

RESOLUTION NO. 2022-46

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, VACATING A PORTION OF THE CITY'S RIGHT-OF-WAY AND EASEMENTS AT THE NORTHWEST CORNER OF PALM AVENUE AND SILVER STRAND BOULEVARD AND APPROVING THE SALE OF SUCH VACATED RIGHT-OF-WAY AND EASEMENTS PURSUANT TO A CEQA EXEMPTION

WHEREAS, the streets commonly known as Palm Avenue and Silver Strand Boulevard were dedicated to and accepted by the County of San Diego for public use on Map No. 1902 on March 22, 1926; and

WHEREAS, the San Diego Superior Court, through a stipulated judgment and order on April 24, 1978, granted the City of Imperial Beach an easement for street, highway and sidewalk purposes along and across a portion of Lots 23 and 24 of Map No. 1902 (Doc. No. 78-164951 ¶ 8); and

WHEREAS, the San Diego Superior Court, through a stipulated judgment and order on April 24, 1978, granted the City of Imperial Beach an easement for sidewalk, parkway and landscaping purposes along and across a portion of Lot 24 of Map No. 1902 (Doc. No. 78-164951 ¶ 9); and

WHEREAS, a survey by the owner of Lots 23 and 24 (which is commonly known as 236 Palm Avenue) revealed that the above sidewalk, parkway and landscaping easement is located entirely in the City's right-of-way; and

WHEREAS, the City of Imperial Beach has realigned Silver Strand Boulevard so that the two easements from the 1978 judgment (the "Easements") and a portion of the right-of-way at the northwest corner of Palm Avenue and Silver Strand Boulevard as described on **Exhibit A** and depicted on the survey map attached as **Exhibit B** (the "236 Palm Avenue Right-of-Way") are no longer needed for right-of-way purposes or any other purposes for which they were dedicated; and

WHEREAS, the owner of Lots 23 and 24 (236 Palm Avenue) has requested that the Easements and the 236 Palm Avenue Right-of-Way be vacated; and

WHEREAS, the City can locate the current sidewalk and any future sidewalk adjacent to Lots 23 and 24 (236 Palm Avenue) in the existing and public right-of-way in the absence of the Easements and in the absence of the 236 Palm Avenue Right-of-Way; and

WHEREAS, the Easements and the 236 Palm Avenue Right-of-Way are an excess right-of-way of a street not required by the City for public street purposes and/or a public service easement that have not been used for the purpose of their dedication for more than five years; and

WHEREAS, the 236 Palm Avenue Right-of-Way has not been used for vehicle traffic and has been impassable for more than five years; and

WHEREAS, it would benefit the City to vacate and sell the 236 Palm Avenue Right-of-Way and vacate the Easements; and

WHEREAS, Government Code sections 37350 and 37351 generally permit a city to dispose of real property for the common benefit or for the benefit of the city and Government Code section 54220, *et. seq.* ("Surplus Lands Act"), designates certain property as exempt surplus property such that the Surplus Lands Act does not apply to it; and

WHEREAS, the City Council has approved a resolution to declare the Easements and the 236 Palm Avenue Right-of-Way as exempt surplus property pursuant to Government Code section 54221(f)(1); and

WHEREAS, the Public Streets, Highways, and Services Easements Vacation Law (Part 3 of Division 9 of the California Streets and Highways Code sections 8300 *et seq.*) (the "Act") permits the vacation of streets and public easements under specific conditions; and

WHEREAS, section 8334(a) of the Act provides that the City Council may summarily vacate an excess right-of-way of a street or highway not required for street or highway purposes; and

WHEREAS, section 8333(a)&(c) of the Act provides that the City Council may summarily vacate a public service easement that has not been used for the purpose of its dedication for more than five years or has been determined to be excess; and

WHEREAS, section 8331(a) of the Act provides that the City Council may summarily vacate public streets that have not been used for vehicle traffic and are impassable for more than five years; and

WHEREAS, sections 8335 and 8336 of the Act provide that the City Council may summarily vacate a street or public service easement by adopting a resolution of vacation and following the procedures outlined in the Act; and

WHEREAS, the City Council finds that the vacation and sale comply with the requirements of the California Environmental Quality (CEQA) as the vacation and sale are categorically exempt pursuant to CEQA Guidelines 15332 (In-Fill Development Projects); and

WHEREAS, Gov. Code section 65402(a) requires a finding that a sale or vacation is in conformance with the general plan; and

WHEREAS, the City Council acts as the Planning Commission for the City; and

WHEREAS, vacation and sale of the Easements and the 236 Palm Avenue Right-of-Way are consistent with the City's General Plan of the City as more particularly described in the staff report for this Resolution which is incorporated herein by reference; and

WHEREAS, vacation and sale of the Easements and the 236 Palm Avenue Right-of-Way are consistent with the City's certified Local Coastal Program including coastal land use policies because Policy C-8 of the certified Local Coastal Program recommends reducing excess rights-of-ways; and

WHEREAS, the portion of right-of-way included in the vacation and sale is located between a coastal area and the first public road, which, in this case, is Silver Strand Boulevard and a portion of Palm Avenue, has not been used for public access purposes for many years and vacating said right-of-way will have no negative impact for public access because existing street and sidewalk access improvements would be maintained or enhanced; and

WHEREAS, the City obtained an appraisal for the Easements and the 236 Palm Avenue Right-of-Way and the appraiser determined that the value is \$90,000. 2K Commercial Palm IB, LLC, the owner of adjacent Lots 23 and 24 ("Buyer") has offered to purchase the Easements and the 236 Palm Avenue Right-of-Way for the appraised value of \$90,000.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial Beach as follows:

1. The above recitals are true and correct, have served as a basis for the findings, and are a substantive part of this Resolution.
2. The City Council hereby approves this Resolution No. 2022-46 and orders vacation of the Easements and the 236 Palm Avenue Right-of-Way pursuant to the conditions more particularly described below.
3. This vacation is made pursuant to Chapter 4 of Part 3 of Division 9 of the Streets and Highways Code.
4. The 236 Palm Avenue Right-of-Way being vacated has a legal description as more specifically described in **Exhibit A** hereto and as depicted in the attached survey map in **Exhibit B** hereto.
5. The Easements being vacated are described in the Stipulation For Judgment and Order filed in the San Diego Superior Court on April 24, 1978 in case number 382264 (¶¶ 8-9) and filed on April 25, 1978 as Doc. No. 78-164951 in the Office of the San Diego County Recorder, State of California with respect to APN 625-023-07-00, which more specifically includes vacation of:
 - a. An easement for street, highway and sidewalk purposes along and across all that land within Lots 23 and 24 lying south of a line 45.00 feet north of and parallel to the center line of Palm Avenue as shown on Silver Strand Beach Gardens Addition to Imperial Beach, filed in the Office of the San Diego County Recorder as Map thereof No. 1902 and as depicted in the attached survey map in **Exhibit C**; and
 - b. An easement for sidewalk, parkway and landscaping purposes along and across and beginning at a point from which the southwesterly corner of Lot 23, Block 8, Silver Strand Beach Gardens Addition to Imperial Beach, filed as Map 1902 in the Office of the San Diego County Recorder, bears the following two courses: north 89°52' west, a distance of 85.80 feet and north 0°08' east, a distance of 2.92 feet; thence, from the point of beginning by metes and bounds, 40 feet north of and parallel to the centerline of Palm Avenue as shown on said Map 1902, south 89°52' east, a distance of 18.00 feet; thence, on the arc of a 13.00 foot radius curve, tangent to the preceding course and concave to the northwest, a distance of 18.94 feet to a point of reverse curvature; thence, along the arc of a 163.00 foot radius curve, concave to the southeast, a distance of 68.69 feet; thence, north 30°48' east, a distance of 5.00 feet; thence north 80°17' west, a distance of 4.00 feet; thence south 27°15' west, a distance of 85.50 feet; thence, south 89°52' west, a distance of 12.29 feet; thence south 0°08' west, a distance of 5.00 feet, plus or minus, to the point of beginning and as depicted in the attached survey map in **Exhibit C**.

6. The City Council hereby directs the City Clerk to cause a certified copy of this resolution of vacation, attested by the Clerk under seal, to be recorded without acknowledgment, certification, or further proof in the San Diego County Recorder's Office pursuant to section 8336 of the Act. Such recordation shall occur upon the satisfaction of any conditions listed in the terms of the Purchase and Sale Agreement that will be entered into between the City and the Buyer as described below.
7. From and after the date that this Resolution is so recorded, the Easements and the 236 Palm Avenue Right-of-Way shall no longer constitute a street or a public service easement.
8. The City Council finds that the vacated 236 Palm Avenue Right-of-Way and Easements have an appraised value of \$90,000 as determined by the City's appraiser and that such amount is fair and reasonable compensation for such a sale and will benefit the public.
9. The City Council hereby approves the sale of the vacated 236 Palm Avenue Right-of-Way and Easements for the purchase price of \$90,000 to Buyer contingent upon (1) the City providing 30 days' notice to the Housing and Community Development Department ("HCD") of the City's determination of this property being exempt surplus property under the Surplus Lands Act prior to any disposition of the subject property and receiving no comments from HCD that would prohibit the sale; and (2) the terms and conditions of a Purchase and Sale Agreement to be entered into by the parties. The City Council authorizes the City Manager to take all necessary steps and execute any and all necessary documents to effectuate the sale of said property to 2K Commercial Palm IB, LLC, including a Purchase and Sale Agreement in a form approved by the City Manager and City Attorney, which shall include a provision that the Buyer shall indemnify, defend and hold the City harmless from any actions or claims arising out of the sale or vacation of the 236 Palm Avenue Right-of-Way or the vacation of the Easements. Further, the Buyer shall deposit funds with the City to pay for the preparation of the Purchase and Sale Agreement and other documents necessary to effectuate the sale of the subject property, including but not limited to any necessary documents for HCD under the Surplus Lands Act. The City Council further authorizes the City Manager to expend such sums as necessary to complete the transaction, including splitting escrow costs with the Buyer. The City Council also authorizes the City Manager to accept the dedication by Buyer of any necessary utility easements on the subject property. The City Council further authorizes the City Manager to take all necessary actions to effectuate the terms of this Resolution.
10. Pursuant to Street and Highways Code section 8357, the purchase price for the vacated 236 Palm Avenue Right-of-Way shall be paid into the City treasury to the credit of the general fund and be available for general fund expenditures.
11. In the event the City and the Buyer do not enter into a purchase and sale agreement, this Resolution shall not be recorded as specified above, shall be deemed null and void, and shall have no force and effect.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 15th day of June 2022, by the following vote:

AYES:	COUNCILMEMBERS:	AGUIRRE, LEYBA-GONZALEZ, FISHER,
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	DEDINA
DISQUALIFIED:	COUNCILMEMBERS:	SPRIGGS



JACK FISHER,
MAYOR PRO TEMPORE

ATTEST:



JACQUELINE M. KELLY, MMC
CITY CLERK

EXHIBIT "A" STREET VACATION

THAT PORTION OF SILVER STRAND BOULEVARD OF SILVER STRAND BEACH GARDENS ADDITION TO IMPERIAL BEACH, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1902, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 25, 1926; BEING DESCRIBED AS FOLLOWS:

PARCEL A:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 23 OF SAID MAP 1902, SAID POINT BEING A POINT ON THE NORTHWESTERLY RIGHT OF WAY OF SAID SILVER STRAND BOULEVARD, AND ON THE BEGINNING OF A 208.25 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY, A RADIAL TO SAID POINT BEARS SOUTH 08°58'53" EAST (SOUTH 09°28'51" EAST - RECORD); THENCE NORTH-EASTERLY 54.00 FEET ALONG THE ARC OF SAID CURVE AND SAID NORTHWESTERLY RIGHT OF WAY THROUGH A CENTRAL ANGLE OF 14°51'25" TO THE SOUTHEAST CORNER OF SAID LOT 23; THENCE ALONG THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID LOT 23, SOUTH 00°37'31" WEST 18.71 FEET TO A POINT ON A PARALLEL LINE 40.00 FEET NORTHERLY MEASURED PERPENDICULAR TO THE CENTERLINE OF PALM AVENUE AS SHOWN ON SAID MAP 1902; THENCE ALONG SAID PARALLEL LINE NORTH 89°22'02" WEST 51.47 FEET TO THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 23, THENCE ALONG SAID PROLONGATION, NORTH 00°55'41" EAST 28.11 FEET TO THE POINT OF BEGINNING.

CONTAINING 494 SQUARE FEET, MORE OR LESS

EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

GARY
D. MELLOM

LS 8537

GARY MELLOM, PLS 8537

03/24/2017
DATE

PRELIMINARY

PASCO LARET SUITER
& ASSOCIATES

STREET VACATION

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SHEET 1 OF 3

EXHIBIT "A"

STREET VACATION

THAT PORTION OF SILVER STRAND BOULEVARD OF SILVER STRAND BEACH GARDENS ADDITION TO IMPERIAL BEACH, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1902, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 25, 1926; BEING DESCRIBED AS FOLLOWS:

PARCEL B

COMMENCING AT THE SOUTHWEST CORNER OF LOT 23 OF SAID MAP 1902, SAID CORNER BEING A POINT ON THE NORTHWESTERLY RIGHT OF WAY OF SAID SILVER STRAND BOULEVARD, AND ON THE BEGINNING OF A 208.25 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY, A RADIAL TO SAID POINT BEARS SOUTH 08°58'53" EAST (SOUTH 09°28'51" EAST - RECORD); THENCE NORTHEASTERLY, 54.00 FEET ALONG THE ARC OF SAID CURVE AND SAID NORTHWESTERLY RIGHT OF WAY THROUGH A CENTRAL ANGLE OF 14°51'25" TO THE SOUTHEAST CORNER OF SAID LOT 23 TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING 124.35 FEET ALONG THE ARC OF SAID CURVE AND SAID NORTHWESTERLY RIGHT OF WAY THROUGH A CENTRAL ANGLE OF 34°12'49" TO THE EASTERLY CORNER OF LOT 24 OF SAID MAP 1902; THENCE NON-TANGENT LEAVING SAID CURVE AND SAID NORTHWESTERLY RIGHT OF WAY, SOUTH 23°13'19" WEST 48.75 FEET TO THE BEGINNING OF A TANGENT 143.00 FOOT RADIUS CURVE, CONCAVE EASTERLY, THENCE SOUTHERLY 47.12 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 18°52'44" TO A POINT ON THE CENTERLINE OF SAID SILVER STRAND BOULEVARD AND ON A NON-TANGENT 248.25 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY, A RADIAL TO SAID POINT BEARS SOUTH 36°06'41" EAST; THENCE SOUTHWESTERLY 16.32 FEET ALONG THE CENTERLINE OF SAID SILVER STRAND BOULEVARD AND THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 3°45'56" TO A POINT ON A PARALLEL LINE 40.00 FEET NORTHERLY MEASURED PERPENDICULAR TO THE CENTERLINE OF PALM AVENUE AS SHOWN ON SAID MAP 1902; THENCE LEAVING THE CENTERLINE OF SILVER STRAND BOULEVARD AND ALONG SAID PARALLEL LINE NORTH 89°22'02" WEST 48.86 FEET TO THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID LOT 23; THENCE ALONG SAID PROLONGATION, NORTH 00°37'31" EAST 18.71 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 2768 SQUARE FEET. MORE OR LESS

EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

PASCO LARET SUITER
& ASSOCIATES

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PLSA JOB NO. 2596-0

STREET VACATION

SHEET 2 OF 3

EXHIBIT "B"

PLAT

28

27

25

(S89°52'E)
N89°22'07"W 143.20'

51.54'

MAP 1902 BLOCK 8

23

TPO
PARCEL B

N00°37'31"E 81.30'
(N00°08'E 81.29')

22

(N00°08'E 97.08')
N00°35'41"E 97.08'
 $\frac{S08 \quad 8153 \cdot E(R)}{S09 \quad 2851 \cdot E(R)}$

=18°52'44"
R=143.00'
L=47.12'

PARCEL B

°37'31"W
18.71'

N89°22'02"W 100.35'

45°56"
R=248.25'
L=16.32'

PARCEL A

N00°35'41"
2.92'

PARCEL

C/L

40'

PALM AVENUE

BASIS OF BEARINGS

BASIS OF BEARING FOR THIS SURVEY IS THE CALIFORNIA COORDINATE SYSTEM, CCS83, ZONE 6, 2011.00 EPOCH, ESTABLISHED FROM GPS STATION NSSS AND GPS STATION P475. IE. N 68°45'15" W.

LEGEND

() RECORD DATA PER MAP 1902

PASCO LARET SUITER
& ASSOCIATES

SCALE = 1" = 20'

STREET VACATION

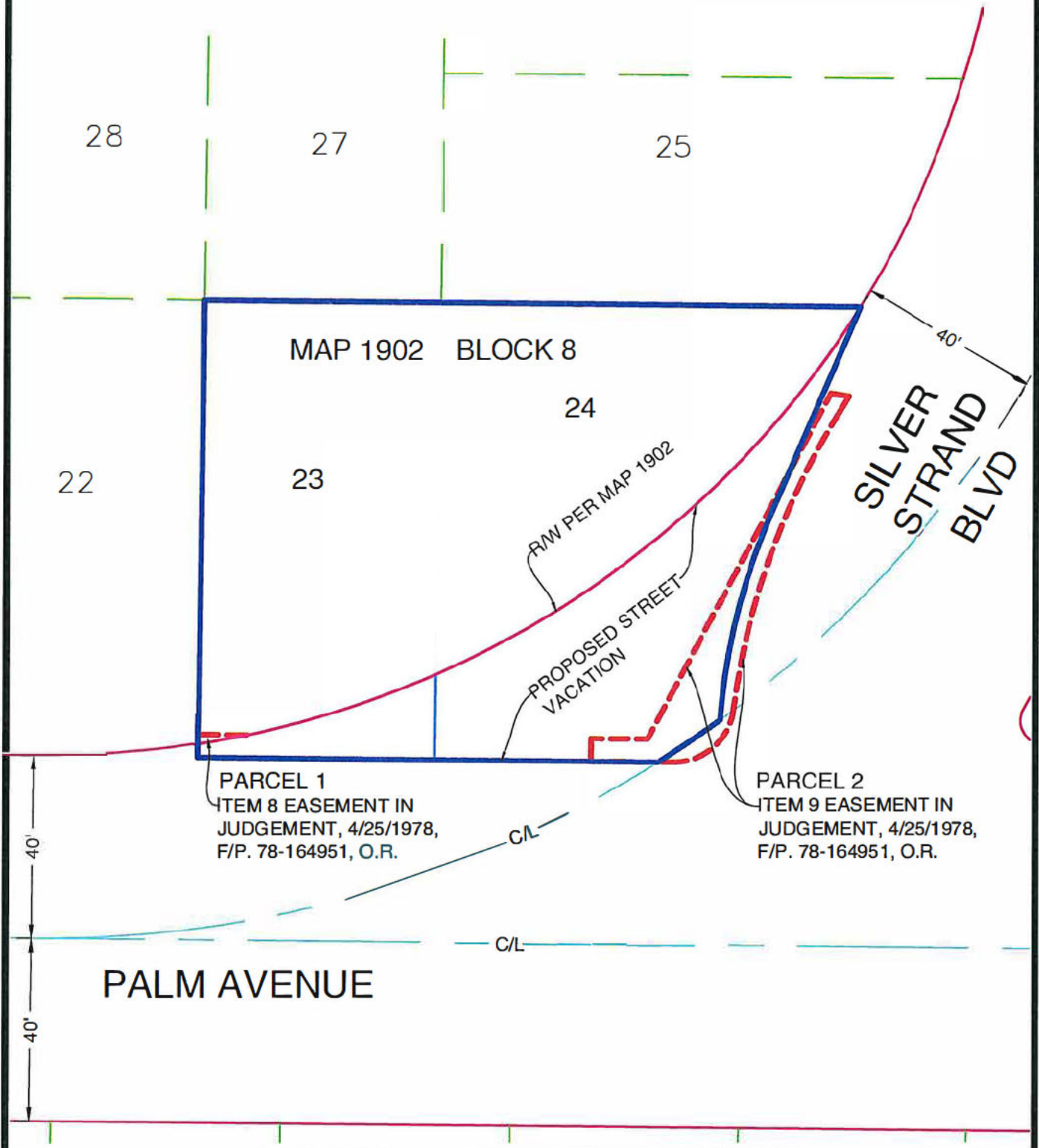
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SHEET 3 OF 3

EXHIBIT "B"

PLAT



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 & ASSOCIATES
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SCALE = 1" = 20'
 PLSA JOB NO. 2596-01



EASEMENT QUITCLAIM
 SHEET 2 OF 2

EXHIBIT "A"

EASEMENT QUITCLAIM

PARCEL 1

AN EASEMENT NOTED AS ITEM 8 IN STIPULATION FOR JUDGEMENT AND ORDER, RECORDED APRIL 25, 1978 AS FILE NO. 78-164951, OFFICIAL RECORDS; DESCRIBED AS FOLLOWS:

ALL THAT LAND WITHIN LOTS 23 AND 24, IN BLOCK 8, LYING SOUTH OF A LINE 45.00 FEET NORTH OF AND PARALLEL TO THE CENTER LINE OF PALM AVENUE AS SHOWN ON SILVER STRAND BEACH GARDENS ADDITION TO IMPERIAL BEACH, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER AS MAP NO. 1902.

PARCEL 2

AN EASEMENT NOTED AS ITEM 9 IN STIPULATION FOR JUDGEMENT AND ORDER, RECORDED APRIL 25, 1978 AS FILE NO. 78-164951, OFFICIAL RECORDS; DESCRIBED AS FOLLOWS:

ALL THAT LAND LYING WITHIN LOT 24, IN BLOCK 8 AND SILVER STRAND BOULEVARD AS SHOWN ON SILVER STRAND BEACH GARDENS ADDITION TO IMPERIAL BEACH, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER AS MAP NO. 1902, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FROM WHICH THE SOUTHWESTERLY CORNER OF LOT 2, BLOCK 8, SILVER STRAND BEACH GARDENS ADDITION TO IMPERIAL BEACH, FILED AS MAP NO. 1902, IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER, BEARS THE FOLLOWING TWO COURSES: NORTH 89°52' WEST, A DISTANCE OF 85.80 FEET AND NORTH 0°08' EAST, A DISTANCE OF 2.92 FEET; THENCE FROM THE POINT OF BEGINNING BY METES AND BOUNDS, 40 FEET NORTH OF AND PARALLEL TO THE CENTERLINE OF PALM AVENUE AS SHOWN ON SAID MAP NO. 1902, SOUTH 89°52' EAST, A DISTANCE OF 18.00 FEET; THENCE ON THE ARC OF A 13.00 FOOT RADIUS CURVE, TANGENT TO THE PRECEDING COURSE AND CONCAVE TO THE NORTHWEST, A DISTANCE OF 18.94 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF A 163.00 FOOT RADIUS CURVE, CONCAVE SOUTHEAST, A DISTANCE OF 68.69 FEET; THENCE NORTH 30°48' EAST, A DISTANCE OF 5.00 FEET; THENCE NORTH 80°17' WEST, A DISTANCE OF 4.00 FEET; THENCE SOUTH 27°15' WEST, A DISTANCE OF 85.50 FEET; THENCE SOUTH 89°52' WEST, A DISTANCE OF 12.29 FEET; THENCE SOUTH 0°08' WEST, A DISTANCE OF 5.00 FEET, PLUS OR MINUS, TO THE **POINT OF BEGINNING**.

EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

GARY D. MELLOM, PLS 8537

PRELIMINARY

DATE: