UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 26-747 PA (MBKx)	Date	May 6, 2026
Title	Brinah Milstein, et al. v. City of Los Angeles, et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Kamilla Sali-Suleyman	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: **IN CHAMBERS — COURT ORDER**

Before the Court is a Motion to Dismiss filed by defendant the City of Los Angeles (the "City" or "Defendant"). (Docket No. 29 ("Motion").)[1/] Defendant challenges the sufficiency of the Complaint filed by Plaintiffs Brinah Milstein, individually and as Trustee of Glory of the Snow 1031 Trust, and Roy Bank (collectively "Plaintiffs"). The Motion is fully briefed. (Docket Nos. 32, 33.) Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds this matter appropriate for decision without oral argument. The hearing set for May 11, 2026, is vacated, and the matter taken off calendar.

I. Factual and Procedural Background

This action concerns a single family residential property on Fifth Helena Drive in Los Angeles (the "Property"), which previously belonged to Marilyn Monroe for about six months in 1962 before she died at the Property. Plaintiffs live adjacent to the Property, which is situated at the end of a short, narrow, dead-end residential street. (See Compl. ¶¶ 12, 23.) According to the Complaint, in the decades since Ms. Monroe's death, the house located on the Property has been substantially altered by successive owners, with no opposition from the City. The house on the Property has been unoccupied since late 2019 and, although it is structurally sound, large segments of the roof are missing, the house leaks, and other elements of the house are in disrepair or nonfunctional. (See id. ¶¶ 24–25.)

Plaintiffs purchased the Property in July 2023 for $8.35 million, with the intent to clear the Property and make way for alternative uses. (See id. ¶¶ 26, 73.) The City code requires a 30-day preservation hold on permits for any property more than 45 years old – a process that

[1/] The Complaint names both the City and Karen Bass, in her official capacity as Mayor of Los Angeles, as defendants (jointly "Defendants"). The City indicates that its Motion is brought on behalf of the City as a whole, including the Mayor in her official capacity.

exists to allow the City and other interested parties to raise objections before any permits become final. No one objected during that period to the issuance of the grading and demolition permits on historical monument grounds or otherwise, and the City issued the permits on September 7, 2023, after the 30-day hold expired. Plaintiffs allege that they spent tens of thousands of dollars preparing to use the demolition and grading permits. (Id. ¶ 27.)

However, on September 8, 2023, a member of the Los Angeles City Council, representing the area where the Property is located, introduced a motion to designate the Property a Historic-Cultural Monument ("HCM"), pursuant to Los Angeles Administrative Code §§ 22.171.8–22.171.10. The City Council approved the motion the same day, and it initiated the process to review and consider a HCM designation for the Property. The City then stayed the demolition and grading permits issued to Plaintiffs. (Id. ¶ 28.)[2/]

On January 18, 2024, the City's Cultural Heritage Commission formally recommended designating the Property as a HCM. The City Council's Planning and Land Use Commission then approved the recommendation. (Id. ¶ 37.) Plaintiffs allege that during the designation process, they "opposed the City's actions to the best of their ability," including by writing to the Planning and Land Use Commission to express concern that the HCM designation would turn the house into a tourist attraction and to highlight opposition to the HCM designation by neighbors and local homeowners' associations. (See id. ¶¶ 38–42.) Plaintiffs also offered to work with the City to relocate the house to another location. However, the City "rebuffed Plaintiffs' overtures and instead charged ahead with the designation." (Id. ¶ 44.) On June 26, 2024, the City Council approved the HCM designation. Plaintiffs allege that as a result of the HCM designation, the City "terminated the previously issued demolition permit and grading permit." (Id. ¶ 45.)

According to the Complaint, the HCM designation prohibits any demolition or substantial alteration to the Property absent the City's express permission. Plaintiffs allege that any effort to seek such permission would involve a "lengthy process, including preparation of an environmental impact report . . . and the rights of any third party to challenge" any approval granted by the City, and would force Plaintiffs to "endur[e] a byzantine legal process where, ultimately, the same actors who drove and appointed the designation process . . . can prevent

[2/] Plaintiffs allege that the same City Councilmember also drew attention to the Property by holding a press conference prior to introducing the motion and by making TikTok videos on the street outside the Property after the motion was adopted, all while dressed as Ms. Monroe. (See id. ¶¶ 29–30.)

issuance of the permit altogether." (Id. ¶¶ 50–51; see id. ¶¶ 52–68 (describing process and approvals that would be required for Plaintiffs to demolish the Property under applicable statutes and regulations, and alleging that Plaintiffs would be unable to obtain necessary approval from City given City's prior rejection of Plaintiffs' arguments against designating Property).)

Plaintiffs allege that the HCM designation has "generated massive tourism"and that the City has "done nothing to prevent the Property from transforming into a tourist attraction." (Id. ¶¶ 82, 84.) Following the designation, numerous people have flown drones over the Property, trespassed or attempted to trespass on the Property, and burglarized or attempted to burglarize the Property. In particular, the Complaint describes a burglary on November 7, 2025, where individuals scaled the wall on the Property and broke into the house; this incident is currently under investigation by the Los Angeles Police Department. (See id. ¶ 4, 81.) Plaintiffs allege that as a result of these incidents, they have been forced to pay for multiple levels of added security measures, including private security forces. (See id. ¶¶ 81, 86.) In addition, Plaintiffs are spending over $100,000 per year on annual property taxes, utilities, and maintenance costs for the Property. (Id. ¶ 76.)

The Complaint alleges that due to the HCM designation, the Property and all structures on it remain frozen in place, the Property is unsellable and unrentable, and its value has plummeted. (See id. ¶ 78.) According to Plaintiffs, in order to rent the house, they would need to obtain permission from the City and then spend hundreds of thousands of dollars on repairs to the Property. They would then be required to disclose to prospective renters the repeated events of trespassing, the influx of tourism, and other burdens to use of the Property caused by the HCM designation. (See id. ¶ 74.) Plaintiffs claim that due to the unrentable condition of the house and other structures on the property, the market value of the house is now "zero, or a negative amount." (Id. ¶ 75.)

Plaintiffs previously challenged the lawfulness of the HCM designation via a writ petition filed in Los Angeles County Superior Court (the "State Court Action").[3/] On September 2, 2025, the Superior Court denied the writ petition. Plaintiffs appealed that ruling. Plaintiffs then initiated this action on January 23, 2026. The Complaint alleges claims pursuant to 42 U.S.C. § 1983 for: (1) violation of the Fifth Amendment's Takings Clause; and (2) violation of the Fifth Amendment's Just-Compensation Clause. Plaintiffs seek injunctive relief under their first claim and just compensation in the amount of the present value of their 2023 investment in the

[3/] Plaintiffs did not raise any Takings Clause claims in the State Court Action.

Property under their second claim. The City moves to dismiss the Complaint on behalf of both Defendants pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

II. Legal Standard

A. Rule 12(b)(1)

Under Rule 12(b)(1), a complaint may be dismissed for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "Federal courts are courts of limited jurisdiction" and "[i]t is to be presumed that a cause lies outside this limited jurisdiction," unless otherwise shown. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377, 114 S. Ct. 1673 (1994). Plaintiff, as the party seeking to invoke jurisdiction, has the burden of establishing that jurisdiction exists. Id.

Because ripeness "pertain[s] to federal courts' subject matter jurisdiction" it is "properly raised in a Rule 12(b)(1) motion to dismiss." Chandler v. State Farm Mut. Auto. Ins. Co., 598 F.3d 1115, 1122 (9th Cir. 2010). The Ninth Circuit has recognized that "in many cases, ripeness coincides squarely with standing's injury in fact prong." Thomas v. Anchorage Equal Rts. Comm'n, 220 F.3d 1134, 1138 (9th Cir. 2000); see also Friends of the Earth, Inc. v. Laidlaw Envt'l Srvs. (TOC), Inc., 528 U.S. 167, 180–81, 120 S. Ct. 693 (2000) (explaining that to satisfy Article III's "injury in fact" requirement, a plaintiff must show that the injury is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical") (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–561, 112 S. Ct. 2130 (1992)). "A dispute is ripe in the constitutional sense if it 'present[s] concrete legal issues, presented in actual cases, not abstractions.'" Montana Envt'l Info. Ctr. v. Stone-Manning, 766 F.3d 1184, 1188 (9th Cir. 2014) (quoting Colwell v. HHS, 558 F.3d 1112, 1123 (9th Cir. 2009)).

B. Rule 12(b)(6)

Generally, plaintiffs in federal court are required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). While the Federal Rules allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," they also require all pleadings to be "construed so as to do justice." Fed. R. Civ. P. 12(b)(6), 8(e). The purpose of Rule 8(a)(2) is to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99 (1957)).

However, in Twombly, the Supreme Court rejected the notion that "a wholly conclusory statement of a claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery." Twombly, 550 U.S. at 561 (internal quotation omitted). Instead, the Court adopted a "plausibility standard," in which the complaint must "raise a reasonable expectation that discovery will reveal evidence of [the alleged infraction]." Id. at 556. For a complaint to meet this standard, the "[f]actual allegations must be enough to raise a right to relief above the speculative level." Id. at 555 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action") (alteration in original)); Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) ("'All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.'") (quoting Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (internal quotations omitted). In construing the Twombly standard, the Supreme Court has advised that "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679, 129 S. Ct. 1937 (2009).

Rule 15 requires that leave to amend "be freely given when justice so requires." Fed. R. Civ. P. 15(a)(2). "This policy is to be applied with extreme liberality." Eminence Cap., LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003). "A district court acts within its discretion to deny leave to amend when amendment would be futile . . . ." Doe v. Garland, 17 F.4th 941, 950 (9th Cir. 2021) (quoting Chappel v. Lab. Corp. of Am., 232 F.3d 719, 725-26 (9th Cir. 2000)). "Although leave to amend should be liberally granted, the amended complaint may only allege 'other facts consistent with the challenged pleading.'" Reddy v. Litton Indus., Inc., 912 F.2d 291, 296–97 (9th Cir. 1990) (quoting Schreiber Distrib. Co. v. Serv-Well Furniture Co., Inc., 806 F.2d 1393, 1401 (9th Cir. 1986)).

III. Judicial Notice

In support of its Motion, the City asks the Court to take judicial notice of the following documents:

1. The Order Denying Petition for Writ of Mandate in the State Court Action, dated September 2, 2025 (Ex. 1);

2. City of Los Angeles' Cultural Heritage Commission Ordinance, Los Angeles Administrative Code Section 22.171 et seq. (Ex. 2);

3. The Los Angeles City Council Motion in Council File No. 23-0953 regarding the Property, dated September 8, 2023 (Ex. 3);

4. The Official Action of City Council, Council File No. 23-0953, regarding the continued consideration of categorical exemption and planning and land use management committee report relative to the inclusion of Marilyn Monroe Residence in the Historic-Cultural Monuments, dated June 26, 2024 (Ex. 4);

5. The Report of the Planning and Land Use Management Committee, Council File No. 23-0953, dated March 5, 2024 (Ex. 5);

6. The Judgment in the State Court Action, dated September 22, 2025 (Ex. 6); and

7. Plaintiff's Notice of Appeal filed in the State Court Action, dated October 31, 2025 (Ex. 7).

(Docket No. 29-1 ("RJN").) Plaintiffs did not oppose Defendant's RJN.

Under Rule 201, a court "may judicially notice a fact that is not subject to reasonable dispute because it" either (1) "is generally known within the trial court's territorial jurisdiction," or (2) "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Civ. P. 201(b). A court may take judicial notice of its own files and of documents filed in other courts. Reyn's Pasta Bella, LLC v. Vista USA, Inc., 442 F.3d 741, 746 n. 6 (9th Cir. 2006). In addition, a court may take judicial notice of "matters of public record." Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001).

Here, Exhibits 1, 6, and 7 are rulings and filings from the State Court Action, Exhibits 3–5 are official reports from the Los Angeles City Council, and Exhibit 2 is a municipal ordinance. Each of these exhibits is a matter of public record and is a proper subject for judicial notice. See Lee, 250 F.3d at 689; Tollis, Inc. v. County of San Diego, 505 F.3d 935, 938 n. 1 (9th Cir. 2007) ("Municipal ordinances are proper subjects for judicial notice"). Moreover,

Plaintiffs do not dispute the Court's ability to take judicial notice of these documents. Accordingly, to the extent the Court relies on the RJN Exhibits in this Order, Defendant's RJN is granted; the RJN is otherwise denied as moot.[4/]

IV. Analysis

Plaintiffs' Complaint alleges violations of the Takings Clause of the Fifth Amendment. The Takings Clause prohibits the federal government, as well as state and local governments, from taking private property for public use without paying just compensation. See U.S. Const. amend. V; Schneider v. California Dep't of Corr., 151 F.3d 1194, 1198 (9th Cir. 1998) ("[T]he Takings Clause has long been held to apply to the States through the Due Process Clause of the Fourteenth Amendment."). "A person who has suffered a taking at the hands of a local government may bring a claim in federal court under 42 U.S.C. § 1983 to obtain just compensation." Ballinger v. City of Oakland, 398 F. Supp. 3d 560, 567 (N.D. Cal. 2019).

"The Supreme Court has recognized two broad categories of takings: physical takings and regulatory takings." Pakdel v. City & Cnty. of San Francisco, 636 F. Supp. 3d 1065, 1071 (N.D. Cal. 2022). Here, Plaintiffs allege both categories of takings. The City argues that the Complaint fails to allege a physical or regulatory taking; that Plaintiffs' regulatory takings claim is unripe for judicial review; and that Plaintiffs' allegations of harm by third parties do not suffice to establish municipal liability.

A. Physical Taking

A physical taking occurs when the government "has physically taken property for itself or someone else – by whatever means . . . ." Cedar Point Nursery v. Hassid, 594 U.S. 139, 149, 141 S. Ct. 2063 (2021). A physical taking can occur when the government "uses its power of eminent domain to formally condemn property," or when the government "physically takes possession of property without acquiring title to it." Id. at 147. Further, the Supreme Court has

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[4/] The City also filed a second RJN with Reply, asking the Court to take judicial notice of additional records from the State Court Actions, as well as records from the City of Los Angeles Official Website regarding the status of Plaintiffs' demolition and grading permits for the Property. (Docket No. 33-1.) Because, as discussed further below, the City offers these records for the first time on reply, in support of arguments raised improperly for the first time on reply, the Court does not consider those arguments and therefore denies the City's Second RJN. See Zamani v. Carnes, 491 F.3d 990, 997 (9th Cir. 2007) ("The district court need not consider arguments raised for the first time in a reply brief.").

recognized that "government-authorized invasions of property—whether by plane, boat, cable, or beachcomber—are physical takings requiring just compensation." Id. at 152. For physical takings, a court assesses the appropriation "using a simple, *per se* rule: The government must pay for what it takes." Id. at 148.

Here, Plaintiffs allege that by designating the Property as a HCM, the City has "induced members of the public to view the house while trespassing on Plaintiffs' property," which Plaintiffs claim amounts to a physical taking. (Compl. ¶ 98.) The City argues that the Complaint fails to plausibly allege a physical taking because the HCM designation does not authorize, let alone mandate, public access to the Property, and because there is no allegation that the HCM designation impairs Plaintiffs' rights to keep out trespassers. The City is correct. Plaintiffs insist that the City's actions constitute a physical taking because the City "knew, or at least foreseeably should have known, that a final decision branding the Property as a monument to Marilyn Monroe would result in the continuing public invasion of the Property, as it has." (Opp'n at p. 19.) However, Plaintiffs points to no actions by the City authorizing or encouraging members of the public to access the Property itself. Nor do Plaintiffs allege that the City has refused to enforce or prevented Plaintiffs from enforcing their rights against individuals who trespass on the Property.[5/]

Thus, while Plaintiffs claim that their property is being invaded by members of the public, the Complaint fails to plausibly allege any *government-authorized* invasion of the Property and thus fails to state a physical taking claim. See 3Pak LLC v. City of Seattle, No. 24-7139, __ F.4th __, 2026 WL 1218469, at *8 (9th Cir. May 5, 2026) (concluding plaintiffs failed to establish per se physical taking based on city's decision not to police or intervene in protests, explaining that plaintiffs failed to allege any affirmative government invasion of plaintiffs' own property or that any alleged unlawful entry onto property by third parties was the "result of any intentional acts by the government"); Fox v. City of Pac. Grove, California, 810 F. Supp. 3d 1065, 1073 (N.D. Cal. 2025) (finding plaintiff failed to allege physical takings claim where city government's use restriction "did not authorize the government or any other person or object to enter and occupy [the plaintiff's] property"). Accordingly, this claim must be dismissed.

B. Regulatory Taking

A regulatory taking occurs when the government, "rather than appropriating private property for itself or a third party, instead imposes regulations that restrict an owner's ability to

[5/] On the contrary, the Complaint alleges that the LAPD is currently investigating a burglary on the Property that occurred in November 2025. (Compl. ¶ 4.)

use his own property . . . ." Cedar Point, 594 U.S. at 147; see Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1018, 112 S. Ct. 2886 (1992) ("[R]egulations that leave the owner of land without economically beneficial or productive options for its use . . . carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm."). Plaintiffs characterize the City's HCM designation of the Property as a regulatory taking. (See Compl. ¶ 100.)

1. Ripeness

"When a plaintiff alleges a regulatory taking in violation of the Fifth Amendment, a federal court should not consider the claim before the government has reached a 'final' decision." Pakdel v. City & Cnty. of San Francisco, California, 594 U.S. 474, 475, 141 S. Ct. 2226 (2021) (quoting Suitum v. Tahoe Regional Planning Agency, 520 U.S. 725, 737, 117 S. Ct. 1659 (1997)); see Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 186, 105 S. Ct. 3108 (1985), overruled on other grounds by Knick v. Township of Scott, 588 U.S. 180, 187–88 (2019) (a regulatory takings claim challenging a restriction on private property is generally not ripe until "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue."). "The finality requirement is relatively modest. All a plaintiff must show is that 'there [is] no question . . . about how the 'regulations at issue apply to the particular land in question.'" Pakdel, 594 U.S. at 478 (citation omitted).

Here, the City argues that Plaintiffs' regulatory takings claim is unripe because there has been no final decision regarding the Property's permitted use.[6/] In particular, the City argues that the state of the Property is in flux due to the ongoing State Court Action. The City also argues that Plaintiffs have not obtained a final decision because they have not re-applied for a demolition permit and have not obtained a formal rejection of any other specific development, relocation, or alteration plan. Plaintiffs argue that the City's decision to designate the Property

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[6/] While the City also appears to suggest in its briefs that *all* of Plaintiffs' takings claims are unripe, the City offers no supporting argument concerning Plaintiffs' alleged physical takings claim. As Plaintiffs note (Opp'n at p. 13 n.1), the final decision rule does not apply to a physical takings claim. See Vacation Village, Inc. v. Clark County, 497 F.3d 902, 912 (9th Cir. 2007) ("[A] final decision regarding the application of the regulations to the property at issue, is 'automatically satisfied at the time of the physical taking' because '[w]here there has been a physical invasion, the taking occurs at once[.]'" (quoting Daniel v. County of Santa Barbara, 288 F.3d 375, 382 (9th Cir. 2002))). The Court therefore considers the City's ripeness arguments only in the context of Plaintiff's regulatory takings claim.

as a HCM, along with its revocation of the demolition and grading permits previously issued to Plaintiffs, constitutes a final decision. They argue that the City completed the process for designating the Property and did so with full knowledge that Plaintiffs had intended to demolish the home and had previously obtained permits to do so.

Considering the allegations in the Complaint, including the circumstances surrounding the City's decision to designate the Property an HCM following Plaintiffs' purchase of the Property and issuance of demolition and grading permits, it appears that Plaintiffs have satisfied the modest finality requirement. Neither the possibility that the State Court Action could result in the eventual removal of the Property's HCM designation, nor the fact that Plaintiffs could seek additional or alternative permits for the Property, renders Plaintiffs' takings claim unripe. See Knick v. Twp. of Scott, Pennsylvania, 588 U.S. 180, 190, 139 S. Ct. 2162 (2019) ("The Fifth Amendment right to full compensation arises at the time of the taking, regardless of post-taking remedies that may be available to the property owner."). The allegations in the Complaint suggest that the City took a "definitive position on the issue" of the HCM designation and whether Plaintiffs could use the Property as they had originally intended when they purchased it. See Pakdel, 594 U.S. 478 (quoting Williamson Cnty., 473 U.S. at 193); see also Killgore v. City of South El Monte, 2020 WL 4258584, at *5–7 (C.D. Cal. Apr. 24, 2020) (adjudicating a takings claim challenging revocation of a use permit on the merits). Accordingly, based on the current record, the Court proceeds on the assumption that Plaintiffs' regulatory takings claim is ripe for review.[7/]

2. Penn Central Factors

The parties dispute whether the Complaint alleges a viable regulatory takings claim under the factors test set forth in Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 98 S. Ct. 2646 (1978). In Penn Central, the Supreme Court identified three factors for determining whether government action constitutes a regulatory taking: (1) "[t]he economic

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[7/] In its Reply, the City asserts for the first time that, contrary to Plaintiffs' allegations, the demolition and grading permits were not revoked but instead were merely stayed. Because this argument was improperly raised for the first time on reply, the Court does not consider it in ruling on the Motion to Dismiss. See Zamani, 491 F.3d at 997. Morever, even setting aside the Complaint's allegations regarding permit revocation, it appears that the City's decision to designate the Property as an HCM would suffice, at least on the current record, to establish ripeness. See, e.g., Zubik as Trustee, Roman Catholic Diocese of Pittsburgh v. City of Pittsburgh, 2025 WL 461533, at *9 (W.D. Pa. Feb. 11, 2025) (finding takings claim ripe based on city's acceptance of nomination for historic designation of plaintiff's church building).

impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) "the character of the governmental action." Id. at 124; see Bridge Aina Le'a, LLC v. Land Use Comm'n, 950 F.3d 610, 630 (9th Cir. 2020) ("The first and second Penn Central factors are the primary factors.").

Here, the Complaint alleges that the City's HCM designation of the Property "vitiates Plaintiffs' clear and announced investment-backed expectations in purchasing the Property," "renders the Property worthless," and thus constitutes a "categorical regulatory taking." (Compl. ¶¶ 100, 103.) The Complaint alleges in the alternative that even if the Property retains some resale value, the HCM designation still constitutes an improper regulatory taking "because its encumbrances have so greatly reduced the Property's value and destroyed Plaintiffs' objectively reasonable distinct investment-backed expectations for the Property." (Compl. ¶ 104.)

In applying the first Penn Central factor, courts "compare the value that has been taken from the property with the value that remains in the property." Colony Cove Props., LLC v. City of Carson, 888 F.3d 445, 450 (9th Cir. 2018) (internal quotations omitted). The Ninth Circuit has explained that "[a]lthough there is no litmus test . . . our value comparison again aims to identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owners from his domain." Bridge Aina Le'a, LLC, 950 F.3d at 630–31 (internal quotations and citation omitted). "Supreme Court cases 'have long established that mere diminution in the value of property, however serious, is insufficient to demonstrate a taking.'" Rancho de Calistoga v. City of Calistoga, 800 F.3d 1083, 1090 (9th Cir. 2015) (quoting Concrete Pipe & Products of California, Inc. v. Constr. Laborers Pension Trust for S. California, 508 U.S. 602, 645, 113 S. Ct. 2264 (1993)).

Here, the Complaint's allegations concerning the value of the Property, including that the market value of the Property is now "zero, or a negative amount" and that the Property is "worthless" as a result of the HCM designation, are conclusory and implausible. Plaintiffs do not allege that they have made any attempt to sell the Property. Nor do they allege that they have attempted to perform the repairs or maintenance needed to return the Property to a habitable state, or that the City could or would prevent them from doing so.[8/] Because the Complaint fails to offer anything beyond vague assertions of a mere diminution in value of the Property, Plaintiffs fail to state a claim under the first Penn Central factor. See Pakdel v. City & Cnty. of San Francisco, 636 F. Supp. 3d 1065, 1075 (N.D. Cal. 2022) (finding that plaintiff had not

[8/] As the City explains, nothing in the HCM designation prevents Plaintiffs from performing routine maintenance and repairs and continuing to use the Property as a single-family residential home. (See Mot. at p. 13; RJN Ex. 2, LAAC § 22.171.14.)

sufficiently pled the first Penn Central factor where plaintiff alleged a diminution in the property's value of $500,000, and explaining that "the FAC does not include any facts to establish the basis for this averred diminution in value"); Colony Cove, 888 F.3d at 451 ("[W]e have observed that diminution in property value because of governmental regulation ranging from 75% to 92.5% does not constitute a taking."); see also Lucas, 505 U.S. at 1019 n.8 (suggesting that even a landowner with 95 percent loss might not recover).

As to the second Penn Central factor, "a purported distinct investment-backed expectation must be objectively reasonable" in order "to form the basis for a taking claim." Colony Cove, 888 F.3d at 452. "[W]hat is relevant and important in judging reasonable expectations is the regulatory environment at the time of the acquisition of the property." Bridge Aina Le'a, LLC, 950 F.3d at 634 (internal quotations and citation omitted); see Pakdel, 636 F. Supp. 3d at 1076 ("[T]his factor must consider the extent to which the challenged regulation departs from or extends beyond past or conceivable future regulatory developments."). Thus, "unilateral expectation[s]" or "abstract need[s]" cannot form the basis of a claim that the government has interfered with property rights. Bridge Aina Le'a, 950 F.3d at 633–34 (quoting Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1005, 104 S. Ct. 2862 (1984)). The expectation that a "property will be continually unencumbered by government regulation" is unreasonable. Rancho de Calistoga, 800 F.3d at 1090; see also id. at 1091 ("Simply put, when buying a piece of property, one cannot reasonably expect that property to be free of government regulation such as zoning, tax assessments, or, as here, rent control.").

Here, Plaintiffs claim that they "held an objectively reasonable, distinct investment-backed expectation that they could demolish the structures on the Property, including the house, and grade the Property." (Compl. ¶ 77.) However, the Complaint fails to plausibly allege that Plaintiffs' expectations were objectively reasonable. On the contrary, Plaintiffs' own allegations suggest that, at the time they purchased the Property, they were aware of its historical connection to Ms. Monroe, the City's HCM designation process and applicable regulations were established, and, while prior owners had made substantial alterations to the property, no prior owner had demolished the buildings on the Property. (See id. ¶¶ 23–24, 28; see also RJN, Ex. 1 at p. 15 (noting that Property seller disclosure stated, "The property used to be owned by Marilyn Monroe . . . . We get visits on the street from tourists, and they occasionally ring the doorbell . . . . While the house is not currently designated as a historic cultural monument, it could be come subject to such designation in the future.").) As alleged, Plaintiffs fail to demonstrate more than a mere unilateral expectation that they could demolish the Property as planned and thus fail to adequately allege a claim under the second Penn Central factor.

In evaluating the third Penn Central factor, the Ninth Circuit considers whether a government action "amounts to a physical invasion or instead merely affects property interests

through some public program adjusting the benefits and burdens of economic life to promote the common good." Guggenheim v. City of Goleta, 638 F.3d 1111, 1121 (9th Cir. 2010) (internal quotations omitted). As the Supreme Court recognized in Penn Central, "States and cities may enact land-use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city . . . ." 438 U.S. at 129. Here, while Plaintiffs insist that the City's HCM designation has singled them out "to preserve and maintain a public burden at private expense," this assertion is devoid of any factual support. As discussed above, there are no facts alleged to suggest that the HCM designation authorizes the public to access the Property, nor is there any indication that the designation prevents Plaintiffs from using the Property as a single-family residential home as it had been used in the past. Plaintiffs therefore fail to allege facts to support a takings claim under the third Penn Central factor.

In sum, because Plaintiffs' Complaint fails to establish a viable takings claim under the any of the Penn Central factors, Plaintiffs' regulatory takings claims must be dismissed.[9/]

Conclusion

For all of the foregoing reasons, the Court concludes that Plaintiffs have failed to state a viable takings claim and therefore grants Defendant's Motion to Dismiss. Because it is not yet clear to the Court that "the allegation of other facts . . . could not possibly cure the deficiency," the Court dismisses the Complaint with leave to amend. See DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992).

Plaintiffs' First Amended Complaint, if any, shall be filed by May 26, 2026. The First Amended Complaint shall not include any new claims or parties without the Court's authorization. Failure to file a First Amended Complaint by the above date will be deemed Plaintiffs' election to stand on the Complaint and may result in dismissal of the Complaint without leave to amend.

IT IS SO ORDERED.

[9/] Because the Court concludes that the Complaint fails to allege a violation of the Takings Clause, it does not address the City's arguments concerning municipal liability.