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FIGHTING WESTWAY



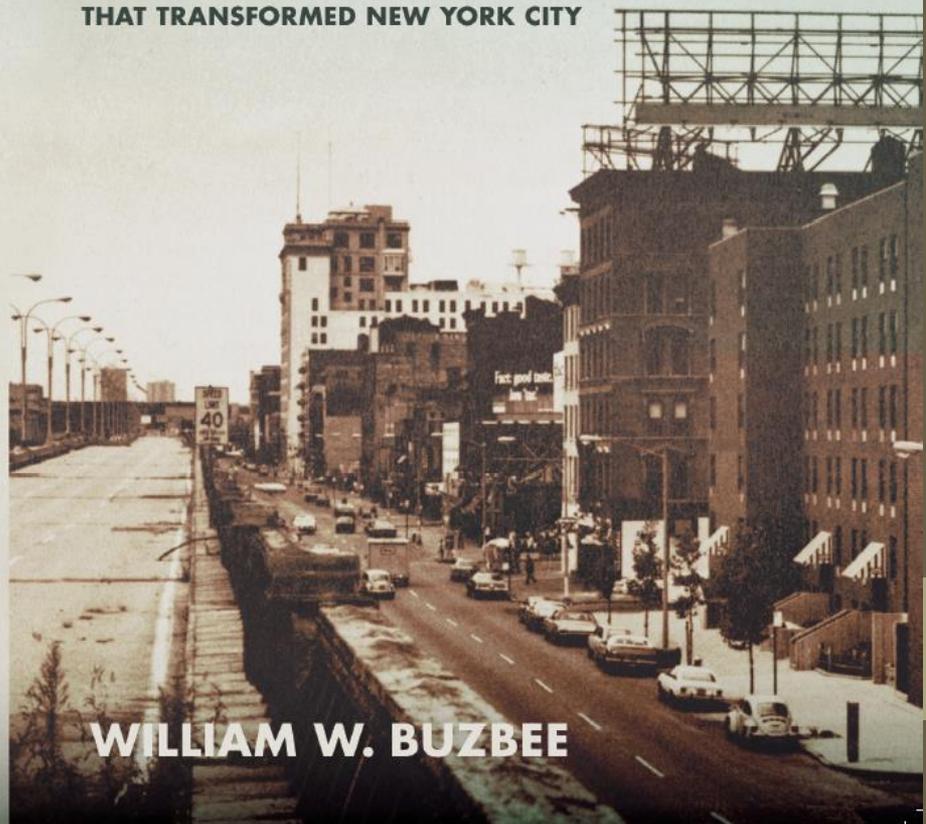
WILLIAM W. BUZBEE



FIGHTING WESTWAY

**ENVIRONMENTAL LAW, CITIZEN ACTIVISM,
AND THE REGULATORY WAR
THAT TRANSFORMED NEW YORK CITY**

WILLIAM W. BUZBEE



Why a book about the 1971-85 war over Westway?

- An epic environmental battle—similar battles today
- Most expensive highway segment ever proposed
- History in dispute
- Environmental protection in crosshairs
- NYC's fate and future transformed by Westway's war
- Lack of previous great book about high stakes regulatory wars, where law and politics intersect, with science and environment central
- Important history, great story
- Show law as more than a picture, more than an opinion for analysis
 - Show law in action, strategic choices and errors

Why build Westway at all?

- Why not just use the old elevated Westside Highway?



A5432 + C53 COVER OUR TOWN





Source: **A Decade of Change in the Journey to Work**, Tri-State Regional Planning Commission, Interim Technical Report 4339-1302, January 1973.



This section of the existing West Side Highway stretches south from 23rd Street, passing the vacant Chelsea Piers.

Who would pay?

Who would benefit?

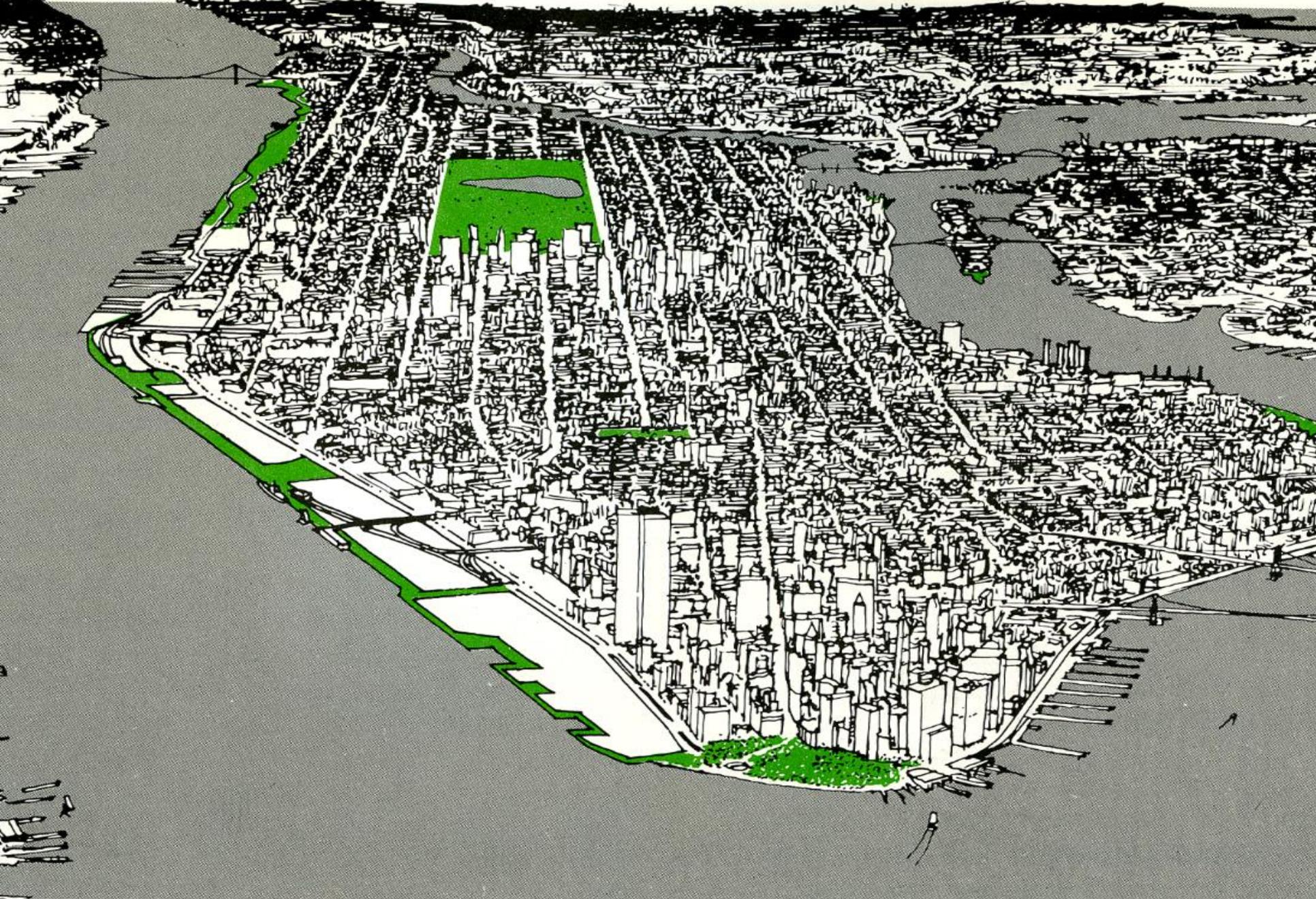
- Other people's money: 90% federal, 10% state
- Costs to completion
- Initially only for interstate highway segment, but included more than just highway

The Westway plan

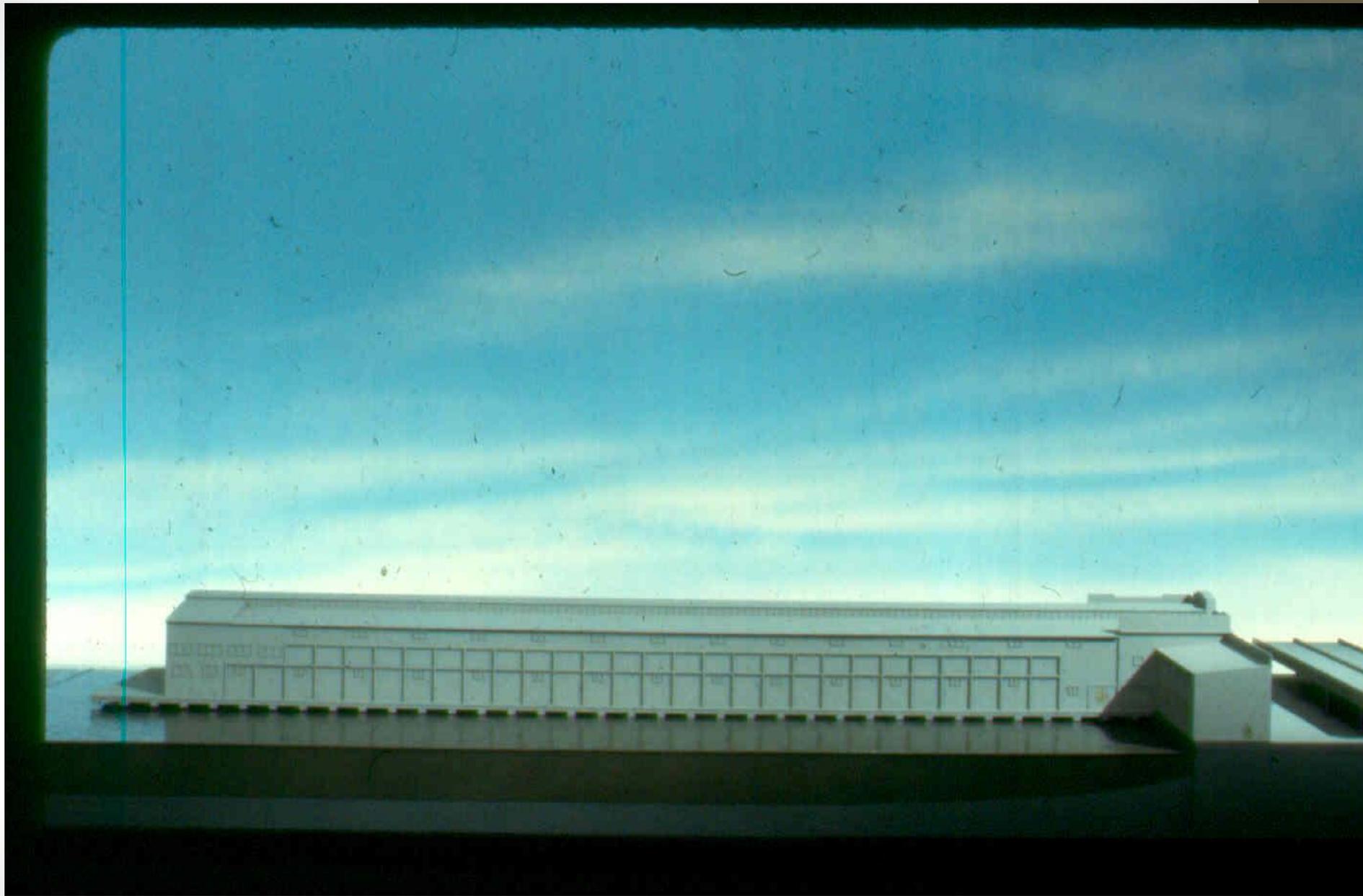
- 4.2 miles, 2.8 in the Hudson
- Massive filling
- Extending close to 1000 feet out; 1/10th of Hudson cross section
- Goodbye piers and pilings
- Sunken highway
- Mostly land for development, broader claimed redevelopment goals
- Linear park

From this, to . . .





Outboard Alternative Waterfront Configuration





Who fought the Westway war?

Robert Moses? Not as a supporter



WESTWAY

A Joint Venture

- ★ TENS OF THOUSANDS OF NEW JOBS
- ★ WATERFRONT REVITALIZATION
- ★ IMPROVED TRANSPORTATION
- ★ ECONOMIC DEVELOPMENT
- ★ RESIDENTIAL PARKING

TREASURY
FISCAL SERVICE
DIVISION OF DISBURSEMENT
Washington, D.C.

Check No. 100000001
SYMBOL 000

United States Treasury

PAY TO THE ORDER OF
State and City of New York

MONTH	DAY	YEAR
9	7	81

DOLLARS 85,000,000 00

WESTWAY PROJECT

DO NOT FOLD, SPINBLE OR MUTILATE
RENDER YOUR INSTRUMENT INVALID

31312 000000518 173352245

Ed Koch's Westway wobbles

As a congressman

As mayoral candidate

As Mayor

Why the flip-flop?

When power meets power . . .



Agency decisionmakers, regulators and scientists

- COE, the EIS, and the permit choice
 - FHWA, federal and state DOT
 - US EPA
 - US FWS
 - NY DEC
-
- The prevalence of politics, advocacy, and political pressure



Figure 5.1. The Westway opponents' lead lawyer for a decade was Al Butzel. Prior to his work in opposition to Westway, he assisted efforts to defeat the Con Edison Storm King project. In this image he is speaking at a 1982 conference discussing the Storm King battles. (Source: Courtesy of Albert K. Butzel; photographer unknown.)

was Robert Kagan, father of Supreme Court Justice Elena Kagan. Combo, Kagan, and their consultants stated their objections to Westway and called





Competing Westway claims

- Democracy frustrated or vindicated?
- Tiny opposition? Hostile judge?
- Over a mere procedural snafu or over substantive protections and competing good choices for NYC?
- Killed just by delay? Error?
- Example of citizen activism and litigation rights run amok or victory for rule of law?

The Westway battles

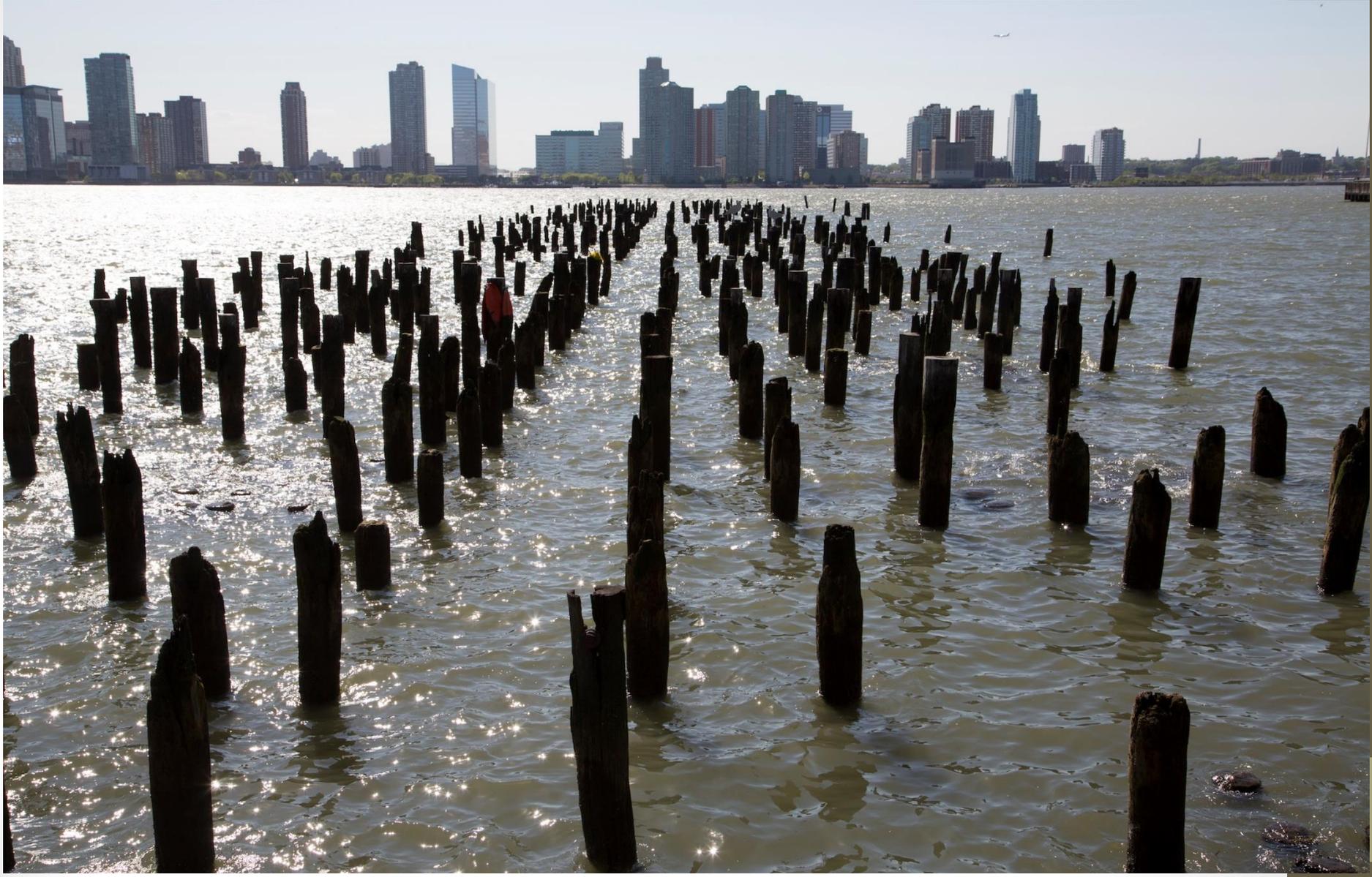
- The critical legal change and choice: \$ only for highways amended to the new trade-in option
 - Enduring motivation
- Legal infirmities:
 - Air pollution
 - Filling of the Hudson: NEPA and Section 404 of CWA

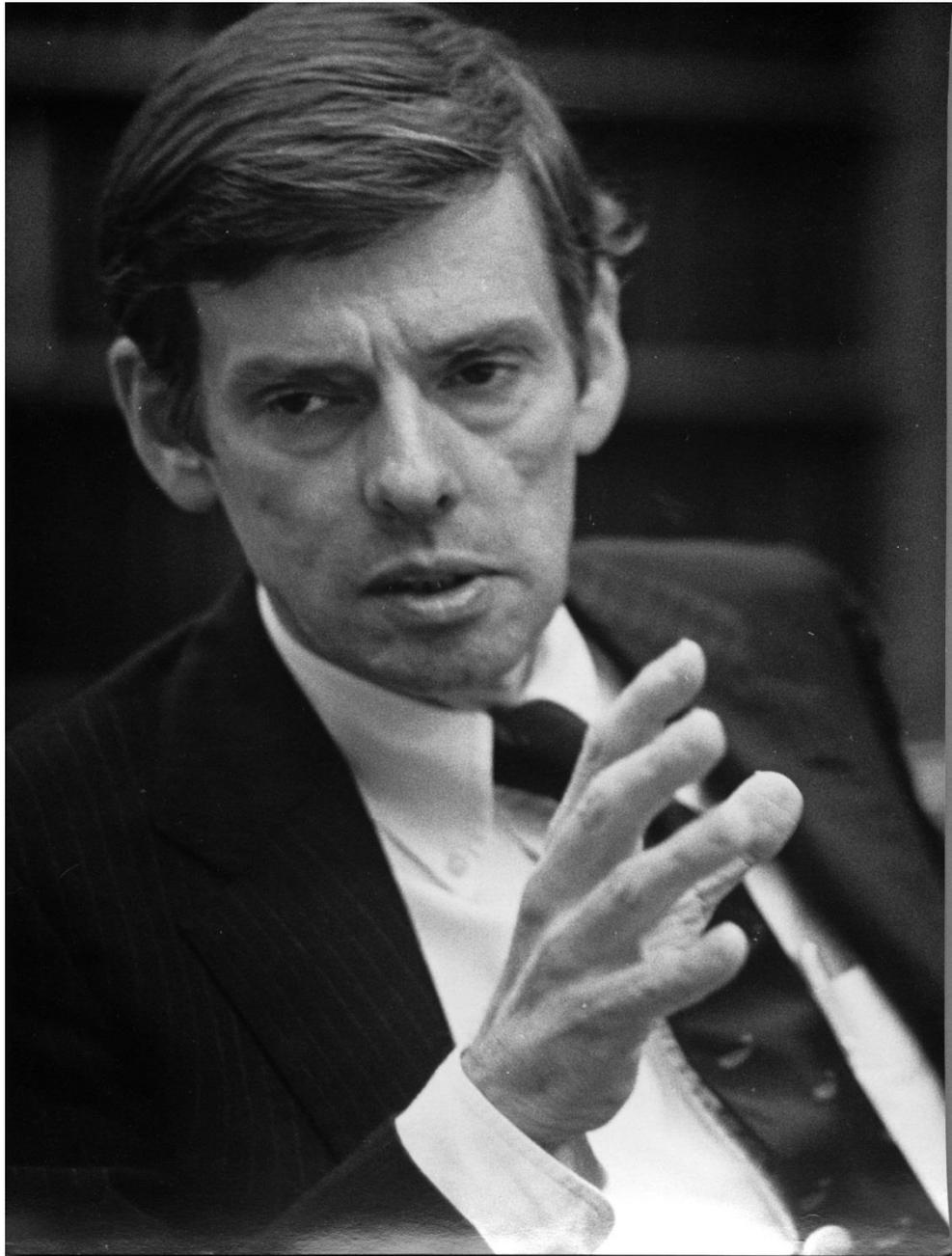
Focus today and 1980-85 on Westway's fill and the protected Hudson

- CWA Section 404 “dredge and fill” prohibitions
- NEPA's environmental impact statement claims
- Multiple attempts to shortcircuit or change the law
 - Battles in local, state, and federal political venues, both legislative and regulatory
- A drama in multiple parts: 2 EIS rounds; 2 end-runs attempted; 3 trials; 2 appellate rulings
- A claimed wasteland and the striped bass



Floating debris is common along the West Side waterfront in the basins between the remaining piers.





STRIPED BASS

KEY

EBS	East Bank Shallow
EBS	East Bank Deep
HI	Hoffman Island
GB	Gravesend Bay (Shallow)
RHD	Red Hook Deep
RHF	Red Hook Flats (Shallow)
EID	Ellis Island Deep
EIS	Ellis Island Shallow
WHA-NJ	New Jersey Interpier Site
WHA-1	Westway Interpier Site - South (RM 1.8)
WHA-4	Westway Interpier Site - North (RM 4.0)
WHA-2/3	Westway River Sites - South (RM 1.8)
WHA-5/6	Westway River Sites - North (RM 4.0)
WHA-7/8	Westway River Sites - River Mile 9.0
TH	Tubby Hook - River Mile 12.9
YW	Yonkers West - River Mile 18.0
HS	Hastings South - River Mile 21.2
PD	Piermont Deep - River Mile 24.4
PS	Piermont Shallow - River Mile 24.4
TZ	Tappen Zec - River Mile 28.0
RL	Rockland Lake - River Mile 32.9
PRD	Potato Rock Deep - River Mile 35.8
PRS	Potato Rock Shallow - River Mile 35.4
BI	Bowline Intake (Shallow) - RM 37.1
BC	Bowline Channel (Deep) - RM 37.5



SAMPLING

LOCATIONS

CATCH PER UNIT EFFORT BY SITE - FEBRUARY 20-27, 1980

EXHIBIT _____

Defeated? The 2nd Chance

- New EIS
- The Draft EIS and Westway's imminent defeat
- The Final EIS's reversed conclusions, Section 404 permit granted
- Back to court
- Oddity of trials over regulatory choices
- The cross examination





September 11, 1985

Assessing Westway's defeat

- Was Westway needed?
- Anti-democratic claims?
- Procedural snafu?

- Law's priorities
- Legal empowerment of citizens and their lawyers
- Genuinely high environmental stakes

- And what followed in Westway's wake?



FAD

Fish Attracting Device

Look

- after sunset
- plankton and fish
- are attracted to the light



THE RIVER PROJECT

STEVENS





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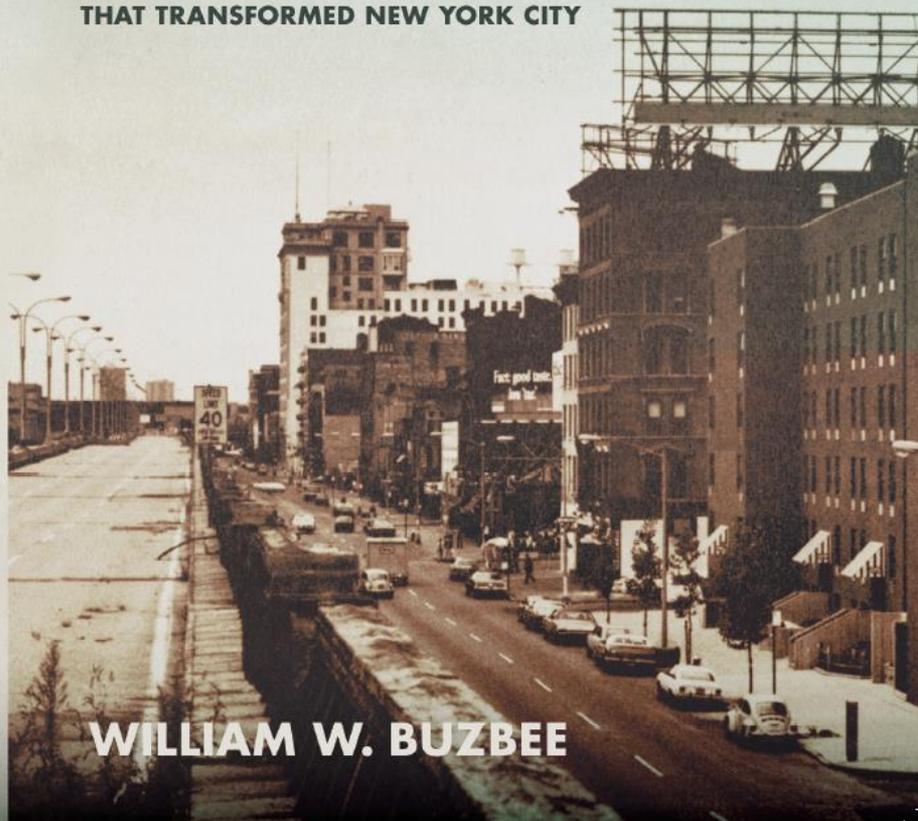


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