



MULTNOMAH COUNTY

Department of Environmental Services  
Transportation and Land Use Planning Division  
2115 SE Morrison Street  
Portland, OR 97214 Phone: (503) 248-3043

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*DECISION OF HEARINGS OFFICER*

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Case File: CU 3-97

Hearings Officer: Liz Fancher

Hearing Date, Time, & Place: Wed., April 16, 1997 at 9:00 a.m.  
2115 SE Morrison Street, Room 111  
Portland, OR 97214

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**WHAT:** Conditional Use application to establish a nursery business to include the sales of bonsai plants, wooden containers, clay pots, soils mixes, ground covers and other small plants on property zoned Rural Center (RC)

**PROPERTY LOCATION:** 29943 SE Orient Drive. T1S, R4E, Section 19, Tax lot '59';  
Tax Account # R-99419-0590

**WHO:** *Property Owner/Applicant:*  
Steven Kreofsky  
29943 SE Orient Drive  
Gresham, OR 97080

**Hearings Officer Decision:** APPROVAL, subject to compliance with the following conditions of approval:

**CONDITIONS:**

1. Approval is for a retail nursery as proposed. The business will include one full time employee (applicant) and no more than one part time employee. Any changes in the hours of operation, use, or scale of use will require a new hearing.
2. Prior to commencement of the nursery business the applicant apply for and obtain approval of Design Review for site development.
3. Approval of this Conditional Use shall expire two years from the date of the Board Order unless substantial construction has taken place in accordance with MCC 11.15.7110 (C).

MULTNOMAH COUNTY  
PLANNING SECTION

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**This approval is granted based upon the following findings of compliance with applicable approval criteria supplied by the Applicant, Staff and Hearings Officer:**

**Applicable Criteria:**

**CONDITIONAL USE ORDINANCE CONSIDERATIONS:**

**11.15.2252 - Rural Center; Conditional Uses**

**The following uses may be permitted when found by the approval authority to satisfy the applicable ordinance standards:**

...

**(B) The following Conditional Uses pursuant to the provisions of MCC .7105 through .7640;**

**(1) Limited rural service commercial uses such as local stores, shops, offices, repair shops, and similar uses;**

**(2) Tourist commercial uses such as restaurants, taverns, gas stations, motels, guest ranches, and similar uses;**

...

**11.15.7212 Conditional Use Approval Criteria**

**(A) A Conditional Use shall be governed by the approval criteria listed in the district under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:**

**(1) Is consistent with the character of the area;**

**Applicant:** The use is consistent with the character of the area. The property is located in a commercial area in the middle of Orient. It has a barber shop on one side and Orient Industries on the other. On the same side of the road two parcels east is a retail nursery. There is a metal fabrication shop no longer operating on the same side of the road to the west. Orient school playground is located on the north side of the property. Across Orient Drive to the south is the Orient store, nursery fields, a retail nursery and a home.

The traffic patterns will not be affected because there is plenty of parking up front. This will keep the noise level in front towards the road. There is also a solid wood fencing on the east side of the property and a solid wall on the west that will confine noise.

**(2) Will not adversely effect natural resources;**

**Applicant:** The use will not adversely affect natural resources like rivers, streams, wetlands and forest because the property is not located near any natural resources.

**(3) Will not conflict with farm or forest uses in the area;**

**Applicant:** The proposed land use will not affect the nursery fields located across the street from the property. I have been coexisting with the field since 1990 and I see no change in the future.

**Staff:** The farm uses in the area include a nursery. The sales of nursery plants will promote the areas agricultural enterprises. The subject parcel is located within an exception area and is committed to Rural Commercial type enterprises. There are no clear forest uses in the immediate area.

**HO:** The site of the proposed use is the Applicant's residence. All agricultural uses in the area are nursery uses. The Applicant's proposed use will support these wholesale nurseries by providing baskets for plants which may be used for shipping and retailing plants. No aspect of the Applicant's proposed operation will conflict with these nurseries. There are no commercial forest uses in the area. There are a couple of small forested areas which are located away from Orient Drive, the road that will carry traffic to and from the Applicant's business. No aspect of the Applicant's operation will conflict with these limited forest uses.

**(4) Will not require public services other than those existing or programmed for the area;**

**Applicant:** The use will not change any public services because I will not be adding any septic service. There is also adequate water supply for the intended use.

**Staff:** The subject parcel includes a mobile home currently occupied by the applicant. The dwelling is connected to public water and an on site septic system. The applicant has not proposed restroom facilities for the business. Pleasant Home Water District currently provides water to the site and has indicated it will continue to provide service from a 6 inch line located on Orient Drive.

**HO:** County staff has confirmed with the Gresham Building and Development Department that no additional septic service is required to serve the proposed use and that public restrooms are not required to serve the proposed use. Based on the foregoing, no public services other than those existing or programmed for the area are required to serve the proposed use.

**(5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable.**

**Applicant:** Does not apply.

**Staff:** The subject parcel is not located within a big game winter habitat area based on the Multnomah County Wildlife Habitat map.

**(6) Will not create hazardous conditions; and**

**Applicant:** The property use will not create a hazardous situation because all sales will take place in a fenced area. The impact on the soils, slopes, and natural resources will not change as planned.

**Staff:** The proposed use is a small scale nursery located in a rural area. The nursery will not be utilizing hazardous material other than fertilizer used for plants.

**HO:** Under ordinary operating conditions, the quantities and types of fertilizer used by the nursery will not create a hazardous condition.

**(7) Will satisfy the applicable policies of the Comprehensive Plan.**

**Staff:** The applicant has addressed the applicable Comprehensive Plan Policies as indicated in this report (below).

**COMPREHENSIVE FRAMEWORK PLAN CONSIDERATIONS:**

**Applicable Comprehensive Framework Plan Policies (including those Policies requiring a Finding prior to a quasi-judicial decision):**

**(1) POLICY NO. 13, AIR, WATER AND NOISE QUALITY. MULTNOMAH COUNTY, ... SUPPORTS EFFORTS TO IMPROVE AIR AND WATER QUALITY AND TO REDUCE NOISE LEVELS. ... FURTHERMORE, IT IS THE COUNTY'S POLICY TO REQUIRE, PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION, A STATEMENT FROM THE APPROPRIATE AGENCY THAT ALL STANDARDS CAN BE MET WITH RESPECT TO AIR QUALITY, WATER QUALITY, AND NOISE LEVELS.**

**Applicant:** The use will satisfy policies of the Comprehensive plan because the noise will be blocked by fence placement. Also, the business itself will not generate much noise. The air and water quality will not change because of the land use planned.

**Staff:** Nurseries are generally a low impact use. The only air and noise quality issues are a result of the public coming to and from the site. There is a very direct relationship between plants and air quality. It can be argued the nursery will actually promote clean air.

**HO:** County staff has advised the Hearings Officer that for this type of application that the County serves as the "appropriate agency" for purposes of this Plan policy. The

County has determined that all standards, if any, can be met with respect to air quality, water quality and noise quality.

**(2) POLICY NO. 14, DEVELOPMENTAL LIMITATIONS. THE COUNTY'S POLICY IS TO DIRECT DEVELOPMENT AND LAND FORM ALTERATIONS AWAY FROM AREAS WITH DEVELOPMENT LIMITATIONS EXCEPT UPON A SHOWING THAT DESIGN AND CONSTRUCTION TECHNIQUES CAN MITIGATE ANY PUBLIC HARM OR ASSOCIATED PUBLIC COST, AND MITIGATE ANY ADVERSE EFFECTS TO SURROUNDING PERSONS OR PROPERTIES. DEVELOPMENT LIMITATIONS AREAS ARE THOSE WHICH HAVE ANY OF THE FOLLOWING CHARACTERISTICS:**

- A. Slopes exceeding 20%;**
- B. Severe soil erosion potential;**
- C. Land within the 100 year flood plain;**
- D. A high seasonal water table within 0-24 inches of the surface for 3 or more weeks of the year;**
- E. A fragipan less than 30 inches from the surface;**
- F. Land subject to slumping, earth slides or movement.**

**Applicant:** The land use now complies with the Comprehensive Plan at this time because I have no development or alterations planned at this time. The land also does not have the development limitations areas described.

**Staff:** The applicant is not proposing any land altering activities (eg. buildings or grading) to accommodate the use. The proposed area for development is relatively flat and is not located in an area designated as a flood plain. The presence of nursery stock growing in the immediate vicinity is adequate to demonstrate the soils on the parcel likely do not include a fragipan.

**HO:** The subject property does not include any areas which meet the Plan definition of a "development limitations area."

**(3) POLICY 27: COMMERCIAL LOCATION. THE COUNTY'S POLICY IS TO:**

- A. IMPROVE THE AVAILABILITY AND ACCESSIBILITY OF CONSUMER GOODS AND SERVICES BY SUPPORTING THE LOCATION AND SCALING OF COMMERCIAL DEVELOPMENT TO MEET THE NEEDS OF THE COMMUNITY AND TO REINFORCE COMMUNITY IDENTITY.**

**Applicant:** The Comprehensive plan is satisfied because the location improves the availability of the nursery and garden goods to the community. The location also promotes products from the local community and it also reinforces community identity.

**HO:** The area is a commercial agricultural area. The proposed use will reinforce the area's identity as such by providing an additional nursery use to the area.

**(4) POLICY NO. 37, UTILITIES. THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:  
WATER AND DISPOSAL SYSTEM**

**B. THE PROPOSED USE CAN BE CONNECTED TO A PUBLIC WATER SYSTEM, AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) WILL APPROVE A SUBSURFACE SEWAGE DISPOSAL SYSTEM ON THE SITE;**

**DRAINAGE**

**F. THE WATER RUN-OFF CAN BE HANDLED ON THE SITE OR ADEQUATE PROVISIONS CAN BE MADE; AND**

**G. THE RUN-OFF FROM THE SITE WILL NOT ADVERSELY AFFECT THE WATER QUALITY IN ADJACENT STREAMS, PONDS, LAKES OR ALTER THE DRAINAGE ON ADJOINING LANDS.**

**ENERGY AND COMMUNICATIONS**

**H. THERE IS AN ADEQUATE ENERGY SUPPLY TO HANDLE THE NEEDS OF THE PROPOSAL AND THE DEVELOPMENT LEVEL PROJECTED BY THE PLAN; AND**

**I. COMMUNICATIONS FACILITIES ARE AVAILABLE.**

**Applicant:** The current utilities satisfy the policies of the Comprehensive Plan. There is an adequate private water system and no public sewer will be added. There is also capacity to handle run-off. There are Communications facilities available and the energy supply will handle the proposed needs.

**HO:** The water system which will serve the subject property is a public system. There is an existing septic system on site which is adequate to serve the existing and proposed use. County site and design review will assure that any run-off from the site will not adversely affect the water quality nor alter the drainage on adjoining lands.

**(4) POLICY NO. 38, FACILITIES. THE COUNTY'S POLICY IS TO REQUIRE A FINDING PRIOR TO APPROVAL OF A LEGISLATIVE OR QUASI-JUDICIAL ACTION THAT:  
SCHOOL**

**A. THE APPROPRIATE SCHOOL DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.**

**FIRE PROTECTION**

**B. THERE IS ADEQUATE WATER PRESSURE AND FLOW FOR FIRE FIGHTING PURPOSES; AND**

**C. THE APPROPRIATE FIRE DISTRICT HAS HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON THE PROPOSAL.**

**POLICE PROTECTION**

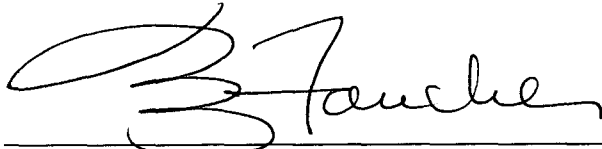
**D. THE PROPOSAL CAN RECEIVE ADEQUATE LOCAL POLICE PROTECTION IN ACCORDANCE WITH THE STANDARDS OF THE JURISDICTION PROVIDING POLICE PROTECTION.**

**Applicant:** The land use facilities complies with the County's Policy. Approval for School, Fire Protection and Police was obtained when the General Application Form was filled out.

**Note:** In addition to the criteria listed above, if approved the applicant would be required to apply for and receive approval of a Design Review Permit. The Design Review Permit includes compliance with the Off-Street Parking and Loading Section of the Zoning Ordinance. Design Review and Off-Street Parking will require a paved parking area, buffered and maintained landscaped areas between Orient Drive and any off-street parking areas, as well as other requirements. A variance may be required if applicable dimensional standards under Design Review (& Off Street Parking) cannot be met.

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DATED this 18th day of April, 1997.



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LIZ FANCHER, Hearings Officer

**Appeal to the Board of County Commissioners:**

The Hearings Officer Decision may be appealed to the Board of County Commissioners (Board) by any person or organization who appears and testifies at the hearing, or by those who submit written testimony into the record. An appeal must be filed with the County Planning Division within ten days after the Hearings Officer decision is submitted to the Clerk of the Board. An Appeal requires a completed "Notice of Review" for and a fee of \$500.00 plus a \$3.50 - per- minute charge for a transcript of the initial hearing(s). [ref. MCC 11.15.8260(A)(1) and MCC 11.15.9020(B)] Instructions and forms are available at the County Planning Office at 2115 SE Morrison Street (in Portland) or you may call 248-3043, for additional instructions.