

**Town of Valdese  
Town Council Meeting  
Valdese Town Hall  
102 Massel Avenue SW, Valdese  
Monday, December 2, 2019  
6:00 P.M.**

- 1. Call Meeting to Order**
- 2. Invocation**
- 3. Pledge of Allegiance**

**4. Informational Items:**

- A. Communication Notes
- B. Reading Material

**5. Open Forum/Public Comment**

- 6. Oaths of Office Administered by Burke County Clerk of Superior Court Mabel H. Lowman:** Councilman Keith Ogle, Councilwoman Frances Hildebran, Councilman Andy Thompson

**7. Consent Agenda**

All items below are considered to be routine by the Town Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests. In which event, the item will be removed from the Consent Agenda and considered under Item 8.

- A. Approval of Regular Meeting Minutes of November 4, 2019
- B. Approval of Regular Meeting Minutes of November 14, 2019
- C. Resolution Adopting 2019 Town Council Meetings Calendar
- D. Appointments/Reappointments to Boards and Commissions
- E. Budget Amendments

**8. New Business**

- A. Council Organizational Meeting
- B. Oath of Office to Newly Appointed Deputy Town Clerk Jessica Lail Administered by Councilwoman Frances Hildebran (Town Clerk)
- C. Public Hearing for Stormwater Ordinance Amendment
- D. Code Enforcement Abatement/Updates
- E. Acceptance of Funding for Main Street Waterline Project
- F. Dye Branch Sewer Line Protection Project

**9. Manager's Report**

- A. Annual Christmas Parade, Saturday, December 7, 2019, 10:00 a.m.
- B. Christmas in Valdese with Christmas Tree Lighting, Friday, December 13, 2019 at 6:00 p.m.
- C. OCP Production of A Christmas Story Show Dates December 13-15 and 20-22, 2019; visit [www.oldcolonyplayers.com](http://www.oldcolonyplayers.com) for more information and to purchase tickets
- D. Mingle with Kris Kringle, Saturday, December 14, 2019
- E. Council and Department Head Dinner, Thursday, December 19, 2019 at 6:30 p.m.
- F. Christmas Fellowship Lunch provided by Fire Department, Wednesday, December 18, 2019 11:30am.

- G. Town Offices Will Be Closed December 24-26, 2019, in Observance of Christmas and January 1, 2020 for New Year's Day
- H. Next Council meeting scheduled for Monday, January 6, 2020, 6:00 p.m.

#### **10. Mayor and Council Comments**

#### **11. Adjournment**

## COMMUNICATION NOTES

**To:** Mayor Black  
Town Council

**From:** Seth Eckard, Town Manager

**Date:** November 27, 2019

**Subject:** Monday, December 2, 2019, Council Meeting

7. Consent Agenda:

**A. Approval of Regular Meeting Minutes of November 4, 2019**

**B. Approval of Regular Meeting Minutes of November 14, 2019**

**C. Resolution Adopting 2020 Town Council Meetings Calendar**

Enclosed in the agenda packet is a resolution for the 2020 Town Council meeting dates.

**D. Appointments/Reappointments to Boards and Commissions**

Staff liaisons contacted representatives with expiring terms on town boards and commissions; most everyone agreed to be reappointed. Staff contacted replacement representatives for the few who chose not to be reappointed, with recommendations for replacements included on the list in the agenda packet.

**E. Budget Amendments**

Enclosed in the agenda packet are three budget amendments prepared by Finance Director Bo Weichel. These amendments will move funds into appropriate expenditure accounts.

7. New Business:

**A. Council Organizational Meeting**

Enclosed in your packet is the proposed Council Organizational Plan. Mayor Black will present the plan.

**B. Oath of Office to Newly Appointed Deputy Town Clerk Jessica Lail**

Councilwoman Frances Hildebran (Town Clerk) will administer the Oath of Office to Ms. Lail.

**C. Public Hearing for Stormwater Ordinance Amendment**

The town of Valdese has contracted with the Western Piedmont Council of Governments for Stormwater management i.e., permit enforcement, employee and citizen education. The town's current Stormwater Ordinance must be amended. Enclosed in the agenda packet is the proposed amendments as recommended by the Western Piedmont Council of Government.

**Requested Action:** Staff requests that council adopt the proposed Ordinance and amendments.

**D. Abatement Packet for Code Enforcement**

Code Enforcement Officer Billy Rickles will be presenting to council two requests for abatement for the properties located on Bass St. NW and Carolina St. SE. Mr. Rickles will present cost estimates at the council meeting. The town has \$13,000.00 budgeted for abatements.

**E. Acceptance of funding for Main Street Waterline Project**

Enclosed in the agenda packet a resolution accepting state funds. The town has been approved for a State Revolving Loan by the Division of Water Infrastructure in the amount of \$2,782,950. \$1,000,000 of the loan is in the form of principal forgiveness. The town would be responsible for repaying the remainder of the loan, \$1,782,950, over a 20-year period. This project will replace the waterline(s) from West End St. to Eldred St. along Main Street(Hwy.70).

**Requested Action:** Staff recommends that council approve the Resolution Accepting State Funds and authorize Town Manager Seth Eckard to execute documents as required in connection with the application.

**F. Dye Branch Sewer Line Protection Project**

Project Manager R.J. Mozeley with McGill Associates will discuss the Dye Branch Sewer Line Protection Project. A sinkhole developed on the Kellex property adjacent to the 24-inch town sanitary sewer line, which is one of the town's largest sewer lines. Staff is requesting reimbursement to Kellex for their participation in this project. The town's reimbursement is approximately \$200,000.

**Requested Action:** Staff recommends that council approve reimbursement to Kellex Seating for work involving rehabilitation of storm sewers from the Utility Capital Improvement Project funds.



# READING MATERIAL

**VALDESE FIRE DEPARTMENT - MONTHLY ACTIVITY REPORT****OCTOBER 1st-31st, 2019**

THE BELOW REPORT OUTLINES THE ACTIVITIES PERFORMED BY THE FIRE DEPARTMENT DURING THE MONTH OF OCTOBER, 2019. THE REPORT SHOWS THE AMOUNT OF TIME SPENT ON EACH ACTIVITY AND THE TYPE AND NUMBER OF EMERGENCY FIRE DEPARTMENT RESPONSES.

<u>ACTIVITY / FUNCTION</u>	<u>TOTAL HOURS</u>
STATION DUTY	105.5 HOURS
VEHICLE DUTY	110 HOURS
EQUIPMENT DUTY	86 HOURS
FIRE ADMINISTRATION	166 HOURS
TRAINING ADMINISTRATION	30 HOURS
MEETINGS	16 HOURS
FIRE PREVENTION ADMINISTRATION	3 HOURS
FIRE PREVENTION INSPECTIONS	26 HOURS
<b><u>TYPE / NUMBER OF INSPECTIONS:</u></b>	
ASSEMBLY	4
BUSINESS	2
DAYCARE	0
FACTORY	0
FOSTER HOME	0
MERCANTILE	2
RESIDENTIAL	0
INSTITUTIONAL	4
<b>TOTAL INSPECTIONS:</b>	<b>12</b>
<b><u>VIOLATIONS NOTED:</u></b>	<b>55</b>
SAFE KIDS ADMIN/CRS INSPECTIONS	17 HOURS
PUBLIC RELATIONS	21 HOURS
HYDRANT MAINTENANCE	0 HOURS
SAFETY ADMINISTRATION	28 HOURS
PHYSICAL TRAINING	14.5 HOURS
TRAINING	141 HOURS
ON-DUTY EMERGENCY RESPONSES	57 HOURS
OFF-DUTY EMERGENCY RESPONSES	74 HOURS
FIRE/MEDICAL STANDBY	19 HOURS
OFF-DUTY TRAINING	81 HOURS
<b>TOTAL TRAINING MANHOURS:</b>	
(INCLUDES VOLUNTEER FIREFIGHTERS)	<b>379 HOURS</b>

**FIRE DEPARTMENT EMERGENCY RESPONSES:****FIRE:**

ALARM	4
VEHICLE	0
ODOR/SMOKE INVESTIGATION	0
MUTUAL AID TO STATION 63	1
MUTUAL AID TO STATION 67	2
STRUCTURE	0
OUTSIDE FIRE	0
STANDBY	3
SERVICE	2
ELECTRICAL HAZARD	<u>4</u>
	<b>16</b>

**MEDICAL:**

ABDOMINAL PAIN	0
ALLERGIC REACTION	0
ASSAULT	0
ASSIST EMS	0
BACK PAIN	0
CANCELLED ENROUTE	0
CARDIAC	3
CHEST PAIN	0
CHOKING	0
CODE BLUE	1
DIABETIC	0
DOA	0
FAINTING	0
FALL	14
GUNSHOT	1
LACERATION/HEMORRAGE	1
MOTOR VEHICLE ACCIDENT	3
OTHER	4
OVERDOSE/INTOXICATED	1
PREGNACY	0
PSYCHIATRIC	1
RESPIRATORY	3
SEIZURE	0
SICK	5
STABBING	0
STROKE	1
TRAUMATIC INJURY	1
UNCONSCIOUS	<u>1</u>
	<b>40</b>

**FIRE AND MEDICAL:**

MVA	<b>0</b>
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**TOTAL: 56 RESPONSES**

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GREG STAFFORD, CHIEF  
VALDESE FIRE DEPARTMENT

**TOWN OF VALDESE  
TOWN COUNCIL REGULAR MEETING  
NOVEMBER 4, 2019**

The Town of Valdese Town Council met on Monday, November 4, 2019, at 6:00 p.m., in the Town Council Chambers at Town Hall, 102 Massel Avenue SW, Valdese, North Carolina. The following were present: Mayor John F. "Chip" Black, Jr., Councilman Keith Ogle, Councilwoman Frances Hildebran, Councilwoman Susan Stevenson, Councilman J. Andrew Thompson, and Councilman Roy F. Sweezy. Also present were: Town Attorney Marc Mitchell, Town Manager Seth Eckard, Deputy Town Clerk Courtney Kennedy, and various department heads.

Absent: None.

A quorum was present.

Mayor Black called the meeting to order at 6:00 p.m. He offered the invocation and led in the Pledge of Allegiance to the Flag.

**OPEN FORUM/PUBLIC COMMENT:**

**RAILROAD TRACKS-JAN MARIE COLE, 705 BERTIS STREET, VALDESE:** Ms. Cole expressed her concern with the condition of the railroad tracks on Praley Street SW and Rodoret Street S. Ms. Cole asked Council to identify the responsible party to find a solution to the issue.

**PHOTO COMPETITION-CADENCE DAVIS, 624 MILTON AVE SW, VALDESE:** Mr. Davis informed Council that he is speaking on behalf of the Burke Youth Health Coalition with regard to the photo competition that was started a few years ago. The Coalition received sponsorship from various entities and organizations throughout the county and would like to provide an opportunity for the Town of Valdese to participate. Mr. Davis shared that the sponsorship does not need to be monetary and could be as simple as Council attending the photo competition event in May 2020. Mr. Davis will provide more information when it is available.

**VALDESE LIBRARY PROJECT UPDATE-BURKE COUNTY PUBLIC LIBRARY, 204 S. KING STREET, MORGANTON:** Ms. Paige Anderson, Ms. Amber Mason, and Ms. Edwina Jones expressed their appreciation for Council's support of the library, provided an update on the Valdese Public Library Project and shared the following statistics and information on programs the library offered this year: over 26,000 visits were recorded; over 52,000 books were signed out; and approximately 330 programs were offered for individuals of all ages. The grand reopening celebration for the Valdese Public Library will be held on Friday, November 15, 2019 at 10:30 a.m.

**CONSENT AGENDA:** (enacted by one motion)

**APPROVED REGULAR MEETING MINUTES OF OCTOBER 7, 2019**

**SET PUBLIC HEARING DATE FOR STORMWATER ORDINANCE AMENDMENT FOR DECEMBER 2, 2019, 6:00 P.M.**

Councilman Ogle made a motion to approve the aforementioned items on the Consent Agenda, seconded by Councilwoman Stevenson. The vote was unanimous.

***End Consent Agenda***

**ITEMS REMOVED FROM CONSENT AGENDA:** None.

**INTRODUCTION OF NEW EMPLOYEE:** Town Manager Seth Eckard introduced Deputy Town Clerk/Human Resources Director Jessica Lail.

**WPCOG CODE ENFORCEMENT UPDATE:** WPCOG Code Enforcement Officer Billy Rickles provided Council with an update on current code enforcement cases and shared that an abatement packet will be delivered to staff by Friday of this week for the property on Bass Street. Mr. Rickles informed Council that

going forward, he will provide a monthly update to be included as Reading Material in each agenda packet.

**RESOLUTION FOR OFFER TO PURCHASE TOWN-OWNED PROPERTY, LOCATED AT 118 FAT AVENUE:** Planning Director Larry Johnson provided Council with an explanation on how the Town acquired the property and presented the following resolution:

RESOLUTION  
(Sale of Property at 118 Fat Avenue NE)

WHEREAS, Heather Gough (Gough) has offered to purchase from the Town of Valdese for the sum of \$3,500 that parcel which has been assigned REID No. 693 and PIN 2743541703 by the Burke County Tax Office (the Property); and

WHEREAS, the town council proposes to accept Gough's offer; and

WHEREAS, pursuant to G.S. 160A-269, Gough is required to deposit with the town clerk an amount equal to 5% of her bid; and

WHEREAS, the town council is required to publish a notice containing a general description of the property, the amount and terms of the offer and notice that within ten (10) days any person may raise the bid as provided by G.S. 160A-269;

IT IS THEREFORE RESOLVED AS FOLLOWS:

1. The town council authorizes the sale of the property through the upset bid procedure of N.C. General Statute § 160A-269.
2. The town clerk shall cause a notice of the proposed sale to be published as required by G.S. 160A-269.
3. Any person may submit an upset bid to the office of the town clerk within ten (10) days after the notice of sale is published. Once a qualifying high bid has been received, that bid will become the new offer.
4. If a qualifying higher bid is received, the town clerk shall cause a new notice of upset bid to be published, and shall continue to do so until a ten (10) day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the town council.
5. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000 of that offer and 5% of the remainder of that offer.
6. A qualifying higher bid must be accompanied by a deposit in the amount of five percent (5%) of the bid; the deposit may be made by cashier's check or certified check. The town will return any deposit on any bid not accepted, and will return the deposit on an offer subject to upset if a qualifying higher bid is received. The town will return the deposit of the final high bidder at closing.
7. The terms of the final sale are that: (a) the town council must approve the final high offer before the sale is closed, (b) title will be conveyed by special warranty deed subject to all existing easements, if any, and (c) the buyer must pay the entire purchase price at the time of closing.
8. The town reserves the right to withdraw the property from sale at any time before the final high bid is accepted and the town reserves the right to reject all bids at any time.

ADOPTED THIS, THE 4th DAY OF NOVEMBER, 2019.

/s/ John F. Black, Jr., Mayor

ATTEST: /s/ Town Clerk

Councilman Ogle made a motion to adopt the aforementioned resolution, seconded by Councilman Sweezy. The vote was unanimous.

**FIRE CODE ORDINANCE AMENDMENTS:** Fire Chief Greg Stafford reviewed the proposed amendments and presented the following resolution:

RESOLUTION ADOPTING  
AMENDMENTS TO THE TOWN OF VALDESE  
FIRE PREVENTION AND PROTECTION CODE

WHEREAS, the Town of Valdese Fire Prevention and Protection Code (the Code) is set forth in Section 3-2021 of the Code of Ordinances of the Town of Valdese; and

WHEREAS, the town council desires to amend the Code to refer to the “North Carolina Fire Code” as opposed to the “North Carolina International Building Code” and to adopt specific appendices in connection with the adoption of the North Carolina Fire Code; and

WHEREAS, the town council also desires to remove the Schedule of Inspection Fees and Schedule of Civil Penalties referred to in the Code from the ordinance and adopt those schedules separately; and

WHEREAS, the amendment in which the town adopts only appendices B,C and D in connection with the town’s adoption of the North Carolina Fire Code may not take effect until those changes have been approved by the North Carolina Building Code Council;

IT IS THEREFORE RESOLVED AS FOLLOWS:

1. Section 3-2021 of Code of Ordinances of the Town of Valdese is amended to read as set forth in the revised Section 3-2021 presented to the town council of the Town of Valdese.
2. The town council adopts the Schedule of Inspection Fees and Schedule of Civil Penalties, which have also been presented to the town council for consideration.
3. The amendment adopting only appendices B, C and D to the North Carolina Fire Code shall not take effect until that amendment has been approved by the North Carolina Building Code Council. The other Code amendments and the new Schedule of Inspection Fees and Schedule of Civil Penalties shall take effect upon their adoption.

Adopted the 4<sup>th</sup> day of November, 2019.

/s/ John F. Black, Jr., Mayor

ATTEST: /s/ Town Clerk

After a brief discussion, Councilman Sweezy made a motion to adopt the aforementioned resolution, seconded by Councilman Thompson. The vote was unanimous.

**CAPITAL IMPROVEMENT PLAN REPRIORITIZATION-HARRIS STREET SEWER PROJECT:** Public Works Director Bryan Duckworth requested approval of funding for an emergency manhole and sewer line repair at the old sewer plant on Harris Street. Mr. Duckworth informed Council that funding for the project has not been identified in the FY19-20 budget but stated that funds identified in the FY19-20 Capital Improvement Plan for the demolition of the Industrial Arts Building could be re-appropriated for this project, or fund balance could be utilized due to the emergency status of the project. The lowest bidder was Max Prestwood Water and Sewer, Inc. in the amount of \$29,920.00. (Other bids: Iron Mountain Construction Co., Inc.-\$39,690.00)

Councilwoman Stevenson made a motion to authorize a fund balance appropriation for the project and to award the bid for the Harris Street Sewer Project to Max Prestwood Water and Sewer, Inc. in the amount of \$29,920.00, seconded by Councilman Ogle. The vote was unanimous.

**SCADA UPGRADE PROJECT FUNDING REQUEST:** Public Works Director Bryan Duckworth requested approval of funding to upgrade the existing SCADA system which services the Triple District. Mr. Duckworth informed Council that funding for the project has been identified in the FY19-20 budget in the Utility Fund Capital Improvement Plan. The lowest bidder was ForTech Inc.in the amount of \$22,420.00. (Other bids: Instrumentation Services, Inc. - \$34,000.00)

Councilman Ogle made a motion to authorize the funding out of the Utility Fund Capital Improvement Plan for the project and to award the bid for the SCADA Upgrade to ForTech, Inc. in the amount of \$22,420.00, seconded by Councilwoman Hildebran. The vote was unanimous.

**PARTF GRANT AGREEMENT:** Public Parks & Recreation Director Doug Knight informed Council that the Town has been awarded a grant in the amount \$285,000.00 from the Parks and Recreation Trust Fund for Phase 1 of the Lakeside Park Project. Matching funds for the grant have been identified from private donations. Mr. Knight informed the Council that no town funds will be used.

Councilwoman Hildebran made a motion to approve the aforementioned grant agreement, seconded by Councilman Sweezy. The vote was unanimous.

**VALDESE LAKESIDE PARK PHASE I CAPITAL PROJECT ORDINANCE:**

TOWN OF VALDESE  
LAKESIDE PARK – PHASE I  
CAPITAL PROJECT BUDGET ORDINANCE

Be it ordained by the Town Council of the Town of Valdese that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following project ordinance is hereby adopted.

Section 1. The project authorized is Lakeside Park – Phase I. Project proposes a greenway, dog park, bird watching platform, kayak launch, walking trails, parking areas, and restrooms. The project is to be financed by an NC DEQ grant, PARTF grant, and private donations.

Section 2. The officers of this unit are hereby directed to proceed with the capital project within the terms of the program ordinance and the budget contained herein.

Section 3. The following revenues are anticipated to be available to contribute to this project:

<b><u>Source</u></b>	<b><u>Amount</u></b>	<b><u>Assigned Account Number</u></b>
Donations - Hospital	\$ 50,000	34.3970.001
Donations - Kellex	35,001	34.3970.002
Donations – Rostan	115,000	34.3970.003
Donations – Other	77,000	34.3970.004
Grant – NC DEQ	200,000	34.3970.005
Grant – PARTF	285,000	34.3970.006
	-----	
	\$ 762,001	
	=====	

Section 4. The following amounts are appropriated for the project:

<b><u>Source</u></b>	<b><u>Amount</u></b>	<b><u>Assigned Account Number</u></b>
Construction	\$ 614,841	34.6200.760
Engineering	48,000	34.6200.140
Design	89,160	34.6200.150
Survey	10,000	34.6200.160
	-----	
	\$ 762,001	
	=====	

Section 5. The finance officer is hereby directed to maintain within the Project Fund sufficient specific detailed accounting records to provide the accounting to town council required by the program procedures, loan agreement(s), grant agreement(s) and state regulations.

Section 6. Funds may be advanced from the General Fund for the purpose of making payments as due.

Section 7. The finance officer is directed to report quarterly on the financial status of each project element in Section 4 and on the total revenues received or claimed.

Section 8. The budget officer is directed to include a detailed analysis of the past and future cost and revenues on this project in every budget submission made to this board.

Section 9: Copies of this project ordinance shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Adopted this 4th day of November, 2019.

/s/ John F. Black, Jr., Mayor

/s/ Deputy Town Clerk

Councilman Sweezy made a motion to approve the aforementioned capital ordinance, seconded by Councilman Thompson. The vote was unanimous.

**BUDGET AMENDMENTS:** Finance Director Bo Weichel presented the following budget amendment and capital project ordinance amendments:

Valdese Town Council Meeting 11/4/2019  
Budget Amendment # 8  
Subject: SCADA Upgrades, project identified and scheduled in adopted utility CIP

Proposed Action:  
BE IT ORDAINED by the Council of the Town of Valdese that, pursuant to Section 15 of Chapter 159 of the General Statutes of North Carolina, the following amendment is made to the annual budget ordinance for the fiscal year ending June 30, 2020:

Section I:  
The following revenues available to the Town will be increased:

Account	Description	Decrease/ Debit	Increase/ Credit
30.3990.000	Fund Balance Appropriated-Utility		22,420
	Total	\$0	\$22,420

Amounts appropriated for expenditure are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
30.8120.740	Capital Outlay	22,420	
	Total	\$22,420	\$0

Section II:  
Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, to the Budget Officer and the Finance Officer for their direction.

Valdese Town Council Meeting 11/4/2019  
Capital Project Ordinance Amendment # 1-55

Subject: To amend capital project ordinance Fund 55 2018 WATER SYSTEM IMPROVEMENTS (originally adopted 8/6/2018) Construction bid award amount was lower than original budget. This reduces the originally anticipated project costs.  
CPO original \$ 1,205,334  
CPO amendment #1 \$ 916,781

Proposed Action:  
BE IT ORDAINED by the Council of the Town of Valdese that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the capital project ordinance for various capital projects funded from a variety of sources is hereby amended as follows.

Section I:  
Revenues available to the Town to complete the projects are hereby amended as follows:

Account	Description	Decrease/ Debit	Increase/ Credit
55.3970.000	Town Contribution (Utility Fund)	5,658	
55.3480.002	DWSRF Loan (zero interest loan)	282,895	
	Total	\$288,553	\$0

Amounts appropriated for capital projects are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
55.8120.042	NCDEQ Loan Administration Fee		5,658
55.8120.760	Contingencies		58,926
55.8120.761	Construction		223,969
	Total	\$0	\$288,553

Section II:  
Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, to the Budget Officer and the Finance Officer for their direction.

Councilwoman Stevenson made a motion to approve the aforementioned budget amendment and two capital project ordinance amendments as presented, seconded by Councilwoman Hildebran. The vote was unanimous.

**MANAGER'S REPORT:** Town Manager Seth Eckard made the following announcements:

Faith "Cutie" Kaplan will be this year's Grand Marshal for the Annual Christmas Parade on Saturday, December 7, 2019, at 10:00 a.m. Council members will meet at the Fire Department at 9:15 a.m.

A list of upcoming events for November and December is included in Reading Material.

Town Manager Seth Eckard thanked the outgoing Deputy Town Clerk, Courtney Kennedy, for her service to the Town of Valdese.



**MAYOR AND COUNCIL COMMENTS:** Mayor Black distributed a book, *13 WAYS TO KILL YOUR COMMUNITY*, by Doug Griffins, for the Council to read. Mr. Black informed Council that he received this book when he attended the annual NADO Conference, which focused on economic development in small communities. Mr. Black shared that this may be a future workshop, in conjunction with the WGCOG annual meeting.

Councilman Ogle expressed concern with the parking at the Halloween event that was held at the Valdese. Mr. Ogle shared that due to the amount of traffic and number of people attending, that someone should have reached out to Community Affairs Director Morrissa Angi to fill out a Special event application.

Councilwoman Hildebran expressed her gratitude to Courtney Kennedy for her service to the Town of Valdese. Ms. Hildebran welcomed the new Deputy Town Clerk, Jessica Lail, to the Town of Valdese.

Councilwoman Stevenson expressed her excitement for the concert she attended at the Old Rock School. Ms. Stevenson encouraged everyone to attend the amazing events at the Old Rock School.

Councilman Sweezy expressed his excitement for the things happening in Valdese. This is all due to the Citizens in Valdese and the employees especially in leadership within the Town of Valdese.

**ADJOURNMENT:** At 7:02 p.m., there being no further business to come before Council, Councilman Ogle made a motion to adjourn, seconded by Councilwoman Hildebran. The vote was unanimous.

The next regular Council meeting is scheduled for Monday, December 2, 2019.

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Town Clerk

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Mayor

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**TOWN OF VALDESE**  
**TOWN COUNCIL ANNUAL/JOINT DINNER MEETING WITH VALDESE MERCHANTS**  
**NOVEMBER 14, 2019**

The Town of Valdese Town Council met jointly with the Valdese Merchants for the Annual Dinner Meeting on Thursday, November 14, 2019, at 6:30 p.m., at the Old Rock School, Waldensian Room.

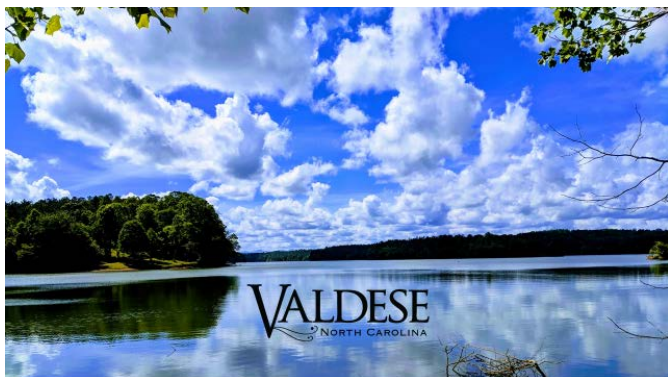
The following were present: Mayor John F. "Chip" Black, Jr., Councilwoman Susan Stevenson, Councilwoman Frances Hildebran and Councilman Roy Sweezy. Also present were Town Manager Seth Eckard, Deputy Town Clerk Jessica Lail, and Community Affairs Director Morrissa Angi.

Absent: Councilman Keith Ogle and Councilman J. Andrew Thompson.

A quorum was present and no action was taken.

At 6:30 p.m., Mayor Black welcomed everyone and thanked the business owners for investing their time and money into the Town of Valdese. He offered the invocation and invited everyone to enjoy dinner catered by Myra's. There were approximately 50 downtown merchants and building owners in attendance.

Town Manager Seth Eckard shared the following presentation:



• Closed on 300-acre property January 31, 2018

• \$1.4M Purchase Funded by Grants and Donations

- NC CWMTF \$673,247 grant
- NC PARTF \$300,000 grant
- Rostan Family Foundation – \$300,000
- Kellex Seating – \$100,000 (\$65K land, \$35K amenities)

Ready  
for  
Phase 1



Phase 1 will be Funded by Grants and Donations

- NC DEQ \$200,000 grant
- NC PARTF \$285,000 grant
- Rostan Family Foundation – \$115,000
- Carolinas HealthCare System – BR - \$50K
- Kellex Seating – \$35K
- Community - \$77K

Total Budget = \$762,001

Greenway

4000 Linear Feet  
10 Foot Wide  
Crushed Cinder



Kayak  
Launch



**Wildlife  
Viewing  
Platform**



**Picnic Area**

**Closer to  
Parking**



**Fenced  
Dog  
Park**



**Walking Trail  
to  
Viewing  
Platform**



**Entry Road, Parking,  
Restrooms, Storm Drainage,  
Signage, Landscaping  
Connecting Paths**



## Phase 1 Build

### Estimated Timeline

- Break Ground in May 2020
- Completed Late 2020 to Early 2021

## Friends of the Valdese Rec



**Accomplishments: Community Projects - Valdese Lakeside Park**

## Downtown Development

Valdese Main Street Program

### Downtown Improvements Since 2014:

- Creation of Façade grant program
- Main Street Solutions Fund Grant
  - Old World Baking Company- 2018 (\$175,000)
  - Catawba Valley Staffing-2015 (\$64,000)
- Creation of public parking along Bobo Street
- Additional:
  - Downtown Wi-Fi
  - Downtown Music
- Main Street Improvements:
  - New planter boxes
  - Flower bed surrounds
  - Bench project
  - Hanging flower baskets
  - Brick paver repair on sidewalks
  - Decorative lighting downtown tree
  - Stamped crosswalk and Redoret and Main Street
  - New landscaping throughout downtown
  - Bump-out removal- additional parking added,
  - Resurfaced two town owned public parking lots
- Public Art:
  - The Arrival Art Installation
  - 125th Mural
- Community Driven Projects:
  - Little libraries: Old Rock School, Wells Fargo Bldg
  - Then & Now Walking Tour
  - Fred B. Cranford Amphitheater renovations- \$60,000



**Accomplishments: Downtown Revitalization**



### Since 2014:

Jobs Created:  
Full-time: 107  
Part-time: 36  
Businesses Opened: 17  
Businesses Expanded: 5

**Accomplishments: Economic Development- New Businesses**



Since 2014...

#### 20 Downtown Façade Renovation

- 13 of the 20 were partially funded by the Valdese Main Street Façade Program Awarded \$25,000 in grants

Private Investment in Downtown: \$1,515,210

- When you include public investment such as renovations to the Old Rock School

Total Investment: \$2,043,793



Accomplishments: Downtown Revitalization - Façade Grants



Accomplishments: Community Projects - Electric Vehicle Charging Station

## Community Projects

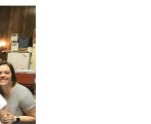
Recreation, Events, Public Art



Accomplishments: Community Projects - The Arrival



Accomplishments: Community Events



Accomplishments: Community Projects

## Department Improvements

Fire, Police, Public Works, Recreation, Community Affairs, Water & Wastewater



Accomplishments: Ladder 1: 2018 Pierce Enforcer 75' Quint



Accomplishments: Purchase of Police Vehicles



- New Signage at all parks
- Crack Seal & Striping of parking lots
- New concrete pad, turf, batting cage
- New chain link fences & posts
- New electrical rack system
- New ground mounted LED floodlight
- V-shaped grass lined swale
- New picnic tables, trash receptacles, pressure treated 6x6 posts, guttering, secure bathroom doors, fencing
- Log building Repairs

Accomplishments: Park & Rec Facility Improvements

Old Rock School Exterior Renovation &amp; Painting



Back Hallway Flooring



Old Rock School Auditorium Renovation



Grit System



Water Plant Generator

Accomplishments: Old Rock School Major Improvements

Accomplishments: Utility Infrastructure Improvements



Accomplishments: Street Paving &amp; Equipment Improvements

Accomplishments: Waterline Projects

Town Manager Seth Eckard provided an update on the water meter project and shared his excitement for progress thus far.

At 7:40 p.m., the meeting adjourned.

The next meeting is a regularly scheduled Council Meeting on Monday, December 2, 2019, 6:00 p.m.

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Mayor

jl

**TOWN OF VALDESE  
RESOLUTION ADOPTING 2020 TOWN COUNCIL MEETING SCHEDULE**

WHEREAS, pursuant to Section 2-1011 of the Town of Valdese Code of Ordinances, there shall be a regular meeting of the council at the town hall, on the first Monday in each month, at 6:00 p.m., unless another place, date or time shall be designated.

NOW, THEREFORE, BE IT RESOLVED that the Town of Valdese Town Council adopts the following Meeting Schedule for 2020:

<b>January 6, 2020</b>	
<b>February 3, 2020</b>	
<b>March 2, 2020</b>	
<b>March 23, 2020</b>	Annual Budget Retreat - Old Rock School - Waldensian Room Day 1: 9:00 a.m. – 5:00 p.m.
<b>March 24, 2020</b>	Annual Budget Retreat - Old Rock School - Waldensian Room Day 2: 1:00 p.m. – 5:00 p.m.
<b>April 6, 2020</b>	
<b>April 20, 2020</b>	Council Budget Workshop Dinner Town Hall - Community Room, 6:00 p.m.
<b>May 4, 2020</b>	
<b>June 1, 2020</b>	
<b>June 29, 2020</b>	Budget Public Hearing; serves as the July Council Meeting
<b>August 3, 2020</b>	
<b>September 8, 2020</b>	Tuesday, due to Labor Day Holiday
<b>October 5, 2020</b>	
<b>November 2, 2020</b>	
<b>November 10, 2020</b>	Tuesday, Annual Dinner Meeting with Valdese Merchants Association Old Rock School - Waldensian Room, 6:30 p.m.
<b>December 7, 2020</b>	

This 2<sup>ND</sup> day of December, 2019.

---

John F. "Chip" Black, Jr., Mayor

## **2020 Board and Commission Appointments/Reappointments**

### **Valdese Housing Authority (3-year terms)**

Appointment of Dan Hoyle who is completing the unexpired term of Miriam Vaught

### **Arbor-Beautification (3-year terms)**

Reappointment of Rose Mueller

Reappointment of Theresa Pizzelanti

### **Parks and Recreation Commission (3-year terms)**

Reappointment of Robert Murray

Appointment of Cindy Powell

### **Public Art Commission (3-year terms)**

Reappointment of Marc Mitchell

Leaving Hamilton Williams

### **Valdese Youth Council**

Reappointment of the following students:

Hannah Johnson, Gillian Abee-Freeze, Trey Blackwood and Alex Hoover

### **VEDIC (3-year terms)**

Appointment of Byron Keith Ogle, Councilman who is completing the unexpired term of Thomas Winfield

## Valdese Town Council Meeting

Monday, December 2, 2019

Budget Amendment #

9

Subject:

Emergency repairs for sewer line at Old Harris St.  
 Notice to proceed at 11/4/19 meeting.

Proposed Action:

BE IT ORDAINED by the Council of the Town of Valdese that, pursuant to Section 15 of Chapter 159 of the General Statutes of North Carolina, the following amendment is made to the annual budget ordinance for the fiscal year ending June 30, 2020:

Section I:

The following revenues available to the Town will be increased:

Account Description		Decrease/ Debit	Increase/ Credit
30.3990.000	Fund Balance Appropriated-Utility		29,920
Total		\$0	\$29,920

Amounts appropriated for expenditure are hereby amended as follows:

Account Description		Increase/ Debit	Decrease/ Credit
30.8120.740	Capital Outlay	29,920	
Total		\$29,920	\$0

Section II:

Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, to the Budget Officer and the Finance Officer for their direction.



## Valdese Town Council Meeting

Monday, December 2, 2019

Budget Amendment #

10

Memo

To adjust budgeted amounts of state and county sales tax.

## Proposed Action:

BE IT ORDAINED by the Council of the Town of Valdese that, pursuant to Section 15 of Chapter 159 of the General Statutes of North Carolina, the following amendment is made to the annual budget ordinance for the fiscal year ending June 30, 2020:

## Section I:

The following revenues available to the Town will be adjusted:

Account Description		Decrease/ Debit	Increase/ Credit
10.3670.000	Sales Tax	68,000	
Total		\$68,000	\$0

Amounts appropriated for expenditure are hereby amended as follows:

Account Description		Increase/ Debit	Decrease/ Credit
10.4200.370	State Sales Tax		46,000
10.4200.390	County Sales Tax		22,000
Total		\$0	\$68,000

## Section II:

Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, to the Budget Officer and the Finance Officer for their direction.

## Valdese Town Council Meeting

Monday, December 2, 2019

Budget Amendment #

11

Memo

Replacement of patrol unit #115 and equipment, totaled during pursuit on 10/27/19

## Proposed Action:

BE IT ORDAINED by the Council of the Town of Valdese that, pursuant to Section 15 of Chapter 159 of the General Statutes of North Carolina, the following amendment is made to the annual budget ordinance for the fiscal year ending June 30, 2020:

## Section I:

The following revenues available to the Town will be adjusted:

Account	Description	Decrease/ Debit	Increase/ Credit
10.3970.931	Insurance Refund		31,817
Total		\$0	\$31,817

Amounts appropriated for expenditure are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
10.5100.740	Capital Outlay	31,817	
Total		\$31,817	\$0

## Section II:

Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, to the Budget Officer and the Finance Officer for their direction.

## VALDESE TOWN COUNCIL ORGANIZATIONAL PLAN

23 of 73

### Mayor **John F. “Chip” Black, Jr.**

Elected 11/04/97: Term 12/01/97 - 12/03/01

Reelected 11/06/01: Term 12/03/01 - 12/05/05

Reelected 11/08/05: Term 12/05/05 - 12/07/09

Reelected 11/03/09: Term 12/07/09 - 12/02/13

Reelected 11/05/13: Term 12/02/13\*

*\*Appointed Mayor 2/2/15 and required to run for reelection in November 2015 for the Mayor's unexpired term which ended 12/4/17*

Elected Mayor 11/03/2015

Reelected 11/07/17: Term 12/04/17 - 12/06/21

Black & Associates Financial Mgmt.

BDI Board

WPCOG Policy Board Delegate

2010 Vice President

2011 President

2012 President

Community Foundation of Burke Co

2015 President

Rotary Club Burke Sunrise

### Ward 1 **Andy Thompson**

Appointed by Council 10/01/2018

Reelected 11/05/19: Term 12/04/17 - 12/06/21

(filling Gary Delp's unexpired term)

Heritage Funeral Home Owner

Public Art Commission

Street Paving Committee

WPCOG Policy Board Alternate

### Ward 2 **Susan T. Stevenson**

Appointed by Council 01/10/2000

Elected 11/06/01: Term 12/03/01 - 12/05/05

Reelected 11/08/05: Term 12/05/05 - 12/07/09

Reelected 11/03/09: Term 12/07/09 - 12/02/13

Reelected 11/05/13: Term 12/02/13 - 12/04/17

Reelected 11/07/17: Term 12/04/17 - 12/06/21

Retired Physical Therapist

Mayor Pro Tem

Assistant Treasurer

WPCOG Metropolitan Planning Organization

Railroad Committee

OCP Board Member

### Ward 3 **Roy F. Sweezy**

Appointed by Council 03/02/2015

*\* Required to run for reelection in November 2015 for the Ward 3 Councilman's unexpired term which ended 12/04/17*

Elected 11/03/15

Reelected 11/07/17: Term 12/04/17 - 12/06/21

Retired School Teacher

Planning Board Chairman

Agape Board of Directors, Vice Chairman

Library Board

Parks & Recreation Commission

### Ward 4 **Frances M. Hildebran**

Elected 11/08/11: Term 12/05/11 - 12/07/15

Reelected 11/03/15: Term 12/07/15 - 12/02/19

Reelected 11/05/19: Term 12/02/19 - 12/04/23

Blue Ridge HealthCare, Executive Assistant

Town Clerk

Retired Local Government

Citizens for Affordable Housing

Street Paving Committee

### Ward 5

#### **B. Keith Ogle**

Elected 11/04/03: Term 12/01/03 - 12/03/07

Reelected 11/06/07: Term 12/03/07 - 12/05/11

Reelected 11/08/11: Term 12/05/11 - 12/07/15

Reelected 11/03/15: Term 12/07/15 - 12/02/19

Reelected 11/05/19: Term 12/02/19 - 12/04/23

Retired HR Professional

Retired Military

Arbor-Beautification Committee

Downtown Revitalization

Former WPCOG MPO and Policy Board Alt.

Street Paving Committee

### Town Manager

#### **Seth Eckard**

Assistant Town Manager 06/18/15 - 06/30/15

Appointed Town Manager: 07/01/2015

Catawba-Wateree Water Management Group

WPCOG Water Resources Committee

VEDIC Member

Valdese ABC Board - Chairman

Valdese Tourism Commission

BDI Board, Chairman

Valdese Rotary

LPDA Member

Street Paving Committee

### Town Attorney

#### **Marcus W. H. Mitchell, Jr.**

Marc Mitchell, P.A., Attorney at Law

Public Art Commission



## Memorandum

**Date:** November 18, 2019  
**To:** Mayor Black and Council  
**Copy:** Town Clerk  
**From:** Alison Adams, MSL, Director of Community and Regional Planning  
**Subject:** Phase II Stormwater Ordinance  
**Attachments:** Article R- Phase II Stormwater and Article T -Illicit Discharges and Connections and Wastewater

Mayor and Council Members,

This memo is to provide an overview of the proposed State mandated Phase II Stormwater Code. The Division of Water Quality has introduced a new template ordinance. Below you will find and outline comparing the current Valdese stormwater and illicit discharge ordinances with the State's new template. The new State Stormwater Ordinance template has been revised to reflect changes the Environmental Protection Agency (EPA) has imposed on the North Carolina Division of Water Quality (DEQ). The repeal of existing ordinances and adoption of the proposed ones will enhance the overall protection of stormwater. The next step is to hold the public hearing and adopt the proposed Code.

### Comparison of Ordinances

- Most changes were to fit state required specifics or missing components that are now required. The language closely follows the needed requirements
- Some edits were just grammatical/layout changes that are not noted in this memo
- 104 (B) (9-33011.4 Codified)
  - Added: "Coordinating site design plans that include open space and natural areas with the Town of Valdese"
- 105 (B) (9-33011.5 Codified)
  - Added: "does not exceed 20,000 square feet or impervious area and does not include disturbances within a stream buffer, filling or excavation in excess of 1,000 cubic yards or filling and excavation that would impact an adjoining parcel through alteration or drainage paths, ponding or water or velocity of stormwater flow"
  - Added: "Not have a net increase in impervious area"
  - Further defines the exemptions to stormwater requirements for new developments. This wording follows the state/NPDES (Fed.) permitting allowances for exemptions
- 105 (C) (9-33011.5 Codified)
  - Added: "the map titled "Phase II Stormwater Map of Town of Valdese, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance."

**Executive Committee:** Barbara C. Pennell, Chair | Bob Floyd, Jr., Vice Chair | Jill Patton, Secretary | Johnny Berry, Treasurer | George B. Holleman, Past Chair | **At-Large Members:** Wayne F. Abele, Sr. | Kitty W. Barnes | John F. "Chip" Black | Bob Smyre | **Executive Director,** Anthony W. Starr

**Serving:** Alexander County | Taylorsville | Burke County | Connelly Springs | Drexel | Glen Alpine | Hildebran | Morganton | Rutherford College | Valdese | Caldwell County | Cahah's Mountain | Cedar Rock | Gamewell | Granite Falls | Hudson | Lenoir | Rhodhiss | Sawmills | Catawba County | Brookford | Catawba | Claremont | Conover | Hickory | Long View | Maiden | Newton

- Previous ordinance just used a zoning map. Having a Phase II SW map is now required per the updated SWMP's
- 201 (A)(2) (9-3302.1 Codified)
  - Fixed a wording/combination error
- 205 (C) (9-3302.5 Codified)
  - Added:
  - (1) The decision of the Board of Adjustment is filed; or
  - (2) A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Chair of the Board of Adjustment at the time of its hearing of the case.
  - Defines board of adjustment specifics and the processes
- 303(A) (9-3303.2 Codified)
  - Updated the treatment requirements to the current required standard
- 303(D) (9-3303.2 Codified)
  - Updated stream buffers to the new requirements for High Density and work with the WSW ordinance
  - Added the requirement to verify on-site streams for sites over 5 acres or 24% Built-Upon Area
- 305 (9-3303.5 Codified)
  - Added entire section. Focuses on maintaining 'abandoned' scm's and sites
- 307 (9-3303.7 Codified)
  - Added entire section
  - Pet-waste is now required to be managed/enforced due to its potential for nutrient pollution of stormwater/receiving water bodies
- 308 (9-3303.8 Codified)
  - Added entire section
  - Defines management for sites with on-site wastewater
- 402(B)(2) (9-3304.1 Codified)
  - Added the escrow requirement for Home Owners Association based SCMs
- 402(B)(3 & 4) (9-3304.1 Codified)
  - Added developer contribution specifics for the escrow requirements to ensure maintenance funds are reasonable
- 408 (9-3304.8 Codified)
  - Added the required Maintenance Easements for SCM's
    - (Required by NCDEQ and EPA NPDES MS4 Standard requirements)
- Section 7
  - Combined Illicit Discharge with the stormwater ordinance
  - Makes compliance with SWMPs easier
- 701, 702, 703 (9-3501.4 Codified)
  - Defines title, authority, and definition expectations for IDDE
- 704 (A) (allowed discharges)(9-3501.4 Codified)
  - Added Flows from emergency firefighting to the allowed discharge list
  - Added residential car washing (with specifics regarding charity and multi-family complexes)

- Added salt water pool to 18 (dechlorinated swimming pools)
  - Added discharges from removing system blockages
- 704 (D) (9-3501.4 Codified)
  - Includes the requirement for industrial or construction activity to comply with NPDES requirements
- 706 (B) (9-3501.4 Codified)
  - Added public nuisances for illicit discharge enforcement
  - (Protects public health and public safety with severe/hazardous discharges)

**Accomplishments/Progression:**

Since contracting with the WPCOG, a draft of the required Stormwater Management Plan (SWMP) has been submitted to the State and is awaiting the feedback. Once an acceptable SWMP and National Pollution Discharge Elimination System (NPDES) permit are granted by the State, the Town is required to adopt the revised Stormwater Ordinance. In order to have an updated ordinance in place when the permit is granted, we are requesting for the Council to set a public hearing date of December 2, 2019 and adopt the proposed ordinance.

We are very excited about this opportunity to serve you. Should you have any questions or concerns please do not hesitate to contact me. I can be reached at 704.682.2681 (cell) or [alison.adams@wpcog.org](mailto:alison.adams@wpcog.org).

Sincerely,

Alison Adams, MSSL  
Western Piedmont Council of Governments  
Director of Community and Regional Planning  
Mailing: P.O. Box 9026 | Hickory, NC 28603  
Location: 1880 2nd Avenue NW  
Hickory, NC 28601

## ARTICLE R

### Phase II Stormwater

#### Section 9-3301    **General Provisions.**

##### Section 9-3301.1            **Title.**

This ordinance shall be officially known as “The Phase II Stormwater Ordinance.” It is referred to herein as “this ordinance.”

##### Section 9-3301.2            **Authority.**

The Town of Valdese is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; Town of Valdese; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185.

##### Section 9-3301.3            **Findings.**

It is hereby determined that:

*Development* and *redevelopment* alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and

These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from *development* sites.

Further, the Federal Water Pollution Control Act of 1972 (“Clean Water Act”) and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this ordinance.

Therefore, the Town of Valdese establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

##### Section 9-3301.4            **Purpose**

###### (A)        **General**

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-*development* stormwater runoff and nonpoint and point source pollution associated with new *development* and

*redevelopment* [as well as illicit discharges into municipal stormwater systems]. It has been determined that proper management of construction-related and post-*development* stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

**(B) Specific**

This ordinance seeks to meet its general purpose through the following specific objectives and means:

1. Establishing decision-making processes for *development* that protect the integrity of watersheds and preserve the health of water resources;
2. Requiring that new *development* and *redevelopment* maintain the pre-*development* hydrologic response in their post-*development* state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
3. Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
4. Establishing design and review criteria for the construction, function, and use of *structural stormwater best management practices (BMPs)* that may be used to meet the minimum post-*development* stormwater management standards;
5. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
6. Establishing provisions for the long-term responsibility for and maintenance of *structural and nonstructural stormwater BMPs* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
7. Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved projects, and to assure appropriate long-term maintenance.
8. Coordinating site design plans that include open space and natural areas with the Town of Valdese,
9. Controlling illicit discharges into the municipal separate stormwater system.



## Section 9-33011.5                      Applicability and Jurisdiction

### (A)        **General**

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and *redevelopment*, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection (B) of this Section, Exemptions.

### (B)        **Exemptions**

*Development* that cumulatively disturbs less than one acre and does not exceed 20,000 square feet or impervious area and does not include disturbances within a stream buffer, filling or excavation in excess of 1,000 cubic yards or filling and excavation that would impact an adjoining parcel through alteration or drainage paths, ponding or water or velocity of stormwater flow is not part of a *larger common plan of development or sale* is exempt from the provisions of this ordinance.

*Redevelopment* that cumulatively disturbs less than one acre and does not have a net increase in impervious area and is not part of a larger common plan of *development or sale* is exempt from the provisions of this ordinance.

*Development* and *redevelopment* that disturb less than one acre are not exempt if such activities are part of a *larger common plan of development or sale*, even though multiple, separate or distinct activities take place at different times on different schedules.

Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

### (C)        **No Development or Redevelopment Until Compliance and Permit**

No *development or redevelopment* shall occur except in compliance with the provisions of this ordinance or unless exempted. No *development* for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

### (D)        **Map**

The provisions of this ordinance shall apply within the areas designated on the map titled "Phase II Stormwater Map of Town of Valdese, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.

The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all *structural BMPs* permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or BMP shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

## Section 9-33011.6

## Interpretation

**(A) Meaning and Intent**

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 104, Purpose. If a different or more specific meaning is given for a term defined elsewhere in Town of Valdese Code of Ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

**(B) Text Controls in Event of Conflict**

In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

**(C) Authority for Interpretation**

The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

**(D) References to Statutes, Regulations, and Documents**

Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the *Design Manual*), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

**(E) Computation of Time**

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Valdese, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Valdese. References to days are calendar days unless otherwise stated.

**(F) Delegation of Authority**

Any act authorized by this Ordinance to be carried out by the Stormwater Administrator of Town of Valdese may be carried out by his or her designee.

**(G) Usage****(1) Mandatory and Discretionary Terms**

The words “shall,” “must,” and “will” are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words “may” and “should” are permissive in nature.

## (2) Conjunctions

Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word “and” indicates that all connected items, conditions, provisions and events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.

## (3) Tense, Plurals, and Gender

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

## (H) Measurement and Computation

Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

### Section 9-33011.7 Design Manual

#### (A) Reference to Design Manual

The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the *Design Manual* as the basis for decisions about stormwater permits and about the design, implementation and performance of *structural and non-structural stormwater BMPs*.

The *Design Manual* includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.

#### (B) Relationship of Design Manual to Other Laws and Regulations

If the specifications or guidelines of the *Design Manual* are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the *Design Manual*.

#### (C) Changes to Standards and Specifications

If the standards, specifications, guidelines, policies, criteria, or other information in the *Design Manual* are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

**Section 9-33011.8 Relationship to Other Laws, Regulations and Private Agreements**

**(A) Conflict of Laws**

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

**(B) Private Agreements**

This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall Town of Valdese be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

**Section 9-33011.9 Severability**

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

**Section 9-33011.10 Effective Date and Transitional Provisions**

**(A) Effective Date**

This Ordinance shall take effect on November 4, 2019.

**(B) Final Approvals, Complete Applications**

All *development* and *redevelopment* projects for which complete and full applications were submitted and approved by the Town of Valdese prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of *development* or *redevelopment* shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions.

A phased development plan shall be deemed approved prior to the effective date of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.
2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.

**(C) Violations Continue**

Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, *development*, construction, or other activity complies with the provisions of this ordinance.

**Section 9-3302 Administration and Procedures.**

**Section 9-3302.1 Review and Decision-Making Entities.**

**(A) Stormwater Administrator**

**(1) Designation**

A Stormwater Administrator shall be designated by the Town Council to administer and enforce this ordinance.

**(2) Powers and Duties**

In addition to the powers and duties that may be conferred by other provisions of the Town Code of Ordinances and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

- a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- b. To make determinations and render interpretations of this ordinance.
- c. To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Town Council on applications for *development* or *redevelopment* approvals.
- d. To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- e. To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this ordinance.
- f. To provide expertise and technical assistance to the Town Council, upon request.

- g. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- h. To take any other action necessary to administer the provisions of this ordinance.

#### **Section 9-3302.2 Review Procedures.**

##### **(A) Permit Required; Must Apply for Permit**

A stormwater permit is required for all *development* and *redevelopment* unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

##### **(B) Effect of Permit**

A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including *structural BMPs* and elements of site design for stormwater management other than *structural BMPs*.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the *development* or *redevelopment* site consistent with the requirements of this ordinance, whether the approach consists of *structural BMPs* or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

##### **(C) Authority to File Applications**

All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land *owner* or the land *owner's* duly authorized agent.

##### **(D) Establishment of Application Requirements, Schedule, and Fees**

###### **(1) Application Contents and Form**

The Stormwater Administrator [Stormwater Advisory Board] shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-*development* stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

###### **(2) Submission Schedule**

The Stormwater Administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications; and that the various stages in the review process are accommodated.

### **(3) Permit Review Fees**

The Town Council shall establish permit review fees, as well as, policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

### **(4) Administrative Manual**

For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.

### **(E) Submittal of Complete Application**

Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

### **(F) Review**

Within 30 working days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

#### **(1) Approval**

If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

#### **(2) Fails to Comply**

If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

### (3) Revision and Subsequent Review

A complete revised application shall be reviewed by the Stormwater Administrator within 15 working days after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this ordinance.

#### Section 9-3302.3 Applications for Approval.

##### (A) Concept Plan and Consultation Meeting

Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed *development* project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the *development* process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans and other relevant resource protection plans should be consulted in the discussion of the concept plan.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

##### (1) Existing Conditions / Proposed Site Plans

Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

##### (2) Natural Resources Inventory

A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g.,



drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for *development* and stormwater management.

### **(3) Stormwater Management System Concept Plan**

A written or graphic concept plan of the proposed post-*development* stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/ floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

### **(B) Stormwater Management Permit Application**

The stormwater management permit application shall detail how post-*development* stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 3, Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the *Design Manual*, and that the designs and plans ensure compliance with this ordinance.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section 2-202(D).

### **(C) As-Built Plans and Final Approval**

Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

**(D) Other Permits**

No certificate of compliance or occupancy shall be issued by the Burke County Building Inspectors without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Burke County Building Inspections Department may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

**Section 9-3302.4 Approvals.****(A) Effect of Approval**

Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

**(B) Time Limit/Expiration**

An approved plan shall become null and void if the applicant fails to make *substantial progress* on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

**Section 9-3302.5 Appeals.****(A) Right of Appeal**

Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the Board of Adjustment within 30 days.

**(B) Filing of Appeal and Procedures**

Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by Town of Valdese. The Stormwater Administrator shall transmit to the Board of Adjustment all documents constituting the record on which the decision appealed from was taken.

The hearing conducted by the Board of Adjustment shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

**(C) Review by Superior Court**

Every decision of the Board of Adjustment shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the latter of the following:

- (1) The decision of the Board of Adjustment is filed; or
- (2) A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Chair of the Board of Adjustment at the time of its hearing of the case.

**Section 9-3303 Standards.**

**Section 9-3303.1 General Standards.**

All *development* and *redevelopment* to which this ordinance applies shall comply with the standards of this section.

**Section 9-3303.2 Development Standards for Low-Density Projects.**

*Low-density projects* shall comply with each of the following standards:

- (A) Stormwater runoff from the *development* shall be transported from the *development* by vegetated conveyances to the maximum extent practicable.
- (B) Stream buffers shall be maintained on all sides of perennial and intermittent surface waters. The size of the buffer for perennial surface waters shall be an undisturbed width of 30 feet, plus a vegetated setback of 20 feet. Buffers for intermittent surface waters shall be an undisturbed width of 30 feet. The buffer width is measured perpendicularly from the top of the streambank. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division-approved methodology.
- (C) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

**Section 9-3303.3 Development standards for High-Density Projects.**

*High-density projects* shall implement stormwater control measures that comply with each of the following standards:

- (A) The measures shall control and treat runoff from the first inch of rain, runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- (B) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);
- (C) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H.1008(c), as explained in the *Design Manual*;
- (D) Stream buffers shall be maintained on all sides of perennial and intermittent surface waters. The size of the buffer for perennial surface waters shall be an undisturbed width of 30 feet, plus a vegetated setback of 20 feet. Buffers for intermittent surface waters shall be an undisturbed width of 30 feet. The buffer width is measured perpendicularly from the top of the streambank. A surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B.0233 (3) (a) or similar site-specific determination made using Division-approved methodology.
- (E) On-site verification of intermittent and perennial streams by a qualified professional is required for all development exceeding a cumulative 5 acres and 24 percent impervious coverage, or any commercial development.
- (F) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

#### **Section 9-3303.4 Standards for Stormwater Control Measures.**

##### **(A) Evaluation According to Contents of Design Manual**

All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the *Design Manual*. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this ordinance.

##### **(B) Determination of Adequacy; Presumptions and Alternatives**

Stormwater treatment practices that are designed, ~~and~~ constructed, and maintained in accordance with the criteria and specifications in the *Design Manual* will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices

not designed and constructed in accordance with the criteria and specifications in the *Design Manual*, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

**(C) Separation from Seasonal High Water Table**

For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

**Section 9-3303.5 Dedication of BMPS, Facilities & Improvements.**

The Town of Valdese may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this ordinance and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

**Section 9-3303.6 Variances.**

**(A)** Any person may petition the Town of Valdese for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of this ordinance.
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- (3) The hardships did not result from actions taken by the petitioner.
- (4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

**(B)** The Town of Valdese may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

**(C) Statutory exceptions**

Notwithstanding subdivision (A) of this section, exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

- (1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

(2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

(3) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

#### **Section 9-3303.7 Additional standards for special situations.**

##### **(A) Pet waste**

###### **(1) Restrictions on Pet Waste**

(a) It shall be unlawful for the owner or custodian of any dog to take it off the owner's own property limits without the means to properly remove and dispose of the dog's feces from any public or private property.

(b) It is the responsibility of a dog's owner or custodian to clean up the dog's feces from any public or private property outside of the dog's owner's own property limits. Such property includes, but is not limited to, parks, rights-of-way, paths, and public access areas.

(c) "Means to properly remove and dispose of feces" shall consist of having on or near one's person a device such as a plastic bag, or other suitable plastic or paper container, that can be used to clean up and contain dog waste until it can be disposed of in an appropriate container. Such a device must be produced and shown, upon request, to anyone authorized to enforce these ordinances.

(d) This provision shall not apply to handicapped persons assisted by trained guide or assistance dogs.

(e) "Public nuisance" is defined to include "a dog which deposits feces on public property or on private property without the consent of the owner or person in lawful possession of the private property, and the person owning, possessing, harboring or having the care, charge, control or custody of the dog fails to remove the feces so deposited. Provided, however, this definition shall not apply to any dog assisting a handicapped person.

#### **Section 9-3303.8 Onsite wastewater.**

##### **(A) Operation and Maintenance Requirements**

New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance shall be subject to the same requirements for operation and maintenance as *structural BMPs* for stormwater, including, at a

minimum, annual inspection reports and a recorded operation and maintenance agreement, pursuant to Section 4 of this ordinance.

**(B) Standards for Operation and Maintenance**

Onsite systems for domestic wastewater covered by this ordinance shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

**Section 9-3304 Maintenance.**

**Section 9-3304.1 General Standards for Maintenance.**

**(A) Function of BMPs As Intended**

The *owner* of each *structural BMP* installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the *structural BMP* was designed.

**(B) Annual Maintenance Inspection and Report**

The person responsible for maintenance of any *structural BMP* installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

- (1) The name and address of the land *owner*;
- (2) The recorded book and page number of the lot of each *structural BMP*;
- (3) A statement that an inspection was made of all *structural BMPs*;
- (4) The date the inspection was made;
- (5) A statement that all inspected *structural BMPs* are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- (6) The original signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator

beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

#### **Section 9-3304.2 Operation and Maintenance Agreement.**

##### **(A) In General**

Prior to the conveyance or transfer of any lot or building site to be served by a *structural BMP* pursuant to this ordinance, and prior to issuance of any permit for *development* or *redevelopment* requiring a *structural BMP* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and maintenance agreement that shall be binding on all subsequent *owners* of the site, portions of the site, and lots or parcels served by the *structural BMP*. Until the transference of all property, sites, or lots served by the *structural BMP*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the *owner* or *owners* to maintain, repair and, if necessary, reconstruct the *structural BMP*, and shall state the terms, conditions, and schedule of maintenance for the *structural BMP*. In addition, it shall grant to Town of Valdese a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the *structural BMP*; however, in no case shall the right of entry, of itself, confer an obligation on Town of Valdese to assume responsibility for the *structural BMP*.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval.<sup>1</sup> A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

##### **(B) Special Requirement for Homeowners' and Other Associations**

For all *structural BMPs* required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *structural BMPs*. If *structural BMPs* are not performing adequately or as intended or are not properly maintained, the Town of Valdese, in its sole discretion, may remedy the situation, and in such instances the Town of Valdese shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major



repair, and reconstruction of the *structural BMPs*, provided that the Town of Valdese shall first consent to the expenditure.

- (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the *structural BMPs*. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the *structural BMPs*. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.
- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Valdese depending on the design and materials of the stormwater control and management facility.
- (5) Granting to the Town of Valdese a right of entry to inspect, monitor, maintain, repair, and reconstruct *structural BMPs*.
- (6) Allowing the Town of Valdese to recover from the association and its members any and all costs the Town of Valdese expends to maintain or repair the *structural BMPs* or to correct any operational deficiencies. Failure to pay the Town of Valdese all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Valdese shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.
- (7) A statement that this agreement shall not obligate the Town of Valdese to maintain or repair any *structural BMPs*, and the Town of Valdese shall not be liable to any person for the condition or operation of *structural BMPs*.
- (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Valdese to enforce any of its ordinances as authorized by law.
- (9) A provision indemnifying and holding harmless the Town of Valdese for any costs and injuries arising from or related to the structural BMP, unless the Town of Valdese has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

### **Section 9-3304.3 Inspection Program.**

Inspections and inspection programs by Town of Valdese may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

If the *owner* or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

### **Section 9-3304.4 Performance Security for Installation and Maintenance.**

#### **(A) May Be Required**

The Town of Valdese may, at its discretion, require the submittal of a performance security or bond with surety or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the *structural BMPs* are

- (1) Installed by the permit holder as required by the approved stormwater management plan, and/or
- (2) Maintained by the *owner* as required by the operation and maintenance agreement.

#### **(B) Amount**

##### **(1) Installation**

The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%.

##### **(2) Maintenance**

The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

#### **(C) Uses of Performance Security**

##### **(1) Forfeiture Provisions**

The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or *owner* in

accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.

**(2) Default**

Upon default of the *owner* to construct, maintain, repair and, if necessary, reconstruct any *structural BMP* in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the *owner* to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Valdese shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

**(3) Costs in Excess of Performance Security**

If Town of Valdese takes action upon such failure by the applicant or *owner*, the Town of Valdese may collect from the applicant or *owner* the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

**(4) Refund**

Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

**Section 9-3304.5 Notice to *owners*.**

**(A) Deed Recordation and Indications On Plat**

The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable) pertaining to every *structural BMP* shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

**(B) Signage**

Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, *structural BMPs* shall be posted with a conspicuous

sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

**Section 9-3304.6 Records of Installation and Maintenance Activities.**

The *owner* of each *structural BMP* shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

**Section 9-3304.7 Nuisance.**

The *owner* of each stormwater BMP, whether *structural* or non-*structural BMP*, shall maintain it so as not to create or result in a nuisance condition.

**Section 9-3304.8 Maintenance Easement.**

Every *structural BMP* installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

**Section 9-3305 Enforcement and Violations.**

**Section 9-3305.1 General.**

**(A) Authority to Enforce**

The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of Town of Valdese. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of Town of Valdese.

**(B) Violation Unlawful**

Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other *development* or *redevelopment* approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.

**(C) Each Day a Separate Offense**

Each day that a violation continues shall constitute a separate and distinct violation or offense.

**(D) Responsible Persons/Entities**

Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that

results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an *owner*, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or *development* of the property on which the violation occurs.

For the purposes of this article, responsible person(s) shall include but not be limited to:

**(1) Person Maintaining Condition Resulting In or Constituting Violation**

An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

**(2) Responsibility For Land or Use of Land**

The *owner* of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, *development* or *redevelopment* of the property.

**Section 9-3305.2 Remedies and Penalties.**

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

**(A) Remedies**

**(1) Withholding of Certificate of Occupancy**

The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

**(2) Disapproval of Subsequent Permits and Development Approvals**

As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Town of Valdese Planning Board may disapprove, any request for permit or *development* approval or authorization provided for by this ordinance or the zoning, subdivision, and/or building regulations, as appropriate for the land on which the violation occurs.

**(3) Injunction, Abatements, etc.**

The Stormwater Administrator, with the written authorization of the Town Administrator, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

**(4) Correction as Public Health Nuisance, Costs as Lien, etc.**

If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the Town Administrator, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

**(5) Stop Work Order**

The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

**(B) Civil Penalties**

Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which Town of Valdese is subject for violations of its Phase II Stormwater permit, or if no Phase II Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

**(C) Criminal Penalties**

Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

**Section 9-3305.3 Procedures.****(A) Initiation/Complaint**

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator.

**(B) Inspection**

The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

**(C) Notice of Violation and Order to Correct**

When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property *owner* or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the law enforcement or code enforcement personnel, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

**(D) Extension of Time**

A person who receives a notice of violation and correction order, or the *owner* of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 30 days. The Stormwater Administrator may grant 15-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

**(E) Enforcement After Time to Correct**

After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

**(F) Emergency Enforcement**

If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

**Section 9-3306 Definitions.**

**Section 9-3306.1 Terms Defined.**

When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

***Built-upon area (BUA)***

That portion of a *development* project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. “Built-upon area” does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

***Department***

The North Carolina Department of Environment Quality.

***Design Manual***

The stormwater design manual approved for use in Phase II jurisdictions by the *Department* and certified by this jurisdiction for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the *Design Manual* are to the latest published edition or revision.

***Development***

Any land-disturbing activity that increases the amount of *built-upon area* or that otherwise decreases the infiltration of precipitation into the soil.

***Division***

The Division of Energy, Mineral and Land Resources in the *Department*.

***High-density project***

Any project that exceeds the *low-density* threshold for dwelling units per acre or *built-upon area*.

***Larger common plan of development or sale***

Any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

***Low-density project***



For a project that is not located within one-half mile of and draining to Shellfish Resource Waters: the project is a low-density project if it has no more than two dwelling units per acre or twenty-four percent *built-upon area* (BUA) for all residential and non-residential *development*.

A project with an overall density at or below the relevant low-density threshold, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainage ways to the maximum extent practicable.

#### ***1-year, 24-hour storm***

The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

#### ***Owner***

The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.

#### ***Redevelopment***

Any *development* on previously-developed land, other than a rebuilding activity that results in no net increase in *built-upon area* and provides equal or greater stormwater control than the previous *development*.

#### ***Structural BMP***

A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the *pre-development* hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural BMP" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this ordinance.

#### ***Substantial progress***

For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. "Substantial progress" for purposes of determining whether an approved plan is null and void is not necessarily the same as "substantial expenditures" used for determining vested rights pursuant to applicable law.



## ARTICLE T

### Illicit Discharges and Connections and Wastewater

#### Section 9-3501 Illicit Discharges and Connections.

##### Section 9-3501.1 Title and Purpose.

###### (A) Title

This ordinance shall be officially known as "The Phase II Stormwater Illicit Discharge Detection and Elimination Ordinance." It is referred to herein as "this ordinance."

###### (B) Purpose

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of Valdese through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by Stormwater discharges by any user
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

##### Section 9-3501.2 Authority.

The Town of Valdese is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A § 174, 185.

##### Section 9-3501.3 Definitions.

For the purposes of this section, the following shall mean:

###### ***Best Management Practices (BMPs)***

schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to Stormwater, receiving waters, or Stormwater conveyance systems BMPs also include treatment practices, operating procedures and practices to control site runoff, spillage or leaks sludge or water disposal, or drainage from raw materials storage.

###### ***Clean Water Act***

The federal Water Pollution Control Act (33 U.S. C. 5 1251 et seq.), and any subsequent amendments thereto.

***Hazardous Materials***

Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported disposed of, or otherwise managed.

***Illegal Discharge***

Any direct or indirect non-storm water discharge to the storm drain system.

***Illicit Connections***

An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by an authorized enforcement agency or,

Any drain or conveyance connected from a commercial or industrial land use to the storm drain system, which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

***Industrial Activity***

Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).

***Municipal Separate Storm Sewer System (MS4)***

Pursuant to 40 CFR 122.26(b)(8) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets catch basins, curbs, gutters, ditches, manmade channels, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures or storm drains):

- (i) Owned or operated by a town, city, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, Stormwater, or other wastes, that discharges to waters of the United States or waters of the State.
- (ii) Designed or used for collecting or conveying Stormwater;
- (iii) Which is not a combined sewer; and
- (iv) Which is not part of a Publicly Owned Treatment Works (POTW), as defined in 40 CFR 122.2

***National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit***

A permit issued by the North Carolina Department of Environment and Natural Resources, Division of Water Quality\* that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable on an individual, group, or general area-wide basis.

***Non-Stormwater Discharge***

Any discharge to the storm drain system that is not composed entirely of storm water.

***Person***

Means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting either as the owner or as the owner's agent.

***Pollutant***

Anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

***Premises***

Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

***Storm Water***

Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

***Stormwater Pollution Prevention Plan***

A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

***Wastewater***

Means water or other liquid, other than uncontaminated storm water, discharged from a facility.

\*Ultimately the federal Environmental Protection Agency regulates the NPDES permit, but it has been delegated to the state for any non-tribal lands within North Carolina

**Section 9-3501.4 Illicit Discharges and Connections**

**(A) Illicit Discharges**

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any Stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a Stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than Stormwater;

provided that non-Stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

- (1) Water line flushing,
- (2) Landscape irrigation,
- (3) Diverted stream flows,
- (4) Rising ground waters,
- (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)),
- (6) Uncontaminated pumped ground water,
- (7) Discharges from potable water sources,
- (8) Foundation drains,
- (9) Flows from emergency firefighting,
- (10) Air conditioning condensation,
- (11) Irrigation water,
- (12) Springs,
- (13) Water from crawl space pumps,
- (14) Footing drains,
- (15) Lawn watering,
- (16) Individual residential car washing - Designated vehicle wash areas at multi-family residential complexes are not allowed if they connect, directly or indirectly, to the Stormwater System or surface waters. Charity Vehicle Washing performed by the same organization or at the same location on a routine basis (more than one time in a thirty-day period) is not allowed under this article.
- (17) Flows from riparian habitats and wetlands,
- (18) Dechlorinated swimming pool discharges - "Salt Water" swimming pools cannot be directly discharged into the storm drain due to the salinity, bromoform/bromine concentration, and chlorine generated.
- (19) Street wash water, and
- (20) Other non-Stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and if any such discharges to the municipal separate storm, The Town of Valdese shall authorize sewer system.

(21) Removal of Stormwater System blockages with Unmodified Potable Water.

Prohibited substances include but are not limited to oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

**(B) Illicit Connections**

(1) Connections to a Stormwater conveyance or Stormwater conveyance system that allows the discharge of non-Stormwater, other than the exclusions described in section (a) above, are unlawful. Including but not limited to: prohibited washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and wastewater from septic systems.

(2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

(3) Where it is determined that said connection:

- i. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
- ii. Was made in violation of any applicable regulation or ordinance, other than this section:

The Stormwater Administrator/ Illicit Discharge Officer shall designate the time within which the connection shall be removed - in setting the time limit for compliance the Stormwater Administrator/ Illicit Discharge Officer shall take into consideration:

- i. The quantify and complexity of the work,
- iii. The consequences of delay,
- iv. The potential harm to the environment, to the public health, and to public and private property, and
- v. The cost of remedying the damage.

**(C) Spills**

Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the Stormwater conveyance system, shall be contained, controlled, collected, and properly disposed of. All affected areas shall be restored to their pre-existing condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Valdese Fire Department of the release or discharge, as well as making any required notifications under state and federal law, Notification shall not relieve

any person of any expenses related to the restoration, loss damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

**(D) Industrial or Construction Activity Discharges**

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit; Proof of compliance with said permit may be required in a form acceptable to the Town of Valdese prior to the allowing of discharges to the MS4.

**Section 3501.5 Right of Entry/Powers and Authority for Inspection**

**(A) Authority to Inspect and Monitor**

The Stormwater Administrator/ Illicit Discharge Officer, bearing proper identification, may enter public or private properties at all reasonable times to inspect, investigate, or monitor activities and conditions subject to this article. Persons occupying premises to be inspected shall allow the Stormwater Administrator/ Illicit Discharge Officer ready access at all times to all parts of the premises to perform inspection, monitoring, records examination, copying, photography, video recording or other duties. Stormwater Administrator/ Illicit Discharge Officer shall have the right to set up on the Person's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a Person has security measures in force that would require identification and clearance before entry into the premises, the Person shall make arrangements with security personnel so that, upon presentation of identification, personnel from Stormwater Administrator/ Illicit Discharge Officer will be permitted to enter and perform their specific responsibilities without delay. Denial of Stormwater Administrator/ Illicit Discharge Officer access to the Person's premises or portions thereof shall be a violation of this article. Denial of access may also occur if a Person fails to provide, without unreasonable delay, such facilities, equipment, or devices as are reasonably necessary to permit Stormwater Administrator/ Illicit Discharge Officer personnel to perform their duties in a safe manner. Unreasonable delays may constitute denial of access. Any delay of more than five minutes may be considered unreasonable.

**(B) Search Warrants**

To the extent permitted by law, Administrator/ Illicit Discharge Officer may seek the issuance of a search warrant to determine compliance with this article.

**(C) Confidential Information**

- (1) To the extent permitted by applicable law and except as otherwise provided in this section, information and data on a Person obtained from reports, questionnaires, permit applications, permits, monitoring programs and inspections shall be available to the public or other government agencies without restriction, unless the Person specifically requests, and is able to demonstrate to the satisfaction of Administrator/ Illicit Discharge Officer, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the Person. Any



such request must be asserted at the time of submission of the information or data.

- (2) To the extent permitted by applicable law, when requested by a Person furnishing a report, the portions of a report that might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon request to governmental agencies for uses related to this article provided, however, that such portions of a report shall be available for use by the State or any State agency in judicial review or enforcement proceedings involving the Person furnishing the report.
- (3) Documents that are not public records and the information set forth therein may be withheld and released only as provided by applicable law.

#### **(D) Obstruction**

No person shall obstruct, hamper, or interfere with Administrator/ Illicit Discharge Officer while carrying out official duties. Upon presentation of credentials by Administrator/ Illicit Discharge Officer, necessary arrangements shall be made to allow immediate access onto premises or into an area protected by security measures. Any obstruction to the safe and easy access to property, a facility or enclosure on property, or to monitoring devices shall immediately be removed. Unreasonable delays in providing safe and reasonable access or removing obstructions shall be a violation of this article.

### **Section 9-3501.6 Enforcement**

#### **(A) Notice of Violation**

Whenever the Stormwater Administrator/ Illicit Discharge Officer finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Stormwater Administrator/ Illicit Discharge Officer may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring analyses, and reporting,
- (2) The elimination of illicit connections or discharges,
- (3) That violating discharges, practices, or operations shall cease and desist,
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property, and
- (5) Payment of a fine to cover administrative and remediation costs, and
- (6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or the Town or a contractor designated by the Stormwater Administrator/ Illicit Discharge Officer will perform the restore, within the established deadline, the work and the expense thereof shall be charged to the violator.

**(B) Violations Deemed a Public Nuisance**

Illicit discharges and illicit connections which exist within the Valdese Town Limits and Extra-territorial Jurisdiction are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances and may be summarily abated or restored by the Town at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the Town.

**401 BASS STREET NW, VALDESE, NC 28690**









**1300 CAROLINA ST. SE, VALDESE, NC 28690**













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TOWN OF VALDESE  
MAIN ST. WATERLINE REPLACEMENT  
PROJECT (H-LRX-F-19-1955)  
RESOLUTION ACCEPTING FUNDS  
BY VALDESE, TOWN COUNCIL

WHEREAS, the North Carolina Clean Water Revolving Loan and Grant Act of 1987 has authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of wastewater treatment works, wastewater collection systems, and water supply systems, water conservation projects, and

WHEREAS, the North Carolina Department of Environmental Quality has offered \$2,782,950 from the North Carolina Drinking State Revolving Fund (DWSRF). 1) To install Approx. 3,000ft 8-inch Ductile-Iron Pipe (DIP) to Replace-in-Kind (RIK) Approx. 3,000 FT of existing 8-inch Cast-Iron Pipe (CIP); 2) Install Approx. 3,800 FT of Proposed 6-inch DIP to RIK Approx. 3,800 FT of Ex. 6-inch CIP and; 3) Install Approx. 190 FT of Proposed 6-inch DIP to RIK Approx. 190 Feet of Ex. 2-inch Galvanized Steel.

WHEREAS, the Town of Valdese intends to construct said project in accordance with the engineering plans and specifications that have or will have been approved by the North Carolina Public Water Supply Section.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF VALDESE:

That the Town of Valdese does hereby accept the NC Drinking Water State Revolving Fund loan offer of \$2,782,950

That the Town of Valdese does hereby give assurance to the North Carolina Department of Environmental Quality that they will adhere to all applicable items specified in the standard "Conditions" and "Assurances" of the Department's funding offer, awarded in the form of Drinking Water State Revolving Fund Loan; and

That Mr. Seth Eckard, Valdese Town Manager, and successors so titled, is hereby authorized and directed to furnish such information, as the appropriate State agency may request, in connection with such application or the Project; to make the Assurances as contained above; and to execute such other documents as may be required in connection with the application; and

That Town of Valdese has complied substantially or will comply substantially with all Federal, State and local laws, rules, regulations, and ordinances applicable to the Project and to Federal and State grants and loans pertaining thereto.

Adopted this the 2<sup>nd</sup> day of December, 2019 at Valdese, North Carolina

---

Chip J. Black, Mayor

---

Date



**TOWN OF VALDESE**  
NORTH CAROLINA'S FRIENDLY TOWN

P.O. BOX 339

VALDESE, NORTH CAROLINA 28690-0339

PHONE (828) 879-2120 | FAX (828) 879-2139 | TOWNOFVALDESE.COM

## **Memorandum**

To: John Black, Mayor  
Town Council Members

From: Greg Padgett, Water Resources Director

Date: December 2, 2019

Subject: Dye Branch Sewer Line Protection Project

A sinkhole developed on the Kellex property adjacent to the 24-inch Town sanitary sewer line as the result of a failure within Kellex's private storm sewer system. This sinkhole threatened the Town sanitary sewer as well as some of Kellex's private property. Even though the Town is responsible for protecting the integrity of the sanitary sewer system, the Town did not have a deeded right of way or easement on the property for the 24-inch sanitary sewer. As part of this reimbursement for restorative work on the storm sewer system, which also protects the 24-inch sanitary sewer system, the Town will also receive an easement from Kellex for all areas necessary to operate and maintain the existing public utilities on the Kellex property.

Out of necessity and expedience, Kellex took the lead on this project with some third party (McGill) oversight to protect the Town's interest (24-inch sanitary sewer). This approach ensured that the sanitary sewer would not fail to subject the Town to violation of its permit and corresponding fines. Further, had repairs been initiated after a spill, the expense to the Town could have been much higher.

Staff requests that council approve reimbursement to Kellex Seating for work involving rehabilitation of storm sewers in the area of their facility that near approximately 400 feet of 24-inch sanitary sewer line, belonging to the Town that passes through the Kellex property.

If you have comments or questions, please contact the Water Resources Director.