

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
SPOKANE DISTRICT, WASHINGTON STATE**

ENVIRONMENTAL ASSESSMENT TITLE PAGE

ENVIRONMENTAL ASSESSMENT NO. OR-134-03-EA-09	SERIAL NUMBER WAOR 58296	DATE OF REPORT July 10, 2003
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RESOURCE AREA Wenatchee	COUNTY Chelan
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TYPE OF ACTION Land Use Permit for Orchard
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APPLICANT'S NAME Steve Shiflett Orchard, Inc. c/o Seth Shiflett	ADDRESS (Include zip code) 4862 Stemilt Creek Road Wenatchee, Washington 98801
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DATE(S) OF FIELD EXAMINATION November 25, 2002, December 20, 2002
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LANDS INVOLVED

Township	Range	Meridian	Section	Subdivision	Acres
21 N.	20 E.	Willamette	2	Portion of the SW ¹ / ₄ SE ¹ / ₄	±6

PURPOSE OF REPORT:
To determine the feasibility of granting a land use permit to Steve Shiflett Orchard, Inc., for operation and maintenance of an existing, unauthorized cherry orchard.

I. INTRODUCTION

A. Background Information and Need for the Proposed Action

This report addresses a land use permit application by Steve Shiflett Orchard, Inc., to obtain an authorization for use of approximately 6 acres of public land located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 2, T. 21 N., R. 20 E., W. M., Chelan County, Washington (see maps in appendix). The application was filed by Shifletts at the urging of BLM, in order to provide a short term solution to an existing orchard trespass. The subject tract is part of a larger BLM parcel that comprises just over 240 acres.

Since at least 1994, the BLM has suspected that a portion of the public land here was in orchard. However, we did not have the benefit of a recent survey and corner monuments. In 1994, the trespass appeared to include just a deer fence and 1-2 acres of fruit orchard, respectively, on BLM lands described as Lot 2 (NW $\frac{1}{4}$ NE $\frac{1}{4}$), and the SW $\frac{1}{4}$ SE $\frac{1}{4}$, of section 2.

In the fall of 2002, BLM learned of a short plat application filed with Chelan County by Shifletts, to segregate a portion of their property described as the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of section 2, which is adjacent to the east boundary of BLM's SW $\frac{1}{4}$ SE $\frac{1}{4}$. After BLM submitted a comment letter to Chelan County (see casefile), we were contacted by Jane Shiflett on November 20, 2002. Chelan County told the Shifletts they would not approve the short plat until possible boundary issues between Shifletts and BLM were resolved. Shortly thereafter, the BLM property was inspected and it was discovered that since 1994, more of it had been planted to orchard. Because Seth Shiflett had obtained a survey for the proposed short plat, it became possible to determine the east and north boundaries of BLM's SW $\frac{1}{4}$ SE $\frac{1}{4}$. At BLM's request, Seth Shiflett obtained GPS acreage figures from the company that supplied his short plat survey (Northwest Geodimensions). The older, lower orchard (that existed in 1994) constitutes 1.40 acres, and a newer, upper orchard, planted in 1999, comprises 4.03 acres. Both orchards are extensions of larger adjoining blocks located on Shiflett owned land. Besides the orchard, roughly 0.5 acres of land is taken up by access roads, fences and water lines.

Besides orchard related improvements on the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Shifletts also have a deer fence located on BLM's Lot 2. This portion of the deer fence would not be authorized by this action. Instead, through the trespass resolution process, Shifletts would be required to move it onto their side of the property line.

B. Conformance With Land Use Plan

The issuance of a land use permit to resolve a trespass has been reviewed and determined to be in conformance with the trespass abatement policy approved by the Spokane Resource Management Plan, as amended (December 1992). See page 50 in the August 1985 RMP document.

C. Relationship to Existing Statutes, Regulations, or Other Plans

Granting land use permits for this type of use is authorized by Section 302 of the Federal Land Policy and Management Act of 1976 (43 USC 1732). The proposal is in conformance with Chelan County zoning regulations.

II. PROPOSED ACTION AND ALTERNATIVES

A. Proposed Action

The proposed action is to grant a land use permit to Steve Shiflett Orchard, Inc., to authorize a cherry orchard and certain ancillary facilities currently located on approximately six acres of public land described as a portions of the SW¹/₄SE¹/₄, Sec. 2, T.21N., R.20E., W. M. The permit would be issued for a term of three years, and could be renewed. The permit would authorize continued maintenance and harvesting of the orchard, as well as use of an existing underground irrigation system, access roads, and deer fences located on this tract. No new improvements would be authorized. The permit would be subject to a set of special stipulations, an example of which is included in the appendix.

Project Design Features:

If cultural or paleontological resources are located in the project area during orchard operation and maintenance activities, changes may be needed to avoid the resource. If cultural sites cannot be avoided, consultation with the Washington State Office of Archaeology and Historic Preservation, tribal governments or historical societies as appropriate, and in some cases the Advisory Council on Historic Preservation would be undertaken before such activities were allowed to continue.

The permit issued by BLM would include the stipulations shown in the appendix to this EA. These are in addition to a set of pre-printed stipulations included on BLM's standard permit form.

B. Alternatives

The alternative to the proposed action is no action. No action means the permit application would be rejected, and Shifletts would likely be required to remove the orchard and ancillary improvements.

III. AFFECTED ENVIRONMENT

A. Physical Environment

General Setting: The subject public land lies on the incised easterly side of a northeasterly trending ridge (known as "Wenatchee Heights") that descends from Naneum Ridge towards the Columbia River. Runoff from the tract drains to Stemilt Creek. The land is approximately three miles straight south from Wenatchee,

Washington. The tract is very steep sloping except for the southeast and northeast portions, which are strongly sloping to moderately steep.

Vegetation: Vegetation in this area is generally shrub-steppe. The dominant native species are bluebunch wheatgrass and big sagebrush. Because of past (and current) grazing disturbance, cheatgrass is present throughout most of the public land tract, and diffuse knapweed is found in the flatter areas. A few ponderosa pine and Douglas fir trees are scattered over the parcel. Elsewhere, on a drainage to the west, a healthy riparian zone has been inventoried on the public land tract. Portions of the land were inventoried in 1988 and 2001 for special status species, but none were located.

Two areas of cherry orchard lie on the portion of the BLM land improved by Shifletts. According to Seth Shiflett, the lower orchard (1.40 acres) consists of Lapin cherries, and was planted in 1992. The upper orchard was planted in 1999 with Sweetheart cherries. It takes up 4.03 acres of BLM land.

Wildlife: Wildlife in the vicinity are species typically found in association with agriculture and shrub-steppe. Examples include mule deer, robin, starling, waxwing, western kingbird, Say's phoebe, and house finch. Shrub-steppe habitat has been degraded by historical uses and does not support shrub-steppe obligates such as Brewer's sparrow. The riparian habitat in the western portion of the parcel supports a greater diversity of species including black-headed grosbeak, Bullock's oriole, brown-headed cowbird, and black-billed magpie. Golden eagles are the only special status species regularly observed in the area. The nearest nests are located six miles from the parcel.

Cultural Resources: The area of the proposed permit is located within the traditional use area of the Wenatchi band of Indians and within the ceded lands of the Yakama Treaty of 1855. Archival literature, records and database review was completed for the undertaking. BLM class III intensive pedestrian inventories were conducted on the BLM parcel in 1988 and 1995. No historically significant cultural resources were identified on the parcel or the area of potential effect. No traditional cultural properties or sacred areas have been identified within the proposed permit area.

B. Land Status

The Master Title Plats indicate the surface and mineral estate of the above described public lands are owned by the United States. The land is leased for livestock grazing to Tom Shiflett (G.R.#3600945). Although at one time, Asamera Minerals, Inc., held hardrock mining claims on the tract and conducted exploration (drilling) activities, there are currently no mining claims of record. There are no other encumbrances known to affect the subject property.

Primary Use of Subject Public Land: This tract is primarily used for open space, wildlife habitat, and grazing. It is an isolated parcel; there are no other public lands located nearby. The parcel was previously included in the Palmer Mountain land

exchange (WAOR 50466), but never traded. It also was considered in the Hallauer land exchange (WAOR 56094), but dropped out due to lack of interest by Hallauer. In the late 1980's, Asamera drilled several test holes to explore hardrock mineral potential. Their activities took place on the flatter, more accessible portions of the parcel.

IV. ENVIRONMENTAL IMPACTS

A. Proposed Action

Approval of the proposed action would mean the authorization of existing orchard on 5.43 acres of BLM land. Along with the orchard, Shifletts would continue to use and maintain access roads, irrigation water improvements and deer fences located adjacent to and within the orchards. These improvements probably cover another 0.5 acre or more of public land. Since the authorization contemplated would only allow the current uses, there would be few additional impacts from this action. Impacts would include small amounts of soil erosion from dirt access roads and increases in invasive and noxious weeds in remnant areas located between the orchards, access roads and fences. Other possible impacts would be the continued exclusion of shrub-steppe wildlife from the area devoted to the orchard, exclusion of mule deer by fences, and any impact of orchard spray drift upon vegetation and wildlife on the adjacent undeveloped public land. Lastly, a small amount of soil and vegetation disturbance would result from moving the deer fence on Lot 2 to the Shiflett side of the actual property line. However, movement of the fence should help to lessen future disturbance on this portion of the public land, whether intentional or inadvertent.

The following critical elements, not discussed above, have been analyzed and would not be affected by this action: Air and water quality, areas of critical environmental concern, farmlands, floodplains, environmental justice, wastes (hazardous or solid), visual resources, wetlands/riparian zones, wild and scenic rivers, wilderness values, water quality (ground and surface), and paleontological resources.

B. Alternatives

If the no action alternative is pursued, it would result in short term impacts to the public land tract through soil disturbance caused by removal of the orchard and the rehabilitation of the land.

V. COORDINATION WITH OTHER AGENCIES, GROUPS, OR INDIVIDUALS

A. Spokane District personnel who provided input to this EA:

- Pamela Camp, Botanist, Wenatchee Field Office
- Neal Hedges, Wildlife Biologist, Wenatchee Field Office
- Rich Bailey, Spokane District Archaeologist
- Jim Fisher, Manager, Wenatchee Field Office

B. Consultation has been initiated with the following Native American Tribal governments:

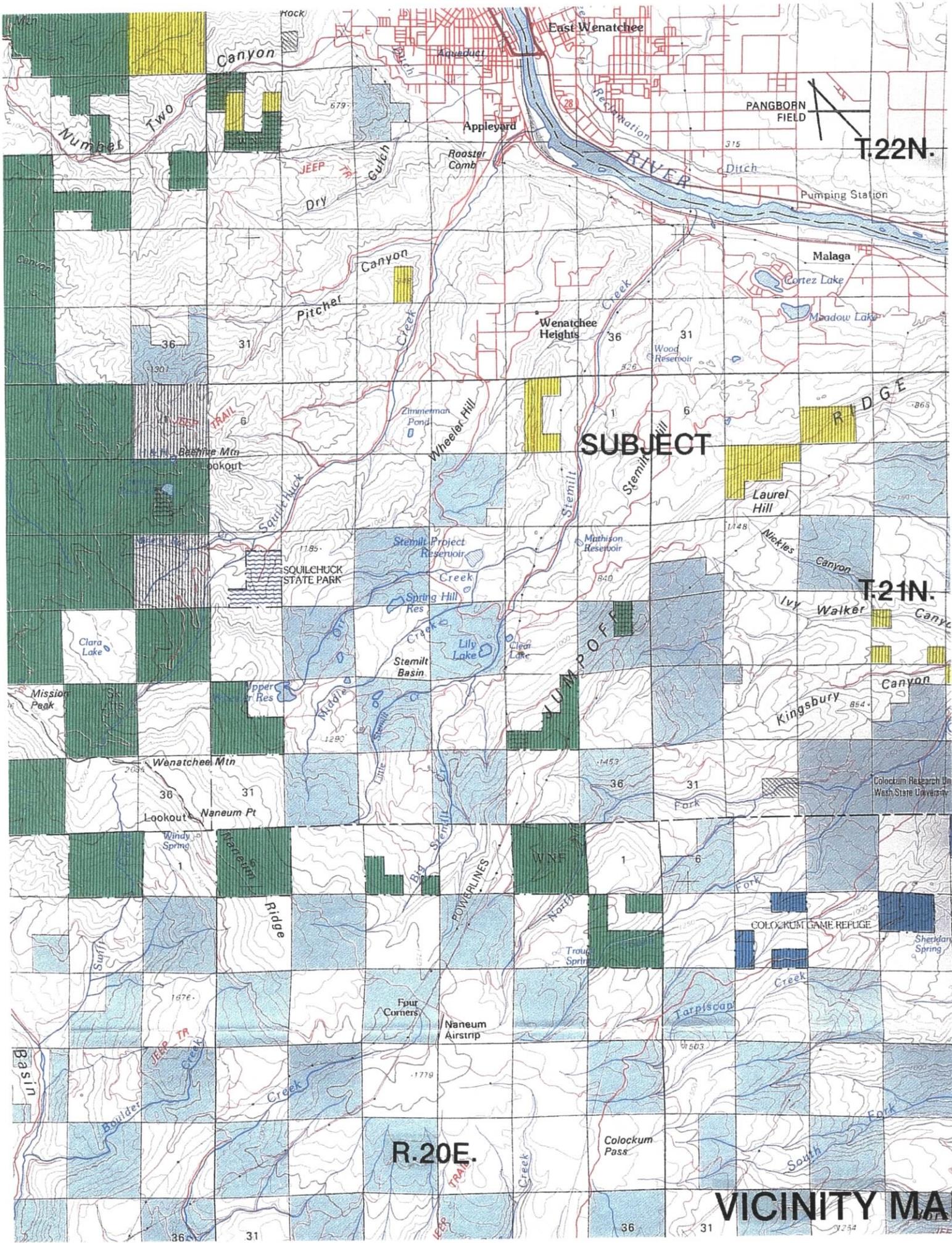
- Confederated Tribes of the Colville Reservation
- Yakama Nation

EA prepared by: William Schurger

Date: July 10, 2003

Appendix

1.....	Vicinity Map
2.....	Topographic Map
3.....	Survey Map
4.....	Special Stipulations for Orchard Permits

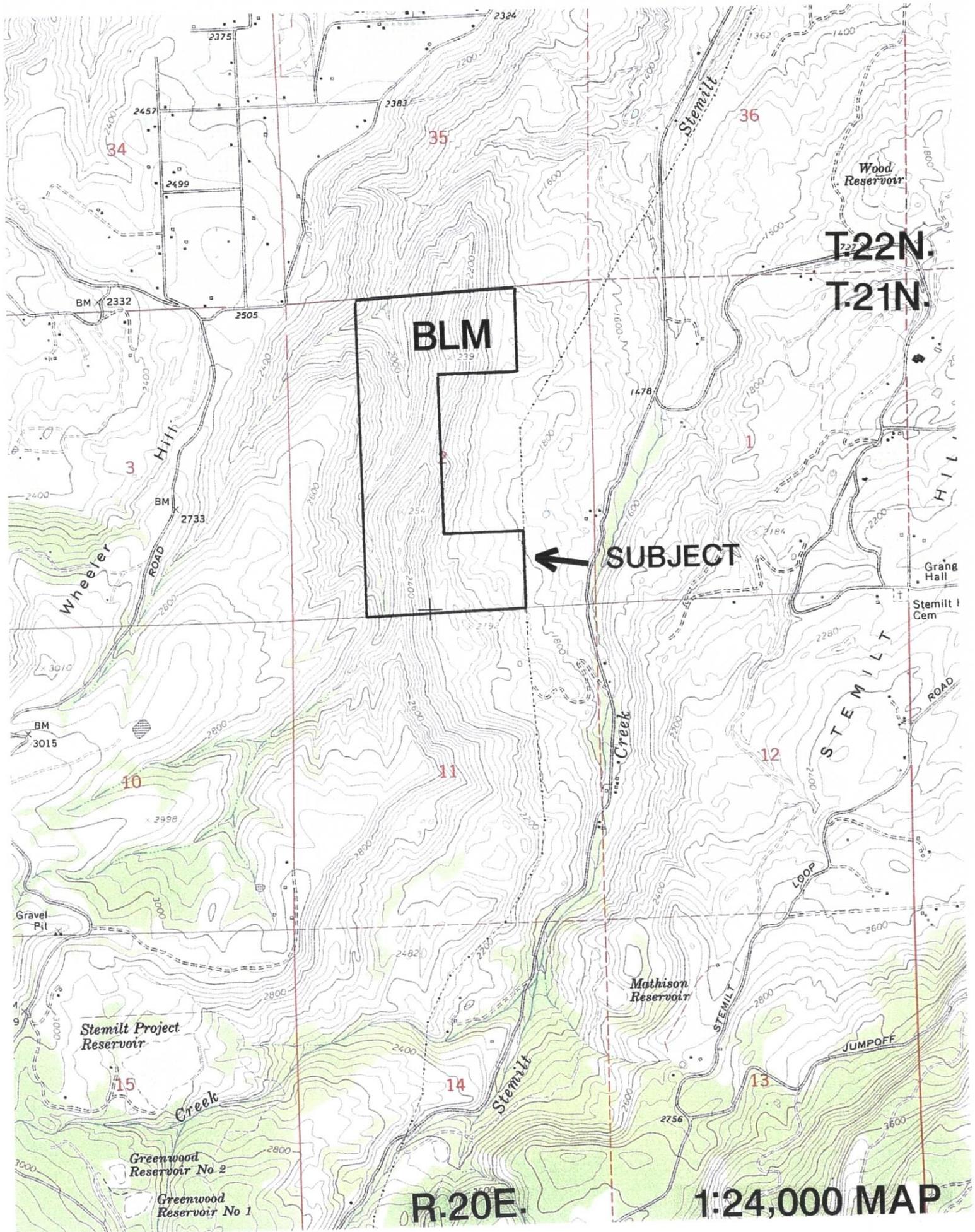


T.22N.

T.21N.

R.20E.

VICINITY MAP



BLM

← SUBJECT

**T.22N.
T.21N.**

R.20E.

1:24,000 MAP

NORTHWEST QUADRANT

WASHINGTON

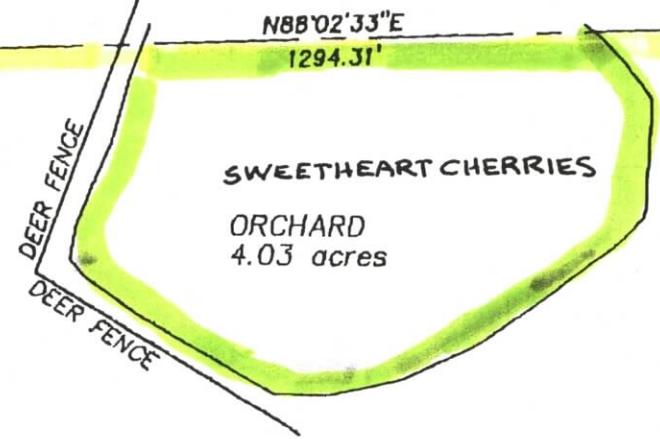
SHIFLETT
BLM ORCHARD AREA

CHELAN COUNTY

02019-03
PROJ. NO.
DATE: 12/27/2002
PLC: SHIFLETT-BASELINE

OWNER:

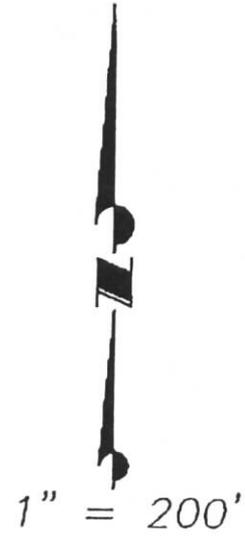
OWNER: SHIFLETT



SW 1/4 SE 1/4
SECTION 2, T. 21 N., R. 20 E., W.M.

PARCEL
NUMBER
212002000100
OWNER: US GOVT.

BLM



S00°17'33"E
1327.26'

S00°17'33"E
1327.26'

S88°12'27"W
1292.58'

S88°12'27"W
286.66'

1/16

650.24'

680.79'

N00°13'21"W

N00°13'21"W

Triple power lines

EXISTING
ROAD

SPECIAL STIPULATIONS FOR AGRICULTURAL PERMITS

1. The permittee agrees:
 - (a) Except for harvesting related activity and maintenance of existing facilities, no other improvements, buildings, or structures, or travel houses shall be constructed or placed on the permitted lands without the written consent of the authorized officer of the Bureau of Land Management (BLM). Plans must be submitted to the office which issued the permit for approval in advance of any new construction or remodeling.
 - (b) To pay rental annually, within 30 days of notification of the amount due.
 - (c) To keep the premises in a neat and orderly condition.
 - (d) Not to commit waste or injury to the land, or to use it for any other purpose than the authorized use.
 - (e) Not to close or obstruct in any manner, or erect or maintain signs, buildings, or other structures on any highways, roads or trails commonly in public use.
 - (f) To comply with air and water quality standards established pursuant to applicable Federal and State law.
 - (g) To comply with State standards for public health and safety, environmental protection, siting, construction, operation and maintenance of, or for, such use if those standards are more stringent than applicable Federal standards.
2. Annual rent on this permit will be based on a percentage of the gross receipts obtained by the permittee. The permittee is responsible for informing the BLM's authorized representative of the yearly yield per acre and the price received per crop unit. This information is due as soon as a substantial amount of the crop has been sold, but no later than December 1st of the year of harvest.
3. The rental charged on this permit may be adjusted periodically to reflect current fair market value.
4.
 - (a) This permit is being used as an intermediate solution to resolve trespass No. WAOR 50793. **Therefore, no new developments on the subject public land are authorized. The definition of new development includes, but is not limited to, mass replacement of orchard trees due to decadence, disease, weather, insect or other damage, or a desire to change tree species.**
 - (b) Nonuse of the land for a period of two or more consecutive calendar years will result in cancellation of the permit.
 - (c) If the existing improvements, or a substantial portion thereof, are destroyed or damaged for any reason to the extent that they become unusable, as determined by the Authorized Officer of the BLM, they will not be replaced and the permit will be cancelled.
 - (d) Upon the termination or cancellation of this permit, the permittee shall have 60 days to remove all improvements from the land and shall restore the land as directed by the BLM's authorized officer. If the permittee fails to remove all improvements within a reasonable period, they shall become the property of the United States. Failure to remove improvements and restore the site as appropriate shall make the permittee liable for the cost of such removal and restoration.

5. The United States reserves the right to use the public lands or to authorize their use by the general public in any way compatible or consistent with the authorized land use.
6. The permittee agrees to comply with all applicable State and Federal laws and regulations concerning the use of pesticides, including insecticides, herbicides, fungicides, rodenticides, and other similar substances. Prior to the use of such pesticides on the permit area, the permittee shall obtain from the Authorized Officer of the BLM, approval, in writing of a written plan for such use. The plan shall state the type and quantity of material to be used, the pest to be controlled, the method of application and such other information as the Authorized Officer of the BLM may require. All use of pesticides on or near the permit area shall be in accordance with the approved plan. If the use of a pesticide is prohibited by the Secretary of the Interior, it shall not be used.
7. The permittee may not release any hazardous substances or hazardous wastes (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601, et seq. or the Resource Conservation and Recovery Act of 1976, 42 USC 6901, et seq.) on the permit lands, and hereby agrees to indemnify the United States against any liability arising from their release of any hazardous substances or waste thereon.
8. This permit will be renewed for a successive 3 year term upon successful adherence to its terms, and timely reporting of harvest amounts and payment of rent, Except and unless, the authorized officer gives the permittee notice that the permit will not be renewed. Said notice will be given to permittee at least 60 days prior to the expiration of the permit.
9. This permit is subject to termination by the BLM for failure of the permittee to perform or observe any of the terms and conditions hereof, in accordance with the provisions of 43 CFR 2920.9-3.
10. Permittee shall protect all survey monuments. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. If a survey monument is in danger of being lost or damaged, permittee shall reference the monument in a manner allowing the point to be reestablished and remonumented or rehabilitated after construction. If a monument is damaged or lost, permittee shall immediately report the incident, in writing, to the Authorized Officer (AO) and the respective installing authority if known. Where General Land Office or Bureau of Land Management monuments or references are involved, permittee shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands of the United States, latest edition. permittee shall record such survey in the appropriate county and send a copy to the AO. Permittee shall be responsible for all federal and non-federal survey costs.

11. If an archaeological resource (historic or prehistoric site or object) is discovered during project operations, the permittee shall immediately stop all operations in the area, immediately notify the Authorized Officer (AO) verbally, and follow such verbal notification with a written confirmation (certified mail recommended). In accordance with 43 CFR §10.4 (c)(d) and (g), if the discovery includes human remains, funerary items, sacred objects, or objects of cultural patrimony, operations shall remain suspended and the discovery protected for thirty (30) days or until a written notice to proceed is issued by the AO. An evaluation of the resource will be made by the AO to determine appropriate mitigation actions. Proper mitigation measures will be made by the AO after consulting with permittee. Permittee shall be responsible for evaluation and mitigation costs. All archaeological materials shall remain the property of the United States.

DECISION RECORD AND FINDING OF NO SIGNIFICANT IMPACT

(Steve Shiflett Orchard, Inc., Land Use Permit - WAOR 58296)

A. Recommendation

It is my recommendation that the proposed action be approved, and Steve Shiflett Orchards, Inc., be granted a land use permit to maintain and harvest an existing orchard on approximately six acres of public land. I further recommend that the permit be issued for a term of 3 years, with the option of renewal. This permit should not be issued until Shifletts have fully paid applicable back rent and processing charges levied under trespass no. WAOR 50793. As part of the trespass resolution, the deer fence located on Lot 2 would be moved to the property boundary. Deer fences situated on the SW¹/₄SE¹/₄ would be allowed to remain under the permit. The permit should be subject to the terms and conditions contained in 43 CFR 2920, and to the stipulations normally applied to this type of authorization.

B. Rationale

Pursuant to Section 302 of FLPMA, the BLM may issue a land use permit for agricultural use of public lands. The permit would allow a short term resolution of the existing trespass until a longer term solution is found. The permit route is recommended in this case, because the larger BLM land parcel may be a good candidate for disposal through land exchange. In the meantime, the U.S. would obtain yearly rent from the cherry crop harvested on the parcel. Permitting continued orchard use of the BLM land is consistent with uses taking place on other lands in the vicinity.

William Schurger
Realty Specialist

July 10, 2003
Date

C. Finding of No Significant Impact

I have reviewed the environmental assessment and have determined that the proposed action and stipulations are adequate. Consideration has been given to all applicable resource values and the proposed action will not have any significant effects on the quality of the human environment. Therefore, an environmental impact statement is not required to further analyze the environmental effects of the proposed action.

D. Decision

The above recommendations are approved as the decision of the Bureau of Land Management on the proposed action.

James F. Fisher
Field Manager, Wenatchee Resource Area

July 10, 2003
Date