



# CITY OF WHEATLAND

## CITY COUNCIL MEETING STAFF REPORT

June 27, 2023

**SUBJECT:** Consideration of the updated Memorandum of Understanding between the City of Wheatland and Bishop's Pumpkin Farm.

**PREPARED BY:** Tim Raney, Community Development Director

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### **Recommendation**

Staff recommends that the Wheatland City Council direct the City Manager to execute the attached Memorandum of Understanding (MOU) between the City of Wheatland and Bishop's Pumpkin Farm (see Attachment 1).

### **Background**

At the June 13, 2023 City Council meeting, City staff and Council discussed several items related to the proposed MOU between the City and Bishop's Pumpkin Farm. The attached MOU has been updated based on those previous discussions (see Attachment 2).

The attached MOU has incorporated the redline changes that were presented to the City Council at the June 13<sup>th</sup> City Council meeting. In addition, the recommended legal language read into the record by the City Attorney has also been incorporated into the updated MOU. Exhibit A showing the location of the four site additions has also been updated per the June 13<sup>th</sup> discussion.

In addition to the updated MOU and exhibit, staff was asked to outline the chronological order of the proposed project documents and entitlements.

### **Discussion**

The general process for the proposed project includes several sequential steps beginning with the out of area service request and then ultimately the annexation into the City of Wheatland. Each step is described below.

#### **Out of Area Service Request**

As presented above, the Bishop Pumpkin Farm has proposed new structures to be built on lands outside the current Wheatland city limits and are requesting the City of Wheatland provide

municipal services to these new buildings. Government Code 56133 requires districts and cities to request and obtain LAFCo approval of any new or extended services outside the agency's existing boundaries. For LAFCo to approve the request, the area to be served must be within the sphere of influence of the agency, and annexation of the territory anticipated.

With approval of the MOU, the City would submit an application for Out of Area Service to the Yuba County LAFCo for review and approval. Any application fees would be paid by Bishop's Pumpkin Farm. Staff estimates this step in the process would likely be completed by the end of year.

### General Plan Update

The current City of Wheatland General Plan was adopted in 2006 and was considered as having a 20-year horizon. The City has now begun the multi-year General Plan Update process, which will address citywide issues related to traffic and circulation, development within the urban farmland interface, flooding, and the development of employment generating uses. The General Plan Update will also identify City goals and policies related to the expanding Bishop's Pumpkin Farm and how that expansion could impact the traffic and circulation in southeast area of the City.

Because community outreach and public input are important parts of the General Plan Update process, the City will host multiple community workshops throughout the process to ensure input from the community. The General Plan Update will also require the preparation and certification of an Environmental Impact Report. Staff estimates this step in the process would likely be completed by the end 2025.

### Annexation Request

Once the General Plan and EIR are approved, the Bishops would be expected to request City approval for annexation of their lands under Yuba County Jurisdiction. This would include the adoption of the City Council resolution approving the requested annexation and the adoption of the City Council ordinance adopting rezoning for the proposed annexation area. Rezoning is a required process that would assign a City of Wheatland zoning district to the properties currently located in the unincorporated area of Yuba County. Staff estimates this step in the process would likely be completed by mid-2026.

### Annexation Approval

Yuba County LAFCo has the approval authority for all proposed annexations in Yuba County. Following the City Council resolution approving the annexation request and City Council adoption of the rezoning ordinance, the City of Wheatland would submit an application to Yuba County LAFCo for the approval of the annexation. Staff estimates this step in the process would likely be completed by the end 2026

### Fiscal Impact

Through the MOU, the Bishops agree to pay the City \$150,000 across three payments to fund the General Plan Update. All costs associated with the Out of Area Service application, annexation application, and expansion of Bishop's Pumpkin Farm, including utility work will be covered by the applicant.

The City of Wheatland has an existing tax sharing agreement with Yuba County that outlines the sharing of property and sales taxes on properties annexed into the City. The City has requested the County to ensure there isn't an ongoing loss of tax revenue to the City by allowing construction of buildings on properties prior to completing annexation due to the existing tax sharing agreement. The County has begun discussions about a feasible solution to this request. The Yuba County Board of Supervisors has expressed their support of what will be accomplished through an MOU between the County and the City regarding the issue. The County is currently working on the MOU and the City is expecting to receive it soon.

**Conclusion**

Staff recommends that the Wheatland City Council consider the attached MOU between the City of Wheatland and the Bishop's Pumpkin Farm and direct staff to execute the MOU.

**Attachments**

- 1) Memorandum of Understanding between the City of Wheatland and Bishop's Pumpkin Farm.
- 2) Redlined Version - Memorandum of Understanding between the City of Wheatland and Bishop's Pumpkin Farm

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CITY OF WHEATLAND AND BISHOP'S PUMPKIN FARM**

This MEMORANDUM OF UNDERSTANDING (“MOU”) dated as of June 27, 2023, is made by and between the City of Wheatland (“City”) and Bishop’s Pumpkin Farm, Inc., a California corporation (“Bishop’s”). The MOU refers to the City and Bishop’s each individually as a “Party” and collectively as the “Parties.”

**RECITALS**

Whereas the City was incorporated in 1874; and

Whereas, Bishop’s began operation in 1973 located on land under the jurisdiction of Yuba County and within the City’s Sphere of Influence; and

Whereas the City adopted its current General Plan in 2006 identifying the Bishop’s property as “Parks” and provided textual information regarding Agricultural Tourism (“Ag Tourism”) on the Bishop’s property at the request of the Bishop’s representative; and

Whereas the City approved Bishop’s Ag Tourism Planned Development zoning and processed the annexation of the Bishop’s property in 2012 in order for the Bishop’s to be able to connect to City water and wastewater service; and

Whereas Bishop’s acquired additional lands in 2015 and 2020 located outside the City limits but within the City’s Sphere of Influence and adjacent to the City limits; and

Whereas, Bishop’s approached the City in order to expand the Ag Tourism operation through initiating an annexation process and have the additional development served by City services; and

Whereas, City seeks to work cooperatively with Bishop’s to accomplish that proposed annexation; and

Whereas, although the annexation process has not yet been completed and has not been approved by LAFCo, Bishop’s wishes to construct a new food service building, a restroom building and a new amusement ride adjacent to, but outside, the current City boundary; and

Whereas, Bishop’s requests that the City seek LAFCo approval to provide, and thereafter provide sewer and water services to the new food service, cider and restroom buildings prior to annexation; and

Whereas, Bishop’s requests that City not oppose the issuance of building permits by Yuba County, for the specific development of the buildings and structure (food service, cider building, restrooms and amusement ride) identified in this MOU in attached Exhibit A; and

Whereas, City recognizes Bishop’s as a major contributor to the local economy and is willing to work with Bishop’s to ensure the ongoing success of Bishop’s while also ensuring

mitigation of impacts to the broader local community that may occur as a result of the growth of Bishop's.

### AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The above recitals are true and incorporated by reference.
2. The Parties agree that each will cooperate and coordinate with the other in all activities covered by this MOU in order to achieve the objectives of this MOU.
3. By and through this MOU, Bishop's agrees that it shall:
  - a. Prior to constructing the new buildings or attractions identified in Exhibit A of this MOU:
    - i. Provide improvement plans, prepared by a registered civil engineer, showing proposed on-site water and sewer infrastructure and appurtenances to the City for review and approval;
    - ii. Provide calculations for existing and proposed demands demonstrating adequate pressure and flow can be achieved for intended uses including domestic supply and fire systems (concurrent with submission of improvement plans for water improvements) to the City for review;
    - iii. Engage a state certified water cross connection specialist to perform cross connection testing and provide a report of results to the City for review and approval (after construction and prior to occupancy); and
    - iv. Provide calculations for sewer improvements, including an estimation of existing flow, proposed flows, evaluation of wet well storage capacity (volume and storage time), and evaluation of private and public collection systems downstream of the points of connection (concurrent with submission of improvement plans for sewer improvements) to the City for review;
    - v. Submit a request with the City and cover the costs of the Out of Service Area application with LAFCo.
  - b. During the City's preparation of its General Plan Update:

- i. Participate in the General Plan Update process in good faith; and
    - ii. Provide the City with payments totaling \$150,000 to support the City's General Plan Update process, payable in three (3) \$50,000 installments as follows:
      1. First installment payment due no later than November 1, 2023;
      2. Second installment payment due no later than thirty (30) business days after the City issues a notice of availability of the City's General Plan Update Environmental Impact Report (EIR) pursuant to CEQA Guidelines section 15087;
      3. Final installment payment due no later than thirty (30) business days after the City files a notice of determination for the City's General Plan Update EIR pursuant to CEQA Guidelines section 15094 with Yuba County.
  - c. After the City adopts a General Plan Update and General Plan Update EIR that covers the unincorporated area currently owned by Bishop's (APNs 15-180-110 (45+ Acres), 15-490-014 (100+ Acres), and 15-660-015 (42+ Acres) that is adjacent to Bishop's property that is already incorporated into the City (APN 15-180109) (hereafter "Annexation Area") and the applicable CEQA statute of limitation has elapsed without legal challenge:
    - i. Pursue processing of an annexation application of the Annexation Area; and,
    - ii. Request the City to agree to amend the current Bishop's Development Agreement and existing Agriculture-Exclusive Planned Development zoning (AE-PD).
4. By and through this MOU, the City agrees that it shall:
    - a. Expeditiously and in good faith review the documentation provided to the City pursuant to Paragraph 3(a)(i)-(v) of this MOU;
    - b. Apply for approval from LAFCo for Out of Area Service Extension;

- c. Not oppose issuance of building permits by Yuba County for any facilities or improvements identified in Exhibit A;
- d. If LAFCo approves an Out of Area Service Extension, City will provide water and sewer service to the Food/Restroom Facility when requested by Bishop's for the new construction included in Exhibit A, consistent with any terms imposed by LAFCo approval; and
- e. Include the proposed Annexation Area in the City's General Plan Update and General Plan Update EIR.

All of the provisions of this MOU shall be binding upon and inure to the benefit of the Parties' successors and assigns; provided, however, that no assignment of this MOU by a Party shall release that Party from its obligations hereunder.

5. The MOU shall be effective from the date first written above and shall continue in full force and effect for five years, or until the General Plan Update, Annexation, Development Agreement amendments and zoning amendments stated herein are complete, whichever is later, unless modified by a written instrument signed by all Parties.

6. The Parties shall abide by their respective obligations under the MOU unless the MOU is modified by amendment of the Parties, or one or all of the Parties are ordered to do otherwise by a court of final adjudication.

7. In the event any of the Parties allege that another has breached its obligations pursuant to this MOU, the following process shall apply:

a. Should a dispute arise between the Parties regarding the subject matter set forth in this MOU, the Parties shall meet and confer within five (5) business days of such dispute arising. At a minimum, Bishop's shall make Wayne or Austin Bishop available at such meeting, and City shall at a minimum make the City Manager, City Attorney and at least one (1) Council Member available at such a meeting. If after such a meet and confer meeting (or more than one meeting if the Parties mutually agree), should the Parties be unable to resolve their differences, the Parties shall submit the matter to a mediator, the cost of which is to be shared equally by the Parties, chosen jointly by the Parties. If the Parties cannot agree on a mediator, the mediators requested by each of the Parties shall jointly name a third mediator, which selection shall be binding on the Parties.

The chosen mediator shall attempt to achieve an acceptable resolution to the dispute between the Parties within thirty (30) calendar days. If the dispute is not resolved during such 30-day period, and the Parties do not both agree to extend the mediator's period of service, the Parties shall each retain all legal rights and remedies to them regarding their respective positions.

8. The invalidity, illegality, or unenforceability of any provision of this MOU shall not render the other provisions unenforceable, invalid, or illegal.

9. The Parties to this MOU do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of this MOU or of any duty, covenant, obligation or undertaking established herein.

10. This MOU shall be interpreted and enforced pursuant to the laws of the State of California.

11. This MOU contains the entire understanding of the Parties related to their interests, obligations, and rights in connection with the subject matter set forth herein. All prior communications negotiations, stipulations, and understandings, whether oral or written, are of no force or effect, and are superseded, except as referenced herein.

12. This MOU may be executed in one or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute the same instrument.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their duly authorized officers to be effective as of the date of final execution.

Date: City of Wheatland

By \_\_\_\_\_,  
Rick West

Date: Bishop's Pumpkin Farm

By \_\_\_\_\_,  
Wayne Bishop

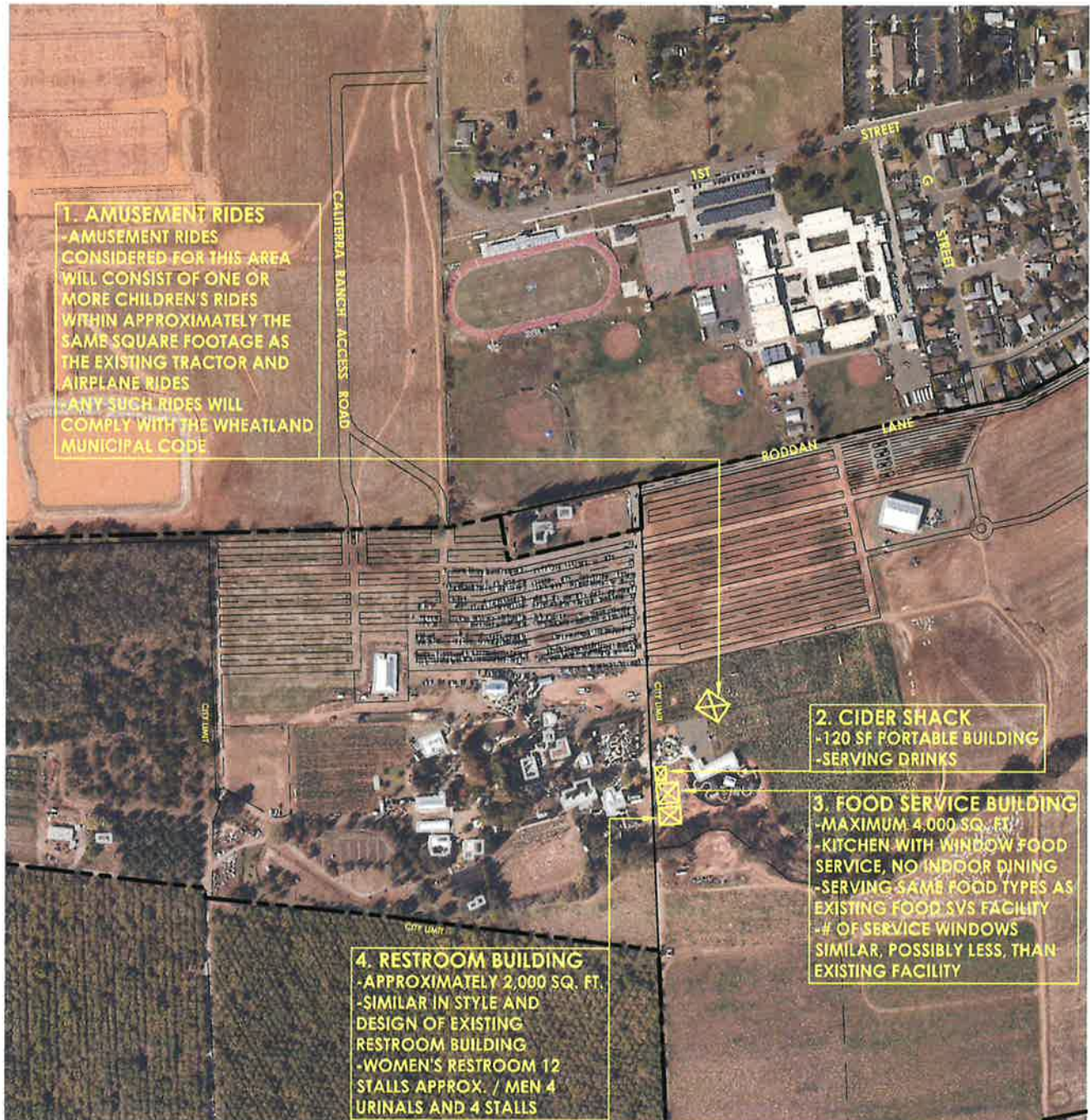


# EXHIBIT A

# BISHOP PUMPKIN FARM MOU

CITY OF WHEATLAND, CALIFORNIA

JUNE 21, 2023



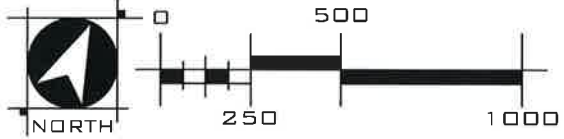
**1. AMUSEMENT RIDES**  
 - AMUSEMENT RIDES CONSIDERED FOR THIS AREA WILL CONSIST OF ONE OR MORE CHILDREN'S RIDES WITHIN APPROXIMATELY THE SAME SQUARE FOOTAGE AS THE EXISTING TRACTOR AND AIRPLANE RIDES  
 - ANY SUCH RIDES WILL COMPLY WITH THE WHEATLAND MUNICIPAL CODE

**2. CIDER SHACK**  
 - 120 SF PORTABLE BUILDING  
 - SERVING DRINKS

**3. FOOD SERVICE BUILDING**  
 - MAXIMUM 4,000 SQ. FT.  
 - KITCHEN WITH WINDOW FOOD SERVICE, NO INDOOR DINING  
 - SERVING SAME FOOD TYPES AS EXISTING FOOD SVS FACILITY  
 - # OF SERVICE WINDOWS SIMILAR, POSSIBLY LESS, THAN EXISTING FACILITY

**4. RESTROOM BUILDING**  
 - APPROXIMATELY 2,000 SQ. FT.  
 - SIMILAR IN STYLE AND DESIGN OF EXISTING RESTROOM BUILDING  
 - WOMEN'S RESTROOM 12 STALLS APPROX. / MEN 4 URINALS AND 4 STALLS

\*BUILDING LOCATIONS ARE FOR ILLUSTRATIVE PURPOSES, EXACT LOCATIONS MAY DIFFER.




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 Sacramento, CA 95816  
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  - a. Prior to constructing the new buildings or attractions identified in Exhibit A of this MOU:
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  - e. ~~Provide water and sewer service to the Food/Restroom Facility when requested by Bishop's for the new construction included in Exhibit A;~~

- c. Not oppose issuance of building permits by Yuba County for any facilities or improvements identified in Exhibit A; ~~and,~~
- d. If LAFCo approved an Out of Area Service Extension, City will provide water and sewer service to the Food/Restroom Facility when requested by Bishop's for the new construction included in Exhibit A, consistent with any terms imposed by LAFCo approval; and Apply for approval from LAFCo for Out of Area Service Extension.
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Date: City of Wheatland

By \_\_\_\_\_, title  
Rick West

Date: Bishop's Pumpkin Farm

By \_\_\_\_\_, title  
Wayne Bishop

# EXHIBIT A

# BISHOP PUMPKIN FARM MOU

CITY OF WHEATLAND, CALIFORNIA

APRIL 25, 2023



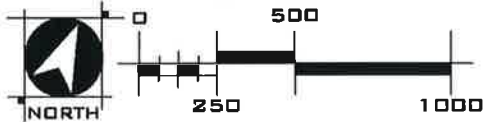
**1. AMUSEMENT RIDES**  
 - 2 RIDES OR A GROUP OF SMALLER 'KIDDIE' STYLE RIDES  
 - SIMILAR IN SIZE AND CONSTRUCTION TO EXISTING RIDES  
 - NO BUILDING ASSOCIATED WITH THIS ITEM  
 - FOOTPRINT TO BE SIMILAR TO EXISTING RIDES  
 - NO DETAILS ON EXACT SPECS AS THE RIDE HAS NOT BEEN DESIGNED OR ORDERED YET

**2. CIDER SHACK**  
 - 120 SF PORTABLE BUILDING  
 - SERVING DRINKS

**3. FOOD SERVICE BUILDING**  
 - MAXIMUM 4,000 SQ. FT.  
 - KITCHEN WITH WINDOW FOOD SERVICE, NO INDOOR DINING  
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