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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BRINAH MILSTEIN, individually and as Trustee of GLORY OF THE SNOW 1031 TRUST, a California Trust, and ROY BANK, an individual,

Plaintiffs,

v.

THE CITY OF LOS ANGELES, a

No. 2:26-cv-00747-PA-MBK

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Judge: Hon. Percy Anderson
Date: May 11, 2026
Time: 1:30 p.m.
Place: Courtroom 9A

Municipal Corporation and Charter City, and KAREN BASS, in her official capacity as Mayor of Los Angeles,

Defendants.

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Los Angeles Administrative Code

INTRODUCTION

This case is about whether the Takings Clause of the Fifth Amendment permits Defendants City of Los Angeles and the Mayor ("City") to require Plaintiffs Brinah Milsten and Roy Bank (collectively, "the Owners") to bear the burden of preserving and maintaining their property as a historic monument for public enjoyment, at great loss to the economic use and value of the property and the Owners' expectations, all without just compensation. It does not.

The property at issue is a 23,222-square-foot parcel located at 12305 Fifth Helena Drive, Los Angeles, California ("the Property"). Docket Entry (DE) No. 1 (Complaint) at 6, ¶ 23. The Property includes a dilapidated 2,300-square-foot Spanish colonial-style house owned by Marilyn Monroe during an approximately six-month period in 1962. *Id*. Since then, fourteen other owners have owned the Property, and the City has issued over two dozen building permits allowing major additions and alterations to the house. *Id.* at 7, ¶ 24. The house has been unoccupied since 2019. *Id.* at 7, ¶ 25.

Plaintiffs own property adjacent to the Property. DE No. 1 at 4, ¶¶ 12-13. In 2023, they purchased the Property for $8.35 million with the intent to clear away the dilapidated house to prepare for different uses of the Property. *Id*. at 23, ¶¶ 71, 73. At the time of the purchase, the Property was not a historical monument. *Id*. at 14-15, ¶¶ 46, 48. After purchasing the Property, the Owners applied for demolition and grading permits, and the City issued the permits. *Id*. at 8, ¶ 27. However, after the Owners spent approximately $30,000 in reliance on the permits, the City moved to formally designate the Property as a "Historical-Cultural Monument," due to its connection to Marilyn Monroe. *Id*. at 8-9, ¶¶ 27-28. In June of 2024, after a lengthy process, the City formally designated the Property as a Monument. *Id*. at 14, ¶ 45. Immediately thereafter, the City revoked the previously issued demolition permits. *Id*.

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The Owners sued the City, alleging that its actions caused an unconstitutional "physical" and "regulatory" taking of the Property. While a physical takings claim ripens as soon as an intrusion into property occurs, a regulatory takings claim ripens once the government arrives at a definitive decision affecting property. *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 479-80 (2021). At that point, the claim is ripe without respect to the availability of additional administrative or judicial processes. *Id.* Here, the City's designation of the Property as a monument and its revocation of prior demolition permits constitute final decisions ripe for a takings challenge. Ultimately, the Complaint states viable takings claim under both physical and regulatory takings precedent because the City's actions have caused a physical invasion of the Property by people seeking to see the new "monument," eviscerated the Property's use and value, and destroyed the Owners' investment-backed expectations. If the City wants the Owners to sacrifice their property rights to preserve the Property as a public monument, the Takings Clause requires it to pay just compensation.

For all of these reasons and those that follow, the Complaint plausibly alleges a claim for relief, and the City's motion to dismiss should be denied.

STATEMENT OF FACTS

A. The Property at 12305 Fifth Helena Drive

The property at issue, 12305 Fifth Helena Drive, Los Angeles, California 90049, is a 23,222-square-foot residential parcel on a short, narrow dead-end street in Brentwood. DE No. 1 at 6, ¶ 23. The Property includes a run-down, 2,300-square-foot Spanish colonial-style house. *Id*. Marilyn Monroe owned the Property for approximately 157 days in 1962, before she died in the house in August of that year. *Id*.

In the sixty-plus years since Monroe's death, the Property has been owned by fourteen successive owners who have renovated the house repeatedly. DE No. 1 at 7, ¶ 24. Indeed, the City has issued more than two dozen building permits authorizing

major alterations, including additions and complete interior renovations. *Id*. No trace of Monroe's brief occupancy remains at the Property. *Id*.

For more than sixty years following Monroe's death, the City treated the Property as an ordinary residential property. DE No. 1 at 14-15, ¶¶ 46, 48. The City was aware of the Property's association with Monroe throughout that entire period, yet never moved to designate the Property as a historic monument. *Id*. Instead, as previously noted, the City routinely issued building permits for additions and alterations. *Id.* at 7, ¶ 24.

The house has been unoccupied since late 2019. DE No. 1 at 7, ¶ 25. Although it is structurally sound, large segments of the tile roof are missing, so the house leaks. *Id*. Other elements are in disrepair and nonfunctional. *Id*.

The Owners live adjacent to the Property at 12306 Sixth Helena Drive. DE No. 1 at 4, ¶¶ 12-13. In 2023, they purchased the Property for $8.35 million with the intent to clear the dilapidated structures to make way for alternative uses. *Id*. at 23, ¶¶ 71, 73. Concurrent with their acquisition, the Owners applied to the City for demolition and grading permits. *Id*. at 8, ¶ 27.

The City code requires a 30-day preservation hold on permits for any Property more than 45 years old—a process that exists to allow the City and other interested parties to raise objections before any permits become final. DE No. 1 at 8, ¶ 27. No one objected during that period to the issuance of the grading and demolition permits on historical monument grounds or otherwise. *Id*. Thus, when the 30-day hold expired, the City lawfully issued the permits on September 7, 2023. *Id.* The Owners spent tens of thousands of dollars preparing to use the demolition and grading permits. *Id.*

B. The City Formally Designates the Property and Revokes the Permits

On September 8, 2023, a City Councilmember introduced a motion to initiate a Historic-Cultural Monument designation process for the Property. DE No. 1 at 9, ¶ 28. Dressed as Marilyn Monroe, the Councilmember held a press conference to

publicize the motion and the City's initiation of the historic designation process. *Id.* The City Council approved the motion the same day. *Id.* The City then stayed the demolition and grading permits previously issued to the Owners. *Id.*

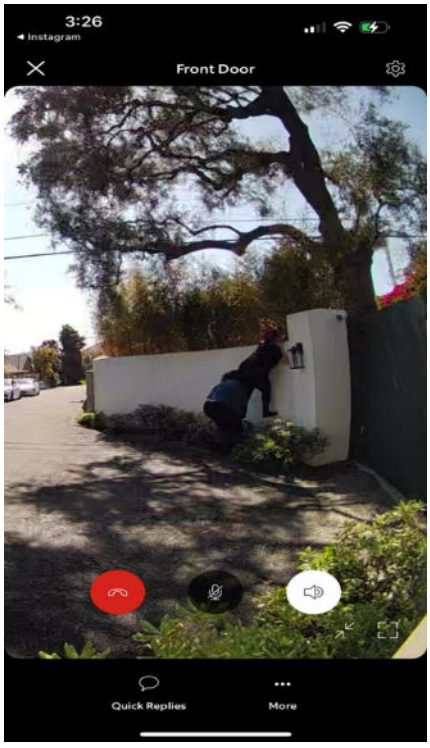
On January 18, 2024, the Cultural Heritage Commission formally recommended designating the Property at 12305 Fifth Helena Drive a Historic-Cultural Monument. DE No. 1 at 11, ¶ 37. During the ensuing designation process, the Owners offered to relocate the house to a publicly accessible location and to help fund the effort, but the City refused. *Id.* at 14, ¶ 44.

The Property and the allegedly "historical" house are surrounded by tall walls and not visible from the public right of way. *Id.* at 3, ¶ 4. During the designation process, people began trespassing on the Property in the hope of viewing the proposed monument. *Id.* at 26, ¶ 81. The Owners made City officials aware that the initiation of the designation process had triggered a public invasion of the Property. *Id.* at 28, ¶ 85; DE No. 1-11, at 2.

Subsequently, on June 26, 2024, the City Council formally approved the designation of the entire Property at 12305 Fifth Helena Drive as a Historic-Cultural Monument. DE No. 1 at 14, ¶ 45. The designation encompasses the full 23,222-square-foot parcel, *id.*, and restricts the demolition, substantial alteration, or relocation of the improvements. Immediately after the designation, the City terminated the previously issued demolition and grading permits for the Property. *Id.* Further demolition permits are prohibited unless the Owners demonstrate that the subject improvements are structurally unsound and that demolition would comply with the California Environmental Quality Act (CEQA). Los Angeles Admin. Code § 22.171.14.

Due to the designation, the Property and all structures on it remain frozen in place as a public monument, at significant economic loss and continuing expense to the Owners. DE No. 1 at 25, ¶ 78. The Property is unsaleable as a public monument, and its value has plummeted, *id.* at 31-32, ¶¶ 100-103. The tens of thousands of

dollars in investments that the Owners made prior to the designation and in reliance on the lawfully issued demolition permits have been wiped out. *Id*. at 8, ¶ 27. Since the designation, members of the public have regularly trespassed in hope of viewing the house. *Id*. at 26, ¶ 81. People have climbed over the Property's walls, drones have been flown over the lot, and burglars have broken into the house. *Id*. As a result, the Owners have had to hire private security for the Property at significant ongoing expense. *Id*. at 28-29, ¶ 86. In addition to these expenses, the Owners are wasting over $100,000 a year on annual property taxes, utilities, and maintenance costs. *Id.* at 24, ¶ 76.



C. Procedure

The Owners initially challenged the Monument designation by writ petition in Los Angeles Superior Court. The petition challenged the lawfulness of the designation, but did not raise any takings claims. On September 2, 2025, the Superior Court denied the petition. DE No. 1 at 4, ¶ 10. The Owners have appealed the Superior Court's ruling.

On January 23, 2026, the Owners filed a Complaint in this Court, alleging that the designation of the Property as a Monument and related revocation of the demolition permits effected an unconstitutional taking of property, in violation of the Fifth Amendment and 42 U.S.C. § 1983. The City has now moved to dismiss the Complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

ARGUMENT

A complaint may only be dismissed under Federal Rule of Civil Procedure 12(b)(6) where the plaintiff's allegations, taken as true, fail to "raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007); *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (a complaint need only state a "facially plausible" claim to relief). Therefore, a court must deny a motion to dismiss when the plaintiff "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

I. The Owners' Takings Claims Are Ripe Under the "Final Decision" Requirement

The City contends that the Owners' takings claims are not ripe because it believes that its designation of the Property as a historic monument and termination of the Owners' demolition permits do not qualify as a "final decision" that is subject to a takings challenge. The City is incorrect.

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A. Takings Ripeness Requires a Definitive Government Position and Nothing More

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." *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985). This "final decision" rule is a "modest" ripeness requirement in regulatory takings cases, *Pakdel*, 594 U.S. 474, 478 (2021),[1] one that focuses on "whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury," *Williamson Cnty.*, 473 U.S. at 193. When the government has adopted a definitive position that harms property rights, a final decision exists, and a regulatory takings claim is ripe. *Pakdel*, 594 U.S. at 478; *see also, Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 739 (1997) (concluding a claim ripens when the government has decided "how the 'regulations at issue [apply] to the particular land in question'") (quoting *Williamson Cnty.*, 473 U.S. at 191).

Notably, a takings claimant does not need to exhaust state administrative or judicial remedies to ripen a claim. *Knick v. Twp. of Scott*, 588 U.S. 180, 187-89 (2019); *Williamson Cnty.*, 473 U.S. at 193 (Finality does not require "administrative and judicial procedures by which an injured party may seek review of an adverse decision and obtain a remedy if the decision is found to be unlawful or otherwise inappropriate."); *Pakdel*, 594 U.S. at 480. "Once the government is committed to a

[1] The final decision rule does not apply to a physical invasion takings claim, such as that raised by the Owners, because physical takings claims are ripe as soon as an invasion of property occurs. *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)).

position," a claim is ripe regardless of whether additional administrative processes might provide some relief. *Id.* at 479. Similarly, the government may not require "repetitive or unfair land-use procedures in order to avoid a final decision." *Palazzolo v. Rhode Island*, 533 U.S. 606, 621 (2001). Futile reapplications are not required. *Martino v. Santa Clara Valley Water Dist.*, 703 F.2d 1141, 1146 n.2 (9th Cir. 1983) (property owners need not engage in an "idle and futile" process to ripen a claim).

B. The Designation and Permit Revocation Are Final Decisions

In this case, there is no question that the City has taken a "definitive position" that inflicts concrete injuries on the Owners. *Williamson Cnty.*, 473 U.S. at 193. After a lengthy process, the City formally designated the Property as a monument and immediately revoked the demolition and grading permits, which it had previously issued, thereby taking the position that the structures on the Property cannot be demolished, but must be preserved. DE No. 1 at 14, ¶ 45.

The City designated the Property with full knowledge that the Owners intended to demolish the home, and had permits to do so, *id.* at 8-14, ¶¶ 27-45, and then terminated the previously issued grading and demolition permits. *Id.* These actions eviscerated the substantial financial investments the Owners had made in reliance on the previously issued demolition permits, ensured that the Property cannot be redeveloped with a new structure pursuant to normal City zoning regulations, and rendered the Property unsaleable, severely devaluing it. *Id*. at 23, 25, 31-32, ¶¶ 73, 78, 100-103. Moreover, as a result of the designation, the Property has been physically invaded by people hoping to view the new monument. *Id*. at 26, ¶ 81.

Thus, this is not a dispute over speculative or incomplete government actions or property owner injuries. *S. Nassau Building Corp. v. Town Board*, 624 F. Supp. 3d 261, 270-71 (E.D.N.Y. 2022) (a takings claim was ripe because there was "no question that the Landmarks Commission would not permit" demolition because the "Landmarks Commission just voted to designate the House a landmark over plaintiff's express objection, and the undisputed goal of the landmark designation

was to assure the preservation of the House at its current location"). The City completed a formal historic designation process that ended with an official monument designation and revocation of previously issued permits, harming the use and value of the Property. Such concrete actions are ripe for a takings challenge. *Pakdel*, 594 U.S. at 478-79; *Zubik as Trustee, Roman Catholic Diocese of Pittsburgh v. City of Pittsburgh*, 2025 WL 461533, at *9 (W.D. Pa. Feb. 11, 2025) (concluding that a historic designation recommendation itself inflicted injuries sufficient for ripeness because it limited the use of the property); *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); *Northville Downs, LLC v. Plymouth Charter Twp.*, 2025 WL 2048358, at *4 (E.D. Mich. Apr. 21, 2025) (holding a claim challenging the revocation of a zoning approval ripe despite the existence of alternative processes).

Nevertheless, the City argues its decisions are not really final because the Owners have filed a pending (non-takings) suit in state court challenging the validity of the City's designation and permit revocation decision. DE No. 29 at 16. But the ripeness of a takings claim does not hinge on "any sort of state lawsuit." *Knick*, 588 U.S. at 194. Rather, a claim ripens as soon as there is a final "*administrative*" decision. *Williamson Cnty.*, 473 U.S. at 191 (takings claims "cannot be evaluated until the *administrative* agency has arrived at a final, definitive position") (emphasis added). Thus, as *Williamson County* explains, a property owner does not need to file a declaratory relief suit seeking to invalidate a challenged action prior to challenging the action as a taking. *Id.* at 193. The City's decisions to designate the Property as a monument and revoke the demolition permits are administratively complete, and the Owners' pending state court suit cannot alter that fact.

The City also argues that the takings claims are not ripe because the Owners could (re)apply for demolition permits through the City's post-designation, Cultural Heritage Ordinance ("CHO") process. DE No. 29 at 16-18. But even if this is

technically true and financially feasible (which it is not), such an option does not alter the finality of the City's prior decisions. In effect, the City contends that post-designation administrative processes may allow the Owners to escape the adverse consequences of the City's prior, final designation and permit revocation. But this type of exhaustion-based ripeness defense was squarely rejected by the Supreme Court in *Pakdel.* 594 U.S. at 476 (takings claimant need not demonstrate that they complied with agency's administrative procedures for seeking relief before seeking relief under the Fifth Amendment). The City's attempt to require the Owners to pursue further administrative permit processes before challenging their already-revoked permits fails.

The City's claim that the Owners may be able to get back their permits through further administrative processes is a disguised and improper demand that the Owners must exhaust administrative remedies. *Id.* But even if it is not, the defense fails because the Owners do not need to futily re-apply for the same permits that the City just revoked. *Palazzolo*, 533 U.S. at 621 (concluding "repetitive" applications are unnecessary for ripeness); *Herrington v. Cnty. of Sonoma*, 857 F.2d 567, 570 (9th Cir. 1988) (concluding that "further attempts to obtain acceptance of the development proposal would have been futile" precluded the county's argument that plaintiff must reapply to meet the finality requirement).

In sum, the City's decision to formally designate the Property and revoke the previously issued permits constitutes a concrete position that is fit for judicial review. The City itself demonstrated the concrete nature of its decision to preserve the Property as a monument and prevent its demolition by terminating the Owners' demolition permits immediately after the designation. The City cannot treat the designation as final enough to justify the revocation of permits but not final enough to allow the Owners to challenge its decision. And it is disingenuous for the City to argue that the Owners cannot challenge the revocation of the permits until they re-apply for the same permits again. The Owners are in court because they *already*

applied for the permits, and obtained them, but they are terminated now because of the designation. Ripeness law does not require the Owners to chase their tails in an administrative process in pursuit of permits that were just revoked. *Hoehne v. County of San Benito*, 870 F.2d 529, 535 (9th Cir. 1989) (property owners did not need to seek a zoning change to challenge a recent rezoning decision restricting development, because that rezoning decision reflected a "clear" position, and it would have been "futile" for the Owners to seek a General Plan amendment because the County had recently amended the Plan to limit the use of property).

II. The Owners Have Stated Viable Unconstitutional Takings Claims

The allegations in the Complaint plead facts sufficient to state a claim that the City's designation of the Property and revocation of the lawfully issued demolition permits constitute a taking under physical and regulatory takings standards. First, the designation of the Property as a historic monument has caused a physical invasion of the Property, causing a *per se* physical taking. Second, the designation and permit revocations eliminates all economically beneficial use of the Property, causing a total regulatory taking under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992). Third, even if some residual property use and value remains, the Owners have stated a regulatory takings claim under the multi-factor test, a balancing test that guides the takings inquiry in such circumstances. *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978).

A. Takings Principles

The Takings Clause of the Fifth Amendment provides that private property shall not "be taken for public use, without just compensation." The basic purpose of the Clause is to prohibit the government from "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 536-37 (2005) (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)). An unconstitutional taking can result from government action that causes a physical invasion of private property and

from action that restricts a property owner's use of their property. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021).

When the government authorizes a physical invasion of property, a per se test applies. *Id.* Under that test, a physical invasion of property is a taking without regard to the purpose, size, duration, or economic impact of the invasion. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982); *Horne v. Department of Agric.*, 576 U.S. 350, 360 (2015) (because a physical invasion intrudes on the property owner's fundamental right to exclude others, it is a taking "without regard to other factors").

A per se physical taking can occur when government itself invades property or when it authorizes third parties to access and occupy private land. *Loretto*, 458 U.S. at 427 n.5 (a taking occurs when the government "deliberately brings it about that . . . the public at large, regularly use, or permanently occupy, space or a thing which theretofore was understood to be under private ownership") (quotations & citation omitted). Indeed, a taking exists when a third-party invasion of private property is "the natural and intended effect" or foreseeable result of government action. *Cedar Point*, 594 U.S. at 159-60 (citing *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 38-39 (2012) (courts must consider "the degree to which [the invasion] was intended or foreseeable, and the character of the land at issue"); *see also Ideker Farms, Inc. v. United States*, 71 F.4th 964, 979 (Fed. Cir. 2023) (examining the "foreseeabl[e]" effects of government action); *Chmielewski v. City of St. Pete Beach*, 890 F.3d 942, 950 (11th Cir. 2018).

Different standards apply when a takings claim challenges actions that restrict a person's ability to use their private property. *Cedar Point*, 594 U.S. at 149. When a use restriction eliminates "all economically beneficial use" of private property, it is treated as a *per se* "regulatory" taking. *Lucas*, 505 U.S. at 1017-19. However, when a restriction deprives the owner of less than all economic use of the property, the issue of whether the restriction is a taking depends on application of a multi-factor

balancing test derived from *Penn Central*, 438 U.S. at 124. The so-called "*Penn Central* test" is an "essentially ad-hoc, factual inquiry" that involves multiple considerations, including, but not limited to: (1) the "economic impact" of the challenged action, (2) the extent to which it interferes with "distinct investment-backed expectations," and (3) the "character of the governmental action." *Id.* Ultimately, the determination of a regulatory taking depends on the severity of the burden of the government's action on private property rights. *Lingle*, 544 U.S. at 539.

Here, the Owners have pled facts sufficient to plausibly allege a physical taking and a regulatory taking.

B. The City's Monument Designation Foreseeably Caused the Physical Invasion of the Property

Since the designation of the Property as a public monument, people have regularly entered the Property in attempts to view the new monument because it is not viewable from the street. DE No. 1 at 25-28, ¶¶ 81-86. This public invasion began soon after the City publicly initiated the monument designation process, and has continued and increased since the final designation decision. *Id*. The Owners informed the City prior to its final designation decision that people had begun to trespass after initiation of the designation process. *Id*. at 13-14, ¶¶ 40-48; DE No. 1-11 at 2. Thus, 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, and it has. DE No. 1 at 9-10, 28, ¶¶ 29-30, 85. People have repeatedly scaled the perimeter walls to see the house, flown drones over the Property to view the monument, and broken into the house searching for memorabilia. *Id*. at 26, ¶ 81. The Owners have been forced to hire private security at significant ongoing expense to deal with continual trespassing problems. *Id.* at 3, 28-29, ¶¶ 4, 86.

This invasion of the Property is not random; it is the direct, foreseeable result of the City's decision to turn a private, publicly inaccessible parcel into a public

monument, DE No. 1 at 28, ¶ 85; *id.* at 29, ¶ 88. The Complaint accordingly states a viable claim that the City's actions have caused a per se, physical taking. *Loretto*, 458 U.S. at 427 n.5; *Chmielewski*, 890 F.3d at 950 (physical taking found where city actions encouraged the public to use the private property); *Daniels v. Town of Palm Beach*, 2026 WL 607648, at *5-6 (S.D. Fla. Feb. 19, 2026) (a property owner asserted a viable takings claim based on government actions that encouraged trespassing on private property); *cf. Presley v. City of Charlottesville*, 464 F.3d 480, 482 (4th Cir. 2006) (plaintiff stated a claim for an unreasonable seizure of her property where the city knowingly encouraged trespass by publishing a map showing a trail crossing through the plaintiff's yard).

Still, the City argues that the designation cannot be a physical taking because it did not "mandate" public access to the Property, and trespassing is simply the "independent, criminal acts of third parties." DE No. 29 at 20, 27. This position reflects a misunderstanding of the facts and the law. Again, trespassing did not occur on the Property until *after* the City initiated the designation process, and continues because of the City's final decision. But for the City's designation of the inaccessible Property as a monument, and its public promotion of that process, people would not be climbing the walls to see the Property. The allegations thus assert that the City's designation decision was the "moving force" behind the invasion of the Property, *Monell v. Dep't of Social Services of City of New York*, 436 U.S. 658, 694 (1978), and the "foreseeable" result of that action. *See Cedar Point*, 594 U.S. at 160. Therefore, the Owners have stated a valid physical takings claim. *See Daniels*, 2026 WL 607648, at *5-6.

C. The Designation and Permit Revocation Have Caused a Regulatory Taking

The factual allegations are also sufficient to state a valid claim that the City's actions have effected a regulatory taking under the *Lucas* "denial of all economically beneficial use" test and/or *Penn Central*'s multi-factor, balancing test.

1. The City's actions constitute a taking under *Lucas*

The City's designation of the Property as a monument, its revocation of the demolition permits, and the public invasion arising from those actions have deprived the Property of "all economically beneficial use." *Lucas*, 505 U.S. at 1017-19. The City's actions have stripped the Property of all redevelopment potential. The zoning scheme applicable to the Property allows the construction of a substantial, valuable modern home on the Property. DE No. 1 at 25, ¶ 78. But the City's denial of demolition permits makes that impossible. *Id.* at 24, 31-32, ¶¶ 75, 101-102. Moreover, due to the dilapidated and uninhabitable condition of the home, the ongoing public invasion of the Property, related security issues, and the severe development constraints that now apply, the Property is unsaleable. *Id.* at 32, ¶ 102.

Additionally, the house is currently not rentable or habitable, and rehabilitation of the existing structure for potential residential and/or rental use is cost prohibitive, and pointless given the security issues related to trespassing. *Id.* at 8, 24-25, ¶¶ 26, 73-74. No one wants to buy or rent property that is inundated with tourists, subject to regular trespassing and break-ins, and burdened by a City-imposed preservation servitude. *Id.* at 23, ¶¶ 72-75 (alleging that the house is not rentable to a third party); *id.* at 32, ¶ 102 (alleging that, in light of the City-imposed servitude on the Property, no buyers would purchase the property). *See, e.g.*, *DM Arbor Ct., Ltd. v. City of Houston*, 150 F.4th 418, 426 (5th Cir. 2025).

The City nevertheless claims that the "lack of economic utility is a function of Plaintiffs' own choice not to maintain the improvements." DE No. 29 at 23. But as described above, the designation and revocation of permits, and resulting public invasion, have worked to render the Property valueless, unsaleable, and unrentable, despite the existence of old structures. *Id.* at 24, 31-32, ¶¶ 72-75, 101-102. The Complaint accordingly states a claim for a total taking under *Lucas*. *See Ali v. City of Los Angeles*, 77 Cal. App. 4th 246, 252 (1999) (denial of a demolition permit for an uninhabitable hotel deprived the owner of all economically viable use of his

property); *State ex rel. Greenacres Found. v. City of Cincinnati*, 56 N.E.3d 335, 343-44 (Ohio Ct. App. 2015) (a city's refusal to issue a demolition permit based on historic designation constituted a *Lucas* taking where the house was uninhabitable, deteriorated, and rehabilitation costs were extreme).

D. The Allegations State a Claim for a Regulatory Taking Under the *Penn Central* Test

Even if some use and value remain in the Property, the Complaint pleads facts sufficient to state a regulatory takings claim under *Penn Central*'s multi-factor test. As outlined above, the *Penn Central* test involves multiple considerations, including the economic impact of the government's action, its effect on the property owners' investment-backed expectations, and the character of the government action. *Bridge Aina Le'a, LLC v. Land Use Comm'n*, 950 F.3d 610, 625 (9th Cir. 2020). This inquiry is fact dependent and can "seldom" be resolved "on the pleadings" and without development of a factual record. *McDougal v. Cnty. of Imperial*, 942 F.2d 668, 676 (9th Cir. 1991); *see also FFV Coyote LLC v. City of San Jose*, 637 F. Supp. 3d 761, 770 (N.D. Cal. 2022).

As to the first "economic impact" factor, the Owners have alleged that the City's actions have rendered the Property unsaleable and severely damaged, and indeed, have entirely eliminated its economic value. DE No. 1 at 24, 31, ¶¶ 75, 100-101. To the extent the City disputes these allegations and seeks to show that the Property retains meaningful value, it is raising a factual issue that cannot be resolved at the motion to dismiss stage. *FFV Coyote*, 637 F. Supp. 3d at 770 ("[T]he extent of the economic impact on plaintiffs caused by the City's actions remains a question of fact that cannot be resolved at the pleadings."). At this stage, the Owners' allegation of a loss of all value in the Property establishes an economic impact sufficient to support a takings claim.

The "investment-backed expectations" factor also supports the Owners' claim. The Owners bought the Property for $8.35 million prior to the designation of the

Property as a monument, and after the City had declined to designate the Property as a monument for the prior 60 years. DE No. 1 at 23, ¶¶ 71, 73. The City also issued grading and demolition permits prior to the designation, *id*. at 8, ¶ 27, and the Owners invested approximately $30,000 in reliance on the permits and began to use them. *Id*. at 23, ¶ 73. The City's designation decision and its revocation of the previously issued demolition permits wiped out the Owners' investments and plans. *Id*. at 23, ¶¶ 71, 73. The Owners' allegations are thus sufficient, at this stage, to show that the City's actions frustrated their distinct and reasonable investment-backed expectations. *Bordelon v. Baldwin Cnty.*, 2022 WL 16543269, at *24 (S.D. Ala. Oct. 28, 2022) (revocation of plaintiffs' land use certificate "severely interfered with plaintiffs' distinct investment-backed expectations"), *aff'd*, 2024 WL 302382 (11th Cir. Jan. 26, 2024).

The City contends, however, that the Owners lacked reasonable expectations because a clause in the Owners' purchasing documents speculated that the Property might be subject to the historic designation process at some unknown point in time. But the Owners' expectations were formed by the more concrete fact that the City had (1) actually refrained from designating the Property as a monument for *the past 60 years*, (2) issued grading and demolition permits to the Owners, without raising historic preservation objections, and (3) the Property was not actually under a monument designation at the time of acquisition. The Owners' expectation that they could clear the Property can hardly be considered unreasonable *when the City literally issued the demolition permits needed to do so.*

Finally, the *Penn Central* "character of the governmental action" factor also supports the Owners. That factor involves several considerations. *Pharmaceutical Rsch. & Mfrs. of America v. Stolfi*, 153 F.4th 795, 840 (9th Cir. 2025) (the "character" factor "'necessarily requires a weighing of private and public interests'") (quoting *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 492 (1987) (quoting *Agins v. City of Tiburon*, 447 U.S. 255, 260-61 (1980))). The "character" inquiry asks

whether a challenged 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.'" *Lingle*, 544 U.S. at 539 (citation omitted). It also considers whether the governmental action singles out property owners to bear burdens which "should be borne by the public as a whole." *Eastern Enters. v. Apfel*, 524 U.S. 498, 522 (1998) (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

In this case, the City's actions have invited and encouraged trespassing and a physical invasion of the Owners' property by people who want to view the newly designated monument. DE No. 1 at 26, ¶ 81. The City's actions have also singled out the Owners to preserve and maintain a public burden at private expense. The purpose of the City's designation is to preserve the Owners' Property for the benefit of the public, yet it is doing so without paying for that effort with public funds. It is compelling the Owners to pay for it—by taking their private property rights and investments. The City is thus requiring property owners, specifically, Plaintiffs Milstein and Bank, to bear a public burden that, in all fairness and justice, should be borne by the public as a whole.

CONCLUSION

The Court should deny the City's motion to dismiss the Complaint.

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Respectfully submitted,

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