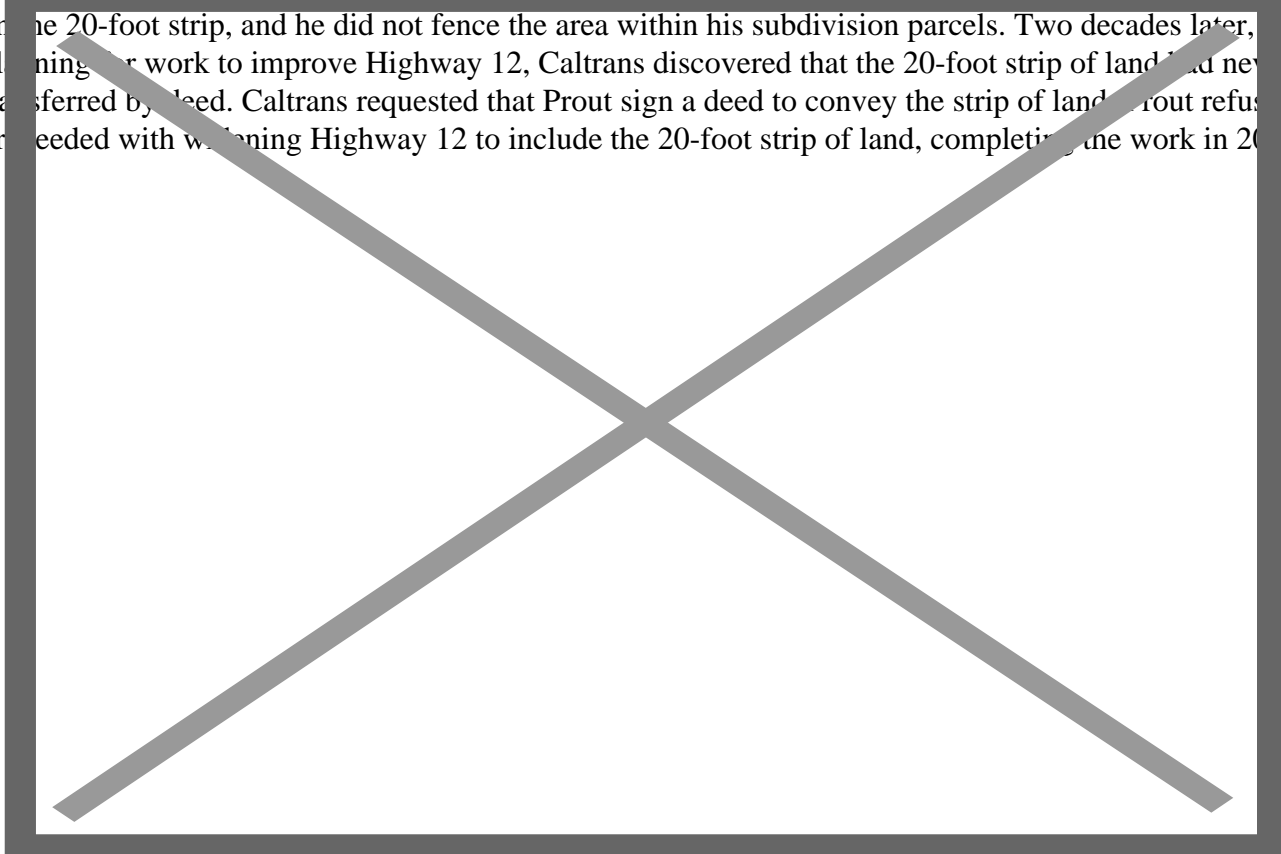


## Public Agency Could Validly Accept Dedication After Twenty Years By Physically Occupying the Property

Twenty years was a reasonable period of time for a public agency to accept a right-of-way dedication offer by physically occupying the property. *Prout v. Department of Transportation*, 31 Cal. App. 5th 200 (2019). Prout developed a 165-acre residential subdivision that fronted State Highway 12 in Calaveras County. In 1989, Prout submitted to the California Department of Transportation (Caltrans) an application for an encroachment permit to connect his subdivision's private road to Highway 12. Caltrans approved the encroachment permit conditioned upon Prout dedicating a 20-foot-wide strip of vacant land along Highway 12 (1.31 acres total) as public right-of-way. Final subdivision maps recorded in 1990 labeled the 20-foot strip as "area in the process of being deeded to Caltrans for highway purposes." However, "the matter simply 'fell through the cracks,'" and the 20-foot strip was never transferred by deed to Caltrans. In the subsequent years, Prout never was assessed or paid property taxes on the 20-foot strip, and he did not fence the area within his subdivision parcels. Two decades later, while planning for work to improve Highway 12, Caltrans discovered that the 20-foot strip of land had never been transferred by deed. Caltrans requested that Prout sign a deed to convey the strip of land. Prout refused. Caltrans proceeded with widening Highway 12 to include the 20-foot strip of land, completing the work in 2011.



Prout

Prout filed an inverse condemnation action against Caltrans, alleging that Caltrans owed him just compensation for physically occupying the 20-foot strip of land. Caltrans filed a cross-complaint for breach of contract, promissory estoppel, and specific performance, alleging that Prout had accepted the benefit of the encroachment permit but refused to finalize the dedication and deed of the 20-foot strip. In response, Prout argued that if the

dedication of the 20-foot strip was a condition of the encroachment permit (as claimed by Caltrans), it was an illegal exaction. The trial court ruled in favor of Caltrans and ordered Prout to dedicate the 20-foot strip by deed to Caltrans for highway purposes. The court of appeal affirmed the trial court's judgment. **Illegal Exaction** The court first considered Prout's argument that the dedication was an illegal exaction. Under *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the government cannot require, as a condition for issuance of a permit for development, that a landowner dedicate land for public use, unless there is an "essential nexus" between the dedication condition and the projected impact of the proposed development. In California, an illegal exaction generally must be challenged by petition for writ of mandate. Applying California's catch-all statute of limitations of four years (Code of Civil Procedure § 343), the court ruled that Prout's illegal exaction claim was time-barred because he did not file a petition for writ of mandate within that period. The court concluded that the statute of limitations began to run when Caltrans issued the encroachment permit in 1990. The court also found that it would be "unfair" to allow Prout to challenge a permit condition more than 20 years after he accepted the benefits of the permit by connecting his private road to the public highway. **Inverse Condemnation** Prout's inverse condemnation claim alleged that Caltrans's occupation of the 20-foot strip constituted a taking of property for which Prout was entitled compensation. In response, Caltrans argued that there was no taking because Prout offered to dedicate the 20-foot strip to Caltrans in 1990, and Caltrans validly accepted the dedication offer in 2010 by physically occupying the strip. The court ruled that Caltrans satisfied the common law requirements for a dedication of land: a clear and unequivocal offer of dedication that is accepted by the public within a reasonable time and before any revocation of the offer.

- First, the court determined that Prout made an unequivocal offer of dedication because he signed the subdivision maps (which marked the 20-foot strip as "area in the process of being deeded to Caltrans for highway purposes"), never paid taxes on the 1.31 acres, and left the strip outside of subdivision fencing. Prout argued that he had no intent to dedicate the property to Caltrans because his civil engineer handled the encroachment permit and subdivision maps. The court rejected this argument, however, explaining that Prout was bound by the actions of his civil engineer (who was acting as Prout's agent) and noting that Prout himself had signed the subdivision maps.
- Second, the court held that Caltrans had accepted the offer of dedication when it used the 20-foot strip for the Highway 12 improvement project in 2010.
- Third, the court ruled that 20 years was a reasonable period of time for Caltrans to accept the offer of dedication in light of the circumstances, including that execution of the deed "fell through the cracks" and that Prout never exerted any ownership over the property. The court observed that periods of more than 30 years had been found by courts to be reasonable, and that a statute permits 25 years for acceptance of an offer of dedication that is made solely by filing a subdivision map.
- Fourth, the court ruled that Prout had not taken any steps to revoke his offer of dedication before 2010. The court explained that Prout did not revoke the offer merely by ignoring Caltrans's letters requesting that he execute a deed in 2008 and 2009. Rather, Prout first attempted to disavow the dedication offer when his attorney wrote to Caltrans demanding compensation in 2011—after Caltrans had accepted the offer by occupying the 20-foot strip for the highway improvement work.

**Statute of Limitations for Caltrans's Contractual Cross-Claims** Prout argued that the five-year statutes of limitations in Code of Civil Procedure sections 318–321 (which apply to recovery of real property) barred Caltrans's cross-complaint for breach of contract, promissory estoppel, and specific performance. The court disagreed, explaining that the permit condition for a deed had never been satisfied, and Caltrans's right to specific performance to compel a deed accrued when Caltrans accepted the offer of dedication by occupying the 20-foot strip in 2010. Accordingly, Caltrans's cross-complaint, filed in 2012, was within the five-year statute of limitations.

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