

BOARD OF YAKIMA COUNTY COMMISSIONERS

ORDINANCE 1-2014

IN THE MATTER OF AMENDING THE OFFICIAL ZONING MAP OF YAKIMA COUNTY

WHEREAS, Gilbert Orchards, Inc. and Sagehen, LLC submitted a minor rezone application (File Nos. ZON2013-00003 and SEP2013-00038) on October 25, 2013 to the Yakima County Public Services – Planning Division to rezone 1.8 acres of property that they own in Wiley City from R-1 (Single-Family Residential District) to SR (Suburban Residential District); and,

WHEREAS, in accordance with the State Environmental Policy Act (SEPA), YCC 16.04, and YCC 16B, the Yakima County SEPA Responsible Official issued a Determination of Non-Significance at the conclusion of conducting an environmental review on the proposed action to approve the application; and,

WHEREAS, in accordance with YCC 15A and YCC 16B, the Yakima County Administrative Official provided public notices of the application and the open record public hearing, requesting comments thereon; and,

WHEREAS, in accordance with YCC 15A and YCC 16B, the Yakima County Hearing Examiner conducted an open record public hearing on the application on January 16, 2014 and issued his recommendation to approve the requested rezone on January 28, 2014; and,

WHEREAS, after providing public notices in accordance with YCC 16B, the Board conducted a closed record public hearing on March 4, 2014 to act on the Hearing Examiner's recommendation in accordance with YCC 16B.03.030(1)(d); and,

WHEREAS, after closing the hearing, the Board deliberated and determined that the requested rezone should be approved; now, therefore,

BE IT HEREBY ORDAINED by the Board of County Commissioner of Yakima County, Washington that:

Section 1. Findings. The Board hereby makes the following findings:

- A. Findings, Conclusions, and Recommendation of the Hearing Examiner. The Board hereby adopts the Hearing Examiner's Recommendation dated January 28, 2014, including its Findings and Conclusions, attached hereto as Attachment A.
- B. State Environmental Policy Act (SEPA). The proposed amendment to Yakima County's official zoning map, adopted by YCC 15A, was subject to environmental review under

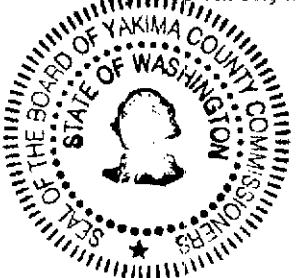
SEPA, RCW 43.21C. Yakima County's SEPA Responsible Official reviewed the proposed amendment in accordance with the provisions of YCC 16.04 and determined that approval of the rezone is not likely to have a probable significant adverse environmental impact. Accordingly, he issued a Determination of Non-Significance on December 9, 2013, which was not appealed to superior court within the prescribed time limits. The Board finds that environmental review is complete and adequate.

Section 2. YCC Title 15A Official Zoning Map Amendment. The official zoning map, as adopted by YCC 15A.03.040 and subsequently amended, is hereby further amended by rezoning the "Subject Area" depicted in Closed Record Hearing Exhibit 10, attached hereto as Attachment B, from R-1 (Single-Family Residential District) to SR (Suburban Residential District).

Section 3. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, sections, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to any other persons or circumstances.

Section 4. Effective Date. This ordinance shall be effective immediately.

DONE this 4th day of March, 2014

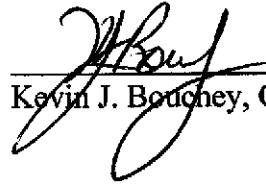


Attest: Tiera L. Girard
Clerk of the Board

Attachments to Ordinance:

Attachment A: *Hearing Examiner Recommendation*, dated January 28, 2014.

Attachment B: *Gilbert Rezone Aerial Photo, ZON2013-00003* – map depicting the area hereby rezoned from R-1 to SR.



Kevin J. Bouchey, Chairman



J. Rand Elliott, Commissioner



Michael D. Leita, Commissioner
*Constituting the Board of County Commissioners
for Yakima County, Washington*

Attachment A

County of Yakima, Washington
Office of the Hearing Examiner

| | | |
|--|---|------------------------------------|
| Application for a Minor Rezone |) | Yakima County File Nos. ZON13-003 |
| |) | |
| By Gilbert Orchards, Inc and Sagehen, LLC, by and through Boxwood, LLC, |) | |
| |) | |
| To Rezone Certain Property on Hughes Road near South Wiley Road |) | HEARING EXAMINER RECOMMENDATION |
| from R-1 to SR. |) | |
| |) | |

I. INTRODUCTION.

Joe Chauncey filed an application for to rezone certain property owned by Gilbert Orchards, Inc. and Sagehen, LLC R-1 to SR. No specific development is currently proposed in association with the rezone, although the applicants have indicated plans to apply for the Class 3 review of a proposed expansion onto the subject property of fruit storage and packing facilities located immediately to the north and west of the subject property. The rezone would allow the expansion if approved as Agricultural Related Industry, which is not a permitted use in the existing R-1 zone, but is a Class 3 use in the proposed SR zone. The several houses that are located on the properties are being moved from the site or demolished. One written public comment specific to the proposed rezone was offered by the Ahtanum Irrigation District but only pertained to the absence of the right to use irrigation district-delivered water on the property.

An open record hearing was conducted on the rezone application on January 16, 2014. A summary of the staff report was presented at the hearing by Phil Hoge. No public comment was offered at the hearing. The Hearing Examiner made an unaccompanied visit to the subject property on January 14, 2014.

II. SUMMARY OF RECOMMENDATION.

This request for a minor rezone should be approved.

Based on the staff report and exhibits, the viewing of the site, consideration of information received at the open record hearing and in writing, and a review of pertinent development regulations, the *Yakima Urban Area Comprehensive Plan 2025 (YUACP)*, and the *West Valley Neighborhood Plan (WVNP)* (adopted as a subarea plan of the YUACP in 2011), the Hearing Examiner makes the following

III. FINDINGS.

1. APPLICANT AND PROPERTY OWNER.

The application was filed by Joe Chauncey of Boxwood, LLC, 1525 Fourth Avenue, Suite 401, Seattle, WA 98101, on behalf of property owners Gilbert Orchards, Inc. and Sagehen, LLC, both at 10804 Gilbert Road, Yakima, WA 98903.

2. LOCATION AND PARCEL NUMBERS.

The subject area is located on the south side of Hughes Road, about 720 feet west of South Wiley Road within the community of Wiley City, WA. Parcel Numbers are 171211-11009, -11010, -11011, -11013, -11030, -11032, and -11033 (owned by Gilbert Orchards, Inc) and 171211-11012 (owned by Sagehen LLC).

3. PROPERTY DESCRIPTION.

The subject area includes eight parcels totaling 1.64 acres plus 0.19 acres of adjacent and interior road right-of-way, most of which was recently vacated by the Board of County Commissioners (BOCC) upon a December 2013 petition from Gilbert Orchards. The subject parcels contain residential structures that were in place at the time the property was initially zoned R-1. All of the properties were acquired by the current owners during 2012 and 2013, based on public records available at the Yakima County Land Information Portal (www.yakimap.com). The subject area is flat and is served by privately-maintained dirt roads, Nob Hill Water, electric lines, and phone lines.

4. APPLICATION.

The application is for a site-specific, non-project minor zoning map amendment that would change the zoning of the subject property from Single Family Residential (R-1) to Suburban Residential (SR). The application was accompanied by the State Environmental Policy Act environmental checklist, together a non-project environmental review supplement. The application materials included the narratives partially responding to the requirements of YCC 15A.23.030(5).

5. HEARING EXAMINER JURISDICTION.

According to Table III-11 ("Future Land Use and Current Zoning Comparison") of the Yakima Urban Area Comprehensive Plan 2025, the requested SR zoning district is one of the zoning districts that is consistent with and implements the underlying "Low Density Residential" comprehensive plan land use designation. Therefore, this application is classified by YCC 16B

("Project Permit Administration") as a minor rezone, on which the Hearing Examiner is authorized to render a recommendation to the Board of Yakima County Commissioners (BOCC). The Hearing Examiner accordingly has jurisdiction to conduct open record hearings and issue recommendations on applications subject to Type 4 review. YCC 16B.03.030 (Table 3-1). The recommendation is to include the considerations listed in YCC 15A.23.030(5).

6. LAND USE, AND ZONING AND COMPREHENSIVE PLAN DESIGNATIONS.

The current zoning districts, comprehensive plan designations, and land uses for the subject area and adjacent parcels are indicated in the table below:

| Location | Zoning | Future Land Use Designation ¹ | Land Use |
|------------------|--------|--|---|
| Subject Property | R-1 | Low Density Residential | Single-family homes and accessory structures |
| North | SR | Low Density Residential | Gilbert Orchards, Inc. cold storage, warehouse/packing, shipping facility |
| East | R-1 | Low Density Residential | Ahtanum Valley Elementary School |
| West | SR | Low Density Residential | Gilbert Orchards, Inc. cold storage, warehouse/packing, shipping facility |
| South | R-1 | Low Density Residential | Single-family home. |

Based on Yakima Urban Area Comprehensive Plan 2025/West Valley Neighborhood Plan.

7. PUBLIC NOTICE.

Notices for the open record public hearing to be held on January 16, 2014 were provided in accordance with the applicable ordinance requirements as follows:

- Mailing of hearing notice to property owners within 300 feet: December 9, 2013;
- Publishing of hearing notice in the Yakima Herald-Republic: December 14, 2013;
- Posting of hearing notice on the subject property: December 31, 2013.

8. ENVIRONMENTAL REVIEW.

The proposed minor rezone is considered a nonproject action subject to review under the State Environmental Policy Act and implementing rules adopted in Chapter 16.04 YCC. On December 9, 2013, Yakima County's SEPA Responsible Official issued a Determination of Non-significance (SEP2013-00038) ("DNS") on the proposal, and thereby determined that it will not have a probable significant adverse impact on the environment negating the need for an Environmental Impact Statement under RCW 43.21C.030(2)(c). The 14-day appeal period for the DNS ended on December 23, 2013, with no appeal being filed.

The Staff Report notes that, although information for a potential Class 3 use on the subject property was included in the submittal materials, such use was not reviewed under SEPA. The report further indicates that if the rezone is approved and a Class 3 application to expand the shipping function and open air box/packaging storage is subsequently submitted, additional environmental review to consider the impacts of such application will be necessary under SEPA. This treatment appears consistent with the description of the action on the final DNS. Accordingly, this recommendation is not informed by any potential impacts associated with any future specific Class 3 review project effects and should not be construed to preclude requirements for such future environmental review or any other project permit review requirements.

9. REZONE ANALYSIS

The considerations and related analyses applicable to this rezone request based on YCC 15A.23.030(5) are set out as follows:

9.1 The testimony at the public hearing:

No public testimony concerning the rezone proposal was offered at the hearing. The County supplemented the hearing exhibits with an aerial photograph showing the pattern of property parcel boundaries following the vacation of the right of way.

9.2 The suitability of the property in question for uses permitted under the proposed zoning.

There are a number of residential and non-residentially oriented land uses that could be requested by the applicant for the property if the rezone to SR-3 is approved (based on Table 4-1 in YCC 15A). Examples of such uses include:

As Class 1 ("permitted") uses:

- Agriculture, Horticulture, General Farming (not feedlots and stockyards);
- Agricultural Building;
- Agricultural Stand;
- Animal Husbandry;
- Floriculture, Aquaculture;
- Day Care Facilities (not home occupation): Family In-Home;
- Group Homes (six or fewer), Adult Family Home;
- Detached Single-Family Dwelling;
- Single-Wide Manufactured Home meeting siting criteria in 15A.04.160(c);
- Multi-Wide Manufactured Home meeting siting criteria in 15A.04.160(c);
- Towers <35' tall subject to 15A.04.180;

As Class 2 ("generally permitted") uses:

- Agricultural Market;

- Winery and Brewery – Resort/Destination;
- Parks;
- Churches, Synagogues, & Temples;
- Community Center, Meeting Halls, Fraternal Organizations;
- Stockpiling of Earthen Materials Not within FEMA Flood Plain;
- Accessory Dwelling Unit;
- Detached Single-Family Dwelling (zero lot line);
- Attached Single-Family Dwelling, Common Wall;
- Single-Wide Manufactured Home not meeting siting criteria in 15A.04.160(c);
- Multi-Wide Manufactured Home not meeting siting criteria in 15A.04.160(c);
- Retirement Homes;
- Temporary Hardship Units;
- Bed and Breakfast Inn;
- Towers >35' tall & <70' tall subject to 15A.04.180;
- Pet Daycare/Animal Training;

As Class 3 ("generally incompatible") uses:

- Agricultural Related Industries;
- Concentrated Feeding Operation;
- Fruit Bin Sales/Storage;
- Campground;
- Drive in Theatres;
- Golf Courses, Clubhouses, Golf Driving Ranges;
- Cemetery/Crematorium with Funeral Home;
- Correctional Facilities;
- Day Care Center;
- Funeral Home not associated with Cemetery/Crematorium;
- Hospital Outside Institutional Overlay;
- Libraries;
- Police, Fire Stations, Ambulance Service;
- Schools: Elementary and Middle; Senior High School; Business Schools;
- Community College/University – Outside Institutional Overlay;
- Vocational Schools;
- Wastewater Sprayfield;
- Zoo;
- Boarding House;
- Asphalt Paving and Roofing Materials, Rock Crushing;
- Mining Including Sand and Gravel Pits;
- Two-Family Dwelling (Duplex);
- Converted Dwelling;
- Mobile Home Park;
- Animal Clinic/Hospital/Veterinarian;
- Auction House for Goods;
- Towers >70' tall subject to 15A.04.180;
- Kennels;

- Nursery;
- Radio/TV Studio;
- Utility Services (substations, etc.).

The subject area is flat and is served by privately-maintained dirt roads, Nob Hill Water, electric lines, and phone lines. The subject area is physically suitable for most the Class 1 and 2 uses in the SR zoning district, though certain of the uses would likely require the development of additional sewage treatment capability for economic viability.

The property is suitable for some of the Class 3 uses in the SR zoning district; however, its small size, lack of sewer service, proximity to an elementary school, and/or isolated location would likely limit its suitability for many of the Class 3 uses, e.g., Drive in Theatre, Golf Course, Hospital, Community College/University, Wastewater Sprayfield, and Mobile Home Park. These same limitations also appear to be applicable to other SR-zoned properties in the area, particularly the parcel to the north. The parcel sizes do not appear to be substantially different from the parcel to the north, given the opportunity for boundary line adjustments or mergers under Chapter 14 YCC.

The subject property is located adjacent to the applicant's existing Agricultural Related Industry facilities and there is no physical condition of the property that indicates that similar use of the subject property could not be integrated into the existing use. Therefore, there is no basis for concluding that the property is physically unsuitable for such a use, though as noted, such a use would be subject to review as would any other Class 3 use in the zoning district.

9.3. The recommendation from interested agencies and departments.

No recommendation has been received from agencies or departments on the proposed rezone request.

9.4. The extent to which the proposed amendments are in compliance with and/or deviate from the goals and policies as adopted in the Comprehensive Plans, adopted neighborhood plans and the intent of Title 15A YCC.

The subject property has been designated as Low Density Residential on the Future Land Use Map included in the Yakima Urban Area Comprehensive Plan 2025 (*YUACP*). The *YUACP* also includes a table that matches potential zoning districts with Future Land Use Map designations of property. (Table III-11 at p. III-18 in the *YUACP*). The table indicates that SR zoning may be appropriate for Low Density Residential lands.

Most land within the area governed by the *WVNP* was zoned "Single-Family Residential" (R-1) as a low-intensity place-holder. (*WVNP* p.14). If encouraging continued operations, expansions, or modernizations of these existing agricultural warehouses and processing facilities is desired in neighborhoods where the Industrial zone is not desired, an alternative strategy is to use the Suburban Residential zone, which allows such uses as Class 3 permitted uses by YCC Title 15A. (*WVNP* p.16).

Currently applicable Goals and policies based on the *WVNP* include the following:

- **GOAL 2.3:** Provide for the continued viability of agricultural warehouses and processing facilities
- **Policy 2.3.1:** Apply zoning districts to agricultural warehouses and processing facilities that will make them permitted uses.

In addition, overall policies in the *YUACP* include Policy 3.13.6, providing that “[new] storage, warehousing, and light industrial development shall be located in clusters with existing development.” As a consequence of these goals and policies, the fact that the minor reduction of eight small parcels from the single family residential lost inventory does not run against the proposed rezone. The original R-1 zoning designation was a place holder, and the change to SR would allow potential expansion of existing agricultural facilities and foster continued viability of such facilities while remaining sensitive to impacts to nearby residential uses through compatibility review for new facilities. The property proposed for rezoning is also immediately adjacent to properties already zoned SR, thus fostering the clustering of such agricultural facilities if the owners so desire.

With regard to compliance with the intent of Title 15A YCC, the overall intent of the ordinance is to “[achieve] public and private land use decisions consistent with the goals, policies and objectives of...the Yakima Urban Area Comprehensive Plan, including those of the West Valley Neighborhood Plan ...[.]” YCC 15A.01.030(1). The ordinance also “[encourages] the location and use of structures and land for commerce, industry and residences in districts where they are compatible with neighboring land uses...[and] development in areas where adequate public services including water and sewer...can be provided; and limiting development in areas where these facilities are not provided.” YCC 15A.01.030(3) and (4). YCC 15A.03.030 provides specific intent statements to consider for prospective areas to be zoned SR and R-1. The current residential density exceeds the intended density for both zoning districts in light of the lack of public sewer facilities. Thus, at the least, the proposed zoning would allow a revisiting of uses to better fit with the intent of the zoning ordinance to address the current density and to encourage compatible commerce and industry in the vicinity as addressed in the *WVNP*.

9.5 The adequacy and availability of public facilities, such as roads, sewer, water and other required public services.

The subject property is currently served by privately-maintained dirt roads, Nob Hill Water, telephone lines, and electric lines. There is no sewer service. These existing facilities would apparently be adequate for reduced residential density consistent with the SR district, and for many of the other uses that would be permitted under Class 1, 2 or 3 review, though not necessarily all of them. Similarly, the services and facilities would be suitable for some but not all of the Class 1, 2 and 3 uses in the R-1, in addition to lower density residential development. There appears to be no meaningful distinction between the adequacy of services for the one zone

versus the other for purposes of rendering a recommendation on the pending application for rezone.

9.6 The compatibility of the proposed zone change and associated uses with neighboring land uses.

Some of the uses that would be Class 1 uses in the SR would be subject to a higher level of review to ensure compatibility with neighboring uses if they were proposed in the R-1. However, compatibility is a general standard for review of a proposed land use action. As such, it is generally incumbent on a local government to show factually that a proposed use (or set of uses in the case of a rezone) is not compatible. See *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 796-797, 903 P.2d 986 (Wash. 1995). In the present case, there has been no public comment on the impacts to neighboring uses from a lesser degree of compatibility review that would result from the rezoning to SR. All potential uses in the SR that would not be permissible in the R-1 have been made subject to Class 3 review by Table 4-1 in Chapter 15A.04 YCC. In addition, the subject set of properties is already bounded on the north and west by properties that are zoned SR, and nothing in the record indicates that this has resulted in incompatibilities with neighboring land uses in the vicinity.

9.7 The public need for the proposed change.

As noted above, the original designation of many lands within the *WVNP* was as a place-holder. The subject rezone is immediately adjacent to other SR properties. In addition, the parcel size and right of way that were the basis for the original designation of the property have been altered as a result of the applicants' acquisition of all of the properties, and the interior right of way that serve the parcels have been vacated by the County. Accordingly, the change in zoning provides flexibility for the land owners to pursue a wider range of uses consistent with Goal 2.3 of the *WVNP* (public policy should "[provide] for the continued viability of agricultural warehouses and processing facilities...").

9.8 Consistency with the criteria set forth in Chapter 16B.10 YCC.

The criteria listed in Chapter 16B.10 apply to rezones associated with comprehensive plan amendments, and are not applicable to minor rezone requests.

From the foregoing findings, the Hearing Examiner makes the following

IV. CONCLUSIONS.

1. The Hearing Examiner has jurisdiction to conduct an open record hearing on the application for a minor rezone and make a recommendation to the Board of County Commissioners.
2. The subject property is suitable for the uses permitted under the proposed zoning, particularly those permitted after Class 1 or Class 2 review.

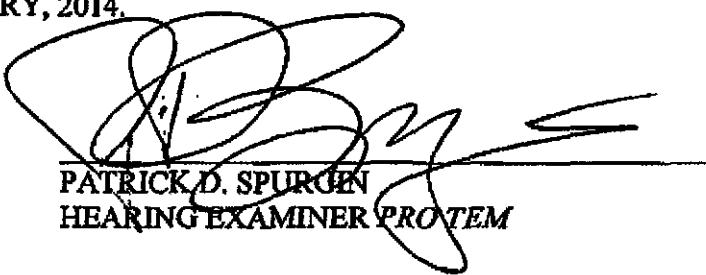
3. No governmental entities have recommended denial of the requested minor rezone.
4. The requested rezone complies with the *YUACP* and *WVNP* and does not deviate from the intent of the Urban Area Zoning Ordinance.
5. The existing or readily available public services and facilities are reasonably adequate to support the uses that would be permitted under the proposed zoning.
6. The proposed zone change and associated uses appear to be compatible with neighboring land uses based on the large degree of similarity between the general types of potential uses and current SR uses in the vicinity, the lack of any identified incompatibility among current uses in the vicinity, and the lack of any adverse public comment on the proposal.
7. The compatibility with neighboring uses of specific uses proposed in the future can be determined through appropriate application for review of those specific uses.
8. Any finding in this recommendation that should be more properly considered a conclusion should be construed as such, and any conclusion or other information in this recommendation that should properly be considered a finding should be construed as such.

Based on the foregoing Findings and Conclusions, the Hearing Examiner makes the following

V. RECOMMENDATION.

The request to rezone the subject property as described above and depicted in Hearing Exhibit 10 should be APPROVED.

DATED THIS 28TH DAY OF JANUARY, 2014.



PATRICK D. SPURGEN
HEARING EXAMINER PRO TEM

Attachment B



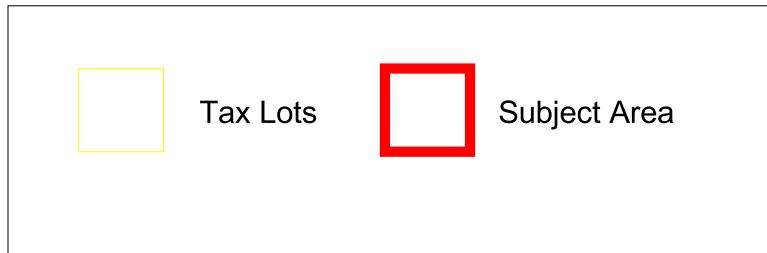
YAKIMA COUNTY

Gilbert Rezone
Aerial Photo
ZON2013-00003

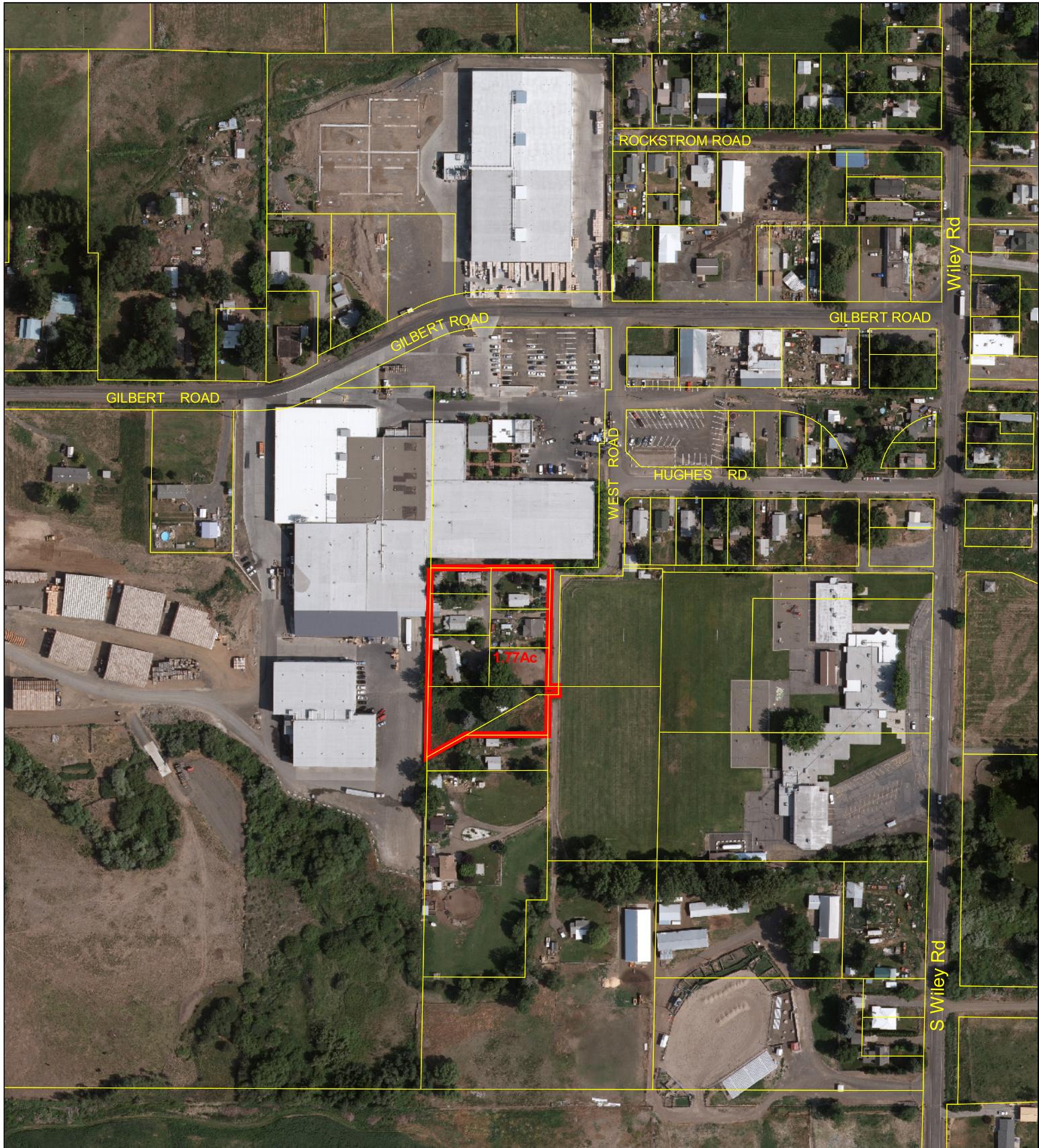
GEOGRAPHIC INFORMATION SERVICES

Parcel Lot lines are for visual display
only. Do not use for legal purposes.

0 25 50 Feet
1" = 50 feet



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The County cannot accept responsibility for any errors.
Therefore, there are no warranties for this product.
Plot date: Jan 15, 2014; gilbert_aerial



GEOGRAPHIC INFORMATION SERVICES

Parcel Lot lines are for visual display
only. Do not use for legal purposes.

0 75 150 225 Feet
1" = 250 feet

YAKIMA COUNTY

Gilbert Rezone
Aerial Photo - 2013
ZON2013-00003

Tax Lots

Gilbertrezone.shp



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