

Return to:

**City Clerk's Office**

 City of Palm Coast  
2 Commerce Blvd.  
Palm Coast, FL 32164

**FIRST AMENDMENT TO THE S.R. 100 PROPERTY DEVELOPMENT OF  
REGIONAL IMPACT DEVELOPMENT ORDER (PURSUANT TO  
SETTLEMENT)**

This First Amendment to the S.R. 100 Property Development of Regional Impact Development Order, (herein referred to as the "First Amended DRI DO"), is made and executed this 23 day of August 2007 between City of Palm Coast whose address is 2 Commerce Boulevard, Palm Coast, Florida 32164 (the "City") and JX Properties, LLC whose address is 14000 Rockland Road, Libertyville, Illinois 60048 (the "Developer"). The following changes are hereby requested and agreed upon:

**RECITALS**

**WHEREAS**, the Developer, who is the owner of the property which is the subject of this First Amended DRI DO, filed an Application For Development Approval ("ADA") dated April, 2005, as amended by ADA First Sufficiency Response dated August, 2005, and ADA Second Sufficiency Response dated November, 2005, for the S.R. 100 PROPERTY Development of Regional Impact ("S.R. 100 PROPERTY DRI" or "Project") located on certain real property as more specifically described in Exhibit "A" hereto (the "DRI Property"); and

**WHEREAS**, whenever an action or approval of the City or City Manager is referred to herein, except for actions specifically relating to actions of the City Council, the action shall be taken by the City Manager, or designee, as deemed appropriate by the City Manager; and

**WHEREAS**, the S.R. 100 PROPERTY DRI is a mixed-use development to be developed on approximately 505 acres located in the City bound by State Road 100, Old Kings Road and Graham Swamp; and

**WHEREAS**, the ADA was reviewed by the Northeast Florida Regional Council ("NEFRC") as required by Section 380.06, *Florida Statutes*, and the NEFRC recommended that the ADA be approved, with conditions; and

**WHEREAS**, the Developer hereby reaffirms that it provided complete copies of the ADA, as amended by ADA First Sufficiency Response and ADA Second Sufficiency Response to the Florida Department Of Community Affairs ("FDCA"), NEFRC and the City; and

**WHEREAS**, pursuant to Section 380.06, *Florida Statutes*, the City Council of the City ("City Council") heard at public hearings convened on August 1, 2006 and on August 15, 2006, the ADA for the S.R. 100 PROPERTY DRI and afforded the public and all affected parties an opportunity to be heard and to present evidence; and

**WHEREAS**, after such public hearing and in consideration of the recommendations made and submitted to the City Council, the City Council passed a resolution adopting the original DRI Development Order (the "DRI DO") which was recorded at Official Records Book 1555, Page 839 of the Public Records of Flagler County; and

**WHEREAS**, on or about October 27, 2006, the FDCA, in conjunction with the Florida Department of Transportation (FDOT), objected to the Initial Development Order on the basis that phasing data called for in the DRI DO was inconsistent with the ADA; and

**WHEREAS**, in an effort to avoid an unnecessary and cost appeal, the FDCA, the NEFRC, the FDOT, the City and the Developer agreed to amend the DRI DO subsequent to the expiration of the FDCA appeal period pursuant to Chapter 380, *Florida Statutes*, and Rule 9J-2, *Florida Administrative Code*; and

**WHEREAS**, the City has coordinated the processing of this matter with the FDCA; and

**WHEREAS**, the FDCA and the NEFRC agreed that changes to the Initial Development Order set forth in this First Amended DRI DO are exempt from the statutory Notice of Proposed Change procedures called for in Chapter 380, *Florida Statutes*, and, therefore, is more closely subject to Section 380.06(19)(e), *Florida Statutes*, but is, effectively, an amicable resolution to issues as if appealed; and

**WHEREAS**, based upon findings of fact and conclusions of law the City finds that the S.R. 100 PROPERTY DRI a) does not unreasonably interfere with the achievement of the objectives of the adopted state land development plan applicable to the area; b) is consistent with the *State Comprehensive Plan*; c) is consistent with City of Palm Coast land development regulations and the *City of Palm Coast Comprehensive Plan*; and d) will be consistent with the NEFRC recommendation for the S.R. 100 Property DRI (February 2, 2006); and

**WHEREAS**, whenever an action, right or eligibility of the Developer is referenced, the action may be taken by, or the right or eligibility may belong, to the Developer or its assigns/designee but all conditions, covenants, and agreements set forth in this First Amended DRI DO are the obligation of the Developer and/or its assigns inasmuch as the covenants, terms and conditions of this First Amended DRI DO run with the DRI Property; and

**WHEREAS**, all covenants and conditions set forth herein are agreed to by the Developer and represent covenants which touch and concern the subject DRI Property and run with the land and are thereby binding upon the transferees, successors and assigns of the Developer.

**NOW THEREFORE**, for valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants and agreements contained herein, the parties hereto hereby agree as follows:

**SECTION 1. RECITALS**

The aforementioned recitals are hereby taken as true, incorporated herein by reference, and made a material part hereof.

**SECTION 2. BUILDOUT AND EXPIRATION**

Part II, Section 4. Buildout and Expiration of the DRI DO shall be deleted in its entirety and replaced with the following:

4. Buildout and Expiration. The S.R. 100 PROPERTY DRI infrastructure and plats shall be developed and recorded in one single phase as shown in the following schedule:

TABLE 1. PROJECT PHASING PROJECTIONS		
Development Summary		Buildout Dec 31, 2011
<b>RESIDENTIAL</b>		
Single-Family		619 DUs
Multi-Family		1,792 DUs
<b>Total</b>		<b>2,411 DUs</b>
<b>COMMERCIAL</b>		
General Retail		50,000 sq. ft.
General Office		30,000 sq. ft.
Hotel		150 Rooms

The Developer shall construct or cause to be constructed, at a minimum, the major infrastructure consisting of the following:

(a) Construction of the Spine Road as a 2-lane urban section from State Road 100 to approximately 500 feet north of the traffic circle, and thereafter, a 4-lane urban section to Old Kings Road. The rights-of-way for the spine road only shall be 104 feet in width.

(b) Construction of the master drainage system for the DRI Property.

(c) Installation of a master water distribution system, a master sewage collection system, a master effluent transmission system, a master underground electric

distribution system and conduit, a master reuse system, and a master underground fiber optic system within all road rights-of-way or adjacent multi-use easements.

(d) Installation of landscaping along roads, around parking lots, entrances, common areas and in other public areas.

(e) Construction of the multi-purpose trail, with a connection to the existing Flagler County Rails to Trails property to the City Park, Tract "P". All internal streets and drainage systems shall be constructed and utility services shall be extended by the Developer as approved by the City.

Development shall commence no later than January 1, 2006. As a result, the S.R. 100 PROPERTY DRI expiration date of this Development Order is both established as of December 31, 2026.

**SECTION 3. TRANSPORTATION**

Part III, Section 8. Transportation of the DRI DO shall be deleted in its entirety and replaced with the following:

**8. Transportation.**

(a) Notwithstanding the phasing schedule that is set forth in Section 4, under Part II above, for the purpose of transportation recommendations, S.R. 100 PROPERTY DRI is a single phase development based upon ITE trip generation estimates for approved construction, as shown on the following schedule:

	Estimated Buildout Year	External PM Peak Hour Trips	External CUMULATIVE PM Peak Hour Trips	External DAILY TRIPS	External CUMULATIVE DAILY TRIPS
Buildout	2011	1,980	1,980	16,983	16,983

(b) The Developer shall be responsible for the design, all required permits, and construction to bring the alignment of Town Center Boulevard to meet the site access at Old Kings Road; henceforth, creating a four-way intersection at the S.R. 100 Property's access to Old Kings Road, attached as **Exhibit "D"**. In the event that a pedestrian bridge is required by the State, the construction of said bridge shall not be an obligation of the Developer but shall not however in any way affect its obligation per City Ordinance 2005-10 Old Kings Road Special Assessment District.

(c) Consistent with the City's Comprehensive Plan, no more that 50 residential units shall be granted a certificate of occupancy until two access points are in place to either collector or arterial roadways from the S.R. 100 Property in a design configuration acceptable to the City.

(d) The Developer shall convey all rights-of-way and associated easements and facilities necessary to construct the internal roadway network and shall be responsible for constructing the internal roadway network. The conveyance of rights-of-way and associated easements and facilities shall be to the City and in a form acceptable to the City.

(e) The Developer shall be responsible for the construction of all access improvements to the SR 100 DRI Property, including turn lanes and traffic signals (as required by the FDOT or the City). Moreover, the Developer shall convey additional and necessary rights-of-way, including but not limited to, the rights-of-way of the alignment of Town Center Boulevard to Old Kings Road to the City.

(f) Conditioned upon satisfying the transportation conditions discussed below, the Developer shall be vested for traffic concurrency until expiration of the Development Order. The Developer shall fund, design and cause to be constructed the following off-site improvements in order to mitigate the impacts associated with the S.R. 100 Property DRI:

(i) (Six Lane Improvement to the S.R. 100): The Developer shall fund, design and cause to be constructed the six lanes of S.R. 100 between I-95 and Old Kings Road. The eastern termini of the six lane improvement will include a 1,500 foot length of lane in the eastbound direction through the intersection. The improvement design will be subject to the review and approval of the FDOT. The western termini of the six lane improvement will be based on the following two scenarios:

(a) (S.R. 100 widened to six lanes west of Interstate 95 Southbound Ramps): The six lane construction should be extended through the interchange to align with the six lane section west of the Interstate 95 Southbound ramps. The traffic signal at the intersection at Old Kings Road and S.R. 100 will be modified to accommodate the widening of S.R. 100.

(b) (S.R. 100 not widened to six lanes west of Interstate 95 Southbound Ramps): The six lane construction should be extended to and terminate at the Interstate 95 Northbound ramps. Currently the FDOT has design plans to widen the section of SR 100 between the Interstate 95 Northbound and Southbound ramps as part of the Interstate 95/S.R. 100 interchange improvements. The traffic signal at the intersection at Old Kings Road and SR 100 will be modified to accommodate the widening of SR 100.

(ii) (S.R. 100 and Old Kings Road Intersection): The Developer shall fund, design and cause to be constructed the signal improvement required to incorporate the improvement required in Condition (i). The signal improvement shall include the modification of the signal as well as the signal timing. The design of the signal modification will be subject to the review and approval of the FDOT.

(g) The Developer shall guarantee the improvements outlined in Conditions (f) (i) and (ii) above through surety, bond, escrow, cash payment or provide binding letter of credit on a form and written by an institution acceptable to the City for City related improvements and FDOT for FDOT related improvements in the amount acceptable to each agency. The guarantee shall be in place prior to the first application for preliminary plat.

(h) The Developer shall receive City transportation impact fee credits for the improvements identified in this section (1) equal to its cost of said improvement less its proportionate share as set forth in Exhibit "E" and (2) a mutually acceptable Impact Fee Credit Agreement between the Developer and the City resulting from an application filed by the Developer in accordance with the controlling provisions of law.

(i) No building permits shall be issued beyond 665 residential units, 50,000 square feet of retail, 30,000 square feet of office or 150 hotel rooms (or the documented equivalent of 1,066 External PM Peak Hour trips) unless the six-laning obligation defined herein is under construction or included in the first three years of the FDOT Five Year Work Program and the appropriate funding guarantees by the Developer are approved by FDOT. The guarantees for the SR 100 improvement do not eliminate the obligation for full reimbursement (as determined by FDOT) to FDOT by the Developer if the improvement is included into the FDOT Five Year Work Program. If requested by the FDOT and/or City, the improvements along SR 100 will be designed and constructed by the Developer in accordance with FDOT standards. In the event the obligations to (1) align Town Center Blvd and the Spine Road as described herein or (2) the improvements to SR 100 as described herein are not completed pursuant to this First Amended DRI DO, the Development Order shall become null and void as evidence by an instrument approved by the City and duly recorded in the Official Records of Flagler County unless otherwise mutually agreed to in writing by the parties.

#### **SECTION 4. LEVEL OF SERVICE STANDARDS**

Part II, Section 9. Level of Service Standards of the DRI DO shall be deleted in its entirety and replaced with the following:

9. Level of Service Standards. The S.R. 100 PROPERTY DRI shall be required to meet all level of service standards in the City's Comprehensive Plan and all requirements of the City's concurrency management system as specifically discussed herein. However, pursuant to Section 163.380(12), *Florida Statutes*, upon the Developer satisfying all the requirements identified in Part III.8, the Developer will have satisfied the transportation concurrency requirements and will therefore become vested.

#### **SECTION 5. FIRE PROTECTION**

Part III, Section 12. Fire Protection of the DRI DO shall be deleted in its entirety and replaced with the following:

12. Fire Protection.

(a) A fire station site shall be donated by the Developer to the City without cost which site shall consist of two (2) acres (one and four-tenths (1.4) acres of uplands) as depicted in Tract F, which shall have its needs for stormwater management facilities off-site accommodated by the Developer. Said fire station site shall be pad ready.

(b) Prior to the construction of any single or multifamily unit exceeding 3 stories in height, one of the following scenarios shall occur:

(i) Within a 3-mile service delivery area of the S.R. 100 Property, the operation of an aerial apparatus shall be available on a 24-hour, 7 days a week basis; or

(ii) Prior to the construction of any structure exceeding thirty five (35) feet in height, the Developer shall contribute fifty percent (50%) of the cost of a fire equipment capable of reaching to the height of the structure to be constructed.

(c) The Developer shall be eligible for fire impact fee credits as provided for in accordance to City regulations and or ordinance in effect at the time the credit is requested or otherwise agreed to by the City.

(d) As of the date of adoption of the First Amended DRI DO, the Developer has satisfied its obligation required under subsection 12(b), above, regarding the purchase of a fire truck.

**SECTION 6. MASTER DEVELOPMENT PLAN**

The Master Development Plan identified in the DRI DO on Exhibit "B" is hereby amended, revised and replaced with the Amended Master Development Plan (Exhibit "B").

**SECTION 7. EFFECT UPON DRI DO**

Except as herein revised, all terms and conditions of the DRI DO shall remain in full force and effect as originally set forth in said DRI DO.

**SECTION 8. DELEGATION TO CITY MANAGER**

The City Manager or designee is hereby authorized to take any actions reasonably necessary to implement the provisions of this First Amended DRI DO.

**WHEREFORE**, the parties hereto have caused these presents to be signed all as of the date and year first above written.

**[SIGNATURES OMITTED TO NEXT PAGE]**

**DEVELOPER'S COVENANT AND AGREEMENT**

COMES NOW, the undersigned, and covenant and agree to the foregoing.

WITNESS my hand and official seal this 31 day of July, 2007.

WITNESSES:

**JX PROPERTIES, LLC,**  
a Florida corporation

[Handwritten Signature]

[Handwritten Signature]  
Frank Blazevich  
Its Manager

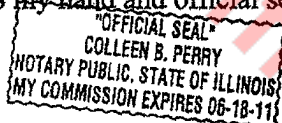
[Handwritten Signature]

STATE OF Illinois )

COUNTY OF Lake )

The foregoing instrument was acknowledged before me this 31 day of July, 2007, by **Frank Blazevich**, the Manager, for and on behalf of the **JX PROPERTIES, LLC**; being a Florida limited liability company, who is personally known or who produced identification to me and who did not take an oath.

WITNESS my hand and official seal this 31 day of July, 2007.



(Seal)

Colleen B Perry  
Signature of Notary Public

Colleen B Perry  
Printed Name

Original Document



**DEVELOPER'S COVENANT AND AGREEMENT**

COMES NOW, the undersigned, and covenant and agree to the foregoing.

WITNESS my hand and official seal this 1 day of Aug, 2007.

WITNESSES:

**JX PROPERTIES, LLC,**  
a Florida corporation

[Signature]  
Jane Duskotilo

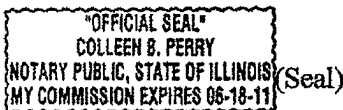
[Signature]  
Fred Leiner  
Its Manager

STATE OF Illinois )

COUNTY OF Lake )

The foregoing instrument was acknowledged before me this 1 day of Aug, 2007, by **Fred Leiner**, the Manager, for and on behalf of the **JX PROPERTIES, LLC**; being a Florida limited liability company, who is personally known to me or produced identification and who did not take an oath.

WITNESS my hand and official seal this 1 day of Aug, 2007.



Colleen B Perry  
Signature of Notary Public

Colleen B Perry  
Printed Name

STATE OF FLORIDA:

COUNTY OF Flagler  
ATTEST:

CITY OF PALM COAST, FLORIDA

Signed this 22 day of August, 2007

Clare M. Hoeni  
Clare M. Hoeni, City Clerk

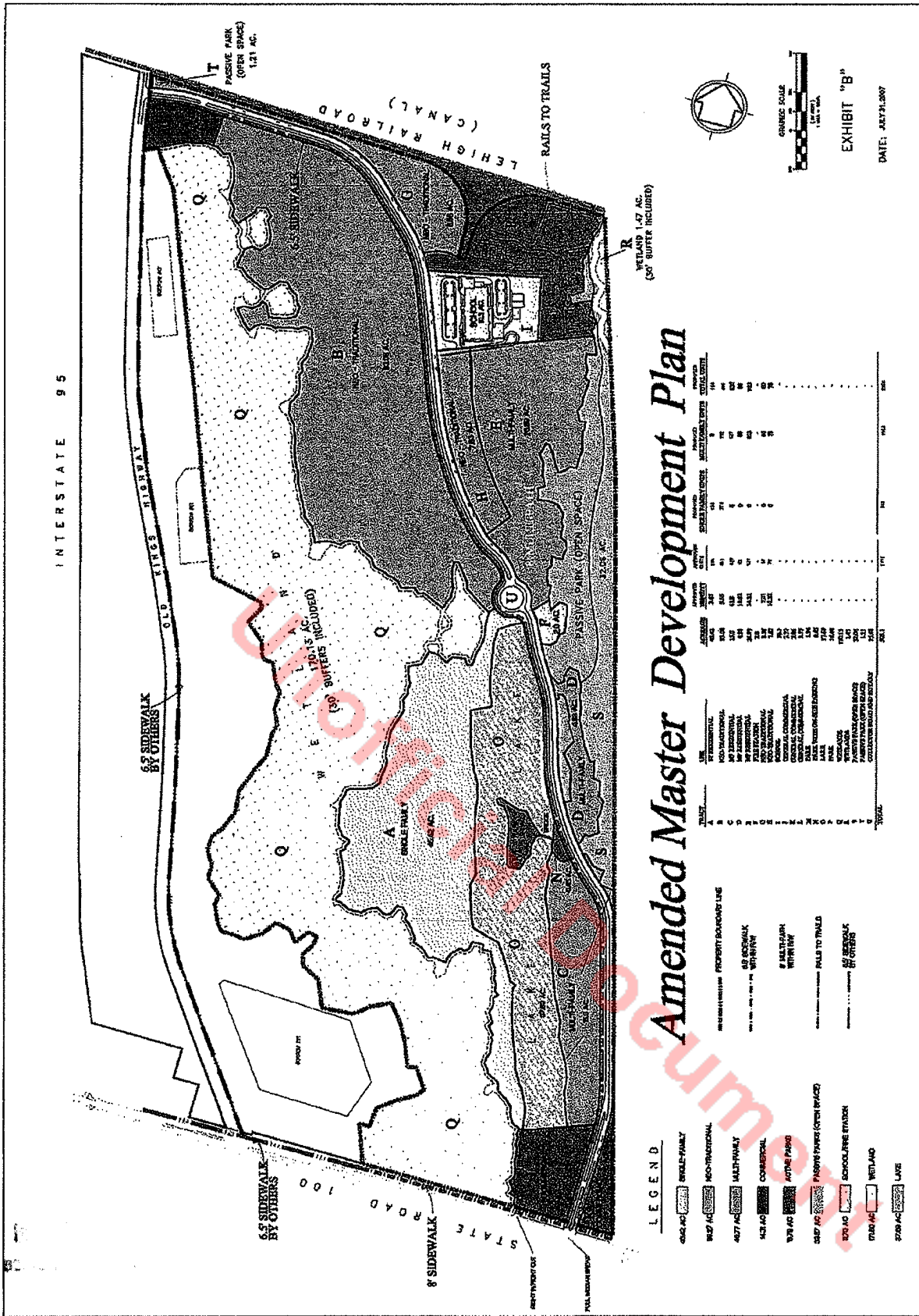
James V. Canfield  
James V. Canfield, Mayor

For use and reliance of the  
Palm Coast City Council only.  
Approved as to form and legality.

/s/ Lonnie Groot  
Lonnie Groot, City Attorney

\\chi-exchange\users\vnchiumentoi\IX, LLC\Final DRI DO\Amendment to DRI DO 073107.doc





# Amended Master Development Plan

## LEGEND

- 650 AC [Symbol] SINGLE-FAMILY
- 180 AC [Symbol] MULTI-FAMILY
- 400 AC [Symbol] MULTI-FAMILY
- 140 AC [Symbol] COMMERCIAL
- 100 AC [Symbol] APPLICABLE
- 200 AC [Symbol] PASSIVE PARK (OPEN SPACE)
- 100 AC [Symbol] SCHOOL USE STATION
- 100 AC [Symbol] WETLAND
- 500 AC [Symbol] LAKE

- PROPERTY BOUNDARY LINE
- AS SIDEWALK WITH TRAIL
- 8 SIDEWALK WITH TRAIL
- PAVING TRAIL
- 50 SIDEWALK BY OTHERS

ZONE	AREA (AC)	APPROX. ACRES	EXISTING USES	PROPOSED USES	TOTAL ACRES
A	400	400			400
B	100	100			100
C	100	100			100
D	100	100			100
E	100	100			100
F	100	100			100
G	100	100			100
H	100	100			100
I	100	100			100
J	100	100			100
K	100	100			100
L	100	100			100
M	100	100			100
N	100	100			100
O	100	100			100
P	100	100			100
Q	100	100			100
R	100	100			100
T	100	100			100
<b>TOTAL</b>	<b>2000</b>	<b>2000</b>			<b>2000</b>

GRAPHIC SCALE  
1" = 100'

EXHIBIT "B"  
DATE: JULY 21, 2007

INTERSTATE 95

OLD KINGS HIGHWAY

STATE ROAD 100

8' SIDEWALK

6.5' SIDEWALK BY OTHERS

8' SIDEWALK

RAILS TO TRAILS

LEHIGH RAILROAD (CANAL)

PASSIVE PARK (OPEN SPACE)

WETLAND 1.47 AC (50' BUFFER INCLUDED)

PASSIVE PARK (OPEN SPACE)

PASSIVE PARK (OPEN SPACE)

PASSIVE PARK (OPEN SPACE)

PASSIVE PARK (OPEN SPACE)

PASSIVE PARK (OPEN SPACE)

PASSIVE PARK (OPEN SPACE)