

INTERLOCAL AGREEMENTS FOR HISTORIC PRESERVATION IN GEORGIA

by

Samuel Trenholm Myers

(Under the Direction of James K. Reap)

ABSTRACT

All across the United States, local governments have chosen to enact protections for their historic resources. However, a survey of local historic preservation commissions indicates that merely seventy percent of these commissions have citywide jurisdiction. Eleven percent of these commissions operate at a county or parish level, and only one percent of the surveyed commissions operate at a regional level. There is a pressing need for the expansion of the existing legal framework to protect the historic resources that slip through the jurisdictional cracks. Intergovernmental agreements and other multi-governmental approaches to historic preservation may provide an effective tool for the preservation of these and many more resources. There is great potential for the use of interlocal agreements for historic preservation in Georgia.

INDEX WORDS: Interlocal, Intergovernmental,
Interjurisdictional, Historic, Preservation,
Thesis, Agreement, Contract, Cooperation, Georgia

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Samuel Trenholm Myers

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Samuel Trenholm Myers

Major Professor: James K. Reap

Committee: John C. Waters
Melvin B. Hill
W.R. Bruce Lonnee

Electronic Version Approved:

Maureen Grasso
Dean of the Graduate School
The University of Georgia
May 2009

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CHAPTER 1

INTRODUCTION

The conventional view among analysts of urban politics now seems to be that cities have "relative autonomy." [citation omitted] They are subject to large structural forces over which they have little effective power given the limited reach of their jurisdiction. At the same time, they possess some degree of agency to move things in one direction or another . . .¹

A similar story can be told of countless communities across the nation. The City of Sampletown has preserved a unique historic resource, which is now an important component of the community's heritage and economy. Yet, across the street and just beyond the city limits, loom a bulldozer and a developer with an eye for incongruous development. Consider another scenario. The City of Anywhere has established and managed a successful historic preservation program. Yet, just beyond the city's jurisdiction, important rural resources are neglected and endangered by sprawling development. These endangered historic resources may be part of a larger, regional cultural landscape or might consist of isolated landmarks under the threat of

¹David J. Barron and Gerald E. Frug, *Symposium: Democracy in Action: The Law & Politics of Local Governance: Defensive Localism - A View from the Field*, 21 J. L. & POLITICS 261, 266 (Summer 2005).

demolition. Too often, these historic resources, which are outside jurisdictional boundaries, go unprotected.²

All across the United States, local governments have chosen to enact protections for their historic resources.³ However, a survey of local historic preservation commissions indicates that merely seventy percent of these commissions merely have citywide jurisdiction.⁴ Eleven percent of these commissions operate at a county or parish level, and only one percent of the surveyed commissions operate at a regional level.⁵ With so many commissions of limited jurisdiction, many historic resources are simply just beyond the jurisdictional reach of current commissions.

There is a pressing need for the expansion of the existing legal framework to protect the historic resources that slip through the jurisdictional cracks. Fortunately, there are a variety of tools currently available to local governments for resolving this issue. Intergovernmental agreements and other multi-governmental approaches to historic preservation may provide an effective tool for the preservation of these and many more resources. In fact, intergovernmental agreements for

² The United States Preservation Commission Identification Project (USPCIP), 1998 Executive Summary, 1 (1998), *available at* <http://www.uga.edu/napc/programs/napc/pdfs/uspcip98.pdf> (identifying a need for preservation planning to address sprawl and other intergovernmental issues).

³ A HANDBOOK ON HISTORIC PRESERVATION LAW 30 (Christopher J. Duerksen, ed., 1983).

⁴ Commission Identification Project, *supra* note 2. In fact, a portion of these communities have less-than-citywide jurisdiction.

⁵ *Id.* at 10.

historic preservation offer communities several important advantages, such as: economy of scale; efficiency; coordinated economic development; and better protection of large multi-jurisdictional resources.

This thesis will introduce and analyze intergovernmental agreements and their potential adaptation to historic preservation. Chapter Two will briefly introduce the legal mechanisms and authority for intergovernmental agreements. Chapter Three will outline some of the legal and practical difficulties of these agreements. Chapter Four will introduce and analyze current multi-governmental approaches to historic preservation. Chapters Five and Six will discuss the potential for intergovernmental agreements for historic preservation in Georgia. Chapter Seven presents one application of interlocal agreements for historic preservation: a joint historic preservation commission. Finally, Chapter Eight will review the presented material and propose areas of additional research. The Appendices include selected provisions from jurisdictions that currently share a joint historic preservation commission and an example of an interlocal agreement for preservation services.

CHAPTER 2

THE BASICS OF INTERGOVERNMENTAL AGREEMENTS

The concept of intergovernmental cooperation is very broad. Intergovernmental cooperation can generally be described as the development of working relationships across formal, legal jurisdictional boundaries; a process which may involve many different types of public and non-public organizations.⁶ Intergovernmental agreements are simply one way in which governments may achieve this cooperation.⁷ Intergovernmental agreements are "typically created at the administrative level and ratified by one or more participating jurisdictions."⁸ This thesis will focus on two types of intergovernmental agreements: less-formal interlocal agreements (or "cooperative agreements") and contracts between local governments (or "interlocal contracts").⁹

⁶ See Robert Agranoff and Michael McGuire, *A Jurisdiction Based Model of Intergovernmental Management in U.S. Cities*, 28 PUBLIUS 1, 3 (Autumn 1998) (citing Robert Agranoff, INTERGOVERNMENTAL MANAGEMENT: HUMAN SERVICES PROBLEM SOLVING IN SIX METROPOLITAN AREAS, 182 (1986) (describing intergovernmental management in much the same way).

⁷ See William C. Seyler, *Intergovernmental Relations in America Today*, 416 ANNALS AM. ACAD. POL. & SOL. SCI. 158 (Nov. 1974) (for a thorough discussion of the emergence of intergovernmental cooperative agreements and contracts in the U.S.).

⁸ Kurt Thurmaier and Curtis Wood, CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES, 116 (2004).

⁹ The scope of this thesis is entirely domestic and does not reference examples of international agreements or treaties. Similarly, the thesis does not delve into the complex realm of intergovernmental or interagency arrangements that are strictly financial in nature.

As Professor Laurie Reynolds aptly observed, “[a]ll intergovernmental cooperative efforts operate against a backdrop of state enabling authority.”¹⁰ This authority may stem from state constitutional provisions, from court-inferred municipal home rule powers, or from general state enabling legislation.¹¹ Moreover, this power can be broadly granted, or given with significant restrictions.¹²

Local governments have used this authority to enter into many different kinds of intergovernmental agreements and contracts. Generally, intergovernmental cooperative agreements can be grouped into four categories: contracts for services; joint provisions of services; agreements creating a new unit of government; and burden-sharing agreements.¹³ The most common types of agreements are cooperative efforts to provide “public works and utilities, public safety, health and welfare, finance and general government.”¹⁴

¹⁰ Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, 78 WASH. L. REV. 93, 119 (February 2003).

¹¹ *Id.* at 119-120.

¹² *Id.* at 120 (identifying, inter alia, the nondelegation doctrine, public purpose requirements, and the primacy of other provisions of state law as potential limitations on governmental flexibility to enter into such agreements). See also, David J. Barron and Gerald E. Frug, *SYMPOSIUM: Democracy in Action: The Law & Politics of Local Governance: Defensive Localism: A View of the Field From the Field*, 21 J. L. & POLITICS 261, 284 (Summer 2005) (“ . . . many interlocal agreements require state approval, if only because the underlying action that localities wish to pursue is not one that the home rule grant clearly permits.”)

¹³ Reynolds, *supra* note 10, at 122-123 (citing Advisory Commission on Intergovernmental Relations, *State and Local Roles in the Federal System* 327 (1982), and Clayton P. Gillette, *Regionalization and Interlocal Bargains*, 76 N.Y.U.L. REV. 190, 194 (2001)).

¹⁴ Thurmaier & Wood, *supra* note 8, at 116.

For example, communities in Pennsylvania have entered into cooperative agreements for a variety of governmental services including healthcare and hospitals, libraries, water supply, fire and police protection, tax collection and recreation.¹⁵ Communities across the country have also used intergovernmental authority to consolidate city and county governments.¹⁶ Communities have also created many sub-state regional councils to coordinate planning, technical and financial assistance for their representative local governments.¹⁷

The National Association of Regional Councils estimates that there are currently around thirty-nine thousand local, general purpose governments in the United States.¹⁸ Proponents of intergovernmental agreements maintain that such agreements provide communities with greater efficiency in the provision of services, increased economies of scale and a reduction of governmental fragmentation.¹⁹ Scholars suggest that such intergovernmental cooperation is especially common in areas like local economic development.²⁰ This thesis will show that,

¹⁵ Seyler, *supra* note 7, at 162.

¹⁶ *Id.*

¹⁷ National Association of Regional Councils, What is a Regional Council, available at <http://narc.org/regional-councils-mpos/what-is-a-regional-council.html> (last visited January 19, 2009).

¹⁸ *Id.*

¹⁹ Seyler, *supra* note 7, at 161-163.

²⁰ See Robert Agranoff and Michael McGuire, *The Intergovernmental Context of Local Economic Development*, 30 STATE & LOCAL GOV'T REV. 150, 161-162 (1998) (presenting a study that establishes the importance of both vertical and horizontal intergovernmental transactions to local economic development,

although there are currently relatively few interlocal agreements for historic preservation, there are strong arguments in favor of this greater intergovernmental cooperation in historic preservation.

especially at times when federal financial and technical assistance are limited).

CHAPTER 3

THE PRACTICAL DIFFICULTIES OF INTERGOVERNMENTAL AGREEMENTS

Though intergovernmental agreements have great potential for a myriad of purposes, they are not without their complications. However, most of the problems associated with intergovernmental agreements are similar to those one usually associates with contracting in general.²¹ Governments that seek to enter cooperative agreements are plagued by such familiar contracting obstacles as transaction costs, enforcement, and divisions of surplus.²²

Yet, there are other problems that apply specifically to intergovernmental contracts. Transaction costs in the intergovernmental context are best described as the "comparative costs of planning, adapting, and monitoring task completion under alternative governance structures."²³ Municipal governments have much less flexibility than private parties to adjust structurally and organizationally in order to reduce transaction costs.²⁴ Moreover, communities have a fixed geographical locality, which limits the number of potential

²¹ Clayton P. Gillette, *Regionalization and Interlocal Bargains*, 76 N.Y.U.L. REV. 190, 213 (2001).

²² *Id.* at 213-216.

²³ Oliver E. Williamson, *Transaction Cost Economics*, in HANDBOOK OF INDUSTRIAL ORGANIZATION, VOLUME I, 142 (R. Schmalensee and R. Willig, eds. 1989).

²⁴ Gillette, *supra* note 21, at 216.

contracting partners and increases the likelihood of obstructive strategic behavior.²⁵ Though bilateral monopolies also inhibit private-party contracting, they are more germane to neighboring communities with a fixed locality.²⁶ If the relationship between neighboring communities sours, these communities are more likely to engage in obstructive strategic behavior. Unlike a private party or firm, cities and counties may not have the luxury of choosing more cooperative neighbors.

Additionally, local governments may often have multiple and conflicting objectives.²⁷ The more heterogeneous a community is, the greater the likelihood that community objectives will be conflicting.²⁸ As Professor Gillette notes, intergovernmental service contracts tend to occur between communities that are more or less homogenous.²⁹ Heterogeneous communities may be unable to find the necessary common ground to enter into intergovernmental agreements.

Another barrier to intergovernmental cooperation is the high costs of information-sharing prior to and during contracting. Scholars suggest that all parties should be aware

²⁵ *Id.* at 216.

²⁶ *Id.*

²⁷ *Id.* at 217.

²⁸ *Id.*

²⁹ *Id.* Professor Gillette submits that these practical and legal costs of intergovernmental contracts are often overlooked as significant impediments. *Id.* at 271. He further argues that less formal interlocal bargains may be one way in which communities can cooperate and avoid such costs. *Id.*

of the potential benefits and costs of collaboration.³⁰ However, economic and demographic heterogeneity among participating jurisdictions may exacerbate informational asymmetry where one population has access to greater information about a particular type of service delivery.³¹ For example, a larger municipality may have had a preservation commission for a number of years, while smaller, outlying municipalities within the same county may not know of the benefits and costs of such a commission.³² Information costs also increase as the distance between collaborators increases and as the number of collaborators increase.³³ For example, it may be administratively difficult to survey a large county for historic and cultural resources, particularly where there are many small jurisdictions within that county.

Heterogeneity may also cause a community to be very selective of its partnerships and only enter into agreements that significantly advance its own interests.³⁴ This kind of selective cooperation can lead to regional disparities, particularly where more affluent metropolitan communities

³⁰ Richard C. Feilock, *Collective Action and Local Government Collaboration*, in *BIG IDEAS IN COLLABORATIVE PUBLIC MANAGEMENT*, 198, 195-210, (Lisa Blomgren Bingham and Rosemary O'Leary, eds. 2008).

³¹ *Id.*

³² As with many aspects of preservation, this lack of adequate preservation information is fertile ground for the education and outreach efforts of the state historic preservation office, a statewide historic preservation organization and other nonprofit organizations.

³³ *Id.*

³⁴ Reynolds, *supra* note 10, at 156.

contract to share resources to the exclusion of less affluent communities.³⁵ For example, recent studies show that there is "more cooperation among economically and socially similar urban communities than among dissimilar urban communities."³⁶

Perhaps one of the most salient complications of intergovernmental agreements is local government suspicion of regional cooperation.³⁷ Local governments are often skeptical of state-mandated regional planning and of regional "supergovernments" that might supersede local land use decisions.³⁸ This suspicion is particularly obstructive to regional planning in states with a strong "home rule" doctrine.³⁹ "Home rule" typically describes a legal system in which local governments are given the authority to "legislatively frame and adopt their own organizational structures."⁴⁰

³⁵ *Id.* at 127. See also Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985 (July 2000) (detailing how localism may benefit the affluent minority at the expense of a fragmented majority).

³⁶ Clayton P. Gillette, *Symposium: Democracy in Action: The Law & Politics of Local Governance: The Conditions of Interlocal Cooperation*, 21 J. L. & POLITICS 365, 381 (Spring/Summer 2005).

³⁷ Douglas R. Porter, *Land Use Law Reform Symposium: State Growth Management: The Intergovernmental Experiment*, 13 PACE L. REV. 481, 482 (Fall 1993). See also Seyler, *supra* note 7, at 162 (finding that one of the greatest disadvantages to intergovernmental cooperation is its dependence upon local elected officials to continue such arrangements).

³⁸ Porter, *supra* note 37, at 482.

³⁹ John R. Nolon, *Symposium: Grassroots Regionalism Through Intermunicipal Land Use Compacts*, 73 ST. JOHN'S L. REV. 1011, 1012 (Fall 1999) (observing that municipal independence may engender political opposition that can only be overcome if regional processes respect the role of local government in land use decisions).

⁴⁰ Perry Sentell, *Special Contribution: The Georgia Home Rule System*, 50 MERCER L. REV. 99, 103 (Fall 1998).

Such broad authority may be cautiously guarded by local governments suspicious of agreements that appear to inhibit or curb these "home rule" powers. In a recent study of interlocal cooperation, Professors David J. Barron and Gerald E. Frug observed that "officials . . . expressed concern that such collective action might worsen their already precarious competitive position, or they feared that residents would conclude that they had been snookered by the other parties to any agreement they reached."⁴¹ This suspicion caused local government officials to forego even financially beneficial agreements "for fear that they might benefit competitor localities even more."⁴²

The suspicion of regional cooperative efforts and concern for the loss of local control may be exacerbated where adjacent communities have a documented history of competition for resources. Cities often compete to provide the best and most attractive mix of goods and services at the lowest cost in order to attract taxpaying residents and employers.⁴³ Professor Clayton P. Gillette noted that ". . . the primary obstacles to cooperation are the costs of reaching an enforceable agreement

⁴¹ Barron & Frug, *supra* note 1, at 283.

⁴² *Id.* In fact, the authors noted that some officials "were very aware that land use controls by neighbors affected their communities . . . [yet] . . . seemed to regard home rule as the right to impose such externalities on neighbors, even if that meant also being subjected to other's externalities themselves." *Id.*

⁴³ See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956) (arguably one of the most influential works of local government theory).

that would allow subsidizers confidently to predict that their contributions would be dedicated to the advance of regional welfare."⁴⁴ Local governments may suspect that any contributions may be used to advance the competitive advantage of their neighbors rather than to the advantage of the region as a whole.⁴⁵

Professor Gillette argues that this obstacle to interlocal cooperation is best overcome by publicizing the decisions regarding the use of any contributions or allowing each contributor to be "represented in the decision making [sic] process."⁴⁶ Other scholars indicate that effective monitoring of intergovernmental cooperative efforts may reduce interlocal suspicion.⁴⁷ For example, an intergovernmental agreement may establish a way for parties to quantitatively measure performance or activity through an audit or similar monitoring mechanism.⁴⁸

Relevance to Cooperation in Historic Preservation

A few of the practical difficulties discussed above have particular relevance to historic preservation. Though some local governments may be suspicious of any regional cooperative

⁴⁴ Gillette, *supra* note 36, at 382.

⁴⁵ *Id.*

⁴⁶ *Id.* at 389-390.

⁴⁷ Feiock, *supra* note 30, at 200.

⁴⁸ *Id.* This monitoring may be particularly difficult if the service to be shared between governments involves "nontangible outputs or complex production processes." *Id.* at 201. However, intergovernmental agreements for historic preservation do not involve either nontangible outputs or complex production processes.

effort, this suspicion should be mitigated by the fact that interlocal agreements are completely voluntary in nature. Neighboring communities are not forced into any agreement because each negotiating party will play an active role in setting the scope of the cooperation.

Some communities may lack the political will and interest to sponsor their own preservation programs. This disinterest would certainly extend to a cooperative venture with neighboring communities. Other communities may suffer from a lack of understanding of the benefits of preservation or may be misinformed about how preservation actually works. The costs of educating and sharing information in these situations may be a high barrier to any interlocal cooperative effort to preserve a shared resource.

Undoubtedly, interlocal competition may also prove to be a significant impediment to some intergovernmental agreements for historic preservation. Adjacent communities often compete with one another to attract development and as a consequence, tax revenue. Sometimes, this competition may spark a "race-to-the-bottom" in land use regulations. Neighboring communities may be tempted to loosen development codes and land use regulations in the hopes of attracting new growth and additional tax revenue. Accordingly, competing communities might choose to forego protections for historic and cultural resources.

Neighboring communities may also be suspicious that one community may commit to preservation on paper with no intention of fully enforcing or administering the agreed-upon protections. Rather than reduce their own competitive advantage for the good of the region, a community that is suspicious of the intentions of its partners may simply abstain from entering into interlocal preservation efforts.

Yet, rather than reaping the benefits of growth and development from a relaxation of development standards, communities are often faced with absorbing additional infrastructure burdens and other externalities. In fact, development in one jurisdiction often negatively impacts adjacent communities. In describing his community's complaints about a new business development in a neighboring municipality, one local government official stated:

Just to show the hypocrisy of the whole thing ... they'll get a lot of tax revenue ... [and] we'll bear a lot of the tax burden. Obviously, we'd like to get them to regionally share the cost of the traffic, but if it was flipped, we wouldn't want to.⁴⁹

For the reasons discussed below, intergovernmental cooperation is a more viable, long-term alternative to this winner-less competition. Historic resources located at the fringe of rapidly growing adjacent communities often bear a substantial amount of development pressure. Interlocal

⁴⁹ Barron & Frug, *supra* note 1, at 283.

agreements are one method of protecting these fringe resources and other important historic sites. Interlocal collaborative efforts help force local governments to internalize these "spillover problems" and other externalities.⁵⁰

⁵⁰ Feiock, *supra* note 30, at 197.

CHAPTER 4

THE CASE FOR INTERGOVERNMENTAL AGREEMENTS FOR HISTORIC PRESERVATION

Despite their difficulties, intergovernmental agreements offer many advantages to local governments, particularly in the land use arena.⁵¹ Many communities have recently begun to utilize this tool in order to reach beyond their jurisdictional constraints to coordinate land use management.⁵² Communities interested in greater protections for historic resources would certainly benefit from the use of intergovernmental agreements.

A large proportion of historic preservation activity in the United States today is a product of local government regulation.⁵³ Although Congress has established a procedural framework for federal and state agencies to consider the impact of their activities upon historic and cultural resources, it has not mandated widespread protection of these resources at the state or local level.⁵⁴ States have responded by passing

⁵¹ Nolon, *supra* note 39, at 1016-1018.

⁵² *Id.* (observing the increasing number of inter-municipal agreements among New York's political subdivisions to resolve land use problems).

⁵³ HISTORIC PRESERVATION LAW, *supra* note 3, at 30 (noting that although the federal and state governments provide financial assistance and a framework for local government action, most landmark protection occurs at the local level).

⁵⁴ See, e.g., 30 C.F.R. 800.1 (2009) (providing that federal agencies "take into account the effects of their undertakings on historic properties"). "Undertakings" are defined by the National Historic Preservation Act as: those activities actually carried out by the agency, activities carried out through federal financial assistance, activities requiring a federal permit

legislation that establishes state agencies to provide technical and financial assistance.⁵⁵ Many states have also granted powers to local governments to preserve historic resources through planning, zoning, acquisition and other mechanisms.⁵⁶ As mentioned above, thousands of local governments have used this authority to establish historic preservation programs and protections.⁵⁷

Yet, "home rule" powers are limited both by state-enabling legislation and jurisdictional constraints. Historic resources that lie between jurisdictions and resources that stretch just beyond local jurisdictions are often neglected. State or federal acquisition is not always a viable option for many historic resources because this is often cost prohibitive.⁵⁸ Rather, coordinated local action to regulate, acquire or manage these resources might be a more effective and efficient means of preservation. As this thesis will demonstrate, intergovernmental agreements offer communities four distinct

or license, or those activities which the federal agency delegates to state or local governments. National Historic Preservation Act, 16 U.S.C. 470w(7) (2009). Many activities that adversely affect historic resources slip through this review process because they do not involve federal permits or federal funding.

⁵⁵ HISTORIC PRESERVATION LAW, *supra* note 3, at 130.

⁵⁶ *Id.* See, e.g., Georgia Historic Preservation Act, O.C.G.A. §44-10-20 *et. al.* (2009) (setting minimum standards for local governments that regulate historic resources).

⁵⁷ *Supra* notes 1-5, and accompanying text.

⁵⁸ Stefano Bianca, *Direct Government Involvement in Architectural Heritage Management: Legitimation, Limits, and Opportunities of Ownership and Operation*, in PRESERVING THE BUILT HERITAGE: TOOLS FOR IMPLEMENTATION, 13, 21-23 (J. Mark Shuster *et. al.* eds., 1997).

advantages that can help fill the gaps of the existing federal, state and local preservation framework. Intergovernmental agreements can: coordinate economic development; protect large multi-jurisdictional resources; promote efficiency and economy of scale; and encourage regional comprehensive planning.

Coordinating Economic Development

First, intergovernmental agreements can be helpful in the pursuit of sub-state regional economic development.⁵⁹ Many communities have tapped into the economic benefits of historic preservation programs, especially heritage tourism.⁶⁰ Travel and tourism is now a major industry in the United States, contributing more than four-hundred billion dollars annually to the economy.⁶¹ Heritage and cultural tourism is rapidly becoming a major component of this travel industry. A 1997 survey indicated that almost sixty-six million Americans frequented an historic place or cultural event in the previous year.⁶² The survey further indicated that these historic and cultural travelers spent more money and more time away from home than the

⁵⁹ See generally HISTORIC PRESERVATION LAW, *supra* note 3, at 31 (noting that "preservation can succeed only if its goals become part of local growth and economic development policies.").

⁶⁰ See generally Genevieve P. Keller and J. Timothy Keller, *Preserving Important Landscapes*, in A RICHER HERITAGE: PRESERVATION IN THE 21ST CENTURY 187, 212-215 (Robert E. Stipe, ed. 2003) (noting the opportunities and dangers of heritage tourism to preservation).

⁶¹ Peter H. Brink, *Heritage Tourism in the U.S.A.: Grassroots Efforts to Combine Preservation and Tourism*, 29 APT BULLETIN 59, 59 (1998).

⁶² *Id.* at 60.

average traveler.⁶³ These high-spending travelers are an attractive resource for governments that are interested in developing tourism to replace jobs and economic opportunities that have disappeared in more traditional industries.

Though there are countless examples of individual success stories, there are also examples of regional success wherein communities have worked together to promote heritage tourism. One such example is the Historic River Towns Agreement ("HRTA") of Westchester County, New York.⁶⁴ The HRTA was formed in 1994 by ten municipalities in the Lower Hudson Valley in order to preserve the unique character of their towns and to promote tourism and other economic development of the area.⁶⁵ In the years before the HRTA, Westchester County had experienced dramatic economic decline, including the closure of several large industrial operations.⁶⁶ The HRTA set forth recommendations and a planning process whereby the municipal-members can coordinate economic development through a unified tourism and marketing strategy.⁶⁷ Although the agreement contains no specific design guidelines or allocation of land use

⁶³ *Id.* (citing *Profile of Travelers Who Participate in Historic and Cultural Activities: Results from the TravelScope Survey* (Travel Indus. Assoc. of Am. 1997)).

⁶⁴ See Mary E. Mohnach, Note, *Intermunicipal Agreements: The Metamorphosis of Home Rule*, 17 PACE ENVTL. L. REV. 161 (Winter 1999) (for an excellent overview of this and several other types of intermunicipal agreements in New York).

⁶⁵ *Id.* at 189.

⁶⁶ Telephone interview with Nancy Gold, Project Manager, Historic River Towns of Westchester County, New York. (March 15, 2007).

⁶⁷ *Id.*

authority to a centralized entity, the various jurisdictions regularly consult with one another to further the HRTA's purpose.⁶⁸ The HRTA strategy has been so successful that the agreement expanded in 2007 to encompass all of Westchester County.⁶⁹

Under the HRTA, the municipal-members initiated a Waterfront Revitalization Assistance Program ("WRAP") through a grant from the New York Department of State.⁷⁰ Pursuant to the WRAP, the municipal-members conducted an analysis of each municipality's assets and resources and have made specific recommendations for each town to strengthen and conserve its unique resources.⁷¹ Though there are no regulations for historic preservation in this intermunicipal agreement, the individual jurisdictions are encouraged to incorporate them into their toolkit.⁷²

In this way, the HRTA is more similar to the previously discussed "cooperative agreement,"⁷³ but it has been an effective means of combining historic preservation and heritage tourism to develop a comprehensive economic development plan at the county

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* See also Historic River Towns of Westchester, Waterfront Revitalization Assistance Program, <http://www.hudsonriver.com/rivertowns/wrap.htm> (last visited January 17, 2009).

⁷¹ Historic River Towns of Westchester, Waterfront Revitalization Assistance Program, <http://www.hudsonriver.com/rivertowns/wrap.htm> (last visited January 17, 2009).

⁷² *Supra* note 66.

⁷³ See *supra* note 9 and accompanying text.

level. Although the HRTA contains no provisions for breach of contract, the interlocal cooperative agreement operates as a memorandum of agreement among the municipal-members to coordinate revitalization, tourism, and marketing strategies to better achieve their economic development goals.

Protecting Large or Multi-jurisdictional Resources

Interlocal agreements are one important option that local governments exercise to address trans-jurisdictional problems.⁷⁴

Secondly, intergovernmental agreements can better protect historic and cultural resources that extend beyond any single jurisdiction, such as historic trails, battlefields and cultural landscapes.⁷⁵ These historic and cultural resources often meander through countless municipalities and may even cross state boundaries. For example, the Gullah/Geechee cultural landscape encompasses public and private land in four Southeastern states.⁷⁶ Even more geographically confined historic resources within a single state may stretch across several municipal and county jurisdictions.⁷⁷ In order to fully protect these resources, extensive coordination is required

⁷⁴ Thurmaier & Woods, *supra* note 8, at 116.

⁷⁵ Nolon, *supra* note 39, at 1018. See also David S. Sampson, *Maintaining the Cultural Landscape of the Hudson River Valley: What Grade Would the Hudson River School Give Us Today*, 8 ALB. L. ENVTL. OUTLOOK 213 (2004) (providing an excellent overview of the diverse definitions of "cultural landscapes" and the unique, multi-jurisdictional problems of protecting them).

⁷⁶ Gullah/Geechee Cultural Heritage Act, 109 P.L. 338, § 295A (2009).

⁷⁷ See, e.g., Arabia Mountain National Heritage Act, 109 P.L. 338, §§ 231-242 (2009).

among all the political subdivisions with a stake in the resource.

The federal government has recognized this problem and, in the last two decades, has developed a National Heritage Areas Program. National Heritage Areas are places designated by Congress as areas with natural, cultural and historic resources that are "uniquely representative of the American experience."⁷⁸ Though Congress acknowledges these places as areas of national significance, the management of the areas is undertaken locally, with the federal government providing for technical and financial assistance.⁷⁹ The program is designed to encourage coordination and partnerships between state and local stakeholders in the administration and preservation of heritage areas.⁸⁰

The first such area to be designated was the Illinois and Michigan Canal National Heritage Corridor in 1984.⁸¹ Since that time, forty additional National Heritage Areas have been designated.⁸² One of the latest areas to be designated is the Arabia Mountain National Heritage Area, which lies within several jurisdictions of Dekalb, Rockdale and Henry counties in

⁷⁸ National Park System Advisory Board, *Charting a Future for National Heritage Areas* (2006), 3 available at <http://www.cr.nps.gov/heritageareas/NHAreport.pdf>.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² National Heritage Areas Program, National Park Service, available at <http://www.cr.nps.gov/heritageareas/> (last visited January 20, 2009).

Georgia.⁸³ This area includes, among other things: a five-hundred and thirty-five acre nature preserve with unique granite outcroppings, Panola Mountain State Conservation Park, an aboriginal archaeological site, and the City of Lithonia, which contains two structures on the National Register of Historic Places.⁸⁴ Federal legislation establishes an "alliance" that is authorized to receive federal funding, distribute federal grants to local authorities, and enter into "cooperative agreements" with the state and its political subdivisions to affect the preservation of the area.⁸⁵ The primary duty of this alliance is to develop a "management plan" that "incorporates an integrated and cooperative approach to protect, interpret, and enhance the natural, cultural, historical, scenic, and recreational resources of the heritage area."⁸⁶

Although this innovative federal involvement has dramatically increased the number of coordinated intergovernmental efforts to preserve historic resources, it suffers from two serious limitations. First, the federal program is under-inclusive, in that it only designates historic, cultural and natural resources that are of *national* significance.⁸⁷ Heritage Areas must be "uniquely representative

⁸³ Arabia Mountain National Heritage Act, *supra* note 77, at § 233.

⁸⁴ *Id.* at § 232.

⁸⁵ *Id.* at § 235.

⁸⁶ *Id.* at § 236(a).

⁸⁷ See NHA Report, *supra* note 78, at 3.

of the American experience.”⁸⁸ There are undoubtedly important state and local historic resources that slip beneath the radar of the federal government. These local historic resources deserve to be protected by similar cooperative agreements and coordinated management.⁸⁹

Furthermore, the National Heritage Areas Program does not equip the local alliance with any legal authority to regulate land use.⁹⁰ In fact, the Arabia Mountain National Heritage Act specifically states that nothing in the statute imposes additional “conservation or environmental regulation” that is more stringent than state or local regulations.⁹¹ The local alliance is left with a mere requirement to develop a *plan* to “protect, interpret, and enhance” the resources of the heritage area.⁹² This procedural planning requirement lacks the teeth of substantive safeguards mandated by other federal preservation law.⁹³ The federal government’s preservation mandate is met by the development of an alliance “management plan.”⁹⁴ Federal

⁸⁸ *Id.*

⁸⁹ Perhaps states can adopt similar legislation to establish a framework of financial and technical assistance to protect “State Heritage Areas”. Yet, a state program may also fail to recognize significant local historic resources that lie within multiple jurisdictions, such as cultural landscapes.

⁹⁰ See, e.g., Arabia Mountain Heritage Act, *supra* note 77, at § 238(b) (recognizing that the statute grants no land use or zoning powers to the local coordinating entity).

⁹¹ *Id.* at § 238(a).

⁹² *Id.* at § 236(a).

⁹³ See, e.g., Department of Transportation Act, 49 USCS § 303(c) (2009) (requiring the Secretary of Transportation approve of transportation programs or projects that “use” historic resources only if there is no prudent or feasible alternative).

⁹⁴ Arabia Mountain Heritage Act, *supra* note 77, at § 236(a).

legislation requires only minimum enforcement mechanisms. In truth, the success of the National Heritage Area Program depends upon willing local governments to provide an effective plan.

Take the example of the Arabia Mountain National Heritage Area management plan. Although the plan cites protection of its historic resources as one of the primary goals of the intergovernmental cooperation,⁹⁵ this goal can only be met if each local government enacts such protections. In fact, only Dekalb County has established an overlay district to protect the natural and cultural resources of Arabia Mountain.⁹⁶ The overlay district restricts the established uses, prescribed by the underlying zoning ordinance, to more stringent standards and regulations.⁹⁷ For example, the overlay district places additional limits on lot coverage,⁹⁸ restricts clearing and grading of lots,⁹⁹ limits the height of buildings and other structures,¹⁰⁰ restricts tree removal,¹⁰¹ and prohibits billboards¹⁰² in the Arabia Mountain area. Although Dekalb County has enacted these stringent land use regulations for portions of the Arabia Mountain National Heritage Area, Henry

⁹⁵ See, Arabia Mountain Heritage Area Management Plan, Management Plan Goals, (2005) available at http://www.arabiaalliance.org/docs/HANDOUT_ManagementPlanGoals2.pdf.

⁹⁶ Dekalb Co., Ga., Arabia Mountain Natural Resource Protection Overlay District, Code § 27-702 (2009).

⁹⁷ *Id.* at § 27-705 and § 27-706.

⁹⁸ *Id.* at § 27-707.

⁹⁹ *Id.* at § 27-708.

¹⁰⁰ *Id.* at § 27-709.

¹⁰¹ *Id.* at § 27-710.

¹⁰² *Id.* at § 27-718.

and Rockdale Counties, who are also partners for the preservation of the heritage area, do not have similar provisions in their code.¹⁰³

Much can be done to strengthen the National Heritage Area Program to require better protections of these unique historic resources.¹⁰⁴ Despite the federal program's limitations, local governments can look to Heritage Areas for ideas about how to protect large scale historic resources. At its heart, the National Heritage Area Program attempts to coordinate a hodge-podge of local and state government efforts to protect all of a community's historic resources.

The federal program has protected a wide variety of cultural and historic resources, including both tangible and intangible resources. For example, the Augusta Canal National Heritage Area contains three national historic districts, architecturally significant mill structures and villages, in addition to significant agrarian and industrial landscapes associated with the eight-and-a-half (8.5) mile-long historic canal.¹⁰⁵ The Blue Ridge National Heritage Area was created to protect the unique cultural, historical and archaeological

¹⁰³ See generally Henry Co., Ga., Code § 3-7 *et. seq.* (2009), and Rockdale Co., Ga., Code § 62-1 *et. seq.* (2009).

¹⁰⁴ A similar clause to Section 4(f) the DOT Act may be inserted into National Heritage Area legislation to require the Secretary of Interior to review the "use" of historic resources within the designated area. Approval of federal financial and monetary assistance may then be contingent upon compliance with a "no prudent or feasible alternative" standard. *Cf.* Department of Transportation Act, *supra* note 93.

¹⁰⁵ Augusta Canal National Heritage Area, 104 P.L. 333, § 301 (2009).

heritage of the Blue Ridge Mountains.¹⁰⁶ In particular, the law aims to protect and promote the area's craft heritage and musical traditions as well as the area's ties to Cherokee heritage.¹⁰⁷ The Blue Ridge National Heritage Area encompasses twenty-five (25) counties in North Carolina.¹⁰⁸ The boundaries of the more recently-enacted Journey Through Hallowed Ground National Heritage Area roughly follow the Route 15 corridor from Gettysburg, Pennsylvania to Monticello in Virginia.¹⁰⁹ This corridor contains a wealth of different cultural and historic resources from Colonial America through the Civil War.¹¹⁰

As evidenced by the above federal programs, local governments can cooperate to protect and promote such diverse resources as battlefields, canals, cultural landscapes and folk heritage. Intergovernmental agreements and contracts provide one mechanism for coordinating protection of these large multijurisdictional resources.

Efficiency and Economy of Scale

In addition to providing opportunities for economic development and for preserving larger historic resources, intergovernmental agreements also allow local governments to

¹⁰⁶ Blue Ridge National Heritage Area Act of 2003, 108 P.L. 108, § 140(b) (2009).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at § 140(d).

¹⁰⁹ Journey Through Hallowed Ground National Heritage Area Act, 110 P.L. 229, § 403(b) (2009).

¹¹⁰ *Id.* at § 401.

more efficiently preserve and utilize their historic resources. Economies of scale are realized where the average cost of service delivery declines as service output increases.¹¹¹ For example, local governments can merge costly administrative bodies, such as zoning, historic preservation and other environmental review boards, into one entity.¹¹² Local governments can then apply these cost savings in monetary and human resources produced by the interlocal cooperation to other areas where additional support is needed. Communities that lack significant financial resources may also share the costs of both comprehensive planning and the development of new regulatory tools to protect their historic resources.¹¹³

Without some sort of assistance, many communities cannot afford to protect their historic resources. This may particularly be the case where a historic preservation project involves "large capital start-up costs".¹¹⁴ Christopher J. Duerken and David Bonderman frame the issue in the following way:

Most rural jurisdictions and small town governments have neither the resources nor legal expertise to enact and implement a comprehensive program that can deal effectively with new development pressures. And even those that do pass landmark ordinances find they

¹¹¹ Feiock, *supra* note 30, at 197.

¹¹² Nolon, *supra* note 39, at 1018-1019.

¹¹³ *Id.* at 1018.

¹¹⁴ Thurmaier & Woods, *supra* note 8, at 117.

needed legal, architectural and other advice when time comes to make a decision.¹¹⁵

The implementation of any preservation program involves a large amount of research, survey, monitoring and documentation. These costs may be too high for many smaller municipalities or rural areas without a broad tax base or the technical capability.

These issues are further exacerbated by the fact that most cultural and historical resources in rural areas are rarely aggregated in formal districts.¹¹⁶ Moreover, these vernacular and agricultural resources have not lent themselves to the crisp definitions or classifications of more traditional preservation programs.¹¹⁷ Corfesi and Radtke suggest that rural areas require more creative, locally devised, preservation approaches in order to be successful.¹¹⁸ Intergovernmental agreements may be that creative approach to rural preservation.

Studies have also shown that greater interlocal cooperation may result in greater likelihood of federal assistance. In a recent study, Kenneth N. Bickers and Robert M. Stein noted that:

. . . collective action among metropolitan area governments helps to defray the search costs associated with grant seeking by individual metropolitan area jurisdictions. By pooling information about grant programs, cooperating

¹¹⁵ HISTORIC PRESERVATION LAW, *supra* note 3, at 26.

¹¹⁶ Lina Corfesi and Rosetta Radtke, *Local Government Programs: Preservation Where It Counts*, in A RICHER HERITAGE: PRESERVATION IN THE 21ST CENTURY, 117, 150 (Robert E. Stipe ed., 2003).

¹¹⁷ *Id.* (observing that rural historic preservation often bleeds into scenic and landscape preservation).

¹¹⁸ *Id.*

communities can overcome one of the most significant obstacles to receiving grant assistance: applying for programs that the recipient is eligible to receive."¹¹⁹

In fact, their study shows that greater interlocal cooperation "enhances the incidence of [federal] grant awards to the metropolitan area as a whole."¹²⁰

A number of jurisdictions have realized financial gains through interlocal partnerships. For example, if a municipality is otherwise unable to obtain Certified Local Government (CLG) status,¹²¹ the municipality may utilize interlocal agreements to establish a relationship with the state office administering the CLG program. In fact, this connection between municipalities that have entered into interlocal agreements with other jurisdictions that have established preservation programs has been recognized by the Washington State Department of Community, Trade and Economic Development.¹²² Once recognized as CLGs, the local governments are then eligible to receive federal grants-in-aid, technical assistance and training.¹²³

¹¹⁹ Kenneth N. Bickers and Robert M. Stein, *Interlocal Cooperation and the Distribution of Federal Grant Awards*, 66 J. POL. 800, 805 (August 2004).

¹²⁰ *Id.*

¹²¹ Certified Local Governments are local governments that have been certified by the state historic preservation officer as having enforceable "legislation for the designation and protection of historic properties", an adequate preservation commission, a survey and inventorying system, and adequate public participation. 16 USCS § 470a(c) (2009).

¹²² Washington State Department of Community, Trade and Economic Development, *Historic Preservation: A Tool for Managing Growth*, (2005) 15, available at www.mrsc.org/GovDocs/HistoricPreservationGuidebookFinal.pdf (last visited February 5, 2009).

¹²³ 16 USCS § 470a(e) and (j).

Considering the number of federal grants-in-aid available to state and local governments for historic preservation, the above findings are particularly important. In the current economic downturn, many state and local governments are in dire financial condition. The competition for federal financial assistance from the recently-passed American Recovery and Reinvestment Act of 2009 and other economic stimulus packages should be fierce. Local governments that have entered into interlocal agreements may have a competitive advantage over others.

Comprehensive Planning

When municipalities and counties work together to solve problems that extend beyond their borders, they help build the relationships and good will necessary to support the realization of a regional agenda. Successful coordination among local governmental entities proves that regional approaches can work.¹²⁴

Finally, intergovernmental agreements allow for better management of growth by encouraging regional comprehensive planning of existing human resources and the built environment. New York's HRTA is a great example of a county-wide initiative to manage growth and capitalize on the area's unique natural and historic resources. Two additional examples of such comprehensive agreements also hail from New York.

¹²⁴ Janice C. Griffith, *Symposium: Democracy in Action: The Law & Politics of Local Governance: Regional Governance Reconsidered*, 21 J. L. & POLITICS 505, 546 (Fall 2005).

Along the Long Island Sound's Westchester Watershed, eleven communities compacted to protect the watershed's natural, cultural and historic resources.¹²⁵ Together, they applied for and received state financial assistance to undertake a study of the area's stormwater management issues.¹²⁶ Through this watershed cooperation, the communities aim to increase economic opportunities through revitalized business and industrial districts, while at the same time maintaining the area's distinct aesthetic, cultural and historical assets.¹²⁷

A similar, yet slightly more elaborate, agreement can be found in the Horizons Waterfront Commission Intermunicipal Cooperation Agreement.¹²⁸ In this 1989 agreement, a number of municipalities joined together with the county government in acknowledging the importance of ninety miles of Erie County shoreline to the area's economy.¹²⁹ The agreement established a joint commission to develop and revitalize this important resource.¹³⁰ The new commission was given significant power to accomplish these ends. This power included: the authority to make changes to existing zoning, development and land use laws;

¹²⁵ Nolon, *supra* note 39, at 1032.

¹²⁶ *Id.* at 1033. Similar state financial assistance might also be obtained to conduct studies for comprehensive historic resource management.

¹²⁷ *Id.* at 1032.

¹²⁸ Jeff LeJava, Note, *The Role of County Government in the New York State Land Use System*, 18 PACE L. REV. 311, 368 (Spring 1998). LeJava argues that the structure of county governments is "naturally interjurisdictional" since they are composed of a variety of municipalities and their elected officials. *Id.* at 315.

¹²⁹ *Id.* at 368.

¹³⁰ *Id.*

the authority to repeal inconsistent provisions of existing law; and the power to receive and distribute federal, state and other funds.¹³¹ The commission was also given authority to exercise eminent domain.¹³²

The HRTA, Long Island Sound and Horizons Waterfront agreements demonstrate how communities can implement multi-jurisdictional comprehensive planning that incorporates historic resource protection with long-range land use goals and economic development.¹³³ These intergovernmental agreements were helpful in coordinating the precious financial and administrative resources of all parties involved. Moreover, the agreements enabled the communities to protect, preserve and promote large-scale natural, cultural and historic resources that were not geographically bound within a single jurisdiction. In these ways, the New York agreements serve as excellent examples for communities interested in harnessing the power of coordinated, sub-state regional planning and intergovernmental agreements for historic preservation.

¹³¹ *Id.* at 369.

¹³² *Id.* at 370.

¹³³ Nolon, *supra* note 39, at 1032.

CHAPTER 5

INTERGOVERNMENTAL AGREEMENTS IN GEORGIA

As one can see, communities have begun to realize their jurisdictional constraints and are utilizing intergovernmental agreements to better protect their unique cultural and historic resources. Beyond the aforementioned National Heritage Areas, there is great potential for additional intergovernmental agreements for historic preservation in Georgia. In order to better understand this potential, it is necessary to briefly describe Georgia's law relating to intergovernmental agreements.

Intergovernmental Cooperation

Georgia was a pioneer of multi-governmental planning initiatives. In the 1960s, the Georgia legislature created Area Planning and Development Commissions (APDCs) to facilitate multi-jurisdictional planning and economic development.¹³⁴ With the passage of the Georgia Planning Act of 1989, the legislature replaced APDCs with Regional Development Centers (RDCs).¹³⁵

These RDCs were created to:

to develop, promote, and assist in establishing coordinated and comprehensive planning in the state, to assist local governments to participate in an

¹³⁴ Georgia Association of Regional Development Centers, *A Summary of Georgia's Regional Development Centers*, 10 (2004), available at <http://www.gardc.com/downloads/rdc2004.pdf> (last visited March 30, 2009).

¹³⁵ O.C.G.A. § 50-8-41.

*orderly process for coordinated and comprehensive planning, to assist local governments to prepare and implement comprehensive plans which will develop and promote the essential public interests of the state and its citizens, and to prepare and implement comprehensive regional plans which will develop and promote the essential public interests of the state and its citizens.*¹³⁶

The RDCs are empowered to "cooperate with all units of local government . . . coordinate area planning and development activities . . . and provide . . . technical assistance" to the local governments within the region.¹³⁷

There are currently sixteen RDCs in Georgia that provide coordination and technical assistance to local governments in such areas as land use planning, transportation, housing and historic preservation.¹³⁸ Each RDC provides an excellent forum to foster intergovernmental dialog and cooperation. Many of the intergovernmental agreements discussed below were created with the guidance and assistance of Georgia's RDCs.

Intergovernmental Agreements

Historically, Georgia law strongly discouraged local government officials from entering into contracts that extended beyond their term of office.¹³⁹ Georgia statutes prohibited governments from binding themselves and their successors to

¹³⁶ O.C.G.A. § 50-8-30 (2009) (emphasis added).

¹³⁷ O.C.C.A. § 50-8-35.

¹³⁸ *Supra* note 134, at 6.

¹³⁹ See *McElmurray v. Richmond Co.*, 153 S.E.2d 427, 428-429 (Ga. 1967) (finding that local governments are prohibited from executing contracts that whose duration extends beyond the term of county commissioners previously in office without the approval of the public).

frustrate the "free legislation" of municipal government.¹⁴⁰

Over time, courts began to construe this statute more loosely.

For example, in *Jonesboro Area Athletic Ass'n v. Dickson*,¹⁴¹ the Georgia Supreme Court refused to strictly construe a statute to invalidate a five-year municipal contract, finding that such a rigid construction would severely limit the number and kind of contracts into which municipalities could enter.¹⁴² Rather, the court looked to early Georgia case law in upholding the doctrine that municipalities may enter into valid agreements that extend for a reasonable time beyond that government's official term of office.¹⁴³ The court further indicated that legislative clarification on the limits of municipal contracts might be necessary so that local governments are provided with clearer guidelines.¹⁴⁴

Shortly thereafter, in 1976, the Georgia constitution was amended to give local governments the authority to enter into intergovernmental agreements, providing an exception to the statutory block against such contracts.¹⁴⁵ Georgia's current

¹⁴⁰ See *O.C.G.A.* § 36-30-3(a) (2009) (stating that: "One council may not, by an ordinance, bind itself or its successors so as to prevent free legislation in matters of municipal government.").

¹⁴¹ 181 S.E.2d 852 (Ga. 1971).

¹⁴² *Id.* at 856.

¹⁴³ *Id.* (citing *Aven v. Steiner Cancer Hospital, Inc.*, 5 S.E.2d 356, 364, 366 (Ga. 1939) and *Horkan v. Moultrie*, 71 S.E. 785, 785 (Ga. 1911)).

¹⁴⁴ *Id.* at 856-857.

¹⁴⁵ See *Ga. Const. Art. IX, Sec. IV, Para. II* (1976).

constitution maintains very similar language to the original amendment.¹⁴⁶

Since the amendment, Georgia courts have strictly enforced this constitutional provision. In *Greene Co. School Dist. v. Greene Co.*,¹⁴⁷ the Georgia Supreme Court held that under the constitution there are two firm requirements for a valid intergovernmental contract.¹⁴⁸ First, the contract must involve either the "provision of services" or the "joint or separate use of facilities or equipment."¹⁴⁹ Secondly, the contract must also deal with "activities, services or facilities" which the contracting governments are authorized by law to provide.¹⁵⁰ Applying this two-part test, the court then invalidated a contract between the county commissioners and the board of education, which allowed for a tax waiver to the board of

¹⁴⁶ See *Ga. Const. Art. IX, § III, Para. I(a)* (2009) (which states in part: The state, or any institution, department, or other agency thereof, and any county, municipality, school district, or other political subdivision of the state may contract for any period not exceeding 50 years with each other or with any other public agency, public corporation, or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment; but such contracts must deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide. . .).

¹⁴⁷ 607 S.E.2d 881 (Ga. 2005). The other two requirements for a valid intergovernmental contract, less than 50 years duration and "with each other or with any other public agency, public corporation, or public authority," are less litigated than those at issue in *Greene Co.* and they will not be greatly discussed in this paper. *Id.*

¹⁴⁸ *Id.* at 882 (citing *Nations v. Downtown Development Authority*, 338 S.E.2d 240, 243 (Ga. 1986)).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

education in exchange for real property.¹⁵¹ The court observed that this contract was neither a "provision of services" nor a service for which the county commissioners were authorized by law to undertake.¹⁵²

The Georgia Supreme Court has not yet considered the scope of "services" authorized the Georgia constitution. The Georgia Court of Appeals recently defined "services" as "the act of doing something useful for a person or company for a fee".¹⁵³ The Court of Appeals then held that an agreement between cities and a county for the expenditure of revenue from a Homestead Option Sales and Use Tax was not within this definition of services and therefore invalid.¹⁵⁴ The Georgia Supreme Court reversed, noting that "[n]one of the cases involving the Intergovernmental Contracts Clause decided by [the] Court [have] construed "services" as used in the Clause."¹⁵⁵

The Georgia Supreme Court has "exclusive appellate jurisdiction over cases involving the construction of the state constitution".¹⁵⁶ The court remanded the case to the lower court to properly address the constitutional issue.¹⁵⁷ Ultimately, we may not know the scope of intergovernmental "services"

¹⁵¹ *Id.* at 883.

¹⁵² *Id.* Since the contract duration was longer than fifty years and did not meet the constitutional exception to the common law rule, the court invalidated the contract. *Id.*

¹⁵³ *City of Decatur v. Dekalb County*, 668 S.E.2d 247, 250 (Ga. 2008).

¹⁵⁴ *Id.* at 250.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

authorized by the Georgia Constitution until the issue is properly addressed by the Georgia Supreme Court.

Notwithstanding this strict construction of the constitutional authority to enter into intergovernmental contracts by the courts, intergovernmental activities are often explicitly recognized by Georgia statutes and regulations. For example, Georgia law provides that local governments may form and enter into an "interlocal risk management agency" to pool general and motor vehicle liability, as well as property damage risks.¹⁵⁸ Georgia law also recognizes the authority of local governments to enter into intergovernmental service agreements to provide for joint emergency services and facilities.¹⁵⁹

Although intergovernmental agreements in Georgia generally involve traditional governmental services and facilities, a group of North Georgia counties and municipalities recently established a cooperative plan for environmental protection in Georgia.¹⁶⁰ The Etowah Habitat Conservation Plan, signed into effect in 2006, is a cooperative agreement between counties and cities in the Etowah River Basin to protect the basin's unique and endangered fish species.¹⁶¹ In coordination with U.S. Fish and Wildlife Services, the local governments developed

¹⁵⁸ O.C.G.A. § 36-85-2 (2009).

¹⁵⁹ Ga. Comp. R. & Regs. 413-04-.07(2)(c) (2009).

¹⁶⁰ Etowah HCP, Timeline & Overview, *available at* <http://www.etowahhcp.org/planning/overview.htm> (last visited January 20, 2009).

¹⁶¹ *Id.*

comprehensive environmental policies and ordinances to reduce the impact of development upon the fish species.¹⁶² In return, the local governments were granted an "Incidental Take Permit," which frees the governments and developers from federal prosecution if threatened or endangered species are actually harmed.¹⁶³

There are some similarities between the Habitat Conservation Plans and National Heritage Areas. Both federally sponsored cooperative agreements seek comprehensive local planning and management of important resources.¹⁶⁴ However, in the Habitat Conservation Plan, local governments are required to pass policies and regulations to ensure the protection of fish species in order to maintain the "Incidental Take Permit" and to avoid civil and criminal prosecution.¹⁶⁵ Conversely, the local coordinating entity charged with the development of the management plan for the National Heritage Area is merely threatened with the withdrawal of federal funding if the plan, not local regulation, fails to incorporate approaches to protect historic and cultural resources.¹⁶⁶ Given this lack of assurance

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Compare Id.* (establishing a comprehensive stormwater management policy and other environmental protections for endangered fish species) *with* Arabia Mountain Heritage Act, *supra* note 77 (encouraging a management plan for the cooperative protection of the area's unique cultural, historical and natural resources).

¹⁶⁵ Fredrico Cheever, *The Road to Recovery: A New Way of Thinking About the Endangered Species Act*, 23 *ECOLOGY L.Q.* 1, 72 (1996).

¹⁶⁶ *See, e.g.,* Arabia Mountain Heritage Act, *supra*, note 77, at § 236.

for protections of historic resources, there is certainly room for stronger cooperative agreements between local governments. The following chapter will discuss the potential for these local preservation agreements in Georgia.

CHAPTER 6

GEORGIA HISTORIC PRESERVATION AND INTERGOVERNMENTAL AGREEMENTS

Georgia is no stranger to innovative intergovernmental approaches to historic preservation. In 1978, Georgia and Alabama passed legislation to create a multi-state agency to promote tourism and historic preservation in the Chattahoochee Valley.¹⁶⁷ This unique interstate compact created the Historic Chattahoochee Commission ("Commission") to implement this purpose along an eighteen (18) county corridor of the lower Chattahoochee River.¹⁶⁸ The Commission was given broad powers to implement its vision for historic preservation and tourism, including the power to acquire real property, borrow money from public and private sources, and enter into additional contracts or cooperative agreements. To this day, the Commission is a powerful presence in the preservation and economic development of the Lower Chattahoochee Valley.¹⁶⁹

¹⁶⁷ O.C.G.A. § 12-10-81 (2009).

¹⁶⁸ *Id.*

¹⁶⁹ The Commission's influence can also be seen in other areas of the state's preservation efforts. The Commission started a historic marker program in 1978 to commemorate important people, places and events within the Chattahoochee Valley. New Georgia Encyclopedia: Historic Chattahoochee Commission, available at <http://wf2dnvr6.webfeat.org/> (last visited Jan. 20 2009). This Commission's marker program is a predecessor to the current program managed by the Georgia Department of Natural Resources and subsequently, the Georgia Historical Society.

The Commission is quite an anomaly in terms of intergovernmental efforts for historic preservation.¹⁷⁰ Its success may have sown the seeds for the current National Heritage Area Program.¹⁷¹ Yet, the Commission is an interstate agency. As discussed above, much of preservation today is accomplished by local governments.¹⁷² It was not until two years after enacting the Historic Chattahoochee Compact that local governments were officially granted the power to preserve.

In 1980, the Georgia General Assembly enacted the Georgia Historic Preservation Act¹⁷³ ("GHPA"), specifically authorizing local governments to regulate and protect historic resources.¹⁷⁴ The statute also establishes minimum standards and guidelines for local governments that choose to enact local protections.¹⁷⁵ For example, although the statute does not mandate local protections, it requires local governments that are interested

¹⁷⁰ The Commission's website states that it is the "first and only tourism/preservation agency in the nation with official authority to cross state lines to pursue goals common to all counties involved." Historic Chattahoochee Commission: Contact Us/About the Commission, available at <http://www.hcc-al-ga.org/contact.cfm?GetPage=1> (last visited Jan. 20, 2009).

¹⁷¹ It may be no coincidence that the National Heritage Area Program began just a few years later, in 1984, with the designation of the Illinois and Michigan Canal National Heritage Corridor. See *supra* note 77 and related discussion.

¹⁷² See *supra* note 3 and related discussion.

¹⁷³ O.C.G.A. § 44-10-20 *et. seq.* (2009).

¹⁷⁴ John C. Waters, MAINTAINING A SENSE OF PLACE: A CITIZEN'S GUIDE TO COMMUNITY PRESERVATION, 17 (1983). Before the enactment of the GHPA, there was some debate in the academic world as to whether local governments already had the authority to regulate historic resources under earlier general planning and zoning enabling legislation. *Id.* at 15-17. Preservationists were concerned about a potential adverse decision as to the constitutionality of existing historic preservation ordinances in places like Savannah. *Id.* They successfully lobbied the legislature to pass the GHPA to clear up any constitutional questions over local governments' authority to regulate historic resources. *Id.* at 17.

¹⁷⁵ O.C.G.A. § 44-10-24 (2009).

in such protections to establish or designate an historic preservation commission.¹⁷⁶ The GHPA further requires that this commission be made of at least three members who serve no longer than three-year terms.¹⁷⁷ Additionally, the statute requires that a "majority of the members" must possess some interest, experience or education in history or architecture.¹⁷⁸

As discussed in the previous chapter, there are two firm requirements for a valid intergovernmental contract in Georgia. Any intergovernmental contract for historic preservation must meet these requirements. Although local governments may enter into cooperative agreements to promote historic preservation, they may only enter into contractual relations with other local governments if the preservation of historic resources involves a "provision of services" or "joint or separate use of facilities" and the activity or service provided is one which the contracting parties are authorized by law to undertake.¹⁷⁹ Any intergovernmental contract for historic preservation must meet these requirements.

In applying the Constitution, Georgia courts have upheld contracts for a variety of local government activities: storm water and sanitary waste facilities,¹⁸⁰ solid waste management,¹⁸¹

¹⁷⁶ *Id.* at § 44-10-24(a).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Greene Co.*, 607 S.E.2d at 882.

¹⁸⁰ *Berry v. City of E. Point*, 627 S.E.2d 391, 397 (Ga. Ct. App. 2006).

and joint development authorities.¹⁸² In *Nations v. Downtown Dev. Auth.*,¹⁸³ the Georgia Court of Appeals ruled that the City of Atlanta was authorized, under the intergovernmental contracts clause, to enter into lease arrangements with a development authority.¹⁸⁴ The court found that these contractual arrangements were constitutional because the contracts were entered pursuant to its plans for urban redevelopment.¹⁸⁵

It is not difficult to imagine ways in which an intergovernmental contract for historic preservation activities might meet the requirements of the first prong of the test. Although historic preservation was not at issue in *Nations*, the case involved urban redevelopment and rehabilitation of Underground Atlanta, a historic resource.¹⁸⁶ Historic preservation activities often entail similar leasehold agreements and other real estate transactions involving development authorities.¹⁸⁷

¹⁸¹ *Board of Comm'rs v. Guthrie*, 537 S.E.2d 329, 331 (Ga. 2000).

¹⁸² *Hay v. Newton Co.*, 538 S.E.2d 181, 185 (Ga. Ct. App. 2000).

¹⁸³ 345 S.E.2d 581 (Ga. 1986).

¹⁸⁴ *Id.* at 582.

¹⁸⁵ *Id.* at 583. The court held that such contracts provided facilities for which the City was authorized by the Urban Redevelopment Law to establish. *Id.*

¹⁸⁶ *Id.* at 581. In 1984, Atlanta declared Underground Atlanta a slum and blighted area, with plans to redevelop the area into a "festival marketplace." *Id.*

¹⁸⁷ See, e.g., Brunswick, Georgia, Downtown Development Authority, available at <http://www.brunswickgeorgia.net/dda.html> (last visited January 20, 2009) (describing the role of the Development Authority in revitalizing the historic downtown). One of the ways that the Authority promotes this revitalization is by offering "Façade Grants" to commercial property owners interested in rehabilitating historic buildings. *Id.*

Moreover, the powers and duties of historic preservation commissions outlined by the GHPA include a variety of services that might be contracted out by interested local governments.¹⁸⁸ For example, local governments are empowered to undertake restoration or preservation of acquired properties,¹⁸⁹ consult with historic preservation experts,¹⁹⁰ or undertake investigations, studies and surveys.¹⁹¹ A local government struggling to exercise one of these powers might contract with the state, county or another municipality to jointly provide the service.¹⁹²

Notwithstanding the above, the second requirement for a valid intergovernmental contract (whether there is legal authority for the contracted activities) deserves closer scrutiny. The resolution to this issue is dependent upon a court's interpretation of the scope of GHPA. If a court construes the statute as a grant of limited authority that simply enables local governments to enact specific local historic preservation protections, then a court may be hesitant

¹⁸⁸ See O.C.G.A. § 44-10-25 (for a complete list of a local commissions powers and duties).

¹⁸⁹ O.C.G.A. § 44-10-25(6).

¹⁹⁰ O.C.G.A. § 44-10-25(10).

¹⁹¹ O.C.G.A. § 44-10-25(8).

¹⁹² See, e.g., U.S.A.E.C., Cooperative Agreements and Federal Agency Partnerships, available at <http://aec.army.mil/usaec/cultural/partnerships.html>, (last visited January 20, 2009) (describing cooperative agreements between the U.S. Army and various federal agencies to help the Army manage its cultural resources).

to find statutory authority for intergovernmental agreements for historic preservation.

As discussed above, although they are excellent guidelines for most communities, the minimum standards required by the GHPA might become overly burdensome for smaller communities that lack the technical or financial resources to meet these requirements. The statute appears to recognize this potential problem. Built into the statute is a clause which allows a county and one or more municipalities "lying wholly or partially within such county" to establish a joint historic preservation commission.¹⁹³ Therefore, a smaller municipality might establish a joint commission with its neighbors and the county in which they lie, if it was unable to maintain one of its own.¹⁹⁴

This authority is particularly useful for small municipalities that may not have the financial or human resources to staff a full-time preservation commission. It may be difficult in some areas of the state to find qualified candidates and staff for a small municipal commission.¹⁹⁵ With an intergovernmental agreement, cities and counties may contract

¹⁹³ O.C.G.A. § 44-10-24(b). The clause grants the power to determine residency requirements for members of the joint commission to the local governments involved. *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ The GHPA requires that the commission be composed of at least three members, the majority of whom must possess some interest, experience or education in history or architecture. O.C.G.A. § 44-10-24(a).

to share human and capital resources to establish a joint commission.

On its face, the GHPA appears to explicitly recognize the authority to enter into intergovernmental agreements for historic preservation commissions.¹⁹⁶ Therefore, an intergovernmental contract providing for a county-municipality joint commission would likely withstand constitutional scrutiny because it is an activity for which the contracting parties are expressly authorized by law to undertake.¹⁹⁷ The authority for a county-municipality joint commission is within the plain meaning of the statute's text.¹⁹⁸ Outside of this context, however, the GHPA does not specifically recognize the power of local governments or their historic preservation commissions to enter into agreements or contracts with other municipalities for the purposes of protecting or regulating historic resources.¹⁹⁹

Since the statute does not specifically grant such power, there might be a Dillon's Rule²⁰⁰ problem with other types of

¹⁹⁶ *Id.*

¹⁹⁷ *Greene Co.*, 607 S.E.2d at 882.

¹⁹⁸ See Appendix A for a Model Interlocal Agreement for a joint historic preservation commission in Georgia.

¹⁹⁹ See O.C.G.A § 44-10-25 (establishing the powers and duties of historic preservation commissions).

²⁰⁰ Dillon's Rule provides that local governments, as creatures of the state, have only those powers that the legislature has expressly given to them and those powers that may be necessarily or fairly implied to the powers that are expressly granted. Gillete, *supra* note 21, at 220, footnote 101 (citing John F. Dillon, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATION 448-50 (5th ed. 1911)).

intergovernmental agreements for historic preservation.²⁰¹ In resolving the issue, a court may look to the GHPA's broadly stated purpose:

The General Assembly finds that the historical, cultural, and esthetic heritage of this state is among its most valued and important assets and that the preservation of this heritage is essential to the promotion of the health, prosperity, and general welfare of the people. Therefore, in order to stimulate the revitalization of central business districts in this state's municipalities, to protect and enhance this state's historical and esthetic attractions to tourists and visitors and thereby promote and stimulate business in this state's cities and counties, to encourage the acquisition by cities and counties of conservation easements pursuant to Code Sections 44-10-1 through 44-10-8, and to enhance the opportunities for federal tax relief of this state's property owners under the relevant provisions of the Tax Reform Act of 1976 allowing tax deductions for rehabilitation of certified historic structures, the General Assembly establishes a uniform procedure for use by each county and municipality in the state in enacting ordinances providing for the protection, enhancement, perpetuation, and use of places, districts, sites, buildings, structures, and works of art having a special historical, cultural, or esthetic interest or value.²⁰²

In this code provision, the General Assembly makes it clear that historic preservation is an important component of the general welfare of the state.²⁰³ Although the GHPA is purposed to create a "uniform procedure" for these protections, the statute does not expressly deny local governments the authority

²⁰¹ See Gillette, *supra* note 21, at 219-232 (for a thorough discussion of the role of Dillon's Rule in intergovernmental agreements).

²⁰² O.C.G.A. § 44-10-21.

²⁰³ *Id.*

to act beyond these minimum standards.²⁰⁴ In fact, there are other Georgia statutes that encourage intergovernmental agreements in planning and protecting the state's valuable assets. For example, the General Assembly has authorized local governments that are "jointly affected by development" to enter into intergovernmental agreements that establish interdependent transferable development right programs.²⁰⁵ Another Georgia statute recognizes intergovernmental agreements as one method through which communities may accomplish their land conservation goals.²⁰⁶

Moreover, the Georgia Planning Act ("GPA") specifically authorizes and promotes cooperative comprehensive planning by local governments.²⁰⁷ The GPA recognizes intergovernmental agreements as one mechanism through which a community may meet the GPA's minimum standards for planning.²⁰⁸ Additionally, the GPA authorizes local governments to enter into contracts with a

²⁰⁴ *Id.*

²⁰⁵ O.C.G.A. § 36-66A-2(f) (2009). One way that communities can harness the power of intergovernmental cooperation for historic preservation is by developing interdependent TDR programs that incorporate criteria for protecting historic resources. For example, one community can designate cultural and historic resources as "sending areas", while other areas in adjacent communities that are more suitable to development may be designated as "receiving areas." See generally Rick Pruetz, BEYOND TAKINGS AND GIVINGS: SAVING NATURAL AREAS, FARMLAND, AND HISTORIC LANDMARKS WITH TRANSFER OF DEVELOPMENT RIGHTS AND DENSITY TRANSFER CHARGES 29-43 (2003) (describing how communities set up traditional TDR programs).

²⁰⁶ O.C.G.A. § 12-6A-1 (2009) (Georgia's land conservation program is purposed to "promote partnerships for the conservation of land resources that are identified by cities or counties as locally valuable...").

²⁰⁷ O.C.G.A. § 36-70-1 (2009). In this legislative intent clause, the General Assembly asserts that "this article shall be construed liberally to achieve" coordinated and comprehensive planning by local governments. *Id.*

²⁰⁸ O.C.G.A. § 36-70-2(5.3).

regional commission or any other public or private entity, including other local governments,²⁰⁹ for the purposes of “developing, establishing, and implementing its comprehensive plan.”²¹⁰ The GPA gives cities and counties in Georgia express authority to work towards a comprehensive plan to protect the “natural resources, the environment, and the vital areas of the state”.²¹¹

Finally, in the section on Home Rule for Counties and Municipalities, the Georgia constitution provides that:

[i]n addition to and supplementary of all powers possessed by or conferred upon any county, municipality, or any combination thereof, any county, municipality, or any combination thereof may exercise the following powers and provide the following services. . . (5) Parks, recreational areas, programs, and facilities. . . (10) Libraries, archives, and arts and sciences programs and facilities. . . (12) Codes, including building, housing, plumbing, and electrical codes.²¹²

Combined with the GHPA’s generous statement of intent, these additional sources of authority may persuade a court to look favorably upon the authority of local governments to enter into intergovernmental agreements for historic preservation, notwithstanding the specter of Dillon’s Rule. Yet, cities that are not in the same county may not wish to establish a joint commission for fear of a legal challenge. The state legislature

²⁰⁹ O.C.G.A. § 36-70-3(5).

²¹⁰ O.C.G.A. § 36-70-3(4).

²¹¹ O.C.G.A. § 36-70-1.

²¹² Ga. Const. Art. IX, § II, Para. III(a) (2009) (emphasis added).

may clarify this area of the law by simply deleting the first twenty-six words of O.C.G.A. § 44-10-24(b)²¹³ and substituting the phrase "[t]he local governing body of any county, municipality, or any combination thereof".

Intergovernmental agreements and contracts for historic preservation would likely meet Georgia's two-pronged test for a valid intergovernmental contract. Such agreements would likely be found to involve both the "provision of services" and activities for which the local governments are authorized by law to undertake. Furthermore, nothing in state or federal legislation inhibits local governments from entering into cooperative agreements and contracts to promote historic preservation.

²¹³ "The local governing body of a county and the local governing body or bodies of one or more municipalities lying wholly or partially within such county. . ."

CHAPTER 7

INTERLOCAL AGREEMENTS IN ACTION: JOINT HISTORIC PRESERVATION COMMISSIONS

Local governments may implement a tremendous variety of interlocal agreements for historic preservation. As discussed above, interlocal agreements can be created to coordinate and implement an economic development plan, to share a joint historic preservation commission, or to share fiscal, physical or human resources. This Chapter will introduce and explain just one of the potential interlocal agreements for Georgia cities and counties: an agreement to share a joint historic preservation commission.

Some jurisdictions currently have interlocal agreements for joint historic preservation commissions. One of the most active jurisdictions for this kind of interlocal cooperation is greater Seattle, Washington. In 1994, King County entered into an interlocal agreement with the City of Carnation to extend county preservation resources, such as tools and technical assistance, to Carnation property owners.²¹⁴ The interlocal agreement was highly successful. As of 2009, fourteen cities within King

²¹⁴ Flo Lentz, *The Slightly Bigger Picture: Historic Preservation in Greater King County*, Preservation Seattle (March 2004), available at <http://www.historicseattle.org/preservationseattle/publicpolicy/defaultmar2.htm> (last visited February 4, 2009).

County have entered into interlocal agreements with the county to provide for "landmarking, historic survey and inventory, and other historic preservation services".²¹⁵

The interlocal cooperation in King County is relatively simple in execution. Several cities within the county did not have the resources to establish a local commission or incentivize the preservation of local landmarks.²¹⁶ However, the county has had a successful preservation commission since 1980 and its operations are well-financed by the government.²¹⁷ Cities that wished to participate in a preservation program simply adopted a landmarks ordinance of their own and then entered into an agreement with King County to co-provide the designation and design review processes.²¹⁸ As an added bonus, landowners within a city that has entered into such an agreement are then eligible to receive preservation incentives from the county, such as tax relief, low-interest loans, and grants.²¹⁹

A closer look at the background to these transactions details the nature of the interlocal cooperation. For example, the King County Comprehensive Plan expressly incorporates

²¹⁵ King County Historic Preservation Landmarks Commission, available at <http://www.metrokc.gov/exec/bred/hpp/comm/> (last visited February 4, 2009). Appendix B contains the King County Historic Preservation Ordinance. Appendix C contains an example interlocal agreement between King County and one of the cities within the county.

²¹⁶ Lentz, *supra* note 214.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

interlocal cooperation into its goals and aspirations. The plan was recently updated with the following language:

Preservation of historic properties provides multiple benefits to the region; historic properties maintain a tangible connection with the historic and prehistoric past. They contribute character, diversity and aesthetic value to communities, particularly in times of rapid change. Historic attractions play a significant role in the region's appeal to tourists. Many municipalities do not have sufficient resources to administer an historic preservation program. As a result, the shared history of the region is endangered. *Comprehensive and coordinated protection of significant historic properties is necessary in order to ensure that King County's collective history is preserved.*²²⁰

and

Cultural resource management crosses jurisdictional boundaries and involves countless public and private players throughout the region. The range and complexity of cultural activity in the region requires coordination and cooperation. *King County government is uniquely able to provide regional coordination and leadership.*²²¹

Similarly, Paragraph 216 of the comprehensive plan furthers this commitment to interlocal cooperation by promising that King County "shall advocate for and actively market its historic preservation services to agencies and cities that could benefit from such services."²²² This cooperative element is echoed in the King County landmarks ordinance which, among other things,

²²⁰ 2008 King County Comprehensive Plan Update, Chapter 6 - Parks, Open Spaces and Cultural Resources, 12 (October 2008) (emphasis added), available at <http://www.kingcounty.gov/property/permits/codes/growth/CompPlan/2008.aspx#chapters> (last visited February 4, 2009).

²²¹ *Id.* at 14 (emphasis added).

²²² *Id.*

holds as its purpose to “[a]ssist, encourage and provide technical assistance to public agencies, public and private museums, archives and historic preservation associations and other organizations involved in historic preservation and archaeological resource management.”²²³ Additionally, the county preservation framework is meant to “[w]ork cooperatively with all local jurisdictions to identify, evaluate, and protect historic resources”.²²⁴

The governing documents of the interlocal agreements detail the nature of the cooperative parties’ relationship. The King County Commission consists of nine regular members appointed by the county executive.²²⁵ In addition to these nine regular members are special members, who are appointed from each municipality that has entered into an interlocal agreement with King County for historic preservation services.²²⁶ These special members serve only as voting members on matters “involving the designation of landmarks within the municipality from which [the] special member was appointed.”²²⁷

At first glance, this limited voting status may seem prohibitive. However, special members do have a seat at the table and are free to attend, lobby and influence any decision

²²³ King County Code, § 20.62.010(D)(8) (2009).

²²⁴ *Id.* at § 20.62.010(D)(9).

²²⁵ *Id.* at § 20.62.030(A)(1).

²²⁶ *Id.* at § 20.62.030(A)(3).

²²⁷ *Id.* at § 20.62.030(E).

of the regular commission. Moreover, each special member has access to the commission's full time historic preservation officer and other planning staff.²²⁸ These are invaluable resources to cities that would otherwise not have access to this kind of human capital.

With this legal framework as a background, the ordinance passed by the city entering the interlocal agreement is relatively simple.²²⁹ In addition to a recitation of purposes behind the legislation, a typical city ordinance simply designates the King County landmarks commission as the entity empowered to act for the city.²³⁰ The ordinance will also establish membership qualifications for the special member to serve on the King County commission.²³¹ Finally, the ordinance incorporates, by reference, key provisions of the county's preservation code pertaining to things like design criteria, designation procedures and the certificates of appropriateness.²³²

Joint Historic Preservation Commissions in Georgia

As discussed in the previous chapter, there is clear legal authority for counties and cities to share a preservation commission. Given the success of the King County program, local

²²⁸ *Id.* at § 20.62.030(H).

²²⁹ *See, e.g.*, Appendix C.

²³⁰ *See, e.g.*, North Bend Code, § 19.20.020(A) (2009).

²³¹ *Id.* at. § 19.20.020(B).

²³² *Id.* at. § 19.20.030.

governments in Georgia may look to this program as a kind of model. However, states differ in their grants of intergovernmental contracting powers to local governments. Therefore, Georgia cities and counties must tailor their agreements to Georgia law.

Presented below²³³ is a Model Agreement for establishing a joint historic preservation commission between a Georgia city and county. The Model Agreement is a kind of second step in a multi-step process. Any agreement is a result of research, outreach and negotiations between contracting parties. The agreement serves as a written memorial of each party's rights and obligations. In the context of interlocal agreements, these obligations detail how the parties will implement historic preservation in their respective jurisdictions.

Similarly, the Model Agreement presented below also sets forth a number of promises that require additional action by the contracting parties. In this model, the city and county have agreed to pass (or modify) an ordinance to set up the joint preservation commission. Passing the ordinance is an important step because the agreement itself merely memorializes the planned legislative and/or administrative steps. As discussed in the previous chapter, Georgia law requires that a municipality interested in regulating historic resources pass an

²³³ See Appendix A.

ordinance that grants specific powers to local officials.²³⁴ Without this ordinance, any attempt by a local government to regulate historic resources is subject to being challenged as ultra vires (or without authority). Therefore, it is critical that both contracting parties pass an ordinance in their respective jurisdiction authorizing the joint commission to administer the historic preservation program.

The Model Agreement begins with an Introduction of the contracting parties and a Statement of Purpose. This Statement of Purpose has been drafted to reflect the legal authority for the transaction. The Model Agreement invokes the general police powers of the contracting parties, in addition to the specific constitutional and statutory authority to enter the intergovernmental contract. The Statement of Purpose also provides background information to explain why the contracting parties have entered into this transaction.

The Model Agreement has a number of performance provisions that detail the nature of the parties' joint enterprise. Paragraphs One through Six contain the most important performance provisions of the agreement. These provisions are highly negotiable since they detail the essence of the interlocal agreement: the joint provision of a historic preservation commission. Paragraphs One through Six describe

²³⁴ O.C.G.A. § 44-10-24.

the membership, authority, procedural rules, and financing of the joint commission.²³⁵ Finally, Paragraphs Seven through Thirteen contain a number of boilerplate provisions²³⁶ designed to clarify the scope of the agreement between the parties. Additional provisions may be added to limit or further clarify the relationship between the parties.

As discussed above, once the parties have entered the agreement, they are obligated by Paragraph One to enact an ordinance to protect historic resources. If a party to the agreement already has an existing ordinance, the other party may enact an ordinance that incorporates by reference key provisions of that party's ordinance. This is basically what the municipalities of King County have done.²³⁷ Regardless, each ordinance should meet the minimum standards of the Georgia Historic Preservation Act.²³⁸

The Model Agreement is just one example of the kind of interlocal agreement for historic preservation that neighboring communities may enter. One can easily imagine a large county or municipality with an established preservation program entering into an agreement with a neighboring jurisdiction to provide financial or technical assistance to a fledgling commission.

²³⁵ Compare the joint commission described in the sample ordinance contained in Appendix B.

²³⁶ Boilerplate provisions are common provisions that are used in a variety of agreements.

²³⁷ See, e.g., North Bend Code, *supra* note 230.

²³⁸ O.C.G.A. § 44-10-20 *et. seq.*

For example, a large municipality may agree with the county in which it lies to survey the county for historic resources. This survey and other types of assistance may provide the necessary background and political capital for the county to establish its own preservation program to protect resources just outside of the metropolitan area. Alternatively, the county may enter into an agreement with the city to allow the city commission to designate landmarks and administer a grants-in-aid program.

In sum, the contracting possibilities for preservation-related services are limited only by the imagination of the parties themselves and the political will of the people. Interlocal agreements are entirely voluntary and can be catered to address a variety of issues. This enables communities to explore creative cooperative solutions to tough preservation issues.

CHAPTER 8

CONCLUSIONS

Despite the authority to enter into such agreements, there are few intergovernmental agreements for historic preservation in Georgia. Perhaps the practical difficulties outlined in Chapter 3 above, such as contracting costs, are significant impediments to these agreements. Yet, despite traditional contracting impediments, communities in New York have been successful in implementing intermunicipal agreements that furthered their preservation goals. Unfortunately, the exact reason(s) for a paucity of intergovernmental agreements in Georgia is beyond the scope of this thesis.²³⁹

Nonetheless, it is clear from a glimpse into the legal authority for such agreements, that there are no significant legal impediments to their formation in Georgia. There is clear statutory authority for the consolidation of city and county preservation commissions.²⁴⁰ Smaller communities within a much more affluent county would reap the financial and practical

²³⁹ This research might pose fertile ground for another graduate thesis topic. For example, a researcher might send surveys to all certified local governments and Regional Development Centers in Georgia with questions regarding possible interlocal cooperation for historic preservation. The survey may gauge local government officials' understanding of the preservation potential of interlocal agreements and may discover reasons for a lack of such cooperation.

²⁴⁰ O.C.G.A. § 44-10-24.

benefits of such consolidation. In turn, the county as a whole would benefit from greater comprehensive planning and management of its unique cultural and historic resources.

These interlocal approaches to historic preservation, like other intergovernmental cooperative efforts, offer communities real financial, organizational and administrative advantages over traditional governmental mechanisms. As the New York examples demonstrate,²⁴¹ and as scholarly research has shown,²⁴² intergovernmental cooperation has been and will continue to play a role in local economic development and comprehensive planning. Historic preservation, as one component of such planning and development, is an aspect of land use planning that lends itself to greater interlocal coordination.

One scholar noted that state administrative schemes that create "occasions for local officials to interact. . . [may]. . . build the networks and social capital that lead to cooperative solutions."²⁴³ Georgia's sixteen RDCs are an excellent place for local officials to build this social capital. In fact, the RDCs were created to "facilitate coordinated and comprehensive planning."²⁴⁴ By sponsoring interlocal cooperative efforts to preserve shared historic resources, the RDCs would be fulfilling the legislature's intent "to prepare and implement comprehensive

²⁴¹ Nolon, *supra* note 39, at 1016-1018, 1032-1033.

²⁴² Agranoff & McGuire, *supra* note 20, at 161-162.

²⁴³ Feiock, *supra* note 30, at 206.

²⁴⁴ O.C.G.A. § 50-8-32.

regional plans which will develop and promote the essential public interests" of all Georgia citizens.²⁴⁵

This comprehensive regional planning and cooperation is especially helpful in areas that are experiencing unprecedented growth pressures. Georgia counties and cities could easily cooperate to share preservation resources in much the same way as King County and its Seattle suburbs have done. With organizations like the RDCs, the Georgia Trust for Historic Preservation and other nonprofit organizations, Georgia communities have a great networking framework upon which to develop cooperative solutions to tough preservation issues. In the end, only time will tell if local governments in Georgia and elsewhere will harness the preservation power of interlocal agreements.

²⁴⁵ O.C.G.A. § 50-8-30.

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APPENDIX A

A MODEL AGREEMENT FOR A JOINT HISTORIC PRESERVATION COMMISSION²⁴⁶

This Interlocal Agreement ("AGREEMENT") entered into between the CITY OF _____, a municipality of the State of Georgia, whose business address is _____, _____, ("CITY") and the COUNTY OF _____, a political subdivision of the State of Georgia, whose business address is _____, _____, ("COUNTY"), hereinafter jointly referred to as "PARTIES".

Statement of Purpose. The PARTIES find that the preservation of the historical, cultural, archaeological and aesthetic heritage of the State of Georgia, the CITY, and the COUNTY is essential to the promotion of the health, prosperity, and general welfare of the people. The Georgia Constitution, Article IX, Section III, Paragraph I(a) and the Georgia Historic Preservation Act, O.C.G.A. § 44-10-24(b), expressly empower the CITY and COUNTY to establish or designate a joint historic preservation commission.

²⁴⁶ This model agreement is for educational purposes only and does not constitute legal advice. Laws and regulations vary from jurisdiction to jurisdiction. The application of these legal rules is highly factually dependent. The reader is strongly encouraged to consult his/her own legal counsel before entering into any agreement or contract.

The PARTIES find that a joint historic preservation commission is essential to the promotion of the health, prosperity and general welfare of the people.

The PARTIES agree as follows:

1. Historic Preservation Ordinance. The PARTIES shall enact an ordinance to provide for the protection, enhancement, perpetuation, and use of archaeological sites, properties, districts, sites, buildings, structures, and works of art having a special historical, cultural, or esthetic interest or value, unless such an ordinance has already been enacted.

2. Joint Historic Preservation Commission. The PARTIES shall establish or designate a joint historic preservation commission ("PRESERVATION COMMISSION"), pursuant to O.C.G.A. § 44-10-24.

a) The PRESERVATION COMMISSION shall have jurisdiction within the unincorporated area of the COUNTY and within the corporate limits of the CITY.

b) The PRESERVATION COMMISSION shall have five members, a majority of whom shall have demonstrated special interest, experience, or education in history or architecture. The Mayor and Commission of the CITY shall appoint ____ member[s], who reside[s] within the corporate limits of the

CITY. The COUNTY'S Commission shall appoint ___ member[s], who reside[s] within the unincorporated area of the COUNTY.

c) Each member shall serve a three-year term. The members of the PRESERVATION COMMISSION at the time this AGREEMENT takes effect will be the initial members of the PRESERVATION COMMISSION and shall hold office for the balance of their terms then remaining as members of such PRESERVATION COMMISSION. Their successors will be appointed by the mayor and commission of the CITY or COUNTY Commission for a term of three years. No member of the PRESERVATION COMMISSION shall serve more than two consecutive full, three-year terms.

d) The mayor and commission of the CITY shall fill any vacancy of a membership that was previously appointed by the mayor and commission of the CITY. The COUNTY'S Commission shall fill any vacancy of a membership that was previously appointed by the COUNTY'S Commission.

e) All members shall serve without compensation but may be reimbursed for actual expenses incurred in the performance of their duties.

f) The mayor and commission of the CITY and the _____ COUNTY'S Commission may remove any member of the PRESERVATION COMMISSION for cause, on written charges, after a public hearing.

3. Powers and Duties. The PRESERVATION COMMISSION will have all the powers and duties of a historic preservation commission authorized by O.C.G.A. § 44-10-25.

4. Rules of Procedure. The PRESERVATION COMMISSION shall adopt rules for the transaction of its business and consideration of applications. The PRESERVATION COMMISSION shall provide for the time and place of regular open meetings, with proper public notification, and for the calling of special meetings. The PRESERVATION COMMISSION shall adopt rules of procedure with approval from the mayor and commission of the CITY and the _____ COUNTY'S Commission. A quorum consists of a majority of the members. The latest edition of Robert's Rules of Order will determine the order of business at all meetings.

5. Financing. The total funding for the PRESERVATION COMMISSION is _____. This sum shall be paid from the following sources:

CITY General Fund	_____
COUNTY General Fund	_____
TOTAL	_____

The above financial contributions by either the CITY or COUNTY respectively may be increased, at the sole option of either party, upon a request by the PRESERVATION COMMISSION for

additional funding as a result of the necessity of hiring outside consultants in conjunction with any major project.

6. Termination. A party may terminate this AGREEMENT by sixty (60) days written notice to the other party. Upon termination, the ownership of all property and equipment used by any party to meet its obligations under this AGREEMENT will remain with that party.

7. Notice. A party may give notice or other communications required or permitted to be given under this AGREEMENT in writing, signed by the notifying party. Notice is deemed to be given on the date of delivery if (i) delivered in person; or (ii) sent by same day or overnight courier service or (iii) sent by certified or registered United States Mail, return receipt requested, postage and charges prepaid. Notice given to a party must be sent to the address set below, or at such other address as the PARTIES shall from time-to-time designate by notice in writing:

COUNTY: _____

CITY: _____

8. Entire Agreement. This AGREEMENT constitutes the entire agreement between the parties and supersedes any prior understanding among them. No representations, arrangements, understandings or agreements relating to the subject matter exist among the parties except as expressed in this AGREEMENT.

9. Severability. If any provision of this AGREEMENT or its application to any person or circumstance is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and of this AGREEMENT will remain enforceable to the fullest extent permitted by law.

10. Amendment/Modification. Any amendments to this AGREEMENT must be made in writing and signed by all parties.

11. Counterparts. This AGREEMENT may be executed in counterparts, each of which may be deemed an original but all of which constitute one and the same instrument.

12. Governing Law. This AGREEMENT is governed and construed exclusively by its terms and by the laws of the State of Georgia, without giving effect to its conflicts of laws provisions. The parties submit to the jurisdiction of courts of competent jurisdiction within _____ County, Georgia.

13. Effective Date. This AGREEMENT will be effective as of _____ day of _____, 20__.

APPENDIX B

SELECTED PROVISIONS FROM THE KING COUNTY, WASHINGTON CODE
CHAPTER 20.62 – PROTECTION AND PRESERVATION OF LANDMARKS,
LANDMARK SITES AND DISTRICTS²⁴⁷

20.62.010 Findings and declaration of purpose. The King County council finds that:

A. The protection, enhancement, perpetuation and use of historic buildings, sites, districts, structures, and objects of historical, cultural, architectural, engineering, geographic, ethnic and archaeological significance located in King County, and the collection, preservation, exhibition and interpretation of historic and prehistoric materials, artifacts, records and information pertaining to historic preservation and archaeological resource management are necessary in the interest of prosperity, civic pride and general welfare of the people of King County.

B. Such cultural and historic resources are a significant part of the heritage, education and economic base of King County, and the economic, cultural and aesthetic well-being of

²⁴⁷ King County, Washington Code (2009), available online at Historic Preservation, Landmarks Commission – King County, <http://www.metrokc.gov/exec/bred/hpp/comm/> (last visited February 4, 2009).

the county cannot be maintained or enhanced by disregarding its heritage and by allowing the unnecessary destruction or defacement of such resources.

C. Present heritage and preservation programs and activities are inadequate for insuring present and future generations of King County residents and visitors a genuine opportunity to appreciate and enjoy our heritage.

D. The purposes of this chapter are to:

1. Designate, preserve, protect, enhance and perpetuate those sites, buildings, districts, structures and objects which reflect significant elements of the county's, state's, and nation's cultural, aesthetic, social, economic, political, architectural, ethnic, archaeological, engineering, historic or other heritage;
2. Foster civic pride in the beauty and accomplishments of the past;
3. Stabilize and improve the economic values and vitality of landmarks;
4. Protect and enhance the county's tourist industry by promoting heritage-related tourism;
5. Promote the continued use, exhibition and interpretation of significant historical or archaeological

sites, districts, buildings, structures, objects, artifacts, materials and records for the education, inspiration, and welfare of the people of King County;

6. Promote and continue incentives for ownership and utilization of landmarks;

7. Assist, encourage and provide incentives to public and private owners for preservation, restoration, rehabilitation and use of landmark buildings, sites, districts, structures and objects;

8. Assist, encourage and provide technical assistance to public agencies, public and private museums, archives and historic preservation associations and other organizations involved in historic preservation and archaeological resource management; and

9. Work cooperatively with all local jurisdictions to identify, evaluate, and protect historic resources in furtherance of the purposes of this chapter.

20.62.030 Landmarks commission created - membership and organization.

A. There is created the King County landmarks commission which shall consist of nine regular members and special members selected as follows:

1. Of the nine regular members of the commission at least three shall be professionals who have experience in identification, evaluation, and protection of historic resources and have been selected from among the fields of history, architecture, architectural history, historic preservation, planning, cultural anthropology, archaeology, cultural geography, landscape architecture, American studies, law, or other historic preservation related disciplines. The nine regular members of the commission shall be appointed by the county executive, subject to confirmation by the council, provided that no more than four members shall reside within any one municipal jurisdiction. All regular members shall have a demonstrated interest and competence in historic preservation.

2. The county executive may solicit nominations for persons to serve as regular members of the commission from the Association of King County Historical Organizations, the American Institute of Architects (Seattle Chapter), the Seattle King County Bar Association, the Seattle Master Builders, the chambers of commerce, and other professional and civic organizations familiar with historic preservation.

3. One special member shall be appointed from each municipality within King County which has entered into an interlocal agreement with King County providing for the designation by the commission of landmarks within such municipality in accordance with the terms of such interlocal agreement and this chapter. Each such appointment shall be in accordance with the enabling ordinance adopted by such municipality.

B. Appointments of regular members, except as provided in subsection C of this region, shall be made for a three-year term. Each regular member shall serve until his or her successor is duly appointed and confirmed. Appointments shall be effective on June 1st of each year. In the event of a vacancy, an appointment shall be made to fill the vacancy in the same manner and with the same qualifications as if at the beginning of the term, and the person appointed to fill the vacancy shall hold the position for the remainder of the unexpired term. Any member may be reappointed, but may not serve more than two consecutive three-year terms. A member shall be deemed to have served one full term if such member resigns at any time after appointment or if such member serves more than two years of an unexpired term. The members of the commission shall serve without compensation except for out-of-

pocket expenses incurred in connection with commission meetings or programs.

C. After May 4, 1992, the term of office of members becomes effective on the date the council confirms the appointment of commission members and the county executive shall appoint or reappoint three members for a three-year term, three members for a two-year term, and three members for a one-year term. For purposes of the limitation on consecutive terms in subsection B of this section an appointment for a one- or a two-year term shall be deemed an appointment for an unexpired term.

D. The chair shall be a member of the commission and shall be elected annually by the regular commission members. The commission shall adopt, in accordance with K.C.C. chapter 2.98 rules and regulations, including procedures, consistent with this chapter. The members of the commission shall be governed by the King County code of ethics, K.C.C. chapter 3.04. The commission shall not conduct any public hearing required under this chapter until rules and regulations have been filed as required by K.C.C. chapter 2.98.

E. A special member of the commission shall be a voting member solely on matters before the commission involving the

designation of landmarks within the municipality from which such special member was appointed.

F. A majority of the current appointed and confirmed members of the commission shall constitute a quorum for the transaction of business. A special member shall count as part of a quorum for the vote on any matter involving the designation or control of landmarks within the municipality from which such special member was appointed. All official actions of the commission shall require a majority vote of the members present and eligible to vote on the action voted upon. No member shall be eligible to vote upon any matter required by this chapter to be determined after a hearing unless that member has attended the hearing or familiarized him or herself with the record.

G. The commission may from time to time establish one or more committees to further the policies of the commission, each with such powers as may be lawfully delegated to it by the commission.

H. The county executive shall provide staff support to the commission and shall assign a professionally qualified county employee to serve as a full-time historic preservation officer. Under the direction of the commission, the historic preservation

officer shall be the custodian of the commission's records. The historic preservation officer or his or her designee shall conduct official correspondence, assist in organizing the commission and organize and supervise the commission staff and the clerical and technical work of the commission to the extent required to administer this chapter.

I. The commission shall meet at least once each month for the purpose of considering and holding public hearings on nominations for designation and applications for certificates of appropriateness. Where no business is scheduled to come before the commission seven days before the scheduled monthly meeting, the chair of the commission may cancel the meeting. All meetings of the commission shall be open to the public. The commission shall keep minutes of its proceedings, showing the action of the commission upon each question, and shall keep records of all official actions taken by it, all of which shall be filed in the office of the historic preservation officer and shall be public records.

J. At all hearings before and meetings of the commission, all oral proceedings shall be electronically recorded. The proceedings may also be recorded by a court reporter if any interested person at his or her expense shall provide a court

reporter for that purpose. A tape recorded copy of the electronic record of any hearing or part of a hearing shall be furnished to any person upon request and payment of the reasonable expense of the copy.

K. The commission is authorized, subject to the availability of funds for that purpose, to expend moneys to compensate experts, in whole or part, to provide technical assistance to property owners in connection with requests for certificates of appropriateness upon a showing by the property owner that the need for the technical assistance imposes an unreasonable financial hardship on the property owner.

L. Commission records, maps or other information indentifying the location of archaeological sites and potential sites shall be exempt from public disclosure as specified in RCW 42.17.310 in order to avoid looting and depredation of the sites.

APPENDIX C

CITY OF BLANK, WASHINGTON INTERLOCAL ORDINANCE²⁴⁸

**CITY OF BLANK, WASHINGTON
ORDINANCE NO. _____**

**AN ORDINANCE OF THE CITY OF BLANK, WASHINGTON, ADDING A
NEW CHAPTER TO THE BLANK MUNICIPAL CODE RELATING TO THE
PROTECTION AND PRESERVATION OF LANDMARKS, ESTABLISHING
PROCEDURES FOR DESIGNATION AND PROTECTION OF
LANDMARKS; PROVIDING PENALTIES FOR VIOLATIONS OF
CHAPTER 20.62.080; PROVIDING FOR APPEALS OF THE LANDMARKS
COMMISSION; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, historic preservation fosters civic pride in the beauty and accomplishments of the past and improves the economic vitality of our communities; and

WHEREAS, the City of BLANK desires to designate, protect, and enhance those sites, buildings, districts, structures and objects that reflect significant elements of its cultural, aesthetic, social, economic, political, architectural, ethnic, archaeological, engineering, and other history; and

WHEREAS, King County is able to provide landmark designation and protection services to the City; and

²⁴⁸ King County Landmarks Commission, Model Interlocal Ordinance (2004), available online at Historic Preservation, Landmarks Commission - King County, <http://www.metrokc.gov/exec/bred/hpp/comm/> (last visited February 4, 2009).

WHEREAS, the City has elected to contract with King County to provide such services; and

WHEREAS, it is in the public interest that the jurisdictions cooperate to provide efficient and cost effective landmark designation and protection;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLANK, WASHINGTON, DOES ORDAIN AS FOLLOWS:

SECTION 1. Landmarks Commission Created-Membership and Organization.

A. The King County Landmarks Commission ("Commission"), established pursuant to King County Code (K.C.C.), Chapter 20.62, is hereby designated and empowered to act as the Landmarks Commission for the City of BLANK pursuant to the provisions of this ordinance.

B. The Special Member of the Commission, provided for in Section 20.62.030 of the King County Code, shall be appointed by the City Council. Such special member shall have a demonstrated interest and competence in historic preservation. Such appointment shall be made for a three-year term. Such special member shall serve until his or her successor is duly appointed and confirmed. In the event of a vacancy, an appointment shall

be made to fill the vacancy in the same manner and with the same qualifications as if at the beginning of the term, and the person appointed to fill the vacancy shall hold the position for the remainder of the unexpired term. Such special member may be reappointed, but may not serve more than two consecutive, three-year terms. Such special member shall be deemed to have served one full term if such special member resigns at any time after appointment or if such special member serves more than two years of an unexpired term. The special member of the Commission shall serve without compensation.

C. The Commission shall file its rules and regulations, including procedures consistent with this ordinance, with the City Clerk.

SECTION 2. King County Code Chapter 20.62 adopted:

A. K.C.C. 20.62.020 - Definitions, except as follows:

1. Paragraph H. is changed to read "Director" is the responsible official who approves building permits for the city.

2. Add paragraph: Q. "Council" is the City of BLANK City Council.

B. K.C.C. 20.62.040 - Designation Criteria, except all references to "King County" are changed to read "City of BLANK."

- C. K.C.C. 20.62.050 - Nomination Procedure.
- D. K.C.C. 20.62.070 - Designation Procedure, except all references to "King County" are changed to read "City of BLANK."
- E. K.C.C. 20.62.080 - Certificate of Appropriateness Procedure, except the last sentence of paragraph A thereof.
- F. K.C.C. 20.62.100 - Evaluation of Economic Impact.
- G. K.C.C. 20.62.110 - Appeal Procedure.
- H. K.C.C. 20.62.130 - Penalty for Violation of Section 20.62.080 (Paragraph E. above).
- I. K.C.C. 20.62.140 - Special Valuation for Historic Properties
- J. Permit applications for changes to landmark properties shall not be considered complete unless accompanied by a certificate of appropriateness pursuant to Section 2.E. above. Upon receipt of an application for a development proposal which affects a King County landmark or an historic resource that has received a preliminary determination of significance as defined in Section 2.A. above, the application circulated to the King County historic preservation officer shall be deemed an application for a certificate of appropriateness pursuant to Section 2.E. above if accompanied by the additional information required to apply for such certificate.

SECTION 3. Redesignation of Existing Landmarks.

All King County landmarks designated pursuant to the provisions of K.C.C. 20.62 that are located within the boundaries of the City shall be subject to the provisions of this ordinance and considered City of BLANK landmarks.

SECTION 4. Severability.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

SECTION 5. Effective Date.

This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON
THE DAY OF ____, 2004.**

CITY OF BLANK

XXXX, Mayor

ATTEST/AUTHENTICATED:

XXX, City Clerk

Approved as to form:

XXX, City Attorney

Date of Publication: _____

Effective Date: _____

APPENDIX D

INTERLOCAL AGREEMENT BETWEEN THE CITY OF SPOKANE AND SPOKANE COUNTY, WASHINGTON²⁴⁹

THIS INTERLOCAL AGREEMENT entered into by between the CITY OF SPOKANE, a Washington State municipal corporation, whose business address is 808 West Spokane Falls Boulevard, Spokane, Washington 99201, as "CITY", and the COUNTY OF SPOKANE, a Washington State political subdivision, whose business address is 1116 West Broadway Avenue, Spokane, Washington 99260, as "COUNTY", hereinafter jointly referred to as "PARTIES".

WITNESSETH:

WHEREAS, it is the public policy of the federal government and state government to promote the designation, preservation, protection, enhancement and perpetuation of those structures, sites, districts, buildings and object which reflect outstanding elements of historic, archeological, architectural or cultural heritage for the enrichments of the citizens; and

WHEREAS, the purpose of this agreement is to continue the relationship between the CITY and the COUNTY in order to provide for historic preservation;

NOW, THEREFORE, the Parties agree as follows:

²⁴⁹ City of Spokane, Interlocal Agreements, available at <http://www.spokanecity.org/government/interlocal/> (last visited February 5, 2009).

SECTION NO. 1: Purpose

The purpose of this Agreement is to set forth the PARTIES' understanding of the terms and conditions under which the CITY will provide historic preservation services.

SECTION NO. 2: SCOPE OF SERVICES

Historic preservation services are outlined in the "Scope of Services", attached to this Agreement and made a part of it shall be provided for the CITY and COUNTY through the CITY'S Department of Historic Preservation.

SECTION NO. 3: DURATION

This agreement shall be effective January 1, 2007, through December 31, 2007, unless terminated earlier by the Parties.

SECTION NO. 4: FINANCING

The total funding for the City Department of Historic Preservation and the Landmarks Commission is TWO HUNDRED FIVE THOUSAND EIGHT HUNDRED FIFTEEN AND 00/100 DOLLARS (\$205,815.00).

This sum shall be paid from the following sources:

City General Fund	\$185,815.00
County General Fund	\$ 20,000.00
TOTAL	<u>\$205,815.00</u>

The above financial contributions by either CITY or COUNTY respectively may be increased, at the sole option of either party, upon a request by the Historic Preservation Officer for

additional funding as a result of the necessity of hiring outside consultants in conjunction with major project(s).

SECTION NO. 5: PAYMENT

The CITY shall make a request for payment to the COUNTY with payment due within thirty (30) days after receipt of the CITY's request. At the sole option of the CITY, a penalty may be assessed on any late payment by the COUNTY based on lost interest earnings had the payment been timely paid and invested in the City Treasurer's Investment Pool.

SECTION NO. 6: ADMINISTRATION

A. The Deputy Mayor shall be in charge of administering this Agreement and ensuring that payment is made to the CITY for the purpose of financing, in part, the operations of historic preservation. The City Treasurer may, in the exercise of his/her reasonable discretion, establish a special fund for the purpose of holding, investing, receiving, and distributing the payment(s) pursuant to this Agreement.

B. In the event of a vacancy in the position of Historic Preservation Officer, the Landmarks Commission will conduct a search and recommend to the Mayor and Board of County Commissioners for their joint designation, the employment of an individual qualified to be Historic Preservation Officer (hereinafter "HPO"). The duties, functions, and

location of any HPO will be under the control and authority of the Deputy Mayor.

SECTION NO. 7: NOTICE

All notice or other communications given hereunder shall be deemed given on: (i) the day the notices or other communications are received when sent by personal delivery; or (ii) the third day following the day on which the notice or communication has been mailed by certified mail delivery, receipt requested and postage prepaid addressed to the party at the address set forth below, or at such other address as the Parties shall from time-to-time designate by notice in writing:

COUNTY: Spokane County Chief Executive Officer or his/her
authorized representative
1116 West Broadway Avenue
Spokane, Washington 99260

CITY: City of Spokane Mayor or his/her authorized
representative
City Hall
808 West Spokane Falls Boulevard
Spokane, Washington 99201

SECTION NO. 8: LIABILITY

The COUNTY shall indemnify, defend and hold harmless the CITY, its officers and employees from all claims, demands, or suits in law or equity arising from the COUNTY's intentional or negligent

acts or breach of its obligations under the agreement. The COUNTY's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the CITY, its officers and employees.

The CITY shall indemnify, defend and hold harmless the COUNTY, its officers and employees from all claims, demands, or suits in law or equity arising from the CITY's intentional or negligent acts or breach of its obligations under the agreement. The CITY's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the COUNTY, its officers and employees.

If the comparative negligence of the PARTIES and their officers and employees is a cause of such damage or injury, the liability, loss, cost, or expense shall be shared between the PARTIES in proportion to their relative degree of negligence and the right of indemnity shall apply to such proportion.

Where an officer or employee of a Party is acting under the direction and control of the other Party, the Party directing and controlling the officer or employee in the activity and/or omission giving rise to liability shall accept all liability for the other Party's officer or employee's negligence.

Each Party's duty to indemnify shall survive the termination or expiration of the agreement.

Each Party waives, with respect to the other Party only, its immunity under RCW Title 51, Industrial Insurance. The PARTIES specifically negotiated this provision.

SECTION NO. 9: RELATIONSHIP OF THE PARTIES

The PARTIES intend that an independent contractor relationship will be created by this Agreement. No agent, employee, servant or representative of the COUNTY shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose. Likewise, agent, employee, servant or representative of the CITY shall be deemed to be an employee, agent, servant or representative of the COUNTY for any purpose.

SECTION NO. 10: AMENDMENTS

This Agreement shall not limit the ability of the CITY and the COUNTY to enter into subsequent agreements to further the purposes of this interlocal agreement.

SECTION NO. 11: COMPLIANCE WITH LAWS

The PARTIES shall comply with all applicable federal, state, and local laws and regulations.

SECTION NO. 12: ASSIGNMENTS

This Agreement is binding on the PARTIES and their heirs, successors, and assigns. No party may assign, transfer or subcontract its interest, in whole or in part, without the other PARTIES' prior written consent.

SECTION NO. 13: SEVERABILITY

If any parts, terms, or provisions of this Agreement are held by the courts to be illegal, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the PARTIES shall not be affected in regard to the remainder of the Agreement. If it should appear that any part, term or provision of this Agreement is in conflict with any statutory provision of the State of Washington, then the part, term or provision thereof that may be in conflict shall be deemed inoperative and null and void insofar as it may be in conflict therewith and this Agreement shall be deemed to modify or conform to such statutory provision.

SECTION NO. 14: COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

SECTION NO. 15: VENUE STIPULATION

This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by each party that this Agreement shall be governed by the laws of the State of Washington both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement, or any provision hereto, shall be instituted only in

courts of competent jurisdiction within Spokane County, Washington.

SECTION NO. 16: TERMINATION

Any party may terminate this Agreement by sixty (60) days written notice to the other party. In the event of such termination, the CITY shall prorate refund to the COUNTY any prepaid compensation. The ownership of all property and equipment utilized by any party to meet its obligations under the terms of this Agreement shall remain with such party.

SECTION NO. 17: HEADINGS

The section headings appearing in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to define, limit or extend the scope or intent of the sections to which they pertain.

SECTION NO. 18: ALL WRITINGS CONTAINED HEREIN/BINDING EFFECT

This Agreement contains terms and conditions agreed upon by the PARTIES. The PARTIES agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement. No changes or additions to this Agreement shall be valid or binding upon the PARTIES unless such change or addition is in writing, executed by the PARTIES.

SECTION NO. 19: AUDIT/RECORDS

The CITY shall maintain for a minimum of three (3) years following final payment all records related to its performance of the Agreement. The CITY shall provide access to authorized CITY and COUNTY representatives, including the CITY Auditor, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provision required under federal law applicable to the Agreement, the federal law shall prevail.

SECTION NO. 20: RCW 39.34 REQUIRED CLAUSES

- A. Purposes: See Section No. 1 above.
- B. Duration: See Section No. 3 above.
- C. Separate Legal Entity: This Agreement does not create, nor seek to create, a separate legal entity pursuant to RCW 39.34.030. It is the intent of the parties that the City's Department of Historic Preservation provide historic preservation activities in the City and County as previously set forth in ordinances of the City (see Chapter 17D.040 of Spokane Municipal Code) and ordinances/resolutions of the County.
- D. Responsibilities of the Parties: See provision above.
- E. Agreement to be Filed: The City shall file this Agreement with its City Clerk. The County shall file this Agreement with its County Auditor or will place the Agreement on its WEB site.

F. Financing: Each Party shall be responsible for the financing of its contractual obligations under its normal budgetary process.

G. Termination: See Section No. 17 above. The City Department of Historic Preservation shall be allowed to acquire, hold and dispose of real and personal property pursuant to City ordinance and State law.

DATED: 02/20/07

CITY OF SPOKANE

BY: _____

Deputy Mayor

ATTEST:

APPROVED AS TO FORM:

DATED: 02/20/2007

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

ATTEST:

MARK RICHARD, Chair

By: _____

Daniela Erickson

BONNIE MAGER, Vice Chair

Clerk of the Board

TODD MIELKE, Commissioner

APPROVED AS TO FORM:

Deputy Prosecuting Attorney

SCOPE OF SERVICES

Goals for 2007

Spokane County Historic Preservation

Identification and Monitoring of Historic Resources

- Goal: Continue to maintain computerized historic property inventory database of all county properties to provide to county departments and citizens.
- Goal: Continue to update the Spokane County Cultural Survey entering the site information into the County GIS system.

Maintain "Certified" Status

- Goal: Investigate possibilities for new grant funding.
- Goal: Carry out duties as Certified Local Government: fulfilling program obligations, which allows us "Established" status and ability to apply for grants.
- Goal: Process applications for Spokane and National Register status for Spokane County Properties.
- Goal: Monitor activity on Spokane Register listings in Spokane County.
- Goal: Maintain Special Valuation program, monitoring County properties in the program.
- Goal: Provide technical assistance to County Planning and Engineering, especially for Subarea Planning.

- Goal: Review any proposed renovation work on County Courthouse, in compliance with Spokane Register contract.
- Goal: Oversee County compliance with Section 106 of the National Historic Preservation Act (which requires that projects using federal funds CDBG, etc. must be reviewed for their effect on historic resources).
- Goal: Review County projects for SEPA determination.

Community Services

- Goal: Partnership with Fairchild Air Force Base (FAFB) regarding Air Force cultural and historic resources.
- Goal: Partnerships with volunteer organizations to maximize our ability to provide services to Spokane County.
- Goal: Partnership with Five Mile School Neighborhood Group to provide technical assistance regarding their potential use of the school.