



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

June 13, 2023

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

PREPARED BY: Tim Raney, Community Development Director

Recommendation

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

Background and Discussion

The City of Wheatland General Plan was adopted in 2006 and was considered as having a 20-year horizon. Therefore, the City has begun the process of updating its General Plan, and the General Plan Update would include emphasis on issues related to traffic and circulation, specifically congestion along State Route (SR) 65; development within the urban farmland interface; flooding; and the job-to-housing ratio. It should be noted that updating a city's general plan is a costly process, requiring the work of multiple consultants or firms to complete the Plan, and the City has cobbled together multiple funding sources to generate a limited budget to complete the General Plan Update process.

As a result, in order to secure additional funds for the General Plan Update, the City discussed an opportunity with the Bishop's Pumpkin Farm for additional funding. As a part of the attached MOU, during the preparation of the General Plan Update, the Bishops agree to participate in the General Plan Update process in good faith and provide the City with payments totaling \$150,000 to support the City's General Plan Update process, and the City agrees to provide municipal services to areas within the Bishop's property that are not within the city limits, prior to annexation.

Bishop's Pumpkin Farm has acquired additional lands adjacent to their existing operation in Wheatland. While the primary agricultural tourism portion of their property is within the Wheatland City Limits, the additional property is currently under the jurisdiction of Yuba County. The Bishops have submitted an application to the City of Wheatland to annex these unincorporated lands into the city limits in order to expand their operations and have access to city services to any new structures. Representatives of the Bishop's Pumpkin Farm have

indicated their desire to construct specific buildings and facilities on these unincorporated lands prior to the completion of the annexation process. In order to allow the Bishops to move forward, City staff has negotiated a draft MOU with the Bishop's Pumpkin Farm that would allow Bishop's Pumpkin Farm to construct these new buildings outside of the city limits through the Yuba County building department, and the City of Wheatland would provide municipal services to the new buildings despite their location outside of the city limits. In order to ensure the City's property tax sharing with Yuba County is not adversely affected, City staff has requested and received confirmation from Yuba County stating that the county would use the current assessed value of the property prior to any new construction that would result in increases to the properties' assessed values (see Attachment 2).

The Bishop's representatives have identified that the new structures to be built prior to annexation would be limited to a food service building, cider building, restrooms, and new amusement ride. Bishops has requested that the City provide the new buildings with sewer and water services. Although buildings' approval would be under the jurisdiction of Yuba County, the MOU states that Bishop's will provide the following to the City:

- 1) 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;
- 2) 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;
- 3) 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
- 4) 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.

Through the MOU, the City will:

- 1) Expeditiously and in good faith review the documents provided to the City for the project;
- 2) Include the proposed Annexation Area in the City's General Plan Update and General Plan Update EIR;
- 3) Provide water and sewer service to the Food/Restroom Facility when requested by Bishop's for the new construction;
- 4) Not oppose issuance of building permits by Yuba County for the specific development of the buildings and structures (food service, cider building, restrooms and amusement ride) identified in Exhibit A of Attachment 1; and,

- 5) Apply for approval from LAFCo for Out of Area Service Extension.

The MOU ensures both the City and the applicant that either party will abide by the respective obligations under the MOU. Future amendments may be made to the MOU provided that both parties agree. The MOU establishes the process, should either party allege the other has breached its obligations pursuant to the MOU.

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 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) Letter from Yuba County regarding Bishop’s Pumpkin Farm Memorandum of Understanding

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

This MEMORANDUM OF UNDERSTANDING (“MOU”) dated as of _____, 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 annexation; and

Whereas, prior to annexation, 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 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;
 - 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 and cover the cost of the LAFCo application, 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 15-180-109) (hereafter "Annexation Area") and the applicable CEQA statute of limitation has elapsed without legal challenge:
- i. Pursue annexation 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(b)(i)-(iv) of this MOU;
 - b. Include the proposed Annexation Area in the City's General Plan Update and General Plan Update EIR;
 - c. Provide water and sewer service to the Food/Restroom Facility when requested by Bishop's for the new construction included in Exhibit A;
 - d. Not oppose issuance of building permits by Yuba County for any facilities or improvements identified in Exhibit A; and,
 - e. Apply for approval from LAFCo for Out of Area Service Extension.

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 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 _____, title

Date: Bishop's Pumpkin Farm

By _____, title

EXHIBIT A

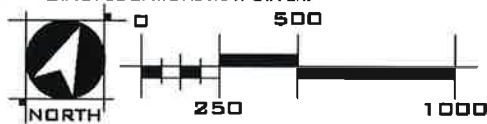
BISHOP PUMPKIN FARM MOU

CITY OF WHEATLAND, CALIFORNIA

APRIL 25, 2023



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



WOOD RODGERS
 BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
 3301 C St, Bldg. 100-B
 Sacramento, CA 95818
 Tel 916.341.7760
 Fax 916.341.7767

The County of Yuba

OFFICE OF THE COUNTY ADMINISTRATOR

GOVERNMENT CENTER 915 8TH STREET, SUITE 115
MARYSVILLE, CALIFORNIA 95901-5273
(530) 749-7575 FAX (530) 749-7312



KEVIN MALLEN
COUNTY ADMINISTRATOR

SEAN POWERS
ASSISTANT COUNTY
ADMINISTRATOR

May 25, 2023

Jim Goodwin, City Manager
City of Wheatland
111 C St, Wheatland, CA 95692

Jim,

Thank you for drafting a proposed MOU between the City and the County regarding the planned annexation of additional portions of Bishop's Pumpkin Farm. As you outlined in the draft MOU, the City plans to annex additional portions of the Farm into the City and is willing to serve these annexed areas with sewer and water prior to completion of the annexation. In addition, the City has an existing agreement with the County that outlines the sharing of property and sales taxes on properties annexed into the City. The City's request of the County is to ensure there isn't an ongoing loss of tax revenue to the City by allowing construction of buildings on the properties prior to completing annexation due to the existing tax sharing agreement with the County. As part of this request, the City provided an exhibit (attached to this letter) that identifies the buildings that would be covered by the MOU.

My office has begun meeting with the Auditor and Assessor, who would both have a role in accomplishing the goal of the proposed MOU through tracking of property value assessments. A feasible implementation solution is still being discussed and we will more than likely need to craft alternative language to the draft you submitted that accomplishes the same revenue goal. In order to ensure that working out the mechanics and/or revised MOU language to accomplish the request doesn't slow down the planned building improvements, I provided the Board of Supervisors under Staff Member Reports at their May 23, 2023 meeting the background on what was being worked on and sought their consensus to support in concept the City's request; specifically explaining the goal of allowing the construction of buildings to proceed that don't result in tax revenue loss to the City as a result of construction occurring prior to annexation being complete. The Board provided unanimous consent for me to send this letter reflecting the conversation had with them and their support of what will be accomplished through an MOU that will be presented to them at a later date.

Sincerely,

Kevin Mallen
Yuba County Administrator

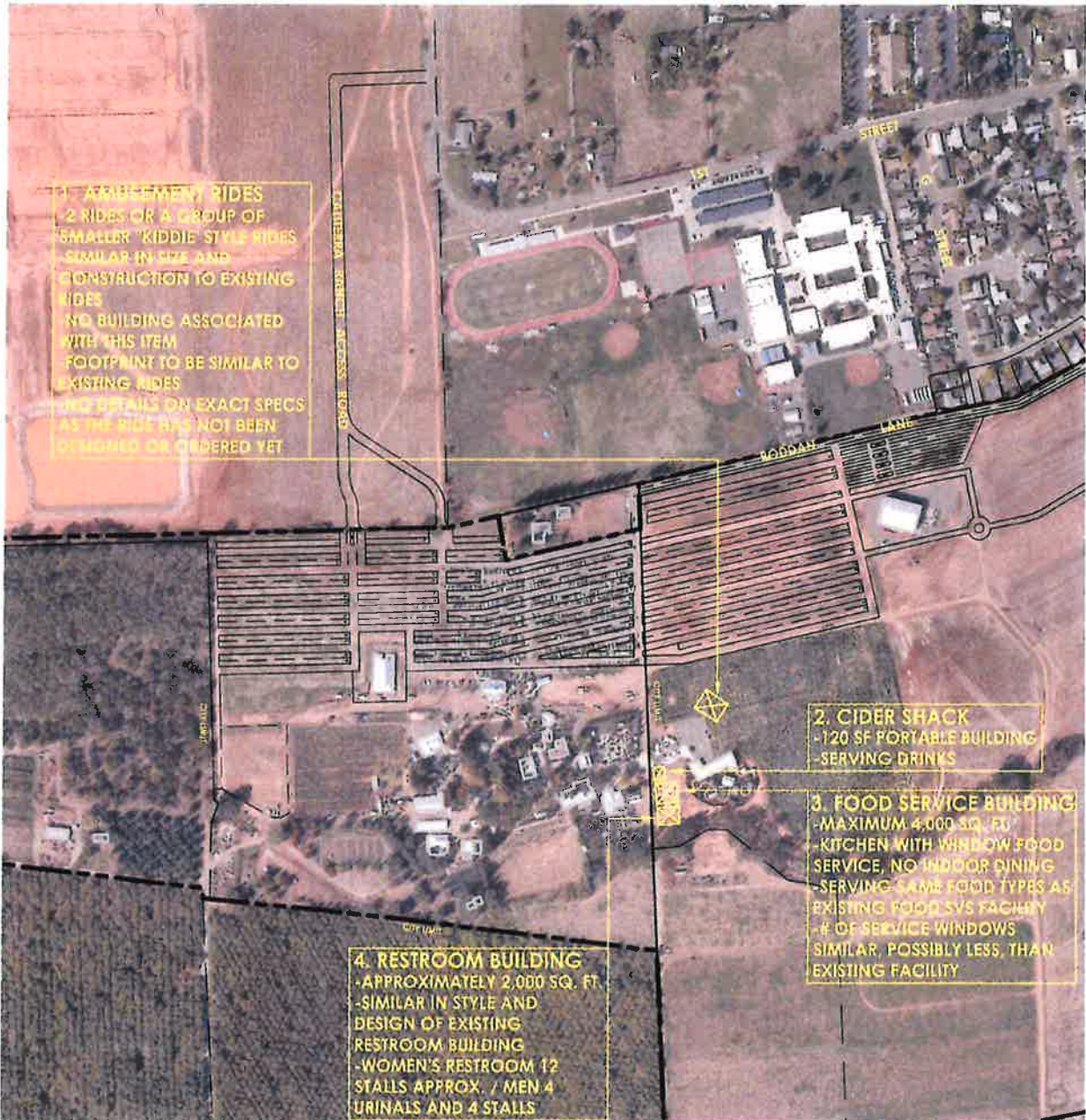
cc: Yuba County Board of Supervisors

EXHIBIT A

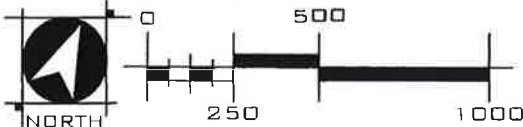
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