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## Intermunicipal Agreements: The Metamorphosis of Home Rule

Mary E. Mohnach

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# Intermunicipal Agreements: The Metamorphosis of Home Rule

MARY E. MOHNACH\*

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## I. Introduction.

Intermunicipal agreements (hereinafter "IMAs") are versatile instruments between and among municipalities that regulate a specific area that impacts or infringes on more than one municipality.<sup>1</sup> For purposes of land use law, "localities may agree to adopt compatible comprehensive plans and ordinances, as well as other land use regulations, and to establish joint planning, zoning, historic preservation, and conservation advisory boards, or hire

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1. See JOHN NOLON, *WELL GROUNDED* (1st ed. 1998).

joint inspection and enforcement officers.”<sup>2</sup> Any town, city, village, or county has the ability to enter into this type of agreement.<sup>3</sup> The number of municipalities that enter into the agreements can be anywhere from two to twenty and beyond.<sup>4</sup> Intermunicipal agreements may be entered into anywhere in New York State.<sup>5</sup> The evolution of these instruments has been slow, but more municipalities are currently combining forces with nearby communities to protect or regulate areas of importance.<sup>6</sup> Intermunicipal agreements were first introduced under the title “Performance of municipal cooperative activities; alternative powers; alternative assignment of responsibilities” in the General Municipal Law in 1960.<sup>7</sup> The law created the notion of “municipal cooperative activities”<sup>8</sup> and set forth the framework for the formulation of intermunicipal agreements.<sup>9</sup> General Municipal Law Section 239-n,<sup>10</sup> entitled “Referral of certain proposed subdivision plats to the county planning agency or regional planning council; report thereon; final action,”<sup>11</sup> and “Intergovernmental relations councils,”<sup>12</sup> gave communities the ability to create “intergovernmental relations councils.”<sup>13</sup> The statute sets forth a laundry list of permitted activities by intergovernmental councils.<sup>14</sup>

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2. *Id.* at 437.

3. *See* N.Y. GEN. MUN. LAW § 119-o (McKinney 1985 & Supp. 1992).

4. *See id.*; N.Y. GEN. MUN. LAW § 239-n (McKinney 1985 & Supp. 1992).

5. *See* N.Y. GEN. MUN. LAW §§ 119-o, 239-n (McKinney 1985 & Supp. 1992).

6. *See, e.g.*, Irondequoit Bay Management Project (July 1997) [hereinafter Irondequoit] (on file with the author); Long Island Sound Watershed Intermunicipal Council (1998) [hereinafter L.I. Sound] (on file with the author).

7. N.Y. GEN. MUN. LAW § 119-o (McKinney 1985 & Supp. 1992).

8. *Id.*

9. *See id.*

10. N.Y. GEN. MUN. LAW § 239-n (McKinney 1985 & Supp. 1992).

11. *Id.*

12. *Id.*

13. *Id.*

14. The activities permitted by the statute are:

- a. Making surveys and studies and conducting research programs to aid in the solution of local government problems and in efforts to improve administration and services.
- b. Providing for the distribution of information resulting from such surveys, studies and programs.
- c. Consulting and cooperating with appropriate state, municipal and public or private agencies in matters affecting municipal government.
- d. Devising practical ways and means for obtaining greater economy and efficiency in the planning and provision of municipal services and making recommendations in accordance therewith.
- e. Promoting the general commercial, industrial and cultural welfare of the participating municipalities.

These powers delegated to the municipalities within the state of New York gave local governments the authority to cooperatively regulate and implement programs that extended beyond their own borders.<sup>15</sup> By creating the authority to enter into intermunicipal agreements, the legislature effectively allowed the local governments to build on their Home Rule authority, accommodating the protection of resources and preventing governmental problems.<sup>16</sup> Under New York General Municipal Law Section 239-n post,<sup>17</sup> municipalities were given the option to enter into agreements with neighboring communities.<sup>18</sup> The original purpose of this statute was to create an intergovernmental relations council that would promote more efficient use of resources, unify the local governments, promote discussions as to cooperative services rendered by participating governments, and find solutions to problems shared by multiple municipalities.<sup>19</sup> New York General Municipal Law Sections 119-o and 239-n<sup>20</sup> were implemented sparingly at best.<sup>21</sup>

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f. Otherwise promoting strong and effective local government, public health, safety, morals and general welfare by means of local and intercommunity planning or performance of municipal services.

g. Employing such persons and adopting such rules and regulations as shall be necessary and proper to effectuate the purposes of this section.

h. Providing a forum for local governments to explore and develop areas for municipal cooperative activities pursuant to article five-G of this chapter.

i. Operating as a purchasing consortium, where authorized by participating municipalities, for the purpose of obtaining economies through joint bidding and purchasing.

j. Purchasing and making available to participating municipalities, where authorized by participating municipalities, goods and equipment, including but not limited to computer hardware and software.

k. Gathering and making available information on surplus goods and equipment for sale or lease.

N.Y. GEN. MUN. LAW § 239-n post (McKinney 1985 & Supp. 1992).

15. *See id.*

16. *See* Interview with John R. Nolon, Professor of Law at Pace University School of Law, in White Plains, N.Y. (Feb. 26, 1999).

17. N.Y. GEN. MUN. LAW § 239-n post.

18. *See* N.Y. GEN. MUN. LAW § 239-n post (1) (stating that intergovernmental relations councils "*shall* have the power to" enter into agreements to perform the functions stated above) (emphasis added).

19. *See* N.Y. GEN. MUN. LAW § 239-n post (McKinney 1985 & Supp. 1992) (citing legislative intent for 1983 Amendments, found in Historical Note Section of the code).

20. N.Y. GEN. MUN. LAW §§ 119-o, 239-n post (McKinney 1985 & Supp. 1992).

21. *See* Interview with John R. Nolon, Professor of Law at Pace University School of Law, in White Plains, N.Y. (Feb. 26, 1999).

In 1992, legislation was enacted permitting the application of intermunicipal agreements to land use regulation.<sup>22</sup> The statutes remained mostly unused until 1994, when municipalities began to apply them to more than a shared planning board.<sup>23</sup> The need for a cohesive state with consistent laws has prompted municipalities to dust off these statutes and put them to work. The walls built as a result of Home Rule<sup>24</sup> isolated communities and compartmentalized the state.<sup>25</sup>

In an era of environmental protection and conservation, municipalities may cooperate to preserve natural resources, wetlands, and historic districts. These agreements can be crafted in many ways to protect many different areas of concern.<sup>26</sup> Home Rule style authority must give way and release the communities to create a comprehensive state where municipalities act cooperatively to conserve resources and protect areas that involve the land of more than one municipality. Intermunicipal agreements encourage municipalities to emerge from the primary stage of Home Rule and evolve to a level of cooperation with neighboring communities; allowing a "jurisdiction beyond their borders that they could not get under the Home Rule authority alone."<sup>27</sup>

The purpose of this comment is to demonstrate the increasing need for communities to band together to protect natural resources and historic districts within the state. Individualized Home Rule authority, while still applicable to a majority of decisions made by a municipality, must expand to include the intermunicipal agreement if resource conservation is to be effective.<sup>28</sup> The legislatures, however, must make the decision to act in the best interests of the communities for intermunicipal agreements to be effective and worthy of the time and money in-

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22. See N.Y. GEN. CITY LAW § 20-g (McKinney 1989 & Supp. 1992); N.Y. TOWN LAW § 284 (McKinney 1987 & Supp. 1992); and N.Y. VILLAGE LAW § 7-741 (McKinney 1995); See also N.Y. GEN. MUN. LAW § 119-u (McKinney 1985 & Supp. 1992).

23. See, e.g., A Local Law Authorizing the Creation of a Joint Planning Board with the Village of Nunda (1993) [hereinafter Nunda] (on file with the author); Agreement Creating Joint Town of Lowville/Village of Lowville Planning Board (Aug. 1982) [hereinafter Lowville Planning] (on file with the author).

24. "Power granted to local and municipal authorities by state governments to manage their own affairs as established by legislative act or constitutional provision." GILBERT LAW DICTIONARY p. 116 (1994).

25. See N.Y. MUN. HOME RULE LAW § 10(1)(ii) (McKinney 1994).

26. See NEW YORK DEP'T OF STATE, JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES, INTERGOVERNMENTAL COOPERATION 1 (1998).

27. Interview with John R. Nolon, Professor of Law at Pace University School of Law, in White Plains, N.Y. (Feb. 26, 1999).

28. See *id.*

vested in them by each participating municipality.<sup>29</sup> This comment will also demonstrate how the intermunicipal agreement has expanded and enhanced the Home Rule authority that has been in place for so long. By allowing regulations to extend past their borders, municipalities in New York State have realized how effective, efficient, and beneficial cooperation with neighboring communities can be.

Part II of this comment will discuss the background information regarding the creation of intermunicipal agreements. Specifically, it will discuss how municipalities within the State of New York used Home Rule authority to regulate their communities prior to the legislature's introduction of intermunicipal agreements. Part III will discuss intermunicipal agreements entered into by municipalities in the State of New York prior to 1992. Part IV will discuss intermunicipal agreements enacted in New York State between the years of 1992 and 1993. Part V will discuss more recent intermunicipal agreements, drafted from 1994 to the present. Part VI will compare and contrast the intermunicipal agreements from the aforementioned categories and include suggestions to municipalities regarding the most effective and efficient mechanisms for regulation, preservation, and management of their own communities in conjunction with neighboring municipalities. Part VII will discuss the future of intermunicipal agreements.

## II. Background.

### A. Home Rule Authority

Home Rule authority is a quasi-constitutional grant of authority to local governments to pass local laws relating to their property, affairs or government, provided such local laws are consistent with the constitution and general statutes of New York State. Additionally, local governments may pass such local laws, consistent with the constitution and general statutes, whether or not they relate to the property, affairs or government of the local government if the local law relates to one of numerous subjects specifically listed by the State Legislature in the Municipal Home Rule Law.<sup>30</sup>

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29. *See id.*

30. Joe Stinson, *The Home Rule Authority of New York Municipalities in the Land Use Context* (1997) (visited Jan. 27, 1999) <<http://www.law.pace.edu/landuse/library/stinso.html>>.

Home Rule authority enables municipalities to regulate matters of local concern within their borders.<sup>31</sup> Simply stated, Home Rule is “the right of self-government as to local affairs.”<sup>32</sup> The Home Rule method of self-regulation permitted municipalities to regulate land use matters as they deemed appropriate.<sup>33</sup> One community could regulate the use of incentive zoning,<sup>34</sup> through waiver of setback requirements, while a neighboring community might use the increased floor area ratio to create the similar result of affordable housing within the community.<sup>35</sup> The ability of municipalities to self-regulate is crucial; the local legislature knows better than the state how to best control the use of its land. Until 1960, municipalities were compartmentalized, individual entities within the state, each exercising its own Home Rule authority. The introduction of the statute creating intermunicipal agreements<sup>36</sup> gave the communities the opportunity to venture beyond their borders, enter joint agreements with neighboring communities, and in essence, share the task of deciding the most appropriate ways to regulate.<sup>37</sup>

## B. Introduction of Intermunicipal Agreements

In 1960, General Municipal Law Section 119-o entitled “Performance of Municipal Cooperative Activities; Alternative Powers; Alternative Assignment of Responsibilities” was enacted.<sup>38</sup> It states:

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31. See John Nolon, *The Erosion of Home Rule Through the Emergence of State-Interests in Land Use Control*, 10 PACE ENVTL. L. REV. 497 (1993).

32. *People v. State Board of Tax Comm’rs*, 174 N.Y. 417, 431, 67 N.E. 69, 70-71 (1903).

33. See N.Y. MUN. HOME RULE LAW § 10(1)(ii)(a)(11) (McKinney 1994).

34. “A system by which zoning incentives are provided to developers on the condition that specific physical, social, or cultural benefits are provided to the community. Incentives include increases in the permissible number of residential units or gross square footage of development, or waivers of the height, setback, use, or area provisions of the zoning ordinance. The benefits to be provided in exchange may include affordable housing, recreational facilities, open space, day care facilities, infrastructures, or cash in lieu thereof.” MARY E. MOHNACH & KATHRYN M. RYAN, *WELL GROUNDED DESKBOOK FOR LAWYERS AND PLANNERS* 103 (1st ed. 1998).

35. See generally, Julie Solinski, *Affordable Housing Law in New York, New Jersey and Connecticut: Lessons for Other States*, 8-FALL J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 36 (1998).

36. See N.Y. GEN. MUN. LAW § 119-o (McKinney 1985 & Supp. 1992).

37. See Interview with John R. Nolon, Professor of Law at Pace University School of Law, in White Plains, N.Y. (Feb. 26, 1999).

38. N.Y. GEN. MUN. LAW § 119-o (McKinney 1985 & Supp. 1992).

Municipal corporations and districts shall have the power to enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis or for the provision of a joint service or a joint water, sewage or drainage project.<sup>39</sup>

The statute sets forth, in extensive detail, who must approve the agreement and what can be contained within the agreement.<sup>40</sup> The agreement "shall be approved by each participating municipal corporation or district by a majority vote."<sup>41</sup> No municipality can monopolize the terms of the agreement.<sup>42</sup> The statute also sets forth the "managerial" provisions of the agreement which could include<sup>43</sup> the management of personnel, assignment of liability from the project, and allocation of funds for the project.<sup>44</sup> The list is not exclusive and the statute explicitly provides a "catch-all," permitting other matters to be included within the agreement.<sup>45</sup>

Since the adoption of this statute, in an effort to cooperate with surrounding communities, municipalities have attempted to create intermunicipal agreements for topics from airports to youth programs.<sup>46</sup> The State Comptroller has deemed most of the proposed uses appropriate. Some limitations, however, have been set.<sup>47</sup> For example, a county may not sell gravel to towns even though that same county and town can operate a gravel pit cooperatively.<sup>48</sup> Other actions have been barred as the premise for intermunicipal agreements: a town and village may not share the cost of the erection of a village firehouse,<sup>49</sup> a county and a town cannot share a police force,<sup>50</sup> and without joint control, a city and a county cannot share the maintenance of a city-owned airport.<sup>51</sup> These restrictions notwithstanding, the overwhelming majority of opinions set forth by the State Comptroller and Attorney General

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39. *Id.*

40. *See id.*

41. *Id.*

42. *See id.*

43. *See* N.Y. GEN. MUN. LAW § 119-o (McKinney 1985 & Supp. 1992).

44. *See id.*

45. *See id.*

46. *See id.* (citing Notes of Decisions).

47. *See, e.g.,* 20 Op. State Comptroller 65 (1964), Op State Comptroller 91-14 (1991); (see appendix A).

48. *See* Op. State Comptroller 83-104 (1983); (see appendix A).

49. *See* Op. State Comptroller 26-244 (1970); (see appendix A).

50. *See* Op. State Comptroller 78-603; (see appendix A).

51. *See* 25 Op. State Comptroller 42 (1969); (see appendix A).

have approved intermunicipal agreements as appropriate under this statute.<sup>52</sup>

The statute also provides for "mutual sharing plans,"<sup>53</sup> subject to the provisions set forth for intermunicipal agreements. Joint service is prohibited under a mutual sharing plan if an intermunicipal agreement prepared pursuant to this statute already exists.<sup>54</sup> These sharing plans apply to municipal corporations rather than individual municipalities.<sup>55</sup>

The companion statute to General Municipal Law Section 119-o is General Municipal Law Section 239-n, which delineates intergovernmental relations councils.<sup>56</sup> Intergovernmental relations councils may be established by "[a]ny county outside the city of New York, city, town, village, school district, board of cooperative educational services, or fire district."<sup>57</sup> The statute itself lists reasons why a council should be created.<sup>58</sup> These councils have the power to encourage commercial and industrial welfare of involved municipalities<sup>59</sup> and preserve the health, safety, and welfare of the communities through the use of planning or municipal services.<sup>60</sup>

### C. Introduction of Intermunicipal Agreements in Land Use Law

In years past, communities implemented the intermunicipal agreement sparingly, usually to share a planning board.<sup>61</sup> Following the enactment of the statutes that enabled municipalities to apply intermunicipal agreements to land use law,<sup>62</sup> the use of this instrument increased. All four of the statutes, the General Municipal Law, the General City Law, the Town Law, and the Village

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52. For example, joint ambulance service (20 Op. State Comptroller 65, (1964)), joint jail (Op. Att'y Gen. 91-F1), and garbage collection (Op. State Comptroller 91-14).

53. N.Y. GEN. MUN. LAW § 119-o(3) (Supp. 1992).

54. *See id.* at § 119-o(3)(c).

55. *See id.* at § 119-o(3).

56. *See* N.Y. GEN. MUN. LAW § 239-n (McKinney 1985 & Supp. 1992).

57. *Id.* at § 239-n(1).

58. *See id.* (providing that such councils should be created "to strengthen local governments and to promote efficient and economical provision of local governmental services.")

59. *See id.* at § 239-n(1)(e).

60. *See id.* at § 239-n(1)(f).

61. *See* Lowville Planning, *supra* note 23.

62. *See* N.Y. GEN. CITY LAW § 20-g (McKinney 1989 & Supp. 1992); N.Y. TOWN LAW § 284 (McKinney 1987 & Supp. 1992); N.Y. VILLAGE LAW § 7-741 (McKinney 1995); *see also* N.Y. GEN. MUN. LAW § 119-u (McKinney 1985 & Supp. 1992).

Law, are identical in title and language.<sup>63</sup> The legislature made its intent clear by the statutory language that it composed: "the legislature seeks to promote intergovernmental cooperation that could result in increased coordination and effectiveness of comprehensive planning and land use regulation, more efficient use of infrastructure and municipal revenues, as well as the enhanced protection of community resources, especially where such resources span municipal boundaries."<sup>64</sup> The realization that there were numerous natural resources and historic districts requiring protection prompted the legislature to resurrect a device that had lain dormant for thirty years.<sup>65</sup> The application of intermunicipal agreements to land use law encouraged communities to work cooperatively to protect and preserve those resources infringing on more than one municipality.<sup>66</sup> The statutes set forth five areas that municipalities may regulate through intermunicipal agreements:

(a) create a consolidated planning board<sup>67</sup> which may replace individual planning boards, if any, which consolidated planning board shall have the powers and duties as shall be determined by such agreement;

(b) create a consolidated zoning board of appeals<sup>68</sup> which may replace individual zoning boards of appeals, if any, which consolidated zoning board of appeals shall have the powers and duties as shall be determined by such agreement;

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63. See N.Y. GEN. CITY LAW § 20-g; N.Y. TOWN LAW § 284; N.Y. VILLAGE LAW § 7-741; see also N.Y. GEN. MUN. LAW § 119-u.

64. N.Y. GEN. CITY LAW § 20-g; N.Y. TOWN LAW § 284; N.Y. VILLAGE LAW § 7-741; see also N.Y. GEN. MUN. LAW § 119-u.

65. See N.Y. GEN. CITY LAW § 20-g; N.Y. TOWN LAW § 284; N.Y. VILLAGE LAW § 7-741; see also N.Y. GEN. MUN. LAW § 119-u.

66. See N.Y. GEN. CITY LAW § 20-g; N.Y. TOWN LAW § 284; N.Y. VILLAGE LAW § 7-741; see also N.Y. GEN. MUN. LAW § 119-u.

67. "Planning boards may be delegated reviewing board functions and a variety of advisory functions, including the preparation of the comprehensive plan, drafting zoning provisions, or suggesting site plan and subdivision regulations, in addition to other functions." JOHN NOLON, *WELL GROUNDED* 442 (1st ed. 1998).

68. "The essential function of the zoning board of appeals is to grant variances. In this capacity it protects landowners from the unfair application of the laws in particular circumstances. The zoning board of appeals also hears appeals from the decisions of the zoning enforcement officer or building inspector when interpretations of the zoning ordinance are involved." *Id.* at 447.

(c) create a comprehensive plan<sup>69</sup> and/or land use regulations which may be adopted independently by each participating municipality;

(d) provide for a land use administration and enforcement program which may replace individual land use administration and enforcement programs, if any, the terms and conditions of which shall be set forth in such agreement; and

(e) create an intermunicipal overlay district<sup>70</sup> for the purpose of protecting, enhancing, or developing community resources that encompass two or more municipalities.<sup>71</sup>

The majority of the intermunicipal agreements entered into prior to the enactment of these statutes focused on the sharing of a land use board; planning or zoning appeals.<sup>72</sup> In recent years, the communities have begun to enter into intermunicipal agreements utilizing the overlay district to protect natural resources.<sup>73</sup> Overlay zoning is “a mapped overlay district superimposed on one or more established zoning districts [which] may be used to impose supplemental restrictions on uses in these districts, permit uses otherwise disallowed, or implement some form of density bonus or incentive bonus program.”<sup>74</sup> “Overlay zoning, through the use of optional and mandatory requirements, can be used to serve three functions. First, overlay zoning can encourage certain types of development. Second, it can discourage certain types of development. And third, it can offer protection to certain areas.”<sup>75</sup>

An overlay district can be created by the legislature to protect or regulate a specific area.<sup>76</sup> Overlay zoning “allows a local gov-

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69. “A comprehensive plan is a written document that identifies the goals, objectives, principles, guidelines, policies, standards, and strategies for the growth and development of the community.” *Id.* at 432.

70. “An overlay zone is a zone or district created by the local legislature for the purpose of conserving natural resources or promoting certain types of development. Overlay zones are imposed over existing zoning districts and contain provisions that are applicable in addition to those contained in the zoning law.” *Id.* at 442.

71. N.Y. GEN. CITY LAW § 20-g(4) (McKinney 1989 & Supp. 1992); N.Y. TOWN LAW § 284(4) (McKinney 1987 & Supp. 1992); N.Y. VILLAGE LAW § 7-741(4) (McKinney 1995); and N.Y. GEN. MUN. LAW § 119-u(4) (McKinney 1985 & Supp. 1992).

72. *See, e.g.*, Nunda, *supra* note 23; *see also* Lowville Planning, *supra* note 23.

73. *See, e.g.*, L.I. Sound, *supra* note 6; *see also* Historic River Towns of Westchester Intermunicipal Agreement (Sept. 1994) [hereinafter Historic River Towns] (on file with the author).

74. Ziegler, Rathkopf's The Law of Zoning and Planning §8.01[3] (1995).

75. Matt Bovoso and Timothy Jones, *Overlay Zoning*, (visited Jan. 27, 1999) <<http://law.pace.edu/landuse/library/overla.html>>.

76. *See id.*

ernment to vary its regulations within the same basic use zone.”<sup>77</sup> It “allows local officials to designate boundaries of natural resource or economic development districts.”<sup>78</sup> This district is used so municipalities are not required to revamp or redraft their entire zoning district map to accommodate one specific area.<sup>79</sup> This form of zoning creates “new regulations applicable to the special area [which] is overlaid upon (added to) the regulations of the zones already in existence there.”<sup>80</sup> For example, if a municipality decides that it wants to protect a wetland, it creates an overlay zone.<sup>81</sup> The overlay zone and the new regulations apply only to the wetland, thus saving the municipality the expense of redrafting its zoning map for one minor adjustment.<sup>82</sup> Overlay districts may be used in a variety of instances including wetland preservation, conservation of wildlife in a particular area, and intermunicipal agreements.<sup>83</sup>

#### D. Implementation of Land Use Intermunicipal Agreements

A myriad of elements exists that may be included in an intermunicipal agreement. These can range from the frequency of meetings to who is in charge of the revenue raised to implement the agreement.<sup>84</sup> There is no set standard or checklist for an intermunicipal agreement. Usually, the issues that the municipalities find important make up the body of the agreement. Furthermore, there are some threads of consistency within intermunicipal agreements in general. Issues commonly addressed in intermunicipal agreements include: the purpose for the crea-

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77. ROBERT C. ELLICKSON & A. DAN TARLOCK, *LAND USE CONTROLS* 61 (1st ed. 1981).

78. John Nolon, *Flexibility in the Law: Reengineering of Zoning to Prevent Fragmented Landscapes*, N.Y.L.J., Feb. 18, 1998, at 5.

79. See Interview with John R. Nolon, Professor of Law at Pace University School of Law, in White Plains, N.Y. (Feb. 26, 1999).

80. ROBERT C. ELLICKSON & A. DAN TARLOCK, *LAND USE CONTROLS* 61 (1st ed. 1981).

81. See *id.*

82. See generally, Matt Bovoso and Timothy Jones, *Overlay Zoning*, (visited Jan. 27, 1999) <<http://law.pace.edu/landuse/library/overla.html>>.

83. See ROBERT C. ELLICKSON & A. DAN TARLOCK, *LAND USE CONTROLS* 61 (1st ed. 1981).

84. See, e.g., Forestville-Chautauqua Water Resource Development (Dec. 1992) [hereinafter Forestville-Chautauqua] (on file with the author); see also Lowville Cooperative Zoning Board of Appeals (July 1982) [hereinafter Lowville ZBA] (on file with the author).

tion of the intermunicipal agreement,<sup>85</sup> the acquisition of funding for the particular project,<sup>86</sup> and the responsibilities of the appointed members.<sup>87</sup> The agreement may be as simple or complex as the municipalities choose to make it.<sup>88</sup> The progression of the use of the intermunicipal agreements has been slow. In recent years, however, more communities are finding it in their best interest to cooperate with surrounding communities to preserve and restore the natural resources located within their boundaries.<sup>89</sup> Another reason for the creation of an intermunicipal agreement may be to promote the economic welfare of a specific area, through increased tourism.<sup>90</sup>

### III. Intermunicipal Agreements Enacted Prior to 1992

Many of the intermunicipal agreements entered into under the authority of General Municipal Law Sections 119-o and 239-n<sup>91</sup> were limited in two respects: the number of participating municipalities and the reasons for the establishment of the agreements. The early intermunicipal agreements included between two and six municipalities, or governmental bodies.<sup>92</sup> Accordingly, these participants created and entered into agreements that provided cooperation on very specific topics such as joint planning boards,<sup>93</sup> assessment and development of a specific municipality's

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85. See, e.g., Irondequoit Bay, *supra* note 6; see also Historic River Towns, *supra* note 73.

86. See, e.g., Cooperation Agreement Between County of Nassau, the town of North Hempstead, Village of Baxter Estates, Village of Manorhaven, Village of Port Washington North, Village of Plandome, Village of Plandome Manor, Village of Plandome Heights, Village of Great Neck, Village of Thomaston, Village of Kingston, Village of Kings Point, Village of Sands Point (1995) [hereinafter Manhasset Bay] (on file with the author); see also An Intermunicipal Agreement Establishing Kendall, Yates, Carlton (KYC) Lake Ontario Cooperative Waterfront Board (July 1984) [hereinafter KYC] (on file with the author); see also Historic River Towns, *supra* note 73.

87. See, e.g., L.I. Sound, *supra* note 6; see also Irondequoit Bay, *supra* note 6.

88. See, e.g., Mianus River Resolution (November 1992) [hereinafter Mianus River] (on file with the author); see also Town of DeKalb Site Plan Review Law (March 1992) [hereinafter DeKalb-Richville] (on file with the author).

89. See, e.g., Historic River Towns, *supra* note 73; see also Irondequoit Bay, *supra* note 6.

90. See, e.g., Historic River Towns, *supra* note 73.

91. See N.Y. GEN. MUN. LAW §§ 119-o, 239-n (McKinney 1985 & Supp. 1992).

92. See, e.g., Lowville Planning, *supra* note 23 and Lowville ZBA, *supra* note 84 (two participants); Flint Creek Plan Agreement (September 1977) [hereinafter Flint Creek] (on file with the author) (six participants).

93. See, e.g., Lowville Planning, *supra* note 23; Lowville ZBA, *supra* note 84.

water supply,<sup>94</sup> and improvements for a watershed drainage system.<sup>95</sup>

#### A. Flint Creek Watershed Plan Agreement

One of the earliest intermunicipal agreements, the "Flint Creek Watershed Plan Agreement" (hereinafter "Flint Creek")<sup>96</sup> was entered into in New York State in 1976.<sup>97</sup> The Flint Creek Small Watershed Protection District was unique in that no specific municipalities entered into the agreement.<sup>98</sup> The participants were: the Ontario County Board of Supervisors, the Yates County Legislature, the Soil and Water Conservation District for Ontario County, the Soil and Water Conservation District for Yates County, and the Soil and Water Conservation District for Stuben County.<sup>99</sup> This group was collectively known, for purposes of this agreement, as "the Sponsoring Local Organization."<sup>100</sup> The State of New York and the Soil Conservation Service, United States Department of Agriculture (hereinafter "Soil Conservation Service"), joined the Sponsoring Local Organization in the agreement.<sup>101</sup> The primary purpose of this agreement was to implement improvements in watershed drainage systems within five years.<sup>102</sup> The organization planned to purchase land rights for the implementation of the proposed improvements.<sup>103</sup>

The attention to the financial responsibilities of each party in this agreement is very elaborate and extensive.<sup>104</sup> This agreement sets out, in detail, how the parties were to acquire the land.<sup>105</sup> The agreement further broke down the economic responsibilities of the Sponsoring Local Organization<sup>106</sup> and the Soil

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94. See, e.g., Contract Between City of Dunkirk and Village of Fredonia (July 1993) [hereinafter Dunkirk-Fredonia] (on file with the author).

95. See Flint Creek, *supra* note 92.

96. See Flint Creek, *supra* note 92.

97. See Flint Creek, *supra* note 92.

98. See Flint Creek, *supra* note 92.

99. See Flint Creek, *supra* note 92.

100. See Flint Creek, *supra* note 92, at i.

101. See Flint Creek, *supra* note 92.

102. See Flint Creek, *supra* note 92, at i.

103. See Flint Creek, *supra* note 92, at i.

104. See Flint Creek, *supra* note 92, at ii.

105. Paragraph two of the agreement includes the percentages of funding from each party for the relocation costs. See Flint Creek, *supra* note 92, at ii.

106. Project Administration Cost to Sponsoring Local Organization: \$34,400. See *id.* at iii.

Conservation Service.<sup>107</sup> The agreement clearly states, however, that it is “not a fund obligating document. Financial and other assistance to be furnished by the [Soil Conservation] Service in carrying out the plan is contingent on the availability of appropriations for this purpose.”<sup>108</sup> The parties agree that the amounts in this agreement are estimated, and that a supplementary agreement will be created delineating the division of finances.<sup>109</sup>

Attached to this agreement is a summary of the plan (hereinafter “Flint Creek Summary”).<sup>110</sup> This summary basically reiterates the terms of the agreement. It also illustrates the specific reasons for erecting the agreement<sup>111</sup> and provides a detailed description of the proposed land treatment measures designed to curtail the problems arising in this area.<sup>112</sup>

## B. Cooperative Tug Hill Council Intermunicipal Agreement

In 1981, the Town Boards of Boylston, Florence, Lewis, Montague, Osceola, Pinckney, Redfield, Turin, West Turin, and Worth created the Cooperative Tug Hill Planning Board (hereinafter “Tug Hill”).<sup>113</sup> This board was to serve as the planning board for all the municipalities that were parties to the agreement.<sup>114</sup> The municipalities had already been cooperating in “the planning of local land use and . . . land management activities.”<sup>115</sup> The board was to perform six specific functions or services.<sup>116</sup> Section II of the agreement lists the functions as follows:

- (a) Coordinate the efforts of the individual towns in the review and adoption process of a Rural Development Code and provide assistance to the individual towns as may be needed.

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107. The Soil Conservation Service was required to pay one hundred percent of the cost of all structural materials used for works of improvement, estimated at \$1,216,000; one hundred percent of the engineering costs for all structural materials for works of improvement, estimated at \$156,000; and \$165,800 for Project Administration Cost. See Flint Creek, *supra* note 92, at ii-iii.

108. See Flint Creek, *supra* note 92, at iii.

109. See Flint Creek, *supra* note 92.

110. See Flint Creek Summary, *supra* note 92, at I-1.

111. For example, some of the problems faced in the Flint Creek area were inundation, floodwater damage and erosion. See Flint Creek, *supra* note 92.

112. See Flint Creek, *supra* note 92.

113. See Cooperative Tug Hill Planning Board (July 1981) [hereinafter Tug Hill] (on file with the author).

114. See *id.*

115. *Id.* at 1.

116. See Tug Hill, *supra* note 113, at 1.

(b) Undertake continued cooperative planning studies and functions, including matters affecting the central forest, watershed, and other natural characteristics of the participating municipalities.

(c) Make reports on planning studies to the various governing bodies, either with or without request.

(d) Exercise the budgeting and fiscal supervision and related functions as described hereinafter.

(e) Review matters referred by any of the governing bodies, by the Cooperative Board of Appeals, or the cooperative enforcement officers, of the Code Enforcement Committee with recommendations to the referring person or office.

(f) Report at least annually to governing bodies of participating municipalities concerning the activities of the cooperative board.<sup>117</sup>

The agreement authorizes the designation and appointment of a fiscal agent, responsible for all the funding and financial aspects of the planning board.<sup>118</sup> The agreement also stipulates an annual budget, subject to approval by the Board.<sup>119</sup> This agreement included a provision allowing for additional municipalities to join,<sup>120</sup> a section not present in previously mentioned intermunicipal agreements. Interested municipalities would be added to the planning board through the amendment procedure set forth in the agreement.<sup>121</sup>

In 1991, the parties to this agreement realized that there was a maturation and growth to its planning board.<sup>122</sup> The parties, having operated the planning board for ten years, realized that the responsibilities originally set forth on paper were insufficient in practice.<sup>123</sup> The municipalities sharing the planning board amended the 1981 agreement and tailored it to the planning board it had already created.<sup>124</sup> Instead of listing the functions and services to be performed and provided by the planning board,<sup>125</sup> the 1991 amendment enumerated eight primary objectives to be

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117. See Tug Hill, *supra* note 113, at 1.

118. See Tug Hill, *supra* note 113, at 1.

119. See Tug Hill, *supra* note 113.

120. See Tug Hill, *supra* note 113, at 2.

121. See Tug Hill, *supra* note 113, at 2.

122. See Cooperative Tug Hill Intermunicipal Agreement (as revised 1991) [hereinafter Tug Hill 1991 Amendment] (on file with the author).

123. See *id.*; see also Tug Hill, *supra* note 113.

124. See Tug Hill 1991 Amendment, *supra* note 122.

125. See Tug Hill *supra* note 116.

achieved by the planning board.<sup>126</sup> The primary objectives, which replaced the function section of the 1981 agreement, are as follows:

(1) To provide staff who will, through regular contact with participating municipalities identify problem areas and needed services, and who will coordinate activities designed to address such issues.

(2) To establish a representative forum by which issues and opportunities of common or individual concern can be affected, both through making recommendations for action, as well as through providing direct support to local government activities.

(3) To establish a communication system by which all representatives to the Cooperative Tug Hill Council (hereinafter "CTHC") report on a regular basis to their respective governing boards.

(4) To explore all avenues of cooperation by and between participating municipalities.

(5) To visualize the future from a big picture or multitown perspective and to create opportunities through cooperation for achieving such vision.

(6) To retain the rural character of the CTHC area through a home rule approach recognized in state legislation. This approach would rely primarily on special area designations by each town, and a plan for the entire CTHC region.

(7) To provide technical and project review assistance, as requested, to CTHC towns when development is proposed in designated special areas, and when projects of CTHC-region-wide significance are proposed.

(8) To carry out project review in cooperation with affected towns when development is proposed in a special area overlapping or immediately adjacent to a boundary between two or more CTHC towns, or when the project might have CTHC-region-wide impact.<sup>127</sup>

The Tug Hill 1991 Amendment also added five municipalities to the planning board, expanding the participants to fifteen communities.<sup>128</sup> The provisions of the agreement common to intermunicipal agreements remained substantially the same.<sup>129</sup>

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126. See Tug Hill 1991 Amendment, *supra* note 124.

127. See Tug Hill 1991 Amendment, *supra* note 124.

128. The Town Boards of the Towns of Harrisburg, Leyden, Lorraine, Martinsburg and Rodman joined the amended agreement. See Tug Hill 1991 Amendment, *supra* note 122.

129. See Tug Hill 1991 Amendment, *supra* note 122.

### C. Agreement for the Creation of a Joint Town/Village Planning Board

In 1982, the Town of Lowville and the Village of Lowville entered into an "Agreement for the Creation of a Joint Town/Village Planning Board" (hereinafter "Lowville Planning").<sup>130</sup> Under the agreement creating a joint planning board, the town and the village would share a planning board that would "exercise all functions as outlined in the adopted bylaws."<sup>131</sup> The planning board was comprised of two members appointed by the town, two members appointed by the village, and one member appointed by the town and village jointly for a total of five members.<sup>132</sup> The agreement delineated the terms of each member's appointment<sup>133</sup> and the procedure for appointment upon the expiration of the initial terms of service by the planning board members.<sup>134</sup> The only mention of finances in this agreement was the provision for the appointment of a fiscal agent by the Town of Lowville.<sup>135</sup>

The town and village executed an agreement for a "Cooperative Zoning Board of Appeals" (hereinafter "Lowville ZBA")<sup>136</sup> on the same day as Lowville Planning.<sup>137</sup> The provisions for the zoning board of appeals were similar in nature to those in the planning board agreement.<sup>138</sup> Unlike Lowville Planning, Lowville ZBA included a provision for the creation of a position called the "Cooperative Enforcement Officer."<sup>139</sup> This position was created "following [a] review of qualifications to perform those functions as shall be agreed upon by both municipalities and outlined in a job description."<sup>140</sup>

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130. See Lowville Planning, *supra* note 23, at 1.

131. See Lowville Planning, *supra* note 23.

132. See Lowville Planning, *supra* note 23.

133. See Lowville Planning, *supra* note 23.

134. See Lowville Planning, *supra* note 23.

135. See Lowville Planning, *supra* note 23, at 2.

136. See Lowville ZBA, *supra* note 84, at 1.

137. These agreements for a joint planning board and cooperative zoning board of appeals for the Town of Lowville and the Village of Lowville were entered into on July 20, 1982. See *supra* notes 136, 142.

138. Compare Lowville ZBA, *supra* note 84 at 1 with Lowville Planning, *supra* note 23, at 1.

139. See Lowville ZBA, *supra* note 84, at 2.

140. See Lowville ZBA, *supra* note 84, at 2.

D. An Intermunicipal Agreement Establishing Kendall, Yates, Carlton (KYC) — Lake Ontario Cooperative Waterfront Board

An interesting example of an intermunicipal agreement entered into before the enactment of the 1992 statutes<sup>141</sup> is “An Intermunicipal Agreement Establishing Kendall, Yates, Carlton (KYC) Lake Ontario Cooperative Waterfront Board” (hereinafter “KYC”).<sup>142</sup> This agreement, entered into eight years before the enactment of the 1992 statutes,<sup>143</sup> is unique because it created a co-operative board to draft and implement a Waterfront Revitalization Program.<sup>144</sup> This is one of the few agreements enacted prior to the 1992 statutes<sup>145</sup> that shows an incentive to protect natural resources.

There were four participating municipalities, Orleans County and the Towns of Kendall, Yates and Carlton.<sup>146</sup> This 1984 agreement established a Cooperative Board to create and oversee a Local Waterfront Revitalization Program (hereinafter “LWRP”).<sup>147</sup> It set forth the extent of the authority granted to the board as well as the functions it was required to perform.<sup>148</sup> The committee’s duties included: the preparation of the LWRP on behalf of the towns involved;<sup>149</sup> authorization to seek “technical and planning assistance”<sup>150</sup> from the Orleans County Planning and Development Department;<sup>151</sup> providing reports to participating communities regarding the planning and research done by the Cooperative Board;<sup>152</sup> and the recommendation of ways to revitalize the waterfront.<sup>153</sup>

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141. See N.Y. GEN. CITY LAW § 20-g (McKinney 1989 & Supp. 1992); N.Y. TOWN LAW § 284 (McKinney 1987 & Supp. 1992); N.Y. VILLAGE LAW § 7-741 (McKinney 1995); and N.Y. GEN. MUN. LAW § 119-u (McKinney 1985 & Supp. 1992).

142. KYC, *supra* note 86.

143. See N.Y. GEN. CITY LAW § 20-g (McKinney 1989 & Supp. 1992); N.Y. TOWN LAW § 284 (McKinney 1987 & Supp. 1992); N.Y. VILLAGE LAW § 7-741 (McKinney 1995); and N.Y. GEN. MUN. LAW § 119-u (McKinney 1985 & Supp. 1992).

144. See KYC, *supra* note 86.

145. See N.Y. GEN. CITY LAW § 20-g (McKinney 1989 & Supp. 1992); N.Y. TOWN LAW § 284 (McKinney 1987 & Supp. 1992); N.Y. VILLAGE LAW § 7-741 (McKinney 1995); and N.Y. GEN. MUN. LAW § 119-u (McKinney 1985 & Supp. 1992).

146. See KYC, *supra* note 86.

147. See KYC, *supra* note 86, at 1.

148. See KYC, *supra* note 86.

149. See KYC, *supra* note 86.

150. KYC, *supra* note 86, at 1.

151. See KYC, *supra* note 86.

152. See KYC, *supra* note 86, at 1.

153. See KYC, *supra* note 86.

This agreement delineated in extensive detail the construction of operations for the newly created Cooperative Board.<sup>154</sup> Some of the operations considered and decided upon by the drafters of the agreement included the appointment of a fiscal agent,<sup>155</sup> the production of an annual report detailing the activities of the Board,<sup>156</sup> and how the Cooperative Board and the LWRP may be terminated.<sup>157</sup> This agreement was created eight years before the legislature enacted statutes permitting the application of intermunicipal agreements to land use topics.<sup>158</sup> The KYC agreement demonstrates the ability of municipalities to enter into agreements to regulate just about anything.<sup>159</sup> This agreement was before its time because it found power within the 1960 statutes<sup>160</sup> that other communities did not utilize until the introduction of the 1992 statutes.<sup>161</sup>

#### E. Horizons Waterfront Commission Intermunicipal Cooperation Agreement

The Towns of Brant, Evans, Hamburg, and Tonawanda; the Cities of Lackawanna, Buffalo, and Tonawanda; the County of Erie; and the Niagara Frontier Transportation Authority entered into the "Horizons Waterfront Commission Intermunicipal Cooperation Agreement" (hereinafter "Horizons Waterfront")<sup>162</sup> in 1988. The primary objective of this agreement was the "protection of Erie County's ninety miles of waterfront"<sup>163</sup> as an important area for the revitalization of that region.<sup>164</sup> The municipalities realized there were many economic opportunities available to them

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154. See KYC, *supra* note 86.

155. See KYC, *supra* note 86, at 2.

156. See KYC, *supra* note 86.

157. See KYC, *supra* note 86.

158. See N.Y. GEN. CITY LAW § 20-g (McKinney 1989 & Supp. 1992); N.Y. TOWN LAW § 284 (McKinney 1987 & Supp. 1992); N.Y. VILLAGE LAW § 7-741 (McKinney 1995); and N.Y. GEN. MUN. LAW § 119-u (McKinney 1985 & Supp. 1992).

159. See generally KYC, *supra* note 86.

160. See N.Y. GEN. MUN. LAW §§ 119-o, 239-n (McKinney 1985 & Supp. 1992) (allowing intermunicipal agreements in a more general manner than the 1992 statutes). See KYC, *supra* note 86.

161. See N.Y. GEN. CITY LAW § 20-g (McKinney 1989 & Supp. 1992); N.Y. TOWN LAW § 284 (McKinney 1987 & Supp. 1992); N.Y. VILLAGE LAW § 7-741 (McKinney 1995); and N.Y. GEN. MUN. LAW § 119-u (McKinney 1985 & Supp. 1992).

162. See Horizons Waterfront Commission Intermunicipal Cooperation Agreement (1988) [hereinafter Horizons Waterfront] (on file with the author).

163. *Id.* at 1.

164. See *id.*

through the preservation of this area.<sup>165</sup> The municipalities also realized the need for cooperation among themselves in order to preserve and efficiently reap the benefits of a waterfront area attractive to tourists and the members of surrounding communities.<sup>166</sup> The communities wanted to achieve six goals by way of this agreement. The goals were:

1. The development, adoption and updating of a Master Plan for Erie County's waterfront.
2. Receiving and distributing state, federal and other funds to carry out waterfront development projects.
3. The designation of a lead agency to carry out specific development projects.
4. The coordination of the activities of all governmental entities in the development of the waterfront.
5. Acting as a developer of last resort when a development project cannot be effectively and appropriately carried out by a local entity.
6. Coordinating and focusing private investment and development efforts.<sup>167</sup>

This agreement extensively describes the Commission's voting members and how the fifteen members are to be chosen.<sup>168</sup> The primary project set before the Commission was the development of a master plan for the waterfront. The agreement details what should be included in the plan, the number of votes needed for approval of the plan, and the process for amendment of the plan.<sup>169</sup>

The termination date of this agreement was set for December 31, 1999.<sup>170</sup> However, the termination came much sooner than

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165. Some of the opportunities listed in the agreement are "recreational, housing, commercial, industrial, transportation and other uses." *Id.* at 1.

166. "[T]he Parties mutually agree that the only way to properly plan and implement the multi-year, multi-million dollar development and redevelopment of the waterfront is through a unified planning and implementation process." *Id.* at 1.

167. *Id.* at 1-2.

168. Seven of the members are appointed by the County Executive, three members appointed by the Mayor of Buffalo, two appointments by the Governor of New York State, one by the Buffalo Common Council, one by the Erie County Legislature and one appointment by the Niagara Frontier Transportation Authority. The chairman of the Commission was to be appointed by the Governor of New York State. *See Horizons waterfront, supra* note 162.

169. *See Horizons Waterfront, supra* note 162.

170. *See Horizons Waterfront, supra* note 162, at 5.

the municipalities expected<sup>171</sup> because Governor George Pataki determined that the preservation of the waterfront was better left to a newly created economic development office.<sup>172</sup> The elimination of the Commission was met with opposition in the participating communities.<sup>173</sup> The County Executive was quoted in an article as stating, "the governor doesn't understand what the waterfront means to this community, and the potential it holds."<sup>174</sup> Even those participating in the agreement were opposed to the dissolution of the Commission. An article on the editorial page approximately three weeks later supported Pataki's decision to transfer the responsibility of the preservation of the waterfront out of the hands of the Commission.<sup>175</sup> Lawrence Brooks, the author of this editorial, considered the Horizons Waterfront "a well-intentioned experiment that wasn't too successful and deserve[d] to be ended."<sup>176</sup> His attendance at the Horizons Waterfront meetings revealed that the Commission was not planning to enhance the waterfront for the residents of the communities but to create a "tourist trap."<sup>177</sup> The members of the community had voiced suggestions regarding the development of the waterfront and how they felt it should be designed.<sup>178</sup> A month after the announcement that Horizons Waterfront was being dissolved, however, another concerned citizen voiced his opinion on the editorial page.<sup>179</sup> This citizen felt that the Commission deserved a chance because solid plans "have emerged . . . for what should be done with the waterfront, a neglected community asset."<sup>180</sup> This person's view of how the Commission handled community suggestions, making

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171. See Jon R. Sorensen, *Pataki to Scrap Horizons Panel New Development Office will Handle Waterfront*, BUFF. NEWS, Mar. 3, 1995, at 1, available in 1995 WL 5449994.

172. See *id.*

173. See *id.*

174. *Id.* at 1.

175. See Lawrence M. Brooks, *Horizons Panel Didn't Do Its Job, Deserves to be Terminated*, BUFF. NEWS, Mar. 28, 1995, at 1, available in 1995 WL 5460928.

176. *Id.* at 1.

177. "Instead we [the residents of the participating communities] get plans for a tourist trap that will cost a family of four \$50 for an afternoon (if they don't stop at the obligatory cafeteria and gift shop) and one for which they'll have to pay to park." *Id.* at 2.

178. The article states that citizens in attendance at the meetings repeatedly requested free parking and footpaths by the water. See Lawrence M. Brooks, *Horizons Panel Didn't Do Its Job, Deserves to be Terminated*, BUFF. NEWS, Mar. 28, 1995, at 2, available in 1995 WL 5460928.

179. See Editorial, *Who Will Save Horizons? Regional Waterfront Agency Deserves Survival*, BUFF. NEWS, Apr. 8, 1995, available in 1995 WL 5467853.

180. See *id.* at 2.

“public access to the water’s edge a guiding priority,”<sup>181</sup> is contrary to the opinion expressed by Lawrence Brooks.<sup>182</sup> Regardless of the views expressed by concerned citizens, Horizons Waterfront ceased to exist at the urging of Governor Pataki, almost seven years after the parties drafted the agreement.

#### F. Smithtown

In 1989, an “Integrated Municipal Review of Actions Located within Coastal Area Law” (hereinafter “Smithtown”)<sup>183</sup> was entered into between the Town of Smithtown, and the Villages of Head of the Harbor and Nissequoque.<sup>184</sup> This agreement intended to “foster a cooperative relationship between [the participating municipalities] to provide for coordinated review and efforts of actions located within the coastal areas so that they could advance policies, standards, and conditions of their respective Local Waterfront Revitalization Programs.”<sup>185</sup> This agreement differs from the KYC agreement in that it provided for “integrated review of actions.”<sup>186</sup> The town and villages enacted the local law<sup>187</sup> to preserve and maintain the waterfront areas infringing on their borders.<sup>188</sup> The cooperation aspect of the agreement arose when one of the participating municipalities proposed an action.<sup>189</sup> The agreement outlined specific steps to be taken by both the proposing and reviewing municipalities.<sup>190</sup> The steps to be taken by the proposing municipality include:

1. a full description of the nature and location of the action;
2. stipulation of dates and times of hearings, meetings, and review and comment periods;
3. exchange of coastal assessment forms, environment assessment forms including copies of applications and supportive documentation;

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181. *See id.*

182. *See Brooks, supra* note 175.

183. *See* Integrated Municipal Review of Actions Located within Coastal Area Law (June 1989) [hereinafter Smithtown] (on file with the author).

184. *See id.*

185. *Id.* at 1.

186. *Id.*

187. *See* SMITHTOWN, N.Y., LOCAL LAW ch. 52 (1978).

188. *See* Smithtown, *supra* note 183.

189. *See* Smithtown, *supra* note 183, at 2.

190. *See* Smithtown, *supra* note 183.

4. time limitation — as early in the planning stages as possible or in the alternative at least thirty days prior to the reviewing municipality's decision on the action.<sup>191</sup>

This notification enabled the reviewing board to determine if the proposed action was in the best interest of the communities and to determine if the action would directly conflict with any existing policies or standards in the LWRP.<sup>192</sup> The Smithtown agreement acts more like a check and balance system on neighboring communities, rather than a direct cooperative effect among them.

Since this agreement was also enacted prior to the 1992 statutes,<sup>193</sup> the backbone of the agreement differs from those created today. Home Rule permitted municipalities to govern themselves as they saw fit within their own boundaries.<sup>194</sup> In this agreement, the communities regulate the independent activities of the communities, but do not cooperatively plan how the waterfront should be preserved and maintained.<sup>195</sup> This is an example of the potential for confusion in the communities; they have the right to exercise Home Rule, yet at the same time the area to be preserved extends beyond that power. In order to remedy the potential conflicting regulations of the waterfront, these three communities decided to review the proposed action in an objective manner.<sup>196</sup> The communities did not create a new entity exclusively for the LWRP; instead, they retained their own respective boards, which reviewed the proposed actions originating in the other communities.<sup>197</sup>

#### G. DeKalb – Richville Site Plan Review Law

In 1991, the Town of DeKalb and the Village of Richville passed a "Site Plan Review Law" (hereinafter "DeKalb-Richville"),<sup>198</sup> consolidating their two planning boards into one co-

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191. See Smithtown, *supra* note 183, at 2.

192. See Smithtown, *supra* note 183, at 3.

193. See N.Y. GEN. CITY LAW § 20-g (McKinney 1989 & Supp. 1992); N.Y. TOWN LAW § 284 (McKinney 1987 & Supp. 1992); N.Y. VILLAGE LAW § 7-741 (McKinney 1995); and N.Y. GEN. MUN. LAW § 119-u (McKinney 1985 & Supp. 1992).

194. See Interview with John R. Nolon, Professor of Law at Pace University School of Law, in White Plains, N.Y. (Feb. 26, 1999).

195. See Smithtown, *supra* note 183.

196. See Smithtown, *supra* note 183, at 4.

197. See Smithtown, *supra* note 183, at 3.

198. See DeKalb-Richville, *supra* note 88.

operative board<sup>199</sup> to review applications applicable to both the Town and the Village.<sup>200</sup> This agreement differs from the previously enacted agreements in that the Town of DeKalb incorporated this joint venture between itself and the Village of Richville into its local law.<sup>201</sup> The law is extensively detailed in terms of the requirements, functions, and specifications of the planning board,<sup>202</sup> including: how the scope of permissible authority is granted to the board,<sup>203</sup> when a site plan should be considered expired,<sup>204</sup> and the selection and term duration of the planning board members.<sup>205</sup>

#### IV. Intermunicipal Agreements Enacted Between 1992 and 1993

Following the enactment of the 1992 statutes,<sup>206</sup> which codified and refined existing practices of municipalities, local legislatures began to understand that cooperation is required in order to preserve vital natural resources and areas of interest.<sup>207</sup> Municipalities began to see the impacts of the ability to self-regulate. While Home Rule authority was sufficient to permit each community to regulate as it deemed appropriate, there were areas that needed preservation and attention extending beyond the individual community borders. The need for cohesion in the preservation of historic districts and environmentally significant areas gave rise to the increased use of intermunicipal agreements to address and accommodate those growing concerns.

##### A. Mianus River Watershed Resolution

In 1992, the towns of Bedford, Greenwich, North Castle, Pound Ridge, and Stamford entered into the "Mianus River Wa-

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199. See DeKalb-Richville, *supra* note 88, at 43.

200. See DeKalb-Richville, *supra* note 88, at 44.

201. See DeKalb-Richville, *supra* note 88, at 1.

202. The law is divided into seven articles; (1) General Provisions, (2) Applicability, (3) Procedure, (4) Public Hearing and Planning Board Decision, (5) Review Standards, (6) Administration, (7) Miscellaneous Provisions. See *id.*

203. See DeKalb-Richville, *supra* note 88, at 44.

204. See DeKalb-Richville, *supra* note 88, at 48.

205. See DeKalb-Richville, *supra* note 88, at 43.

206. N.Y. GEN. CITY LAW § 20-g (McKinney 1989 & Supp. 1992); see N.Y. TOWN LAW § 284 (McKinney 1987 & Supp. 1992); see N.Y. VILLAGE LAW § 7-741 (McKinney 1995); and see N.Y. GEN. MUN. LAW § 119-u (McKinney 1985 & Supp. 1992).

207. See Interview with John R. Nolon, Professor of Law at Pace University School of Law, in White Plains, N.Y. (Feb. 26, 1999).

tershed Resolution" (hereinafter "Mianus River").<sup>208</sup> The purpose of this agreement was the promotion of bioregional watershed protection.<sup>209</sup> This agreement demonstrates the same incentive utilized in the KYC IMA<sup>210</sup> almost eight years before, but the originality of this agreement was not as stark as that of KYC.<sup>211</sup> This agreement was entered into at a time when the awareness of the importance of the environmental resources was well established.<sup>212</sup> There is some uniqueness, however, encompassed in this agreement in that the participating municipalities were from different states; Greenwich and Stamford in Connecticut and Bedford, North Castle and Pound Ridge in New York.<sup>213</sup> By crossing state lines, these towns demonstrated that the need for multi-governmental cooperation extends beyond those neighboring communities within the same state. Although this particular agreement set forth in detail the reasons behind the creation of the agreement,<sup>214</sup> the procedures used to accomplish the preservation of the Mianus River are markedly absent.<sup>215</sup> The agreement does not provide for an amendment procedure or for standards to be set at a later date.

## B. Dunkirk and Fredonia Water Services Agreement

The topic of the 1993 agreement between the Village of Fredonia and the City of Dunkirk was the sharing of a public water supply.<sup>216</sup> In the "Contract Between City of Dunkirk and Village of Fredonia Water Services" (hereinafter "Dunkirk-Fredonia"),<sup>217</sup> the City expanded its public water supply to serve the Village.<sup>218</sup> In exchange for the water, the Village provided and maintained the necessary equipment to access the water from the City's supply.<sup>219</sup> The agreement had a term of five years<sup>220</sup>

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208. See Mianus River, *supra* note 86.

209. See Mianus River, *supra* note 86, at 2.

210. See KYC, *supra* Part III.D.

211. See KYC, *supra* Part III.D.

212. See Interview with John R. Nolon, Professor of Law at Pace University School of Law, in White Plains, N.Y. (Feb. 26, 1999).

213. See Mianus River, *supra* note 86.

214. See Mianus River, *supra* note 86, at 1.

215. This agreement lists ten reasons for the creation of the agreement yet there is nothing to indicate a plan of action as to the preservation of this area. See *id.* at 2.

216. See Dunkirk-Fredonia, *supra* note 94.

217. See Dunkirk-Fredonia, *supra* note 94.

218. See Dunkirk-Fredonia, *supra* note 94.

219. See Dunkirk-Fredonia, *supra* note 94, at 2-3.

220. The agreement began on January 1, 1993 and terminated on December 31, 1997. See Dunkirk-Fredonia, *supra* note 94, at 2.

with the opportunity for renewal for another five-year block so long as both parties consented to the renewal of the terms of service.<sup>221</sup> While the subject of the agreement appears to be simple in nature, the parties created a detailed agreement, including thirty-five separate clauses<sup>222</sup> and topics previously absent from intermunicipal agreements.<sup>223</sup> Interestingly, it includes sections addressing indemnification, violations, and nonsignificant violations.<sup>224</sup> Section Seventeen of Dunkirk-Fredonia sets out the indemnification agreement as follows:

1. The Village shall save harmless and indemnify and defend the City from any claims, suits, damages or causes of action arising or resulting from the Village's negligent use of the City water filtration facilities.

2. The City shall not be responsible for, or liable for, failure to provide adequate water filtration facilities or services, provided such failure is permitted by this contract.

3. The City shall save harmless and indemnify and defend the Village from any claims, suits, damages or causes of action arising, or resulting, from the City's negligence with respect to the conveyance of water to the Village.<sup>225</sup>

The drafters of this agreement considered many possibilities and instances in an effort to make the agreement as comprehensive as was practicable, and in an effort to prevent situations arising from the project not addressed in the agreement.<sup>226</sup>

### C. Forestville-Chautauqua Water Resource Development

The Village of Forestville sought out the services of the Chautauqua County Department of Health Division of Environmental

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221. See Dunkirk-Fredonia, *supra* note 94, at 1.

222. See Dunkirk-Fredonia, *supra* note 94.

223. See Dunkirk-Fredonia, *supra* note 94.

224. See Dunkirk-Fredonia, *supra* note 94. Section Twenty-One covers "Non-significant Violations." It specifies what these violations are and how the parties shall deal with them:

1. A nonsignificant violation by the Village of the City water use legislation shall not be grounds for termination of this contract. The City recognizes that nonsignificant violations may occur.

2. Nonsignificant violation means a violation, which does not interfere with the water filtration plant operation or process or create any hazard.

3. The Village shall take all necessary measures to correct any such violation.

Dunkirk-Fredonia, *supra* note 94, at 9.

225. Dunkirk-Fredonia, *supra* note 94, at 7.

226. See generally Dunkirk-Fredonia, *supra* note 94.

Services in 1992, to evaluate the quality and the quantity of the Village's water supply.<sup>227</sup> This intermunicipal agreement, entitled "Water Resource Development" (hereinafter "Forestville-Chautauqua")<sup>228</sup> allowed the Village to utilize the County's services that were beyond the scope of the Village's resources.<sup>229</sup> The Village and the County agreed that the County would provide services including: stream gauging,<sup>230</sup> investigation of springs,<sup>231</sup> and drill piezometers<sup>232</sup> for the collection of data pertinent to the evaluation of problems in the Village's water supply.<sup>233</sup> The Village monetarily compensated the County for its services during the four-month duration of the agreement.<sup>234</sup>

#### D. Nunda Joint Planning Board and Joint Zoning Board of Appeals

Similar to the 1991 agreement between the Town of DeKalb and the Village of Richville,<sup>235</sup> the Town of Nunda and the Village of Nunda (hereinafter "Nunda") drafted a local law agreeing to the creation of a joint planning board and a joint zoning board of appeals.<sup>236</sup> The specifications drafted in this agreement are similar in nature to those found in the Town of DeKalb and the Village of Richville,<sup>237</sup> regarding how the members were appointed, which municipalities chose the members, the term of the membership, and the steps taken to occupy a vacancy.<sup>238</sup> Provision Two grants removal power to the Town of Nunda for those members appointed by the town.<sup>239</sup>

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227. See Forestville-Chautauqua, *supra* note 84.

228. See Forestville-Chautauqua, *supra* note 84.

229. See Forestville-Chautauqua, *supra* note 84.

230. See Forestville-Chautauqua, *supra* note 84, at 1-2.

231. See Forestville-Chautauqua, *supra* note 84, at 2.

232. See Forestville-Chautauqua, *supra* note 84.

233. See Forestville-Chautauqua, *supra* note 84, at 1.

234. See Forestville-Chautauqua, *supra* note 84, at 2.

235. See DeKalb-Richville, *supra* Part III.G.

236. See Nunda, *supra* note 23, at 1 (authorizing the creation of "a joint Zoning Board of Appeals with the Village of Nunda") (1993) and Local Law No. 2 for the Town of Nunda (authorizing the creation of "a joint Planning Board with the Village of Nunda") See *id.*

237. See DeKalb-Richville, *supra* Part III.G.

238. See Nunda, *supra* note 23, at 2.

239. See Nunda, *supra* note 23, at 7.

V. Intermunicipal Agreements Enacted From 1994 to the present

A. Castile-Perry

Responding to the need for the preservation of natural resources and open space, the Town of Castile, the Village of Castile and the Village of Perry created an amendment to "Local Law No. 1 of the Year 1970 Zoning Regulations" (hereinafter "Castile-Perry").<sup>240</sup> The communities agreed to draft amendments to their current zoning regulations for the protection of agricultural uses, the preservation of open spaces, and the prevention of inordinate concentration of population within the communities.<sup>241</sup>

B. Historic River Towns of Westchester Intermunicipal Agreement

The Historic River Towns of Westchester County, New York Intermunicipal Agreement (hereinafter "Historic River Towns")<sup>242</sup> was designed to protect a specific area of interest.<sup>243</sup> In 1994, ten municipalities entered into a cooperative agreement to preserve the river towns located in that area.<sup>244</sup> The motivating factor for the creation of the Historic River Towns of Westchester Intermunicipal Agreement was economic in nature.<sup>245</sup> The communities began to feel the aftereffects of the economic recession including the corporate merger of General Foods and Philip Morris,<sup>246</sup> the downsizing of IBM,<sup>247</sup> and the closing of the General Motors plant.<sup>248</sup> The purpose of the agreement focused on ways to increase tourism and economic enhancement to the Lower Hudson Valley Area (LHVA).<sup>249</sup> This intermunicipal agreement lists seven goals to be accomplished by the creation of the Historic River Towns:

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240. See A Local Law Amending Local Law No. 1 of the year 1970 Zoning Regulations (Sept. 1994) [hereinafter Castile-Perry] (on file with the author).

241. See *id.* at I-2.

242. See Historic River Towns, *supra* note 73.

243. The signatories were the mayors of the Villages of Croton-on-Hudson, Ossining, North Tarrytown, Tarrytown; the supervisors of the towns of Ossining and Cortlandt, the city manager of Peekskill, the president of Historic Hudson Valley, the village manager of Hastings-on-Hudson, and the administrator of the village of Irvington. See Historic River Towns, *supra* note 73, at 5.

244. See Historic River Towns, *supra* note 73.

245. See Historic River Towns, *supra* note 73.

246. See Historic River Towns, *supra* note 73, at 1.

247. See *id.* Historic River Towns, *supra* note 73, at 2.

248. See Historic River Towns, *supra* note 73, at 2.

249. See Historic River Towns, *supra* note 73, at 3.

(a) To promote intermunicipal cooperation by and between the signatories<sup>250</sup> to this agreement.

(b) To build the local economy of the Lower Hudson Valley area through public-private partnership.

(c) To enhance and promote tourism in the Lower Hudson Valley area.

(d) To increase public awareness of features and benefits of local destinations.

(e) To improve methods of transportation to tourist sites in the Lower Hudson Valley area.

(f) To develop a comprehensive marketing plan for the tourist sites and the communities wherein they are located in the Lower Hudson Valley area.

(g) To recommend improvement of . . . tourist sites . . . .<sup>251</sup>

This agreement, in contrast to the Smithtown<sup>252</sup> agreement, encourages the municipalities to work as a cohesive unit to achieve an underlying common goal, namely the preservation of the river towns in an effort to increase economic gains through tourism.<sup>253</sup> By utilizing their newfound power under the 1992 statutes,<sup>254</sup> the communities collaborated to create an overlay district for the Historic River Towns.<sup>255</sup> All of these communities could have regulated their own riverfront areas separately, however by joining forces the revenue granted to the group will be greater than the sum of its parts. The IMA also permits the communities to determine the best way to achieve the common goal of attracting people to come to their areas. By working as a unit, these communities can formulate numerous different strategies for the promotion of tourism. These ideas will eventually boil down to a select few that will be the most efficient and most likely to produce the desired results. This agreement was conceived only two years after the enactment of the statutes,<sup>256</sup> when the formula for the intermunicipal agreement was far from perfected. The

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250. See *supra* note 243 and accompanying text.

251. See Historic River Towns, *supra* note 73, at 3-4.

252. See Smithtown, *supra* note 183.

253. See Historic River Towns, *supra* note 73.

254. See N.Y. GEN. CITY LAW § 20-g (McKinney 1989 & Supp. 1992); N.Y. TOWN LAW § 284 (McKinney 1987 & Supp. 1992); N.Y. VILLAGE LAW § 7-741 (McKinney 1995); and N.Y. GEN. MUN. LAW § 119-u (McKinney 1985 & Supp. 1992).

255. See Historic River Towns, *supra* note 73, at 4.

256. See N.Y. GEN. CITY LAW § 20-g (McKinney 1989 & Supp. 1992); N.Y. TOWN LAW § 284 (McKinney 1987 & Supp. 1992); N.Y. VILLAGE LAW § 7-741 (McKinney 1995); N.Y. GEN. MUN. LAW § 119-u (McKinney 1985 & Supp. 1992).

Historic River Towns designated an already existing entity to act as trustee of the finances generated for the project.<sup>257</sup> Later agreements have created entities exclusively for the management of funds raised for the underlying project.<sup>258</sup> This concerted effort by the participating municipalities was an early stab at the application of the new statutes.

### C. Manhasset Bay

The following year, 1995, twelve municipalities<sup>259</sup> drafted an intermunicipal agreement (hereinafter "Manhasset Bay") to preserve Manhasset Bay.<sup>260</sup> The communities recognized this area "as a vital coastal ecosystem essential to the environment and economic well-being of the people in the surrounding communities."<sup>261</sup> The conservation of Manhasset Bay as a "healthy and diverse marine ecosystem"<sup>262</sup> and a commercial and recreational region serves as the foundation for this intermunicipal agreement.<sup>263</sup> The communities became concerned about the status of Manhasset Bay as a result of pollution.<sup>264</sup> The collective body knew that something had to be done to safeguard the Bay from further degradation.<sup>265</sup> The agreement identifies some of the sources of pollution as "stormwater runoff, petroleum spills, industrial effluent, illegal dumping, floatable debris, and boat waste."<sup>266</sup>

The identification of the root of the problem lends itself to the next step required for the preservation of natural resources: how municipalities will curtail or prevent this behavior so as to reverse the existing damage and prevent similar damage in the future. The goals of this agreement focus primarily on the preservation of fishing and the protection of the surrounding tidal wetlands.<sup>267</sup> This committee had the responsibility of reviewing and assessing

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257. See Historic River Towns, *supra* note 73, at 4.

258. See, e.g., L.I. Sound, *supra* note 6; Irondequoit, *supra* note 6.

259. The County of Nassau, the Town of North Hempstead, and the Villages of Baxter Estates, Manorhaven, Port Washington North, Plandome, Plandome Heights, Great Neck, Thomaston, Kensington, Kings Point and Sands Point entered the Manhasset Bay Grant. See Manhasset Bay, *supra* note 86.

260. See Manhasset Bay, *supra* note 86, at 2.

261. Manhasset Bay, *supra* note 86.

262. Manhasset Bay, *supra* note 86.

263. See Manhasset Bay, *supra* note 86.

264. Manhasset Bay, *supra* note 86.

265. See Manhasset Bay, *supra* note 86.

266. Manhasset Bay, *supra* note 86, at 2.

267. See Manhasset Bay, *supra* note 86.

the water quality as well as the wildlife habits in and around the Bay area.<sup>268</sup> The committee was also required to draft solutions to existing problems and to create measures to prevent repeated problems in the future.<sup>269</sup> This agreement specifically designates goals for this committee, which involve the ecosystemic health of the Bay and surrounding tidal wetlands.<sup>270</sup> The Manhasset Bay Grant seeks to preserve a natural resource.<sup>271</sup> The conservation of this ecosystem must be a concerted effort on the parts of the communities holding land in and around the Bay.

The Manhasset Bay agreement demonstrates with extreme clarity the need for intermunicipal agreements. The area needing protection consists of a body of water and the surrounding land. In order for the preservation to be successful, all of the communities must be willing to participate in the maintenance and conservation of Manhasset Bay. What if one community decided to regulate its area of the Bay under its Home Rule authority and left the others to collectively agree on methods best suited for conservation? The time and expense of the committee comprised of the numerous municipalities may be for naught if the Home Rule municipality chooses to act in direct conflict with the committee. The unique qualities of a waterway require uniformity in its regulation. What if the Home Rule municipality does not fine individuals for illegal dumping, but the committee does? The impact of the inconsistency seems small at first blush. Enforcement of the regulation, however, would become tedious and not cost effective. Short of catching the illegal dumper in the act, how could one

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268. See Manhasset Bay, *supra* note 86.

269. See Manhasset Bay, *supra* note 86.

270. The goals of this committee are as follows:

improve the water quality of Manhasset Bay so that all waters of the Bay will consistently meet water quality standards for bathing, swimming and fishing;

improve the water quality of Manhasset Bay so that it will once again be classified as an area suitable for the harvesting of shellfish for human consumption; restore and enhance the surrounding tidal wetlands that serve to cleanse ecosystems; provide marine food production and wildlife habitat; offer opportunities for education, research and recreation; provide flood and storm control; and offer open space and aesthetic appreciation;

control and reduce point and nonpoint source pollution affecting the Bay and its environs; and

coordinate local coastal regulations so as to maximize protection and enhancement efforts to improve the quality of Manhasset Bay, its tributaries and wetlands.

See Manhasset Bay, *supra* note 86, at 3.

271. See Manhasset Bay, *supra* note 86.

prove that the dumping occurred within the area regulated by the committee and not the Home Rule community? Furthermore, the currents of the waterways would defeat the goal set forth by the committee. The Home Rule municipality continues to permit illegal dumping and the current takes the debris and chemicals to the communities participating in the committee defeating the purpose of the committee. This example might seem improbable, but it illustrates the necessity of collaboration by municipalities when the underlying goal is the preservation of natural resources.

#### D. Titicus River

In 1995, the Towns of Lewisboro and North Salem in the State of New York and the Town of Ridgefield in Connecticut collaborated with New York City for the preservation and protection of the Titicus River Watershed (hereinafter "Titicus River").<sup>272</sup> The communities desired increased water quality for the drinking water provided to New York City from the Titicus River.<sup>273</sup> This agreement provided a unique section regarding written statements released to the press,<sup>274</sup> providing that New York City would be given five days' notice of any release.<sup>275</sup> It also provided that New York City would have a thirty-day time period to review and comment on "publications, reports, and other written statements."<sup>276</sup> This agreement further set forth the responsibilities of the participating parties regarding liability, indemnification, and the renewal of the agreement.<sup>277</sup>

#### E. Intermunicipal Agreement Irondequoit Bay Management Project

In 1997, the Department of Environmental Conservation (DEC) signed on to an intermunicipal agreement.<sup>278</sup> The Irondequoit Bay Management Project (hereinafter "Irondequoit Bay")<sup>279</sup> combined the forces of the Monroe County, the Towns of Irondequoit, Penfield, and Webster, and the New York State Department

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272. See Titicus River Watershed (July 1995) [hereinafter Titicus River] (on file with the author).

273. See Titicus River, *supra* note 272.

274. See Titicus River, *supra* note 272, at 4.

275. See Titicus River, *supra* note 272.

276. See Titicus River, *supra* note 272, at 4.

277. See Titicus River, *supra* note 272, at 2,5.

278. See Irondequoit Bay, *supra* note 6.

279. See Irondequoit Bay, *supra* note 6.

of Environmental Conservation.<sup>280</sup> The agreement sets forth two separate goals of the Irondequoit Bay Coordinating Committee (hereinafter "IBCC"): to "[d]efine the purpose of the IBCC based on major issues or projects"<sup>281</sup> and to "[i]mprove the effectiveness of the IBCC."<sup>282</sup> There are seven purposes of the creation of the IBCC: (1) the development of a consistent vision for the Irondequoit Bay, (2) the minimization of conflicts between stakeholders in the IBCC, (3) the advocating of consistency among town codes and plans, (4) the bolstering of proactive resource management, (5) the education and enlightenment of the stakeholders as to the vision of the IBCC, (6) the identification of impacts on the Bay area and continual resource appraisal, and (7) the elevated accessibility to the Bay area by the public.<sup>283</sup> The methods for improved effectiveness of the IBCC include an effective review process, technical staff and assistance, efficiency of communications with participating agencies, increased credibility for the IBCC, and community feedback.<sup>284</sup> The DEC has three specific responsibilities within the IBCC,<sup>285</sup> two of which illustrate the need for cooperation from state agencies for the preservation of natural resources.<sup>286</sup> The DEC is responsible for educating committee members about "air, water and soil quality and fish and wildlife resources,"<sup>287</sup> as well as State Environmental Quality Review<sup>288</sup> (SEQR) regulations.<sup>289</sup> The DEC will play an important role in this intermunicipal agreement by conveying information to the communities participating in the agreement, enabling them to create an efficient preservation of the Bay area and conserve the resources in a manner consistent with the regulations set forth by the DEC.

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280. See Irondequoit Bay, *supra* note 6.

281. Irondequoit Bay, *supra* note 6, at 2.

282. Irondequoit Bay, *supra* note 6.

283. See Irondequoit Bay, *supra* note 6, Article II.

284. See Irondequoit Bay, *supra* note 6, Article III.

285. See Irondequoit Bay, *supra* note 6, at 3.

286. See Irondequoit Bay, *supra* note 6, at 3.

287. See Irondequoit Bay, *supra* note 6, at 3.

288. "The State Environmental Quality Review Act requires local legislatures and land use agencies to consider, avoid, and mitigate significant environmental impacts of the projects that they approve, the plans or regulations they adopt, and the projects they undertake directly." JOHN NOLON, *WELL GROUNDED* 445 (1st ed. 1998).

289. See Irondequoit Bay, *supra* note 6, at 3.

F. Long Island Sound Watershed Intermunicipal Council  
Intermunicipal Agreement

An intermunicipal agreement for the preservation of a watershed was drafted in 1998.<sup>290</sup> Eleven communities joined together under the Long Island Sound Watershed Intermunicipal Council (hereinafter "L. I. Sound")<sup>291</sup> to preserve and conserve the Long Island Sound.<sup>292</sup> This committee was interested in cleaning up the Long Island Sound and the surrounding area.<sup>293</sup> The goals set for this agreement are as follows:

- (1) a cleaner Long Island Sound,
- (2) the responsibility of protecting the Sound and the benefits of that protection,
- (3) curtailment of point and nonpoint source pollution,
- (4) decreasing existing pollution, and
- (5) preserving the open space and natural resources in and around the Sound.<sup>294</sup>

The agreement also delineates shared interests among the communities including the increased economic value of the business and industrial districts,<sup>295</sup> improvement of air and water quality,<sup>296</sup> reduction of noise and traffic,<sup>297</sup> open space and recreational opportunities,<sup>298</sup> and the "cultural, social, scenic, aesthetic, and historical assets of the area."<sup>299</sup> The results to be achieved by this committee include obtaining funding from county, state, and federal agencies,<sup>300</sup> and working with these agencies to create an intermunicipal agreement that is consistent with the plans and programs of the participating municipalities.<sup>301</sup> The underlying goal is the improvement of the quality of life for individuals resid-

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290. See L.I. Sound, *supra* note 6.

291. See L.I. Sound, *supra* note 6.

292. The communities in this agreement are the Cities of Mount Vernon, New Rochelle and Rye, the Town of Mamaroneck, the Town-Villages of Harrison and Scarsdale and the Villages of Larchmont, Mamaroneck, Pelham Manor, Port Chester and Rye Brook. See L.I. Sound, *supra* note 6.

293. See L.I. Sound, *supra* note 6.

294. See L.I. Sound, *supra* note 6, at 1.

295. See L.I. Sound, *supra* note 6, at 1.

296. See L.I. Sound, *supra* note 6, at 1.

297. See L.I. Sound, *supra* note 6, at 1.

298. See L.I. Sound, *supra* note 6.

299. L.I. Sound, *supra* note 6, at 1.

300. See L.I. Sound, *supra* note 6, at 2.

301. L.I. Sound, *supra* note 6.

ing in these communities.<sup>302</sup> The preservation of the Sound and the area surrounding it will also increase the economic well-being of these communities,<sup>303</sup> as well as the conservation of the area for wildlife.<sup>304</sup>

## VI. Comparison of Intermunicipal Agreements from Three Separate Categories: Pre-1992, 1992-93, and Post 1994

### A. Common Themes

The majority of the intermunicipal agreements share standard clauses or provisions. There are specific provisions that should be included in every agreement and some that are optional. The Department of the State of New York created the "James A. Coon Local Government Technical Series" (hereinafter "Coon Technical")<sup>305</sup> to assist local governments in various areas of the law. One of the issues addressed in this series is "Intergovernmental Cooperation."<sup>306</sup> This document has a section entitled "Illustrative Contract Clauses"<sup>307</sup> which gives examples of clauses common to intermunicipal agreements. The categories are: introductory clauses, parties, rationale, statutory authority, services provided or jointly performed, financial arrangements, and indemnification.<sup>308</sup> The style and inclusion of clauses and provisions can vary greatly from agreement to agreement. For example, Nunda Planning<sup>309</sup> is only one page in length whereas Dunkirk-Fredonia<sup>310</sup> is fifteen pages long. The amount of detail and preparation that municipalities put into their agreements is a matter of preference. Some clauses could be considered "boilerplate" or common to all intermunicipal agreements.

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302. See L.I. Sound, *supra* note 6, at 1.

303. See L.I. Sound, *supra* note 6.

304. See L.I. Sound, *supra* note 6, at 1.

305. NEW YORK STATE DEP'T OF STATE, JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES, INTERGOVERNMENTAL COOPERATION (1998).

306. *Id.* at 1.

307. NEW YORK STATE DEP'T OF STATE, JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES, INTERGOVERNMENTAL COOPERATION 7 (1998).

308. See NEW YORK STATE DEP'T OF STATE, JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES, INTERGOVERNMENTAL COOPERATION 8-12 (1998).

309. See Nunda, *supra* note 23.

310. See Dunkirk-Fredonia, *supra* note 94.

### 1. Standard Introduction Clauses

The Coon Technical<sup>311</sup> provides that agreements should begin with “whereas clauses which identify the parties, the rationale for entering into the agreement, the problem and its proposed solution, and the statute under which the particular type of agreement is authorized.”<sup>312</sup> Each of these topics must be included in an intermunicipal agreement in order for it to be an effective document. Omission of one of these elements will render the agreement confusing and difficult to understand. To draft a comprehensive, understandable agreement, municipalities must include introductory clauses giving the reader and the participants a clear, concise understanding of the parties involved, the purposes of the agreement, and the authority for the agreement.

### 2. Participating Parties

The first requirement of the introductory clauses is to specify which parties will be participating in the agreement. All of the agreements discussed in this comment list the municipalities collaborating in the agreement, with the exception of the Tug Hill agreement.<sup>313</sup> That agreement allows for the addition of other municipalities through its amendment process.<sup>314</sup> The participants could potentially vary depending on the interest demonstrated by municipalities not originally included in the agreement.<sup>315</sup> This agreement specifically sets forth which municipalities are participating and the end of the document where the representatives sign on to the agreement.<sup>316</sup>

### 3. The Purpose Underlying the Agreement

The municipalities entering into an intermunicipal agreement should clearly state the “reason for which the agreement is entered into or the problem which the agreement hopes to solve.”<sup>317</sup> Intermunicipal agreements can be created for almost any underlying purpose. The agreements considered in this com-

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311. See NEW YORK STATE DEP'T OF STATE, JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES, INTERGOVERNMENTAL COOPERATION (1998).

312. *Id.* at 8.

313. See Tug Hill, *supra* note 113.

314. See Tug Hill, *supra* note 113.

315. See Tug Hill, *supra* note 113.

316. See Tug Hill, *supra* note 113, at 3.

317. NEW YORK STATE DEP'T OF STATE, JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES, INTERGOVERNMENTAL COOPERATION 8 (1998).

ment range from a shared planning board<sup>318</sup> to the protection of the entire Long Island Sound.<sup>319</sup> An example of a purpose clause is found in the Dunkirk-Fredonia agreement: "the City is an owner of a water filtration plant and water system and has a supply of water in excess of its public utility service obligations and is willing to sell a portion of such excess water supply to the Village."<sup>320</sup> A more simplistic clause can be found in the L.I. Sound agreement.<sup>321</sup> The goal established by the participating municipalities was "a cleaner Long Island Sound and . . . the protect[ion of] the watershed of Long Island Sound."<sup>322</sup> Sometimes when the purpose is obvious, the municipalities exclude this section altogether. In the Nunda<sup>323</sup> and Lowville<sup>324</sup> agreements, the municipalities consolidate their planning boards and zoning boards of appeals. None of these agreements includes a purpose section;<sup>325</sup> perhaps the consolidation of the boards is the only purpose they intend to achieve. They could have included financial reasons or convenience as an underlying purpose, but they chose to omit this section entirely.

The Historic River Towns,<sup>326</sup> Manhasset Bay<sup>327</sup> and Mianus River<sup>328</sup> agreements describe the background for the creation of the agreement. In Historic River Towns, the closing of plants in the area decreased the economic returns from the nearby communities.<sup>329</sup> They decided, therefore, in an effort to recover from the financial hardship created by the closing of the local plants, to revitalize the waterfront to attract tourism and in turn economic gain.<sup>330</sup> In Manhasset Bay, the purpose of the agreement was the preservation of the Bay "as a vital coastal ecosystem essential to the environmental and economic well being of the people in the surrounding communities and a Center of Historic Maritime Activity."<sup>331</sup> The agreement further describes specific problems

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318. See Nunda, *supra* note 23.

319. See L.I. Sound, *supra* note 6.

320. See Dunkirk-Fredonia, *supra* note 93, at 1.

321. See L.I. Sound, *supra* note 6.

322. See L.I. Sound, *supra* note 6, at 1.

323. See Nunda, *supra* note 23.

324. See Lowville Planning, *supra* note 23.

325. See generally Nunda, *supra* note 23; Lowville Planning, *supra* note 23.

326. See Historic River Towns, *supra* note 73.

327. See Manhasset Bay, *supra* note 86.

328. See Mianus River, *supra* note 88.

329. See Historic River Towns, *supra* note 73.

330. See Historic River Towns, *supra* note 73.

331. See Manhasset Bay, *supra* note 86.

faced in that area<sup>332</sup> and interests to be protected.<sup>333</sup> The Mianus River<sup>334</sup> agreement had similar objectives to those of Manhasset Bay.<sup>335</sup> The preservation of the river as the “sole source of drinking water”<sup>336</sup> was the primary concern. This agreement also details extensively what is to be protected and how those goals are to be achieved.<sup>337</sup>

The purpose of the agreement may be as elaborate or simple as the parties choose to make it. What they are trying to achieve through the intermunicipal agreement may dictate the length and detail of the purpose section of the agreement. This section details why the agreement is being created and how the end shall be attained.

#### 4. Delegation of Authority

Some variation occurs as to how each group of municipalities approaches different topics. One of the predominant concerns when drafting an intermunicipal agreement is the delegation of responsibility for the actions to be achieved through the agreement.<sup>338</sup> Coon Technical provides that “[p]lanned services should be set forth as specifically as possible so that each of the parties is fully aware of its duties and responsibilities under the agreement.”<sup>339</sup>

#### 5. Entities Created Within an Intermunicipal Agreement

Some agreements include a provision for the creation of a new entity. For example, Tug Hill,<sup>340</sup> KYC,<sup>341</sup> Horizons Waterfront,<sup>342</sup> DeKalb,<sup>343</sup> Historic River Towns,<sup>344</sup> Manhasset Bay,<sup>345</sup> and L.I.

332. Some of the problems include; petroleum spills, illegal dumping and boat waste. *See* Manhasset Bay, *supra* note 86.

333. Interests to be protected include; water quality, wildlife habitats, and enhancement of the quality of the wetlands. *See* Manhasset Bay, *supra* note 86.

334. *See* Mianus River, *supra* note 88.

335. *See* Manhasset Bay, *supra* note 86.

336. *See* Mianus River, *supra* note 88, at 1.

337. *See* Mianus River, *supra* note 88, at 1.

338. *See* NEW YORK STATE DEPT OF STATE, JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES, INTERGOVERNMENTAL COOPERATION 9 (1998) (“Services provided or jointly performed”).

339. *Id.*

340. *See* Tug Hill, *supra* note 113.

341. *See* KYC, *supra* note 86.

342. *See* Horizons Waterfront, *supra* note 162.

343. *See* DeKalb-Richville, *supra* note 88.

344. *See* Historic River Towns, *supra* note 73.

345. *See* Manhasset Bay, *supra* note 86.

Sound<sup>346</sup> all created a board or committee to be responsible for the execution of objectives underlying the intermunicipal agreement. The separate entities created by each of these agreements are as different as the primary reasons for the drafting of the agreements. The Tug Hill Planning Board consisted of "two individual members from each municipality appointed by the appropriate town board."<sup>347</sup> The KYC<sup>348</sup> agreement reflects the membership appointment set out in Tug Hill.<sup>349</sup> The members of both the Tug Hill Planning Board and the KYC Board elected its own officers.<sup>350</sup> L.I. Sound<sup>351</sup> decided to compose its "Long Island Sound Watershed Intermunicipal Council" (hereinafter "Council")<sup>352</sup> in the same manner set forth in the Tug Hill<sup>353</sup> and KYC<sup>354</sup> agreements.<sup>355</sup> However, the L.I. Sound agreement does not provide the Council with the authority to appoint its own officers.<sup>356</sup>

In contrast, the Horizons Waterfront<sup>357</sup> designed a Commission consisting of fifteen voting members,<sup>358</sup> and an eighteen member non-voting group of members including "representatives from the economic development agencies from each of the parties, and other County-wide public agencies, business groups, and certain state agencies."<sup>359</sup> The Horizons Waterfront permits people who are not directly involved in the participating municipalities to make contributions to the objectives and procedures encompassed in the agreement.<sup>360</sup> However, the members not elected from within the municipalities are not permitted to vote on the issues to be passed by the Commission.<sup>361</sup> This panel of representatives

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346. See L.I. Sound Watershed, *supra* note 6.

347. See Tug Hill, *supra* note 113.

348. See KYC, *supra* note 86.

349. The KYC Board was "comprised of two individual members from each town appointed by the respective Town Board, and one County representative to be appointed by the Orleans County Legislature." KYC, *supra* note 86, at 1; see also Tug Hill, *supra* note 113, at 1.

350. See Tug Hill, *supra* note 113, at 1; see also KYC, *supra* note 86, at 1.

351. See L.I. Sound, *supra* note 6.

352. See Historic River Towns, *supra* note 73.

353. See Tug Hill, *supra* note 113.

354. See KYC, *supra* note 86.

355. See L.I. Sound, *supra* note 6, at 2.

356. See L.I. Sound, *supra* note 6.

357. See Horizons Waterfront, *supra* note 163.

358. See *supra* note 168.

359. See Horizons Waterfront, *supra* note 163, at 2.

360. See Horizons Waterfront, *supra* note 163.

361. See Horizons Waterfront, *supra* note 163.

remains at a set number and is not determined by the number of municipalities participating in the agreement.

A third potential approach for the appointment of members on an entity created within the power of the intermunicipal agreement is demonstrated in the Manhasset Bay<sup>362</sup> and Historic River Town<sup>363</sup> agreements. These committees permitted each of the signatories to appoint one member to the committee<sup>364</sup> and board.<sup>365</sup> The size of the committees depends on the number of participating municipalities. These committees have the potential to be smaller than those previously mentioned requiring two member appointments per participant.<sup>366</sup> The reasoning behind the allocation of members to municipalities stems from the fact that each community will be equally represented and the committee will not be controlled or overpowered by a dominant municipality.

A final approach, used by DeKalb-Richville,<sup>367</sup> allows municipalities to determine a small set number of members to be appointed to the board.<sup>368</sup> In this agreement, three members of the board must reside in the Town of DeKalb and two must reside in the Village of Richville.<sup>369</sup> The five member board serves staggered terms, the three DeKalb members serve one, three and five year terms whereas the two Richville members serve two and four years.<sup>370</sup> By allowing the Richville members to serve longer terms than the first two DeKalb representatives, the agreement compensates for the additional member provided to DeKalb. The Planning Board created by the DeKalb-Richville agreement is required to have an uneven number of members to avoid an even split in the voting processes. Since there are only two participants in this agreement, one of them had to sacrifice a member on the board in

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362. See Manhasset Bay, *supra* note 86.

363. See Historic River Towns, *supra* note 73.

364. "The town and each of the twelve separate municipalities shall appoint one representative to the Manhasset Bay Protection Committee." See Manhasset Bay, *supra* note 86, at 3.

365. "A representative of each signatory of this agreement shall constitute the Board." See Historic River Towns, *supra* note 73, at 2.

366. See, e.g., L.I. Sound, *supra* note 6; KYC, *supra* note 86.

367. See DeKalb-Richville, *supra* note 87.

368. See DeKalb-Richville, *supra* note 87.

369. See DeKalb-Richville, *supra* note 87.

370. See DeKalb-Richville, *supra* note 87.

order to conform to the standards required for planning boards in New York State.<sup>371</sup>

The ability of the municipalities to determine who should be responsible for executing the objectives of the agreement is an important element that should be included in each intermunicipal agreement. By omitting this provision, the intermunicipal agreement may be implemented in an inefficient and ineffective manner, defeating the attractiveness of cooperation among the communities. Without this provision, the municipalities may be unsure as to what role they are required to play. Further, without the "delegation of authority" clause, municipalities may unknowingly duplicate required measures and omit others entirely, in effect defeating the primary purpose of the intermunicipal agreement.

## 6. Responsibility Vested in Already Existing Entities

The parties to the Irondequoit Bay agreement used a committee already established to oversee the objectives of the agreement.<sup>372</sup> The municipalities agreed to the continued use of "the Irondequoit Bay Coordinating Committee as an advisory committee whose mission is to coordinate, among the various levels of government . . . all levels of public and private use of the area, and to develop, recommend and monitor, related policies."<sup>373</sup> Other municipalities merely appointed one of the participants, or a collective group of the participants, as the body responsible for the execution of the agreements. In Dunkirk-Fredonia,<sup>374</sup> the parties designated the responsibilities of the Village in a separate section from that which specified the responsibilities of the City.<sup>375</sup> There was no need for the creation of a separate entity because the City agreed to provide services to the Village in return for compensation.<sup>376</sup> The Forestville-Chatauqua<sup>377</sup> agreement is substantially similar to the Dunkirk-Fredonia<sup>378</sup> agreement in that both stipulated that the County would provide services to the Village in ex-

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371. "Planning Boards must consist of five to seven members." MARY E. MOHNACH & KATHRYN M. RYAN, *WELL GROUNDED DESKBOOK FOR LAWYERS AND PLANNERS* 118 (1st ed. 1998).

372. See Irondequoit Bay, *supra* note 6.

373. Irondequoit Bay, *supra* note 6, at 1.

374. See Dunkirk-Fredonia, *supra* note 94.

375. See Dunkirk-Fredonia, *supra* note 94.

376. See Dunkirk-Fredonia, *supra* note 94.

377. See Forestville-Chautauqua, *supra* note 84.

378. See Dunkirk-Fredonia, *supra* note 94.

change for monetary compensation.<sup>379</sup> Other communities have combined the resources of participating municipalities into a collective body for the purposes of the agreement. For example, Titicus River collectively refers to the participating towns as the "Cooperative."<sup>380</sup> The Flint Creek agreement also clumped the participating counties into a collective group called "Sponsoring Local Organization."<sup>381</sup> The Nunda Planning<sup>382</sup> and Nunda ZBA<sup>383</sup> merely designated the Town as the party responsible for the execution of the agreement.<sup>384</sup>

## 7. Contribution of Funds

Each intermunicipal agreement requires some kind of financial support. Depending on what the agreement purports to accomplish, the funds will be allocated accordingly. The City participant in Titicus River would not pay more than \$9,975 in furtherance of the agreement,<sup>385</sup> and the Cooperative<sup>386</sup> would contribute the remainder of the \$17,453 required for the agreement.<sup>387</sup> The Flint Creek agreement<sup>388</sup> outlines in extensive detail how the financing of the project was to be divided between the Sponsoring Local Organization and the Service.<sup>389</sup> Only four other agreements set forth the financial responsibilities of the municipalities participating in the agreements. Manhasset Bay provides that the collective municipalities shall contribute \$70,000.<sup>390</sup> The Historic River Towns municipalities were required to contribute \$1,000 per year "to help with associated costs of this group."<sup>391</sup> The finance section of the KYC agreement<sup>392</sup>

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379. See Forestville-Chautauqua, *supra* note 84.

380. The municipalities referred to as the Cooperative are the Towns of Lewisboro, North Salem, and Ridgefield. See Titicus River, *supra* note 272.

381. The Ontario County Board of Supervisors, Yates County Legislature, Ontario County Soil and Water Conservation District, Yates County Soil and Water Conservation District, Steuben County Soil and Water Conservation District were the participants referred to as the Sponsoring Local Organization. See Flint Creek, *supra* note 92, at 1.

382. See Nunda, *supra* note 23.

383. See Nunda, *supra* note 23.

384. See Nunda, *supra* note 23.

385. See Titicus River, *supra* note 272.

386. See *supra* note 382.

387. See Titicus River, *supra* note 272, at 2.

388. See Flint Creek, *supra* note 92.

389. See *supra* notes 110-111.

390. See Manhasset Bay, *supra* note 86.

391. See Manhasset Bay, *supra* note 86.

392. See KYC, *supra* note 83.

designates the fiscal agent, specifies the budget request deadline, and provides that Orleans County will contribute forty percent of the total cost of the project.<sup>393</sup> The Tug Hill agreement provides for the appointment of a fiscal agent and the submission of a budget.<sup>394</sup> If the budget of the project exceeded funding received from grants, the municipalities were required to make contributions sufficient to cover the additional costs.<sup>395</sup> The remaining intermunicipal agreements do not outline where or how the funding for the projects will come from.<sup>396</sup>

## B. Differences Among the Agreements

The agreements entered under the authority of the 1960 statutes<sup>397</sup> differ from the later agreements in that their underlying objectives and goals are much more simplistic.<sup>398</sup> The later agreements show creativity and understanding of how powerful intermunicipal agreements can potentially become. The earlier agreements sharing planning boards and zoning boards illustrate the municipalities' reluctance to extend their authority beyond their own borders. By reaching across municipal lines, the later agreements demonstrate a heightened awareness of the need for cohesiveness within the State of New York.<sup>399</sup>

Although the 1976 agreement for the protection of the Flint Creek Watershed<sup>400</sup> included many boilerplate provisions, some areas were lacking. The detail with which this agreement was drafted does not allow the agreement to be effectively put into action. The majority of the agreement provides for the acquisition of land and the percentage of costs incurred by each of the parties. It lacks a delegation of authority for decision-making processes arising in conjunction with the agreement.<sup>401</sup> Similarly, the Tug Hill<sup>402</sup> agreement entered into in 1981 was adequate on paper, but when the municipalities put the theory to practice they realized its problems. This agreement is unique because the municipali-

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393. See KYC, *supra* note 86, at 2.

394. See Tug Hill, *supra* note 113.

395. See Tug Hill, *supra* note 113.

396. See, e.g., Nunda, *supra* note 23; Lowville Planning *supra* note 23; DeKalb-Richville, *supra* note 88.

397. See N.Y. GEN. MUN. LAW §§ 119-o, 239-n (McKinney 1985 & Supp. 1992).

398. See, e.g., Nunda, *supra* note 23; Tug Hill, *supra* note 113.

399. See, e.g., L.I. Sound, *supra* note 6; Historic River Towns, *supra* note 73.

400. See Flint Creek, *supra* note 92.

401. See Flint Creek, *supra* note 92.

402. See Tug Hill, *supra* note 113.

ties amended the agreement ten years after its enactment to conform to the objectives the municipalities felt should be at the heart of the agreement. By amending the original agreement, Tug Hill fine-tuned the agreement to fit the needs of the communities rather than trying to adjust the needs to the agreement.

Following the introduction of the 1992 statutes<sup>403</sup> permitting intermunicipal agreements with respect to land use issues, agreements like Nunda Planning<sup>404</sup> and Nunda ZBA<sup>405</sup> were still clinging to the restrictive authority of the 1960 statutes.<sup>406</sup> The Mianus River<sup>407</sup> agreement tested the waters for the later agreements conserving and preserving watersheds, wetlands, and other land use concerns arising within the communities. The Dunkirk-Fredonia<sup>408</sup> and Forestville<sup>409</sup> agreements paired municipalities that needed and provided water filtration services and hydrologic evaluation respectively.

The increased use of intermunicipal agreements after 1994 illustrates the creativity and involvement the parties were willing to exercise for the preservation of areas extending across municipal borders. The Historic River Towns agreement<sup>410</sup> joined the financial and land resources of nine communities to create an area attractive to tourists. In turn, this agreement helped restore the economies of the participating municipalities and averted a potentially serious recession as the result of corporation departure from that area.<sup>411</sup> By encouraging more municipalities to collaborate on more expansive agreements, the use of the intermunicipal agreements in the area of land use demonstrates that there are efficient and effective alternatives to regulation in isolation. The expansion and enhancement of Home Rule through the implementation of intermunicipal agreements completes the metamorphic process of Home Rule, allowing municipalities within New York State to cooperate and collaborate on the preservation and management of their own municipalities.

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403. See N.Y. GEN. CITY LAW § 20-g (McKinney 1989 & Supp. 1992); N.Y. TOWN LAW § 284 (McKinney 1987 & Supp. 1992); N.Y. VILLAGE LAW § 7-741 (McKinney 1995) (The General Municipal Law was not enacted until the following year, 1993); See also N.Y. GEN. MUN. LAW § 119-u (McKinney 1985 & Supp. 1992).

404. See Nunda, *supra* note 23.

405. See Nunda, *supra* note 23.

406. See N.Y. GEN. MUN. LAW §§ 119-o, 239-n (McKinney 1985 & Supp. 1992).

407. See Mianus River, *supra* note 88.

408. See Dunkirk-Fredonia, *supra* note 94.

409. See Forestville-Chautauqua, *supra* note 84.

410. See Historic River Towns, *supra* note 73.

411. See Historic River Towns, *supra* note 73.

## VII. Conclusion

Municipalities have a wealth of power at their fingertips when they implement an intermunicipal agreement. Regulation of anything is possible, even things not already jointly regulated by communities participating in intermunicipal agreements. Municipalities can now use intermunicipal agreements to enhance the powers delegated to them almost four decades ago with the introduction of statutes permitting intermunicipal agreements. The increased use of agreements in recent years demonstrates community awareness of resources requiring protection and preservation, as well as efficient and economically advantageous agreements for the collaboration on a planning board or the preservation of an historic district. The future of intermunicipal agreements is only as large as the municipalities in New York State choose to make it.

By creating a cohesive unit to regulate issues common to one region, municipalities can learn to cooperate with one another and exchange potentially important ideas that would remain silent without the benefit of collaboration. The implementation of intermunicipal agreements within a State may benefit municipalities beyond the participants in the agreement. By demonstrating that an area can be preserved through an intermunicipal agreement, other municipalities with similar areas or concerns may use the pre-existing agreement as a template or a guide. The guidance provided by pre-existing intermunicipal agreements can give rise to new ideas, unrealized aspects, or omissions that are of great importance. The metamorphosis of Home Rule through the cocoon of intermunicipal agreements may create a beautiful butterfly yet: establishing a cohesive State with the ability to preserve, protect and efficiently regulate those precious areas requiring more than individual attention.