



# LAND USE APPEAL APPLICATION RECEIVED

AUG 09 2019

## 1. GENERAL DATA REQUIRED [to be completed by the appellant]

Case No. FRP-ADJ-SUB 19-01 July 26, 2019 COMMUNITY DEVELOPMENT

Case # Being Appealed

Decision Date

4100-4200 Blocks of Pringle Rd SE, 4200 Block of Battle Creek Rd SE, 97302

Address of Subject Property

1454 Grantham Lane SE, Salem OR 97302

Appellants Mailing Address with zip code

jmumper@toast.net

503-910-5651

Appellant's E-mail Address

Day-time Phone / Cell Phone

Appellant's Representative or Professional to be contacted regarding matters on this application, if other than appellant listed above:

Sean T. Malone, Attorney at Law

259 E. 5th Ave, Ste 200-C

Name

Mailing Address with ZIP Code

seanmalone8@hotmail.com

303-859-0403

E-Mail Address

Day-time Phone / Cell Phone

## 2. SIGNATURES OF ALL APPELLANTS

Signature:

Date: 8/9/19

Printed Name: Jerry Mumper

Signature:

Date:

Printed Name:

### 3. REASON FOR APPEAL

Attach a letter, briefly summarizing the reason for the Appeal. Describe how the proposal does not meet the applicable criteria as well as verification establishing the appellants standing to appeal the decision as provided under SRC 300.1010

## FOR STAFF USE ONLY

Received By: SALLY LONG

Date: 8.9.19

Receipt No: 17-124220-20

Appeal Deadline: 8.12.19  
5:00 P.M.

Case Manager: BRUCE BISHOP

# Sean T. Malone

## Attorney at Law

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August 9, 2019

### Hand Delivery

Bryce Bishop, Planner II  
City of Salem Planning Division  
555 Liberty Street, SE Rm 305  
Salem OR 97301  
503-540-2399  
[bbishop@cityofsalem.net](mailto:bbishop@cityofsalem.net)  
[lmanderson@cityofsalem.net](mailto:lmanderson@cityofsalem.net)

Re: Addendum to Appeal of Planning Commission Decision,  
Fairview Refinement Plan, Class 2 Adjustment, Subdivision Case  
No. FRP-ADJ-SUB 19-01; Application Nos 17-124220-ZO, 19-  
113933-ZO, and 17-124217-LD

On behalf of Jerry Mumper, please accept this addendum to the notice of appeal of the Planning Commission's decision for the Fairview Refinement Plan, Class 2 Adjustment, and Subdivision, Case No. FRP-ADJ-SUB 19-01, Application Nos 17-124220-ZO, 19-113933-ZO, and 17-124217-LD. The Notice of Decision date was July 26, 2019, and the deadline to appeal the decision is, therefore, August 12, 2019. The notice of decision is attached hereto.

The appellant is Jerry Mumper, 1454 Grantham Lane SE, Salem, Oregon, 97302. The appellant participated below through his own testimony and through counsel. *See* attached testimony.

The reasons for appeal include, but are not limited to the following:

- Under SRC 530.030(e), a refinement plan shall be approved if "[t]he refinement plan is consistent with the Fairview plan." The decision is inconsistent with the Fairview master plan. The provisions of the master plan expressly contemplate the area proposed for significant development be retained as a community open space, neighborhood park, and/or wildlife

habitat/ecological buffer. The proposed development is inconsistent with numerous elements of the master plan, as set forth in the attached testimony.

- The refinement plan is also inconsistent with the master plan as it relates to the street network plan. The street network plan does not contemplate any such streets in the area proposed for the development. There are no main streets, collector streets, local streets, residential couplets, frontage roads, alleys, or otherwise. This lack of transportation facilities is consistent with the overall guidance in the master plan that the area be protected for park uses, community open space, and wildlife habitat/ecological buffer.
- Under SRC 530.045(b), “[a] minimum of 20 acres of land within the FMU zone shall be reserved as natural open space.” The area proposed for development is the area proposed as natural open space, consistent with the master plan. The applicant has not demonstrated that 20-acres of open space will be available absent a significant amendment to the master plan.
- The applicant must first amend the master plan, pursuant SRC 530.025. Because the significant change proposed by the subject development that is inconsistent with the basic objectives of the master plan, the applicant cannot implement the subject development until the master plan has been amended. Amendments are necessary in many instances that are implicated here, including under SRC 530.025(b)(2), SRC 530.025(c), SRC 530.025(b)(2)(B), and SRC 530.025(b)(2)(F), as more fully explained in the attached testimony.
- The proposed refinement plan is not compatible with adjoining land uses because the community open space, park, wildlife habitat, and ecological buffer were contemplated in the master plan to provide for these uses to offset more dense development elsewhere. SRC 530.030(e)(3). The contemplated uses of the subject property contained within the master plan create the compatibility necessary to support areas of greater density elsewhere in the master plan, as well as through other refinement plans.
- The class 2 adjustment cannot be approved because the purpose of the 40-acre requirement is to ensure development occurs in a coordinated fashion involving land areas large enough to discourage a piecemeal approach. A piecemeal approach is occurring here because the applicant is reducing minimum area for a refinement plan instead of developing larger areas of land required by code and the master plan.
- The proposed adjustment is prohibited, pursuant to SRC 250.005(2), because the proposed adjustment modifies the applicability of a



requirement under the UDC, modifies the definition of a refinement plan, and changes the status of an activity under the UDC.

Appellant retains the right to raise additional issues on appeal because the appeal is *de novo*.

The filing fee of \$250 will be provided upon hand delivery.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sean T. Malone". The signature is fluid and cursive, with a large initial "S" and "M".

Sean T. Malone  
Attorney for Jerry Mumper

Cc:  
Client



PLANNING DIVISION  
555 LIBERTY ST. SE, RM 305  
SALEM, OREGON 97301  
PHONE: 503-588-6173  
FAX: 503-588-6005



# NOTICE OF DECISION

*Si necesita ayuda para comprender esta informacion, por favor llame  
503-588-6173*

## DECISION OF THE PLANNING COMMISSION

**FAIRVIEW REFINEMENT PLAN / CLASS 2 ADJUSTMENT / SUBDIVISION CASE  
NO.: FRP-ADJ-SUB19-01**

**APPLICATION NO.: 17-124220-ZO; 19-113933-ZO; 17-124217-LD**

**NOTICE OF DECISION DATE:** July 26, 2019

**SUMMARY:** An application to develop approximately 14.07 acres of the former Fairview Training Center site pursuant to the requirements of the Fairview Mixed-Use zone and the Fairview Plan, the adopted master plan for the former Fairview Training Center site.

**REQUEST:** A consolidated application to develop approximately 14.07 acres of the former Fairview Training Center site. The application includes the following:

- 1) A Refinement Plan, pursuant to SRC 530.030, for the approximate 14.07-acre property setting forth the requirements and standards for future development of the property consistent with the provisions of the Fairview Mixed-Use Zone (SRC Chapter 530) and the adopted Fairview Plan;
- 2) A Class 2 Adjustment to reduce the minimum required size of a refinement plan from 40 acres, as required under SRC 530.030(b), to approximately 14.07 acres; and
- 3) A Subdivision to divide the 14.07-acre property included within the Refinement Plan into 16 lots ranging in size from approximately 13,499 square feet to approximately 47,096 square feet.

The property is zoned FMU (Fairview Mixed-Use) and is located in the 4100 to 4200 Blocks of Pringle Road SE and the 4200 Block of Battle Creek Road SE (Marion County Assessor Map and Tax Lot Number: 083W1100202).

**APPLICANT:** Olsen Design and Development, Inc.

**LOCATION:** 4100-4200 Blocks of Pringle Rd SE and 4200 Block of Battle Creek Rd SE / 97302

**CRITERIA:** Salem Revised Code SRC 530.030(e)  
Salem Revised Code SRC 250.005(d)(2)  
Salem Revised Code SRC 205.010(d)

**FINDINGS:** The facts and findings are in the attached document dated July 26, 2019.

**DECISION:** The Planning Commission **APPROVED** Fairview Refinement Plan / Class 2 Adjustment / Subdivision Case No.: FRP-ADJ-SUB19-01 subject to the following conditions of approval:

- A. **APPROVE** the proposed Fairview Woods Refinement Plan, a refinement plan for a portion of the former Fairview Training Center property approximately 14.07 acres in size, subject to the following conditions:

**Condition 1:** Figure 5 (Archeological Inventory/Tree Conservation Plan) of the refinement plan shall be revised to indicate a 90 percent preservation requirement within the identified tree protection zones.

**Condition 2:** The "Transit Close at Hand" section of the refinement plan on page 10 shall be revised to eliminate the language referring to transit service being provided to the development via Salem-Keizer Transit Route 6 on Pringle Road SE and Battle Creek Road SE.

~~**Condition 3:** All figure drawings included within the refinement plan that show the modified cul-de-sac transition between the southern end of Braden Woods Lane and Braden Lane as being located outside the subject within the adjacent Fairview Addition West subdivision shall be revised to instead show the modified cul-de-sac transition as being located on the subject property within the boundary of the refinement plan consistent with the corresponding transition provided at the northern end of Braden Woods Lane.~~

**Condition 43:** The language concerning water service to the proposed refinement plan included under Sections 12 and 22 of the refinement plan shall be revised to be consistent with the water service requirements identified by the Public Works Department.

**Condition 54:** The existing glacial erratic boulder identified in the 2004 Archaeological Cultural Resources Inventory and Assessment for the Fairview Plan shall be moved to a different location within 200 feet of its current location in order to facilitate development of the property. When the boulder is moved, an archaeologist shall be present to examine the procedures and re-examine it to determine if any cultural petroglyphs are present.

**Condition 65:** An archeological resource inadvertent discovery plan shall be required for development within the refinement plan area.

- B. **APPROVE** the Class 2 Adjustment to reduce the minimum required size of the refinement plan from 40 acres, as required under SRC 530.030(b), to approximately 14.07 acres.

- C. **APPROVE** the proposed tentative subdivision plan to divide the 14.07-acre property included within the Refinement Plan into 16 lots ranging in size from approximately 13,499 square feet to approximately 47,096 square feet subject to the following conditions prior to final plat approval unless otherwise indicated:

~~**Condition 1:** Extend water main(s) pursuant to the PWDS from the terminus of the existing S-2 water main at the intersection of Battle Creek Road SE and Sunland Street SE to serve proposed parcels with a finished floor elevation greater than 358 feet.~~



For all lots proposed with dwellings constructed at a finished floor elevation greater than 358 feet, extend water main(s) pursuant to PWDS from the terminus of the existing S-2 water main at the intersection of Battle Creek Road SE and Sunland Street SE to serve those lots.

- Condition 2:** Construct water and sewer systems to serve each lot.
- Condition 3:** Design and construct stormwater facilities pursuant to SRC Chapter 71 and PWDS.
- Condition 4:** Provide easements for public utilities located within private streets pursuant to PWDS 1.8(f).
- Condition 5:** Show all necessary access and utility easements on the plat and provide appropriate documentation of infrastructure maintenance agreements pursuant to SRC 802.040.
- Condition 6:** Dedicate a 10-foot public utility easement along the street frontage of all internal streets.
- Condition 7:** Fire hydrants shall be provided and located within 600 feet of all portions of the dwelling units.
- Condition 8:** Prior to final subdivision plat approval, the applicant shall submit a Homeowners Association Agreement and Covenants, Conditions, and Restrictions (CC&R) document for review and approval by the City Attorney for the perpetual maintenance and operation of all common properties and facilities within the development including, but not limited to: private streets, private utilities, open spaces, common facilities, and community areas.
- Condition 9:** The portion of 2<sup>nd</sup> Street within the Fairview Addition West Subdivision located west of Z Street and connecting to Long Loop within the Fairview Woods refinement plan shall be designed to provide a transition from the private street design approved in the Fairview Addition West refinement plan to the private street design for Long Loop approved in the Fairview Woods refinement plan.
- Condition 10:** ~~The tentative subdivision plan shall be revised to relocate the modified cul-de-sac transition between the southern end of Braden Woods Lane and Braden Lane onto the subject property within the boundary of the refinement plan consistent with the corresponding transition provided at the northern end of Braden Woods Lane.~~

The portion of Braden Lane within the Fairview Addition West subdivision located between the south end of Braden Woods Lane and the modified cul-de-sac transition shown on the tentative subdivision plan shall be designed as a private street extension of Braden Woods Lane.



- Condition 11:** Construct a minimum 46-foot-wide improvement along the entire frontage of parcels 2 and 3 of Partition Plat 2015-29 to Minor Arterial standards, including tapers pursuant to PWDS. The sidewalk may meander and be located within an easement east of the property line in order to preserve existing trees along the property frontage. The boundary street improvements for the parcel 3 frontage may be deferred through an amendment to the existing Construction Deferral Agreement for the Fairview Addition West Subdivision (Reel 3690, Page 288, Marion County Records).
- Condition 12:** Construct internal streets to Local street standards pursuant to PWDS, except as otherwise provided in the alternate cross-sections pursuant to the refinement plan.
- Condition 13:** The emergency access to Pringle Road SE will be allowed only as required by the Fire Marshal.
- Condition 14:** Braden Woods Lane and Long Loop shall have appropriate no parking signage reviewed and approved as a condition of public construction plan approval.
- Condition 15:** No parking shall be permitted in the cul-de-sac bulbs at the northern and southern ends of Braden Woods Lane.

**VOTE:**

**Yes 5      No 0      Absent 3** (Griggs, Kopcho, Wright)      **Abstain 1** (Elzinga)



Brian McKinley, Vice President  
Salem Planning Commission

The rights granted by the attached decision must be exercised, or an extension granted, as follows or this approval shall be null and void:

Fairview Refinement Plan	<u>August 13, 2021</u>
Class 2 Adjustment	<u>August 13, 2021</u>
Subdivision	<u>August 13, 2021</u>

Application Deemed Complete:	<u>May 30, 2019</u>
Public Hearing Date:	<u>July 9, 2019 and July 23, 2019</u>
Notice of Decision Mailing Date:	<u>July 24, 2019</u>
Decision Effective Date:	<u>August 13, 2019</u>
State Mandate Date:	<u>September 27, 2019</u>

Case Manager: Bryce Bishop, [bbishop@cityofsalem.net](mailto:bbishop@cityofsalem.net)

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, **no later than 5:00 p.m., Monday, August 12, 2019**. Any person who presented evidence or testimony prior to the close of the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 530, 250 & 205. The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Salem City Council will review the appeal at a public hearing. After the hearing, the City Council may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

# Sean T. Malone

## Attorney at Law

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Eugene, OR 97401

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[seanmalone8@hotmail.com](mailto:seanmalone8@hotmail.com)

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July 23, 2019

### Email

Bryce Bishop, Planner II  
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Salem OR 97301  
503-540-2399  
[bbishop@cityofsalem.net](mailto:bbishop@cityofsalem.net)  
[lmanderson@cityofsalem.net](mailto:lmanderson@cityofsalem.net)

Re: Mumper testimony re Application Nos 17-124220-ZO, 19-113933-ZO, and 17-124217-LD – FRP-ADJ-SUB 19-01

On behalf of Jerry Mumper, please accept the following testimony on the proposed Fairview refinement plan, the proposed class 2 zoning adjustment, and proposed subdivision. For the reasons set forth below, the application must be denied.

The Salem City Council adopted amendments to the comprehensive plan and code establishing a “mixed use” comprehensive plan designation and a “Fairview Mixed Use” (FMU) zone district. The amendments apply to the former Fairview training site in order to promote the sustainable and mixed-use development of the 275-acre property. A Fairview master plan was adopted that establishes the overall goals and policies to guide future development of the property. Refinement plans are then prepared that set forth detailed regulatory plans for areas not less than 40 acres in size. Here, the applicant is seeking approval of a proposed refinement plan, an adjustment of to the basic requirements of a refinement plan, and a subdivision of the area contained within the proposed refinement plan.

Under SRC 530.030(e), a refinement plan shall be approved if “[t]he refinement plan is consistent with the Fairview plan.” Here, the refinement plan is fundamentally at odds with the basic requirements of the Fairview plan. The Fairview master plan contains both general and specific provisions regarding open space. For example, the “SFA [i.e., Sustainable Fairview Associates] shares its neighbors’ interest in maintaining



significant open spaces and preserving the natural environment. FTCCR [i.e., Fairview Training Center Redevelopment] will maximize common open spaces, parks, and nature preserves. Natural areas will be linked together throughout the development. Existing steep slopes, wetlands, and watersheds will be protected and enhanced.” The area slated for development is also repeatedly illustrated as undeveloped open space, referred to as “The Woods.” Under “Respect the Landscape,” the master plan provides following framework:

“FTCCR plan works with, not against, the existing landscape. The natural slopes on the site are preserved for recreational use, for habitat, and for storm water flow. These slopes lead to the Village Green which is both the ecological and social heart of the community. *Large existing forest blocks and wetlands are preserved, and, will be expanded over time.*”

Emphasis added. Adding to the master plan’s goal of preserving large existing forest blocks and open space for the community’s benefit is another passage :

#### **“Forested Habitat and Wildlife Corridors**

A mature grove of fir trees along Pringle Creek creates a park-like environment that will be protected and enhanced as either neighborhood park or community open space. Another mature grove of fir trees is located atop the northwestern edge of the site. It also will be protected and enhanced as neighborhood park or community open space. *Scrub oak and native plants at the southwestern edge of the property will be protected for their ability to serve as wildlife habitat and as an ecological buffer.* A small mature oak grove on the eastern edge of the property will frame the ‘front door’ entrances to FTCCR from the south.”

(emphasis added). Under the heading, Natural Resources, the master plan specifically identifies the area at issue as “B” and “C.” The master plan then reinforces the above language by calling for the areas’ preservation *and* enhancement *as a neighborhood park or community open space or wildlife habitat/ecological buffer*:

“Another mature grove of firs to be protected and enhanced as neighborhood park or community protected open space sits atop the northwestern most ridge of the site. (B).

At the southwestern edge of the property is a considerable acreage of scrub oak and native species that will be protected for its ability to serve as wildlife habitat and provide an ecological buffer. (C)”<sup>1</sup>

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<sup>1</sup> “Open space” is defined as “land designated to preserve community livability, significant plant materials, and natural resources.”

Taken together and on their own, the provisions of the Fairview master plan expressly contemplate protecting the area known as The Woods for community open space, neighborhood park, and wildlife habitat/ecological buffer. Each of these are inconsistent with the proposed use. Also of note is the general development standard that “[a] minimum of 20 acres of land within the FMU zone shall be reserved as natural open space.” SRC 530.045(b). Because The Woods is the area proposed as natural open space, the proposed development is contrary to this basic standard, absent some showing that a 20 acres of the proposed area contained within the master plan will contain open space.

Attempting to distance itself from the plain requirement that the subject area be preserved for as a park or community open space and alleging consistency with the recommendation to “encourage the innovative integration of park and school uses,” the staff report alleges that “[a] park is also not needed within the proposed refinement plan due to the City’s purchase of land on the eastern portion of Fairview site on Old Strong Road SE for a community park. Because neither land for a new school or a public park is needed with the proposed refinement plan, the goal of encouraging innovative integration of park and school uses in [*sic*] not applicable in this case.” This runs contrary to the plain language of the master plan, and the staff report cannot erase the language contained in the master plan. The City cannot legislate through interpretation. Rather if the applicant finds some portion of the master plan disagreeable, then the appropriate means of moving forward is to amend the master plan, which the applicant has not proposed here. SRC 530.025 contains provisions related to the amendment of the Fairview plan. The types of amendments to the Fairview plan include several provisions that are applicable here, but the applicant is not seeking to amend the Fairview plan.

Indeed, amendment of the Fairview plan is a necessary precondition to what is being proposed here, given the degree of deviation from the master plan. For example, an amendment is necessary if it is proposed to change “designated buffers, perimeter landscaping, or significant natural resource areas delineated in the Fairview plan that were established to adapt the FMU zone to specific site characteristics or mitigate development impacts on the site and surrounding area.” SRC 530.025(b)(2). This would be considered a “major amendment” and would have to be processed as a Type IV decision. *See* SRC 530.025(c). Various criteria must also be satisfied to approve a master plan amendment. The existence of the master plan amendment procedures indicate unequivocally that the City cannot interpret its way out of the master plan when an applicant finds the requirements of the master plan to be inconsistent with the proposed development.



A further indication that the master plan must first be amended is evident in the densities proposed by the refinement plan. A major plan amendment is required to “increase[] or decrease[] the number of proposed residential units per acre by more than 20 percent or exceeds the maximum number of dwelling units permitted within the FMU zone.” SRC 530.025(b)(2)(B). Here, the FMU zone densities are changing in the low intensity overlay from 5 to 8 du/acre to 0.5 to 2 du/acre and in mixed intensity from 7 to 35 du/acre to 1 to 3 du/acre. Clearly, the proposed change is more than a 20 percent change in density. *See* Table 1, Proposed Refinement Plan. Moreover, the proposed refinement plan represents, cumulatively, a significant change in the purpose, scope, main concepts, goals, policies, or general development guidelines of the Fairview plan,” SRC 530.025(b)(2)(F), because the applicant is attempting to develop areas set aside for park use, community open space use, and wildlife habitat/ecological buffer. Indeed, the notion of an “ecological buffer” is completely lost if the area is developed. Again, it should be clear that an amendment to the plan is necessary, and, therefore, the application cannot be approved, as proposed.

The proposed refinement plan is not compatible with adjoining land uses because the community open space, park, wildlife habitat, and ecological buffer were contemplated in the master plan to provide for these uses to offset more dense development elsewhere. SRC 530.030(e)(3). The contemplated uses of the Woods contained within the master plan create the compatibility necessary to support areas of greater density elsewhere in the master plan, as well as through other refinement plans.

The City cannot approve the class 2 adjustment because it does not comply with the relevant approval criteria. The purpose of the 40-acre requirement is to ensure development occurs in a coordinated fashion involving land areas large enough to discourage a piecemeal approach. That is exactly what is occurring if the minimum area for a refinement plan can be dramatically reduced. The staff report alleges that the only way for this area to be part of a refinement plan is by lowering the acreage of the plan. This argument proves too much, as there is no requirement that a refinement plan cover only contiguous areas within the master plan area. Moreover, the notion that this area is isolated is a product of the applicant’s own creation. The applicant – the same applicant as for the Fairview Addition West – isolated this property by not including it in the refinement plan for the Fairview Addition West. The proposed refinement plan also identifies an adjacent area as “Future Fairview Addition West.” This just perpetuates the small-sale, piecemeal development that is proposed here, and which was warned against in creating the requirement for a 40-acre refinement plan minimum standard. The purpose underlying the development standard at issue is clearly applicable to the proposed development and the 14-acre refinement plan is no better than one that is 40 acres. Indeed, a smaller acreage will likely result in additional refinement areas being less than 40 acres.



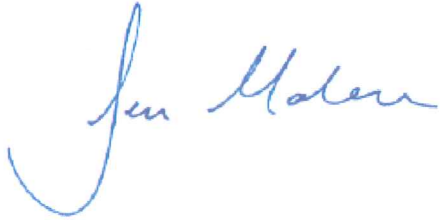
It should also be noted that the Fairview master plan street network plan does not contemplate any such streets in the area proposed for the development. Indeed, there are no main streets, collector streets, local streets, residential couplets, frontage roads, alleys, or otherwise. This lack of transportation facilities is consistent with the overall guidance that the area be protected for park uses, community open space, and wildlife habitat/ecological buffer. The Woods also appears to contain some of the steeper slopes on the site, and the master plan assumes that these slopes will be protected, instead of developed. Again, the proposed refinement plan is inconsistent with the basic requirements of the master plan. The proposed refinement plan is reducing the livability of the area covered by the master plan because it is removing community open space and park uses, all of which promote better living for the residents within the master plan.

The proposed adjustment will detract from the livability or appearance of the residential area. The reduced acreage for the refinement plan creates development in an area the master plan recognizes is devoted to park use, open space use, wildlife habitat, and as an ecological buffer. Clearly, development within an area previously designated for these uses will affect the 14-acre property's appearance. Again, the applicant alleges that this refinement plan is an extension of the Fairview Addition West refinement plan, which just means that the applicant should have created a single refinement plan for both areas, instead of developing in a piecemeal fashion. Moreover, if the applicant wishes to amend the refinement plan, then the applicant may avail itself of that under SRC 530.035, but the applicant cannot seek an adjustment for something that is specifically prohibited. Furthermore, the proposed adjustment is prohibited, pursuant to SRC 250.005(2), because the proposed adjustment modifies the applicability of a requirement under the UDC, modifies the definition of a refinement plan, and changes the status of an activity under the UDC.

Because this is the first evidentiary hearing, I respectfully request that the record remain open for seven days to address additional testimony and evidence submitted at the hearing.

For the foregoing reasons, the application is deficient in numerous respects and must be denied at this time as inconsistent with the Fairview master plan and other provisions of the Salem Revised Code.

Sincerely,

A handwritten signature in blue ink, reading "Sean T. Malone". The signature is fluid and cursive, with the first name "Sean" being more prominent than the last name "Malone".

Sean T. Malone  
Attorney for Jerry Mumper

Cc:  
Client

Jerry Mumper  
1454 Grantham Lane SE  
Salem, Oregon 97302

Lisa Anderson-Ogilvie  
Planning Administrator  
City of Salem

July 17, 2019

Re: Case no. FRP-ADJ-SUB 19-01

Dear Ms. Anderson-Ogilvie:

The staff report on page 8, states, "Pursuant to SRC.030(d), refinement plans are required to contain the following elements:

(12) Proposed method for the perpetual maintenance of any common open space and common facilities;"

The refinement plan does not contain the proposed method for the perpetual maintenance of any common open space and common facility, and thus is not a complete application of the refinement plan. Therefore a decision should not be made until the refinement plan is complete, the public has been notified and had a chance to comment.

Sincerely,

Jerry Mumper

cc: Bryce Bishop, Planner II  
City of Salem



2

Jerry Mumper  
1454 Grantham Lane SE  
Salem, Oregon 97302

July ----, 2019

City of Salem Planning Commission  
Case no. FRP-ADJ-SUB-19-01  
Testimony for July 23, 2019 public hearing

To: Planning Commission members

This land use request, Fairview Refinement Plan/Class 2 Adjustment/Subdivision Case No. FRP-ADJ-SUB 19-01 does not meet the requirements of SRC 530.030(e) criteria. "A refinement plan shall be approved if all of the following criteria are met: (1) The refinement plan is consistent with the Fairview Plan." Acting or done in the same way over time, especially so as to be fair or accurate is the definition of consistent. I will show that this application does not meet this criteria, and should be denied.

The proposed Fairview Woods Refinement Plan states on page 5 "The Fairview Woods Refinement Plan (referred to in this plan as The Woods) was developed to be consistent with the principles in the Fairview Master Plan.", on page 6, "The Woods Refinement Plan is based on the goals of the Fairview Master Plan.", on page 36, "Development of the Woods will be in compliance with standards and regulations set by the Fairview Master Plan and the Fairview Mixed-use Zone." and on page 36, "The design is ultimately intended to follow the regulations and guidelines outlined in the Fairview Master Plan." Even the applicant realizes the importance of following and being consistent with the Fairview Master Plan.

The following is from the City of Salem website:

"The Fairview Plan is a master plan that establishes goals and policies to guide future development within the Fairview Mixed-use Zone.

(EXHIBITS)

Exhibit 1 Fairview training center redevelopment master plan

Exhibit 2 Transportation impact analysis

Exhibit 3 Revised transportation and mobility study

Exhibit 4 Natural Resources inventory

Exhibit 5 Fairview training historic analysis and inventory

(ATTACHMENTS)

The following attachments are maps that support the plan:"

There are 12 maps included in the attachments.

Four of these maps show that The Woods would remain undeveloped. The FAIRVIEW MASTER PLAN is an aerial schematic of proposed development and it shows The Woods as an open area. The OFF-STREET PATHWAY AND OPEN SPACE PLAN shows The Woods as open area with pathways through it. The MOBILITY PLAN, again show The Woods as open area with pathways through it. The STREET NETWORK PLAN shows The Woods as open area. Besides the comments and maps that I have

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referenced, there are other smaller maps that show this area should remain open, and not be developed.

On page 13 of Exhibit 2, of the Fairview Plan, figure 3 shows the proposed site plan of the original 275 acre Fairview Training Center with all the proposed streets shown. There are no streets shown on The Woods site. This is also the site described as (B) and (C) on page 18, Exhibit 1. Site (B) is described on page 18 as "Another mature grove of firs to be protected and enhanced as neighborhood park or community protected open space sits atop the northwestern most ridge of the site." and Site (C) is described "At the southwestern edge of the property is a considerable acreage of scrub oak and native species that will be protected for its ability to serve as wildlife habitat and provide an ecological buffer." It also states on page 11 of Exhibit 1, "Another mature grove of fir trees is located atop the northwestern edge of the site. It also will be protected and enhanced as neighborhood park or community open space. Scrub oak and native plants at the southwest edge of the property will be protected for their ability to serve as wildlife habitat and as an ecological buffer." It is pretty difficult to imagine this as protected for wildlife habitat or as an ecological buffer with streets and houses.

The planning staff used the 13 principles listed under the heading, Sustainable Land Use Principles of the Plan of Exhibit 1 to show that "the Refinement Plan is consistent with the Fairview Plan," To be consistent with the Fairview Plan they need to be consistent with the total plan, which as previously noted, consist of 5 exhibits and 12 maps that make up the Fairview Plan. Principle 6, one of the principles, states in part, "Large existing forest blocks and wetlands are preserved, and, will be expanded over time." Preserve is defined as to maintain in its original or existing state. The staff report states "The proposed refinement plan respects the landscape consistent with this identified Fairview Plan principle and will protect the natural, ecological, habitat and recreational benefits and opportunities afforded by the two existing identified tree groves by allowing reasonable economic use of the property while at the same time preserving it's natural character, habitat, and trees by providing large lots served by sensitively narrow private streets, trails and open space areas that provide benefit to not only the residents within the proposed refinement plan but the Fairview Training Center as a whole." These large existing forest blocks cannot maintain their original or existing state if "large lots served by sensitively narrow private streets..." are allowed.

Principle 6, Appendix A, Sustainable Fairview Principles, of Exhibit 3, states "The Sustainable Fairview plan will work with, not against, the existing landscape. Large forest blocks and wetlands will be preserved and, indeed, expanded over time."

It is quite evident that the staff did not consider the entire Fairview Master Plan to show that the proposed refinement plan is consistent with the Fairview Plan. The refinement plan is definitely not consistent with The Fairview Plan's intent to leave The Woods undeveloped, consequently this refinement plan should be denied.

The staff report cites that Principle 13. Walk Every Day states "The design promotes walking at all levels, from walkways on both sides of all streets..." On page 1 Exhibit 3, of the Fairview Plan, principle 13 states, "Fairview will be a walkable community in all



2

respects. Sidewalks will line both sides of each street." Page 5 of Exhibit 3 states, "Sidewalks are required on all streets except the alleys." Page 8 of Exhibit 3 states, "Sidewalks on both sides insure that pedestrian orientation of the project is maintained." Principle 13 of Appendix A, Sustainable Fairview Principles, Exhibit 3 states "sidewalks will be line both sides of each street." Sidewalks should be required on all streets. This application should be denied.

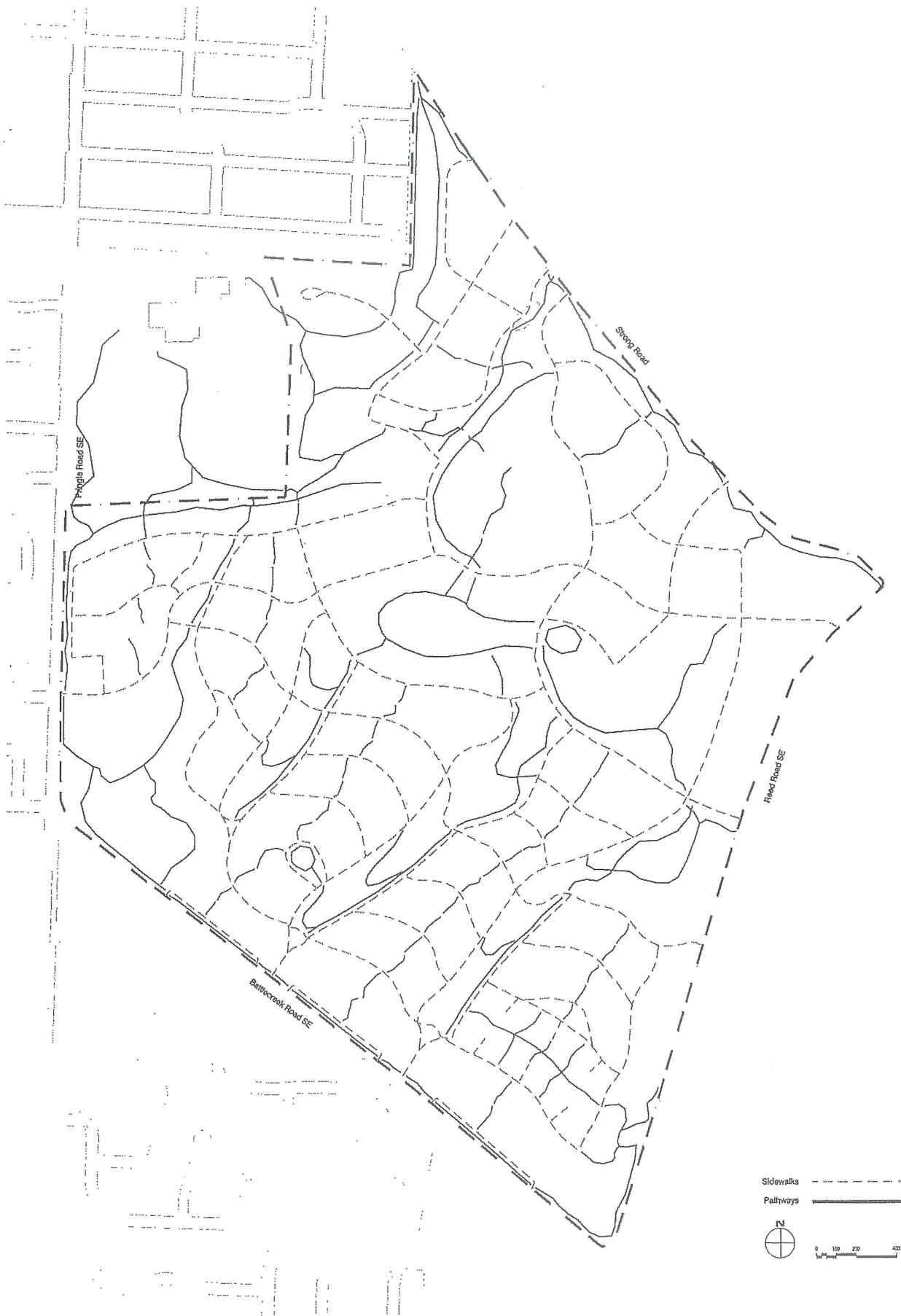
The proposed Fairview Woods Refinement site plan by Westech Engineering shows that a portion of Long Loop runs along the Northwest property line of future Fairview Addition West. There is a section of Long Loop that runs parallel and adjacent to this property line. There is not enough space between the pavement edge and the property line for a sidewalk, therefore, this section of Long Loop will need to be redesigned. This sidewalk and road redesign should be a condition of approval, if approved.

SRC 530.030(b) states "Minimum refinement plan area. The area subject to a refinement plan shall contain no less than 40 acres." This application for this land use request is for 14.07 acres or 36% of the required 40 acre minimum, much less than required. Both the current owners and the applicant knew at the time of the transfer of ownership of the land surrounding this 14.07 acre parcel that it would no longer meet the 40 acre minimum of the refinement plan. This application should be denied for this reason.

On July 1, 2019, I sent an e-mail to Bryce Bishop, City of Salem Planner informing him that I thought that the hearing notice was incomplete because it did not include the appendices which were listed in the Fairview Woods Refinement Plan Table of Contents. I requested that these appendices be sent to me. I have not received them nor any written reason why they haven't been sent out.

Jerry Mumper

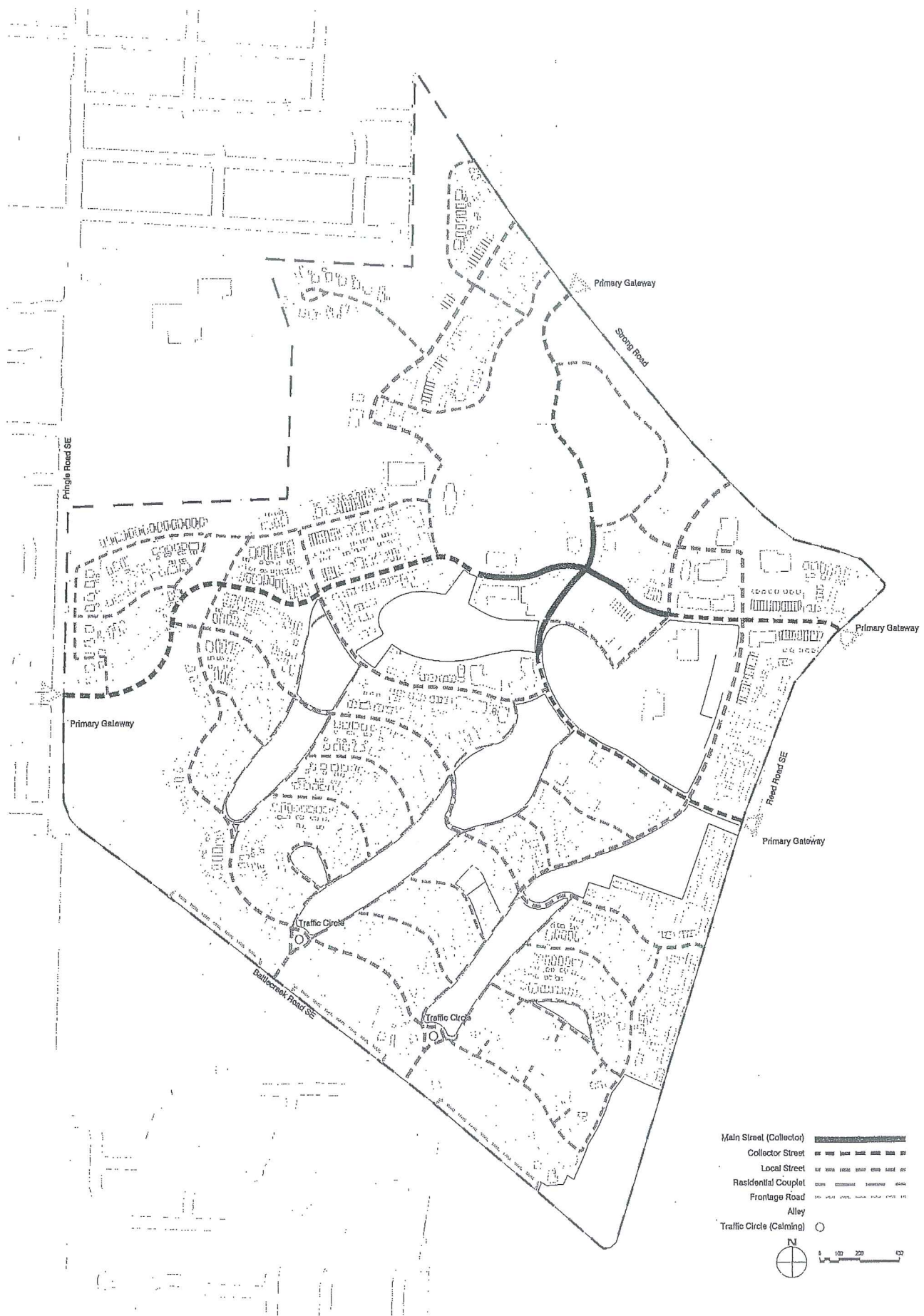




# off-street pathway and open space plan

Fairview Training Center Redevelopment-Salem, Oregon  
 Sustainable Fairview Associates, LLC  
 October, 2004

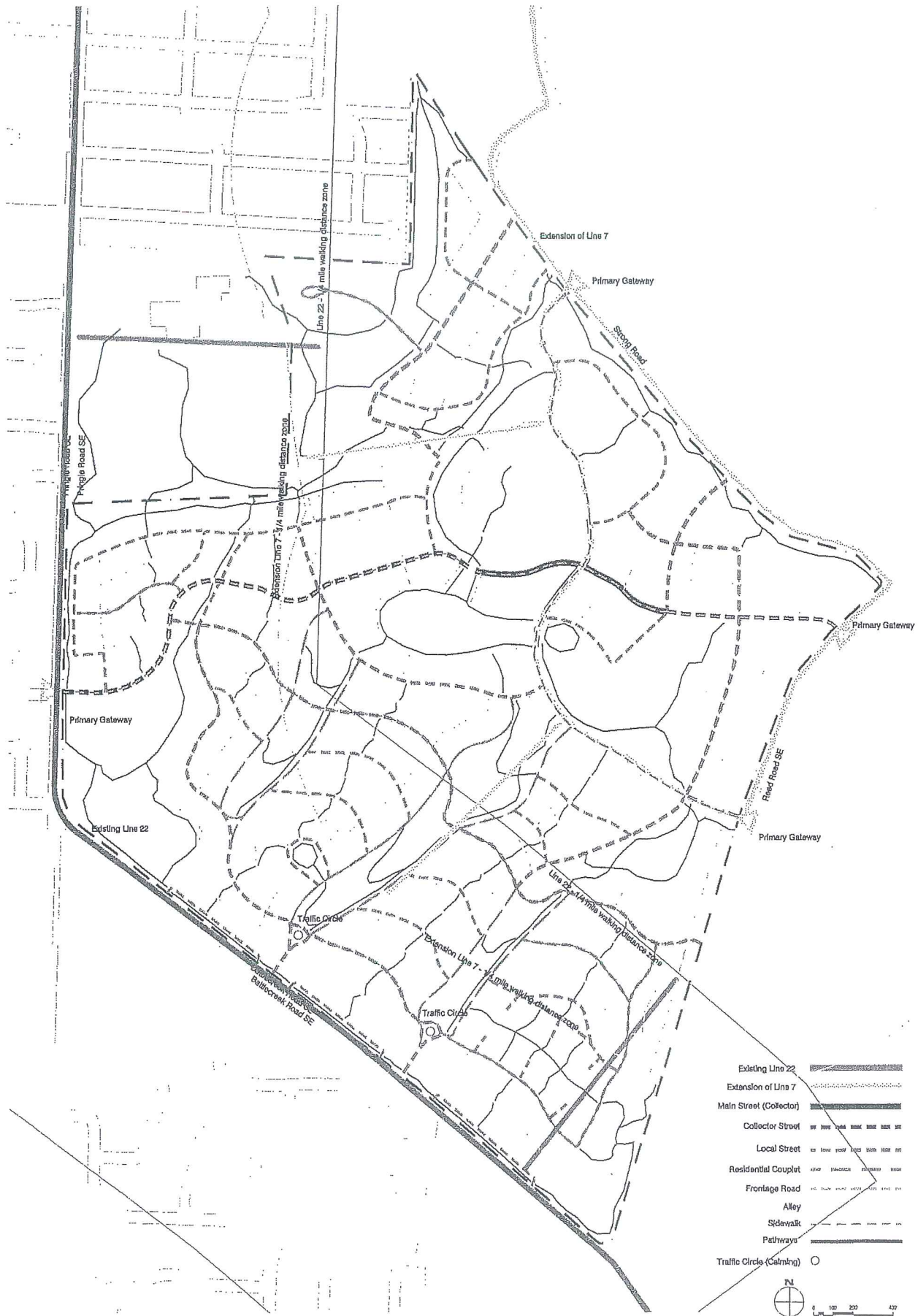
opsis architecture  
 1202 NW 17th Avenue  
 Portland, Oregon 97209  
 P: 503.525.9911  
 F: 503.525.0440



## street network plan

Fairview Training Center Redevelopment-Salem, Oregon  
Sustainable Fairview Associates, LLC  
October, 2004

opsis architecture  
1802 NW 17th Avenue  
Portland, Oregon 97209  
P: 503.825.9511  
F: 503.825.0440



## mobility plan

Fairview Training Center Redevelopment-Salem, Oregon  
Sustainable Fairview Associates, LLC  
October, 2004

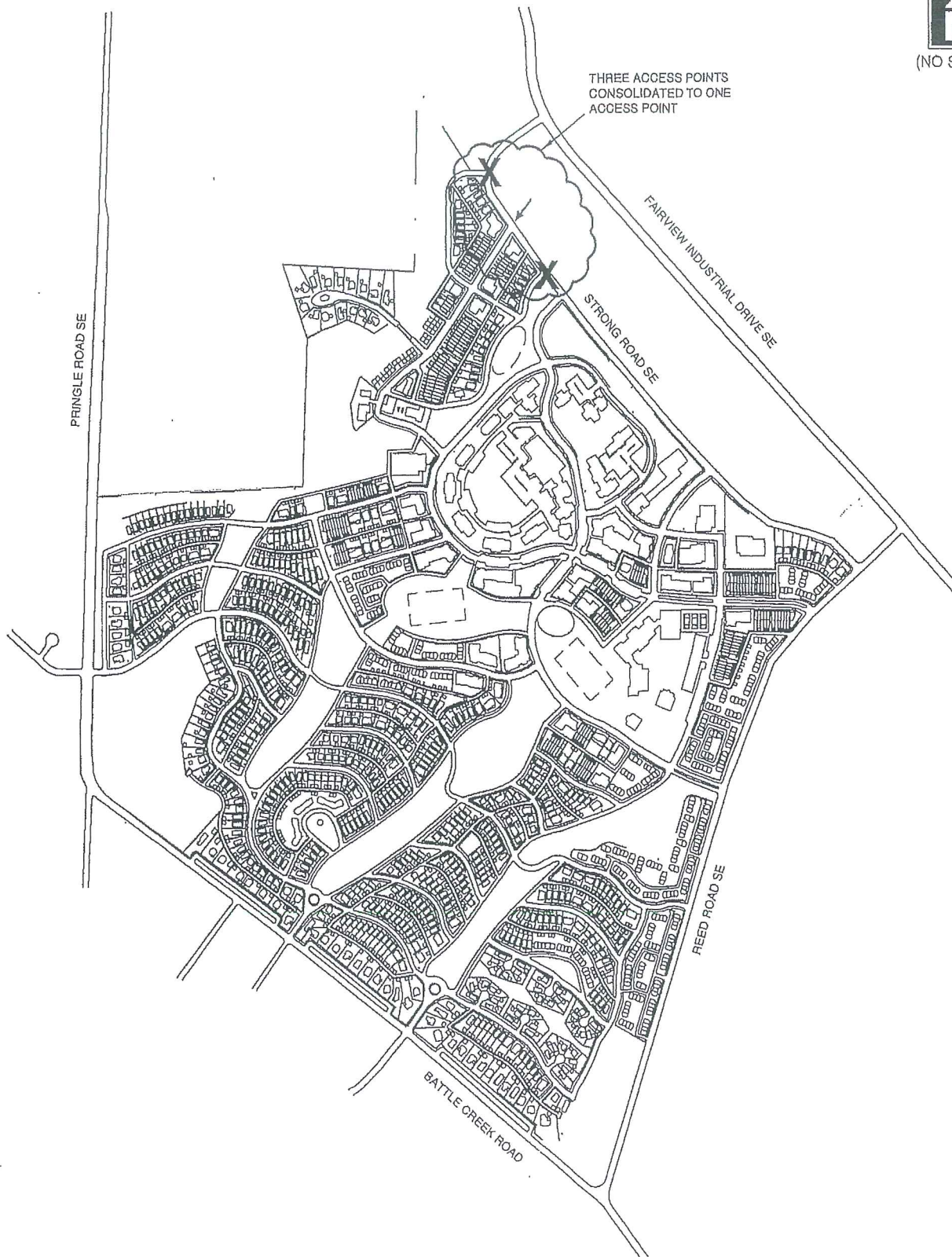
opsis architecture  
1202 NW 17th Avenue  
Portland, Oregon 97209  
P: 503.255.5011  
F: 503.255.0410





(NO SCALE)

THREE ACCESS POINTS  
CONSOLIDATED TO ONE  
ACCESS POINT



PROPOSED SITE PLAN  
SALEM, OREGON

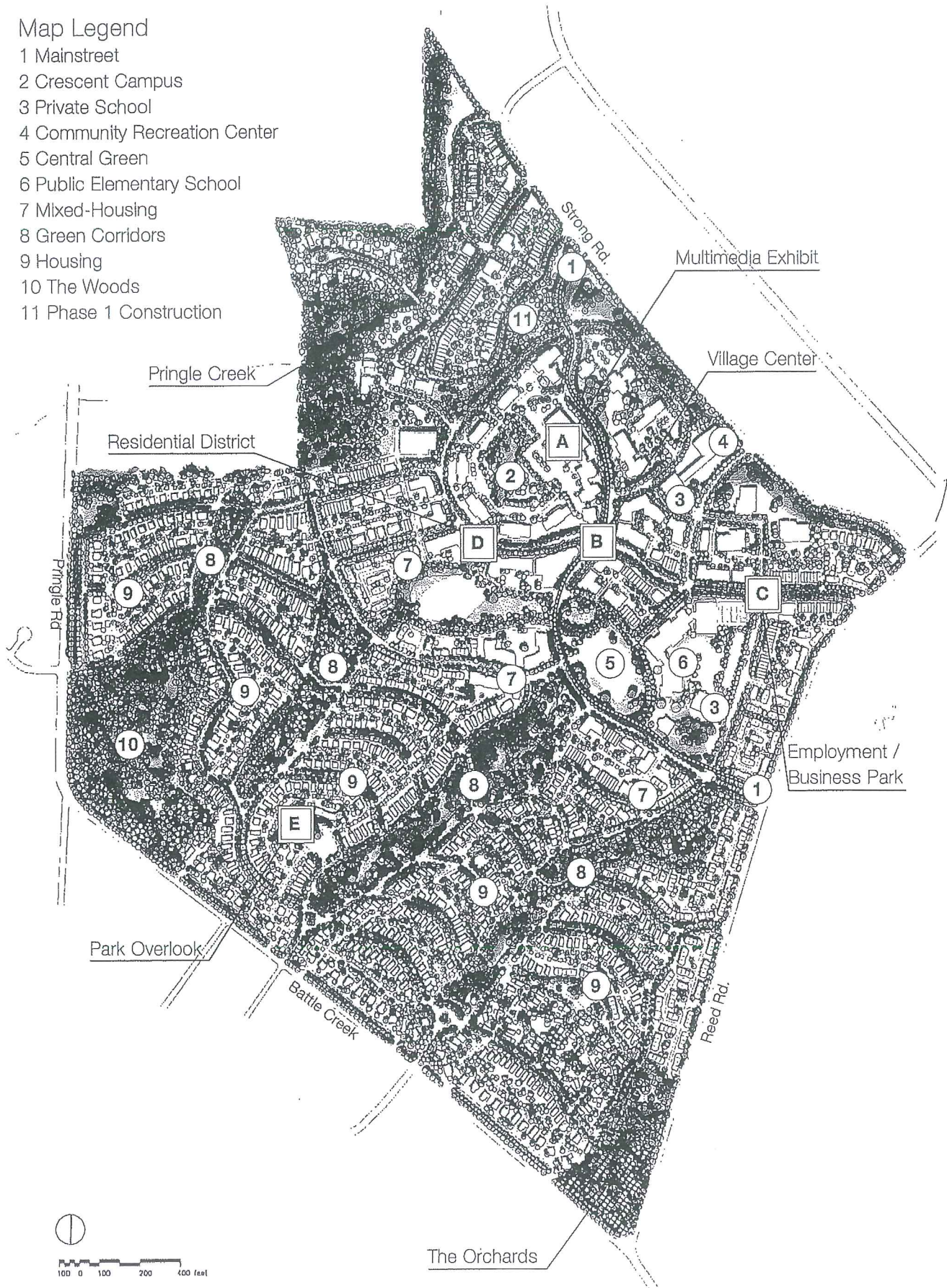
FIGURE  
**3**

5622FIGS



## Map Legend

- 1 Mainstreet
- 2 Crescent Campus
- 3 Private School
- 4 Community Recreation Center
- 5 Central Green
- 6 Public Elementary School
- 7 Mixed-Housing
- 8 Green Corridors
- 9 Housing
- 10 The Woods
- 11 Phase 1 Construction

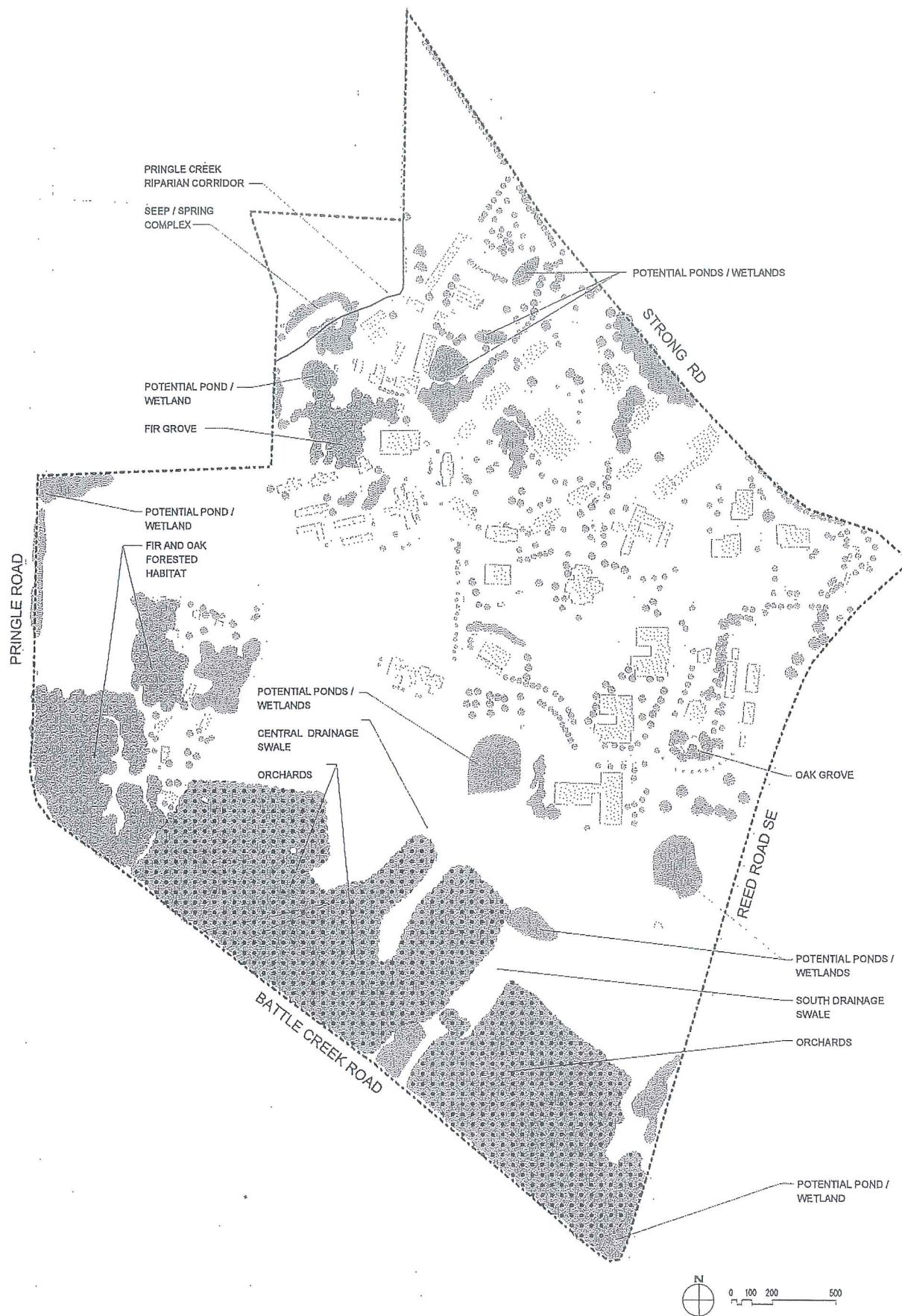


## fairview masterplan

Fairview Training Center Redevelopment-Salem, Oregon  
Sustainable Fairview Associates, LLC  
October, 2004

opsis architecture  
1932 mt 17th avenue  
portland, oregon 97203  
p: 503.825.9511  
f: 503.825.0140





## existing natural resources

Fairview Training Center Redevelopment-Salem, Oregon  
Sustainable Fairview Associates, LLC  
October, 2004

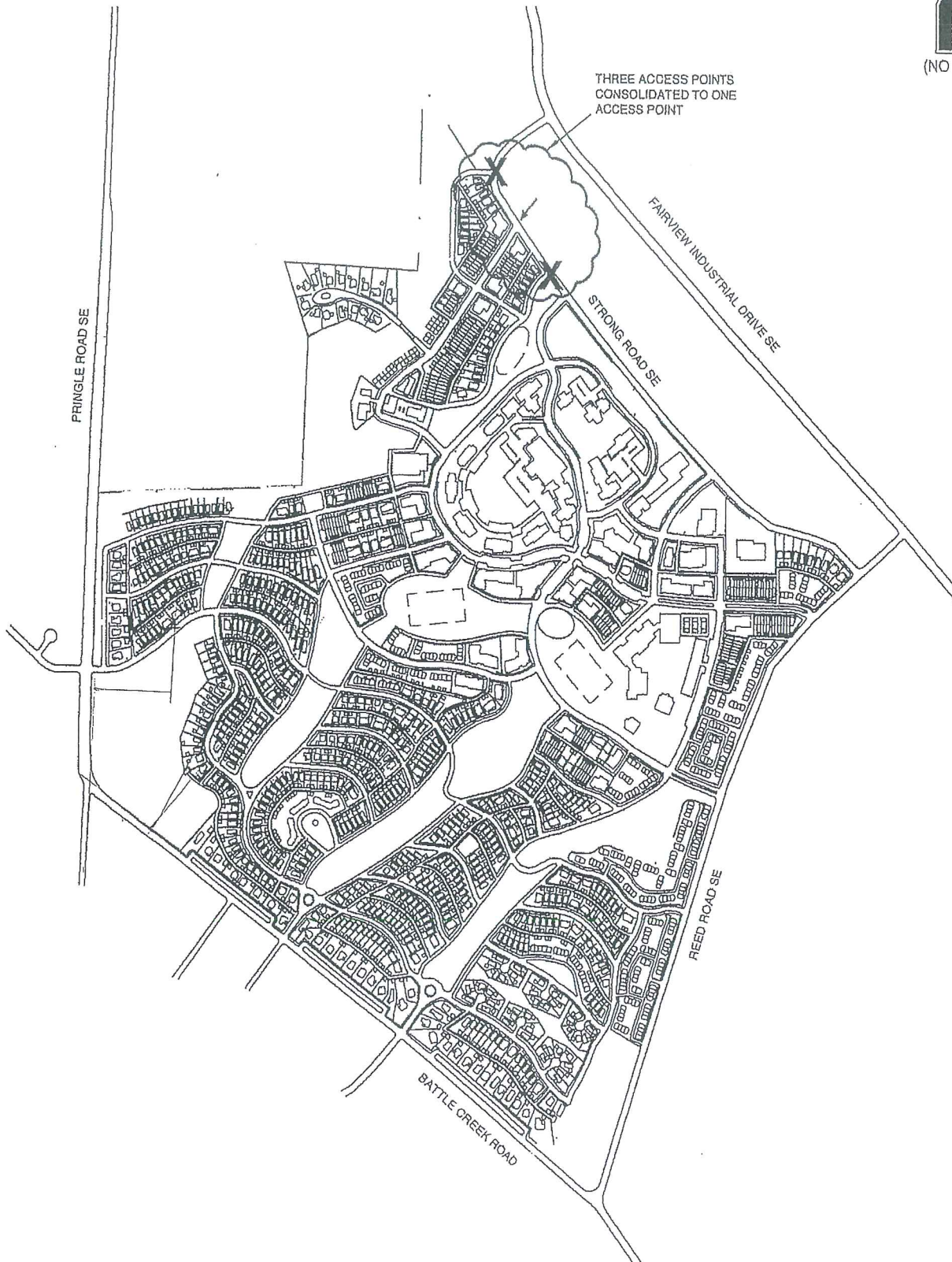
opsis architecture  
1252 NW 17th Avenue  
Portland, Oregon 97209  
P: 503.226.9511  
F: 503.429.0440





(NO SCALE)

THREE ACCESS POINTS  
CONSOLIDATED TO ONE  
ACCESS POINT



PROPOSED SITE PLAN  
SALEM, OREGON

FIGURE  
**3**

5622FIGS

## SECTION 2: GENERAL ALLOCATION AND IDENTIFICATION OF MAJOR PROPOSED LAND USES

The Fairview Addition model generally follows the Mixed-Use Overlay Plan outlined in Chapter 530 of the SRC: FMU Fairview Mixed-Use Zone unless stated herein. Four of the indicated overlay zones are included in the Refinement Plan:

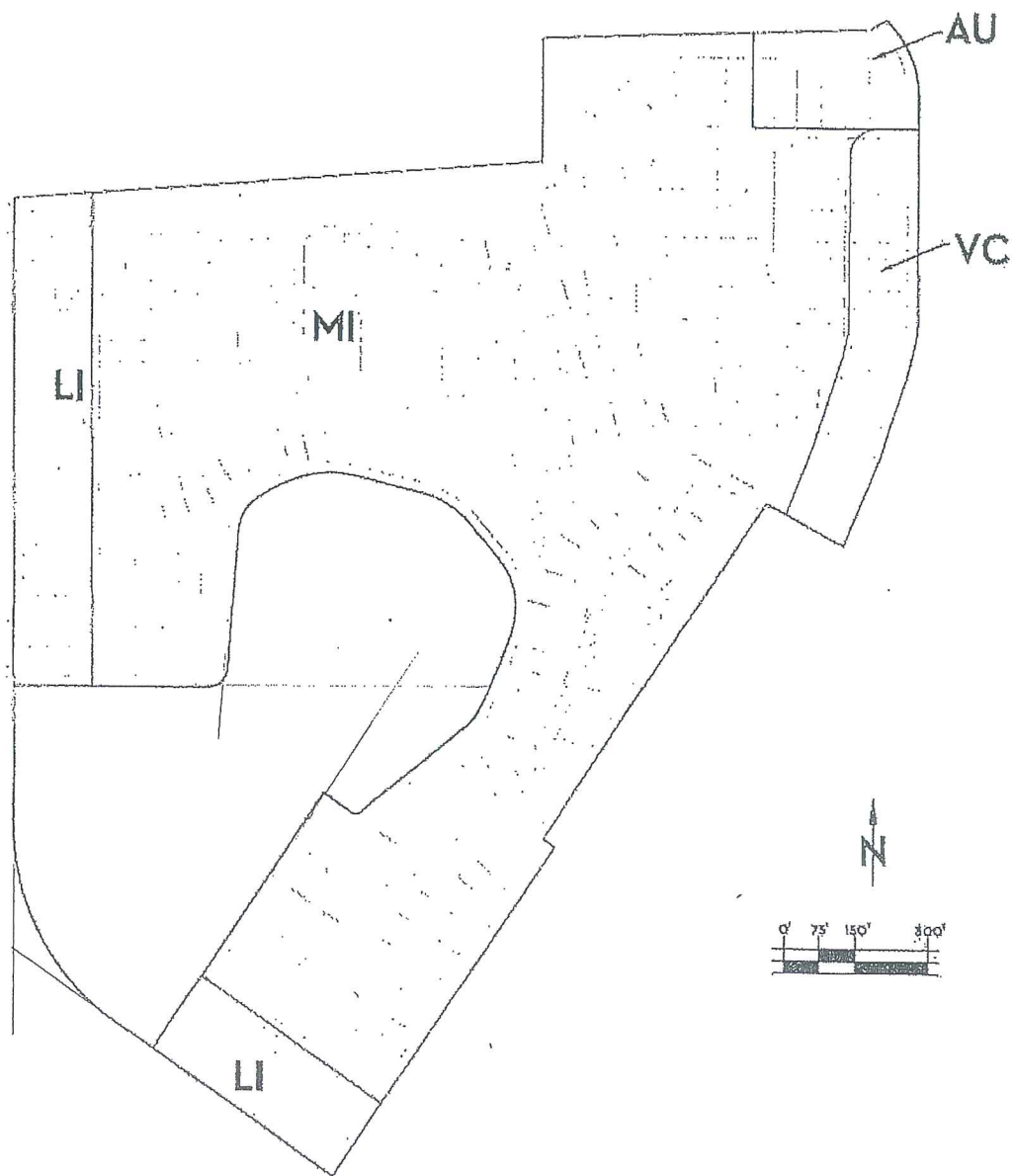


Figure 2: Mixed Use Overlay Plan