

CITY OF WESTMORLAND

REPORT TO CITY COUNCIL

MEETING DATE: September 3, 2025

FROM: Laura Fischer, Manager

SUBJECT: Public Hearing – To consider approval of a Zone Change Application for APN# 035-342-005 and #035-342-006. This application will change the current zone from Industrial to Residential.

ISSUE: Shall the City Council Open a Public Hearing to consider approval of a Zone Change Application for APN# 035-342-005 and #035-342-006. This application will change the current zone from Industrial to Residential?

GENERAL MANAGER'S RECOMMENDATION:

- A) Open the Public Hearing to consider any comments Regarding the Zone Change Application for APN# 035-342-005 and #035-342-006. This application will change the current zone from Industrial to Residential
- B) After receiving comments, close the Public Hearing. Any and all comments from the public will be included in the project notes.
- C) Approve the zone change application as presented.

FISCAL IMPACT: There is no fiscal impact should the Council approve the zone change application. The applicant has paid the required fees for processing.

To Be Considered at Public Hearing.

Under consideration at the public hearing tonight is the request to change zone from Industrial to Residential for property located at 510 E. Main Street (Boarts Road).

The purpose of the hearing is to solicit comments from interested persons regarding the zone change application for APN # 035-342-005 and 035-342-006 located at 510 Main Street (Boarts Road). The request is to change the zone from industrial to residential.

Council should Open the Public Hearing and solicit input from interested parties. After hearing all parties, Council should Close the Public Hearing and consider approval of the application to change zone from Industrial to Residential for property located at 510 E. Main (Boarts Road).

DISCUSSION:

A change of zone in California is the process of requesting a local government to alter a property's zoning designation, which dictates permitted land uses and development standards. The process involves initial discussions with city staff, the submission of a detailed application with site plans and environmental documentation, and a public hearing before the planning commission and/or city council.

What is a Change of Zone?

Zoning divides land into areas with specific rules about what can be built and what uses are allowed, like residential, commercial, or industrial.

Zone Change or Rezoning.

A request to change a property's zoning designation from one type to another, such as changing a residential zone to allow for mixed-use development.

Key Steps in the Process

1. Pre-Application Meeting: Completed

Applicant meets with the city to discuss the project's feasibility, requirements, and compatibility with the city's General Plan and zoning policies.

2. Application Submission: Completed

Submit a complete application package, which includes site plans, supporting documents, a statement of justification for the change, and any required fees.

3. Environmental Review: Completed & Attached

The city will evaluate the project's potential environmental impact under the California Environmental Quality Act (CEQA), which may result in a Negative Declaration or an Environmental Impact Report (EIR).

4. Planning Commission and/or City Council Review: Council on 9/3/25

The commission makes a recommendation to the city council, who then hold a public hearing and vote to approve or deny the zone change.

Important Considerations

- **General Plan Consistency:** Completed – No GP Amendment Needed

A zone change must typically be consistent with the city's General Plan. If it is not, a General Plan Amendment may be needed concurrently.

- **Public Interest:** The current use as Residential is not allowed in the Industrial zone. This change will allow the property to be zoned according to the allowed use as Residential.

The application must demonstrate how the change will serve the public interest, necessity, convenience, or general welfare.

- **Other Approvals:** N/A

Related applications, such as a Conditional Use Permit (CUP), Tentative Map or Development approval, may be required and processed with the zone change request.

- **Impact on Neighbors:** Only one business within 300 feet, which is zoned Industrial. No change of use or negative impact.

It is advisable to consult with nearby residents and property owners about the proposed changes.

BACKGROUND:

The property under consideration was zoned industrial when the property was used as the County Public Works yard. When the county owned the property they had an industrial use, but as this was a county owned property they were able to build a home at the County Public Works yard for the staff assigned to the area to live.

Residential use is not an allowed use in Industrial zone, and there is no record of a Conditional Use Permit being recorded on this parcel or parcels.

When the County sold the property to the new owner, George Mallory, it was purchased with the zone as industrial. The property was sold to Vance and Anne Mallory in 1994 and was used as the family's home with a commercial agriculture operation. Allowed uses under Industrial zone have not been in operation since the County of Imperial closed the Public Works Yard.

The property's current use as residential home is not permitted under the Industrial Zone.

The new owners of the property (once sold by Ms. Mallory) will be required to install a separate water line for each individual residents on the property. Currently there is only one line (1.5") meter. Prior to providing water service, a new ¾" line must be run to the additional home.

The City of Westmorland will reevaluate any zoning concerns if or when a business license application is received for operating at this location.

These development issues do not affect the zone change application and do not require a conditional use permit or any other consideration until an application for services is received by city hall for services or a business license.

Industrial Zone Description from the City of Westmorland's Zoning Ordinance 04-02 adopted June 2, 2004

Section 3.5 INDUSTRIAL (I) ZONE.

3.5.1. Intent.

It is the intent of the Industrial (I) zone to provide for wholesale and warehousing uses as well as those industrial uses that include manufacturing, assembly or processing and which require large storage areas.

3.5.2. Permitted Uses.

The following uses shall be permitted in an I Zone:

(a) Any of the following uses provided that such operations, manufacturing, assembly or processing are not obnoxious or offensive by reason of emission of odor, dust, gas, fumes, smoke, glare, waste, noise, vibrations, disturbances or other similar causes which may impose hazard to life or property.

(b) Wholesale and warehouse uses, which include establishments or places of business primarily engaged in selling -merchandise to retailers; to industrial, commercial, institutional, or professional users or to other wholesalers. The function of bulk storage and related uses is also included in this classification.

(c) Manufacturing which includes establishments primarily engaged in assembly, processing, packaging or treatment of various food stuffs or natural or person-made materials.

(d) Storage of empty bee hives and equipment pertaining to bees.

(e) Tractor/Truck repairing, painting or washing related uses.

3.5.3. Conditional Uses. The following shall be permitted in an I zone subject to a Conditional Use Permit (see Section 5.1):

(a) Establishments or enterprises involving large assemblages of people or automobiles.

(b) Commercial storage of oil, gasoline or petroleum products.

Under the City's adopted Zoning Ordinance 04-02 the property can be zoned Residential R-1 as long as the accessory buildings and structures are not permitted as commercial use and do not receive a business license. Should the new owner request a business license, they would have to secure a Conditional Use Permit from the city.

CONCLUSION:

After opening a Public Hearing, gathering comments and information from the public, staff recommends closing the Public Hearing, and taking the appropriate action to approve the zone change request as presented.

Next Step to Proceed with Zone Change Request is to hear the first reading of Ordinance 2025-2 to change zone from Industrial to Residential APN 035-342-005 and 035-342-006.

ALTERNATIVE:

- 1) Approve the zone change application and direct staff to move forward with the approval process
- 2) Do not open the Public Hearing and direct staff to take alternate action.
- 3) Do not approve the zone change application, and direct staff to make edits to the request.

Respectfully Submitted,

Laura Fischer, Manager

Attachments:

Zone Change Application

CEQA Environmental Negative Declaration

Maps of Property

Zoning Ordinance 04-02

Processing Fee: \$ 175.00
plus consultant cost



Date Filled: _____

Received By: _____

**CITY OF WESTMORLAND
DEPARTMENT OF BUILDING & PLANNING
APPLICATION FOR CHANGE OF ZONE OR PREZONE**

Application is hereby made to the City of Westmorland, County of Imperial, State of California, for a **Change of Zone** as set forth under Section 5.05, et. Seq., of the Zoning Ordinance, of the City Zoning Code of the City of Westmorland, California, as amended.

APPLICANT:

Name Anne Mallory Telephone No. (760) 455-4791
Mailing Address 307 Sunny meadow Place - Brawley, CA 92227
Name of Property Owner's (if different from above) Anne J. Mallory
Mailing Address 307 Sunny meadow Place - Brawley, CA 92227
Telephone No. (760) 455-4791
Financial Institution/Bank, providing funding for the project (if known) N/A
Mailing Address _____ Telephone No. (____) _____

Applicant is the : (check one)

- ☒ Owner.
☐ Purchaser under contract.
☐ *Lessee, acting with written approval of the Owner (five (5) year minimum).
☐ *Agent, acting with written approval of the Owner of the property described hereinbelow.
☐ Other _____

*Submit written approval with application.

DESCRIPTION OF PROJECT SITE:

Legal:

| Lot | Block | Subdivision |
|---|-------|-------------|
| Assessor's Parcel No. (APN): <u>035 - 342 - 005 / 035 - 342 - 006</u> | | |
| Street Address/Location <u>510 Boarts Road / 510 Main St.</u> | | |

ZONING REQUEST:

Current zoning Industrial
Proposed zoning Residential

JUSTIFICATION:

In the opinion of the petitioners, the public interest, health, safety, morals, peace, comfort, convenience and the general welfare and amenities would require such change for the following reasons:

Property ^{has} been used as residential since purchased in 1994

REQUIRED ATTACHMENTS:

1. Environmental Information Form.
2. Location Map.

SIGNATURE:

I certify that I am the signer of the within application and have read the foregoing and certify that the contents herein are true and correct to the best of my knowledge and belief.

8/27/25
Date

Chloe J. Mallory
Applicant Signature

Anne J. Mallory
Print Name

NOTE:

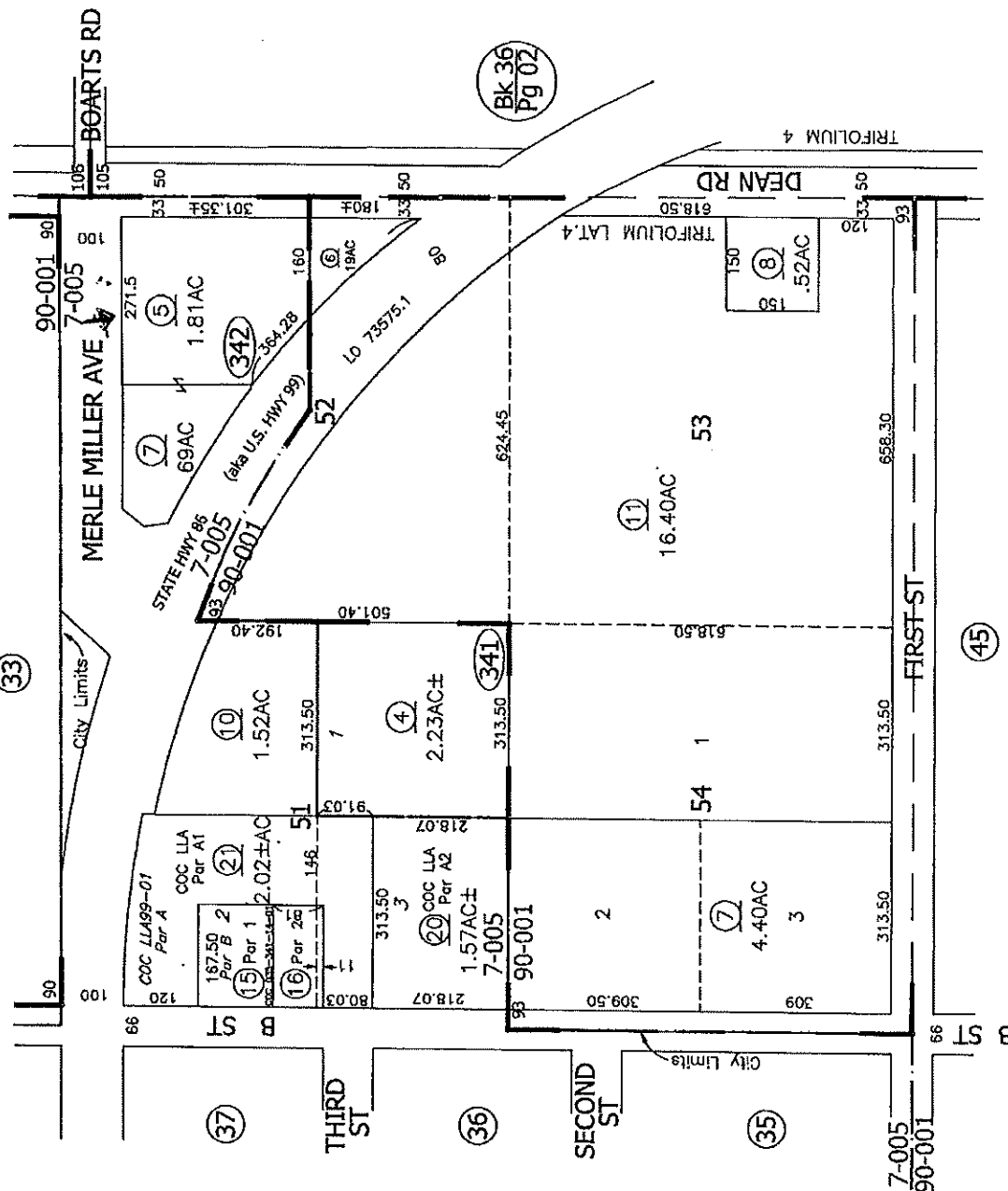
Please submit change of zone application with the required attachments and the appropriate filing fees to the Department of Building & Planning at City Hall, 355 South Center Street, Westmorland, California 92281.
Incomplete applications will not be accepted.

If you need assistance completing the applications, please contact the Department of Building & Planning on weekdays, from 8:00a.m. to 5:00p.m., at (760) 344-3411.

Tax Area Code
7-005
90-001

TRACT 93 & POR. OF RESUB. OF TOWNSITE

OM 6-14
OM 3-54
OM 3-54 1/2



DISCLAIMER:
THIS IS NOT AN OFFICIAL MAP.
THIS MAP WAS CREATED FOR THE IMPERIAL COUNTY
ASSESSOR, FOR THE SOLE PURPOSE OF AIDING IN
THE PERFORMANCE OF THE DUTIES OF THE ASSESSOR.
ANY ERRORS OR OMISSIONS IN THIS MAP ARE NOT
THE RESPONSIBILITY OF THE COUNTY OF IMPERIAL
OR THE ASSESSOR. (REV. & TAX CODE SEC.327)

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11-7-73 ED
9-18-68 R.M.
9-5-67 W.B.

CITY OF WESTMORLAND
Assessor's Map Bk.35-Pg.34
County of Imperial, Calif.



1" = 134 ft

08/28/2025



This map may represent a visual display of related geographic information. Data provided here is not a guarantee of actual field conditions. To ensure complete accuracy, please contact the responsible staff for the most up-to-date information.

CITY OF WESTMORLAND
355 SOUTH CENTER STREET
WESTMORLAND, CA 92281

CEQA Compliance Certification

Grantee: City of Westmorland

Project Name: Zone Change Application APN# 035-342-005 and # 035-342-006

Project Address: 510 Main (Boarts) Street, Westmorland, CA 92281

Is the CEQA analysis complete? ☒ Yes ☐ No

What document was filed, or is expected to be filed for this project's CEQA analysis:

(check one)

Date complete/expected to be completed

☒ Notice of Exemption (**attach recorded copy if filed**) – Expected to be filed 10/2025

☐ Notice of Determination (**attach recorded copy if filed**) _____

If CEQA is complete, and a Notice of Exemption or Notice of Determination was not filed, attach a letter from the Lead Agency explaining why, certifying the project has complied with CEQA and noting the date that the project was approved by the Lead Agency.

LEAD AGENCY CONTACT

Agency Name: City of Westmorland

Contact Person: Laura Fischer

Mailing Address: 355 South Center Street, Westmorland, CA 92281

Phone: (760) 344-3411

Email: lfischer@cityofwestmorland.net

Certification

I hereby certify that the above referenced Lead Agency has complied or will comply with the California Environmental Quality Act (CEQA) and that the project is described in adequate and sufficient detail to allow the project's ZONE CHANGE.

I further certify that the GEQA analysis for this project encompasses all aspects of the impacts of the zone change.

 09/03/2025
Signature of Authorize Representative Date

Laura Fischer Manager
AUTHORIZED REPRESENTATIVE
(Printed Name and Title)

ORDINANCE NO 13-01**AN ORDINANCE OF THE CITY OF WESTMORLAND, CALIFORNIA, AMENDING
THE ZONING ORDINANCE TO INCLUDE UPDATES TO THE GENERAL PLAN****TABLE OF CONTENTS**

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It is declared that in the adoption of this Ordinance and of the respective zones set forth in this Ordinance, the City Council has given due and special consideration to the peculiar suitability of each and every such zone created for the particular uses enumerated therefore, the area requirements, density of land occupancy and the necessary, proper and comprehensive groupings and arrangements of the various industries, businesses and population of the city and in relation with established plans in the adjoining areas of the city in accordance with a well-considered plan of land use for the development of the entire city.

Article I. PURPOSE AND INTRODUCTORY PROVISIONS

SECTIONS 1.01 PURPOSE

The purpose of this Zoning Ordinance is to classify, designate, regulate and restrict the use of land, buildings and other structures so as to ensure that the goals and objectives of the Westmorland General Plan are realized, and to ensure the protection and enhancement of the public health, safety and general welfare. This Ordinance is further intended to provide economic and social advantages resulting from an orderly planned use of land resources, and to encourage, guide and provide a definite plan for the future growth and development of the City. It is also intended to establish minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, access to persons with disabilities, sanitation, adequate lighting and ventilation, and energy conservation, safety to life and property from fire and other hazards attributed to the built environment; and provide safety to firefighters and emergency responders during emergency operations. The provisions of this code shall apply to the construction, alteration, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every detached one and two single-family dwellings, buildings not more than three stories above grade plane in height with a separate means of egress and structures accessory thereto within the City of Westmorland. Therefore, the 2010 California Residential Code, Title 24, Part 2.5, published by the International Code Council (ICC), in the California Code of Regulations, except as specifically repealed or amended by ordinance of the City, is hereby adopted and made part of this chapter as though set forth in full herein. A true and correct copy of the 2010 California Residential Code as adopted by this section shall be on file in the office of the City Building Official for inspection by the public.

SECTION 1.02 GENERAL PROVISIONS

(a) Provisions to Be Construed As Minimal Requirements.

In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, convenience and general welfare. Anything not expressly incorporated by reference in this Ordinance is hereby prohibited.

(b) Effect on Other Ordinances.

The provisions of this Ordinance shall not be deemed or construed to repeal, amend, modify, alter or change any other ordinance or any part thereof not specifically repealed, amended, modified, altered or changed in the provision codified in this Ordinance, except in such particulars or matters as this Ordinance is more restrictive than such other ordinances or part thereof; and that in all particulars wherein this title is not more restrictive, each such other ordinance shall continue and shall be in full force and effect.

(c) Exercise of Powers Granted By Title.

Whenever a power is granted to, or a duty imposed upon, a public officer by this Ordinance, the power may be exercised or the duty may be performed by the Planning Commission, a deputy of the chairperson, or a person authorized pursuant to law or ordinance by the Planning Commission unless this title expressly provides otherwise.

SECTION 1.03 DEFINITIONS

For the purpose of carrying out the intent of this ordinance, words, phrases and terms used in this document and in the implementation of this ordinance are defined as follows:

Abut:

“Abut” means two adjoining parcels of property with a common property line except where such common property line is located in a public street right-of-way.

Access

“Access” means the way by which pedestrians and vehicles shall have safe, adequate and useable ingress and egress to a property or use.

Accessory building or structure

“Accessory building” or “accessory structure” means a detached subordinate building or structure, the use of which is incidental to that of the predominant use of the land, and which is located in the same or less restrictive zone on the same lot or parcel with the predominant building, structure or use.

Apartment

“Apartment” means any building, or portion thereof, which is designed, built, rented, leased, let or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other and doing their own cooking in the building

Alley

“Alley” means any dedicated way, intended for vehicular service to the rear or side of property served by a street.

Automobile storage space

“Automobile storage space,” when required by this code/ordinance, means any permanently maintained space of not less than one hundred forty-four square feet of useable area and not less than nine feet wide at any place, on the same lot or parcel of land as is located the structure it is designed to serve, so located and arranged as to permit the storage of, and be readily accessible under its own power, one (1) passenger automobile of average size.

Building

“Building” means any structure that is completely roofed and enclosed on all sides which is built for the support, shelter or enclosure of persons, animals, chattels or property of any kind and having a fixed base on or fixed connection to the ground and as defined by the Uniform Building Code.

City

“City” means the City of Westmorland

Commission

“Commission,” as used in this document, means the Planning Commission of the City of Westmorland

Council

“Council” means the City Council of the City of Westmorland

Density

The number of dwelling units allowed within a given square footage. Density shall be based upon lot size and shall be determined by dividing the net useable area of the parcel to be subdivided or parcelized by the required lot area. “Net useable area” is the area of a parcel exclusive of streets, alleys and similar public right-of-ways.

Density Bonus

Density Bonus means a density increase of at least twenty percent (20%) unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density, as required for some affordable housing, mixed-use, or other designated residential developments.

Detached living quarters

“Detached living quarters” means living quarters within a detached accessory building located on the same premises as the main building, for use by temporary guests of the occupants of the premises. Such accessory building shall have no plumbing or plumbing facilities of any kind except for space heating, air conditioning, toilet or bath.

Disability

Federal laws define a person with a disability as any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment. In general, a physical or mental impairment includes hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation that substantially limit one or more major life activities. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.

Dwelling unit

Dwelling Unit means a building or portion thereof either designed for or occupied for residential purposes by one person living alone or a group of two or more persons living together whether related to each other by birth or not, but not including hotels, boarding and lodging houses, and trailers (unless the trailer meets building code requirements for dwelling unit).

Dwelling, Single Family

A Single Family Dwelling unit is a detached building, or portion thereof designed for occupancy by one or more families.

Dwelling, Two or more units

A multi-family dwelling unit is a detached building, or portion thereof designed for occupancy by two or more families.

Dwelling, Second Unit

An attached or detached dwelling unit which provides complete independent living facilities for one (1) or more persons, with permanent provisions for living, sleeping, eating, cooking and sanitation sited on the same parcel as the primary dwelling unit. This definition includes granny flats.

Emergency Shelter

A facility whose primary purpose is to provide temporary or transitional shelter for the homeless in general or for specific populations of the homeless.

Employee Housing

Property used temporarily or seasonally for the residential use of unrelated persons/families employed to perform agricultural or industrial labor either on- or off-site of agricultural activities. The accommodations may consist of any living quarters, dwelling, boardinghouse, tent, bunkhouse, mobile home, manufactured home, recreational vehicle, travel trailer, or other housing accommodations maintained in one (1) or more buildings, or one (1) or more sites, and the premises upon which they are situated, including area set aside for parking of mobile homes or camping of employees by the employer. Employee housing may also involve permanent residency if the housing accommodation is a mobile home, manufactured home, travel trailer, or recreational vehicle. Specifically, there are two (2) types of employee housing as follows: Employee Housing, Large. Employee housing that serves more than six (6) employees and consists of no more than thirty-six (36) beds in group quarters or twelve (12) units or spaces designed for use by a single family or household; and Employee Housing, Small. Employee housing that serves six (6) or fewer employees.

Family

Family includes, but is not limited to, regardless of marital status, actual or perceived sexual orientation, or gender identity, the following: A group of persons residing together.

Flag lot

“Flag lot” means a lot which does not abut or have access to a public road, other than by a narrow right-of-way which is part of the otherwise wider lot and which constitutes a significant portion of all of the width of the lot where the right-of-way is located.

Floor area ratio

“Floor area ratio” means the numerical value obtained through dividing the gross floor area of the building or buildings located upon a lot or parcel of land by the total area of such lot or parcel of land.

General Plan

As used in this document, the General Plan means The General Plan of the City of Westmorland.

Grade (ground level)

“Grade” or “ground level” means the average grade of the finished ground level at the center of all walls of a building. In case walls are parallel to and within five feet of sidewalks, the aboveground level shall be measured at the sidewalks.

Habitable building

“Habitable building” means a building or a portion thereof designed, built, rented, leased, used or occupied as living quarters of one person living alone or a group of two or more persons living together, and includes detached living quarters, trailers, and mobile home units.

Height

“Height” means the vertical distance from the grade to the highest point of the coping of a flat roof or to the average height of the highest gable of a pitch or hip roof. In calculating the height, roof structures which comply with Chapter 36 of the building code shall not be considered.

Homeless person

"Homeless person" means an individual or family who lacks a fixed, regular, and adequate nighttime residence; or an individual or family who has a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, regular sleeping accommodations for human beings.

Home occupation

"Home occupation" means a lawful occupation carried on by residents of a dwelling as an accessory use within the same dwelling.

Incentives or concessions

"Incentives" or "concessions" mean regulatory concessions as specified in Subsection 65915(l) of the California Government Code to include, but not be limited to, the reduction of site development standards or Zoning Code requirements, direct financial assistance, approval of mixed-use zoning in conjunction with the housing development, or any other regulatory incentive which would result in identifiable, financially sufficient, and actual cost avoidance or reductions that are offered in addition to a density bonus

Incidental use

"Incidental use" means a minor use incidental in all respects to the primary use permitted on the premises. An incidental use shall not be the only use of a parcel or commercial space

Indoor recreation facility

"Indoor recreation facility" means a building or structure in which a sports or recreational use is conducted. Such uses include a bowling alley, skating rink, health club, racket club and theater but do not include arcades.

Lot

"Lot" means a parcel or tract of land duly recorded and having its frontage upon a publicly dedicated street or, publicly dedicated easement accepted by the city and as defined by the Subdivision Map Act.

Lot area

"Lot area" means the total horizontal area within the lot lines of a lot.

Lot coverage

"Lot coverage" means the percentage of total building site area covered by a roof structure, open or enclosed excluding uncovered steps, patio and terraces.

Lot line

"Lot line" means the property line bounding a lot.

Lot, nonconforming

"Nonconforming lot" means any lot having a minimum square footage of not less than six thousand square feet or the minimum required by the underlying zoning designation, and which was legally created prior to the effective date of the ordinance codified in this section, but which does not conform to the lot area and lot width standards for the zone within which the lot is located. Such lot may be developed for such uses and be subject to the same development standards as apply to the remainder of the properties in the zone.

Lot width

“Lot width” means the average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line.

Lot, through

“Through lot” means a lot having frontage on two parallel or approximately parallel streets/ right-of-ways.

Manufactured housing

“Manufactured housing” means and includes “manufactured housing,” “mobile homes” and “factory-built housing” as such terms is defined in Division 13, Part 2.1, Chapter 1 and Division 13, Part 6, Chapter 2 of the Health and Safety Code. The term “manufactured housing” shall not include “commercial coaches,” “recreational vehicles,” or “travel trailers” as such are defined in Division 13, Part 2.1 Chapter 1 of the Health and Safety Code of the State.

“Maximum residential density” means the maximum number of residential units permitted by the City of Westmorland General Plan land use element and Zoning Code at the time of application.

Motel

“Motel” means a group of attached or detached buildings containing guest rooms or dwelling units, some or all of which have a separate entrance leading directly from the outside of the building with garage attached or automobile storage space conveniently located on the lot or parcel of land and which is designed, used or intended to be used wholly or in part for the accommodation of automobile transients. Motels include auto courts, motor lodges and tourist courts.

Natural catastrophe

For the purposes of this ordinance, “natural catastrophe” means damage or destruction to structural improvements and property occurring from fire, earthquake, flood or other act of God. A natural catastrophe shall not include destruction or damage incurred by demolition or other intentional act.

Nonconforming Use or Structure

A non-conforming use or structure is a lawful existing use or structure at the time this Ordinance or any amendment thereto becomes effective, which does not conform to the requirements of the zone in which it is located, except that this ordinance or amendment thereto may provide for the abatement and amortization of nonconforming structures.

Parcel of land

“Parcel of land” means a contiguous quantity of land, in the possession of, or owned by, or recorded as the property of, the same claimant or person.

Person

“Person” means any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, syndicate, this and any other county, city and municipality, district or other political subdivision, or any other group or combination acting as a unit, other than the city.

Residence

“Residence” means a building designed as living quarters for persons doing their own cooking in such building, which either complies with, or was erected before the effective date of the requirements for group 1 occupancies in the city building code.

“Residential care facility,” consistent with the definitions of State law, means a facility that provides twenty-four (24) hour nonmedical care for more than six (6) persons eighteen (18) years of age or older, or emancipated minors, with chronic, life-threatening illnesses in need of personal services, protection, supervision, assistance, guidance, or training essential for sustaining the activities of daily living, or for the protection of the individual. This classification includes group homes, residential care facilities for the elderly, adult residential facilities, wards of the juvenile court, and other facilities licensed by the State of California.

“Residential care home,” consistent with the definitions of State law, means a home that provides twenty-four (24) hour nonmedical care for six (6) or fewer persons eighteen (18) years of age or older, or emancipated minors, with chronic, life-threatening illnesses in need of personal services, protection, supervision, assistance, guidance, or training essential for sustaining the activities of daily living, or for the protection of the individual. This classification includes group homes, rest homes, residential care facilities for the elderly, adult residential facilities, wards of the juvenile court, and other facilities licensed by the State of California. Convalescent homes, nursing homes and similar facilities providing medical care are included under the definition of “medical services, extended care.

Room

“Room” means an unsubdivided portion of the interior of a building excluding bathrooms, kitchens, closets, hallways and service porches.

“Second dwelling unit” means an attached or detached dwelling unit, sited on the same parcel as the primary dwelling unit, which provides complete independent living facilities for one (1) or more persons, with permanent provisions for living, sleeping, eating, sanitation, and includes a single kitchen as defined in this chapter. This definition shall also include: 1 An efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code; and 2. A manufactured home, as defined in Section 18007 of the California Health and Safety Code

Setback

“Setback” shall mean the required yard. See “yard”

Stand

“Stand” means a structure for the display and sale of products with no space for customers within the structure itself.

Story

“Story” means that portion of a building included between the surface of any floor and the surface of the floor above it,

Street

“Street” means any public thoroughfare or right of way which affords the principle means of access to abutting property. The word “street” shall include all major and secondary highways, traffic collector streets and local roads on the street system.

Structure

“Structure” means anything constructed or built, any edifice or building of any kind, or any piece of work artificially built or composed of parts joined together in some definite manner, which is located on the ground or is attached to something located on the ground.

“Supportive housing” means housing that is linked with on- or off-site services that assist the resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, where possible, work in the community. In accordance with Section 50675.14 of the Health and Safety Code there is no limit on the length of stay and such facilities are occupied by a target population that includes, among other populations, adults, emancipated youth, families, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people who are: 1) Low income having one (1) or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions; or 2) Individuals eligible for services provided under the Lanterman Development Disabilities Services Act (Division 4.5 of the Welfare and Institutions Code).

“Use”

Use means the purpose for which land or a structure is designed, arranged or intended, or for which it is occupied or maintained. For the purposes of carrying out the intent of this Ordinance, the term “use” includes construction, establishment, maintenance, alteration, moving onto, enlargement and occupation. Wherever this chapter prohibits the “use” of any premises for any purpose, such premises and any building, structure or improvement on such premises shall not be used, occupied, altered or improved for such purpose and no building, structure or improvement on such premises shall be erected, constructed, established, maintained, allowed to remain, altered, moved onto, or enlarged which is designed, arranged or intended to be occupied or used for such prohibited use.

Yard

“Yard” means any open space on the same lot with a building or dwelling which open space is unoccupied and unobstructed from the ground upward except as otherwise permitted by this Ordinance.

Yard, Front

“Front yard” means a yard extending across the front of a lot between side lot lines and measured horizontally at right angles to the front lot line from the front lot line to the nearest point of a main building or other structure. On corner lots the commission shall determine which the front yard is. In the absence of such determination, the front yard shall be provided on the roadway upon which the front of the building faces.

Yard, Rear

“Rear yard” means a yard between side lot lines and measured horizontally at right angles to the rear lot line from the rear lot line to the nearest point of a main building or other primary structures.

Yard, Side

“Side yard” means a yard between the front and rear yards measured horizontally at right angles from the side lot line to the nearest point of a main building or other primary structures.

SECTION 1.04 - Compliance with the Ordinance. Land may be used and a structure or part of a structure may be constructed, reconstructed, altered, or occupied or used only as this Ordinance permits.

SECTION 1.05 - Severability. The provisions of this ordinance are severable. If a section, sentence, clause or phrase of this Ordinance is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this Ordinance.

Article II. ESTABLISHMENT OF ZONES

SECTION 2.01 Classifications of Zones. For the purposes of this Ordinance, the following zones are hereby established:

- R-1 Single Family Zone
- R-2 Low/Medium Density Multi-Family Zone
- R-2-T Mobile Home Park Zone
- R-3 Medium/High
- R-4 High Density Multi Family Residential
- C Commercial Zone
- I Industrial Zone.
- OS Open Space Zone.

SECTION 2.02 Locations of Zones. The boundaries for the zones listed in this Ordinance are indicated on the Westmorland Zoning Map which is hereby adopted by reference and as amended. The boundaries shall be modified and amended in accordance provisions set forth by this Ordinance.

SECTION 2.03 Zoning Map. A zoning map or zoning map amendment adopted by Section 2.2 of this Ordinance shall be prepared by authority of Planning Commission or be a modification by the City Council or a map or a map amendment so prepared. The map or map amendment shall be dated with the effective date of the ordinance that adopts the map or map amendment. A certified print of the adopted map or map amendment shall be maintained in the Office of the City Clerk as long as this Ordinance remains in effect.

SECTION 2.04 Zone Boundaries. Where indicated zone boundaries are approximately street, ally or lot lines, said lines are determined to be the boundaries of the zone. In case any uncertainty exists, the City council shall determine the location of boundaries.

SECTION 2.05 Newly Annexed Territory. Territory annexed to the City of Westmorland shall be in the Single Family Zone (R-1). Such zoning may be temporary and the Planning Commission shall recommend to the City Council within a period not to exceed one (1) year a final zoning plan for the annexed territory. The City Council has the authority to pre-zone the annexed territory, and in which case, that pre-zoning designation shall apply.

Article III. ZONES**SECTION 3.01 SINGLE FAMILY (R-1) ZONE**

- (a) **Intent.** It is the intent of the R-1 residential zone to provide for the development of low density single family homes on lots, not less than six thousand (6,000) square feet in area, and the protection of these zones from incompatible uses.
- (b) **Permitted Uses.** The following uses shall be permitted in an R-1 zone.
 - (i) Single family dwellings
 - (ii) Detached second dwelling units on lots with land area exceeding 15,000 square feet, subject to the following provisions:
 - 1. The second residential dwelling unit shall be separated from the primary residential unit a minimum of twenty feet (20'); and
 - 2. All provisions outlined in Section 3.01 (c) (2) through Section 3.01(c) (6) of this Ordinance.

(iii) Accessory buildings and structures incidental to the above use.

(c) **Conditional Uses.** The following shall be permitted in an R-1 zone subject to a Conditional Use Permit:

i. Second dwelling units subject to the following provisions and in accordance with California Government Section 65852.1 et seq.

1. Second dwelling units shall be conditionally permitted on R-1 zoned parcels with an existing single-family residence, or if the lot is vacant and is to be developed in conjunction with the construction of the primary single family residence.
2. Attached and detached secondary dwelling units shall not exceed fifty percent of the floor area of the primary residence, or one-thousand square feet, whichever is less.
3. In addition to the required parking for the primary residence, a minimum of one (1) off-street parking space shall be provided. Direct access to the second unit shall be provided from a public right-of-way.
4. All development standards shall apply to both the primary residence and the second unit as a whole. This includes, but is not limited to, lot coverage maximum, setback requirements, and infrastructure requirements.
5. Second dwelling units shall not be separated sold or subdivided, and the owner of the subject property shall be occupant of either unit.
6. Second units may be rented subject to Council approval, provided that the second unit is rented to "low" and "very-low" income households as defined by the most currently published State Housing and Community Development (HCD) income limits for Imperial County. The Property owner shall enter into and record an affordable housing contract with City for as long as the second unit exists and shall run with the land.

ii. Churches

iii. Education institutions

iv. Public service buildings including libraries

v. Public parks and recreational facilities

vi. Public utility structures

vii. Home occupations

(d) **Property Development Standards.** The following property development standards shall apply to all land and buildings in an R-1 zone:

- i. Lot Area Minimum: six thousand (6,000) square feet
- ii. Lot width minimum: fifty (50) feet
- iii. Lot Width minimum one hundred twenty (120) feet
- iv. Front Yard Minimum: twenty (20) feet. A carport, subject to planning Commission review and approval, may encroach within the front yard setback, provided that it is an open-frame structure and does not obstruct visual lines of sight from the roadway(s).
- v. Side Yard Minimum: five (5) feet, except that on a corner lot the side yard on the street side shall be a minimum of eight (8) feet.
- vi. Rear Yard Minimum: twenty (20) feet.
- vii. Building Height Maximum: thirty-five (35) feet.
- viii. Lot Coverage Maximum: fifty percent (50%)
- ix. Off-Street Parking Requirements: see Section 4.5
- x. Fences, Walls and Hedges: see Section 4.7

- xi. Signs: see Section 4.8

SECTION 3.02 LOW/MEDIUM DENSITY MULTI-FAMILY (R-2) ZONE.

- (a) **Intent.** It is the intent of the R-2 residential zone to provide for multi-family residential development at low and medium densities on lots not less than six thousand (6,000) square feet in area, and the protection of these zones from incompatible uses.
- (b) **Permitted Uses.** The Following uses shall be permitted in an R-2 zone:
 - i. Any use permitted in the R-1 zone.
 - ii. Two and three family residential dwellings
 - iii. Accessory buildings and structures incidental to the above use.
- (c) **Conditional Uses.** The following shall be permitted in an R-2 zone subject to a Conditional Use Permit (see Section 5.02):
 - i. Four or more family residential dwellings, but less than fifteen.
 - ii. Church
 - iii. Educational institutions
 - iv. Public service building including libraries
 - v. Public parks and recreational facilities
 - vi. Public utility structures
 - vii. Home occupations
- (d) **Property Development Standards.** The following property development standards shall apply to all land and buildings in an R-2 zone:
 - i. **Density:** No lot shall contain less than two thousand (2,000) square feet per dwelling unit.
 - ii. **Lot Area Minimum:** seven thousand (7,000), square feet.
 - iii. **Lot width Minimum:** fifty (50) feet
 - iv. **Lot Depth Minimum:** one hundred forty (140) feet
 - v. **Front Yard Minimum:** twenty (20) feet
 - vi. **Side Yard Minimum:** five (5) feet, except that on a corner lot the side yard on the street side shall be a minimum of eight (8) feet.
 - vii. **Rear Yard Minimum:** twenty (20) feet
 - viii. **Building Height Maximum:** thirty-five (35) feet
 - ix. **Lot Coverage Maximum:** fifty percent (50%)
 - x. **Off-Street Parking Requirements:** see Section 4.5
 - xi. **Fences, Walls and Hedges:** see Section 4.7
 - xii. **Signs:** see Section 4.8

SECTION 3.03 HIGH DENSITY MULTI-FAMILIES RESIDENTIAL (R-4) ZONE

- (a) **Intent.** It is the intent of the R-4 residential zone to provide for the development of high density multi-family homes, and the protection of these zones from incompatible uses.
- (b) **Permitted Uses.** The following uses shall be permitted in an R-4 zone.
 - i. Single family dwellings
 - ii. Mobile home parks, subject to Section 4.10 (Mobile Home Park Development Standards) of this Zoning Ordinance
 - iii. Accessory buildings and structures incidental to the above use.
- (c) **Conditional Uses.** The following shall be permitted in an R-4 zone subject to a Conditional Use Permit:
 - i. Multi-family dwellings up to four units

- ii. Four or more family residential dwellings
- iii. Churches
- iv. Educational institutions
- v. Public service building including libraries.
- vi. Public parks and recreational facilities
- vii. Public utility structures
- viii. Home occupations

(d) Property Development Standards. The following property development standards shall apply to all land and buildings in an R-4 zone:

- i. **Density:** No lot shall contain less than fifteen hundred (1,500) square feet per dwelling unit
- ii. **Lot Area Minimum:** seven thousand five hundred (7,500), square feet.
- iii. **Lot width Minimum:** fifty (50) feet
- iv. **Lot Depth Minimum:** one hundred forty (140) feet
- v. **Front Yard Minimum:** fifteen (15) feet
- vi. **Side Yard Minimum:** five (5) feet, except that on a corner lot the side yard on the street side shall be a minimum of eight (8) feet
- vii. **Rear Yard Minimum:** twenty (20) feet
- viii. **Building Height Maximum:** thirty-five (35) feet
- ix. **Lot Coverage Maximum:** fifty percent (50%)
- x. **Off Street Parking Requirements:** see Section 4.5
- xi. **Fences, Walls and Hedges:** see Section 4.7
- xii. **Signs:** see Section 4.8

SECTION 3.04 RECREATIONAL VEHICLE PARK (-RV) OVERLAY ZONE

(a) Purpose and Intent. The Recreational Vehicle Park Overlay Zone is intended to allow recreational vehicle parks in areas suitable for such use subject to restrictions otherwise required by the provisions of this Ordinance. Whenever the Recreational Vehicle Park (-RV) Overlay Zone is placed on the official zoning map, the designation -RV shall be indicated after the zoning area over which it is placed (e.g., C-RV). The regulations of the -RV Overlay Zone shall apply in addition to the regulations of the principal zone of the area to which it is applied. Whenever a use is permitted in the -RV Zone, the use shall be permitted in addition to the uses otherwise allowed in the area over which it is placed. In the event that regulations of the underlying zone conflict with the provisions of the overlay zone, the more stringent regulation shall apply.

(b) Definitions.

- i. **Recreational vehicle.** Recreational vehicle is a motor home, travel trailer, truck camper, or camping trailer with or without motive power designed for human habitation for recreational or emergency occupancy.
- ii. **Recreational vehicle Park.** Recreational Vehicle Park is any property where one or more lots are rented to users of recreational vehicles and which are occupied for temporary purposes.
- iii. **Recreational vehicle site.** A plot of ground within a recreational vehicle park for one recreational vehicle, automobile and camping party.

(c) Permitted Uses. All uses permitted by this overlay zone are subject to a Conditional Use Permit in accordance with provisions set forth in Section 5.02 of this Ordinance.

- i. Recreational vehicle parks which includes any lot or parcel where two or more recreational vehicles are stored and/or occupied as temporary residences, regardless of whether or not a fee is charged for such accommodations.
- ii. Accessory uses limited to a permanent residence for the manager, vending machines and recreational facilities for the exclusive use of the park occupants.
- iii. Any commercial activity which is related to and necessary for the operation of the park. No signs advertising the presence of such commercial activity shall be visible from a public street.

(d) Property Development Standards. The following property development standards shall apply to all land and buildings in the –RV overlay zone:

- i. **Lot Area Minimum:** one and a half acres.
- ii. **Lot width minimum:** one-hundred fifty (150) feet
- iii. **Lot Depth Minimum:** none
- iv. **Site Size.** Each recreational vehicle site shall have a minimum site size of twelve-hundred square feet (1,200sf)
- v. **Front Yard Minimum:** fifteen feet (15')
- vi. **Side Yard:** No minimum except as provided in the Building Code for separation of structures, and a minimum of ten feet (10') on the street side of a corner lot, and a minimum of twenty feet (20') of landscaped area shall be provided on a side adjoining any "R" zone.
- vii. **Rear Yard:** No minimum except as provided in the Building Code for separation of structures and a minimum of twenty feet (20') of landscaped area shall be provided on a side adjoining any "R" zone.
- viii. **Separation.** Recreational vehicle parking pads shall be located to maintain a ten-foot separation between recreational vehicles.
- ix. **Building Height Maximum:** thirty-five (35) feet.
- x. **Lot Coverage Maximum:** eighty percent (80%)
- xi. **Landscaping.** All required yards shall be landscaped
- xii. **Required Facilities**
 - 1. A recreation area of at least five thousand (5,000) square feet shall be provided in addition to the required landscaping. Recreation equipment, such as a pool, playground, and picnic tables, and a service building, including toilets, showers, and laundry, can be located within the recreation area.
 - 2. **Sanitation Facilities**
 - a. A minimum of one toilet and one lavatory for each sex shall be provided for the exclusive use of the park occupants. An additional toilet and lavatory for each sex shall be provided for each fifteen (15) sites or fraction thereof which is not provided with a water connection and a three-inch drain inlet for connection to a vehicle equipped with a toilet.
 - b. A minimum of one shower for each sex and one washer and dryer is required.
 - c. Trailer sanitation stations designed to receive the discharge of sewage holding tanks for self-contained vehicles shall be installed in an accessible location in every recreational vehicle park in which there are sites not provided with drain inlets designed to receive the discharge of toilets. Trailer sanitation stations shall be provided on the basis of one station for each one hundred (100) such sites or fraction thereof.

- d. Trash containers shall be located within three hundred (300) feet of every recreational vehicle site and enclosed with a masonry fence six feet in height.
- xiii. **Off-street Parking Requirements:** One visitor parking space shall be provided for every fifteen (15) recreational vehicle sites or fraction thereof.
- xiv. **Fences, Walls, and Hedges:** see Section 4.7
- xv. **Signs:** see Section 4.8

SECTION 3.05 COMMERCIAL (C) ZONE.

- (a) **Intent.** It is the intent of the Commercial (C) zone to provide areas within the community which are primarily retail and service business in character, and to provide as a conditional use for more intense uses which are customarily accomplished at the commercial place of business. The Commercial (C) zone is intended to accommodate general commercial, office and other highway- oriented businesses and transportation-related service facilities which serve city-wide and transportation corridor-related needs. Primary uses in the Commercial (C) zone should be directed towards the provision of goods and services to the residents of Westmorland.
- (b) **Permitted Uses.** Buildings, structures and land shall be used and buildings and structures shall hereafter be erected, structurally altered or enlarged only for the following uses, plus such other uses as the Planning Commission determines to be similar or not more obnoxious or detrimental to the public health, safety and welfare. The following uses shall be permitted in a (C) zone.
 - i. Retail uses engaged in selling merchandise for personal and/or household consumption, and
 - ii. Financial and professional services and office uses which are conducted in office buildings or clinics.
 - iii. Commercial recreation uses whose primary function is to provide amusement or entertainment.
 - iv. Private non profit institutions and organizations
 - v. Hotels and Motels.
 - vi. Parking lots.
 - vii. Transportation terminals.
- (c) **Conditional Uses.** The following shall be permitted in a C zone subject to a Conditional Use Permit (see section 5.02):
 - i. Automobile repair, painting or washing related uses.
 - ii. Churches
 - iii. Educational institutions
 - iv. Heavy agricultural machinery and equipment sales and rentals.
 - v. Public service buildings including libraries
 - vi. Public parks and recreational facilities
 - vii. Public utility structures
 - viii. Wholesale distributors.
 - ix. Storage of empty bee hives and equipment pertaining to bees.
- (d) **Property Development Standards.** The following property development standards shall apply to all land and buildings in a C zone:

- i. **Lot Area Minimum:** seven thousand five hundred (7,500) square feet.
- ii. **Lot Width Minimum:** fifty (50) feet.
- iii. **Lot Depth Minimum:** one hundred fifty (150) feet.
- iv. **Front Yard Minimum:** Ten feet (10')
- v. **Side Yard:** No minimum except as provided in the Building Code for separation of structures, and a minimum of ten feet (10') on the street side of a corner lot, and a minimum of fifteen feet (15') shall be provided on a adjoining any "R" zone.
- vi. **Rear Yard:** No minimum except as provided in the Building Code for separation of structures and a minimum of ten feet (10') shall be provided upon that portion of a lot abutting or across a rear street from any "R" zone. Where there is an alley or other right-of-way separating the commercial use from the "R" zone, the minimum rear yard shall be ten feet (10') or as required by the Planning Commission.
- vii. **Building Height Maximum:** thirty-five (35) feet
- viii. **Lot Coverage Maximum:** eighty percent (80%)
- ix. **Off-Street Parking Requirements:** see Section 4.5
- x. **Off Street Loading Requirements:** see Section 4.6
- xi. **Fences, Walls, and Hedges:** see Section 4.7
- xii. **Signs:** see Section 4.8

SECTION 3.06 INDUSTRIAL (I) ZONE

- (a) **Intent.** It is the intent of the Industrial (I) zone to provide for wholesale uses as well as those industrial uses that include manufacturing, assembly or processing and which require large storage areas.
- (b) **Permitted Uses.** The following uses shall be permitted in an I zone:
 - i. Any of the following uses provided that such operations, manufacturing, assembly or processing are not obnoxious or offensive by reason of emission of odor, dust, gas, fumes, smoke, glare, wastes, noise, vibrations, disturbance, or other similar causes which may impose hazard to life or property.
 - ii. Wholesale and warehouse uses which include establishments or places of business primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional, or professional users or to other wholesalers. The function of bulk storage and related uses is also included in this classification.
 - iii. Manufacturing which includes establishments primarily engaged in assembly, processing, packaging or treatment of various food stuffs or natural or person-made materials.
 - iv. Storage of empty bee hives and equipment pertaining to bees.
 - v. Tractor/Truck repairing, painting or washing and related uses.
- (c) **Conditional Uses.** The following shall be permitted in an I zone subject to a Conditional Use Permit (SECTION 5.02):
 - i. Establishments or enterprises involving large assemblages of people or automobiles.
 - ii. Commercial storage of oil, gasoline or petroleum products.
- (d) **Property Development Standards.** The following property development standards shall apply to all uses and buildings in an I zone.
 - i. **Lot Area Requirements:** none
 - ii. **Front Yard Minimum.** Fifteen feet (15')

- iii. **Side Yard:** A minimum of ten (10) feet on the street side of a corner lot. Also, a minimum of fifteen feet (15') shall be provided on a side adjoining any "R" Zone.
- iv. **Rear Yard:** A minimum of twenty-five (25) feet shall be provided upon that portion of a lot abutting or across a rear street from any "R" zone.
- v. **Building Height Maximum:** fifty (50) feet
- vi. **Off Street Parking Requirements:** see Section 4.5
- vii. **Off Street Loading Requirements:** see Section 4.6
- viii. **Fences, Walls, and Hedges:** See Section 4.8
- ix. **Signs:** see Section 4.7

SECTION 3.07 OPEN SPACE (OS) ZONE

- (a) **Intent.** It is the intent of the Open Space (OS) zone to provide open space for the preservation of natural resources, managed production of resources, open space for outdoor recreation, and for the protection of public health and safety.
- (b) **Permitted Uses.** The following uses shall be permitted in an OS Zone.
 - i. Agricultural land and areas of economic importance for the production of food or fiber
 - ii. Areas required for the preservation of plant and/or animal life
 - iii. Areas which require special management or regulation because of hazardous conditions
 - iv. Open space for outdoor recreation, including parks and utility easements.
- (c) **Conditional Uses:** The following shall be permitted in an OS zone subject to a Conditional Use Permit (see Section 5.02):
 - i. Commercial recreation facilities
 - ii. Residential uses on parcel with a minimum of ten (10) acres
 - iii. Public utility structures
 - iv. City Hall, Fire Station and/or Police Department.

Article IV. SUPPLEMENTARY PROVISIONS

SECTION 4.01 MAINTENANCE OF MINIMUM ORDINANCE REQUIREMENTS. No lot area, yard or other open space existing prior to the effective date of this ordinance shall be reduced below the minimum required for it by this ordinance.

SECTION 4.02 ACCESS. Every building hereafter erected shall be on a lot adjacent to a public street, and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection and required off street parking.

SECTION 4.03 EXCEPTIONS AND MODIFICATIONS. The following exceptions and modifications to yard and height requirements and reasonable accommodation are hereby authorized.

- (a) **Yard Requirements.** If there are buildings on both adjacent lots which are within one hundred (100) feet of the intervening lot, and the buildings have front yards of less than the required setback for the zone, the setback of the front yard for the intervening lot shall not exceed the average setbacks of the front yards of the adjacent lots. Where a building on an adjacent lot as above has a front yard setback of less than that required by the zone, the front yard shall not exceed a

setback distance of halfway between that on the adjacent front yard and that required by the zone.

- (b) Height Requirements. Vertical projections such as chimneys, spires, domes, towers, aerials, flagpoles and similar objects not used for human occupancy are not subject to the building height limitations of the Ordinance.
- (c) In order to comply with the provisions of SB 20 (Chapter 671 of the government code) regarding reasonable accommodation, an exception is provided for persons with disabilities to allow a ministerial process with no processing fee, subject to approval by the Building Official, as follows:
 - 1. The request for reasonable accommodation will be used by an individual with a disability protected under fair housing laws.
 - 2. The requested accommodation is necessary to make housing available to an individual with a disability protected under fair housing law.
 - 3. The requested accommodation would not impose an undue financial or administrative burden on the City.
 - 4. The requested accommodation would not require a fundamental alteration in the nature of the City's land use and zoning program.

SECTION 4.04 ACCESSORY USES. No attached accessory structure shall be erected in any required yard except for open sided canopy or roof structures, and no detached accessory structure shall be erected within five feet (5') of any other structure.

SECTION 4.05 OFF STREET PARKING REQUIREMENTS. For each main building, dwelling, commercial, industrial establishment or other structure hereafter erected, converted, reconstructed or enlarged there shall be provided and maintained off street parking facilities to accommodate the motor vehicles used by the occupants, customers, clientele, and employees of such building or structure. Each required parking space shall be not less than nine (9) feet wide and twenty (20) feet long. In addition, vehicular access to a public right of way shall be provided. The number of parking spaces for each type of use shall not be less than that stated as follows:

- (a) Residential Dwellings. For every dwelling, multiple dwelling or other structure erected or intended to be used as a dwelling, there shall be provided on the same lot or parcel of land at least one and a half (1 ½) parking spaces for each dwelling unit. A full parking space shall be provided in each instance where a fractional space would otherwise be required by the terms herein.
- b. Commercial and Industrial Buildings. For all office and commercial buildings at least one (1) parking space shall be provided for each two hundred and fifty (250) square feet of floor space or fraction thereof in said building. Each such parking space shall be on the same lot or within five hundred feet (500') of the building.
- c. Group Occupancies. For each guest room in rooming, lodging, clubs, and dormitories, there shall be provided one (1) parking space. Each such parking space shall be on the same lot or parcel of land or contiguous thereto.

- d. **Hotels, Motels and Tourist Courts.** For hotels, motels, and tourist courts at least one (1) parking space shall be provided for each living or sleeping unit on the same lot or parcel of land or contiguous thereto.
- e. **Public Assembly Uses.** For places of public assembly, including churches and theaters, at least one (1) parking space shall be provided for every three (3) seats provided in the assembly place. Each such parking space shall be on the same lot or within five hundred (500') feet of the building.
- f. **Mobile Home Parks.** For each mobile home space, there shall be provided at least two (2) parking spaces. In addition, guest parking space shall be provided at the ratio of one (1) space for each eight (8) home sites in the park.
- g. **Parking for All Other Uses.** Parking for all other uses permitted, but not enumerated in this section, shall be furnished as required by the Planning Commission.

SECTION 4.06 OFF-STREET LOADING. On the same premises with every building, structure or part thereof erected or occupied for manufacturing storage, warehouse, department store, wholesale or retail market, hotel, restaurant, hospital, laundry plant or other uses similarly involving the receipt or distribution of materials or merchandise carried by vehicle there shall be provided and maintained on the lot adequate space for standing loading and unloading service in order to avoid undue interference with the public uses of the streets or alleys. Such off-street loading facilities shall be located on the same site with the use for which it is required. The facilities shall not occupy required front yard space nor shall facilities be located closer than fifty (50) feet to any lot in any residential zone.

SECTION 4.07 FENCES, WALLS AND HEDGES. A fence, wall, or hedge within a front yard or a street side yard shall not exceed an elevation of four feet above a street elevation. A fence, wall, or hedge not more than six (6) feet tall as measured from the highest grade, may be maintained along the side or rear lot lines, provided that such fence, wall, or hedge does not extend into a required front yard. In the Industrial (I) Zone, all improved property shall be fenced as stated above; however, where such a use forms a common side or rear boundary with a residential zone, a solid masonry wall not less than six (6) feet in height shall be erected along the property line.

- (a) **Minor Deviation from standards.** A fence not more than six feet (6') in height may be constructed along the property line abutting a street upon request by the owner and approval by the Planning Commission based on the following findings:
 - i. The installation of such a fence or wall is necessary to protect the public health, safety and welfare from noise, vibration, odor, etc.
 - ii. The height and location of the fence does not create a traffic hazard by blocking lines-of-sight from public rights-of-ways and does is not otherwise detrimental to the public health, safety and general welfare.

SECTION 4.08 SIGNS. Signs shall be permitted as provided below:

- (a) **Sign in Residential Zones.**
 - i. Name plates on single family units shall be permitted provided that the area of the sign does not exceed two (2) square feet in area.
 - ii. The name of the development and related information shall be permitted provided that the area of the sign does not exceed one (1) square foot of area for each apartment unit.

- iii. Not more than two "For Rent" and "For Sale" signs shall be permitted provided that the areas of the signs(s) do not exceed six (6) square feet in area.

(b) Signs in Commercial Zones.

- i. Business signs indicating the name and the nature of the occupancy shall be permitted provided the total sign area shall not exceed two (2) square feet per foot of building frontage facing a street. Such signs shall be affixed to the building surface unless otherwise allowed by conditional use permit.
- ii. Illumination of signs shall not create a nuisance to adjoining residential zones.

(c) Signs in Industrial Zones.

- i. Sign indicating the name and the nature of the occupancy shall be permitted provided the total sign area shall not exceed three (3) square feet per foot of building frontage facing a street.
- ii. No sign shall be located within fifty (50) feet of a Residential Zone.
- iii. Illumination of sign shall not create a nuisance to adjoining zones.

SECTION 4.09 HOME OCCUPATION REGULATIONS. Home occupations shall be allowed in residential zones subject to the following regulations

- (a) No persons other than residents of the dwelling unit shall be employed in the conduct of a home occupation.
- (b) A home occupation shall be conducted in a dwelling and shall be clearly incidental and secondary to its use for dwelling purposes.
- (c) There shall be no external alteration of the dwelling in which a home occupation is conducted, and the existence of a home occupation shall not be apparent beyond the boundaries of the site, except for a name plate.
- (d) A home occupation shall not create any radio or television interference or create noise audible beyond the boundaries of the site. Also, no equipment shall be used that makes dust, odor, smoke, vibration or other adverse conditions which are detrimental to adjoining dwellings.
- (e) There shall be no outdoor storage of materials or supplies.

SECTION 4.10 MOBILE HOME PARK DEVELOPMENT STANDARDS

- (i) **Size of Mobile Home Park.** No parcel containing less than three and one half (3 ½) acres may be used for the purpose permitted in R-2-T Zone.
- (ii) **Density.** There shall be a minimum of five thousand (5,000) square feet of gross area for each mobile home space. The total area may include access roadways, accessory building space and recreational areas.
- (iii) **Building Height.** Building Height for any structure shall be limited to fifteen (15) feet. Structures not more than 35 feet in height may be permitted subjected to a Conditional Use Permit.
- (iv) **Mobile Home Park. Measurement of Yards.** Yards shall be measured perpendicular to the property line or from a future street or highway right of way line, as shown on the General Plan or Zoning Map.
- (v) **Mobile Home Park Space Requirements.** Mobile home spaces shall observe the following requirements:
 - 1 The minimum size of an individual mobile home space shall be twenty-seven hundred (2,700) square feet with a minimum width of forty-five (45) feet and a minimum depth of sixty (60) feet.

- 2 No mobile home space shall be located closer than twenty (20) feet from the exterior property line of the mobile park when said line abuts a public street.
- 3 No mobile home space shall be closer than five (5) feet from any other portion of the property line of said mobile home park.
- 4 There shall be a minimum front yard of three (3) feet extending for the full width of the mobile home space and measured from the edge of the pavement or back of the curb of an interior street. The trailer tongue may encroach into the required front yard set back.
- 5 There shall be a minimum side yard of three (3) feet and a minimum rear yard of three (3) feet. Where a side or rear yard abuts an access road, public parking area, or walk, said yards shall not be less than ten (10) feet in width.

(vi) Distance between Mobile homes.

- 1 There shall be not less than ten (10) feet between mobile homes.
- 2 Where residential mobile homes are located near any permitted building, other than another residential mobile home, Ramada or cabana, the minimum space between the mobile home and said building shall be fifteen (15) feet.

(vii) Patio and Skirting

- 1 A cement concrete patio or other metal or wood deck having a minimum area of three hundred (300) square feet shall be installed as part of each mobile home space.
- 2 The area between the ground level and the floor of a mobile home shall be screened from view by an opaque skirt entirely around the mobile home. The skirt shall be specifically designed for mobile home usage.

(viii) Tenant Storage. Tenant storage may be provided for in any manner consistent with the requirements of the California Department of Housing & Community Development, Division of Codes and Standards.

(ix) Access Roads.

- 1 Access roads within a mobile home park shall be paved to a width of not less than twenty-five (25) feet.
- 2 Portland cement concrete curbs and gutters shall be installed on both sides of all access roads.
- 3 Access roads, with paved width of less than thirty-two (32) feet shall not be used for automobile parking at any time.
- 4 Access roads, with paved width of less than forty (40) feet shall not be used for automobile parking on more than one side at any time.
- 5 Access roads around the recreational area shall be paved to a minimum width of thirty-six (36) feet with off-street parking provisions and no on-street parking shall be permitted around the recreational area.
- 6 All access roads shall be adequately lighted.
- 7 Each mobile home shall have frontage on an access road. A minimum fifteen (15) foot wide unobstructed access shall be provided to approved access road for the movement of mobile home service vehicles.

(x) Sanitary Sewer. Each mobile home space shall be provided with a connection to a sewer line. Mobile homes that cannot be connected to a sanitary sewer system shall not be permitted to be used for human habitation. The sewer system and connection plans shall be subject to the approval of the County Health Department and the City.

- (xi) **Electrical Service.**
 - 1 All electrical, telephone and television services within the mobile home park shall be underground.
 - 2 All services to the individual spaces shall be a minimum of 100-AMP service.
- (xii) **Management Office.** Each mobile home park shall have a management office with a gross floor area of not less than two hundred (200) square feet. The office may include space for usual office furniture and supplies and shall contain a lavatory and water closet. Suitable facilities shall be provided for mail distribution.
- (xiii) **Park Storage.** Storage space for supplies, maintenance materials, and equipment shall be provided in a separate building or in a building with other facilities.
- (xiv) **Laundry Facilities.**
 - 1 Laundry facilities equipped with washing machines and dryers shall be provided.
 - 2 Outside drying yards shall be enclosed with a six (6) foot high solid fence.
- (xv) **Accessory Structures.** No accessory building shall be constructed as a permanent part of the mobile home. Accessory structures such as cabana, Ramada, patio, carport, and/or storage cabinet are permitted.
- (xvi) **Trash Enclosures.** One (1) standard trash enclosure shall be provided for every fifteen (15) mobile homes units.
- (xvii) **Offsite Improvements.**
 - 1 All mobile home parks shall connect to City water and sewer facilities. Extension from existing facilities shall be borne by developer.
 - 2 All streets abutting park shall be improved to city standards.
 - 3 All plans shall be approved prior to issuance of a building permit.
- (xviii) **Recreational Vehicle Storage Yard.** Recreational vehicle storage yards may be provided and shall conform to the following standards. No recreational vehicle, travel trailers, boat and trailer or accessories shall be kept on the mobile home space, but shall be stored as provided herein, except that one recreational vehicle or travel which is the primary residence of the occupant of the space may be permitted.
 - 1 The area shall be graded and graveled or surfaced with asphalt concrete or Portland Cement Concrete.
 - 2 The storage yard shall be enclosed by a six (6) foot high fence and landscaped to shield the interior of the area from view on all sides. The wall or fence shall be broken only by a solid gate.
 - 3 No sewer connection other than standard trailer sanitation shall be permitted within the storage yard.
 - 4 The storage yard shall not be used for living purposes.
- (xix) **Submittal Requirements.**
 - 1 Six (6) copies of plot plan providing sufficient detail of proposed park shall be submitted to determine sufficiency of plans, along with a written statement of intent to comply with the standards of this ordinance.
 - 2 Upon approval the application shall be submitted to the planning commission for review and approval. The plans must delineate all property lines, right-of-ways, easements, setbacks, location of accessory structures, offsite improvements, other information that illustrate compliance with the provisions of this zoning ordinance and other information deemed necessary by Planning Staff. The Planning Commission may approve, approve with

conditions or disapprove the project. The Planning Commission shall recommend to the City Council that a conditional use permit be issued or that the application be denied.

- (xx) **Establishment and Enlargement.** No mobile home park, as defined herein, shall be established and maintained in the City of Westmorland, nor shall any mobile home park already existing in the City of Westmorland be enlarged unless such mobile park shall be established, maintained or enlarged in compliance with all provisions of this ordinance and shall further comply with the provisions of Chapter 5, Title 25 of the California Administrative Code.
- (xxi) **Off Street Parking Requirements:** see Section 4.5.6
- (xxii) **Fences, Walls, and Hedges:**
 - 1 Each mobile home park shall be entirely enclosed at its exterior boundaries by fence or wall six (6) feet in height, and by screen landscaping not less than six (6) feet in height. Said wall or fence shall run along and be contiguous to the boundary line or property line except where abutting a front street. The minimum height of fence along any public street shall be four (4) feet.
 - 2 The type of fence or wall shall be set forth by the Planning Commission at time of review of Plot Plan and issuance of Conditional Use Permit.
 - 3 Also see Section 4.7
- (xxiii) **Signs:** see Section 4.8

SECTION 4.11 APPLICATION OF ENVIRONMENTAL GUIDELINES. In accordance with the California Environmental Quality Act of 1970 (and as amended), an environmental review shall be initiated for any actions that are not categorically and/or Statutorily Exempt.

SECTION 4.12 ENVIRONMENTAL REVIEW PROCEDURES. Procedures as they may be established by the City Council shall govern the preparation and review of environmental assessments, and where such environmental reports are required, procedural timing for zoning actions may be adjusted accordingly.

Article V. PROCEDURES

SECTION 5.01 CLASSIFICATION OF USE

- (a) **Purpose.** The City of Westmorland recognizes that in the development of this document, not all land use types can be listed nor can all future uses be anticipated, or a use may have been omitted from the list of those specified as permissible in the various zoning designations, or ambiguity may arise concerning the appropriate classification of a particular use within the meaning and intent of this Ordinance.
- (b) **Procedure for Approval.** Any person seeking to establish a use that is not expressly contained in this Zoning Ordinance but is similar to any permitted use may submit a request for a "Classification of Use" by the Planning Commission. The applicant shall file an application with the City of Westmorland in a format prescribed by the City Council and pay the necessary fees. After receipt of the application, the Planning Commission shall review the request at its next regularly scheduled meeting. The Planning Commission action may be appealed to the City Council subject to the City's appeal procedure.
- (c) **Findings.** In approving an unclassified use, the Planning Commission must make the following findings and determine that the following conditions exist:

- i. That the subject use and its operation is consistent with the goals, objective and policies of the General Plan;
- ii. That the subject use and its operation is consistent with the purposes and intent of the zone in which the use is proposed to be located;
- iii. That the subject use and its operation is a compatible use in all areas of the city where the zoning is applied;
- iv. That the subject use is similar to one or more uses permitted in the zone within which it is proposed to be located. A use shall be deemed to be similar only where the size, scale, design and impact of the uses are comparable. A use shall not be deemed to be similar when the operation of the use involves greater impacts in terms of traffic, parking, noise, glare, odor, refuse, or other environmental considerations; generates greater demand for public services; does not have comparable hours of operation; is significantly more intensive in the number of employees, patrons and other users of the facility; and is not complementary to other uses in the zone;
- v. That the subject use will be so designed, located and operated that the public health, safety and general welfare will be protected; and
- vi. That the subject use and operation is not more obnoxious or detrimental to the public health, safety and general welfare than such other permitted uses.

SECTION 5.02 CONDITIONAL USE PERMITS

- (a) **Intent.** Uses permitted subject to conditional use permit are those uses necessary for the development of the community, having inherent qualities or characteristics which, unless provided for, would cause such uses to be incompatible or inharmonious with adjacent or nearby permitted uses. The procedures specified in this section are intended to provide a means whereby the Planning Commission may modify such uses to the extent that they can be made compatible and harmonious with the adjacent uses.
- (b) **Special Conditions.** In permitting a new conditional use or the alteration of an existing conditional use, the Planning Commission may by resolution impose, in addition to those standards and requirements expressly specified by this ordinance, additional conditions which the Planning Commission considers necessary to protect the public health, safety and general welfare. These conditions may include but are not limited to the following:
 - i. Regulations of use
 - ii. Special yards, spaces and buffers
 - iii. Special fences, solid fences and walls
 - iv. Surfacing of parking areas
 - v. Requiring street, service road or alley dedication and improvements or appropriate bonds
 - vi. Regulation of points of vehicular ingress and egress
 - vii. Regulation of signs
 - viii. Requiring maintenance of the grounds
 - ix. Time period within which the proposed use shall be developed
 - x. Regulation of hours for certain activities
 - xi. Duration of use
 - xii. And any other such condition as will make possible the development of the City in an orderly and efficient manner.

- (c) **General Conditions.** The Planning Commission shall, in addition to any special conditions, impose the following general conditions upon every Conditional Use Permit granted:
- i. The right to use and occupy the subject property shall be contingent upon the fulfillment of all general and special conditions imposed by the conditional use permit procedure.
 - ii. That all of the special conditions shall constitute restrictions running with the land and shall be binding upon the owner of the land, his successors or assigns.
 - iii. That in the case of a use existing prior to the effective date of this ordinance and classified in this ordinance as a conditional use, any change in the use or in lot area or any alteration of structure shall conform to the requirements for the conditional use.
- (d) **Administrative Provisions.** The following provisions shall apply in obtaining conditional use permits:
- i. **Application and Filing Fee:** Application for a conditional use permit giving such information as may be prescribed but the Planning Commission, shall be made upon forms provided by the City Clerk.
 - ii. **Planning Commission Hearing:**
 1. Upon receipt of the application in proper form and application fee, the City Clerk shall place the item on the Planning Commission Agenda for public hearing not more than thirty (30) days after the date of the filing of the application, or sixty (60) days if an Environmental Impact Report is required.
 2. Notice of such hearing for the time and in the manner as established by resolution of the City Council which shall be mailed at least ten (10) days prior to the public hearing to all property owners whose names and addresses appear on the latest adopted tax roll as owning property within a distance of three hundred (300) feet from the exterior boundaries of applicant's property, and by the posting of said notice in three conspicuous places on or close to the property at least ten (10) days prior to the hearing.
 - iii. **Action by the Planning Commission:** Within thirty (30) days after the conclusion of the public hearing, the Planning Commission shall approve, conditionally approve, or deny the conditional use permit application based upon its findings along with any general and special conditions in Section 5.02(b) above as they might apply. Notice of the action shall be mailed to the applicant. The findings of the Commission shall be that the establishment, maintenance or operation of the use or building applied for will or will not, under the circumstances of the particular case, be detrimental to the public health, safety and the general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to the property and improvements in the neighborhood.
 - iv. **Appeals to the City Council:** The decision of the Planning Commission is final unless an appeal is made in writing to the City Council within ten (10) days of such action. Following a public hearing, notice of which shall be given in the manner prescribed above, the Council may by resolution reverse or affirms wholly or in part, or may modify any decisions, determination or requirement of

the Planning Commission. The Council shall also make a written finding of fact setting forth where the Planning Commission findings were in error.

v. Revocation of Conditional Use Permits:

1. The Planning Commission may by resolution and after a public hearing with notice in accordance with provisions set forth above revoke any conditional use permit for non-compliance with any of the conditions set forth in the resolution granting the application. Written notice of intention to revoke shall be mailed to the applicant not less than thirty (30) days before the Planning Commission action.
2. If an established time limit for development expires or if the time limit for the duration of the carrying on the use has been established as one of the conditions then said permit shall be considered to be revoked upon such date of expiration without any notification to the owners.
3. The revocation of a conditional use permit shall have the effect of denying all rights granted by the conditional use permit.

SECTION 5.03 NONCONFORMING USES

- (a) **Intent.** Where building or lots legally existing on the effective date of the ordinance adopting these regulations are not in conformity with the provisions of these regulations, it is the intent of this section to declare such to be nonconforming and to encourage these nonconforming buildings and uses to be brought to or toward conformity as rapidly as possible; all for the purpose of protecting the public health, safety and general welfare.
- (b) **Nonconforming Uses**
 - i. Nonconforming uses shall be those in any zone which are not provided for in the permitted uses or conditional uses section of each zone. A nonconforming use may not be expanded or extended within an existing building and no structural alterations except those required by law shall be made therein. A nonconforming structure which conforms with respect to use may be altered or extended if the alteration or extension does not cause the structure to deviate further from the standards of this ordinance.
 - ii. If a nonconforming use of land is discontinued for a period of one hundred eighty (180) days, any further use of the property shall conform to this ordinance.
 - iii. If a nonconforming use is replaced by another use, the new use shall conform to this ordinance.
- (c) **Removal or Razing of Structures.** The right to operate and maintain a nonconforming use shall terminate when the structure or structures housing such uses are removed or razed to the extent of fifty percent (50%) of the structure's fair market value as determined by the last equalized assessment roll of the County of Imperial.
- (d) **Destruction, Damage or Obsolescence of Structure.** The right to operate and maintain a nonconforming use shall terminate when structure or structures housing such use is (are) damaged or destroyed from any cause whatsoever as to become obsolete or become(s) obsolete under any municipal ordinance.

SECTION 5.04 VARIANCES

- (a) **Intent.** When practical difficulties, unnecessary hardships or results inconsistent with the general intent and purpose of these regulations occur through the strict application of the provisions herein to a parcel or a group of parcels affected by a unique problem, the Planning Commission shall have the power to grant, upon such terms and conditions as it deems necessary and proper, variances from the strict provisions of these regulations. A variance shall not be granted to permit a use not permitted in the zone by this Ordinance.
- (b) **General Conditions.** The Planning Commission may impose the following general conditions upon a variance:
 - i. The Planning Commission, in approving a variance, may set force in its decision reasonable terms and conditions which it deems necessary to protect the health, safety, and general welfare of the community and to assure the intent and purposes of these regulations.
 - ii. Every variance from the provisions of these ordinance regulations shall become void one hundred and eighty (180) days after the effective date such variance is granted unless construction has commenced. The Planning Commission, however, may, by request, extend authorization for an additional period not to exceed one year.

- (c) **Administrative Provisions.** The following provisions shall apply in obtaining variances:
- i. **Application and Filing Fee:** Application for variance, giving such information as may be prescribed by the Planning Commission, shall be made upon forms provided by the City Clerk. The Clerk shall charge and collect the filing fee for each such application as determined by resolution of the City Council.
 - ii. **Planning Commission Hearing:**
 1. Upon receipt of the application in proper form, the City Clerk shall place the item on the Planning Commission Agenda for public hearing not more than thirty (30) days after the filing of the application, or sixty (60) days if an Environmental Impact Report is required.
 2. Notice of such hearing for the time and in the manner as established by resolution of the City Council which shall be mailed at least ten (10) days prior to the public hearing to all property owners whose names and addresses appear on the latest adopt tax roll as owning property within a distance of three hundred (300) feet from the exterior boundaries of applicants property, and by the posting of said notice in three conspicuous places on or close to the property at least ten (10) days prior to the hearing.
 - iii. **Action by the Planning Commission:** Within thirty (30) days after the conclusion of the public hearing, the Planning Commission may grant the requested variance in whole or in part, or deny the application for variance based upon its findings with or without conditions. The Commission, in granting a variance, shall make a finding that in the evidence presented, all four of the following conditions exist in reference to the property being considered:
 1. Because of unique circumstances applicable to subject property including size, shape, topography, location, or surroundings, the strict application of the zoning ordinance would deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.
 2. Any variance granted shall be subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which subject property is situated.
 3. The granting of the variance will not be materially detrimental to the public health, safety, convenience, or welfare or injurious to property and improvements in the same vicinity and zone in which subject property is situated.
 4. The granting of such variance will not adversely affect the General Plan for the City.
 - iv. **Appeals to the City Council:** Appeal from any action of the Planning Commission on an application for variance may be made in writing to the City Council within ten (10) days of such action following public hearing. The Council may by resolution reverse or affirm, wholly or in part, or may modify any decision, determination or requirement of the Planning Commission findings that were in error.
 - v. **Revocation of Variances:**
 1. The Planning Commission may by resolution and after a public hearing with notice revoke any variance for noncompliance with any of the conditions set forth in the resolution granting the variance. Written notice of intention to revoke shall be mailed to the applicant(s) not less than thirty (30) days before the Planning Commission action.

2. The revocation of a variance shall have the effect of denying all rights granted by the variance.

SECTION 5.05 ZONING MAP AND TEXT AMENDMENTS

- (a) **General Conditions.** The Planning Commission shall consider whether the following conditions exist:
 - i. That the proposed zoning amendment is in conformity with the General Plan of the City.
 - ii. That in the case of a zoning map amendment, the subject property is suitable for the uses permitted in the proposed zone, in terms of access, size of parcel, relationship to similar or related uses, and other considerations deemed relevant by the Planning Commission and the City Council.
- (b) **Administrative Provisions.** The following provisions shall apply in obtaining zoning map and text amendments:
 - i. **Initiation:**
 1. The Planning Commission may initiate proceedings by motion and then hold public hearings
 2. The City Council may initiate proceedings by submitting the matter to the Planning Commission for public hearings
 3. In the case of a zoning map amendment, the owner of a property or duly authorized agent may initiate proceedings by filling an application on a form provided by the City Clerk giving such information as may be prescribed by the Planning Commission. The City Clerk shall charge and collect the filing fee for each such application as determined by resolution of the City Council.
 - ii. **Staff Investigation:** A city official, as may be designated by the City Council, shall investigate the proposed ordinance amendment in order to provide information necessary to assure action consistent with the intent of this ordinance and the General Plan and report the findings to the Planning Commission.
 - iii. **Planning Commission Hearing:**
 1. The City Clerk shall place the matter on the Planning Commission Agenda for public hearing not more than thirty (30) days after the date of the initiating motion by the Planning Commission or City Council or upon receipt of an application in proper form. An additional thirty (30) days will be allowed if an Environmental Impact Report is required.
 2. Notice of such hearing shall be given both by mail or delivery at least ten (10) days prior to the public hearing to all property owners whose names and addresses appear on the latest adopted tax roll as owning property within a distance of three hundred (300) feet from the exterior boundaries of applicant's property and the posting of said public notice at three conspicuous places in the City.
 - iv. **Action by the Planning Commission:** Within thirty (30) days after the conclusion of the public hearing, the Planning Commission shall file its recommendation together with a report of findings, hearings and other supportive data. In the case of a zoning map amendment notice of the action shall be mailed to the applicant within ten (10) days. The Planning Commission may reduce but shall not enlarge the area of any proposed zone change in any way, unless proper notice and publication of the enlarged area is made.
 - v. **Action by the City Council:**

1. In the case of a zoning map amendment, if the Planning Commission recommends against such an amendment, the City Council shall not be required to take any further action unless an interested party requests such a hearing by filing a written request with the City Clerk within ten (10) days after the Planning Commission files its decisions and recommendations. In this event, a public hearing shall be held and notice given.
2. In all other cases where recommendations have been made on proposed zoning map and text amendments, the City Council shall, not more than thirty (30) days after publication of legal notice of a public hearing hold said public hearing. Such notice shall be given as provided above.
3. The City Council may adopt by ordinance or reject the amendment recommended by the Planning Commission after holding at least one public hearing. The Council may modify the amendment recommended by the commission, provided the proposed modification has been referred back to the Planning Commission for its further recommendations or in the case of a zoning map amendment where the area of the proposed zone change is reduced, proper notice and publication is made.

SECTION 5.06 ENFORCEMENT

- (a) **Enforcement.** The City Council, the City Attorney, the Police Chief, the Building Inspector, the City Clerk and all officials charged with the issuance of licenses or permits shall enforce the provisions of this ordinance.
- (b) **Actions Deemed a Nuisance.** Any building or structure hereafter erected or maintained for any use of property contrary to the provisions of this ordinance shall be declared to be unlawful and a public nuisance.
- (c) **Remedies.** All remedies concerning this ordinance shall be cumulative and not exclusive. Conviction and punishment of any person hereunder shall not relieve such persons from the responsibilities of correcting prohibited conditions or removing prohibited buildings, structures, or improvements, and shall not prevent the enforced correction or removal thereof.

SECTION 6.00-ADDITIONAL RESIDENTIAL PROVISIONS

6.01 SECOND DWELLING UNITS

(a) Purpose

The purpose of this section is to regulate second dwelling units in residential zoning districts and on residential property consistent with State law (Sections 65852.1 through 65852.2 of the California Government Code). Implementation of this section is intended to expand housing opportunities for low income and moderate income or elderly households by increasing the number of rental units available within existing neighborhoods while maintaining the primarily single-family residential character of the area.

(b) Definition

Second Dwelling Unit means an attached or detached dwelling unit, sited on the same parcel as the primary dwelling unit, which provides complete independent living facilities for one (1) or more persons, with permanent provisions for living, sleeping, eating, sanitation, and includes a single kitchen as defined in this chapter. This definition shall also include: (1) An efficiency unit, as defined in Section 17958.1 of the California Health and Safety Code; and (2) A manufactured home, as defined in Section 18007 of the California Health and Safety Code.

(c) Permitted use provisions

Pursuant to Section 65852.2 of the Government Code, second units shall be permitted in all residential, agricultural residential and agricultural zoning districts in compliance with the development standards as set forth on single-family residential parcels by the Planning Director when the following conditions are met

- Second units shall only be located on lots with an area of six thousand (6,000 ft²) square feet or larger.
- Second units shall be compatible with the architectural style, materials, and colors of the primary dwelling unit.
- No more than one (1) second unit shall be allowed per parcel.
- The property owner shall occupy either the primary unit or second unit. The property owner shall record a declaration acknowledging owner occupancy, recorded with the property as a condition of the administrative permit.
 - Prior to issuance of the administrative permit, the declaration shall be recorded with the Imperial County recorder's office.
 - The declaration shall be in a form as required by the Planning Director.
 - The declaration shall run with the land and be binding upon the applicant and successor property owners. Lack of compliance at any time after recording shall void the approval of the second unit permit and shall constitute a public nuisance which may result in legal or administrative action against the property owner.
- A second unit shall not exceed one thousand two hundred (1,200 ft²) square feet, excluding garage area. If a secondary dwelling unit includes an attached garage or other unfinished space, the characterization of the structure shall be based upon which use encompasses the greater square footage. If the square footage of the attached garage or other unfinished space exceeds the square footage of the habitable area, the structure shall be deemed to be an accessory structure and shall be denied.
- The maximum building coverage, including a second unit, is five (5%) percent above the maximum lot coverage as set forth in this code for the underlying zoning district.
- Building setbacks for attached second units shall comply with all required building setbacks for the primary unit. Within the agricultural and agricultural-residential zoning districts, the building setbacks for detached second units shall not be less than the height of the structure at the highest point, with a minimum distance of ten (10' 0") feet between structures. Building setbacks for detached second units within all other residential zones shall be the same as the underlying zoning district for front and street side yards, five feet from interior and rear yard property lines, with a minimum distance of ten (10' 0") feet between structures.

6.02 EMERGENCY SHELTERS AND TRANSITIONAL HOUSING FACILITIES**(a) Purpose and intent**

General Plan housing element Policies identify the City's need to provide equal access to housing for people with special needs, including encouraging the development of emergency and transitional housing. It is the intent of this chapter to provide for adequate development and operational standards to ensure appropriate housing and services for special needs populations are met.

(b) Definition

"Emergency shelter" means any facility, the primary purpose of which is to provide temporary or transitional shelter for the homeless in general or for specific populations of the homeless.

(c) Permit Requirements and exemptions

Emergency shelter and transitional housing facilities are permitted in I and OS zones and shall be subject to the following conditions:

(1) Permit Requirements

- (a) Emergency shelter and transitional housing facilities shall comply with all federal and California State licensing requirements.
- (b) Emergency shelter and transitional housing facilities shall comply with all applicable Uniform Building and Fire Codes, including maximum occupancy restrictions.
- (c) Maximum Number of Beds. No more than thirty (30) beds shall be provided in any single emergency shelter or transitional housing facility.

(2) Exemptions to Permit Requirements

- (a) Shelter facilities may exceed the maximum one hundred (310) bed limitation through a conditional use permit subject to approval by the designated approving authority.
- (b) An emergency shelter or transitional housing facility for ten (10) or fewer persons may be located in any portion of the City zoned for residential or commercial development.

(d) Development Standards**(1) Location and Separation**

- (a) Emergency shelters and transitional housing facilities of more than ten (10) persons shall be located in I and OS zones and situated within one-half (1/2) mile of a transit corridor or existing bus route.
- (b) All shelter programs must be situated more than one thousand (1,000) feet from any other similar program; a public park; a public or private K – 12 school; an indoor or outdoor recreational facility primarily designed to serve persons under eighteen (18) years old; a child care facility or single-family residential zone [one thousand (1,000) feet measured from property line to property line]. Programs may have multiple buildings.

(2) Physical Characteristics

- (a) The maximum number of beds (100) does not apply in situations of Citywide or statewide designated disasters or catastrophic conditions.
- (b) Smoke detectors, approved by the Fire Department, must be provided in all sleeping and food preparation areas.
- (c) The facility shall have adequate private living space, shower and toilet facilities and secure storage areas for its intended residents.
- (d) The size of an emergency facility shall be in character with the surrounding neighborhood.

(e) The facility shall have at least one room, which has one hundred twenty (120 ft²) square feet of floor area. Other habitable rooms shall have an area not less than seventy (70 ft²) square feet. When more than two (2) persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of fifty (50 ft²) square feet for each occupant in excess of two (2).

(3) Operational Standards

(a) If the facility is proposed for location in an area either zoned or developed as a residential area, all intake and screening shall be conducted off-site.

(b) If a program includes a drug or alcohol abuse counseling component, appropriate State and/or Federal licensing shall be required.

(c) The program shall provide accommodations appropriate for a minimum stay of twenty-eight (28) days and a maximum stay of one hundred eighty (180) days per client/family.

(d) The program shall identify a transportation system that will provide its clients with a reasonable level of mobility including, but not limited to, access to social services, housing and employment opportunities.

(e) Transitional housing programs shall provide specific mechanisms for residents to contact social services.

(f) The program shall include clear and acceptable arrangements for facility residents, such as on-site meal preparation or food provision and disbursement.

(g) The program, where applicable, shall provide child care services and ensure that school-aged children are enrolled in school during their stay at the facility.

(h) The transitional housing provider shall have a written management plan including, as applicable, provisions for staff training, neighborhood outreach, security, screening of residents to ensure compatibility with services provided at the facility and for training, counseling, and treatment programs for residents.

(i) Shelters may establish written expectations of residents – behavioral, medical, and religious, etc. Expectations of residents will be available to each resident at entry to the shelter, and to the public (upon request).

(j) Shelters shall have infection control policies in accordance with guidelines of the Centers for Disease Control covering but not necessarily limited to HIV/AIDS, hepatitis, and tuberculosis.

(k) Emergency shelters and transitional housing facilities shall provide on-site management and support staff at all times during shelter use.

6.03-REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES

(a) Purpose and intent

The purpose of allowing reasonable accommodation(s) is to provide a process for individuals with *disabilities* to make requests for reasonable accommodation(s) for relief from the various land use, zoning, or rules, policies, practices, and/or procedures of the City. It is the policy of the City, pursuant to the Federal Fair Housing Act (as amended), to provide people with *disabilities* reasonable accommodation(s) in rules, policies, and procedures that may be necessary to ensure equal access to housing.

(b) Requesting Reasonable Accommodation(s)

(1) In order to make specific housing available to an individual with a *disability*, a disabled person or representative may request reasonable accommodation(s) relating to the various land use, zoning, or rules, policies, practices, and/or procedures of the City.

(2) If an individual needs assistance in making the request for reasonable accommodation(s) or appealing a determination regarding reasonable accommodation(s), the Planning Director will

endeavor to provide the assistance necessary to ensure that the process is accessible to the applicant.

(3) A request for reasonable accommodation(s) with regard to City regulations, rules, policies, practices, and/or procedures may be filed on an application form provided by the Planning Director at the time that the accommodation may be necessary to ensure equal access to housing.

(c) Required Information.

The applicant shall provide the following information when requesting reasonable accommodation(s). This information shall be made part of the public record for the project and subject to all applicable State and Federal laws for public access to records.

(1) A completed City application indicating, among other things, the applicant's name, address, and telephone;

(2) Address of the property for which the request is being made;

(3) The current actual use of the property;

(4) The Westmorland ordinance, provision, regulation, or policy from which reasonable accommodation(s) is being requested;

(5) The basis for the claim that the person(s) for whom the reasonable accommodation(s) is/are sought is/are considered disabled under the Fair Housing Act and why the accommodation is reasonably necessary to make specific housing available to the person(s);

(6) Such other relevant information as may be requested by the Planning Director as the Director reasonably concludes is necessary to determine whether the findings required by subsection (F) of this section (Required Findings for Reasonable Accommodation(s)) can be made, so long as any request for information regarding the *disability* of the individuals benefited complies with fair housing law protections and the privacy rights of the individual(s) affected.

(d) Approving Authority and Approval Process

(1) The Planning Director shall have the authority to consider and take action on requests for reasonable accommodation(s). When a request for reasonable accommodation(s) is filed with the Planning Department, it will be referred to the Planning Director for review and consideration as a ministerial action unless determined otherwise by the Planning Director. A request for reasonable accommodation(s) shall be considered ministerial in nature when it is related to a physical improvement that cannot be constructed to conform to the City's setbacks or design standards. Typical improvements considered to be "ministerial" in nature would include ramps, walls, handrails, or other physical improvements necessary to accommodate a person's *disability*. The Planning Director shall issue a written determination of his or her action within fifteen (15) days of the date of receipt of a completed application and may:

(a) Grant or deny the accommodation request; or

(b) Grant the accommodation request subject to specified nondiscriminatory condition(s); or

(c) Forward the request to the Planning Commission for consideration as a conditional use permit.

(2) In the event the Planning Director determines that the request for reasonable accommodation(s) is non-ministerial in nature, such request shall be forwarded to the Planning Commission in accordance with City of Westmorland Conditional Use Permit provisions, and shall be subject to the findings stated in subsection "F" of this section (Required Findings for Reasonable Accommodation(s))

(3) All written determinations of actions of the Planning Director shall give notice of the right to appeal and the right to request Reasonable Accommodation(s) on the appeals process (e.g., requesting that City staff attempt to schedule an appeal hearing as soon as legally and practically possible), if necessary. The notice of action shall be sent to the applicant by mail.

(4) If necessary to reach a determination or action on the request for reasonable accommodation(s), the Planning Director may request further information from the applicant specifying in detail what information is required. In the event a request for further information is made, the fifteen (15) day period to issue a written determination shall be stayed until the applicant fully and sufficiently provides such information

(e) Considerations

(1) The City may consider, but is not limited to, the following factors in determining whether the requested accommodation is necessary to provide one (1) or more individuals with a *disability* an equal opportunity to use and enjoy a dwelling:

- (a) Whether the requested accommodation will affirmatively enhance the quality of life of one (1) or more individuals with a *disability*;
- (b) Whether the individual or individuals with a *disability* will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation;
- (c) In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants;
- (d) In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a *disability* an equal opportunity to live in a residential setting.

2. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of this title:

- (a) Whether the requested accommodation would fundamentally alter the character of the neighborhood;
- (b) Whether the accommodation would result in a substantial increase in traffic or insufficient parking;
- (c) Whether granting the requested accommodation would substantially undermine any express purpose of either the City's General Plan or an applicable specific plan;
- (d) In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.

(f) Required Findings for Reasonable Accommodation(s).

(1) In making a determination regarding the reasonableness of a requested reasonable accommodation(s), the approving authority shall make the following findings:

- (a) The housing which is the subject of the request for reasonable accommodation(s) will be used for an individual protected under the Fair Housing Act.
- (b) The request for reasonable accommodation(s) is necessary to make specific housing available to an individual protected under the Fair Housing Act.
- (c) The requested reasonable accommodation(s) does not impose an undue financial or administrative burden on the City and does not fundamentally alter City zoning, development standards, policies, or procedures.
- (d) The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in fair housing laws and interpretive case law.
- (e) The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

6.04 DENSITY BONUS AND OTHER DEVELOPER INCENTIVES**(a) Purpose and intent**

This density bonus chapter is intended to provide incentives for the production of housing for very low, lower income, or senior households and the development of child care facilities. In enacting this chapter, it is the intent of the City of Westmorland to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the City's Housing Element.

(b) Definition

Density Bonus means a density increase of at least twenty percent (20%) unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density, as required for some affordable housing, mixed-use, other designated residential developments.

(c) Eligibility for density bonus and other incentives.

The City of Westmorland shall either grant a density bonus and concessions or incentives as set forth herein. Types of density bonus and other incentives allowed, or provide other incentives or concessions of equivalent financial value based upon the land cost per dwelling unit, when the applicant for the housing development seeks to construct at least any one (1) of the following

- (1) Ten (10%) percent of the total units of a housing development for low income households;
- (2) Five (5%) percent of the total units of a housing development for very low income households;
- (3) A senior citizen development;
- (4) Ten (10%) percent of the total dwelling units in a condominium project or in a planned development for persons and families of moderate income;

(d) Types of density bonus and other incentives

- (1) Project-Specific Density Bonus. A housing development that satisfies all applicable provisions of this chapter shall be entitled to the following density bonus:

- (a) For developments providing lower income target units, a twenty (20%) percent base density bonus plus a one and one-half (1.5%) percent supplemental increase over that base for every one percent (1%) increase in low income units above ten (10%) percent. The maximum density bonus allowed including supplemental increases is thirty-five (35%) percent;
- (b) For developments providing very low income target units, a twenty (20%) percent base density bonus plus a two and one-half (2.5%) percent supplemental increase over that base for every one (1%) percent increase in very low income units above five (5%) percent. The maximum density bonus allowed including supplemental increases is thirty-five (35%) percent;
- (c) For senior developments, a twenty-five (25%) percent base density bonus plus a two and one-half (2.5%) percent supplemental increase over that base for every one (1%) percent increase in senior units. The maximum density bonus allowed including supplemental increases is thirty-five (35%) percent;
- (d) For condominium/PUD developments providing moderate income target units a five (5%) percent base density bonus plus a one percent increase in moderate income units above ten (10%) percent. The maximum density bonus allowed including supplemental increases is thirty-five (35%) percent.

- (2) Number of Other Incentives or Concessions. In addition to the eligible density bonus percentage described above, an applicant may request incentives or concessions in connection with its application for a density bonus:

- (a) One incentive or concession for housing developments that include at least ten (10%) percent of the total units for lower income households, at least five (5%) percent for very low income households, or at least ten (10%) percent for persons or families of moderate income in a condominium or planned development.
 - (b) Two incentives or concessions for housing developments that include at least twenty (20%) percent of the total units for lower income households, at least ten (10%) percent for very low income households, or at least twenty (20%) percent for persons or families of moderate income in a condominium or planned development.
 - (c) Three incentives or concessions for projects that include at least thirty (30%) percent of the total units for lower income households, at least fifteen (15%) percent for very low income households, or at least thirty (30%) percent for persons or families of moderate income in a condominium or planned development.
- (3) Available Incentives and Concessions. The following incentives and concessions are available for compliance with this chapter:
 - (a) A reduction in the site development standards or a modification of Westmorland development standards, requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5, Section 18907 of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in ratio of vehicle parking spaces that would otherwise be required and that results in identifiable, financially sufficient, and actual cost reductions.
 - (b) Approval of mixed-use development in conjunction with the Housing Element. The City shall not be required to provide a density bonus or incentive or concession for a child care facility if it makes a written finding, based upon substantial evidence, that the community has adequate child care facilities in development if the nonresidential land uses will reduce the cost of the housing development, and the nonresidential land uses are compatible with the housing development and surrounding development.
 - (c) Other regulatory incentives or concessions proposed by the applicant or that the City determines will result in identifiable, financially sufficient, and actual cost reductions.
 - (d) Priority processing of a housing development that provides income-restricted units.
- (4) Denial of Request for Incentives or Concessions. The City shall grant incentive(s) or concession(s) requested by the applicant unless the City makes a written finding, based upon substantial evidence, of either of the following:
 - (a) The incentive or concession is not required in order to provide for affordable housing costs or affordable rents.
 - (b) The incentive or concession would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5 of the California Government Code, upon public health and safety or physical environment or any real property that is listed in the California Register of Historical Resources and for which the City determines there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households.
- (5) Density Bonus for Donation of Land
 - (a) An applicant for a tentative subdivision map, parcel map, or other residential development approval who donates land to the City in accordance with Section 65915(h) of the California Government Code shall receive a fifteen (15%) percent base density bonus plus a one (1%) percent supplemental increase over that base for every one (1%) percent increase in land donated above the minimum ten (10%) percent. The maximum density bonus allowed including supplemental increases is thirty-five (35%) percent.

- (b) An applicant shall only be eligible to receive the density bonus described in this subsection if all the conditions listed in subsections (1) through (6) of Section 65915(h) are met.
- (c) Nothing in this subsection shall be construed to enlarge or diminish the authority of the City to require a developer to donate land as a condition of development.
- (6) Additional Density Bonus and Incentives or Concessions for Development of Child Care Facility.
- (a) Housing developments meeting the requirements of the City of Westmorland Density Bonus Provisions and including a child care facility that will be located on the premises of, as part of, or adjacent to, the housing development shall receive either of the following:
- (i) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.
 - (ii) An additional incentive or concession that contributes significantly to the economic feasibility of the construction of the child care facility.
- (b) The density bonus housing agreement for the housing development shall ensure that:
- (i) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the target units are required to remain affordable; and
 - (ii) Of the children who attend the child care facility, the children of very low income households, lower income households, or persons or families of moderate income shall equal a percentage that is equal to or greater than the percentage of target units that are required pursuant to the City's Density Bonus provisions.
- (e) The City shall not be required to provide a density bonus or incentive or concession for a child care facility if it makes a written finding, based upon substantial evidence, that the community has adequate child care facilities.
- (f) General Provisions Related to Density Bonuses and Incentives and Concessions**
- (1) All density calculations resulting in fractional units shall be rounded up to the next whole number.
- (2) The granting of a density bonus shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval.
- (3) The density bonus shall not be included when determining the number of housing units that is equal to five (5%) percent or ten (10%) percent of the total.
- (4) Upon request by the applicant, the City shall not require that a housing development that meets the requirements of 601.4.C. provide a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following:
- (a) Zero (0) to one (1) bedroom: one (1) on-site parking space;
 - (b) Two (2) to three (3) bedrooms: two (2) on-site parking spaces;
 - (c) Four (4) and more bedrooms: two and one-half (2.5) parking spaces.
- If the total number of parking spaces required for a housing development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subsection, a development may provide on-site parking through tandem parking or uncovered parking, but not through on-street parking.
- (5) The City shall not apply any development standard that would have the effect of precluding the construction of a housing development meeting the requirements of 6.04.C, eligibility, at the

densities or with the incentives permitted by this chapter. An applicant may submit to the City a proposal for the waiver or reduction of development standards. Nothing in this subsection, however, shall be interpreted to require the City to waive or reduce development standards if the waiver or reduction would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5 of the California Government Code, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which the City determines there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Furthermore, the applicant shall be required to prove that the waiver or modification is necessary to make the target units economically feasible.

(g) Location of bonus units

As required by State law (Section 65915(j) of the California Government Code), the location of density bonus units within the housing development may be at the discretion of the developer. However, the inclusionary units shall be reasonably dispersed throughout the development (where feasible), shall contain on average the same number of bedrooms as the non-inclusionary units in the development, and shall be compatible with the design or use of the remaining units in terms of appearance, materials and quality finish.

(h) Continued availability

- (1) If a housing development providing lower or very low income target units receives only a density bonus, the target units must remain restricted to lower or very low income households for a minimum of thirty (30) years from the date of issuance of the certificate of occupancy.
- (2) If a housing development providing lower or very low income target units receives both a density bonus and an additional incentive, the target units must remain restricted to lower or very low income households for a minimum of fifty (50) years from the date of issuance of the certificate of occupancy.
- (3) In the case of a housing development providing moderate income target units, the initial occupant of the target unit must be a person of family of moderate income. Upon resale, the seller of the target units shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation, which shall be used within three (3) years for any of the purposes described in subdivision (e) of Section 33334.2 of the California Health and Safety Code that promote home ownership. The City's proportionate share shall be equal to the percentage by which the initial sale price of the moderate income household was less than the fair market value of the home at the time of the initial sale.

(i) Process and conditions of approval

The density bonus request shall be considered by the City Council along with the required density bonus agreement after the designated approving authority approves any necessary permits. The form and content of the density bonus agreement shall be determined by the City.