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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JOHN MONKS et al., Plaintiffs and Appellants, v. CITY OF RANCHO PALOS VERDES, Defendant and Respondent.	B201280 (Los Angeles County Super. Ct. No. YS010425) ORDER MODIFYING OPINION AND DENYING REHEARING [NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on October 1, 2008, be modified as follows:

1. On page 32, delete the first full paragraph ("Whether there was a compensatory taking . . . *Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th 1261, 1269.)") and replace it with the following paragraph, without any quotation marks.

> Whether there was a permanent taking in violation of the California Constitution is a question of law we review de novo. (See *Ali v. City of Los Angeles* (1999) 77 Cal.App.4th 246, 250.)

2. On page 42, after the second full paragraph (which begins, "But in *Monks I*, we held" and ends, "*ABF Capital Corp. v. Grove Properties Co.* (2005) 126 Cal.App.4th 204, 212.)"), insert the following new paragraph:

> The city contends that the law of the case is not applicable because the evidence at the trial differed substantially from what was presented at the earlier hearing reviewed in *Monks I*. (See *Nally v. Grace Community Church* (1988)

47 Cal.3d 278, 301–302; *Wicktor v. County of Los Angeles* (1960) 177 Cal.App.2d 390, 394–395.) We disagree. The gist of the evidence did not change. At the trial, plaintiffs simply offered *more* evidence that a *local* safety factor was geologically acceptable and that their lots had a safety factor of at least 1.5; the city asserted again that, under the resolution, plaintiffs had to prove a *gross* safety factor and offered *more* evidence that the safety factor of Zone 2 was less than 1.5. And no one, including Poormand, provided any additional evidence about the cost of determining the *gross* safety factor of *Zone 2.* In these circumstances, it would make a mockery of the principle of finality (see *Nally*, at p. 302) if, after we remanded the takings claim for a trial on the merits, the trial court found instead that plaintiffs should seek an exclusion under the resolution a second time, using the same administrative process as before.

3. On page 42, in the third full paragraph (which begins, "Assuming for the sake of argument"), after the seventh sentence (which ends, "his opinion at trial and on appeal.") and before the eighth sentence (which begins, "There is no reason to believe"), insert the following sentence:

Indeed, the city's principal witness, Tofani, testified that the majority of Zone 2 should be moving, indicating a *gross* safety factor below 1.0.

There is no change in the judgment.

Respondent's petition for rehearing is denied.

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MALLANO, P. J. ROTHSCHILD, J. HASTINGS, J.*

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* Retired Associate Justice of the Court of Appeal, Second Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.