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Historic preservation or constitutional taking? The next frontier in the Marilyn Monroe home dispute

The litigation over Marilyn Monroe's Brentwood home centers on whether the City's historic designation and related demolition restrictions constitute an unconstitutional taking under California inverse condemnation law.

By Zachary D. Schorr

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The battle over Marilyn Monroe's Brentwood home has moved beyond celebrity-driven preservation efforts and now raises a key California real estate law question: how does the court balance historic preservation powers with constitutional property rights and government takings?

When the City of Los Angeles moved to designate Monroe's former home as a Historic-Cultural Monument, much of the public discussion focused on her last days there. But the more interesting legal question is not the celebrity involved. It is whether government can effectively strip an owner of core development rights for the claimed public historical preservation benefit without paying compensation. This concept of forced taking underpins this case as the courts are now asked to consider whether the city's historic designation, when involuntarily imposed on a property owner by third parties, amounts to a governmental taking.

The case has already generated multiple rounds of litigation. After the city issued demolition permits, it initiated the historic designation process and halted further demolition. The owners then filed suit asserting inverse condemnation claims, constitutional claims and related challenges to alleged improprieties in the historic designation process itself.

As background, historic preservation laws were created to protect culturally significant structures from demolition and redevelopment. Los Angeles has long embraced these protections through its Cultural Heritage Ordinance, which permits the city to delay demolition permits, initiate historic review proceedings and ultimately impose restrictions on redevelopment. Los Angeles was among the first major cities in the country to adopt historic preservation laws, now codified through its Historic-Cultural Monument procedures.

California law also provides incentives supporting historic preservation. Government Code sections 50280

et seq. authorize Mills Act contracts for qualified historic properties, often resulting in substantial property tax reductions in exchange for preservation obligations. Likewise, Health and Safety Code sections 18950 et seq. permit qualifying structures to utilize the State Historical Building Code rather than strict modern code requirements. These laws reflect California's broader public policy favoring preservation of historically significant resources.

In most cases, those protections are not controversial because the owner voluntarily seeks historic designation and receives benefits in return, including Mills Act tax advantages and access to California's historic building standards.

But involuntary historic designation is fundamentally different — downright unusual but not unprecedented.

That is where inverse condemnation enters the conversation.

In California, inverse condemnation arises from article I, section 19 of the California Constitution, which prohibits the government from taking or damaging private property for public use without just compensation. In a traditional eminent domain action, the government affirmatively acquires property rights through formal condemnation proceedings. Inverse condemnation flips that framework. The property owner sues the government and alleges that governmental conduct effectively took or damaged property rights without paying compensation required under the Constitution.

Courts traditionally associate inverse condemnation claims with physical damage, flooding or public works projects. But courts have long recognized that governmental regulation can also go "too far." The United States Supreme Court addressed this principle in *Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104, which itself involved historic preservation restrictions imposed on Grand Central Terminal in New York City.

Penn Central remains the cornerstone case governing regulatory takings claims involving historic preservation. There, New York City prohibited Penn Central from constructing a high-rise office tower above Grand Central Terminal after the property was designated a historic landmark. The owner argued the restrictions destroyed substantial development rights and therefore constituted a taking requiring compensation.

The Supreme Court rejected the takings claim, but in doing so established the balancing test still used today. The Court identified several factors that govern whether a regulation crosses the constitutional line into a compensable taking: (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation interferes with distinct investment-backed expectations; and (3) the character of the governmental action. (Penn Central, supra, 438 U.S. at pp. 124-125.)

Those factors may become highly relevant in the Monroe litigation.

First, the economic impact factor could become significant if the restrictions prevent the owners from utilizing or redeveloping the property as intended. If redevelopment represented the property's highest and best economic use, restrictions on demolition and construction may materially diminish value.

Second, the owners are likely to focus heavily on their investment-backed expectations. According to the allegations, they purchased the property intending to demolish and redevelop it and secured demolition approvals before the city intervened. Courts routinely examine whether the owner reasonably anticipated the challenged restrictions at the time of acquisition.

Third, courts evaluating the character of the governmental action often distinguish between broad public regulations affecting entire communities and regulations that impose disproportionate burdens on a single owner for the public's benefit. The Monroe owners will likely argue that the city forced them alone to bear the financial burden of preserving a structure the public wishes to maintain as part of Hollywood history.

At the same time, Penn Central itself demonstrates the substantial hurdles owners face in these claims because courts remain reluctant to invalidate preservation laws where some economically viable use remains.

The constitutional issue becomes more complicated when preservation efforts substantially interfere with the owner's practical use of the property. At some point, the line between permissible regulation and compensable taking blurs. That question becomes even more interesting in the context of celebrity homes.

Unlike architecturally unique landmarks or historically significant public structures, celebrity residences often derive their alleged significance from association alone. In the Monroe matter, much of the property's claimed historical importance stems from the fact that Monroe spent the final months of her life there.

The implications of this intersection between historical designation and private property rights extends well beyond Hollywood and Marilyn Monroe's legacy. California already faces substantial tension between preservation efforts and redevelopment pressures, particularly in dense urban areas where property values and redevelopment opportunities are extraordinarily high. The Monroe litigation may ultimately force courts to confront where preservation authority ends and constitutional taking liability begins.

Importantly, the issue is not whether historic preservation in general is legitimate. It plainly is. The issue is whether the public should bear the financial burden of preservation efforts rather than imposing that burden entirely on a single private owner. That principle lies at the core of inverse condemnation law.

If the public desires preservation of culturally significant property, courts may increasingly ask whether fairness requires the public to pay for it.

The Monroe dispute therefore represents more than a fight over a famous person's house. It may become one of the more closely watched California cases examining whether involuntary historic designation can cross the constitutional line from regulation into taking.

As preservation efforts continue to expand throughout California, the next chapter in the law of historic preservation and inverse condemnation is not being written in history books, it is being litigated in real time.

Zachary D. Schorr *is a real estate attorney at Schorr Law.*