



Glenn Youngkin
Governor

Caren Merrick
Secretary of
Commerce and Trade

COMMONWEALTH of VIRGINIA

Bryan W. Horn
Director

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

AGENDA

Shenandoah County and Town of New Market VSA

Oral Presentations & Public Hearing

Commission on Local Government

2:00 p.m., March 9th, 2023

New Market Town Office

9418 John Sevier Road

New Market, VA 22844

For the public, Microsoft Teams joining info:

Enter this URL to join the meeting:

https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2F%2Fmeetup-join%2F19%3Ameeting_OGFjNDI3ODItNmY4My00MDZjLWFjZGUtYTQ0MDRiOTk1MWE5%40thread.v2%2F0%3Fcontext%3D%257b%2522id%2522%253a%2522620ae5a9-4ec1-4fa0-8641-5d9f386c7309%2522%252c%2522oid%2522%253a%25223cd3642f-3ea5-49bd-b640-ac3795999550%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=b8e455ff-4ce6-4957-b144-68007bcad88a&directDl=true&msLaunch=true&enableMobilePage=false&suppressPrompt=true

Meeting ID: 220 827 619 929

Passcode: rbHYWi

Or call in (audio only)

+1 434-230-0065,,713486674# United States, Lynchburg

Phone Conference ID: 713 486 674#

1. Occupancy for the meeting space is limited, so the Commission encourages members of the public to observe the proceedings through the Microsoft Teams link provided above. Please contact LeGrand Northcutt (legrand.northcutt@dhcd.virginia.gov) for information on how to connect to the meeting using this method.
2. Members of the public viewing the meeting through the Microsoft Teams option are required to mute themselves during the meeting unless called upon by the Commission Chair to speak.
3. Access to meeting materials for members of the public is available on the corresponding meeting page of the [Virginia Regulatory Town Hall website](#) and on [Commonwealth Calendar](#).

I. Call to Order

A. Welcome

(Dr. Johnson)



- B. Introduction of Commissioners and Staff (Dr. Johnson)
- C. Commission’s Review (Mr. Northcutt)
- D. Comments by other Commission Members (Dr. Johnson)
- II. **Set Date to Close the Record**
- A. Commission Deliberation and Action
- III. **Oral Presentations** (Parties)
- IV. **Recess until Public Hearing at 7:00 pm** (Dr. Johnson)
- V. **Reconvene for Public Hearing**
- A. Chair’s remarks (Dr. Johnson)
- B. Public testimony (Mr. Malloy)
- VI. **Closing Remarks** (Commissioners and Staff)
- VII. **Adjourn**



RESOLUTION #: 245

JOINT RESOLUTION OF SHENANDOAH COUNTY AND THE TOWN OF NEW MARKET REQUESTING THAT THE COMMISSION ON LOCAL GOVERNMENT REVIEW A PROPOSED AMENDMENT TO THE SECOND AMENDED VOLUNTARY SETTLEMENT AGREEMENT

WHEREAS, on the 15th day of March, 2012, Shenandoah County, Virginia (the “County”) and the Town of New Market, Virginia (the “Town”) entered into a Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County (the “VSA”), **Exhibit 1**; and

WHEREAS, the VSA was affirmed by order of a special three judge panel pursuant to Code of Virginia § 15.2-3400 on May 1, 2012; and

WHEREAS, the VSA provided that the Town could annex from time to time by Town ordinance portions of land containing a total of approximately 1918 acres known as the Future Growth Area subject to certain terms in the VSA; and

WHEREAS, one of those VSA terms is that the land use in the Future Growth Area shall be in conformity with the Future Land Use Map attached to the VSA as exhibit B, as further described in section 3 of the VSA; and

WHEREAS, during the ten years since the VSA was adopted, no development has occurred in the Future Growth Area, and no territory has been annexed by the Town. In addition, the Shenandoah Valley Battlefields Foundation has purchased or obtained conservation easements over portions of the Future Growth Area, limiting the Town’s growth within those originally conceived areas; and

WHEREAS, the parties wish to allow additional future uses of the areas to be annexed through the substitution of a new exhibit B-1, which provides for additional uses in two areas of the Future Growth Area. The two amendments are in the bottom of exhibit B-1 to the VSA Amendment, and are marked Houses/Townhouses/PUD; and

WHEREAS, the parties also wish to add flexibility to the VSA in order to allow possible additional amendments to the uses permitted in the Future Growth Area and to the VSA by mutual

consent of the Town and County, but without the necessity of instituting court action pursuant to Code of Virginia § 15.2-3400; and

WHEREAS, in order to begin the process of amending the VSA, following open meetings of both parties, the governing bodies of both parties have approved and both parties have executed an Amendment to Second Amended Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County (the “VSA Amendment”), **Exhibit 2**; and

WHEREAS, Code of Virginia § 15.2-3400(6) provides that the VSA Amendment shall not become binding on the parties until affirmed by a special three judge panel after compliance with all provisions of Code of Virginia § 15.2-3400; and

WHEREAS, Code of Virginia § 15.2-3400(3) provides if a voluntary agreement is reached that the governing bodies shall present to the Commission on Local Government (the “Commission”) the proposed settlement so that, following public hearings, the Commission may report to the governing bodies their findings and recommendations; and

WHEREAS, 1VAC50-20-230 requires that referral of a proposed voluntary settlement agreement to the Commission under the provisions of Code of Virginia § 15.2-3400 shall be accompanied by resolutions, joint or separate, of the governing bodies of the localities that are parties to the proposed agreement requesting that the Commission review the agreement, stating the parties’ intention to adopt the agreement, and providing certain information to the Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF SHENANDOAH COUNTY, VIRGINIA AND THE TOWN COUNCIL OF THE TOWN OF NEW MARKET, VIRGINIA THAT:

1. The County and the Town request that the Commission review the VSA Amendment and state their intention to adopt the VSA Amendment subsequent to the Commission’s review.
2. The County Administrator, Town Manager and the parties’ Attorney are authorized and directed to refer the VSA Amendment, together with all necessary data and materials, to the Commission and to take all other actions as may be required to accomplish the Commission’s review of the VSA Amendment; and
3. The County designates the following individual as the County’s contact persons for communications with the Commission regarding the review of the VSA Amendment:

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Evan Vass, County Administrator
 Shenandoah County, Virginia
 600 N. Main Street, Suite 102
 Woodstock, Virginia 22664
 Phone: 540-459-6165
 Fax: 540-459-6168
 Email: evass@shenandoahcountyva.us

4. The Town designates the following individual as the Town’s contact person for communications with the Commission regarding the review of the Agreement:

J. Todd Walters, Town Manager
 Town of New Market, Virginia
 9418 John Sevier Road
 Post Office Box 58
 New Market, Virginia 22844
 Phone: 540-740-3432
 Fax: 540-740-9204
 Email: t.walters@newmarketvirginia.com

Adopted by the County this 11th day of October, 2022.

CERTIFICATE


The undersigned Chairman and Clerk of the Board of Supervisors of Shenandoah County, Virginia hereby certify that the foregoing constitutes a true and correct copy of a Joint Resolution of Shenandoah County and the Town of New Market Requesting that the Commission on Local Government Review a Proposed Amendment to the Second Amended Voluntary Settlement Agreement adopted by the Board of Supervisors at a meeting held on October 11, 2022. A record of the roll-call vote by the Board of Supervisors is as follows:


<u>NAME</u>	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Karl V. Roulston, Chairman	X			
Dennis M. Morris, Vice Chairman	X			
Steven A. Baker	X			
Bradley G. Pollack		X		
Josh M. Stephens	X			
Timothy F. Taylor	X			

Date: October 11, 2022

[SEAL]

ATTEST:


Evan L. Vass, Clerk
Shenandoah County, Virginia


Karl V. Roulston, Chairman
Board of Supervisors of
Shenandoah County, Virginia

Adopted by the Town this 17th day of October, 2022.

CERTIFICATE

The undersigned Mayor and Clerk of the Town Council of the Town of New Market, Virginia hereby certify that the foregoing constitutes a true and correct copy of a Joint Resolution of Shenandoah County and the Town of New Market Requesting that the Commission on Local Government Review a Proposed Amendment to the Second Amended Voluntary Settlement Agreement adopted by the Town Council at a meeting held on October 17, 2022. A record of the roll-call vote by the Town Council is as follows:

<u>NAME</u>	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Larry Bompiani, Mayor*				
Peggy Harkness	✓			
Janice Hannah	✓			
Peter Hughes	✓			
Bob King	✓			
Daryl Watkins				✓
Scott Wymer	✓			


*Mayor Bompiani votes in the event of a tie

Date: October 17, 2022

[SEAL]

ATTEST:


Larry Bompiani, Mayor
Town of New Market, Virginia


J. Todd Walters, Clerk
Town of New Market, Virginia

**SECOND AMENDED VOLUNTARY SETTLEMENT AGREEMENT BETWEEN
THE TOWN OF NEW MARKET AND SHENANDOAH COUNTY**

THIS AGREEMENT is made and entered into this 15 day of MARCH, 2012, and executed in triplicate originals (each executed copy constituting an original) by and between the TOWN OF NEW MARKET, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, and the COUNTY OF SHENANDOAH, VIRGINIA, a political subdivision of the Commonwealth of Virginia.

WHEREAS, the Town and the County have reached this Agreement, pursuant to Title 15.2, Chapter 34, of the Code of Virginia, (i) providing for the annexation of certain territory of the County to the Town (ii) providing for the development of the annexation areas in accordance with a jointly approved land use map, (iii) providing for the grant of immunity to the County from annexation for a period of 20 years, and (iv) providing for the transfer of certain funds received by the Town to the County.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Town and the County agree as follows:

SECTION 1
DEFINITIONS

The Town and the County hereto agree that the following words, terms, and abbreviations as used in this Agreement shall have the following defined meanings, unless the context clearly provides otherwise:

- 1.1 "Town" means the Town of New Market, Virginia.
- 1.2 "Town Council" means the Town Council of the Town of New Market, Virginia.
- 1.3 "County" means the County of Shenandoah, Virginia.



- 1.4 "County Board of Supervisors" means the Board of Supervisors of the County of Shenandoah, Virginia.
- 1.5 "Code" means the Code of Virginia (1950), as amended. A reference to a specific Code provision shall mean that Code provision as it existed on the date of execution of this Agreement, or any successor provision should the Code be amended after execution of this agreement.
- 1.6 "Commission" means the Commission on Local Government.
- 1.7 "Special Court" means the Special Three-Judge Court appointed by the Supreme Court of Virginia pursuant to Title 15.2, Chapter 30, of the Code.
- 1.8 "Section" refers to the parts of this Agreement unless the context indicates that the reference is to sections of the Code.
- 1.9 "Subsection" refers to the parts of this Agreement set out in the various "Sections."
- 1.10 "Future Land Use Plan" refers to the written text outlining the future land use for Future Growth Area entitled "future land use plan."
- 1.11 "Future Land Use Map" attached as Exhibit B

SECTION 2
ANNEXATION

- 2.1 Annexation Area. The Town and the County agree to the annexation of County territory lying generally to the north, south, east and west of the existing Town corporate limits. This area is referred to as the Future Growth Area and is described by metes and bounds in Exhibit A and is depicted on the map attached as Exhibit B to this Agreement containing approximately 1,918 acres. The

annexation by the Town shall occur in strict accordance with the terms and conditions set out in Section 2 of this Agreement.

2.2 Survey of Parcels in Future Growth Area. Prior to the annexation of any parcel in the Future Growth Area, the Town shall have prepared, without expense to the County, a survey plat and metes and bounds description showing the parcel or parcels being annexed into the Town, as required by Subsection 2.5(b).

2.3 Terms and Conditions of Annexation. The Town and County agree that the Town may annex any tax parcel or parcels in the Future Growth Area by the passage of an ordinance by the Town Council, provided that either subsection 2.3 (a), 2.3 (b), or 2.3 (c) has been satisfied.

- (a) The tax parcel is deemed developed subsequent to the effective date of this Agreement, as the term “developed” is defined in Subsection 3.4; or
- (b) The tax parcel or parcels are currently being served by Town water, sewer or both; or
- (c) An owner in the Future Growth Area requests the annexation of a tax parcel or parcels in the Future Growth Area to the Town subsequent to the effective date of this Agreement; and
- (d) The tax parcel or parcels referred to in Subsections 2.3 (a), (b), and (c) of this Section that are to be annexed are either contiguous to the Town or contiguous to another tax parcel that is contiguous to the Town;
- (e) In the event annexation is sought for a tax parcel or parcels that are not contiguous to the Town but are contiguous to another tax parcel or parcels that are contiguous to the Town, the tax parcel or parcels that are not

contiguous to the Town must meet the requirements of Subsection 2.3 (a), (b), or (c) of this Section. The contiguous parcel or parcels shall also be annexed to the Town to insure that the Town remains a compact body of land.

- (f) No annexation shall include land greater than 12% of the total Future Growth Area except as otherwise noted in Section 2.4 of this agreement. The Town agrees that all such annexations shall be consistent with its Comprehensive Plan concerning growth.

2.4 Complete Annexation of Future Growth Area. When 75% of the acres in the Future Growth Area have developed as that term is defined in Subsection 3.4 of this Agreement, the Town may annex the remaining tax parcels within the Future Growth Area without regard to the 12% limitation set forth in Subsection 2.3(f) of this Agreement.

2.5 Conditions Precedent to the Town Annexing by Ordinance Pursuant to Subsections 2.1, 2.2, 2.3, and 2.4 of this Agreement. The Town shall not pass any ordinance to annex any territory in the Future Growth Area unless and until:

- (a) The Town provided the County written notice of its intent to adopt an annexation ordinance for any tax parcel or parcels in the Future Growth Area. Such notices shall be delivered at least 60 days prior to the adoption of an annexation ordinance.
- (b) The Town provides with the Annexation Notice to the County, (i) a metes and bounds description, (ii) survey plat of the tax parcel or parcels to be annexed to the Town, and (iii) a written statement of the Town's basis for annexing such tax parcel or parcels. Such written statement should include

reference to specific Subsections of this Agreement that permit such annexation.

- 2.6 Effective Date of Annexation by Ordinance. The effective date of any annexation that occurs pursuant to Section 2 of this Agreement shall be established in the Annexation Ordinance as of either June 30th or December 31st, at the discretion of the Town.
- 2.7 Extension of Municipal Services. The Town agrees to only annex such areas as can be served by water and sewer within a period of five (5) years from the date of annexation and will allow its water and sewer service to be extended to the tax parcel or parcels that are annexed to the Town on the same basis and at the same levels as such services are now or hereafter provided in areas within its current corporate limits where like conditions exist. Water and sewer services shall be extended into annexed areas only as it becomes reasonably necessary and economically feasible. Additionally, other municipal services, exclusive of water and sewer, will be extended by the Town into annexed areas on the effective date of each annexation, or as soon as practicable. All such services will be at the same level and quality as are generally available within the entire Town.

SECTION 3

LAND USE AND ZONING IN THE FUTURE GROWTH AREA

- 3.1 Future Land Use. The Town and the County agree that the orderly development of the Future Growth Area is in the best interest of both parties. The Town and the County have agreed upon the Future Land Use Map attached hereto as Exhibit B. The Future Land Use Map depicts the types of land uses for the Future Growth Area that the Town and the County have agreed are most appropriate for the reasonably near future. The Future Land Use Map is to serve as a guide to future development as specified in Section 3 of this Agreement. The Town and the County have already amended their respective Comprehensive Plans to

incorporate the Future Land Use Map. The Town further agrees to amend their zoning ordinance to reflect the zoning districts proposed on the Future Land Use Map prior to any annexation requests.

3.2 Interim Zoning Classifications. Until such a time as a zoning classification is assigned, any unzoned land within the corporate boundaries may be used only as permitted by the regulations of the Transitional X District as set forth in the Town of New Market Zoning Ordinance.

3.3 Affirming or Rezoning of Interim Zoning Classifications.

- (a) Within six (6) months after the effective date of a Future Growth Area Annexation, the Town Council shall classify all parcels so annexed to Town zoning districts that substantially conform to the Future Land Use Plan.
- (b) After completing the herein referenced classification process, the Town Council shall then have the full discretion and power to approve or disapprove any rezoning requests, whether initiated by the property owners or the Town itself provided that the Town specifically agrees that it will only approve rezoning requests that substantially conform to the Future Land Use Plan until the terms and conditions of Subsection 3.4 of this Agreement are complied with.

3.4 Future Land Use Constraints.

- (a) The Town and the County agree that the obligations imposed on the Town Council with respect to zoning and rezoning matters as reflected in Subsections 3.1, 3.2, and 3.3 shall remain in effect and the Town Council will specifically comply with such Subsections until such time as 75% of the original undeveloped acreage in the Future Growth Area has developed.

- (b) After the development of 75% of the undeveloped acreage in the Future Growth Area, the Town Council shall have complete discretion to deal with all zoning and rezoning matters within the Future Growth Area upon the merits of each zoning application without reference to Subsections 3.1, 3.2, and 3.3.
- (c) In determining whether 75% of the acreage in the Future Growth Area is developed, the Town and the County agree that Subsection 3.4 (d) and (e) shall be followed and applicable to the 75% calculation in the Future Growth Area.
- (d) The Town and the County agree that the term “developed” as used in this Agreement for the purpose of making the 75% calculation shall mean:
 - (1) The Town and the County agree that if a residential dwelling of any kind is constructed upon any tax parcel in the Future Growth Area which contains five (5) acres or less, then that entire parcel shall be deemed developed.
 - (2) The Town and the County agree that if a residential dwelling of any kind is constructed upon any tax parcel in the Future Growth Area which contains more than five (5) acres, then only five (5) acres of that tax parcel shall be deemed developed.
 - (3) The Town and the County agree that any tax parcel in the Future Growth Area that is exclusively in commercial or industrial use shall be deemed developed in making the 75% calculation.

- (4) The Town and the County agree that any tax parcel being used for commercial or industrial activities on which agricultural operations or uses are also occurring, including the planting and harvesting of crops or plant growth of any kind, pasture, horticulture, silviculture, dairying, floriculture, or the raising of poultry and/or livestock, then the portion (or acreage) of such tax parcel being put to such agricultural uses shall be deemed undeveloped in making the 75% calculation.
- (e) The Town and the County agree that any tax parcel or part of any tax parcel used for public roads and highways or public facilities, or which lies in the 100-year flood plain shall be excluded from the total acreage in the Future Growth Area for the purposes of making the 75% calculation.
- (f) The Town agrees that properties currently shown on the Future Growth Area Map may remain in the Agricultural and Forest District as long as they remain in Shenandoah County. In the event that a tax parcel or parcels are located in the Agricultural and Forest District and the property owner has requested the property to be annexed, they must also request that the property be removed from the Agricultural and Forest District by the County and have such request approved prior to any approval of annexation by the Town. Both parties recognize that land within the Agricultural and Forest District is limited in its growth potential.
- (g) Prior to annexation, in the event of rezoning requests, special use requests, non-conforming uses or any other use situations not permitted by right in the Shenandoah County Zoning Ordinance, the County Zoning Administrator shall refer any such matter for a joint review by the County Planning Commission and the Town Planning Commission. The respective commissions may meet jointly and shall make their recommendations

jointly or severally, as each respective commission may so desire, to the County Board of Supervisors, as provided by law. The Town agrees that, provided such referrals are made in a timely fashion so as to allow adequate time for review, the Town Planning Commission shall in turn make a timely recommendation, if any, so as not to delay formal action by the County. Any such referrals by the County Zoning Administrator to the Town Planning Commission should be made no less than 10 days prior to any meeting of the Town Planning Commission during which action thereon by the Town Planning Commission is desired.

SECTION 4

WAIVER OF ANNEXATION RIGHTS, IMMUNITY AND DEANNEXATION

- 4.1 Waiver of Annexation Rights. The Town and the County agree that for a period of 20 years the Town waives all its statutory rights to annex County territory and will not initiate, institute or support any proceeding to annex territory of the County except (i) as specifically provided in Subsection 2 of this Agreement or (ii) any annexation that may be the result of a mutual agreement between the Town and the County. It is the intent of the Town and the County that the County be immune from any annexation to the Town for such 20-year period.
- 4.2 Citizen Annexation. In the event annexation proceedings are instituted by property owners or qualified voters pursuant to § 15.2-3203 of the Code or any statute similar thereto, the Town agrees that it will not support such proceedings and, if requested by the County, will oppose at no cost to the Town all such proceedings during the 20-year immunity period. The Town specifically agrees not to provide any legal assistance, engineering assistance, financial aid, or any other aid or assistance to property owners or qualified voters petitioning for annexation pursuant to Va. Code § 15.2-3203 of the Code.

SECTION 5
CASH PAYMENT TO THE COUNTY

- 5.1 **Cash Payment.** It is in both the Town and County's interest that new development pay its fair share of the costs for new capital projects in the Town and County. The County agrees to run a fiscal impact model for all new developments proposed in conjunction with a property requested to be annexed into the Town to determine the county's share of fiscal impact on the County Capital Improvement Plan. The composition of the model shall be determined from time to time, within the County's reasonable discretion. The Town agrees to negotiate a pre-annexation agreement with the property owner of properties proposed to be annexed for development that stipulates the payment of cash on a per unit basis in the amount determined by the County fiscal impact model. This cash payment will be paid by the property owner after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy. Such cash payments shall be made payable to the Town of New Market. The Town will forward this payment to the County within 60 days.

SECTION 6
COMMISSION AND SPECIAL COURT APPROVAL

Commission Approval. The Town and the County have presented this proposed settlement to the Commission as required by Code of Virginia § 15.2-3400. This agreement incorporates the changes suggested in their report.

- 6.1 **Special Court Approval.** The Town and County agree to petition the Shenandoah County Circuit Court for an order affirming the proposed settlement.
- 6.2 **Termination for Failure to Affirm and Validate and Give Full Force and Effect to This Agreement.** The Town and the County agree that if this Agreement is not

affirmed by the Special Court as required by Code of Virginia § 15.2-3400 that this Agreement shall immediately terminate.

SECTION 7
MISCELLANEOUS PROVISIONS

- 7.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit to the Town and the County, and each of the future governing bodies of the Town and the County, and upon any successor to either the Town or the County.
- 7.2 Amendments. This Agreement may be amended, modified, or supplemented in whole or in part, by mutual agreement of the Town and the County, prior to affirmation, by a written document of equal formality and dignity, duly executed by the authorized representatives of the Town and the County.
- 7.3 Enforceability. This Agreement shall be enforceable only by the Special Court affirming, validating, and giving full force and effect to this Agreement or by a successor Special Court appointed pursuant to Title 15.2, Chapter 30 of the Code, pursuant to a declaratory judgment action initiated by either of the parties hereto to secure the performance of any provisions, covenants, conditions and terms contained in this Agreement of the Order affirming, validating, and giving full force and effect to this Agreement.
- 7.4 Standing. The Town and the County agree that each shall and does have standing to enforce any of the provisions, covenants, conditions and terms of this Agreement.
- 7.5 Conflict Waiver. The Town and County recognize that both parties are represented by Litten & Sipe, LLP and waive any conflict that this presents, including but not limited to any conflict with respect to both sides being represented by the same law firm during the affirmation procedures set forth in

Code of Virginia § 15.2-3400 and any work incidental to obtaining such required approvals of this Agreement. The parties acknowledge and agree that the material portions of this Agreement were negotiated and agreed to without the participation of Litten & Sipe, LLP, and that if a dispute arises with respect to the interpretation or performance of this Agreement that neither side may be represented by Litten & Sipe, LLP.

SECTION 8
RESOLUTION OF DISPUTES

- 8.1 Should the parties have any dispute about the interpretation or performance of this agreement, the dispute will be resolved as follows:
- (a.) The Town Manager and the County Administrator will meet informally to discuss the parties' needs and concerns. They will search for solutions and, if necessary, they will seek their governing bodies' approval of any solutions developed.
- (b) Should the dispute not be resolved through such informal discussions, the parties agree to participate in mediation as a further effort to resolve the dispute. If such mediation shall fail to be held within sixty days of either parties' request court proceedings may commence.
- (c) Should both of the foregoing steps fail to lead to resolution of the dispute, the parties may bring such legal or equitable proceedings as may be proper under Virginia law. This procedure shall not prevent the institution of any legal proceeding necessary to preserve a claim.

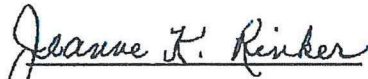
WITNESS the following signatures and seals:

TOWN OF NEW MARKET, VIRGINIA

By:  _____

Mayor

ATTEST:


Town Clerk

COUNTY OF SHENANDOAH, VIRGINIA

By:  _____

Chairman of the Board of Supervisors

ATTEST:

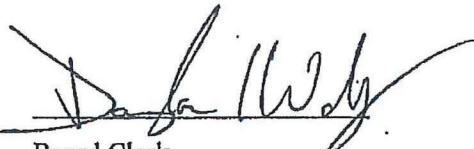

Board Clerk

EXHIBIT A

Metes and Bounds Description of Growth Area

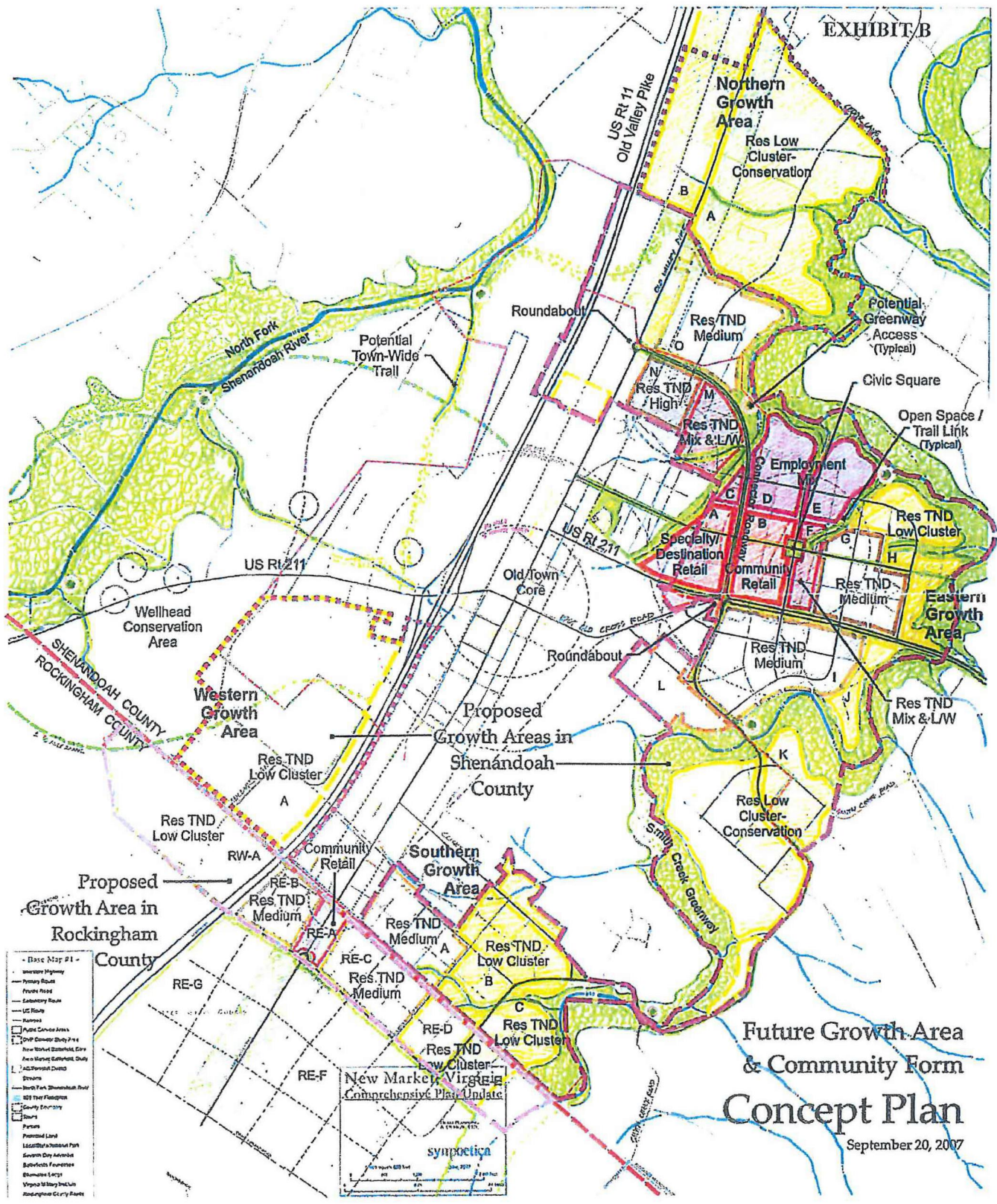
The following is the metes and bounds description, in layman terms, of an approximately 1,710 acre annexation area, to be described in two parts, and located adjacent to the Town of New Market, in the Lee Magisterial District of Shenandoah County, Virginia.

Beginning on Clicks Lane (Rt. 823) where it is intersected by Smith Creek (approximately 1.1 miles from Rt. 11); thence leaving Clicks Lane and following Smith Creek downstream until arriving at the southeast corner of tax map parcel 104-A-40D (106 White Mill Road); thence following said property line in a northwest direction until arriving at the western most point of tax map parcel 104-A-40A (a tractor trailer parking area on Smith Creek Road); thence following said property line in a northeast direction until the end of the gravel parking lot, thence turning east and crossing the gravel driveway, thence proceeding northeast until intersecting Smith Creek Road (Rt. 735), which becomes White Mill Road; thence following White Mill Road in a southeastern direction until arriving at the northwest corner of tax map parcel 104-A-38; thence following said property line in a northeastern direction to said property's northern most point; thence following said property line thru said property and to the northeastern corner of the adjacent property known as tax map parcel 104-A-38 (135 White Mill Road); thence following the property line of tax map parcel 104-A-15C until arriving at East Lee Highway (Rt. 211); thence following East Lee Highway in a western direction until intersection East Old Cross Road (Rt. 1002); thence following East Old Cross Road in a western direction until arriving at a small pond at the Life Care Center of New Market; thence heading in a northeast direction until arriving at East Lee Highway; thence proceeding north across East Lee Highway and along the property line of tax map parcel 104-A-15 approximately 1,950' in a northeastern direction; then following said property line in a western direction (and crossing a small stream) until arriving at tax map parcel 104A-3-A (storm water detention pond for Horseshoe Bend Subdivision); thence proceeding northeast until arriving at the northeastern corner of tax map parcel 104A-3-17 (135 Dillon Court); thence following said property line in a northwestern direction along Horseshoe Bend Subdivision until arriving at Rt. 11; thence proceeding south along Rt. 11 until intersecting with Shipp Street (Rt. 1016); thence proceeding west on Shipp Street and across Interstate 81 until arriving at George R. Collins Memorial Parkway (Rt. 305); thence proceeding north until arriving at the northeastern corner of tax map parcel 103-A-51A (New Market Battlefield State Historical Park); then proceeding east across Interstate 81 to the southwestern corner of tax map parcel 99B-2-59 (188 Battlefield Lane); thence proceeding north along the right-of-way of Interstate 81 approximately 3,670'; thence proceeding east so as to follow the southern property line of tax map parcel 99-A-29 (3455 Old Valley Pike) until arriving at Rt. 11; thence proceeding south on Rt. 11 until arriving at intersection of Cedar Lane (Rt. 737); then proceeding along Cedar Lane in a southeastern direction approximately 0.6 miles (fork in road); thence proceeding south along the eastern property line of tax map

parcel 99-A-41 (turn right at aforementioned fork in road) until arriving at Smith Creek; thence proceeding upstream on Smith Creek until arriving at East Lee Highway; thence proceeding across East Lee Highway and following Smith Creek until arriving at the southern property line of tax map parcel 104-A-50 (2889 Smith Creek Road); thence proceeding on a straight line from said point in a southwestern direction to the eastern most point of tax map parcel 104-A-51 (open field located adjacent to and northwest of 1688 Smith Creek Road); thence proceeding south along said property line until arriving at Smith Creek Road (Rt. 620); thence following Smith Creek Road until arriving at Clicks Lane; thence proceeding north on Clicks Lane until arriving at the noted beginning point.

Beginning on Clicks Lane (Rt. 823) where it is intersected by Smith Creek (approximately 1.1 miles from Rt. 11); thence leaving Clicks Lane and following Smith Creek upstream until arriving at the Rockingham County/Shenandoah County line; thence proceeding in a northwest direction following said county line approximately 1.74 miles until arriving at the western most point of tax map parcel 103-A-81C (open field across road from 929 Miller Road; thence following said property line in a northeast direction until arriving at the southern most point of tax map parcel 103-3-59A (415 Burkholder Lane); thence proceeding along the southwestern property line until arriving at Burkholder Lane; thence following Burkholder Lane until arriving at Arthur Lane; thence proceeding east on Arthur Lane and following the existing corporate limits of the Town of New Market until arriving at Miller Lane (Rt. 619); thence proceeding north along Miller Lane until arriving at the northeastern corner of tax map parcel 103-A-72G (located just south of Shenandoah Valley Travel Association building); thence proceeding east across Interstate 81 to a point on tax map parcel 103-A-72A approximately 0.1 miles south of West Lee Street (Rt. 1007); then proceeding south and following the right-of-way of Interstate 81 until arriving at the existing corporate limits of the Town of New Market on tax map parcel 103D-4-A (directly behind 9995 Pleasant View Drive) and being a portion of the Pleasant View Subdivision; thence proceeding in a southeast direction and crossing Pleasant View Drive, Massanutten Avenue, Rt. 11 and arriving at the southern corner of the existing corporate limits located on tax map parcel 103-A-83E (open lot in front of 9892 S. Congress St.); then proceeding in a northeast direction along said property line until arriving at the Heritage Green Subdivision (open space with drainage area); then proceeding to the southeast along the boundary of the Heritage Green Subdivision and the Foothills Subdivision until arriving at the southern most corner of tax map parcel 103-A-82 (open space adjacent to 9921 Woodbine Way); thence proceeding in a northeast direction along said property line until arriving at Clicks Lane; thence proceeding southeast along Clicks Lane until arriving at the intersection of Driver Lane; thence proceeding in a northeast direction and following Driver Lane and then following the property lines of tax map parcel 103-A-95 that are adjacent to the Town of New Market and the Shenvallee Golf Course; then following the property lines of tax map parcels 103-A-94A, 103-A-94D, and 103-A-94B that are adjacent to the Town of New Market and the Shenvallee Golf Course; thence proceeding east following the rear

property lines of tax map parcels 103-A-93 (579 Clicks Lane), 103-A-92, 103-A-90, 103-A-89, 103-A-87, 103-A-86 (699 Clicks Lane) and including portions of tax map parcel 103-A-113 (Shenvalee Golf Course access ways) until arriving at the northeast corner of tax map parcel 103-A-86; thence proceeding along the southeast property line of tax map parcel 103-A-86 until arriving at Clicks Lane; thence following Clicks Lane until arriving at the noted beginning point.



Future Growth Area
& Community Form
Concept Plan
September 20, 2007

**AMENDMENT TO SECOND AMENDED VOLUNTARY SETTLEMENT AGREEMENT
BETWEEN THE TOWN OF NEW MARKET AND SHENANDOAH COUNTY**

This Amendment to the Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County (the "VSA Amendment") is entered into between the Town of New Market, Virginia (the "Town") and Shenandoah County, Virginia (the "County") this 13 day of SEPTEMBER, 2022.

WHEREAS, on the 15th day of March, 2012 the Town and County entered into a Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County (the "VSA Agreement"); and

WHEREAS, the VSA Agreement was affirmed by order of a special three judge panel pursuant to Code of Virginia § 15.2-3400 on May 1, 2012; and

WHEREAS, since the VSA's adoption and implementation it is the opinion of both parties that components of the areas to be annexed could be amended and remain mutually beneficial to both parties; and

WHEREAS, the parties wish to add flexibility to the VSA to allow for additional future uses of the areas to be annexed by mutual consent of the Town and County, but without the necessity of instituting court action pursuant to Code of Virginia § 15.2-3400; and

WHEREAS, the Town and County now wish to amend the VSA Agreement pursuant to this VSA Amendment.

NOW, THEREFORE, THE PARTIES HERETO DO HEREBY AGREE THAT THE VSA AGREEMENT IS AMENDED AS FOLLOWS:

- 1.) Section 3.1 is amended to replace Exhibit B with Exhibit B-1, as attached to this VSA Amendment.
- 2.) Section 3.4(a) is revised to add the italicized text below, so that it states as follows:

The Town and the County agree that the obligations imposed on the Town Council with respect to zoning and rezoning matters as reflected in Subsections 3.1, 3.2, and 3.3 shall remain in effect and the Town Council will specifically comply with such Subsections, *unless otherwise agreed to by the governing bodies of the Town and County after following the procedure set forth in*



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Virginia Code § 15.2-2204(A), until such time as 75% of the original undeveloped acreage in the Future Growth Area has developed.

- 3.) Section 7.2 is amended to read as follows: This Agreement may be amended by mutual agreement of the Town and the County after following the procedure set forth in Virginia Code § 15.2-2204(A). Any modifications to Exhibit B-1 should note the projected density at build out under the existing plan and the proposed modified plan.
- 4.) The parties agree in good faith to reasonably cooperate with each other during the affirmation process set forth in Code of Virginia § 15.2-3400, and agree that if this VSA Amendment is not affirmed by the special court as required by Code of Virginia § 15.2-3400 that this VSA Amendment shall immediately terminate.
- 5.) All other terms of the VSA Agreement shall remain in full force and effect, and the duration of the VSA Agreement shall not be modified by this VSA Amendment.
- 6.) The Town and County recognize that both parties are represented by Litten & Sipe, LLP and waive any conflict that this presents, including but not limited to any conflict with respect to both sides being represented by the same law firm during the affirmation procedures set forth in Code of Virginia § 15.2-3400 and any work incidental to obtaining such required approvals of this VSA Amendment. The parties acknowledge and agree that the material portions of this Agreement were negotiated and agreed to without the participation of Litten & Sipe, LLP, and that if a dispute arises with respect to the interpretation or performance of this Agreement that neither side may be represented by Litten & Sipe, LLP.

WITNESS the following signatures and seals:

TOWN OF NEW MARKET, VIRGINIA

By: *Darryl A. Boyer*
Mayor

ATTEST:

J. Hill
Town Clerk

COUNTY OF SHENANDOAH, VIRGINIA

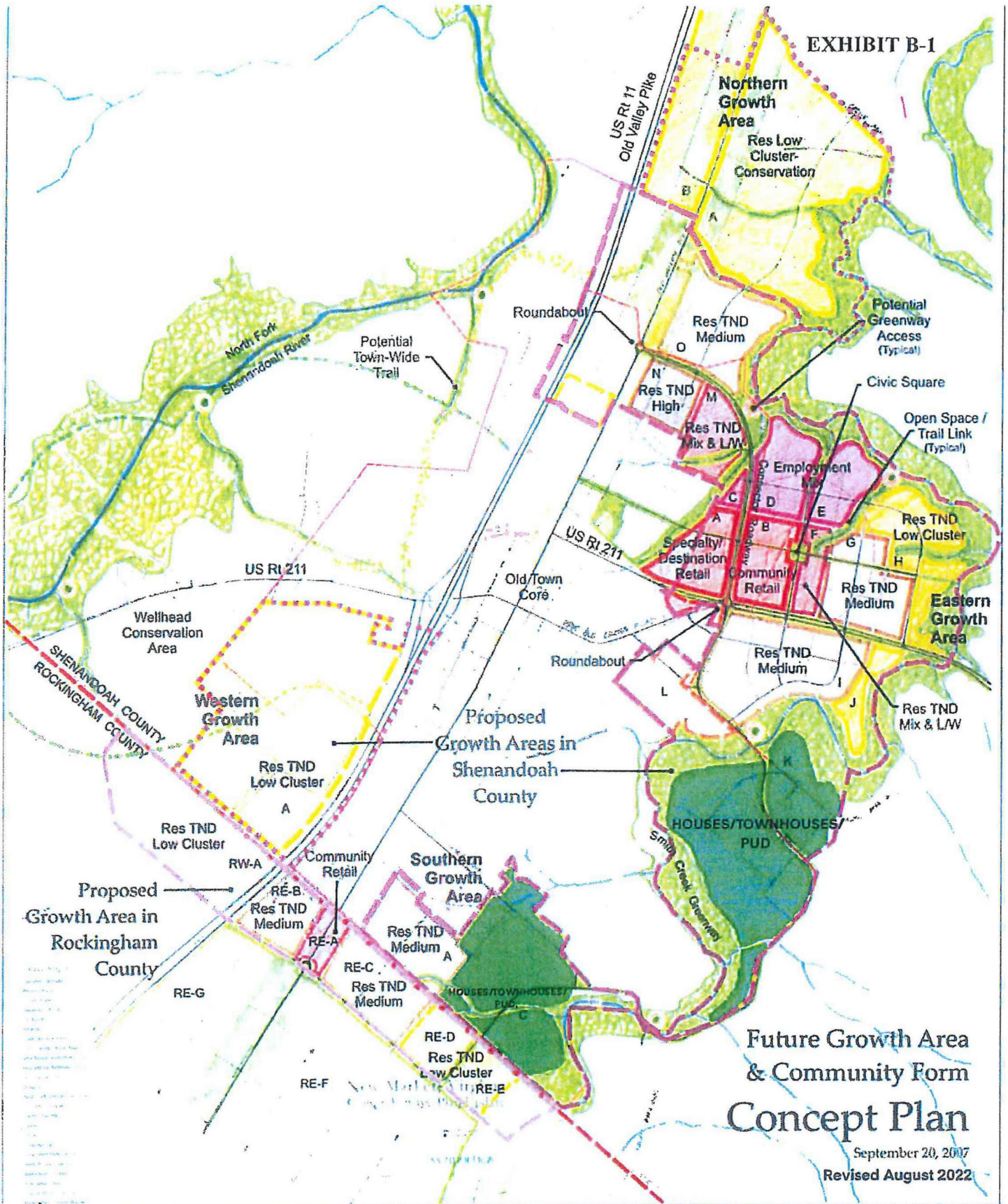
By: *Jeffrey*
Chairman of the Board of Supervisors

ATTEST:

[Signature]
Board Clerk

Approved as to legal form:

Jason Ham
Jason Ham, County Attorney



Re: New Market -Shenandoah County Amendment to VSA

Jason Ham <jason.ham@littensipe.com>

Fri, Sep 23, 2022 at 9:36 AM

To: "Northcutt, LeGrand" <legrand.northcutt@dhcd.virginia.gov>

Cc: Evan Vass <evass@shenandoahcountyva.us>, Todd Walters <t.walters@newmarketvirginia.com>, Jordan Bowman <jordan.bowman@littensipe.com>

LeGrand:

Thank you for all of your assistance regarding the Amendment to the Voluntary Settlement Agreement.

We discussed my providing some background that you could share with the Commission on Local Government (the "Commission").

In 2012 Shenandoah County, Virginia (the "County") and the Town of New Market (the "Town") entered into a Second Amended Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County (the "VSA").

My firm, with consent from the Town and County, represents both parties.

Per 15.2-3400, this was the second amended agreement because of feedback provided by the Commission that was incorporated into the VSA.

The VSA was approved by the Court per 15.2-3400, and the order is attached.

Both parties then adopted the VSA by ordinance, and it has been in effect since March 15, 2012.

The VSA provided that the Town could annex from time to time by Town ordinance land containing approximately 1918 acres known as the Future Growth Area subject to certain terms in the VSA.

One of those terms is that the land use in the Future Growth Area shall be in conformity with the Future Land Use Map attached to the VSA as exhibit B, as further described In section 3 of the VSA.

During the ten years since the VSA was adopted, no development has occurred in the Future Growth Area, and no territory has been annexed by the Town. In addition, the New Market Battlefield Foundation has purchased or obtained conservation easements over significant portions of the Future Growth Area, limiting the Town's growth.

The Town and County have agreed to amend the VSA, primarily to provide for a new exhibit B-1, which provides for additional uses in two areas of the Future Growth Area. The two amendments are in the bottom of the map attached to the VSA Amendment as an exhibit, and are marked Houses/Townhouses/PUD.

I have attached the VSA Amendment, which includes a new exhibit B-1.

Although the VSA Amendment has been executed by both parties, both parties understand that it does not become effective until compliance with the process set forth in 15.2-3400 has been completed.

Recognizing that this is a minor amendment which still requires time consuming compliance with 15.2-3400, the VSA Amendment also includes language designed to expedite the process of any other future amendments.

There is a developer that wants to build houses and townhouses in the Future Growth Area, which are allowed but at a density that is so low that the development is uneconomical.

As the Town has had almost no development in over ten years, the Town would like this project to proceed in a timely fashion.

For this reason, while recognizing the need for the Commission to perform its important work, the Town will do everything that it can do to expedite the process, and very much appreciates how responsive and prompt you have been with respect to this matter.

I understand that the Commission will meet to discuss this matter on November 4, 2022, and I will provide the resolutions requesting the commission to review the VSA Amendment pursuant to 1VAC50-20-230 before November 1, 2022, per our conversation.

Per our conversation of today, given the limited nature of the effect of the VSA Amendment, the only information responsive to the requirement to provide information described in 1VAC50-20-610 is this email describing the process, per subsection 8.

If there is additional information that I can provide to you, please let me know.

Cordially,

Jason J. Ham

Litten & Sipe, LLP

410 Neff Avenue


Harrisonburg, Virginia 22801

(540) 437-3064



3 attachments

 **VSA.pdf**
2550K

 **Order.VSA.pdf**
382K

 **VSA.Amendment.pdf**
2705K