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## Church Property Is Exempt From City's Historic Landmarking Regulation

In *The California-Nevada Annual Conference of the United Methodist Church v. City and County of San Francisco*, (--- Cal.Rptr.3d ---, Cal.App.1 Dist., May 20, 2009), a California Court of Appeal considered a church's challenge to a city's attempt to declare its property a historic landmark, thereby preventing the church from demolishing a structure on the property and then selling it.

The court ruled that Government Code Section 25373, subdivision (d) plainly exempts noncommercial property owned by religious organizations from such local regulation, and that the city therefore exceeded its jurisdiction when it tried to regulate the church property.

### Facts

The California-Nevada Annual Conference of the United Methodist Church ("Church"), a California religious corporation, owned property within the city of San Francisco ("City"), on which a church building was built and religious services had been conducted for more than 90 years. In 2005, the Church vacated the property due to declining membership and seismic safety concerns. The Church decided to demolish the building and sell the property and entered into a contract with Pacific Polk Properties LLC ("Pacific Polk") for the development of a residential condominium project. The Church applied to the City's planning and building inspection departments to demolish the building but no permit was issued and the building still remains.

In 2007, over the Church's objections, the City began proceedings to declare the property a local historic landmark, which would have prevented the building's demolition. The Church and Pacific Polk filed suit to stop the landmark designation process. The trial court granted a writ voiding any City action to declare the property a landmark, and ordering that the City's landmark designation process be

discontinued. The City appealed.

### Decision

Government Code Section 25373 grants local governments the power to provide conditions or regulations to preserve properties having special historic, cultural or aesthetic values. In 1994, the Legislature amended the law by adding subdivision (d) which states that the law's provisions do not apply to noncommercial property owned by a religious association or corporation, provided that the association or corporation objects to the designation, and that it demonstrates that the designation will cause it a substantial hardship, such as being deprived of an economic return on the property.

In *East Bay Asian Local Development Corp. v. State of California* (2000) 24 Cal.4th 693, the court noted, the California Supreme Court upheld the validity of the exemption for religious organizations. The *East Bay* opinion made it "unmistakably clear," the court said, that the purpose of the 1994 amendment was to protect the financial interests of religious organizations who sought to sell property they were no longer using. Here, the Church clearly demonstrated that the landmark designation would cause it a significant hardship by denying it the right to sell its property for a profit. Since the Church was a religious organization and it had shown a significant hardship, section 23573 subdivision (d) plainly removed from the City the authorization to designate the property a historic landmark.

Further, the court concluded the City's argument that the matter was not ripe for litigation was irrelevant because the landmark designation process had not been completed. "If an agency is proceeding in a matter beyond its jurisdiction, judicial intervention may be obtained even though the agency has not yet reached a final decision and the affected party therefore has not yet exhausted administrative remedies," the court said.

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The trial court therefore properly ruled that the City has no jurisdiction to apply its landmark ordinance to the Church property. The judgment was affirmed.

### **Questions**

If you have any questions concerning the content of this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult.

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