



## Agenda Item No. 12.

### Staff Report

**Date:** May 14, 2020

**To:** Mayor McMillan and Councilmembers

**From:** Richard Simonitch, Public Works Director

**Subject:** Town Council consideration of adoption of Resolution 2156 to vacate an irrevocable offer of dedication of a 40-foot public road right of way over APN 072-101-026 (100 Winding Way) in the Town of Ross.

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#### Recommendation

Town Council adopt Resolution No. 2156 to vacate all of that certain Irrevocable Offer of Dedication (IOD) for Public Purposes as described in the document recorded in Book 2568 of Official Records of Marin County, at Page 394 (2568-OR-394), located in the Town of Ross, California.

#### Background and discussion

The petitioner, Michael and Nancy Alvarez, are requesting that the Town Council approve the vacation of the IOD which is located on a portion of their property, Assessor's Parcel Number 072-101-026 (100 Winding Way). The basis for the request is that the IOD has not been accepted by the Town for 48 years, and the existence of the IOD is clouding the Title of their property. The original offer of dedication was made in May, 1972, apparently as a condition of approval for the 3 lot subdivision recorded August 27, 1972 in Book 7 of Parcel Maps at Page 65, Marin County Records which thereby created, more or less, 100 & 102 Winding Way and 9 Morrison Road. The offer of dedication was recorded in 2568-OR-394 but was never accepted nor rejected by the Town of Ross.

Pursuant to California Government Code Section 7050 such an offer of dedication shall be irrevocable and may be accepted at any time by the Town Council or may be terminated and the right to accept such offer abandoned in the same manner as the process prescribed for the summary vacation of streets or highways by Part 3 (commencing with Section 8320) of Division 9 of the Streets and Highways Code.

Notification of the proposed vacation was sent on April 29, 2020 to all owners of neighboring parcels located within 300 feet of the applicants' parcel subject to the IOD. A Notice and information were also sent to the Marin Independent Journal and all public agencies with a potential interest in the subject roadway including Marin Municipal Water District (MMWD), Ross Valley Sanitation District (RVSD) and Pacific Gas and Electric Company (PG&E). None of these public agencies objected to the vacation of the IOD.

100 Winding Way and 102 Winding Way access their homes along a private driveway that was constructed over the lands described in the IOD. 9 Morrison Road accesses their home off Morrison Road and do not

have any access rights over the IOD lands. All existing underlying easements, including the existing easement for access and utilities granted to 102 Winding Way (as recorded in Book 2652 of Official Records of Marin County at Page 252) are not a part of this vacation process and will not be affected by it. To alleviate any concern that the proposed vacation of the public interest in the lands described in 2568-OR-394 would affect any existing public utility easements or private easements, Resolution 2156 includes "RESERVING AND EXCEPTING from vacation and abandonment all existing underlying private and public easements..."

The Town Engineer/Surveyor transmitted notification of the proposed vacation of the subject IOD to the Planning Department, in conformance with Government Code Section 65402, and requested a General Plan Consistency Analysis Determination. Planning staff determined that the proposed vacation of the subject IOD is consistent with the General Plan as noted in Resolution 2156.

Town staff has researched the subject IOD and has determined that the Town has an interest to consider vacating. Specifically, it is extremely unlikely that the Town will ever accept this offer of dedication without intending to construct a new, full-width roadway and accept the roadway into the Town-maintained roadway system. Such a course of action is not in the public interest because the existing private driveway is a dead-end road that serves only 2 lots in a very low-density residential zoning district. Rejecting the IOD or vacating the public interest over this private driveway is consistent with the General Plan and several other similar private driveways which serve only two to three lots in Town.

#### **Alternative actions**

Deny the petitioner's request for summary vacation of the IOD.

#### **Fiscal, Resource and Timeline impacts**

There are no fiscal impacts to the Town as a result of the summary vacation of the IOD.

#### **Environmental review**

Summary vacation of the Irrevocable Offer to Dedicate pursuant to Streets and Highways Code Section 8320 et seq. is not a project pursuant to CEQA Guidelines sections 15060(c)(2), 15060(c)(3), and 15278 because it does not have the potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment..

#### **Attachments**

1. Resolution No. 2156
2. Comments and correspondence
3. Plat Map of Offer of Dedication to be vacated

# ATTACHMENT 1

## TOWN OF ROSS

### RESOLUTION NO. 2156

#### A RESOLUTION OF THE TOWN OF ROSS APPROVING THE VACATION OF AN IRREVOCABLE OFFER OF DEDICATION OF A 40-FOOT PUBLIC ROAD RIGHT OF WAY OVER APN 072-101-026 (100 WINDING WAY) IN THE TOWN OF ROSS

**WHEREAS**, pursuant to Streets and Highways Code section 8320(a)(2), on April 21, 2020, Michael and Nancy Alvarez submitted an application to vacate an existing irrevocable offer of dedication that was held for a future public roadway, in the Town of Ross; and

**WHEREAS**, the vacation proceedings are conducted under Chapter 4 of Part 3 of the State of California Streets and Highway Code; and

**WHEREAS**, On April 29, 2020, Town staff distributed notices to the Marin Independent Journal newspaper, and to residents within 300 feet of the proposed vacation and to all public utility companies which may have an interest in the vacation; and

**WHEREAS**, Town staff determined that the proposed vacation of the subject Irrevocable Offer of Dedication is in the public interest and consistent with the General Plan; and

**WHEREAS**, the Town Council of the Town of Ross on May 14, 2020, heard all persons interested in the proposed vacation at a regular public Council Meeting in the Town of Ross Town Hall, 31 Sir Francis Drake Boulevard, Ross, California 93957.

**NOW THEREFORE BE IT RESOLVED** that the Town Council of the Town of Ross, State of California, has adopted this Resolution to vacate all of that certain existing irrevocable offer of dedication as described in the Offer of Dedication recorded in Book 2568 of Official Records of Marin County, at Page 394, in the Town of Ross per Attachment A in accordance with the following:

1. The vacation of the Irrevocable Offer of Dedication is in conformity with the General Plan.
2. The Irrevocable Offer of Dedication is unnecessary for present or prospective public use or purpose.
3. The Irrevocable Offer of Dedication vacation as proposed is consistent with California Code of Civil Procedure Section 771.010.
4. The vacation as proposed complies with the California Environmental Quality Act since it is exempt from environmental review pursuant to Section 15061 (B) (3) of the CEQA Guidelines.

RESERVING AND EXCEPTING from said vacation and abandonment all existing underlying private and public easements other than the offer of dedication specifically vacated hereon.

The foregoing resolution was duly and regularly adopted by the Ross Town Council at its regular meeting held on the 14th day of May, 2020, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Julie McMillan, Mayor

**ATTEST:**

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Linda Lopez, Town Clerk

# ATTACHMENT 2

**From:** [Steve Moore](#)  
**To:** [Richard Simonitch](#)  
**Subject:** RE: Notice to Vacate Offer of Dedication  
**Date:** Monday, May 4, 2020 1:35:11 PM

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Hi Richard,

We reviewed the properties and there are no public sewers or easements in the subject 40' road area, only private laterals from 100 and 102 Winding Way. According to our system map, the one public main in the vicinity of the subject properties is a 6"-diameter VCP (vitrified clay pipe) located within the Winding Way public right of way.

Thank you,

*Steve Moore, P.E., General Manager*

Ross Valley Sanitary District

2960 Kerner Blvd., San Rafael, CA 94901

(415) 870-9764

(415) 730-0089 (cell)

Website: [www.rvsd.org](http://www.rvsd.org)

Email: [smoore@rvsd.org](mailto:smoore@rvsd.org)

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**From:** Richard Simonitch <[rsimonitch@townofross.org](mailto:rsimonitch@townofross.org)>

**Sent:** Monday, May 4, 2020 11:11 AM

**To:** Steve Moore <[smoore@rvsd.org](mailto:smoore@rvsd.org)>

**Subject:** Notice to Vacate Offer of Dedication

Hi Steve,

The Town of Ross will hold a public hearing on May 14 to vacate an offer of dedication for 40' roadway over what is currently a private driveway to 102 Winding Way in Ross. The driveway also serves 102 Winding Way, which has a separate legal access granted to them. Because the Town intends to only vacate the 48-year old offer of dedication there should be no impact to any existing RVSD easements that may exist over the driveway, and our resolution will state that intent.

Please forward this to your land division and let me know if you have any questions or comments.

Thank you,

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Richard Simonitch  
Public Works Director/Town Engineer  
Town of Ross  
P.O. Box 320  
Ross, CA 94957  
(415) 453-1453 ext. 115

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**From:** [Riley Hurd](#)  
**To:** [Richard Simonitch](#)  
**Subject:** RE: 40' IOD vacation  
**Date:** Tuesday, May 5, 2020 2:46:06 PM

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Richard,

Thank you very much for sending this. This adds clarity to the situation not provided by the 102 title report. A brief continuance would still be welcomed such that the new owners of 102 could have a chance to consider and participate in the process. Thank you.

Riley F. Hurd III, Esq.  
RAGGHIANI | FREITAS LLP  
1101 5th Avenue, Suite 100  
San Rafael, CA 94901  
Tel: 415.453.9433 ext. 126  
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Website: <http://www.rflawllp.com/>

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**From:** Richard Simonitch [<mailto:rsimonitch@townofross.org>]  
**Sent:** Monday, May 04, 2020 10:53 AM  
**To:** Riley Hurd <[rhurd@rflawllp.com](mailto:rhurd@rflawllp.com)>  
**Subject:** 40' IOD vacation

Hi Riley,

We took another look at 100 WW's Title Report and exceptions (attached) and it appears that 102 was indeed granted ingress and egress rights over 100 by the original owner of 100 per 2652-OR-252 (exception 10 of 100's prelim shown on page 11 of Title exception). As part of the vacation process, our resolution will ensure that this access easement (and all other legally granted easements) will be preserved after the IOD is vacated.

You may want to get 102's Title Report exception 8 and the Legal Description for PARCEL TWO updated with the proper recording information accordingly. I'll let you know what staff's decision is on the postponement.

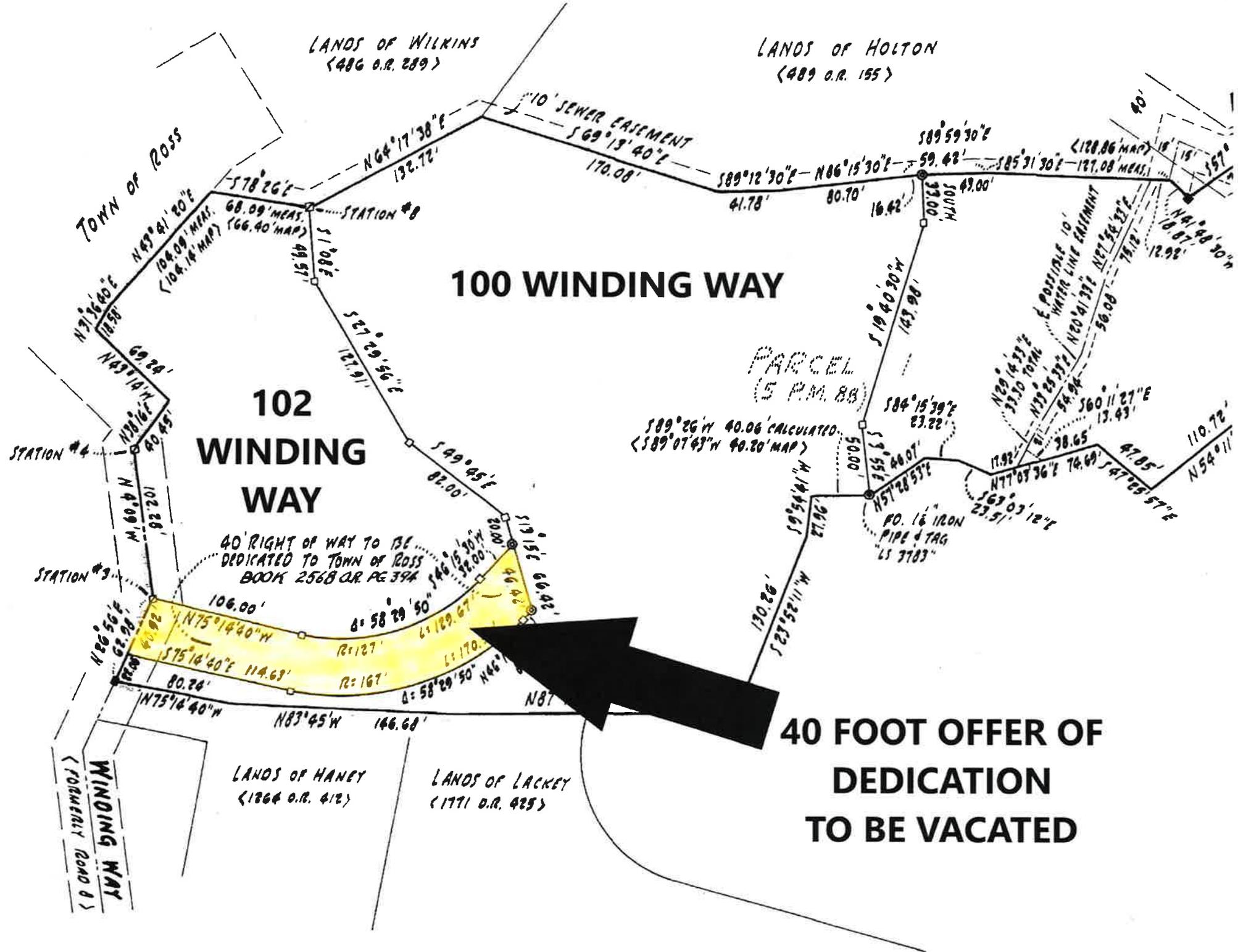
Let me know if you have any questions.

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Richard Simonitch  
Public Works Director/Town Engineer  
Town of Ross  
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Ross, CA 94957  
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# ATTACHMENT 3



**100 WINDING WAY**

**102 WINDING WAY**

**40 FOOT OFFER OF DEDICATION TO BE VACATED**

40' RIGHT OF WAY TO 13E DEDICATED TO TOWN OF ROSS BOOK 2568 O.R. PG 394

PARCEL (5 P.M. 88)

$S89^{\circ}26'W$  40.06' CALCULATED.  $S89^{\circ}07'43''W$  40.20' MAP

PO. 16" IRON PIPE & TAG LS 3783"