal arguments prevailed over the appeal to "home rule", caucus protocol and the code of log-rolling. But it is striking to note that the core of determined opposition was so small, yet was so nearly able to get its way.

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## CHAPTER XVII: S. 477 SUSTAINED, SCR. 41 RESCINDED

Governor Hughes signed S. 477 on January 13, 1969. The gathering at the signature ceremony was a festive occasion; a fairly inclusive list of the individuals who had played a role in the bill's evolution was invited, and it made a large party.

Even before the bill was formally enacted, Attorney Porro announced that the mayors of the affected towns and the MRDA would contest its constitutionality;[1] and they did initiate court challenges early in 1969.

### Hughes Attacks SCR. 41

Under the terms of SCR. 41, the question it specified was to go on the 1969 General Election ballot. The New Jersey State Chamber of Commerce was beginning to shape plans for a massive "Vote Yes" campaign, but the issue had entirely dropped from public attention when Governor Hughes opened up a powerful offensive in mid-February. He issued an appeal to the Legislature to rescind SCR. 41, saying that he would attack it in court if it were not rescinded.[2] Senate Minority Leader Crabiel introduced a resolution for that purpose, but the Senate voted it down promptly by a heavy vote.

Just as promptly, the Governor responded with a sharp attack on SCR. 41, coupled with the announcement that he, together with four other top State officials, as trustees of the School Fund, were filing a court action immediately, seeking an

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[1] The Record, Dec. 15, 1968.

[2] The Record, Feb. 18, 1969.

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injunction against the inclusion of the title referendum question on the November ballot. The basic thrust of the complaint that was filed was that the ballot question was so worded as to obscure what was really at stake; that what was at stake was the enormously valuable riparian property which had been appropriated to the Fund for the Support of Public Schools; that the constitution forbade the Legislature to give away these assets; and that posing this title surrender in disguised terms of the ballot constituted a violation by the legislators of their constitutional responsibility, and was thus unconstitutional. The complaint was fortified by citation of a statute requiring the wording of a referendum question to be a clear and adequate statement of the proposition's purport.[1]

The Governor told the reporters that he would push the court challenge as hard and as far as he could. And he further promised that if he lost the court fight and the question went on the ballot, he would fight it throughout the campaign as "the biggest give-away scandal since Teapot Dome."[2]

The initial reaction of Republican legislators was angry and defiant.[3] But they were plainly disturbed; and they were a good deal more so a few days later when a Newark newspaper carried a story, under the headline, "Leader in Title

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[1] The Record, Feb. 19, 1969.

[2] The Record, Feb. 18, 1969.

[3] The Record, Fab. 19, 1969.

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Fight a 'Front' for Owners", which detailed Senator Hiering's own direct stake in the legislation, as an officer of a title company,[1] and also as an owner of record of some affected property. The story raised the question of conflict of interest and dominance of special interests over public needs in the Legislature's enactment of SCR. 41. This was the first time that Hiering's role had been publicly questioned.

The whole issue got a great deal of press attention. In addition to briefing the reporters, Hughes sent out a memorandum and background information package to editorial writers around the State. He was fortunate in his timing. There was no major national or international news of high interest that particular week. As a result, his "Teapot Dome" blast got an unusually heavy play, and this was followed over the next week with a chorus of strong editorial approval for his position. The Governor subsequently had his staff assemble all the news and editorial clips and send it to the Republican leadership in both houses.

The action was astonishingly effective. Within a week, State house correspondents reported that the Republican legislative leaders were considering rescinding SCR. 41.[2] Within two more weeks it was all done.[3] The Republicans rescued Senator

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[1] Newark Star-Ledger, Feb. 23, 1969.

[2] The Record, Feb. 26, 1969.

[3] The Record, Mar. 11.

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Crabiel's rescinding resolution from the waste basket, changed the language slightly, introduced it and passed it through both houses on March 10.

The timing of Hughes' attack was well gauged, in that politicians' thoughts were just getting focussed on the problems of the gubernatorial contest in the coming Fall. And the thrust and tactics of the Governor's move fully exploited the electoral hazard in the proposition the title lobby had sold to the Legislature. It also exploited the strains and stresses in the Republican Party over SCR. 41. Dickinson had vowed, the previous year, to finance an extensive media campaign to tell the public why he opposed the title surrender. This was certain to develop sharp division and obvious disarray in Republican ranks, which Hughes' attacks on the Teapot Dome theme could exacerbate and exploit.

Faced with these frightening threats to their prospects for electing a governor, the Republicans hastily disowned the proposition most of them had piously defended short months before. In an editorial recapping the rescinding action, an editorial in The Record credited the Star-Ledger's expose with a heavy impact.

> The Republican legislative majorities decided they couldn't give the Democratic opposition that much campaign opposition.[1]

Some Republicans felt sharp resentment over Hughes'

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[1]The Record, March 18, 1969.

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handling of the matter, privately accusing him of hypocritical grandstanding. Barry Parker, Republican Assemblyman from Burlington County, said that Hughes had called him in June, asking his support for S. 477 and citing the title package as a justification; the Governor back-pedalled, according to Parker, when the latter said he opposed the title surrender.[1]

There was at least some well-calculated trickiness in Hughes' handling. He did put himself on record in a press conference as being opposed to SCR. 41; he even said then that he would attack it in the courts. (p. 269, above) And the State Treasurer's spokesman put on record, at the SCR. 41 hearings, an objection to the obscure wording of the proposed ballot question. (p. 253, above) But both of these passed virtually unnoticed, and the administration did nothing otherwise to disturb the impression which generally prevailed, that there was a tacit "deal" between S. 477's sponsors and SCR. 41's.

However, this was at best a whore's bargain on both sides, each avoiding a clear commitment to the deal in the hope that they could get what they wanted without it. Certainly the title lobby had given S. 477 no help after SCR. 41 was in the clear. Hughes could point specifically to the rather finky performance of an Assemblyman from Hiering's county (Ocean) in abstaining on the emergency vote on the final day - in effect, a vote to kill S. 477 when it was most vulnerable - and then registering

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[1] Interview Assemblyman Barry Parker.

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a "Yea" vote on the roll-call for final passage when it had votes to spare.

MRDA Challenges Constitutionality of S. 477

The MRDA was formally reactivated in December 1968, and Porro, as attorney for the MRDA, together with attorneys representing the Mayor and Council of several of the affected communities and some private parties affected, filed suit in February 1969 against the State of New Jersey and the Hackensack Meadowlands Development Commission, seeking to invalidate S. 477. The complaint attacked the statute as violating the State and Federal constitutions on numerous counts. However, the legal dispute centered almost entirely on the issue of whether the Act was a general law, or a private, special, or local law, as those terms are used in the New Jersey Constitution. The plaintiffs alleged that it was a special law, and was therefore invalid because procedures constitutionally specified for a special law, including a petition originated by the local governing body adfected, were not followed. They argued that to be a general law, the statute would have to embrace all meadowlands in the State; and also argued that even if the Hackensack Meadowlands could properly be the subject of a general law, the boundaries used were arbitrary.

William J. Brennan, III, attorney for the defendant State and HMDC, argued that precedent clearly established that the Legislature could properly regulate specific districts of

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the State, embracing more than one local jurisdiction, provided that there is a reasonable basis, related to the public purposes of the act, to establish the lands in the district as a distinct class.

The complaint also charged that the tax-sharing scheme was inequitable, and therefore unconstitutional, because each of the individual municipalities would have tax obligations to the intermunicipal pool based on spending decisions of the other municipalities, and where there were governmental inefficiencies in one town, the other towns would be penalized for it. The argument had a sharp practical and political point because of high tax rates in the Hudson County towns, particularly in Jersey City. It was developed in a confusing way, however, with testimony which thoroughly scrambled together the question of the effect of different municipal spending rates, with the questions of the effect of different municipal assessment rates and the State's equalization formula. Nor did the plaintiff's argument develop in clear and explicit fashion, which particular provisions of the State constitution it held to be violated, and in what respects; the argument had, rather, a grab-bag quality.

A court ruling in October 1970 held the act valid.[1] On the pivotal legal question, it held that the act was a general, rather than a special, private, or local law, on the basis that the classification (Hackensack Meadowlands) it created was

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[1]MRDA et als vs. State of New Jersey et als. Chancery Division of N. J. Superior Court, decision of Judge Trautwein, Oc. 19, 1970, 112 N. J. Super, 89-137.

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reasonably related to legitimate public purposes.

On the tax-sharing scheme and the constitutional questions raisdd about it, the court's ruling was a sweeping affirmation of the Legislature's power to direct and control local government in the area of assessment, taxing and appropriation.

The Act rather closely limited the power of the "State", i.e. the Commission, to use the funds payable by the towns to the intermunicipal account; it could not, for example, apply intermunicipal revenues to reclamation costs. It could only draw on the "pool" for the costs of bookkeeping administration of the account itself. The one important exception empowered the Commission to credit individual towns for part of the cost of local improvements where they served district-wide needs.

The plaintiffs ignored these limits, and much of their attack rested on the premise that the Act empowered the Commission to appropriate funds paid into the intermunicipal account.

The court did not choose to spend time on the question of whether this premise of the plaintiffs was soundly based. Instead, it accepted the premise, that under the Act the State is imposing certain costs on the municipalities, and proceeded to develop the holding that the State indeed has very sweeping power to do just that.

> In New Jersey two conditions limit the power of the Legislature to impose an expense on its political subdivisions - the expense must be for a public purpose, and the statute which imposes it must be general and not special, private or local. ( p. 110)

The decision thus underscores that the notion of "home

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rule" has virtually no anchorage in the constitutional law of the State. At best, it is a tradition of political preference, which is reflected in legislative inaction in some areas, or in the mode of action chosen by the Legislature. But in law the Legislature is sovereign, with few restraints on its discretion.

Even though the plaintiffs did not pose very clearly the issues of equity and constitutionality involved in the tax-sharing formula by virtue of differences among the towns in ratables wealth and service costs, the court dealt with the whole question in very certain terms:

> No decision which research discloses prohibits the allotment of tax revenues from one municipality to another. Indeed, given the State's sovereignty over its municipal subdivisions, and the principle that all taxes are imposed under ultimate legislative authority .... the failure to find such a decision is not surprising. Thus, the issue is not whether the Legislature has the power to apportion tax revenues, but whether in particular circumstances the exercise of its power is arbitrary. (p. 113)

Thus, in effect, the court's opinion held that State Legislature has power to go much farther than it did in S. 477, in subordinating municipal power of taxing, spending, and land development control to the needs and purposes of larger areas.

And so, some ten years after the Meadowlands Regional Planning Board leaders had sought to engage Governor Meyner's interest in the concept of applying the sovereign power of the State to the problem of reclaiming, planning and developing the Hackensack Meadows, New Jersey's political decision-making process had at long last ground out a response. The scope of the opportunity had dwindled considerably in the interim and its costs had risen.

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## CHAPTER XVIII: THE BASIS AND NATURE OF SUPPORT

A great many people played a role in the development and passage of S. 477. Yet if one looks back over the whole story to ask, "who brought this bill about?", what is striking is that only a very few individuals appear to have played an important, dynamic role; and virtually no group interests were activated on behalf of the bill, excepting only the State and Federal government agencies which were directly involved.

The decisive arena was the Legislature; yet, considering the length, intensity and importance of the struggle, it is remarkable to note how few legislators cared very much or were deeply involved. Senator Dickinson was clearly the pivotal figure; Senator Knowlton became deeply involved, and provided support and push in the crucial battles to overcome opposition in the Assembly. The aides of these Senators became intensely committed, and share the credit for getting the bill over some of its toughest hurdles. Senator Guarini played a useful role - but hardly a decisive one. The same words fairly characterize the roles played by Rinaldi and Crane in the Assembly; and that completes the roster of legislators who contributed an active push. In the entire period up till 1968, when the issue of State action to develop the Meadowlands was taking shape, there were only two legislators - Senators Kiefer and Parsekian - who even tried to

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define the need for State action and gain public attention for the issue, and neither one had measurable success.

Support in the Executive branch was of key importance. Hughes' own strong commitment, and the shrewd, bold, hard-hitting way he used the resources of his office, dominated the outcome in November. Ylvisaker's grasp, conviction and leadership were decisive in a more fundamental sense, because it was he who in 1967 set a new direction not only for the State professionals and staff most directly concerned, but for Hughes too. And Ylvisaker, through his department, commanded resources of manpower, expertise, and political leverage which were essential. The key staff people of the Division of State and Regional Planning, it should be noted, were not a significant source of active initiative or support.

Political candidates and political parties by and large failed abysmally on this test of their usefulness for articulating the public interest. It is true that the Bergen County Republican Organization in 1967 did a switch and called for Meadows development in language Dickinson could cite to advantage; and it is true that this commitment provided some leverage in Republican legislative parleys and in the press in 1968.. But the G.O.P. took this position primarily because Nelson Gross wanted Dickinson for a Senate candidate, and Dickinson was thus in a position to ask for a party commitment on an issue he cared a lot about; Gross also saw that the idea of Meadows development had some wide general approval and thus made good window dressing; but he was at least as concerned

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not to provide a target for hostile fire from local interests, as evidenced by the broadly hedged language of the campaign platform (p. 186 above). And at the decisive times, the campaign pledge proved to be virtually meaningless as a factor influencing members of the Bergen Assembly delegation.

So far as the Democratic Party in Bergen County was concerned, local opponents of a strong State role and local advocates of the private title claimants had the stronger voice in defining the organization's official position in 1967. Bergen Democrats generally never paid much attention to the issue, and ignored the efforts of Kiefer and Parsekian.

The Meadows development issue never featured at all in a gubernatorial campaign. To the extent that the Meadows were an issue in 1965 when Hughes won a second term, the focus was on the title issue, and Hughes' tactic was to sit on the whole question until the election was over.

The Army Corps of Engineers, strategically placed astride the only plausible line of access to Federal funds for reclamation works, exerted a strong, steady and finally very effective pressure on the State; and it directed that pressure toward the fulfillment of a clear and consistent policy goal, namely the creation and adequate implementation of a coherent plan. The public awareness of the Corps as a major policy influence was virtually zero. This was largely because the Corps took pains to maintain an extremely low profile and to avoid strictly any semblance of advocacy; they just kept reiterating over the years, the basic Congressionally-ordained requirements for "local cooperation".

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Little Outside Support

Outside the government structure, active and articulate support for the Meadowlands bill was almost totally absent. The two important exceptions were the press and the "planning lobby"; and the latter is perhaps more accurately seen as a permissive base for an individual with a keen personal interest and commitment, than as a well-defined group interest. The New Jersey Committee of the Regional Plan Association was not able to function as a vigorous source of advocacy for the Meadows bill within the business community after the collision on the title issue within the Committee in 1965. And the business and industrial community as a whole was neutralized by this same issue and so provided no significant support for a Meadows bill. For the most part the formal lobbying organs of business were captured by the title lobby, and to the extent that they played a role in S. 477 it was an obstructive one.*

On the testimony of legislators, aides, observers and press reports, no other group interests whatever were active on behalf of the bill. A labor spokesman testified for it at both hearings, but organized labor as a political force was

*It is quite possible, of course, that if the title issue had not existed, and the interest of private title claimants had not been strongly mobilized, S. 477 might have died for lack of interest. Senate passage of the bill was mainly a consequence of the fact that its sponsors and SCR. 41's needed each other's help. In that sense the title issue and the title lobby were essential elements of S. 477's support.

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scarcely aware of the issue and was certainly not mobilized in support. There is no indication of any lobbying for the bill by labor representatives.

Conservationists were the one interest group which may have exercised a marginal influence; two of their spokesmen testified at hearings, Ylvisaker reportedly won their support, and they are credited with an important assist in getting some of the Morris County votes for S. 477 in the Assembly.

The strong and consistent support of the daily newspapers in the North Jersey metropolitan area - and the support of The New York Times on two critical occasions - constituted the one important force working for the Meadows bill in the body politic at large. It is a striking comment on the character of the conflicting forces at work, that support for a strong State role in the Meadows was so consistent, unanimous and dependable in the press, even though comparable support was not evident through any other channel of the political system.

An additional word of emphasis on the efficacy of Ernest Erber's role is in order. Although there is no indication that he, or others he activated, exerted strong influence on the course of the 1968 legislative struggle, there is no question that more than any other individual, Erber pushed and prodded the development of the Meadows issue through the years, and that he deserves much of the credit for the consensus on the issue which slowly developed. What is particularly worth remarking

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is how much leverage a single individual was able to exert, though he held no elective, appointive or party position. What he did have was a base which gave him legitimacy and standing, access to influential help and support, and a platform for public statements; it paid his rent, and commissioned him to represent and promote certain well-defined broad public interests. To be sure, this emphasis on the importance of Erber's role should be qualified to give due credit to the significance and force of the Regional Plan Association as an institution; its New Jersey Committee was quite important in shaping a consensus on the Meadows issue among progressive elements in the business community.

Like the RPA's New Jersey Committee, two other mechanisms were helpful in defining where the public interest lay in the Meadows issue and helping to develop recognition and support for the need for a State initiative. These were the Meyner Commission, and in a much lesser role, the Lord Committee. The creation of the former was probably an essential tactic to achieve a fresh initiative by-passing the MRDA. In being, it constituted the one agency which effectively articulated the public interest in the title fight. (Previously the Governor's office had had to shoulder this job alone, and it was a hazardous and precarious undertaking, given the political pressures this office must respond to.) Also, the Meyner Commission's report did state the central need and put a stamp of authority on its finding. As for the Lord Committee, its availability as an instrument of skilled and objective judgment was

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valuable in helping the Hughes administration turn a difficult policy corner.

Motivating interests and attitudes of supporters.

It must be duly noted, in the first place, that by 1968 there was a broad consensus about the need for the State to create an effective Meadows agency. This is in a sense self-evident; surely the handful of active sponsors of S. 477 could not have succeeded, against intense local opposition, if there had not been a foundation of broad recognition of the need for a bill. This consensus was manifest in the unanimity of press sentiment, in the fact that almost all the witnesses at the hearings in 1967 and 1968 gave at least lip service to the idea of a unified agency, and in the fact that the "home rule" issue as a basis of dissent to S. 477 was not even raised in the Senate.

The basis of this consensus is analyzed in Chapter XX. The bill's passage was achieved by the active efforts of a small group of individuals who shared this consensus, felt strongly on the issue, and occupied strategic roles in the decision-making structure. It does not appear that the proponents had any particular personal stakes for which the public interest issues were a mask. To be sure, Ylvisaker's "empire" as Community Affairs Commissioner would be enlarged by enactment of S. 477, and political ambition or other career stakes no doubt played some role in the motives of all the principals. But the domin-

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ant motive of the proponents appears to have been a bona fide conviction that the bill was of great public import.

It appears that the prime movers - a category which certainly includes Dickinson, Ylvisaker and Erber - saw the large and long-term stakes more clearly, and felt more strongly about them, than most of their fellow-men; and the strength of their desire to fulfill the Meadows opportunity was for each of them a motive for seeking a position of leverage on the political system. *

Of course, personal ambitions were mingled, necessarily and inseparably, with the concern of the proponents to fulfill broad public interests. The desire to play a big role, to have a hand in a splendid and honored achievement, probably enters into the motives of everyone in public life. And this wish is naturally linked to aspirations to personal success and power. Cliff Goldman and Beatrice Tylutki moved to important jobs on the Hackensack Meadowlands Development Commission. Ylvisaker in 1970 seriously pondered a bid for the Democratic Senatorial nomination. Guarini sought the same nomination in a primary contest. Dickinson reportedly was interested in his party's nomination for Governor in 1969. It would be rather forced to argue, however, that the desire to "make a name for himself" impelled any of the chief proponents into a role he would otherwise have avoided. In the case of Guarini, perhaps, the desire

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* Why do some individuals, such as these particular men, have more "vision" or "breadth of view" than others? The study has nothing to offer on this question except to point to it as a significant one.

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to gain wider recognition and display a capacity for statesmanship, may have led him to take a role of bold initiative on as issue which involved some local political hazards; and this may have had very important effect in buffering the bill against local opposition in Hudson County. But Guarini states that his interest in Meadows development began in the early '60's, several years before he was elected to office.

The other important question is whether the career stakes of individuals exercised a specific influence on the policy preferences they expressed in the course of the bill's development. The acquiescence of Dickinson and Guarini in the Hollenbeck amendments could certainly be interpreted in these terms - the desire to keep peace in the family and stay on good terms with all 'the boys'; but it is hard to see wherein the substance of S.477 as it was passed, was shaped in this way.

At the same time it should be noted that almost everyone who played an active role was thereby "doing his job" and getting paid for it. (Even Dickinson, who on a narrow cost-accounting basis undoubtedly lost money being a State Senator, was acting in an official rather than unofficial role.) On the face of it this may seem so normal as not even to warrant comment. But the point is that despite the apparent broad consensus among the informed public, there were virtually no active agents of "public opinion" on the Trenton scene prodding the legislators to do their duty. The concept of "interest groups" seems to have no relevance whatever to the nature and modus operandi of the forces propelling S. 477 through the New Jersey Legislature. Thus, it rested almost entirely on individuals whose

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job roles and career stakes as well as their convictions happened to coincide with the public interest, to push the bill through. And, even though the prospective public benefits heavily outweighed the opposing private stakes, the forces that could be mustered for the bill proved to be just barely adequate.

There were, clearly, broad public benefits to be realized by Meadows action, and perception of these and commitment to them must be acknowledged as real and legitimate motives. One feels wary in asserting this. But if it is naive not to be skeptical and check for the presence of private motives behind public professions, it is also an absurdity to deny that there are broad interests, and totally illogical to assert that public men are not 'really' motivated by the desire to realize public stakes.

The most important point about the support is that, given the magnitude of the public opportunity, the number of individuals motivated to help achieve it was so small. Is a political system which generates so little support for public stakes, ipso facto defective? Should political scientists and artisans of public administration be concerned to foster the establishment of more mechanisms and institutions which enable more people to make livings and careers of seeing and serving public interests? Or should we seek, rather, to foster ways in which voluntary citizens' activity on behalf of these interests is stimulated and made more effective?

It is useful to note that political ambition was one of the few credible explanations of what did spur the prime

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movers, other than the simple explanation that they thought it was right. But before we leap to the happy conclusion that desire for high office leads men to articulate the public interest, we must recognize that on balance, in the overall history of the bill, the behavior of candidates for election appears to have been shaped much more by the desire to avoid the wrath of opponents than by the hope of winning the approval of a wide public.

And yet, it may be that the feeble articulation afforded by a political campaign serves the public interest better than none at all. In between campaigns, agents of private interests are active, serving these interests and making a living thereby, while there is scarcely any corresponding activity on behalf of public interests, and typically such little activity as occurs is spasmodic, poorly organized volunteer effort.

From this perspective, the object is not necessarily to elect candidates committed to certain public policy goals; rather it is to create broader awareness of the public stakes in such issues as Meadowlands development, and to have legislative decisions made in the climate of that awareness. By that formulation, it is useful to press candidates to talk about such issues even if angry opposition seems to dominate the public response and most candidates take an equivocal position.

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The Modus Operandi of Support

Except for a somewhat sporadic exploitation of press support, mainly by the Governor, the modus operandi of the bill's proponents was an "inside" strategy. The main line of effort was to negotiate for the support of individual legislators, and particularly of legislative leaders, by face-to-face discussion. There was virtually no effort to generate constituency pressures on the individual legislators.

The reasons for the development of this strategy are quite clear. In the first place, the proponents were a small group, whose clearest and most dependable advantages came from their "inside" position: Dickinson's committee chairmanship, his commitment from the Bergen Senate delegation, and the friendly, respectful disposition of the Senate Republican leadership toward him; and the full commitment of the key resources of the Executive Department, particularly the Governor's office, and Ylvisaker's department with its expert personnel and its numerous programs which furnished points of contact with local interests important to the legislators. Secondly, they saw that the opponents could stir up a lot more intense response within the area directly affected. They feared this and hoped to minimize this disadvantage by confining the debate within the Legislature.

There were additional reasons, not quite so tangible. All the proponents were "insiders" themselves; they held official positions, and virtually all of them were much more

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habituated to "insider" methods of action than to mass political activity. Thus, they naturally gravitated to an "inside" strategy. (Again, Hughes must be noted as an exception, with respect to his high awareness of the availability of the press as a medium of support and his sense of how to use it. Knowlton, also, thought along the same lines; but he was not able to sell the approach to Dickinson and other Republican proponents.)

Also, it was not at all clear how an alternative strategy might be developed, nor was there any certainty that it would be effective. The proponents felt themselves to be a small group, with limited time and resources, and thus poorly equipped for a major effort to develop broad public support .. And, there was no agency in being, nor any readily apparent coalition of support groups, which they could look to to carry the ball. It would all have to be put together more or less from scratch.

Yet, however understandable was the choice of an "inside" strategy, the consequence was that a significant resource of potential support was left undeveloped, namely the substantial favorable consensus of informed opinion which had built up over the preceding ten years. No agency or coalition of support which could have nourished, activated and drawn on this consensus was established. As a further consequence, the proponents were very vulnerable to the opposition, which was activated more than the proponents expected, and made a much better show of having popular support. Thus, the "don't stir things up" strategy was clearly a failure.

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The weakness fed on itself; the narrow, "inside" character of the proponent leadership group led to the choice of an 'inside' strategy; that choice confirmed the narrowness of the support base, closed the leadership councils to the participation of individuals who might have kept in view the wider options and the consequences of ignoring them, and foreclosed the opportunity to make the most of the potential broad support.

The legislators who were "in the middle" both literally and figuratively, i.e. those who were not directly affected either by the Hackensack or the South Jersey issues, and who held the decisive voting balance, felt that S. 477 was an issue in which the public had little interest. On this point, the testimony gained in interviews was unanimous: they didn't hear from the public at all.

How much public support could have been roused by a full effort, and what would its effect have been? There is no way to assess that with any precision. But there is clear evidence that the potential of a ready public response was present: the apparent broad consensus, the favorable press climate, the apparent impact when these resources were invoked. At the very least, it seems fair to say that if the proponents had made an aggressive effort to develop wide support they could have developed a counterforce to the local opposition and would not have been so politically vulnerable to it.

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In summary, the salient aspects of S.477's support were:

(1) total dependence on a small leadership group;

the force working for the bill consisted of a small group of sponsors occupying strategic official positions; there was no organized support outside the leadership group, and none was developed, so that the effort was almost entirely dependent on the skill and force of the half-dozen or so individuals who were the active leading sponsors.

(2) broad support potential, very slightly mobilized;

a broad consensus of public opinion support existed, and there was corallary press support; the broad public support was not systematically cultivated and developed, but it was exploited at some crucial junctures by calling the press support into play.

(3) no coherent group force operative on behalf of the broad public stakes;

neither the business community, civic groups, voter groups, conservation groups, nor any coalition drawing on these sources, was mobilized around the Meadowlands issue; particularly striking is the virtually complete absence of any local voice for the regional stakes of people resident in the area.

(4) federal policy, through the agency of the Army Corps of Engineers, exercised strong leverage for the establishment of an adequate mechanism for comprehensive planning and control.

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## CHAPTER XIX: THE BASIS AND NATURE OF OPPOSITION

Much about the basis and nature of the opposition to S. 477 is patent in the preceding narrative chapters. A particularly significant aspect of the opposition configuration - the heavy overlapping of the interests of local officials with those of industrial developers and property owners - is analyzed in some detail in Chapter X (pp. 196-199 above). Therefore, this chapter will only essay to summarize those facets of the topic which are apparent in earlier material; its main emphasis will be to develop some additional lines of analysis which are highly relevant to the main thesis.

### Who Were the Opponents?

The main classes of opponents were the "property interest", garbage disposal contractors, and local officials.

The "property interest" embraced the property owners of record and the title companies. Among the property owners, the industrial developers were in some respects a distinct class. Closely associated were those engaged in financing development, and lawyers active in real estate. The interests in this group were by no means clear and uniform. The title companies had a keen and intense interest in only one aspect of the problem: they wanted to set aside the State's riparian claim wherever there was a substantial competing private claim. Not all the property owners had a stake in this, since a few had obtained State grants and a few others could readily demon-

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strate that their land had never been tide-flowed. But the reach of the State's claim was not clear, relating as it did to countless natural changes and acts of man over a long past, of which no systemmatic record had been kept; so most claimants felt threatened by it. And so long as this issue remained unresolved, it overshadowed all other considerations in the thinking and attitudes of this whole group.

The property owners had some conflicting interests on the issue of planning and development controls, but generally they tended to identify their interest with the status quo rather than with the creation of a unified authority and a regional development plan. (Aspects of this are discussed on pp. 61-65 above.) Some of them, actively involved in development, could see that optimal development and profit prospects were being impaired for lack of planning in the current activity. But for most owners a more important motive, working in the opposite direction, was the highly permissive character of existing controls by the separate towns. Virtually the entire area of the Meadows was zoned for industry; each of the towns was eager for ratables. A new regional agency, on the other hand, would almost certainly set aside large areas for recreation and other uses, some of them perhaps less profitable than industrial use. So clearly, the plan would work to the disadvantage of some, and the individual owner could not be sure he would be a gainer rather than a loser. Also, most of the owners were on familiar terms with local officials and had a considerable identity of interests; whereas a new, region-

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al agency would be an unknown quantity.

With regard to reclamation, the private claimants clearly had divergent interests, depending on the location, elevation, and soil characteristics of their land. Generally the large areas which were dependent on comprehensive reclamation for any hope of early development, made up the greater part of the area and therefore should have generated a preponderant sentiment for reclamation. But the owners of land nearer the margins and more readily developed by landfill were much more numerous, and were involved in many current and proposed projects from which divers parties stood to gain; so in fact they were much more clamorous, and they did not see the reclamation plan as a benefit to them.

The interests of the garbage disposal contractors played a shadowy role in the conflict. There was a network of established relationships between the active contractors and the individual towns. Whether any corruption was involved or not - and most seasoned observers assume that there was - many putrescent applecarts were certain to be upset, both by the State's assertion of title to the lands being used for dumping, and by the creation of a new regional authority to administer control over dumping. Concerns of this character were attributed by some to Assemblyman Russo and to some of the Hudson County Assemblymen, but neither the dumping contractors nor local officials made an active public issue of the preservation of the status quo in garbage.

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## The Perspective of Local Officials

In theory, at least, local officials had as much reason as anyone to perceive and strive for the potential benefits of the Meadows' development. The citizens to whom they are accountable would reap the greatest benefits - in profits as land owners, and in 'ratables' as taxpayers, as well as in improved services and greater amenities. But in practice, local officials provided the main strength and striking force of the opposition.

The reasons are clear enough. In the first place, local officials feel a particularly close identification with local property owners and especially with industrial developers; and as detailed above, these interests were in general opposed to S. 477 even though it promised to generate spectacular development and value appreciation over the long pull. The title conflict was a main factor in this, and most of the towns were themselves rival claimants to the State. In the second place, there was the basic threat to their autonomous power, in the vitally important area of development control. The local officials had political stakes, ego stakes, and profit stakes - if not for themselves, then for business and political friends - in their continued power to determine permissible land uses and say 'yea' or 'nay' to specific projects; so they were sure to be most reluctant to surrender any of this.

There was some recognition among the local officials of the benefits that might be won by reclaiming the Meadows, and of the potential political appeal of this course. In partic-

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ular, they had some sense of the possibility for industrial development on a much larger scale, and a boom in economic activity; and they were not unmoved by some of the other exciting possibilities that were articulated. They were virtually all in favor of getting the Federal government to spend some hundreds of millions on reclamation works; and they all acknowledged the need and value of a unified plan for the area - in theory.

Nevertheless, favorable prospects of Meadows action were narrowly perceived and heavily discounted by the local officials; and there were public stakes in the issue with political appeal which were hardly articulated at all. The public advantages of rational planning, for example, were never argued very vigorously; "planning" was not a dirty word, it was always given a respectful endorsement, but it was assigned little tangible and vital content, and it was treated as an idea with little or no political "oomph". Likewise the stakes of the Meadows towns in protecting their air and water resources got very little emphasis from the local officials. (Perhaps this would have been a much more potent political consideration if the Meadows bill had come to a head two years later.)

Much more than any of the other parties at interest, the local officials were particularly concerned with the near term effect on the tax rate of any proposed action. On this score they were very apprehensive; they foresaw the need to freeze current development planning while an overall land-use

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plan was formulated, and beyond that they feared that all early development would be arrested and everything would have to wait for the execution of massive dam and dike works. Most of all, however, they did not like the idea that the power to approve and expedite the construction of a big industrial ratable in their particular town would be taken out of their hands, along with the right to capture the full tax proceeds for their local budget.

This concern with the near-term aptly characterizes the perspective of the local officials on the whole issue. The balance of concerns was heavily on the side of the short-term, close-to-home, defensive local considerations. They could see that there were larger possibilities under unified reclamation and planning; but their perspective was grossly distorted so that a potential achievement of wide-scale significance, such as a major transportation terminal tying Northern New Jersey mass transit into Manhattan, was fully counterbalanced in their view by the possibility of a $2 million warehouse to be added to the local tax rolls next year. They were willing to give time and attention to the possibilities of a Meadows-wide scheme, but they were not ready to surrender any local power, nor to make any substantial dollar commitment. It was expressive of their perspective that they were willing to commit to the Meadows project far less than it warranted and far less than it required.

The Lines of Interest Alliance

The role of the Meadowlands Institute, described in Chapter IX, (pp. 177-179) provides a significant demonstration

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of the different interests affected by the Meadows issue. Although the Institute's primary sponsors represented property claimants and others for whom the title issue had top priority, the organization solicited support from the whole community of interests with a stake in construction and economic development. This community responded with a keen showing of interest, most notably at the "Meadowlands Seminar" in May 1967, but they proved to be far more interested in the creation of the means of reclamation and development, than in providing support to the private claimants in the title dispute. The leadership remained in the same hands, however, and it subsequently eschewed such activities as the "Seminar" and became mainly a letterhead for press releases conceived by Porro. But as a political force affecting the struggle over S. 477, the Institute was pretty much neutralized by the cross-currents of interest and purpose within it.

The private property interest found a much more responsive ally in local officialdom. And local officials proved to be potent allies. They occupy a strategic place in the political system of the State. The local political organizations are the main channels through which electoral candidates for State or county office try to reach local voters. (It is not an especially effective channel, because it affords direct contact only with a relative handful of activists. But that is t he way the game is generally played; excepting in campaigns for State-wide office, i.e. Governor and U.S. Senator, media

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campaigns by-passing the local organization are of minor importance.) Local officials command the access to this channel, and reciprocally they command the sympathetic attention of State legislators, who give them unquestioning recognition as the spokesmen for local sentiment.

This is especially true in the New Jersey Assembly, whose members are elected from 42 districs each having about 50,000 voters. In the northern counties, each of these districts is a minor portion of a county. Assembly candidates are recruited among individuals scoring successes in town politics, who are thus strongly imbued with the viewpoint of local government. Hollenbeck and Russo, for example, were both officials in their respective towns, as well as Assembly members, at the time of the S. 477 battle.

The opposition strategy which evolved from this configuration of interests was to give the lead role to the local officials and to emphasize the themes of "home rule" and the "grab" threat, using the latter freely and interchangeably as a handle for the title issue, the tax issue and the issue of autonomous local power of development control. Local publicity and political agitation encouraged all property owners to believe their title might be jeopardized by the State's riparian claim; local fears and angers were generated to the maximum extent.

Porro, whose activities in the preceding four years were primarily as an agent of private title claimants, had wide acquaintance and standing among local officials; he had time, energy, expertise and concern to offer, he was accepted

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in a key role in the joint activity of the mayors and in the MRDA, and he was thus able to play a powerfully influential role as catalyst and coordinator of their opposition activity. In this role he was able to insure that the mayors acted along lines which suited the private title claimants. The most important aspect of this influence was to insure that the effect on the title conflict was the first consideration in every decision.

It should be noted that the title issue greatly shaped the configuration of interests, and changed the whole balance and character of the struggle from what it would have been had it truly centered on the issue of local autonomy versus unified regional authority. The primacy of the title issue, above all other factors, was responsible for damping awareness and agitation of the great potential economic benefit of Meadows action. It was responsible for the anomaly of the politicos of a score of towns turning their back on a $200,000,000 Federal project. There would have been ardent champions of Meadows development among the private owners had their title not been in jeopardy, and they would have had their spokesmen among the local officials; these, in turn, would have found reason to perceive and proclaim the broad public stakes in a unified development plan.

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## CHAPTER XX : WHY THE BILL PASSED

To analyze why the bill passed requires a mode of analysis. It was hoped that the interviewing portion of the research would yield explnatory data on this question simply by asking the individual legislators why they supported the bill, and examining the replies to see what patterns were evident. Several of the Assembly members who withheld a commitment in the early stages of the battle, and eventually voted for S. 477, were interviewed. But no pattern of strong analytic value emerged. Generally the answers furnished were vague and did not appear to reflect a clear grasp of the issues, much less strong convictions about them. If there was a dominant theme, it was to go along with the leadership. But this was not too great a pressure. Members felt free to vote against, because the Assemblymen from the area affected were opposed. Given this division, it appears that the Assembly members on whose votes the decision turned voted their "gut feeling" about the bill, with horse-trading inducements clinching the matter in some cases.

The final vote of some Assembly members was influenced by the strange character of the Secaucus exception, coupled with the fact that this had been championed by the always suspect Hudson Democratic delegation. These factors weakened the influence of the Bergen opposition. There were, clearly, very few salient common denominators in the attitudes of the Assemblymen interviewed. There was a general awareness of what the

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Meadows looked like, of their strategic location and large expanse, of the shabby character of current development. There was a general awareness that reclamation required major engineering works, of the prospect of Federal funding, and of the Army Engineers' position. Those who wound up voting for the bill thought it would be "good for the State", citing mainly the prospect of economic development. But the attitudes of the different Assemblymen did not indicate that they were responding to any particular constituency, interest, or ideological theme. With regard to the complex disputed provisions of the bill such as the tax-sharing arrangement, there was evident no particular consensus that these were sound and necessary, but rather a willingness to accept the sponsors' assurances about them.

It was quite obvious from the sequence of votes that the Assembly members who swung the balance were considerably influenced by the Republican leadership. The best evidence of this is the lopsided vote by which the Assembly adopted the bill with Hollenbeck's amendments, despite the Governor's well-publicized objections, and the vote lopsided the other way by which the Governor's veto conditions were accepted a week later.

The Assemblymen interviewed were unanimous on one point: they heard from "the public" not at all on S. 477 - not from lobbyists, not from constituents, not from proponents nor opponents outside the Legislature.

If there is a moral to be drawn from these observations

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for future legislative struggles, it is that a thorough and competent communications effort in lobbying for a bill such as S. 477 might hope to accomplish a lot, simply because it would be filling a vacuum.

The interviews developed one interesting point of agreement in the views of the legislators: all of them expressed a favorable attitude toward the general notion of planning, and they saw the value of a unified regional plan as a strong point of the bill. The interviews also suggested that typically the Assembly member acquires something of a State-wide perspective from his legislative service; and he is something less of a True Believer in "home rule" than his public utterances would indicate.

These are somewhat hopeful indications of the readiness of the New Jersey Legislature to give a serious hearing to bills establishing wider jurisdictions and larger powers for development planning and control. But aside from this, analysis of the experience from the angle of why individual legislators voted for the bill tells us little that is helpful to guage how similar issues may be fought and won.

Another approach, which seems more productive, is to ask the question, why did the force for the legislation prove more effective than the force against it? Although answering this question is much more dependent on deductive analysis, it opens the way to a coherent cause-and-effect explanation grounded on basic interests and circumstances which can more readily

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be related to other urban planning situations.

In summary, the reasons for the success of the legislation appear to be: (1) the strong inherent case for reclamation work and planned development on a regional scale; (2) the powerful leverage of Federal policy; (3) the accumulation of a broad consensus among informed and influential people; (4) accidents of person; (5) a sound basic legislative strategy. The following discussion takes these up in turn.

The Objective Case for the Bill

The basic fact to be dealt with was a physical one: tidal and soil conditions rendered these strategically placed lands costly and difficult to develop; but gross costs could be lowered and difficulties mastered by a large-scale engineering approach. (This point is fully developed in Chapter I, pp. 54-58.)

Benefits of a Meadows reclamation effort could be persuasively argued in terms of cost, time, esthetics, the more effective service of public need, and environmental protection. The cost of engineering works, applied over the whole area, promised to be much less on a per-acre basis than filling from the margins in; though such works would take a long initial time to execute, development could then proceed in a much more rapid and rational way than by piecemeal development. The esthetic and functional defects of current laissez-faire development were glaringly visible. This, plus the dramatically large

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sweep of untouched acreage surrounded on all sides by intense urban development, and criss-crossed with major arteries, made for unusually broad and general awareness of the planning and achievement opportunity, and of the costs of not planning.

The urgency of action was likewise highly apparent; there was a rapidly intensifying shortage of sites in virtually all the major categories of land use, notably industry, housing, commercial development, public institutions, recreation and disposal; the economics of land scarcity was pushing up site values to the level which justified the cost of filling sites on the Meadows margin; and the resulting development was rapidly compromising possibilities for more ordered and comprehensive development.

The garbage issue, on balance, helped to strengthen the case for the Meadows bill. Here in particular was a category of need in which a crisis was shaping up; the need for a rational, responsible long-term solution was patent, and the Senate Committee amendments to S. 477 offered one.

The Leverage of Federal Policy

The "requirements for local cooperation" specified by the Army Corps of Engineers were based on the Flood Control Act of 1936. Several of the requirements the Corps enumerated, for example to hold the Federal government free of damages due to works and to provide the necessary rights-of-way and easements without cost, are specified explicitly by the statute. But the key requirement which had great influence on the effort

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to develop a governmental structure for the Meadows was to -

> accomplish the development of the meadowland in accordance with the master land use plan to assure the accrual of benefits in the manner used to justify the project.[1]

This requirement did not rest on explicit statutory language but was rather a standard developed by the Corps to implement the basic statutory requirement that "benefits equal or exceed the cost".[2] A spokesman for the Corps' New York District which articulated this policy characterizes it as an "extrapolation" of the statute, essential to realize the cost-benefit ratio criterion in the highly unusual and complex circumstances of the Meadows problem.[3]

Without any quarrel with the logic or wisdom of the policy, this can be characterized as a striking instance of policy-making by administrative regulation. In the situation, it exerted a salutary leverage. The Corps' studies indicated that the cost of reclamation would be in the range of $100,000,000 to $300,000,000. In theory, this might be financed by State, county and local debt or by bonds of a reclamation authority. But the prevailing consensus from the outset was that the Federal government was by far the most promising source, and so long as that possibility was open, it would be fiscal and political folly to pursue any alternative. Thus the terms of Federal aid were crucial.

From 1961 on, the Corps consistently pointed to the need for a mechanism of government with the capability to develop,

[1]Citation p. 123 above.

[2]Flood Control Act of 1936, statement of purpose

[3]Leonard Ratushevitz, Engineering Division, Army Corps of Engineers N.Y.District, phone interview.

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adopt, and enforce a use plan. It strongly reiterated this need to the MRDA in 1962. It affirmed to the Meyner Commission in 1964 that this was a key need of the situation. The Corps' requirement of a viable development agency was a main anchor of the insistence by S. 477's proponents that the principle of "home rule" must be subordinated. And the Corps' objections to the difficulties created by the Assembly amendments gave decisive credibility to Hughes' conditional veto.

The Accumulation of a Consensus

It is hardly surprising that a broad consensus developed supporting the basic principles of S. 477. To say this is only to say that the political system in New Jersey demonstrated some degree of rationality, however cautious and restrained.

This consensus was the cumulative result of some 15 years of studies, proposals, official reports and protracted efforts to achieve a solution by joint municipal action. There was one central theme of controversy in this history: some said intermunicipal action could be effective, others said it could not and that State authority must be invoked to establish a strong unified agency. There was an incontrovertible trend in evidence: the experience was demonstrating that intermunicipal action was ineffective, and the consensus of analysis, reports and opinions to this effect became more and more pronounced.

Most of the individuals who had a direct and obvious stake in the issue were involved and affected by this 15-year

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experience. Literally hundreds of different individuals played some sort of participant role in one or more phases of the history which included the six-year history of activity by MRPB and its predecessor, the five-year history of active effort by the MRDA, the hearings and deliberations of the Meyner Commission, the Lord Committee report, the S. 518 hearings, and the political negotiation and maneuvering in drafting S. 477. Most of the elected and appointed officials of the towns involved had a long exposure to the series of proposals and activities. Lawyers, engineers, contractors, and suppliers serving clients with property or building plans in the Meadows had direct reason to follow developments; a number of them participated directly, and passed on their experience and views to their associates. Utility company representatives participated actively throughout the history. All the State officials and staff people with a significant functional stake in the issue were involved from 1959 on. Aspects of the issue confronted State legislators in almost every session through the '60's. Also, significantly, there was a good deal of continuity in the press personnel covering the development of the Meadows issue, particularly among the senior editors and political reporters.

The erosion of the credibility of the alternative of municipal action, as the MRDA floundered, bickered and then lapsed into almost total inactivity, was of course the other side of the coin. This was an important underlying weakness in the opposition to the bill, because it affected the atti-

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tudes of many influential individuals in the circles in which opposition to S. 477 was supposedly centered. It is notable that the mayors most active in opposition to S. 477 were relative newcomers and had not been active in trying to make MRDA work. And none of the professionals, nor any of the citizen appointees who had labored long on the MRDA, allied themselves in 1968 with the active opposition.

The consensus which had accumulated by 1968 was not easy to demonstrate, and seemingly the prevalent opposition of local officials in that year belies any such consensus. Yet it was manifest in the unanimity of press comment, in the judgment of Bergen Republican leaders in 1967 that a pledge to enact a Meadows bill would be good campaign fodder, and in the lip-service everyone accorded to the principle of a strong, unified agency. It was manifest in the unanimous Senate passage of S. 477, and in the Assembly it was manifest again in the avoidance of any head-on opposition to S. 477 based on a hard-line "home rule" position. The only exception was Russo, and generally his colleagues appeared to feel that his arguments were extreme and unsound.

The limitations of this consensus must be recognized lest its weight as a factor in the passage of the bill be overstated. The need for S. 477 was not urgently felt by many. Most of those who were concerned in some way thought it was a "good idea". But they were not ready to fight hard for it against determined opposition, nor to pay a heavy political price for the bill in any other way. There was a "broad" consensus in

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the sense that most of those who had some knowledge of the issue and had some sense of the stakes acknowledged the need for the Legislature to act; this embraced, probably, a majority of those in the influential, activist, politically aware strata of the electorate. But that is far from saying that any large fraction of the public knew or cared what the Meadows issue was, and there is no persuasive evidence that that was ever the case.

Neither did the consensus involve wide agreement on any firm principles of structure - such as that an authority should be constituted on a unitary rather than federal basis. It extended only to agreement that the State Legislature would have to set up some kind of an agency with an ample mandate and powers.

The existence of a consensus of this character helps to explain why it was possible for a very small circle of active proponents to get S. 477 passed despite the intense opposition of local officials. But it would be most inaccurate to imply that the bill passed because there was powerful, widespread feeling that it should be.

Accidents of Person

Not only was S. 477's passage the result of the active effort of a very small circle of people, but there were three individuals - Dickinson, Ylvisaker, and Hughes - who were extraordinarily important to it. A reasonable case can be made for the proposition that if any one of these had not made his dis-

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tinctive contribution - a contribution well beyond what we might look for from another man in the same office - the bill would have failed of passage in 1968 and might not even have been introduced that year. And it is quite conceivable that it would it would never have been enacted at all, because by this time marginal development was rapidly nibbling away the opportunity for a comprehensive achievement.

Dickinson's commitment and prestige were indispensable factors in the acceptance by Republican legislators of a viable bill. No other Bergen County legislative candidate - and certainly no Republican candidate - ever entered the hustings with anything like the same degree of commitment on the Meadows issue. In addition Dickinson had extraordinary leverage on the rest of the Bergen County delegation, at least at the outset. Dickinson in effect secured a strong party commitment, and it was only the circumstance that that commitment had been made, and that Dickinson and Knowlton were intensely concerned to call for its fulfillment, that stood in the way of a capitulation by the Bergen legislators to the opposition of the South Bergen mayors. Dickinson also played an essential role at earlier stages, in framing the bill and gaining Senate passage. To get that far the bill had to survive the hazards posed by Republican allegiance to 'home rule', local opposition, and the title lobby, and without Dickinson's commitment, his prestige as a new Republican luminary, and his leverage as Committee Chairman, it might possibly not have done so. All of these circumstances attending Dickinson's role were highly fortuitous.

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The same is true of Ylvisaker. The evidence is clear that he, by virtue of the bold new perspectives he brought to his office and his unusual ability to gain enthusiastic acceptance of them, was personally responsible for a pronounced and decisive reversal of attitudes in the State agencies with planning functions. His personal qualities and his views, it appears, also had a comparable influence on Governor Hughes as well. Ylvisaker's background, as an action-oriented academic with several years' experience of trying to foster innovation in public policy through the leverage of foundation aid, was certainly unique; and so was the role and the leverage he had in the S. 477 situatuon, as the Commissioner of a new department imbued with youth, zeal and esprit.

It is a bit harder to cite objective circumstances in making a case for Hughes' unique contribution which was a matter of skill, force and boldness in using the weapons at his disposal to get the Legislature to do what he wanted. These are qualities which are to some extent selected and developed by the political "game". Yet, observing the way Hughes met the situation at two crisis points - the Assembly jam in June, and the Assembly-amended bill in November - the feeling is inescapable that he displayed these qualities in extraordinary degree.

Sound Basic Strategy

The basic strategy of the proponents was soundly based on the primary elements of strength in their situation, namely, the strong objective validity of the proposal and the powerful

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leverage of Federal policy in support of the legislation's basic premise. Also of basic importance was their effective use of the leverage available in the title issue.

An inherent element of the strategy was the organization of the proponents, as a fairly cohesive team of "insiders" which included most of the forces available and crucially needed. This makeup afforded the proponents better unity, and led to better strategy, than the opponents achieved.

Efforts to accomodate criticism and gain broader acceptance was an essential attribute of the proponents' approach. (This probably flowed more from the character and style of Dickinson and Ylvisaker than from a calculated decision to make this a part of the strategy.) In terms of opposition won over, this approach did not have very much apparent effect. Yet it was tactically productive, for it kept the initiative in the hands of the proponents more than would otherwise have been the case, it served to modify some of the opposition, and it was a posture which made it harder for the opposition to gain the Legislature's sympathy. Given the narrow margin of victory, the small gains won by this means may have been crucial. For example, Ylvisaker took pains to respond to concerns voiced by conservationists and probably gained some votes thereby, and the way the garbage disposal issue was handled helped avert what could have been troublesome Hudson County opposition.

In sum, the proponents had a clear perception of their goals and how to reach them; they developed an intelligent strategy; and both their purposes and their methods evinced a sense

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of statesmanship which was a real though intangible advantage.

The other side of the strategy coin was the weakness of the opposition in their inability to formulate and pursue a clear and well-defined strategy in unified fashion. They were thus unable to make fully effective use of their considerable political clout. It is clear that in the Fall the opposition was divided on the question of whether to try to kill the bill or to modify it drastically. The opinion which prevailed among the mayors was not politically realistic, and none of the Assembly members supported it. The tack which Hollenbeck's amendments took, on the other hand, was hastily contrived. This tendency to disunity was a weakness inherent in the nature of the opposition elements, closely related to the weakness which rendered them incapable of a voluntary intermunicipal approach.

Looking at the question overall, it seems clear that the bill's passage substantially intact was a matter of chance and freak circumstance. In spite of all the strong fundamental considerations it had going for it, its passage would not have been achieved save for the accidents of person described.

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## CHAPTER XXI: WHY THE BILL ALMOST FAILED

The plan of this chapter's analysis is, first, to take note of those factors of weakness which had a significant influence on the progress of S. 477 but which do not have particular relevance to the problem of the State's role in urban development, so as to establish the context within which the more relevant factors may be judged more clearly; and then to examine these latter factors in the following sequence:

- vulnerable aspects of the bill
- effectiveness of the opposition
- weakness of proponents' strategy as an 'inside' approach
- weakness flowing from the choice of an 'inside' approach
- the endemic weakness in the American political system: the absence of agencies serving public stakes.

### Factors Significant but not of Central Relevance

To a much more serious degree than the national Congress, American state legislatures are technically deficient, as many studies have observed. New Jersey's is certainly no exception. To be a legislator there is a part-time job, rather poorly paid - particularly by the standards of the lawyers and other professionals who hold most of the seats. The Legislature is in session on Mondays and Thursdays, during the first half of the year, and a few more weeks in the Fall. The members come to Trenton for the day, aiming to get back home that night. The proceedings are held under great pressure of time, usually in a hectic atmosphere and often enough in a chaotic one. There is a large volume

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of work to be handled, and there is not sufficient time for the members to familiarize themselves with all or even most of the bills. There is little time for committee work, and grossly inadequate committee staff.

The Legislature's procedures leave almost everything to be desired from the point of view of public visibility and means of popular control. There is no printed record of debates in the Senate or Assembly; there is only the summary of procedure and the roll-call record of votes at the stage of final passage. Particularly objectionable is the power which the Republican caucus in each chamber arrogates to itself, when holding a majority, to prevent a public debate and vote on any measure the caucus majority will not clear; this, coupled with the protocol of caucus secrecy, is a procedure which thumbs its nose at the public's right to know what its Legislature is doing. And all these elements contributed to the difficulty of passing S. 477.

Another circumstance which worked against the bill was the legislative inexperience of the principal proponents. (Similar legislation need not always bear this handicap. On the other hand, it was not entirely an accident; we have seen that it took unusual men with unusual motives to extract decision on the Meadows issue from the Legislature. By definition, such men are not usually around, and a corallary of that is that when they do appear on the scene they will likely be less experienced than their antagonists.)

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The manner in which the title issue cross-cut other interests in the Meadows battle has been evident throughout the narrative. The most important consequence of this was that S. 477 was deprived of some important potential support, from specific owners who would benefit greatly from reclamation, and from the business community, which went very limp on the issue posed by S. 477 and let the title lobby call the tune.

Vulnerable Aspects of the Bill

S. 477 was very long, very complex, and full of innovations. It undertook to break new ground not just in one area but in several: scope of purposes, intergovernmental structure, supervening planning powers, tax-sharing and sanitary landfill control, to name the most important. Given the severe time handicaps on the Legislature's work, these characteristics of S.477 meant that the great majority of the legislators just didn't have time to get the whole thing clear. This in turn made it easy for the bill's opponents to make extravagant criticisms and stir doubts. It meant that most of the legislators, those with the deciding votes in the Assembly, had to base their evaluation and their vote on somebody else's advice; it was more comfortable to temporize, and this was a major reason the bill had trouble getting out of the Assembly Republican caucus in the Spring.

There was, moreover, some ambiguity and uncertainty in crucial provisions of S.477, especially regarding tax-sharing. For the most part, this was inherent in the nature of the problem (for reasons which are discussed in Chapter XIV, pp. 258-261, above); and taxation and spending will probably be more rather

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than less equitable, on balance, under S. 477's arrangement than under separate municipal administration. But psychologically the burden of proof was on those who proposed innovations which would violate the established and sanctified local autonomy. And several of the bill's opponents asserted in interviews that in sessions designed to satisfy doubts and respond to criticisms, none of the bill's principal spokesmen was able to furnish clear and consistent explanation of some of its features. Whether this was the fault of the bill, of the problem, of the speakers or of the listeners, it made it extremely difficult for the bill's proponents to resolve the points of controversy and calm the atmosphere.

Effectiveness of the Opposition

The opposition forces did well to let local officials spearhead the attack, because of the strong leverage these officials have on the Governor and the Legislature, and because of their virtually unassailable legitimacy. A mayor may be challenged as narrow, but it is politically dangerous to call him self-serving even when he really is; an industrial developer by contrast is very vulnerable.

The opponents' exploitation of the fears and confusion which were inherent in the situation was skilful and effective. The situation was tailor-made for demogoguery; the title issue could be posed in terms of ruthless dispossession of hard-working tax-paying property-owners; this could be linked to State "rape" of the towns' fairest ratables and a power-mad takeover by the State of the towns' autonomy in planning. Porro's rhetoric, in

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fact, neglected none of these juicy opportunities, and he summed up the whole evil business in the word "grab". It was a cool politician indeed who could walk into a hall full of citizens aroused by these themes and defend S. 477.

Porro himself constituted an "accident of person" which greatly counterbalanced the special strength which Ylvisaker and Dickinson contributed to the proponents' side. But though Porro is a person of unusually intense energy and commitment, and his style and modus operandi were peculiarly well suited for some aspects of the role he assumed, the role itself was ready-made and waiting for a politically-minded and opportunity-minded lawyer to come along and fill. It was a role activated by standard motivations and rewards. The representation of private title claims, the extensive researching of the title issue, the development of a political response to the adverse court decisions, the rousing of the local governments as allies in the common fight against the State title claims, the stimulation of the local officials to take the lead in the battle against S. 477, the coordination and shaping of opposition effort by dint of expertise and industry - all this developed naturally and logically as one bag for the man who would take it on as Porro did. Had he not been there, much the same functions would have been undertaken by someone else or perhaps shared by two or three others. The same appeals would have been made, the same mood would have developed. Whether Ylvisaker would have been able to reach an accomodation with a different sort of ad-

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versary is the sort of riddle that makes horse races. But it was much more predictable that the dramatis personae would include a role like Porro's than that it would include a Dickinson or an Ylvisaker.

Weaknesses of the Proponents' Strategy as an "Inside" Strategy

Although the proponents' strategy was a sound and strong one on the whole, hindsight makes apparent a number of points of weakness, some of which nearly cost S. 477 its life.

In the first place, some vitally important elements were left out of the leadership group. Most obvious in this respect, adequate representation of the Assembly majority and particularly of the Bergen Assembly delegation was neglected throughout the formative period beginning in December 1967, through the point of Senate passage, when the bill was drafted and then modified in response to criticisms. Even Rinaldi, as chairman of the Assembly Committee which would handle the bill, participated very little in the leadership sessions in this stage. And no Bergen Assembly member did.

This was related to a broader failure, to foresee the political problem that would be posed for the Assembly delegation by local opposition, and by the weakness inherent in the equivocal character of the G.O.P. campaign pledge on the Meadows and the consequent danger of a serious defection in the Bergen Assembly group; and with this, the failure to act to forestall such a defection.

It is idle to try to formulate precisely what should have been done or to speculate on the degree of success that might

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have been achieved. But there were things that were not done that could have been done to cultivate support and nail down stronger commitments from the Assembly members at the strategic time.

Some of the State planners associated with the MRDA effort seem to feel that there should at least have been overtures to the mayors, providing for consideration of their views in the early drafting stages of the legislation. But the practical difficulties of this were obvious. There may have been a better course than the one the proponents followed, which was to present a draft bill to the mayors and invite their recommendations, before the bill was introduced; but this has to be viewed as a fielder's choice. Basically, the proponents did not have too much leverage with the mayors, and the latter were almost certain to shy away from negotiations or commitments at the early stages.

But Dickinson did have leverage among the Republicans, and his failure to use it in some timely and strategic ways must be chalked up as errors of the proponents' strategy. Besides the failure to nail down support among Bergen Assemblymen, there was the failure to secure a commitment from Moraites to press hard to clear the bill from caucus, and to cultivate support elsewhere in the Assembly majority caucus at an early stage. Senator Dickinson acknowledges that the Assembly difficulties could have been better foreseen and handled than they were; he feels that inexperience was a serious factor. All five of the Bergen Senators were freshmen in that body. Also, he said, the

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the ease of Senate passage induced a euphoric overconfidence among the proponents.[1]

The proponents failed rather seriously to fulfill the requirements of their strategy, in the area of communication - primarily, communication to the members of the Assembly. The scope of the bill's nature and purposes, and the complexity of its provisions and operation, demanded that extraordinary and well-considered measures be taken to insure that the bill was fairly well understood by most of the Assembly members; and this was not accomplished. If the opponents of the bill are to be credited, there was also poor communication of answers to questions and criticisms.

These failures can be taken together with the weak performance of the proponents at the Senate hearings and the very spasmodic performance in generating informational and publicity material, as expressive of an overall failure to perceive that even within the demands of an 'inside' strategy, there was need for a thorough, carefully conceived "P.R." and communications plan, some of it beamed directly at the legislators, and other elements designed to exploit the strongly favorable press attitude.

A vital element of the proponents' strategy was the cohesion of the leadership group, which provided bi-partisan strength and legislative-cum-executive strength. This was breached, early in November, when relations between S. 477's legislative sponsors and those in the executive branch became strained, and the Hollenbeck amendments were put in the hopper with Dickinson's and Guarini's blessing, without securing the

[1]Interview, Sen. Fairleigh Dickinson, Jr.

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assent of Ylvisaker and Hughes as well. This was nearly fatal.

Finally, there was the heavy reliance on the prestige and commitment of Dickinson and Ylvisaker, unique individuals in key roles, which brought with it a high vulnerability to their weak points: Dickinson's "nice guy" qualities which made him so unwilling to use his considerable weight to press others for support, and which inclined him too readily to compromise and accomodation; and those qualities of Ylvisaker's which, while giving him a charismatic and inspiring stature in the eyes of many, at the same time aroused antagonism and jealousy among many legislators, especially of the opposite party.

Weaknesses Flowing from the Choice of an 'Inside' Approach

The choice of an 'inside' approach by the proponents flowed from their particular perspective, which was that of persons accustomed to operating close to the center of power, and with privileged access to 'inside' lines of influence. It is the point of view of this paper that this was a somewhat faulty perspective. This had paradoxical aspects. On the one hand, their vision of the great and broad potential of the Meadows, though their greatest strength, had as its corallary a weakness in ability to empathize with the point of view of local interests concerned with the here and now, and thus a tendency to underestimate the intensity and potency of opposition based on those interests. And on the other hand, their perspective was somewhat myopic in that it failed to see the potential for broad support, and to perceive the importance of mobilizing such broad support to counter local opposition.

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The proponents' justification for not mounting a campaign to develop greater popular support was that neither planning generally nor the Meadows specifically were issues the public could be made to get excited about, and the effort would be largely wasted. This argument has considerable force. There is broad concurrence among planners, publicists and politicians, on the basis of repeated experience, that the effort to rouse broad public support for planning is difficult and discouraging.

The argument advanced here is that an effort to develop much wider support would nevertheless have been the wiser strategy. The issue is not subject to scientific proof, one way or the other, and the weight of experience is on the other side. The proposition that support could have been rallied for S. 477 is important to underlying concerns of the study, however, and accordingly there is need to analyze what sort of a case can be made for it.

There are two questions: was there a realistic possibility that propaganda effort on behalf of S. 477 would elicit a lively and favorable response? and, was there a crucial need for such support?

On the first question, there is quite a lot in the history of the bill as recounted which at least inferentially attests to the potential for a strong response. The preceding chapter summarized the evidence that a broad favorable consensus had accumulated; and the very existence of such a consensus meant

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that a good foundation of public interest and support was already in being.

The fact of strong press support was both evidence of an underlying consensus, and a favorable means of broadening it. On at least three occasions - the Assembly action in June, the success of the Governor's conditional veto, and the rescinding of SCR. 41 - Hughes called this press support into play and it had powerful effect. That the legislators showed themselves so sensitive to a barrage of press comment says more than that the press has power to influence. It says that the legislators believed that the press was focussing public attention and articulating concerns shared by many voters. And it is hard to reconcile this with the proposition that the public was indifferent; there was at least enough public interest to cause legislators to reverse their position.

Again, it was the consensus of those interviewed that Moraites was hurt, in his race against Helstoski, by The Record's criticism of his duplicity and equivocation on the Meadows bill. This consensus, and the very fact that Moraites felt he had to voice support for the measure at meetings in the northern part of the county, testify that public opinion for the bill had developed and had political force.

If, even in the absence of any organized effort to cultivate support, sentiment for the bill had this much clout, it seems clear that there was a good potential for response and that a systemmatic program could have developed much stronger support.

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To analyze the question from another angle, certainly the public interests at stake (outlined in Chapter I, pp. 70-73) were very substantial. They included interests which, in their negative aspects, are keenly felt: pollution of air and water, congestion, increasing difficulty and costliness of public services which are dependent on public space and natural resource use; ugliness, filth and chaos of the urban landscape. It is true that efforts to translate these grievances into a recognition of the need for planning have had little success. But the recent phenomenal increase in public sensitivity to the concepts of pollution, environmental protection and ecology demonstrate that broad and vigorous sentiment can be galvanized and given a political direction. In this development, the problems under attack have been successfully translated into acute personal consequences: the poisoning of the air I breathe, the water I drink, the food I eat; the fouling of the space I inhabit. There seem to be subtler reasons as well why the concept of "ecology" (robust, naturalistic, organic?) has taken hold where the concept of "planning" (regimenting, bureaucratic, sanitary?) has left people cold. But the point is that people do recognize that they are hurting from causes which can't be cured by an increase in wages and profits, and this awareness has a lively political potential. The sponsors of S. 477, despite rather favorable circumstances, followed the more conventional wisdom that an appeal to such awareness would be a dubious investment.

The question of whether such an appeal was needed is easier to answer: obviously it was. For the lack of lively public

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pressure and close scrutiny, there was no effective counterweight to the local opposition, which thus was able to push the whole Bergen Assembly delegation and the bill's legislative leadership into acceptance of boundary changes so drastic and badly conceived that no real defense of them was even attempted when, at the Governor's insistence, the same Assembly restored the cuts a week later.

To some extent the proponents' avoidance of a broad public appeal was based on a "don't stir 'em up" theory, and obviously this was a miscalculation. Certainly in hindsight it seems most unrealistic to have hoped that intense local opposition would not materialize.

Overall there was a failure to anticipate communication needs and problems at all levels - within the Legislature, within the towns, and in the broad public arena. There was no formulation of an information/communication plan and program. There was a failure to communicate broadly a clear understanding of the basic what-and-why proposition: reclamation demands large-scale engineering which demands unified decision-making and fiscal powers. There was a conspicuous failure to dispel major confusion on the relation of the bill to the title issue and the "grab" charge, and this was a serious problem among legislators, let alone the public.

So far as the public effort was concerned, the most obvious criticism is that the proponents realized only a fraction of the help that the press, almost unanimously favorable disposed, was ready to give. This would have required nothing extraordin-

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ary but only a considered and sustained sequence of releases, speeches and the like to disseminate the cardinal arguments for the bill.

Beyond that, there was the absence of any effort to identify, inform and mobilize the latent constituency for planning and for Meadows development, and to stimulate expression of support for the bill. There is no way to judge which groups would have proved responsive, what effect they might have had, etc. But it does seem fair to say that the proponents had only themselves to blame in November when the only public pressure on the bill was coming from the opposition.

All this constitutes a criticism of the strategic choices made by the proponents, given the ideological parameters and political resources presented by contemporary American society. But the underlying problem that is involved, lies in the polity itself.

The total dependence on a small leadership group, the narrow support base, the choice of an 'inside' strategy, the vulnerability to errors in development of that strategy and to its inherent weaknesses, the heavy reliance on unique individuals and the vulnerability to their weak points, the failure to mobilize broad support - all these stem basically from the absence in the American political system of agencies motivated and fitted to identify, mobilize and service broad public interests, particularly interests in coherent urban development.

Speaking very broadly, the disparity between the presence and strength on the political scene of agents of private stakes,

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and that of the agents of public stakes, is the consequence of the Lockean cast of our ideology and institutions, which rest on the premise that the commonwealth will flourish if each freeman is protected and encouraged in his private privilege: to own "as much land as a man tills, plants, improves, cultivates and can use the produce of."[1] Even in Locke's day and economy, this was truly privilege rather than a right demonstrably harmonious with nature, for there was not enough land in England for each man to own what he could work, and those who had not property must be the servants of those who did.

The rewards of today's highly socialized production are distributed according to a much more elaborate structure of privileges, but it is privilege rather than inherent right or self-evident equity, which is the controlling principle. Wealth, status and power are the prime stakes, with the first being the main mark of the second and the main means of the third. And virtually everyone's share of these is largely controlled by privileges granted and/or protected by political authority. Naturally the prime political concern of everyone benefitting from these vested privileges is to defend and advance them. These interests have imperative motive to seek representation in the political process; and the principal fruit of these interests is money, which provides the means to finance political representation in skilled, professional and ample form.

The other, shared interests of the society do not furnish the same intensity of individual motivation, nor the same

[1]John Locke, Second Treatise on Government, p. 20

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means of support. Our political process thus displays extreme imbalance in the representation of private as against public interests, fulfilling the maxim that "everybody's business in nobody's business" to the point of social disaster.

This is manifest in the most stark and unqualified form in the conflict between private and public stakes in urban land use. The right to reap the fruit of land value appreciation is the most arbitrary of privileges, for the owner reaps wealth created not at all by his efforts, but rather by the collective industry and enlargement of the community. The political system is stacked in a negative, defensive way by the strength of the profit motive in relation to land value appreciation; that is, public decisions affecting land use development which may upset the profit expectations of individuals will be intensely resisted. (The fact that these private expectations may, in the aggregate, be competing against each other or be mutually adverse to each other, and are therefore unrealistic, is not likely to temper the political behavior they engender.)

The land interest makes a direct appeal of identity of interest to the local official, on the basis that a lucrative client for one is a lucrative ratable for the other. For just this reason, the local home-owner and taxpayer generally lines up with the land developers. This disposition is reinforced by an affinity of attitudes. First of all the home-owner sees eye-to-eye with the land developer regarding property and the virtue of its going up in value. Beyond that the home-owner has a more

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direct and visible stake in local and municipal interests than in the larger regional consequences of his town's action or of the county's or state's inaction; so there is a local bias in his political values, analogous to the narrow concern of the land-owner with the development prospects of his own particular acreage.

Thus the whole of local government is a system strongly oriented toward the maximization of property values; and this system, reinforced in its attitudes by the intrinsic jealousy of local government, exercises powerful strategic leverage on the larger political system. Property title and municipal government are mutually supportive institutions with a close community of interests in narrow, private stakes. And there are virtually no viable institutions on the local or regional scene to articulate and fight for the broader common interests affected, and so often damaged, by the decisions which serve private stakes.

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# CHAPTER XXII: LESSONS FOR POLITICAL THEORY

By a necessarily arbitrary choice, this chapter is confined to discussion of the correspondence, or lack of it, between the observed activity and the principal analytic models which contemporary political science offers. Those points which are in greater or lesser degree normative, evaluating the quality and servicability of the society and its governannce, or prescribing lines of solution for some of the problems noted, are treated in the following chapters.

## The Pressure-Group Model

This model provided the terms in which the central inquiry of the study was posed: "what support was mobilized? what opposition?" This mode of putting the question implies a picture of the legislative struggle as an expression of contending forces in the society which are expressive of specific interests, rather than as a contest of personalities or of legal or moral principles. But, with respect to support for the bill, this formulation seems to have very little meaning.

The study did not identify any "support forces" in the sense of identifiable, self-conscious group interests. The single exception - the "planning lobby" - had, in the first place, only marginal correspondence to an "interest group". To accord it the highest degree of correspondence consistent with the observed facts, it was in the nature of a clique, or special self-selected caucus within the business community, seeking to propagate a wider awareness within that community

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of its stakes in rational planning and control of urban development, and seeking to articulate those stakes and lobby for legislative policies that would serve them. And as noted, even this "lobby" was not very cohesive, and was severely curtailed in its force and influence by the title issue. In its most significant and influential activity, the "planning lobby" was so much the work and conviction of a single individual, Erber, that it is a legitimate question whether there would have been substantially the same activity had he not been on the scene.

In the second place, the "planning lobby" appears to have played no significant role at the crucial stage of Assembly passage, on the basis of the statements of all the Assembly members interviewed. Its important role was in relation to the preparatory events years earlier, mainly the establishment of the Meyner Commission, and subsequent action on targets of opportunity to advance from that commission's proposals to legislation.

The pressure group model was of somewhat more relevance and value for understanding opposition activity. The clearest manifestation of group action on behalf of the property interest was the formation and work of the Ad Hoc Committee on Riparian Lands of the New Jersey State Chamber of Commerce. And in a very simple and direct way, the mayors acted as an interest group in defense of the autonomous powers of local officials.

We can go beyond this prima facie data and perceive the opposition activity, in terms provided by the pressure group

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model, as expressing a coalition of the property interest and the vested interests of local government with Porro filling the role of coordinator and catalyst. This is tidy and satisfies the craving for a good firm explanation, but it involves a very serious risk of distorting the reality. While it is clear that local officials acted in concert, with defense of local autonomy their paramount concern, it is not really at all clear that Meadows property owners and developers were in concert on anything except the sanctity of their title claims.

Different units of property have some shared and some conflicting interests. The latter are highly important and very difficult to compromise. By its nature, land is ineluctably local. It is held in local, separate parcels, by different owners. In the Meadowlands, only the State of New Jersey had property claims over a wide area. The holdings of the major private owners were concentrated in one or at the most two towns each. In economic terms, each site is in competition with all the others, and the sites in each locality see other localities as economic rivals. The nature of land does not lend itself to any sort of cartelization or joint action. Typically, the land speculator plays a lone game and a waiting game; he sits back and waits for development to come his way.

These considerations help to explain why the study did not yield a clear picture of the property interest cohering, defining its stakes, and exerting a unified and consistent influence regarding Meadows development. (It did all of these

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things, of course, with regard to the title challenge.) We may interpret Porro's role as acting on behalf of property interests. But we are unable to say whether his actions were directed by a coherent group interest or were determined very largely by his own highly subjective interpretation of where the interests of the owner lay. Nor can we even be certain that Porro was acting at all times primarily for the owners; he became intensely involved in the issue of local government autonomy and often this seemed to be his leading concern. And in another direction several participants attribute many of Porro's actions to the self-serving motive of generating litigation.

Also, there are numerous bits of evidence that in fanning opposition to S. 477 Porro in fact did not have wide and strong support among the principal land holders. For example, such public testimony as there was by officers of the Meadowlands Institute and by individual developers did not oppose the principal purposes of S. 477, did express support for regionally-planned development, and in at least one instance did clearly articulate dissatisfaction with the administration of planning controls by 18 separate towns.

The more important point, however, is that whereas it was possible to discern the purposeful representation of identifiable group interests in the opposition activity, it was not possible to do so with respect to support for S. 477. The broader regional and public interests that were at stake were represented in the political decision-making process by a hand-

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ful of individuals in key roles, by the press, and no more.

This is not to say that the pressure-group model is "invalid", of course. It is only to say that, if we appraise the experience in terms of this model, we observe that local and private interests were represented in an overt and organized style, by advocates who were able to utilize established institutions as channels of information and mobilization, whereas the broader interests had no such representation. Through the New Jersey Chamber of Commerce and the formal and informal networks associated with it, for example, the title lobby was able to sound the tocsin to the legal profession, bankers, real estate brokers, and industrialists that the sanctity of private property was being threatened. Through the Chamber and also by reason of the broad identity of professional interests of the legislators with those constituencies, this interest had excellent, organized access to the Legislature which over a period of several years was highly responsive to it. Also, on a different line of concern, local officials acting ex officio were able to press the particular interests of their towns with such great force and leverage as nearly to afford them veto power in the Assembly. The urgency of planning, the need to establish a rational balance of land use and a coherent scheme of movement, the need to protect air and water resources and all the rest of it, had no such communications, no such spokesmen, no such access, had no professional groups or organizations which regarded these interests as their interests. Instead, what S. 477 had going for it was some favorably situated

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sponsorship plus a wide consensus that unified Meadows development would be a good thing; but this kind of power, in the absence of an active broad constituency, was to prove shaky and vulnerable.

In the legislative battle the support for and opposition to the bill were very nearly evenly matched. Superficially, this seems fair enough. But in fact the stakes on the two sides were in no sense equal. The defensive stakes were much smaller; the bill envisioned a much fuller and earlier development of the Meadows, and overall to a higher value level, than would be possible without it, while speaking to many needs which the ongoing development ignored. Relative to the stakes they represented, the opponents were able to demonstrate much more political clout than the proponents.

Relevance of Pluralist and Elitist Concepts

The observations of the study support the conclusions of many studies that only a very small fraction of the people participate in any significant way in political policy decisions.

Within that very general consensus, there are many differing perceptions of the nature, meaning and values of the decision process. Two major conflicting views may be synthesized as "elite pluralism" and the "power elite" model. The "elite pluralist" model sees the American polity as made up of many groups and constituencies with varying, overlapping and conflicting interests. Within each, participation in political decision-making is generally confined to an elite. For any given issue, some

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constituencies will be actively concerned and others not; political decisions will be reached by conflict-within-the-rules, bargaining and compromise among the elites concerned. (When dealing with a legislature as an institutional elite from the point of view of this model, we must also take note of log-rolling as a characteristic mode of involvement of interests not otherwise involved.) Modern American government, according to those who assert this model of its operation, is intrinsically democratic because the elites represent their respective constituencies, access to elite status within respective groups is generally open, and the decisions reached are generally accorded legitimacy, are generally viable resolutions of the conflicts involved, and represent a fair balancing of the contending popular interests.

The "power elite" model sees power and wealth heavily concentrated, particularly in major corporate managements, and sees this power controlling the major decisions of the society and, at least as important, setting the boundaries regarding what issues may be posed for political decision. (Largely by exercise of ideological control, the "power elite" effectively bars political challenge to the basic institutions by which power is held and exercised, particularly the right to hold land and capital as property and decide its use.)

This is, of course, a grossly oversimplified summary of a major area of controversy in political science; and it is a grossly oversimplified resolution to say that the disputants are talking past each other much of the time - that "elite pluralism" rather well describes the style in which conflicts are

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waged at City Hall, the State House and often in the Congress, while the "power elite" model describes the mode of decision of more basic issues which are hardly allowed to come up for debate in legislatures, such as the relations of production, what is produced and how it is produced, and the ideological premises of foreign policy. However, since the debate is complex, and it is not a central concern here, this study will settle for that oversimplification with the comment that, in the writer's view, both models are useful modes of interpretation for particular purposes and situations, but that the"power elite" model describes the more decisive aspects of the society and brings into focus the more important issues.

However, neither of these models contributed valuable insight or categories of explanation to the S. 477 story, nor does the latter furnish illuminating comment to the theoretical discourse on the rule of elites. The experience is striking testimony to the influence and leverage single individuals can exert in the political system - but that can't be related meaningfully to any generalizations about "elites" unless it can be demonstrated that Dickinson, Ylvisaker, or Hughes was the agent of a definable elite. A case might be made that Dickinson was, in a sense, the agent of the elite earlier identified as the "planning lobby", but it would be a thin case; there is no evidence of systemmatic communication, nor any that either Dickinson or the individuals who might be termed the "planning lobby" saw things in this light. Ylvisaker together with his staff chiefs constituted a sort of bureaucratic elite by virtue of

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office and expertise, but the history has noted the unique character of Ylvisaker's convictions and style.

In general, the mode of S. 477's development and passage corresponded much more nearly to a pluralist-bargaining model than to a power-elite model. Many and diverse interests exerted an influence; the strong influence of particularistic interests was manifest at almost every stage of the process. Bargains were repeatedly struck along lines essentially irrelevant to the major issues of public policy involved: vide the "title package" which gained passage of S. 477 in the Senate, and the Hollenbeck amendments.

From the perspective of the individual legislators and the way their voting decisions were formed, (in the Assembly more clearly than in the Senate) the decision process certainly corresponded to the pluralist-bargaining model rather than suggesting an Establishment dictate. This of course reflected the character of the opposition and its leverage on the Assembly; and at the same time this style of decision-making was a decided advantage to the opponents of the bill.

Another line of argument wants to be considered: can not the victory of the bill be seen as a victory of the "Establishment"? In this view Dickinson particularly would be seen as the agent of the larger and broader interests of the business and finance community of the State and the region. But all the evidence the study developed indicates this would be a very forced view. A reasonable criterion for judging the question would be, whether powerful leaders or spokesmen for corporate industry, public utilities, railroads or banking voiced positive

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support or otherwise exerted influence for S. 477, or whether they stayed aloof. And the testimony of observers and participants is unanimous is that the business community generally stood by while the State Chamber of Commerce's chief lobbyist oriented all his efforts toward a favorable outcome of the title issue.

Establishment Power and the Planning Issue

Perhaps the most interesting and significant question arising from this line of analysis is, why did not the Establishment assert its considerable interest in rational planning and development of the Meadows? (The question can be posed in more general terms: why does not the Establishment assert its interest in rational urban growth?)

There were, in the first place, two special aspects of the Meadows situation which more or less cancelled each other out. On the one hand the unique physical characteristics of the land which made it so hard to develop except by a large-scale, unified approach, coupled with the acute need of the area for land and especially for industrial land, constituted unusually favorable circumstances for business backing; but on the other hand the title issue created a more urgent concern for those affected which was accorded priority by the business community as a whole.

But in fact, it was quite possible logically and legally to regard the title and the planning issues as fully separable. The fact that business interests with much to gain, objectively speaking, from reclamation and optimal development of the Meadows permitted the title interest to dictate the whole thrust of the

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business response indicates that they did not place a high value on their stakes in the planning issue. This is in accord with general experience which indicates that it is difficult to develop vigorous support for rational planning of urban growth among corporate and banking leaders. There is an anomaly here worth looking at, for increasingly the characteristic style of large-scale corporate power is long-range planning, whole-system integration, and rationalized design. Furthermore the problems of accommodating rapid growth needs in the face of site scarcity and escalating land costs, congestion and breakdown of transportation, and the costs of pollution and its control present the captains of industry with tangible evidence of their stake in planning and rational design of urban growth.

Why do not the dominant corporate elements of the Establishment perceive and act on their interests in broad-scale land development planning? There would seem to be a complex of reasons. Landed property itself, the interest most directly affected, is by nature localist in orientation, tends toward constantly divided rather than concentrated ownership, and generally does not have strong links and common interests with corporate power. Supplementing this influence, there is probably a tendency in circles of corporate power to seek control within a sphere of interest defined by product category, and to regard other spheres as the territories of other industries. In this perspective, land development is perhaps viewed as the territory of the real estate industry, rather than as a sphere for public policy control. The land interest itself perceives its stakes

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in terms of autonomy and freedom of development decisions, and no doubt there is ready ideological sympathy for this view among other business/industry/property leaders.

It is probable that lawyers are highly influential in forming corporate attitudes toward public policy issues relating to land; and by conditioning lawyers are the high priests of the cult of property.

A further hypothesis is suggested, that the customary criteria by which members of the industrial/financial Establishment identify their concerns are the profit and growth of specific corporate enterprises; and these criteria do not serve to identify their stakes in a coherent framework of land use, public services and community functioning.

All this is subject to change, of course. One possibility is that industries whose markets are closely linked to urban growth - most obvious examples would be building materials and major appliances - will be made increasingly aware of the constricting effects of traffic congestion, land scarcity and zoning practices. Such awareness may lead to a consensus favorable to the New Cities concept and comparable lines of public policy initiative to foster development. Such a consensus would constitute an important political development.

We can say, on the basis of the Meadows experience, that a broad acceptance of some basic planning premises had already developed. This is suggested, for example, by the fact that there was no substantial expression of ideological opposition to the planning rationale of S. 477. This spells significant

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change from the '30's and '40's, say, when "planning" was still something of a dirty word in conservative circles. But on the surface, at least, this change would seem to be slow and weak. It is hard to see that there is a great deal more active support in Establishment circles for the Regional Plan Association today, for example, than there was when it first promulgated proposals in the '20's.

In sum, it seems clear that the issue of subordinating property rights to public policy presents the business class with a severe ideological difficulty. On the one hand, individual companies and corporate industry in general have clear stakes, as noted, in better planning of urban development. On the other hand, the power of corporate management rests on the legitimacy of the institution of property. The question of how members of the business class resolve this conflict is one in which proponents of planning have much at stake. It is the writer's belief that they should not duck the ideological issue but should meet it head on, urging the essentially arbitrary nature and often dysfunctional effects of urban land property claims, and arguing that the business class is wiser to stake its legitimacy on functional contributions of the entrepreneur and the manager than to stake it on the sanctity of property.

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# CHAPTER XXIII: LESSONS FOR GOVERNMENT AND PUBLIC ADMINISTRATION

The analysis in this chapter will pursue two lines: (1) general lessons for the development of agencies suitably constituted for regional functions, and (2) an appraisal of the particular agency created.

## General Lessons

One of the most obvious lessons of the experience is the fallacy of the proposition that municipalities, by voluntary joint action, can develop and execute a plan for the orderly, rational development of a vacant land area which is politically partitioned into their separate jurisdictions, in a way which optimally fulfills and harmonizes local and regional needs. The inherent reasons for this are analyzed in detail in Chapter X, and only a summary of the argument will be made here.

The officials of local government have a vested interest in their own autonomous power. Also, by far the strongest constituency pressure on them is the pressure to minimize the burdens and maximize the gains of people who own land property. It is precisely these interests - official and private - which are most competitive and least amenable to restraints for the sake of wider public benefits. And it is precisely these interests which have the most faulty perspective on those public concerns which run across municipal lines, such as congestion, pollution and the rational apportionment of land among competing

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private and public claims. So that it is quite unrealistic to expect an agency composed of, or answerable to, local officials to agree on a regional plan, and utterly inconceivable that a mechanism of this kind could develop a plan which gave adequate consideration to regional as well as local needs. Self-defeat is built into the very concept of voluntary intermunicipal cooperation for regional planning.

The obverse lesson is that the creation of an agency with the capability to plan the rational comprehensive development of an area embracing several municipal jurisdictions requires a decisive assertion of the same sovereign power which created those jurisdictions; sovereign state power must create a supervening jurisdiction, and should provide for strong representation of the unified interests of the new jurisdiction.

The High Cost of an Unsound Initiative

The subject of the MRDA should not be left without taking note of the cautionary tale it offers: the high cost of an unsound initiative in government. The theory of those who spurred MRDA's formation was that nothing could be achieved except with the interest and support of local political leaders; and that if these leaders accepted roles in an agency charged to realize a regional program, they would in due course recognize the structural requirements for unified action and ask the State to legislate an adequate charter. Their analysis erred in not seeing that the dominant political imperatives of local officials require them to favor local over regional interests; the consequent danger they failed to see was that once these enemies of regional development were placed in control of a regional agency

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they would insist tenaciously that the authority should stay with them. The MRDA proved to be an obstacle to appropriate institutional development rather than a vehicle for it.

Weakness in the Legislature's Capabilities

In one aspect the Meadows legislation experience provided a demonstration of how the State's institutions, formal and informal, perform the function of identifying a need of government and designing a mechanism to fill it. In this particular situation, structural innovation of considerable scope and complexity was required. How well suited were the legislative institutions for this task?

What is most obvious, noting the role of the Meyner Commission, the Lord Committee, the Rutgers study financed by HHFA and the State, and the role of Ylvisaker's and Hughes' staff assistants in drafting S. 518 and S. 477, is that the Legislature itself was not up to the assignment. This is no news to students of government, nor is it necessarily a grave defect. The creation of the Meyner Commission by the Legislature in 1963 was a rational and responsible way of trying to bring a question of this kind into focus, providing a depth and scope of study beyond the capability of individual legislators or of Senate or Assembly committees. (But it should be noted in passing that the staffing, resources and procedures of the committees of the New Jersey Legislature are clearly inadequate, for reasons linked to the systemic weakness of a part-time, underfunded Legislature.)

The shortcomings of the legislative " R and D " process were evidenced not so much by the need to call other agencies

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into service, as by the lack of continuity and coherence in the overall process. At the simplest mechanical level, there was no repository where the body of data and analysis which the Meyner Commission and various other agencies generated was systematically assembled, organized and made accessible to legislators or citizens with an interest in analyzing the material or carrying the issue forward. There was no agent of the public whose assigned duty it was to maintain and make available information on what had been proposed, much less to elicit responses and to take appropriate initiatives to spur logical follow-up lines of action.

The lack of such mechanisms in the Legislature is one reason why so much of the legislative initiative in major matters has passed to the executive branch, and that is what happened here; virtually all the initiative, policy formulation and detail work involved in the extensive transformation from the Meyner recommendations to S. 477 was carried by the executive branch, mainly by Ylvisaker's office.

But the executive machinery for the performance of this function is improvised and poorly defined too. The machinery which produced S. 477 was an improvised, ramshackle affair. And with no wrongful intent on anyone's part, its mode of functioning was such as to make it difficult for members of the public to know what was happening and why, much less to participate.

These are rather serious faults. One possible remedy might be for the Legislature to have an enlarged secretariat,

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mandated to develop an organized body of information and analysis, assimilating that generated by the executive departments, legislative committees, and other sources, on public policy issues, and to perform specific research functions at the Legislature's direction. An alternative might be a joint creature of the Legislature and the executive branch, a "Council on Pending Public Policy Issues" performing functions of compilation, research and policy analysis under the direction of a board composed of legislators and department chiefs.

* * * * * * *

One of the strategies often urged by planners and other observers concerned to achieve better coordination and harmony of metropolitan development is to require local, county and state governments to cooperate with a regional planning agency as a condition of federal grants and loans assisting various categories of public improvements. The history of S. 477 demonstrates the intrinsic leverage of such policies. It does not seem at first glance to have much else to tell us on this point; for example, it is hardly a model for appropriate forms and mechanisms for such policies. The Army Corps of Engineers' policy on the most vital point was "extrapolated", as we have seen, and thus had to be a somewhat uncertain and imprecise instrument as to scope, standards, and enforcability. But one aspect of the experience may be quite significant: federal leverage exercised <u>in support of state authority</u> was able to enforce a comprehensive regional solution in the face of local resistance. This is a point worth pondering, since federal incentives have not been particularly effective in inducing voluntary cooperation of local governments. This matter is examined more fully in the final chapter.

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Appraisal of the Agency Created

In terms of government structure, S. 477 did two genuinely novel things. One was to create a new pattern of intergovernmental relations, between the appointive regional commission on the one hand and the existing local governments on the other. The other - an integral element of the first - was to establish a new mechanism for pooling and distributing municipal tax revenues.

The intergovernmental pattern created by S. 477 establishes a regional agency with powers supervening those of the municipalities affected, with regard to the planning, execution and financing of works necessary for reclamation, assessing of benefitted properties, and land-use planning and development control; it details the terms and the mechanism for levying property taxes on the new development in the area affected and distributing the proceeds; and at the same time it leaves under local jurisdiction the performance of the other ordinary municipal functions in the area affected. It is of interest that the agency's area of jurisdiction embraced part of 14 towns but did not embrace the whole of any one; but this is not an essential characteristic of the structure. A town could conceivably be entirely within the Commission's area of jurisdiction, and yet its status in most vital particulars would not be radically different than that of the other towns. It would continue to tax pre-existing ratables, and receive and spend the proceeds directly; it would continue to operate municipal services for all residents and properties, old and new. The cardinal difference would be that it would lose planning jurisdiction over all its area, rather

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than over a part only. What is essential in the arrangement is the particular division of powers over the same territory, coupled with the tax mechanism.

The bill actually created no new powers. The powers transferred to the Commission previously resided in the individual municipalities. Even in the case of its waste disposal provisions it did not create novel powers, although the bill mandated to the Commission a new responsibility: to assure availability of space and facilities for waste disposal, which previously had been left to the workings of the market in land and services.

The tax mechanism, however, is inherently novel, and in one respect it is radical: it requires all the towns to share, on an equal pro rata basis, the cost burdens for municipal services generated by new development in the Meadows district. However, that statement papers over some significant anomalies. The goal of those who devised the legislation was a mechanism which would tax all incremental development equally, and pay the cost burdens generated by this development from the proceeds, (distributing the putative surplus on a pro rata acreage basis.) But they were not able to accomplish quite that, because they were not able to devise a workable way to preserve the towns' territorial integrity and at the same time empower the Commission to fix a uniform tax rate on all new development in the district. Each property including new buildings in the Meadowlands district is taxed at the local rate. The obligation of each town to the intermunicipal account is to be figured by applying a uniform

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"apportionment rate" (an average rate, the total tax levy of all the towns as a per cent of their aggregate taxable assessed value) to the incremental value of Meadowlands property in the particular town. For some towns, the "apportionment rate" at which their obligation to the intermunicipal account is figured will be substantially higher than the local rate at which the properties were taxed. There are extreme differences in the tax rates of the towns presently; the "effective" tax rate, i.e., a rate based on equalized assessed values, for Ridgefield in 1970 was $1.09 per $100 of assessed valuation, and for Teterboro was $0.72, whereas Jersey City's was $7.50.[1] Thus, a town's obligation to the account may be considerably more than the tax revenues it realizes from the development. The deficit amount will have to be met by the town as a whole, that is, by an added budget item which all the town's taxpayers will join in paying.

There is a rough justice to the operation of the mechanism, because its overall tendency will be to require the towns favored with a high ratio of ratables to cost burdens to pay somewhat higher taxes than they would under full tax autonomy, with the proceeds flowing to towns with a low ratio of value to burden. However, its complexity is such that all sorts of anomalous and inequitable situations are at least theoretically possible. This invites confusion and angry suspicion in public discussion.

S. 477 as a Model?

How useful and significant is S. 477 as a model for legislation to deal with comparable problems in other situations and

[1] N.J. State Division of Taxation, Annual Report, 1970, pp. 202-203 and p. 212

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other states? Several aspects of the bill want to be considered from this angle.

To deal with the tax-sharing mechanism first, the faults which have been cited loom rather large in appraising its possible value for wider application. The primary reasons for its particular form appear to have been legal and political expediency, rather than efficiency or logic. And further, it was expedient for this particular situation, where there was a unique and urgent reason to find some legally acceptable tax-sharing mechanism, yet strong political pressure to minimize the invasion of local sovereignty. Also unique were the circumstances which rationalized a differential treatment of new development as against existing development.

The problem which the tax-sharing mechanism helps to solve is in fact a very broad problem. Municipalities compete to attract ratables which generate high tax returns and low burdens; industries are pleased to accept the low-tax benefits which some towns can offer by reason of local autonomy, accidents of geography and the arbitrary nature of municipal boundaries. The result is a circular, self-reinforcing trend which is irresponsible and socially harmful: towns and industries enter into cozy arrangements such as those where the town houses a lot of jobs but not many people, or it houses low-income jobs but only high-income people. In these situations the residents get lots of help in paying for their own municipal services, while the industrial and commercial enterprises pay a low tax. Thereby, they avoid responsibility for their share of the cost of the public

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service needs of the people whose work generates their profit. These costs are left for less-advantaged cities and towns to bear; the tax differential boosts values in the advantaged towns; those who can afford it leave the "have-not" towns for the "have" towns, intensifying the problem.

However, there is no reason to believe that the mechanism developed in S. 477 would be any more salable politically, for state-wide application, than some more straightforward proposal such as state-wide taxation of industrial and commercial ratables at a uniform rate, the proceeds to be distributed locally on a formula based on population and income.

How useful a model is the Hackensack Meadowlands Development Commission in its overall aspect as a package of specific powers vis-a-vis the towns? The question begets a question: a model for what? for New Cities development at or beyond the fringe of existing urban development? or for rationalizing the development of unbuilt areas within counties, or sub-reagions otherwise defined, which already have substantial urban and suburban development?

It is logical to consider the latter first, since that was the condition for which the Commission was designed. And again, the circumstance that S. 477 was a response to a unique problem suggests the conclusion that analysis confirms: absent the unique factors that made a unified agency essential in this situation, there would be little reason to recommend such a structure, and none at all to think it would be politically viable. The felt need in the situation was to master an engin-

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eering problem. The choice of a commission form was primarily oriented toward the needs of an engineering enterprise: fiscal responsibility and unified management insulated from popular pressures. Everyone said regional planning was a good idea; but nobody was prepared to pay any kind of a price to accomplish regional planning. Planning was accepted because the Governor, his planning chief and the Army Engineers joined in insisting that federal funds for the engineering works could not be secured if ample planning capability was not provided.

Where there are only the ordinary problems of development to be dealt with, everyone complains about the lack of planning but nobody is ready to relinquish "home rule" over his property to get it. The most important reason for this is the autonomous power of local government to tax local property, even though the economic base of the industrial and commercial land uses in each town is regional in character, and even though all the wealth being taxed is derived from economic activity of a regional and national, rather than local, character. Wealth drawn from the region thus finds shelter behind municipal walls. It is because the stakes in this game are rendered so great and so vital by our property and government institutions, that other stakes are subordinated and ignored. This is the key reason why there is no effective political demand for regional planning in areas where many separate towns are growing into one continuous area.

Even for those who would like to raise such a demand, however, there are important deficiencies in the model S. 477 provides. Perhaps the assignment to a supra-municipal agency

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of power to formulate an overall land-use plan, leaving the towns autonomous powers to operate local municipal services and to exercise concurrent though subordinate powers of planning and development control, has merit as a mechanism to achieve planning which is attuned to wider interests; perhaps also the concept of an area jurisdiction intermediate between town and county, following logical geographic and functional boundaries and small enough to correspond to the radius of activity and acquaintance of the ordinary man, is worthwhile. But these facets of S. 477's plan can be of value only as parts of a mechanism which solves more fundamental problems.

The most important of these is the problem of property taxation. To assign planning powers to a supra-municipal agency is neither feasible nor equitable unless tax responsibilities and benefits can also be shared over the same area. And in this respect, as discussed above, S. 477 produced a rather complicated and unsatisfactory makeshift.

Another vital problem is that of representation and accountability. Here too S. 477 can be seriously faulted. The Commission it created has desirable characteristics in the eyes of prospective bondholders; and it will probably be more sensitive to important State-wide and regional interests than municipal officials typically are. But there is nothing save the Commissioners' own sweet reason to make them feel they must answer to the public for their actions, and no aspect of the mechanism which leads the citizen to feel that he is represented on the Commission.

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The Hackensack Meadowlands Municipal Committee, composed of the mayors of the affected localities, does provide representation of them in a fair and effective way; and to the extent that local government represents the interests of its citizens, the Municipal Committee does provide a significant instrument of popular control and check. However, it has been argued here that local government fails signally to perceive and attend to many interests of its own citizens; so that, with respect to these interests, and those of people in the wider surrounding area, the S. 477 mechanism is unduly dependent on the wisdom and character of its Commissioners.

As a model for New Cities development, in areas beyond the present zone of metropolitan development, S. 477's structure makes no sense. To accept the boundaries and established jurisdictional powers of rural townships as the terms of governance of a New City enterprise would violate totally the logic of the concept, which demands a new municipal jurisdiction encompassing the full planned extent of the project. The Meyner Commission's decision not to seek this in the Meadows was based on the belief that it would make for too much local political opposition; besides, it was felt, the New City concept didn't really fit the physical realities of the Meadows. On this score, S. 477's history would not seem to have much relevance for New Cities, since the political equation in the Meadows involved established towns with a large aggregate population, where a New City approach would not ordinarily be considered.

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# CHAPTER XXIV: LESSONS FOR THE POLITICS OF LEGISLATION

The Meadowlands legislative history was first of all a demonstration of a systemic bias and distortion in the representation of interests in the political system, in favor of the narrow and particular interests of property owners at the expense of the broader public interests in convenience, amenity and functional performance of the metropolitan region viewed as an organic whole.

The factors making for high attention to the interests of property owners have been examined in previous chapters; (in detail in Chapter X, pp 196-201). They may be summarized as (1) high profit stakes in property, (2) structure of the property tax system, (3) strong identification of local officials with property owners, (4) strong leverage of these interests on the polity.

Large rewards flow to the holders of title to property situated in the path of urban development, with the warm blessings of American ideology. It is one of the most cordially approved ways of gaining something for nothing, the most popular and respectable Bingo game in the land. Shrewdness and foresight in buying land that appreciates handsomely in value is regarded as most commendable, constructive, even verging on patriotic, displaying as it does such stout faith in the fruitful workings of our institutions.

Economic growth, urban dispersion and the scarcity of sites operated in the Nineteen-Sixties to generate spectacular

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value appreciation in favorably located areas; in the Meadows, some of this appreciation was on the order of fifty-fold.

Gains of this magnitude obviously constitute stakes which can fire men's imaginations, fix their ambitions and shape their values; at the same time such stakes provide the wherewithal to pay for skilled, diligent professional representation in the political arena.

There is, further, a wide circle of trades and professions whose fortunes are tied to land development and construction; and since the developer is the key entrepreneur in this area, there is a considerable tendency for the others to identify their interests with his.

Ideological support for profit in property is reinforced because the preponderant majority (65% in the census area embracing the Meadows[1]) of citizens are themselves home-owners; hoping to reap the fruits of appreciation themselves, they are sympathetic to the right of others to do the same.

The community, in fact, creates the value of land, and through the institution of property title it fosters the realization of this value as private wealth. The property tax, in turn, is the accepted device whereby the community lays claim to a share of the income sites can command. But local autonomy in taxing property and spending the proceeds provides a means for the users of land to escape from the claims of the wider community, to enclaves where they need only meet the more modest

[1]U.S. Census of Population and Housing, Paterson-Clifton Passaic N.J. SMSA, 1960.

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demands of the "members of the club". At the same time local government depends on local property taxes almost exclusively. This has a dual effect: on the one hand, property owners have an extremely direct and sensitive stake in local government, and it is a stake on the side of local autonomy; on the other hand, local government strongly identifies its interests with particular categories of property-owners, and has strong motive to maintain the status quo which it has created.

Local officials are conditioned both by political reasons and personal career considerations to identify strongly with the interests of property owners. Not only does a rise in taxes make the next election tougher to win; not only does the construction of new "ratables", on the other hand, help forestall a tax rise and provide grounds for a campaign boast; but the local official in his full-time occupational role is, more likely than not, closely tied to property and its development. And in all likelihood his involvement in politics developed, in the first instance, from the close interaction of his full-time occupation with local government.

The property interest has strong leverage on the political system not only through local officials but through several related lines. Most important, perhaps, is the pervasive role of the legal profession in government, in elective office and as the expert professionals who so often frame the policy choices and are charged with drafting and implementing policy decisions. The lawyer typically is conditioned to perceive problems in terms of a structure of property and contractual rights, and is

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likely to place a high value on the maintenance of such rights in accordance with traditional principles, and a relatively low value on conflicting human or functional considerations. Lawyers, incidentally, comprise a particularly large fraction of the State Legislature; for example, nine of the fifteen members of the Bergen delegation in 1968 were attorneys.

Property has strong leverage in the business community; ideologically, in the most basic way, since the institution of private property is the pivot of the profit system; through the prominent role of lawyers in counselling and representing business in matters of government and particularly in matters relating to the use of land; and through the strong and well-organized representation of real estate and mortgage finance interests in business associations, with lawyers in the most active roles.

Weak Standing of Broader Interests

The Meadows experience demonstrated almost a total absence of comparable resources, representation and attention to other interests. These interests are not even easy to identify clearly (although this is in large part because we are not conditioned to think of them as interests which citizens may legitimately assert and as interests which are heavily dependent on public policy.) Most obvious, perhaps, is the interest of people who have to get from place to place in the metropolitan region. Almost everyone shares this interest, and certainly the vast majority of the job-holders in Northern New Jersey do. To travel to a job some miles away is the rule rather than the exception;

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public transportation is costly and inconvenient; the more prevalent travel by private car is even more costly, and is made exasperating by chronic traffic jams. For anyone who took the trouble to analyze it, the rational and creative development of the Meadows held important possibilities both for better highway travel and for mass transit.

Yet there was scarcely any effort to articulate this interest in the course of the political effort for the Meadowlands bill, and it is easy to understand why. Only in the planner's or the statesman's perspective is the link between traffic jams and the Meadows clear and urgent. The time schedule of any possible achievement is so long, and the number of interlocking decisions and initiatives so complex, that the individual citizen could not be expected to feel any strong awareness or conviction that he personally had an important stake in the transportation improvements that might come with Meadows development. And this illustrates a problem of the public stakes in planning which is even more pronounced with respect to other interests: the linkage between the felt dissatisfaction and the remedy is so complex and tenuous as to be hard to see, and when it is seen, the complexity in itself is discouraging.

Citizens of New Jersey and of metropolitan New York had stakes, large and small, in many different aspects of the Meadows development issue: as people who from time to time must buy or rent a home and are hurt by the high costs and inconvenience resulting from land scarcity and congestion; as taxpayer-clients

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of municipal governments, concerned with the quality and efficiency of various services dependent on the space and physical resources of the surrounding region, such as water supply, waste disposal, and sewerage; as physical animals who need room to disport themselves; as sensuous creatures who gain pleasure from artful and expressive form in their surroundings, and who are depressed and blunted by formlessness and disorder; as members of a society who may be infected by its pathologies.

Diffuse Character of the Public Stakes

Besides being remote and hard to perceive, these stakes share another characteristic which militates against their being translated into strong political demands: they are very diffuse in their effect on the population. They constitute many different interests, which don't appear to be tightly related; each one of them affects a great many people somewhat, but generally none of them affects specific, well-defined groups in a strong and compelling way.

A corallary of this is that these stakes are usually secondary interests of individuals who are of course more concerned with their primary interests, and whose political capabilities for cooperating with each other are inhibited by the rivalries of their primary interests.

Only a very limited number of individuals have direct stakes of personal gain or career advancement in these issues. People in our society are motivated mainly by that kind of direct stake. This is meant as an objective statement of a common-sense

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fact, rather than as a cynical criticism. Indeed, it is a cardinal ethic of our value system that people should be so motivated. But aside from a few public service employees whose career horizons would be opened up by the creation of stronger government mechanisms for planning and development, no one has a vital personal stake in these issues.

In theory, elected officials have precisely the career stakes which should motivate them to articulate and advance these broad public interests. But in fact this appears to be a very weak factor. There are two strong reasons: one is that as part-time legislators their principal career stakes lie elsewhere, generally in the sphere of private business. The second is that as the political game is played, the legislator is constantly made aware of the threat that he will lose votes if he fails to accommodate an interest which is vigorously articulated by some of his constituents, but he sees little or no convincing evidence that he will gain votes if he himself employs initiative to identify, articulate and promote other, broader public interests.

One broad category which has a fairly direct stake in planning and public initiatives to foster optimal urban development is the construction industry and its attendant professions. But even for this group, their stake in planning is by no means sufficiently clear and compelling to enlist their strong support. The connection between planning and enlarged construction opportunities is somewhat remote in logic, and it is even more so in time. Planning often demands near-term delays as the price of

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long-term benefits, but people in construction are of necessity more interested in next month's work than in more distant prospects; for this reason they may see planning as going against their interest, and their identification with the developer-client will strengthen this tendency. The very fact that a contractor, supplier, professional or mechanic is on the scene attests that he has been able to find a market in the existing structure and his loyalties and his perceptions of his interests will be shaped accordingly.

A related but more diffuse interest is the prospect of more prosperous conditions an expansive economy generates. The Meadows issue presented this potential advantage of a planned undertaking in a particularly strong form, but it is generally valid for the whole concept of planning for urban development, and in particular for the New Cities concept. The argument is essentially that growth by sprawl makes for congestion, constriction and costliness whereas planning can achieve favorable conditions for expansion. There were numerous bits of evidence that the business community, in particular, was responsive to this argument for a strong public initiative to launch development of the Meadows; had it not been for the stronger negative effect of the title issue, this sentiment might have been a potent factor.

The one profession with a clear and vital stake in the issue, of course, is the planning profession itself. However, like other professions whose clients have greater bargaining power than the professional, planners tend to be attuned to the interests of their clients; and in the present state of the art,

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local governments and agencies are the most important category of planning client.

We return to the conclusion which all these reasons help to explain: that the political system displays a systemic bias and distortion in the representation of interests affected by urban development policies, so that it is sensitive to local, private and particular interests, but vital public interests are very feebly represented.

* * * * *

What can we do about it?

The question can be approached in two different ways, One, accepting the limits inherent in the present machinery and established array of forces, asks, "how can we do the best with what we've got?" It asks why S. 477 was passed in the way it was and what we can learn from the achievement. A second approach asks, "does the experience demonstrate inadequacies in our political system, and if so how can we remedy them?" The balance of the chapter essays an analysis from each of these perspectives.

The Passage of S. 477 as a Model

The passage of S. 477 was a demonstration that an "inside" approach is realistically fitted to the present structure of the political system and the existing mobilization of interests. Such an approach, under favorable circumstances, is clearly capable of great leverage and decisive effect. However, the "favorable circumstances" probably include the absence of any highly motivated adverse private interests with a state-wide base; even though Bergen County was the most directly benefitted,

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it was Bergen Assemblymen whose opposition presented the biggest hazard.

The component elements of a good "inside" approach, judging by this model, include strong support of the Governor's office, linked with the support of a strong executive department; bipartisan support in the legislature, and legislative sponsors of high standing, able to secure the cooperation of majority party leaders. Other vital elements include a unified, concefted strategy, good communication among the key proponents, and unified operation of the leadership team.

The strategy should include an assessment of the opposition which logically may be anticipated, and a plausible plan to deal with it.

Another lesson of the history as a success story can be drawn from the influence of the RPA's New Jersey Committee, and of Erber in particular, at an earlier stage. This furnished a demonstration of the really surprising leverage a single individual can have in the role of lobbyist for public interests, given a combination of competence, commitment, and a form of backing which enables him to mobilize influential individuals in support in a strategic and knowledgable way.

Some other lessons can be drawn from some errors of omission and commission by the bill's proponents. The nature and purpose of a bill of this character must be clearly communicated to all the legislators; confusion, uncertainty, misunderstanding and vulnerability to deliberate misrepresentaton are serious hazards if this is not done. By the same token, thorough contact efforts with legislators, and feedback of their attitudes, are important to the

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strategy. The probability of strains within the leadership group, and of opposition efforts to develop and exploit splits among the proponents, needs to be anticipated and provision made to maintain full communication and unity of action among the proponents.

Even though pursuing an "inside" strategy, the proponents should take pains to include ample representation of all vital elements in the leadership group, to insure a strong position in both legislative houses and a core of aggressive support in key delegations. To the extent possible the leadership should maintain good liaison with potential agents of conciliation or negotiation with opposition elements; and there should be an effort to give a role in the leadership planning to individuals who are leaders of outside groups which might be mobilized in support.

If the evidence afforded by interviews in this study is to be credited, the concept of planning has growing acceptance and respect among legislators, and this should be exploited fully.

The history of the battle demonstrates how very hazardous it is to undertake to fight a constituency with no constituency. So that, even though a relative weakness of outside support forces dictates primary reliance on an "inside" strategy, and inside forces assume the main burden of the effort, the need for defensive security against opposition counter-attacks dictates that the proponents should make a studied effort to develop outside support, and be ready to call that support into play to provide counter-pressure when popular opposition is stirred up. Closely linked to this should be a thorough and consistent program to exploit such press support as is available, and to cultivate support in the general public by ample

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publicity and information.

Possible Remedies for Systemic Deficiencies

The inherent limitations of an "inside" approach are, that it has limited and unreliable power to win, and that it limits its perspectives on the nature and dimensions of the problems to be tackled, increasing the risk of mistakes or deficiencies in the legislation.

The need to rely on small, narrow-based "inside" groups and strategies for legislation of the character of S. 477 is symptomatic of weakness of the political forces operating on behalf of broad public stakes. It implies - and the experience confirms - that it is a slow and chancy matter that we get what we need.

This weakness has been defined earlier (P. 403 above) as "a systemic bias and distortion in the representation of interests, in favor of the narrow and particular interests of property owners...." Are there ways this weakness can be remedied?

The problem is a very broad one, which relates to public policy formation in virtually all spheres; and it is beyond the scope of this study to essay definitive and comprehensive answers. Yet it would be quite artificial and absurd to pretend that the political problem of legislation of this character can be defined more narrowly, and to then propose specific solutions tailored to the problem as thus defined, e.g. to develop the idea of a public "lobby" for the New Cities concept, how it might operate, the constituencies it might involve, etc.

What are essayed below are some observations and some very general proposals addressed to two principal questions:

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(1) How might the intensity and political force of private stakes in land value be diminished?

(2) How can the political force of public interests at stake in urban development be strengthened? What initiatives and strategies might serve to develop eyes and ears, brains and muscle for these interests?

Reducing the Political Force of Private Land Interests

The most obvious and direct way to reduce the political force of private stakes in property values is to trim the stakes, for example by expropriating the land, or by taking the income land earns for public purposes. Is this ideologically defensible, or would it rupture the normal functioning of a private enterprise capitalist system?

Urban land has unique properties: each parcel of it is a natural monopoly, and the ability of each parcel to command rent is not the fruit of the efforts of the man who owns it, but of the existence and activity of the surrounding social community.

A challenge to the legitimacy and social usefulness of private profit in urban land is not necessarily a challenge to the essential logical tenets of the system of free enterprise capitalism. It is true that there is a strong ideological affinity between private ownership of land and of capital. There is also a powerful interlocking of interests simply because most of the people who own productive capital also own land. But the social rationale for private enterprise capitalism rests on the contributions to the enlarged productivity of the community which results from the creative and organizational efforts of the entrepreneur and/or manager. There is no comparable rationale for private ownership of urban land. Its

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ideological rationale rests on the very different circumstances of independent farming, the traditional emotional appeal of land ownership, and the desire for privacy and independence in family life. In general the economic theory of urban land runs to an explanation of the factors generating rent differentials, and a justification of a fluid and responsive market in these values, rather than to an assertion of a productive contribution by the landlord. There is no necessary connection between successful capitalist production and the welfare of a landlord class. And there is no persuasive data indicating that land proprietors qua proprietors (as distinguished from the activities of some of them in constructing or managing buildings) render a social service in any degree commensurate with the rewards which flow to them as a result of rising urban land values.

On the contrary, a strong case can be made for the proposition that private property in urban land is in many ways dysfunctional. Since each landlord is a monopolist with respect to his parcel, he is strongly motivated to maximize the particular advantages of his monopoly. This is something he can only do by means of influencing the direction of public policy via decisions on zoning, transportation and other services affecting his land. Thus, in effect, the institution of private property creates urgent private stakes in constriction. Decisions which should be based on the long-range convenience and amenity of the entire community of persons, living and still unborn, who will live or work or travel through an area, are made instead on the basis of the hopes of those individuals here and now who hold land titles and hope to maximize the monopoly

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values thereof. And the entire system rewards privilege - the essentially arbitrary privilege, awarded by the sovereign power of the community, of having a monopoly control over the use of a parcel of real estate.

Property Tax Policy a Key Tool

The purpose under discussion is to reduce the political force of private land stakes, first of all by curbing the privilege of drawing private wealth and income from land value appreciation. Property taxation is the obvious tool of public policy to accomplish this.

A property tax policy fashioned to capture most or all of the incremental rent of land for public purposes would not only weaken private stakes but would serve a corallary objective, to weaken the powerful community of interests between the land interest and local government. It should also be noted that it would serve other public purposes, intimately related to the concerns of this study though not its main focus: to capture socially generated values for social purposes, and to render taxation and the distribution of its proceeds more equitable and more socially responsible.

Detailing a rationale and implementation of such a tax policy would be another dissertation, at the least. It would demand a full and careful treatment of a rich and controversial literature. Obviously this study cannot undertake that, and the best alternative appears to be to formulate in the briefest possible terms, the principles which should govern property tax policy to fulfill the purposes here indicated, with a candid acknowledgement that the problems and implications of such a policy have not been explored.

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The principles proposed for a property tax policy are:

- capture all incremental income arising from land value appreciation.

- over time, capture proprietorship or the total income of land used in social production.

- transfer the power of taxation and distribution of property used for economic activity of a regional character to regional (county or state) jurisdictions.

To say that the way to redress the balance against public interests is to weaken private stakes in this way, is something akin to saying that the way to catch a bird is to put salt on its tail. Yet the motivation generated by private property titles is so intense, so pervasive and so inimical to public interests in an industrial urban society that it seems idle to hope for any major shift in the balance by means which don't come to grips with this conflict. And perhaps it is politically possible to do this. Neither the landlord nor the land speculator have an exalted place in public esteem, and both are somewhat vulnerable. A cardinal point of a strategy against them would be to weaken their ideological ties with home owners and with the business community, by making the latter groups aware of the ways in which their interests are antagonistic. The land interest would then be less able to subvert the interest of the business community in rational development and property tax policies, and would be less able to exploit the political clout of the army of home owners.

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Implementing the Public Stakes

If the notion of weakening the private stakes in land is intrinsically radical, the idea of strengthening the political force of broader public stakes opens a much broader range of possibilities; for reformist and for radical proposals, for particular and general proposals, for approaches focussing on interests, on motives, on organization, on leadership, on mechanism or still other aspects.

Three concepts are presented and discussed here. Each approaches the problem from a different side. One is addressed specifically to the issue of planning, the other two are addresssed to public interests generally. They are not competing alternatives, but neither are they presented as components of an integrated approach. And they by no means exhaust the possibilities. They are presented as the writer's selection of the most plausible and cogent of the ideas which have taken form in making the analysis and reflecting on the needs the analysis has identified. In capsule form, the three concepts are:

- a "planning lobby" realistically attuned to the character of the interests to which it can appeal.
- the public agency, designed and mandated to "profit" and grow in direct proportion as it serves public interests.
- a corps of salaried "public interest agents", paid from the proceeds of a "privilege tax" levied on the income associated with private rights granted and/or secured by public authority; the functions of "agents" to be (1) to monitor the exercise of private rights as they affect public interests, and (2) political activity such as lobbying, advocacy, public information, etc., on behalf of those interests.

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A "Planning Lobby" - Some Problems and Possibilities

The idea of a "planning lobby" naturally commends itself for evaluation because there was such a lobby in the Meadowlands experience, which demonstrated quite impressive capability but also some serious limitations. Even had there been no such element, however, the logic of the problem we are dealing with would push such a concept to the fore.

It seems distinctly unrealistic, however, to try to bring into being a broad-based "planning lobby"; if there is a potential it is for a relatively small, politically sophisticated organization of pro-planning activists who can identify key planning objectives and priorities, and move toward their realization by shrewd and timely cooperation with broad-based groups on specific issues.

This flows from the nature of the public stakes in planning; as analyzed above (p. 406 ff. ) they are diffuse, remote, fragmented. The individuals with common stakes in one interest, say transportation, have very weak ties with each other and virtually no awareness of links between this interest and others, e.g. housing policy, or with the general concept of planning.

It does not seem at all realistic to think that there is any way to by-pass this difficulty and to accomplish a wide mobilization for planning of the people with a stake in planning. We can make people aware of specific consequences, e.g. traffic congestion, high housing costs, foul air; and we can generate their resentment and will for corrective action. Beyond that, we can get their attention to note and assent to the proposition that

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planning is needed to secure their purposes. But we cannot expect them to invest passion and effort on behalf of planning.

Leadership elements must grasp and pursue the connection. (And the study suggests that political leaders with experience in local government understand and respect the concept of planning, in theory at least.) But the great majority of citizens who take some interest in government will not get riled up on the issue of planning; they will only get riled up over much simpler, more tangible and immediate causes. They can be expected to understand and approve an insistence on planning by their leaders, but they cannot be expected to lobby and demonstrate for it. If this be elitism, then the only remedy is to recast the society and the economy in a much simpler mold, in which most of the factors which determine a man's welfare are of such a nature and scale that he can see, understand and control them.

It seems more realistic, then, to look for mobilization of broad public support for specific functional goals; and it also seems more realistic to expect that leadership cadres will be organized around these specific interests and functions, than that they will show a spontaneous tendency to cooperate and coalesce.

It follows logically from this that the leadership resources available to the cause of planning are relatively small, and that such leadership will not have direct access to a large constituency.

The approach and strategy employed by the Regional Plan Association of New York is one which has been quite widely employed by planning advocates: cultivate the interest and partic-

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ipation in pro-planning efforts of highly influential men, primarily leaders in the commercial, industrial and banking community. This approach is highly plausible. These men move in the circles where the power is; they have legitimacy, prestige, access; their advocacy can secure acceptance of planning by the Establishment.

The approach does in fact seem closely attuned to the "inside" style of legislative decision-making which obtains most of the time; and it has some substantial accomplishments to its credit. It has, however, some serious limitations. The focus and emphasis which it develops may be narrow and lop-sided, reflecting the high priority of profit and growth in the purposes of participants of this character. Their dominance in financial support and policy-shaping may impose some severe ideological inhibitions and class biases. And policy goals may be subject to veto - in effect if not in form - by participants whose primary stakes may be threatened by a particular proposal, or who are subject to the strong influence of those who are so threatened. This, in essence, is what largely neutralized the RPA's New Jersey Committee in the battle for S. 477.

It appears to the writer that there is both a need and a strong logical possibility for the development of a different kind of pro-planning "lobby", composed principally of professionals in planning and related fields such as architecture, engineering, public administration, law and the social sciences, who see planning as a central issue for their respecitve professions as well as for the whole polity. Such a "lobby" is conceived as

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a voluntary association of individuals based on a shared conviction of (1) the need for expansion and appropriate implementation of public power for the direction of development, to realize broad public interests of convenience, amenity, conservation and reduction of social costs, and (2) the need for, and potential efficacy of, knowledgable political activism by concerned professionals.

The role and function of the "lobby" envisioned here is that of a strategy-making and catalyst agency. Its primary raison d'etre would be a putative ability to supply a vitally necessary missing element in the public policy making process, by taking responsibility and initiative to set legislative goals, priorities and strategies within its area of concern; an important corallary premise would be the recognition that such a group could not hope to exert major influence on the strength of its own resources alone. Its action tasks would thus be conceived largely in terms of cultivating support in other groups and putting together support coalitions for each major target.

The concerns of such a "lobby", by their nature, would seem to call for a network of metropolitan and state units within some sort of national coordinating framework. Obviously such a group would confront important financial and organizational problems, but no analysis of these will be essayed here. What is offered is simply the general proposition that the vital professional interests of many planners and professionals warrant their participation in such a lobby; that its base would permit it to

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play a bolder and more active role than established pro-planning groups; and that with capable leadership such a group, might have a very substantial impact, mainly by virtue of the fact that it would be articulating needs which now have no effective spokesman even though they are very important.

New Public Agencies?

There is no surer way to create a powerful new element in a given configuration of interests than to create a public agency with mandated responsibilities in the field. But experience with such agencies whose sponsors hoped they would serve a public interest has revealed some disappointing and frustrating tendencies in their operation. They tend rapidly to develop a dominant concern with their own survival and prosperity as a bureau; and where created to regulate or limit a particular private interest, they tend to become a captive of that interest. One moral that can be drawn from this is that if a self-conscious constituency exists, it is likely to develop a mutually supportive relationship with a public agency which is created to serve it; but if a public agency is created to serve an interest for which no self-conscious constituency has formed, it is unrealistic to expect the agency to dedicate itself to that interest, or to make more than very limited efforts to foster the development of the latent constituency.

In the final section of the chapter, a state agency empowered to execute studies leading to the designation of areas as New City sites is proposed. Such an agency would become to some degree a force in itself pushing for the development of a New Cities program, if for no other reason than that the careers

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of its personnel would be at stake. But it would be unrealistic to expect such an agency to take a vigorous lead in articulating the many different public stakes in a New Cities program - the interest of ghetto blacks in the development of open-occupancy housing on a large scale, to pick a sensitive example - or actively to spur the mobilization of these many diffuse interests. If effective ways to mobilize such constituencies are developed then a New Cities agency would be responsive to them and would provide them with a valuable source of expertise and alliance; but if they are not developed, a New Cities agency may be expected to promote its own survival and prosperity by making itself useful to other affected constituencies which are already organized.

Accordingly, it is argued here that the creation of such an agency is not a key element in the attack on the political problem posed by the diffuse nature of the public stakes in planning. It is treated, rather, as a key element in meeting the legal and administrative needs of a New Cities program. But the political muscle to push for the creation of such an agency, and to push it in the right direction, must be developed within the body politic itself.

Concept: A Corps of "Public Interest Agents"

What this study has identified as its key finding - inadequate representation of the broad public stakes in planning in our political process - is a particular manifestation of a problem of a much broader nature. That is, broad public stakes of many different kinds, not only in land-use planning but in a great many areas, lack effective means of articulation and influence. Accord-

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ingly, it seems more logical to look for a line of solution to the general problem than to focus only on the particular one.

The effort of invention produced a concept which would be a fairly radical innovation in the apparatus of representative government. The concept is the establishment, whether by appointment or election, of a corps of "public interest agents", paid from the proceeds of a "privilege tax", whose basic mission would be to monitor the exercise of private rights as they affect public interests, and to perform lobbying, advocacy and representational functions on behalf of such interests.

The point was noted earlier, (pp 330-331) that so very few individuals were motivated to work for S. 477, despite the magnitude of the public stakes involved; that these few individuals were all-important to the bill; and that each of them was acting in an official and paid capacity. Analysis of Erber's role produced similar comment. And the question was posed, whether we should seek to redress the weakness by devising ways for more people to earn a living by serving the public interest, or by devising ways to make voluntary action more effective?

It need not be an either-or proposition, of course. The proposal for a "planning lobby" just discussed would rely heavily on volunteer activity by concerned professionals. But the argument advanced here is that the effective performance of much of the work that is needed demands concentration, continuity and a degree of professionalism which volunteer activity cannot consist-

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ently achieve; and it is unfair to the interests at stake to put them under the handicap of volunteer representation, pitted always against the professional help available to private interests with monetary stakes. Certainly the Meadows experience shows that the only individuals who rendered perceptible service were people doing paid jobs.

There are perfectly logical reasons for this. The kind of work involved in developing legislation, resolving objections and developing support takes time, continuity and expertise. It necessarily requires frequent travel. It involves the coordinated and skilful use of research, public information and publicity and other group communication techniques. These demands place the volunteer approach under a severe handicap, since they call for more sustained and frequent participation than a "spare time" schedule affords and they imply a considerable degree of professionalism in mastery of substance and in organization and communication.

The concept of enabling more people to make a living by representing the public interest in the public-policy-making process is therefore urged as the more promising approach.

By what machinery would such a corps of agents be established, directed, and controlled? Obviously the usefulness of the concept would be much enhanced by detailed proposals on these questions. Yet any effort to develop such proposals would inevitably become a sizable undertaking. For example, on the key issue of whether such agents should be appointed or elected, and by what procedure, it would be necessary to evaluate a wide variety of al-

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ternative arrangements in relation to a demanding set of criteria, before a specific proposal could be developed and defended. Therefore the writer chooses simply to present the concept and its rationale in broad general terms.

It is important to point out that the concept is quite distinct in its nature and rationale from that of strengthening legislative representation and structure per se. The legislature is obliged to try to resolve the conflicting demands and pressures on it, and in doing so it will inevitably reflect the balance of power and interest structure of its political context. This study asserts that the key need is to correct a serious imbalance in the kinds of interests that are articulated in the body politic and the kinds of pressures which are brought to bear on the legislature. The need is not one which legislators themselves can fulfill. In the first place it is unrealistic to expect them to champion causes which have little support; but beyond that, what is often required is a degree of advocacy and commitment which exceeds what is consistent with the legislator's role of mediation and brokerage between conflicting claims.

The concept of public interest agent also needs to be distinguished from that of ombudsman. The latter is a role focussing on the need of the individual citizen for knowledgeable help in getting complex governmental machinery to respond to him as it should; whereas the concept here proposed would be concerned with group needs and broad public needs which are neglected because they are not of urgent continuing concern to anybody in particular.

A primary criterion of suitable machinery to implement this concept would be that it should afford a high degree of pub-

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lic accountability. Agents might be elected from local districts or from occupational or other associational constituencies. Or they might be elected on a proportional representation basis from somewhat larger districts, as a means of insuring representation to a broader diversity of interests and groups. Election by any plausible method would have the clear virtue of insuring direct public accountability. An appointive method might have advantages in securing more competent agents and insuring more responsibility and greater coordination in their efforts. Under an appointive scheme the electorate might determine the problems or needs to which agents should be assigned, through a periodic referendum presenting a broad "shopping list" of issues. But any such scheme would also have to provide some mode of accountability of those administering it.

Other important criteria for a suitable structure of selection and direction would include:

(1) a high degree of autonomy for individual agents, sufficient to permit them to follow their convictions and respond to constituent demands without undue restraint from strong hierarchical authority or colleague pressure within the corps;

(2) facilitation of effective coordination of the work of agents, at least to the extent that they desire it;

(3) direction and motivation toward needs which affect large numbers of people in a significant way, yet receive little effective attention;

(4) safeguards to minimize the extent to which agents are coopted by particular interests already well represented.

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The basic notion of how an agent would operate is that each one would see himself obliged to explore the area of public needs and concerns in his particular constituency, as they relate to publicly supported private rights and privileges; to consult widely with the citizens concerned and affected; to decide his priorities on the basis of his convictions and the claims on him; and to devote his full-time to helping to articulate, mobilize and represent the interests he chooses to champion, and advancing their policy goals through the political system by any and all legitimate means. Presumably agent activity would develop in a variety of patterns of autonomous individual work, ad hoc joint action, collegial action, and interaction with constituency groups.

All salaries and expenses of the proposed agents would be paid from the proceeds of a "privilege tax" which would be levied against all classes of property income and all other classes of income earned under the protection of a public charter, franchise, license, certificate, or other publicly protected privilege. (This should at least be the underlying principle, although administratively many such charges would be more easily realized as additional yield required from taxes already levied on such privileges, e.g. an additional "point" on the property tax.

The rationale of this, of course, flows from the observation that our institutions by grants of privilege create numerous private stakes of a monetary character which generate

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both the means and the motive for political representation; and that often these private stakes run counter to public interests which cannot readily be perceived in monetary terms, which are not spoken for, and are thus neglected or pushed aside. (Not only do private interests generate their own means to finance their representation, but very often the public pays private interests to represent themselves; the utility's costs for a rate-increase presentation are incorporated in its rate base, the corporation's lobbying expense is a tax deduction.) Therefore it is urged as a principle of public policy that part of the price of any privilege should be a fee or tax to cover the cost of policing the exercise of the privilege to insure that public interests affected are at all times fully considered. This would be mandated as the primary duty and responsibility of the "public interest agents".

It is envisioned that the assigned duties of some or all of the agents would be to represent the public on the decision-making boards of corporate bodies operating under publicly-granted charter; machinery for such representation could be provided by a collegium of agents in conformity with criteria of equity, diversity and representativeness.

Overall, by staffing the political machinery with such

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agents, the result in time should be to provide energies and abilities which are now lacking for the furtherance of public needs. A side benefit which might reasonably be expected is that the public interest agent corps would provide a means of recruitment and preparation for elective office candidates with a decidedly different orientation than the lawyers, insurance agents and similar business and professional service types who presently dominate most legislatures.

Under the best of arrangements, of course, it would still be likely that a sizable portion of any corps of public interest agents would be elected and/or co-opted to serve the interests of specific private interests. Unless such interests are expunged from the social system, it cannot be otherwise. But the present serious imbalance in the representation of private interests vis-a-vis public ones might be measurably reduced, even though not eliminated, by the innovation here proposed.

A State New Cities Agency: Prospects and Problems

Overall, the history of S. 477 does not furnish any basis for lively optimism about the political feasibility of legislation creating an agency for State initiative in New Cities development.

Indeed, it can be read as demonstrating how unlikely are

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the prospects for such legislation. There were highly unique circumstances working strongly in S. 477's favor, particularly the Meadows location and the engineering facts requiring a large-scale, regional solution. Also, these circumstances were such that it was the populous counties which would most benefit from Meadowlands reclamation. If the passage of S. 477 was so difficult despite these favorable factors, legislation which could not offer similar engineering justification and which would presumably spur development in the less populous counties would probably be still harder to pass.

The legislative battle demonstrated that "home rule" sentiment is politically potent and would presumably be an important obstacle. But it is worth noting that in the showdown, the only ones who regarded the "home rule" issue as of paramount importance were the particular mayors affected, and their particular allies in the Assembly.

The history demonstrated that on the "pro" side of the S. 477 fight there was virtually no developed constituency for planning, and no well-developed awareness in the construction and business communities of their stakes in a public policy framework conducive to vigorously expansive, rational urban development.

In the Introduction, the argument was developed for a State agency empowered to study growth needs, identify desirable New City sites, acquire them and make them available for development under appropriate planning controls.

S. 477's history certainly suggests that to provide blanket powers of this kind in one bill would be politically most difficult

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and unwise. Such a bill would in effect create a situation in which a State agency by administrative decision could wipe out municipal jurisdiction over any area it designated for New City development, and could render the same land subject to acquisition by eminent domain. Presumably this would generate the united state-wide opposition of local officials and of vacant land.owners. (New York State's Urban Development Corporation was vested with powers of this character. However, the enabling legislation for this agency reportedly was passed under circumstances of unusually strong influence by Governor Rockefeller over legislative leaders; and its powers were justified on the basis that they were needed for bargaining purposes but would be invoked only sparingly if at all.)

A rather simple alternative which would seem to offer much better prospects of political acceptance would be to require the designation of each New City site to be a separate legislative enactment. Under this alternative, initial legislation would create a State agency, mandate it to make appropriate studies leading to New City site proposals, and also vest it with appropriate powers of acquisition, development action and planning controls. But it would have to submit any specific New City site proposal to the Legislature for its enactment. Presumably this would have the effect of isolating the opposition in each instance to those affected in the specified area. Inevitably such opposition would be able to rally sympathetic allies from other sections; but hopefully this would be largely confined to those antagonistic to further urban expansion in general. In any event, the division into two separate enactments would enable the legislature to reach a decision on the

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broad concept of state initiative for New Cities development without cross-cutting considerations about the merits of any specific site proposal.

A further possibility for minimizing opposition would be to offer private owners whose land is to be taken, a choice between cash and "a piece of the action" as participating owners of land slated for commercial,industrial or other development involving greater risks and greater profit prospects. The frustrated profit expectations of some land-owners, however unrealistic, are likely to be a factor in the politics of any New City site decision. But the very act of building a New City is likely to generate land value appreciation considerably above what the same area might otherwise expect. This is particularly true regarding those parcels which the planners' decisions designate for categories of use which have high earning power. Even under policies designed to capture most of the land rent so generated for public purposes, there should be enough potential for profitable risk-taking which, judiciously employed, could be used to convert some opponents into participants. In any event it would seem to be politically wiser and more ingratiating to offer those coercively affected by a proposed act some intriguing alternatives designed to distract them from opposition by tickling their avarice. It might even be argued that avarice is what made this country great - or at least, made it what it is today.

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## CHAPTER XXV: CAN A "FEDERAL STRATEGY" TIP THE BALANCE? A PERSPECTIVE AND SUMMARY

A final undertaking of the study is to comment on some particularly relevant developments and issues of current interest, from the perspective afforded by an intensive analysis of the Hackensack Meadowlands experience. Specifically, this chapter will examine three questions:

1. What lessons can be drawn from a comparison of the legislative struggle over S. 477 in New Jersey, and the struggle in Congress over the Housing and Urban Development Act of 1970 (P.L. 91-609)? In particular, does the comparison vindicate a strategy which emphasizes initiative and leverage at the Federal level?

2. What are the apparent contributions of the Housing and Urban Development of 1970 to the problem this study has emphasized, i.e. the distortion in the representation of private versus public interests at the state level?

3. What is the appropriate governmental structure to realize comprehensive planning on a metropolitan scale as an effective control on urban growth? In particular, what are the relative merits of voluntary metropolitan councils of government, and the exercise of sovereign state power in new patterns?

The following summary of the substance and legislative history of the HUD Bill of 1970 will help set the stage for discussion of the first two questions.

The major innovations of the bill, and the only ones of concern to us here, were incorporated in its Title VII, Urban Growth and New Communities Development. (There were eight other titles; one provided for Federal support for insurance against crime losses in problem urban areas, and the others provided ex-

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tensions and additional funding authorizations for established HUD programs.) The principal provisions of Title VII had originated in a bill introduced early in 1970 by Rep. Ashley (D. Ohio) as the "Urban Growth and New Communities Act of 1970".

The Housing and Urban Development Bill of 1970 as reported by the House Committee on Banking and Currency incorporated the proposals of Rep. Ashley's bill with little change. It provided for the establishment of a Presidentially-appointed Urban Growth Council, charged with preparing a biennial report on urban growth policy, planning and coordination for the President, and it charged the latter to make a biennial report of the same scope to the Congress. It called for creation of a Community Development Corporation within HUD, and authorized the Corporation to administer aids to new community developers. It provided for important new forms of aid, principally for guarantees of long-term bonds of such developers for land acquisition and improvement costs, and for loans to the developers to enable them to meet bond interest payments in the years before development has progressed to the stage where sufficient cash returns are generated. It authorized grants to new community developers and to local public bodies for planning, municipal services and public facilities in support of new communities. All in all it authorized $650 million in loan guarantees, $240 million in loans and $193 million in grants over a three-year period.

The bill also authorized the Community Development Corporation to carry out new community demonstration projects on Federal land. And it broadened the urban renewal provisions of the

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Housing Act of 1949 to support local public agencies in acquiring vacant or under-used land (as distinct from developed "blighted" areas) for redevelopment for housing or public uses.

The bill encountered opposition from an energetic and shrewd minority on the House floor, and the provisions relating to New Communities were almost lost. But the net effect of this opposition was minor. As enacted, the bill omitted provision for an Urban Growth Council; it simply provided:

> .... that the President make biennial reports to Congress, beginning in February 1972, on assessments of Federal, state and local policies affecting urban growth; analyses of future needs resulting from urbanization and steps being taken to meet those needs, and recommendations for programs to carry out a national urban growth policy. (1)

It trimmed the bond guarantee authorization from $650 million to $500 million, but continued the loan authorization for interest payments at $240 million and left the grant authorizations almost unchanged. It eliminated the amendment to the urban renewal law that would have permitted redevelopment of vacant or under-used sites, which had been sought as a tool of a "New-Towns-in-Town" approach. But it retained authorization for DHUD to carry out new community demonstration projects on Federal land.

On balance, the provisions of the Urban Growth and New Communities Development title received quite friendly treatment by the Congress, inasmuch as nothing vital was trimmed from it; and this was unusual for a bill staking out a substantial new

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[1] 1970 Congressional Quarterly Almanac, p. 727.

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area, traditionally in state and local jurisdiction, for Federal action.

Thorough exploration and good political groundwork by the bill's proponents contributed to this result. An important early step was the establishment in 1968 of the National Committee on Urban Growth Policy. Senators and Representatives with important roles on committees having jurisdiction over housing were given a dominant role.* In all, 8 of the Committee's 16 members were members of the Congress.

The Committee was jointly sponsored by the National Association of Counties, the National League of Cities, the United States Conference of Mayors, and Urban America Inc., which played a key role in the Committee's formation and support. The Committee made an extensive study of European New Towns experience, and conducted a series of conferences involving American experts in many aspects of urban development. This exploratory work was carried forward by an Ad Hoc Subcommittee of the House Banking and Currency Committee, established in 1969 under the chairmanship of Rep. Ashley, which conducted extensive hearings in the Fall of 1969 and the Spring of 1970.[1]

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*Its chairman, Albert Rains, was a former Representative with long experience in the House. The Committee included Rep. Ashley of the Subcommittee on Housing of the House Banking and Currency Committee, Rep. Widnall (R., N.J.), ranking minority member of that subcommittee, three other members of the Banking and Currency Committee and Hale Boggs, (D. La.) a member of the House Democratic leadership. It also included Senators Sparkman and Tower.

[1]These hearings were published in two volumes, Vol.I titled"Urban Population Trends and Growth" and Vol.II titled "The Quality of Urban Growth".

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Rep. Ashley's bill, H.R. 16647, developed from these hearings. Identical legislation (S. 3640) was introduced in the Senate by Senators Sparkman and Muskie.

In June of 1970, the House Banking and Currency Committee's Subcommittee on Housing conducted further hearings over a two-week period on four bills; H.R. 16647; H.R. 16643 introduced by Rep. Widnall which was an administration-sponsored bill concerned mainly with streamlining DHUD structure and procedures, but providing only minimal new funding authorizations for established HUD programs; a bill sponsored by the Reps. Patman, (D. Texas) and Barrett (D., Pa.) chairmen of the Committee and the Subcommittee respectively, which provided extensions and substantial additional funding authorizations for established HUD programs; and a bill for direct federal insurance against crime losses in problem areas. Three days of the hearings were devoted to the Ashley bill; witnesses from a wide spectrum of groups with a stake in urban growth and its problems were heard.

What evolved from these hearings was a clean bill (H.R. 19436) which was reported by the full Committee on September 29 by a 24-4 vote. (There was apparently some later backtracking, as the Minority Report of the Committee was signed by 11 members.) In effect this consolidated the Ashley bill, the crime-loss insurance bill, and the Patman-Barrett bill in a single package. (The Urban Growth and New Communities title appeared as Title I of H.R. 19436.) The Administration's proposals for streamlining HUD were put off, on the basis that "these comprehensive and far-reaching proposals could not be adequately examined in the

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brief period available."[1]

The report of the committee minority opposing the bill criticized specific features as unduly enlarging the role of the federal government or as mandating further complexity and overlapping authority in the Executive branch. The minority also criticized as excessive the proposed additional authorizations for urban renewal grants, rent supplements, and public housing contributions. But it tacitly accepted the key concepts of the Urban Development and New Communities title.

A compromise bill offered by Rep. Stephens (D., Ga.) which cut back the additional funding authorizations from three years to one year, and the amounts correspondingly, and which dropped the provisions for an Urban Growth Council and Advisory Board, gained the support of Widnall and some other Republicans. The bill in this form apparently had enough support to pass.

However, the House Republican leadership made a determined effort against it, with the Urban Growth and New Communities title drawing much of the fire. Although this title weathered several test votes, the opposition seized a moment when most supporters were off the floor to strike it from the bill on a teller vote on an amendment proposed by Rep. Williams, (R., Del.)[2]

It is apparent, as evidenced by the statements by Rep. Widnall and Secretary Romney cited in the floor debate[3] that the

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[1] House Report No. 91-1556, p. 4.

[2] New York Times, Dec. 4, 1970; article cited in Congressional Record, Dec. 7, 1970, P. H11271

[3] Ibid.

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Nixon administration's opposition to the Urban Growth and New Communities Development title was tactical rather than ideological.

Rep. Williams' attack had no clear focus. He argued that the money involved should be spent on the cities instead; (yet at another point, he argued that the funds being poured into the cities had ended and reversed the flight to the suburbs). He also criticized the concept of direct federal aid to projects on federal land rather than to state agencies. But his opposition did not go to any slighting of local powers or private property rights. And there is nothing in the record of the floor fight that hints of a vigorous opposition lobby effort.

On December 8 the Senate enacted H.R. 19436 (the bill reported by the House Committee). The conference committee accepted some of the changes effected by the Stephens compromise bill in the House, but restored the Urban Development and New Communities title. The conference report was accepted by comfortable margins in both chambers in the closing days of the session.

Two Legislative Battles: Comparison and Conclusion

The HUD Bill of 1970 represented a major effort by proponents of planned urban growth and of the New City concept, following a strategy which emphasized the Federal level, both as the beginning point for legislative action, and as the fulcrum providing powerful and decisive leverage on development activity at the local level.

One premise which seems implicit in this strategy is that the interests which would be served by better planning of

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urban growth can be more effectively mobilized and articulated at the Federal level, and can achieve a more favorable balance of political strength at that level, than at the state or metropolitan level.

The inherent logic of that strategy is quite strong. In the first place, any such major question as urban growth policy is first of all a national question. To an extent which seriously vitiates the relevance and effectiveness of the states as jurisdictions for legislation and governing, the American society today is an economic and ecological system which spills over state boundaries, and in many aspects does its planning and resource allocation on a national scale. Accordingly the power structure is national in scale, and most state and regional decisions are taken in a controlling framework of national decisions (public and private).

A closely related point is that the stakes in rational growth and in the physical and financial well-being of metropolitan areas are clearer in the national perspective than at the state or metropolitan level. For one reason, in many states the interest in metropolitan order collides with particular state interests in interstate metropolitan areas. Such situations are immediately apparent on examination of the urbanization patterns of virtually every one of the industrial states of the Northeast and the Midwest. For another reason, political participants at the state level are more likely to be caught up in one side or the other of the city-suburban conflicts, and thus less likely

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to view the entire metropolitan entity as their area of concern.

Thirdly, because America is a national economy, all the strong economic interests have national structure and are appropriately represented at the federal level. The structure of representation of these interests at the state level is less consistent, if only because many of them are not greatly affected by state government activity.

Other things being equal, of course, there is an obvious advantage in establishing key policies and funding dollar incentives at the federal level, as against fighting 50 separate battles in as many states, thereby establishing policies in 50 different patterns, and then trying to coordinate them. It is this logic, coupled with superior federal taxing power, which accounts for the employment of the grant-in-aid formula for so many varied purposes.

In sum, the complex of interests which are served by planned urban growth should be able to muster comparatively strong representation at the federal level and to exploit the intrinsic advantages of a federal strategy.

Since the logic favoring this strategy is so strong, we should expect its superiority to be clearly manifest in a comparison of the political balance of forces which operated on the HUD Bill of 1970 and those which operated on S. 477. This study does not provide the basis for any sort of carefully calibrated comparison. Indeed, the two pieces of legislation do not parallel each other at all closely. But they do deal with matters which are of concern to the same spectrum of interests and they

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pose somewhat similar ideological issues, so that a proximate comparison seems justified. And even a very proximate appraisal seems to support the judgment - confirming what the logic predicts - that the "planning interest" is relatively more effective, and its opposition relatively less so, in the federal as compared to the state arena.

Most notable of the data on this point is the broad range and near-unanimity of support which proponents of the Ashley bill mobilized. The hearings of the Subcommittee on Housing heard witnesses from the National Association of Home Builders, the Council of Housing Producers, Contractors Organized to Lobby, the American Federation of Labor, the Consulting Engineers Council, the National Housing Conference, the American Institute of Planners, the American Institute of Architects and the Mortgage Bankers Association, inter alia. The testimony was all generally friendly. Spokesmen for the National Governor's Conference, the U. S. Conference of Mayors, and the National Association of Counties all testified strongly for the bill. Spokesmen for major cities concentrated their attention on extension and added funding of established HUD programs, but spoke favorably of the whole bill.

Thus, in sum, the bill's proponents marshalled support from spokesmen of industry, of banking - a vitally important and powerful element, - of government at all levels and of related professions.

In the Meadowlands bill fight, in contrast, the business community in general laid low, while the local government

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units affected spearheaded the opposition.

Although neither bill had clear sailing, the HUD Bill of 1970 ran a much easier course than S. 477. The contrast between the balance of support and opposition for the two bills is heightened if we allow for the fact that the HUD bill was opposed by the Nixon administration, whereas the energetic support of the Hughes administration was the driving force of S. 477's passage.

On the other hand, there appears to have been no mobilization of group interests in opposition to the Urban Growth and New Communities title. The most likely group spokesmen for opposition based on themes of "home rule" or private property rights- the lobbies for builders, brokers, bankers or local government bodies - were either silent or in support of the HUD Bill of 1970. The opposition attack on the floor had no focus. It made opportunistic recourse to diverse themes, e.g. attacking excessive spending and excessive Federal power, and urging cooperation with the President's fiscal policies, but it did not attack the concept or the implications of a national growth policy and planned new communities. This was in sharp contrast to the vigorous opposition and loudly concerted "home rule" theme in the S. 477 battle.

In assessing why the balance of forces was so different in the two fights, credit must first be given to the thorough and knowledgable groundwork of the Ashley bill's proponents. For example, it seems clear that the possibility of big-city opposition on the basis of competition for resources was anticipated, and that efforts were made to establish rapport and agreement on common needs; the proviso for enlarging urban renewal powers to permit

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taking vacant and under-used city areas for "new-towns-in-town" redevelopment was clearly designed to help bring the big cities into the support coalition.

The presence of skilled legislative leadership should not be seen as a fortuitous circumstance without bearing on the question under examination. To a considerable extent, the availability of such leadership is a function of the array of interests assembled in Washington, and of their orientation - just as the fact that Ernest Erber had to operate much of the time as a one-man lobby was a function of the structure of organized political interests in New Jersey.

It seems quite clear that a planning lobby exists in Washington, even though it would be quite difficult to locate and identify its component elements at any one time. In large part it probably consists of a community of variegated professionals who share a common philosophy, who can be tapped through various interrelated associations, and who can furnish considerable capability for bill-drafting, publicizing and lobbying. The offices and representatives of national professional associations are an important element: witness the publication of an American Institute of Planners Task Force study on New Communities about two years before the gestation of "The New City" by the National Committee for an Urban Growth Policy. Similarly, the presence of representatives of many other national trade and business associations is a potential resource, and it seems probable that the national perspective their jobs afford them renders many of these representatives sympathetic to the concept of planning, in greater

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or lesser degree.

Similarly we may surmise that from the national perspective the case for planning is compelling and the case for accommodation of local and particular concerns is decidedly subordinate, in the eyes of such interests as banking and the building materials industry, which probably could muster decisive opposition to legislation such as the Ashley bill if they wanted to.

Although the opposition to S. 477 was vigorous in New Jersey, what the study observed of its character and modus operandi there is consistent with the failure of the same or related interests to make a showing on the HUD Bill of 1970. The interests fighting S. 477 were inherently local and particular. They had great difficulty in forming an organized, disciplined force, in agreeing on common goals and strategy, or in articulating any point of view other than a purely defensive, pro-status-quo policy of preserving "home rule". They placed very heavy reliance on gaining the support of individual legislators on the basis of personal political ties or particular interests, rather than any strong basis of program or principle All these considerations help support the judgment that interests of this character will probably have much less capability to mobilize effective force at the federal level than at state houses.

Political Effect of the 1970 HUD Bill at the State Level

The study has identified the strong influence of local and particular interests and the relatively weak representation of broad public interests at the state level, as factors working against the states' assertion of a strong role of initiative and planning control to guide urban growth, and specifically to foster

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planned New Towns. Has the enactment of the HUD Bill of 1970 rectified that imbalance to any significant degree?

There would seem to be a prima facie case that it has.

On the most obvious level, it promises to nourish a new species of private interest group pushing for planned new development; or, from another point of view it promises to open more favorable prospects for large-scale planned development and thus to give the building industries and banks more explicit motive to encourage and participate in such development. The intent of the legislation is to create more favorable conditions for new community developers, on the basis that their interests coincide in great degree with the public interest in ample and coherent growth. To the extent that the legislation succeeds it will bring into being a larger and more active group of new community entrepreneurs, and will tend to channel a significant fraction of new development into their projects. At the state level this is likely to mean, in the first place, that such entrepreneurs will be an active force encouraging permissive and supportive state action, and in the second place that elements of the building and banking industries in each state will also be enlisted in the same cause. It seems likely that advocates of participation in each state will use the argument that the home state must not miss out on the action generated by the federal program. This is a standard gambit which has made manifest the logic and dynamic of the federal strategy in many different grant-in-aid programs.

Support from these quarters for some kind of state legislation to encourage new communities building may radically alter

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the balance in favor of such legislation. At the same time it will pose the question of whether the other forces in support will have enough weight - or can exercise enough leverage - to insure that the new breed of developers operate in a framework of policy and controls which give full expression to the broad public stakes involved.

Another specific provision of the 1970 HUD bill authorizes planning and financial assistance to public and private new community developers. The new community development program set up in the 1968 legislation did not specify public developers as eligible for assistance, and a bill with that intent proposed by Senator Ribicoff in the same session died in committee. The 1970 bill thus gives Congressional recognition to the legitimacy of public enterprise in new community development. Presumably projects of New York State's Urban Development Corporation, or of the Hackensack Meadowlands Development Commission, would be eligible. The specification of eligibility and the existence of prototypes such as those just cited may serve as a spur to the creation of other public agencies by other states to take on key roles in new community development. And once created these agencies themselves become new factors in the political balance - agencies with a vested stake in the exercise of their mandated powers, putatively in the service of specified broad public interests.

Another relevant contribution of the 1970 HUD Bill is its explicit Congressional finding of the need for new community development as part of a national policy to accommodate

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growth needs, together with its specification of the range of types of communities contemplated (secondary or "satellite" centers within metropolitan areas, additions to existing smaller cities, major in-town developments in central cities, and free-standing communities.) These serve to strengthen considerably the legitimacy and credibility of the New Cities concept in the business and banking worlds and in the public imagination. This may, in various direct and indirect ways, tend to change the political balance by changing the legislator's view of the nature of the modern world and the sort of claims on public policy which deserve a hearing.

The HUD Bill of 1970 promises to change the political balance between local and narrow vs. regional and broad forces in another way which is subtler but probably much stronger in its ultimate effect. The bill declares a Congressional finding that urban growth must accommodate enormous rapid population growth - an estimated 75 million additional people by the year 2000 - and calls on the President to make biennial reports incorporating recommendations to carry out a national growth policy. Although the bill as adopted did not include the strong and explicit affirmation of the necessity of such a policy which was the opening language of H.R. 19436 - "It is the policy of the Congress and the purpose of this title to provide for the development of a national growth policy..." - the practical effect is hardly less consequential. A willing Executive can make just as much of the more prosaically-worded mandate of the bill as enacted, and an unwilling Executive, committed to a passive and

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permissive policy, can't be pushed very far off that course by the most ringing declaration of Congressional intent.

What is important is that a national urban growth policy is now destined to take shape. This policy is almost certain to exert a strong influence. We may confidently expect DHUD to work to translate the bill's mandate into some reasonably well-defined policy framework. Consistency with that framework will become a criterion for the award of HUD grants, loans, etc. As a natural consequence, awareness of the policy will develop rapidly among all the states, localities and developers looking for a share of help.

The establishment of an urban growth policy framework at the national level can be expected to have varied and pervasive effects. It will constitute a guide for planning at the state and regional level. This will be valuable; the lack of any basis for planning assumptions about the national context (other than the projection of past trends, innocent of any judgment of their wisdom) has been a significant handicap to state-level planning. The existence of a national policy will serve to draw attention to the need for comprehensive growth plans at the state and regional level, and to impart a new basis of legitimacy to such plans. And at the same time, manifesting the classic thrust of the federal strategy in action, it will fortify a strong pressure to plan, to enable local developers and governments to qualify for grants conditioned on a showing of consistency with area-wide plans.

The legislation does not furnish any direction as to

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where the planning authority for such comprehensive plans should be located within the total intergovernmental structure. This is a vitally important issue, which will be discussed in the following section. But, to anticipate the argument of that section, the inherent logic of the situation seems to favor an enlarging role of the states in the assumption of planning authority. To the extent this happens, the leverage of federal support will be available to planning agencies operating with a state mandate and a state perspective. And if the location and leverage of planning authority matures in this configuration, we may anticipate that it will very materially alter the balance of political forces operative in state-level decisions affecting development.

In terms of optimal public policy, there are some important omissions in the 1970 HUD Bill. It completely avoids three important, closely related issues: the necessity of the power of eminent domain, the appropriate locus of power and responsibility to assert public interests in development decisions, and the appropriate locus and structure of planning power.*

The point of noting these omissions is not so much to

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*The bill provides that a new community program is eligible for assistance if (1) it will provide a favorable alternative to disorderly growth; (2) be economically feasible, (3) contributes to the welfare of the surrounding area; (4) "is consistent with comprehensive planning (which provides) an adequate basis for evaluating the .. program in relation to other plans (including State, local and private plans) ..."; (5) has received all required State and local governmental reviews and approvals; (6) contributes to good living conditions, in a community having balanced and diversified land use and served by adequate public and commercial facilities; (7) makes substantial and appropriate provisions for low- and moderate-income housing; and (8) makes significant use of advanced technology.

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criticize the legislation as to draw attention to the fact that new community development cannot take place on any significant scale until these difficult questions are met and dealt with. The neglect of the bill even to acknowledge their existence could therefore give a misleading impression.

In a strictly legalistic sense, there was no necessity for the bill to touch these issues since they are all within the jurisdiction of state rather than national power. However, the Congress has great latitude to specify criteria for federal aid; so the bill's avoidance of these questions was, more plausibly, based on political considerations. Most important among these, it seems likely, is that there is no clear agreement as yet among the bill's proponents on such issues as local autonomy versus regional planning authority, how regional planning authority is to be structured and legitimated, the respective roles of private enterprise, public enterprise and public controls, or who is to use eminent domain and how.* Therefore any effort to establish even broad general guidelines on these questions would have involved a risk of sparking dispute among the bill's supporters; and stirring potentially troublesome opposition on such themes as "home rule".

In avoiding these issues, the bill's proponents ignored the urging of several witnesses at Subcommittee hearings. George Raymond, speaking for an association of planning consultants, said the bill should have specific powers to encourage states to set up agencies along the lines of New York State's Urban Development

*This was apparent in the testimony for the bill at the Hearings of the Subcommittee on Housing, previously cited.

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Corporation and to provide federal start-up assistance to them. Edward Logue, UDC's chief executive, pointed out that his agency has eminent domain power which, he said, is essential. He saw the bill's failure to require such power as a defect. A spokesman for the American Institute of Planners and the Secretary of Pennsylvania's Department of Community Affairs also urged that the bill explicitly assign a strong role to the states.

By the tactic of remaining silent on the issues cited, the bill at least avoided setting false directions. (One possible exception to that is the provision, explicitly criticized by Logue, that new community programs must secure all required local approvals.) Overall, the bill's avoidance of these issues was probably an intelligent political choice. The issues are in fact unavoidable if new cities are to be built; and the inherent logic of the situation is likely to dictate the main outlines of the solutions that evolve.

What Mechanism for Metropolitan Planning?

A federal strategy of fiscal incentives to encourage metropolitan-scale planning is a leading theme of recent efforts to solve the riddle of fragmented metropolitan government. But such a strategy confronts the question of what mechanism to work through, and the answer to that has necessarily been mixed, uncertain and confused. Voluntary metropolitan councils of local government officials have been the focus of much attention, effort and federal encouragement. At the same time, many of the state governments have begun to assert more active and positive roles. The Hackensack Meadowlands experience suggests that a key issue in

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the development of appropriate structures of metropolitan planning will be the choice between the concept of voluntary intermunicipal cooperation and the concept of new instrumentation and more active and purposeful application of the sovereign state power. And it may be that the Hackensack Meadows experience provides a paradigm of the conflicting forces in such a contest and of its dynamics and direction.

There were a number of efforts in the United States to establish metropolitan governments by referendum, usually pursuant to a permissive resolution of a state legislature, in the 1950's. But in almost every case, voters rejected the proposal.[1] More recently, there have been efforts in a large number of metropolitan areas to establish voluntary councils of local elected officials. The results as reflected in studies covering activities up to the mid-'sixties were unimpressive. Two case studies[2] observed patterns of weakness and incapacity which were strikingly similar to those this study noted of the Meadowlands Regional Development Agency, particularly the continuous avoidance of hard decisions, and the resistance of the participating officials to any surrender of local autonomy. Another common denominator was the disruptive effect of electoral mutuality on continuity and cooperation in the councils.

In recent years, and particularly since the Congressional

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[1]Advisory Committee on Intergovernmental Relations, Alternative Approaches to Governmental Reorganization in Metropolitan Areas, 1962.

[2]Joan Aron, The Quest for Regional Cooperation, 1969, and Royce Hanson, The Politics of Metropolitan Cooperation: Metropolitan Washington Council of Governments, 1964.

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enactment of key legislation in 1965 and 1966, the main hope of proponents of region-wide planning has been the increased leverage of federal policy, which has developed in the direction of increasing commitments to requiring conformity with area-wide plans as a condition of aid, along with better coordination of the federal aid machinery toward that end.

The relevant federal legislation has displayed a strong disposition to work through metropolitan councils of government. The Housing and Urban Development Act of 1965 made metropolitan councils of government eligible for planning assistance grants; the same act established requirements for comprehensive planning in grant programs for water and sewer facilities, advance land acquisition, and neighborhood facilities. The Demonstration Cities and Metropolitan Development Act of 1966 authorized supplemental grants for ten types of federally aided development projects in metropolitan areas "which attain a high standard of planning, programming and actual implementation of areawide plans and programs of all types."[1]

The HUD Bill of 1970, as noted, set similar requirements for new communities programs.

There was a rapid proliferation of metropolitan councils of government after the 1965 enactment making them eligible

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[1]"Evaluation of (HUD) Department's Goals", memorandum of Hilbert Fefferman transmitted by Secretary Weaver, Federal Role in Urban Affairs Hearings, op. cit., Appendix to Part 1, p. 4. Data for this summary, generally, was drawn from this memorandum.

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for planning grants.[1]

The 1966 legislation (Demonstration Cities and Metropolitan Act) required that local applications for a wide range of federal grants or loans be "...submitted for review (and comment) to any areawide agency which is designated to perform metropolitan or regional planning for the area" and called for the designated review agency to be "... to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning."[2] In 1966 and 1967, more than 50 councils of government were designated as review agencies for this purpose.[3]

Carl Feiss, a respected planner testifying for the American Institute of Architects at the hearings on the 1970 bill, said that the provisions for review by metropolitan planning bodies had been implemented successfully.[4] But no consensus has yet developed in the literature of planning and government on the effectiveness of metropolitan councils when supported by Federal

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[1]The Aron study, cited above, refers to more than 90 councils in existence, and 20 more in process of formation as of March 1968, and estimates that 75% had been created after 1965. (p. 6).

[2]Demonstration Cities and Metropolitan Development Act, section 204(a) (Public Law 89-754, 1966), cited in Aron, op. cit. p. 106-107.

[3]News Service to Regional Councils, Nos. 3 & 5, 1967, cited in Aron, ibid.

[4]Hearings, Subcommittee on Housing, op. cit., p. 718.

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policy. Perhaps there has not been enough experience for a definitive evaluation. The scanty funding of so many HUD programs through the period 1967-70 has been a severe limitation on all activity.

Another important trend in the same recent period has been the assertion by a number of state governments of a more active, direct and positive role in the problems of directing growth and governing cities.

Probably several causative factors have been at work. Reapportionment may not have enabled big cities to establish dominance of any state legislatures, but in quite a few states it has greatly increased the relative strength of representatives of metropolitan area residents vis-a-vis those of rural areas. The urgency of urban problems has been growing, as most dramatically manifested by the ghetto riots. The scope of the emergent problems as they affect land use, environmental pollution, transportation congestion, etc. are such that they affect virtually all the residents in many states. There is wider recognitition that the nature of the problems puts them beyond the reach of local solutions; and efforts at joint action by local governments have accomplished little. Meanwhile state governments have greatly enlarged the scope and scale of their activities since World War II. Particularly through their activities in highway construction, education, welfare and employment, they have many battalions of staff involved in the nitty-gritty of metropolitan life and growth; thus state government's contact and capabilities in these areas have grown. Finally, in the '60's, there was a

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significant enlargement in federal grant and loan programs directed at city and metropolitan needs. Some of this was channelled through the states, some went direct to localities. Inevitably the states became concerned not to be by-passed; and their desire to justify a claim to a larger participation stirred them to give urban needs more attention.

Not all observers make the same appraisal of the vigor and significance of state action. Alan K. Campbell and Donna Shalala in the opening chapter of The States and The Urban Crisis stress the slowness and inadequacy of state action, relative to the urgency of the sinking cities' needs. Charles R. Adrian's assessment[1] is quite similar. Both essays are addressed to center city and ghetto problems, rather than to those of growth and development, and in this context a more negative appraisal is probably justified. But John N. Kolesar's chapter in the Campbell book, which is titled "The States and Urban Planning and Development" details a much more affirmative picture. He summarizes recent state initiatives, and cites New York's Urban Development Corporation and the Hackensack Meadowlands Development Commission as "large-scale pilot projects". (Kolesar is Deputy Commissioner of the New Jersey Department of Community Affairs.)

Rita Kaunitz, in a paper prepared for the 1968 conference of the American Institue of Planners, marshalls a cogent and impressive presentation of the developments and factors making

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[1] "The States and the Ghettoes", in Politics and the Ghettoes, Roland L. Warren, Ed.

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for an increasingly strong state role.[1]

She credits the National Governors Conference for having played an important role in bringing about a "turnaround" in the attitudes and aims of the states; among the manifestations of this she cites are the assertion of more authority and initiative in state-wide planning, the establishment by 19 states of agencies for community and local affairs, eight of them in the late 'sixties,[2] and the aggressiveness of several states in asserting a channeling and coordinating role for Model Cities programs.[3]

Dr. Kaunitz argues generally that though the states lagged in response to urban problems, and federal programs stepped into the breach, the states are likely to play an enlarging role, both channelling and coordinating federal aid and applying their own funds and leadership, because their powers are vital and strategic. She discusses the reaction of federal agencies, noting resistance by OEO agencies and ambivalence in DHUD, but concludes that there is a trend toward federal acceptance of a key state role.

(The DHUD staff report by Hilbert Fefferman for the Ribicoff hearings pays lip service, at least, to this concept.[4] And

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[1]"The Emergence of the States in Urban affairs", in Urban Planning in Transition, Ernest Erber, Ed.

[2]Ibid, p. 108.

[3]Ibid, p. 113.

[4]"Evaluation of Department's Goals", Federal Role Hearings, Appendix to Part I, op. citl, p. 34.

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Rep. Ashley, sponsor of the Urban Development and New Communities title of the 1970 legislation, refers approvingly in a journal article to "the Administration's effort to initiate statewide land-use planning and the proposal of DHUD to route 701 and other planning assistance through the states to regional and local agencies.")[1]

Clearly, there is a latent conflict between the two major trends cited: the federal encouragement of metropolitan councils of government, and the states' assertion of a more active role. Much of the battle is likely to be fought within DHUD. Undoubtedly there will be strong advocates of perseverance in the effort to support metropolitan councils of government and coax viable planning decisions from them. DHUD procedures have been oriented toward the local units of government and particularly toward the cities as their natural "constituencies". Many of the field people in the agency will doubtless be slow to welcome the interposition of state agency people, particularly for the exercise of vital approval powers. But as the effort to work through voluntary councils of local government encounters frustrations, others in the federal establishment will increasingly urge an alliance between federal dollar leverage and sovereign state powers.

The Hackensack Meadows experience illuminates the nature of the contending forces in this conflict and displays a dynamic toward the establishment of an alliance of national and state power to enforce the concept of area-wide planning against

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[1] "A New Urban Growth Strategy for the U.S.", Urban and Social Change Review, Spring 1971, p. 50.

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local efforts to maintain autonomy.

The logic of this tendency has two main facets: the inherent weakness of the councils-of-government approach, and the favorable situation and inherent power of the states.

Obviously the hopes of the current federal strategy rests on the development of strong councils of government. It is hard to see how such councils can develop adequate solutions to the problems they are addressing until they acquire the power to make decisions which are binding on their constituent units of local government. The Meadowlands Regional Development Agency found this problem legally difficult and - more to the point - politically impossible to solve. Local officials were simply too heavily committed to local development concerns to surrender voluntarily any important degree of autonomy over land-use controls. The result of several years of effort to get some binding consequential decisions out of this mechanism was total frustration. And since voluntary councils anywhere confront essentially the same difficulties and limitations, it seems reasonable to predict that by and large they will generate much frustration and little accomplishment.

This was the conclusion of both the Aron and the Hanson case studies, previously cited, of experience prior to the development of strong federal leverage. There is not sufficient evidence at hand to judge with certainty whether federal leverage can make a decisive difference. But the evidence and analysis of this study tend toward a negative conclusion.

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In the Hackensack Meadows situation, the federal leverage was very great indeed. There was no possibility of full-scale reclamation and development without a big tidal project, Congressionally funded; and the towns were told repeatedly that they would have to develop an adequate plan and a viable mechanism of intermunicipal government to enforce it before there could be such a project. But the towns never even came close to positive action to meet these terms.

Federal leverage cannot make voluntary councils of government effective unless it can either impart capability to resolve conflicts and agree, or confer power to make and enforce decisions against the wishes of some members. In fact, it can do neither. It does not seem in the least likely that the federal incentives will be enough to make local officials subordinate their particular concerns to regional needs, given their myopic perspective and their strong ties to narrow, highly concerned private interests. And no amount of federal leverage can establish binding <u>power</u> in a council. Only the state legislature can do that.

It was this intractable logic of power and situation which led Dr. Kaunitz to conclude that -

> In the quest for a regional body to fill the metropolitan void, we may have been going up the wrong path. Regional and metropolitan bodies cannot be politically responsible as long as they lack a legislature and a regional constituency, nor are they likely to be given the sovereign powers to tax, to regulate and to condemn .... by turning to what can only be ineffectual and irresponsible metropolitan agencies such as councils of elected officials, we are foregoing the use of constitutionally empowered state agencies which, with their

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> far greater powers and resources, can solve metropolitan problems. [1]

The logic of calling on the states to create new mechanism for metropolitan planning is the simple, strong logic of power and situation. The state is the level of government, in the American scheme, which combines the basic legal power of development control and an adequate area of jurisdiction, relative to the physical scale of the problems of metropolitan planning. (This argument was developed in some detail in the opening chapter, Pp. 22-28) State legislatures have sovereign powers to draw new jurisdictions within their boundaries and to reassign the powers of planning, zoning, and development approval. They have similar sovereign power over the assignment of taxing power and the structuring of responsibility for education and other public services.

From both a legal and political point of view, it is important that the powers of development control, which local government is using with such unsatisfactory results, are not inherent powers of local government but were delegated to them by specific state enabling acts. It is clear that these powers must be restructured. Since the choice of how they should be restructured rests with the state legislatures, we may expect them to lean toward state-oriented solutions.

Political considerations will somewhat modify this tendency, since state legislators are very sensitive to local concerns. Indeed, town officials could strongly influence the legis-

[1] In Urban Planning in Transition, Erber, Ed., op. cit., p. 108.

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lative choice if they could bring themselves to agree on, and lobby for, an intermunicipal agency with adequate powers. But the Hackensack Meadows experience suggests that the towns are unlikely to unite on anything but the status quo. And where this is the situation, a state legislature is more likely to adopt a solution which assigns the state's powers to a new structure, specifically tailored to the emergent situation and reasonably free of local jealousies and restraints. For one reason, the initiative in proposing solutions in this situation will pass to the state executive, which is more likely to frame solutions which give state power a strong role. For another, it will probably be recognized as the more logical and workmanlike solution by the majority of state legislators, who are likely to be a good deal more skeptical about the practicality of local cooperation in private than in public utterances. Certainly this logic was operative in the unfolding of the Hackensack Meadows experience.

The logic of a strong state role in development planning may be expected to have a still more clear-cut appeal to the Governor's office and to state staff planners. It is conceivable that planning agencies at the state level, armed with substantial powers and capable of unified decision-making, could formulate and implement plans adequate to the problems. It is difficult to see how planning agencies at city or town levels or based on intermunicipal decision-making structures could achieve such a capability. The professional desire of planners to achieve results may be expected to push them toward advocacy of a strong state role.

In the Hackensack Meadows experience, limitations of

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perspective and preoccupation with narrow, local concerns rendered the representatives of local government on the MRDA incapable of action. State planners in the situation began with a heavy commitment to "home rule" and voluntary intermunicipal decision-making. But their perspective gave them a strong sense of the need to act, on a comprehensive and unified basis. The Army Corps of Engineers, in this situation, was not committed as heavily as the state planners to the concept of intermunicipal cooperation, but they were willing to give it an honest try. Over a period of time, the state planners became disenchanted with voluntary local cooperation, and became convinced of the need for the state to take some powers away from the localities and vest them in a new agency with the capability and will to "get the job done". At the climactic point in the struggle, the State executive arm and the Corps of Engineers were in firm alliance on this.

In general, the same basic forces and impulses will be at work in the many situations across the nation where federal officials, mandated to use dollar leverage to make urban development consistent with area-wide plans, make choices about alternative mechanisms of metropolitan planning. Under the influence of these forces and impulses, it is predicted that the states will demonstrate the power and the will to act, while the councils of government will by and large demonstrate the opposite. And DHUD officials, motivated by a desire to escape frustration and "get results", will increasingly make common cause with the states.

Prescriptively speaking, the conclusion of this analysis

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is that pro-planning strategists should recognize that the forces working for a broader, more active state role are very strong, that this is essentially a logical and constructive development, and they should therefore seek to encourage, influence and exploit it. A corallary conclusion is that they should recognize and exploit the logic and potential advantages of exercising federal leverage on urban development through the states, and in alliance with them, rather than in rivalry with the states.

* * * * *

Yet, to say that the leverage of federal incentives acting in support of the exercise of state power over planning and development promises to strengthen broader regional interests vis-a-vis private and local interests, is not to say that such a change will effect a decisive shift in the balance of strength. It seems clear that local interests dominate public development policy. This is not likely to change suddenly or dramatically, and we are not likely to see many instances in the near future of the vigorous assertion of state power, with federal support, to subordinate local to regional influences. The primary factor in this is the strong local orientation of state legislators.

The problems which are dominant in the overall perspective of the study are formidable, and will not be solved by simple tinkering with intergovernmental structure. They appear to demand some basic institutional changes which will be bitter-

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ly contested and difficult to achieve because they run counter to so many specific private and local interests.

Some Problems and Principles

The following are some of the deeper problems which the study has identified, and which must be dealt with before public policy can hope to direct and spur urban development along lines which adequately satisfy the society's most basic needs.

The most fundamental problem is that the institution of private property in urban land exerts a warping influence on public policy. Not only does it serve to funnel wealth created by community action into the hands of individuals who contribute little or nothing to the community; but because it creates the possibility of such windfalls, it motivates individuals holding land titles to exert a distorting influence on public decisions affecting development. The history of Meadowlands property furnishes a direct demonstration that the existence of private land stakes generated pressure for opportunistic development and warped public policy decisions in favor of immediate gains as against long-term considerations; in favor of local as against regional concerns; in favor of individual as against community benefits.

The tax system - specifically the property tax as the support base of local government - greatly amplifies the distortion of public policy in the interest of private land stakes, and serves to make local government the agency of private property owners and developers in the struggle against larger juris-

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dictions.

Local government, because it is linked so tightly to private development interests and also just because it is local, is intrinsically incapable of serving the vital public interest in orderly regional development; yet property stakes and tax considerations motivate local government to fight bitterly to retain autonomy in planning and taxing; and the structure of the political system affords local government great leverage at the county and state level.

Further aggravating the difficulty posed by these problems is the absence of any strong counterweight, since there is a lack of effective political institutions or structures which identify, mobilize and articulate broad public interests in urban growth.

For the most part this study has produced questions rather than answers. It has identified these problems as crucial without pretending to define how they can be solved. Some principles which must be observed for their solution, however, are at least clearly implicit.

One is that local autonomy in planning, zoning, taxing and support of public services must be drastically compromised. State power, or new jurisdictions of ample extent vested with powers of planning and development control transferred to them from local jurisdictions, must be brought into being. That this will be politically painful and difficult is all too obvious. Yet the leverage exists, in superior fiscal power at the state and

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national level, coupled with the urgent money needs of local government and the rising urgency of problems which can't be solved by local action. There are already many scattered straws in the wind that the process of restructuring local and state tax policy, particularly the property tax, to distribute its proceeds more equitably and weaken its distorting influence on development decisions, is getting under way.

Another principle which needs to be established in public policy is that the desire of private owners or local officials to realize land value appreciation should not be permitted to control location decisions for new urban development. Urban development should be conceived as an enterprise which is basically public in character. The decision of which land should be developed, and in what use, should be a public decision, rendered by procedures which insure ample consideration of public stakes, regional concerns, and the needs of tomorrow's people.

This principle is just as valid for redevelopment or more intensive development within built-up urban areas as it is for new development. But its realization is much more clearly possible in new development, and particularly under the New Cities concept. It is precisely this which is one of the most potent elements of the New Cities approach: it provides particularly favorable circumstances, in theory, to implement a new urban land policy which breaks decisively with the historic American acceptance of the land speculation game as the activating principle of development. Siting decisions made by a pub-

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lic agency; developers rewarded contractually for developing, but no class of private land proprietors set up which is thereby vested with a motive to manipulate public policy to maximize the value appreciation of their particular parcel; these are clearly practical under a concept which sees the creation of a community as the outcome of a rational process of planning and authoritative decision rather than as the outcome of a competitive market mechanism. But to date the leading advocates of the New Cities concept in America have not embraced this possibility as part of their concept, and have accordingly not made any clear provision for its realization in federal law or policy.

The most fundamental point which emerges from the study, however, is the need for more effective articulation and agitation of the broader, more diffuse and more long-term needs affecting the public at large, and the mobilization of stronger demand that these needs be served. In the final analysis, this is the necessary condition for real progress on the whole range of issues of structure and policy which the study has touched.

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## APPENDIX A

### LIST OF PERSONS INTERVIEWED

| | |
|---|---|
| Archibald Alexander, Jr. | Chairman, Subcommittee on Meadows Legislation, Lord Committee |
| Paul Amico | Mayor, Secaucus |
| Curtis J. Berger | Counsel, Meyner Commission |
| Horace A Bogle, Jr. | Former Mayor, Lyndhurst |
| William J. Brennan, III | Counsel for State of N.J. in suit testing constitutionality of S. 477 |
| James M. Coleman, Jr. | Assemblyman, Monmouth County |
| Francis J. Coury | Assemblyman, Middlesex County |
| Thomas J. Costa | Assemblyman, Bergen County |
| William M. Crane | Assemblyman, Bergen County |
| William K. Dickey | Assemblyman, Camden County |
| Fairleigh Dickinson, Jr. | Senator, Bergen County |
| Peter Dorn | Legislative Representative, New Jersey State Chamber of Commerce |
| Ernest Erber | Executive Director, New Jersey Committee of the Regional Plan Association |
| I. Lloyd Gang | Member, Meyner Commission |
| Alvin Gershen | former Chairman, MRDA |
| Clifford Goldman | member, Ylvisaker staff; later executive of HMDC |
| Frank J. Guarini, Jr. | Senator, Hudson County |
| Grace Harris | Executive Director, PVCPA |
| Joseph Healey | Mayor, Kearny |

NOTE: in general, the role specified is as of 1968.

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List of persons interviewed, cont.

| | |
|---|---|
| Harold C. Hollenbeck | Assemblyman, Bergen County |
| Merritt Ierley, Jr. | Legislative Ass't to Sen. Dickinson |
| Thomas Jones | Mayor, East Rutherford |
| William Kirchner | Counsel to Gov. Hughes (1963-63) and Member, Meyner Commission |
| Alfred Kiefer | Senator, Bergen County, 1966-67 |
| Willard B. Knowlton | Senator, Bergen County |
| Lee B. Laskin | Assemblyman, Camden County |
| David Lloyd | Legislative Representtive, New Jersey Manufacturers Association |
| James B. McCoy | Executive Director, MRPB; later an executive of HMDC |
| William McDowell | Mayor, North Arlington |
| James Merritt | President, Bellemead Development Co. |
| Charles Nathanson | Executive Director, MRDA |
| Hugo M. Pfaltz, Jr. | Assemblyman, Union County |
| Alfred A. Porro, Jr. | Attorney; Counsel, Meadowlands Institute; Counsel, MRDA |
| Ned J. Parsekian | Senator, Bergen County, 1966-67 |
| Barry T. Parker | Assemblyman, Burlington County |
| Herbert Rinaldi | Assemblyman, Essex County |
| Eugene Schneider | New Jersey Division of State and Regional Planning |
| Bolton Schwartz | State House Reporter, Passaic Herald-News |
| James Sutphen | Member, Meyner Commission |
| Peter Tonner | former Mayor, North Arlington |
| Justin Toomey | President, Meadowlands Institute |
| Beatrice Tylutki | Assistant Counsel to Gov. Hughes; (now Counsel to HMDC) |

(continued)

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List of persons interviewed, concl.

| | |
|---|---|
| Richard van der Plaat | Assemblyman, Bergen County |
| Sidney Willis | New Jersey State Division of State and Regional Planning |
| Robert Wilentz | Assemblyman, Middlesex County |
| Curtis Winston | Legislative Assistant to Senators Dickinson and Knowlton |
| Leon Zimmerman | State House Reporter, The Record, Hackensack |

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(listing continued)

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MRDA. Comprehensive Report ..... cont.

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Section III - Special Reports and Papers: 13 items including: Riparian Rights (Oct. '59); Land Ownership (May '60); Existing Land Uses (May '60); Summary Reports of MRPB Master Plan Series; Report on Feasibility of Reclaiming the Hackensack Meadows by Means of Closing the Hackensack River, by NEDECO (as consultants to MRPB, Dec. '58);Industrial Potential of the Hackensack Meadows; A Suggested Action Program for the Reclamation and Development of the Hackensack Meadows,(Aug. '60).
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1C: Regional Labor Force (1965)
1D: Manufacturing in the Region (1965)

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2B: Land Use and Development Trends (1966)
2C: Land Ownership and Assessed Valuation (1967)
3A: Transportation Networks in the Hackensack Meadows Region (1965)
3B: Movement Patterns, Hackensack Meadows (1966)
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