“RLUIPA is the latest skirmish in a tug of war between Congress and the Supreme Court over the meaning and application of the Free Exercise Clause of the United States Constitution.” (Lennington,Thou Shalt Not Zone: The Overbroad Applications and Troubling Implications of RLUIPA’s Land Use Provisions (2006) 29 Seattle U. L.Rev. 805, 806–807.) Adopted in response to the Supreme Court’s partial invalidation of the Religious Freedom Restoration Act, title 42 United States Code section 2000bb (RFRA), in City of Boerne v. Flores (1997) 521 U.S. 507 [117 S.Ct. 2157, 138 L.Ed.2d 624], RLUIPA applies to a government’s implementation of land use regulations so long as the government makes, or has in place procedures allowing it to make, “individualized assessments of the proposed uses for the property involved.” (42 U.S.C. § 2000cc (a)(2)(C).) If applicable, RLUIPA prohibits a government from implementing a land use regulation in a way that “imposes a substantial burden” on one’s “religious exercise” unless the burden satisfies strict scrutiny.8 In passing the Act, Congress intended to relax the requirement under First Amendment jurisprudence that the “religious exercise” be central to the individual’s religion. Under RLUIPA, free exercise includes “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” (42 U.S.C. § 2000cc–5(7)(A).) *118 Particularly relevant to our inquiry here, RLUIPA provides that “[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.” (42 U.S.C. § 2000cc–5(7)(B).)

A RLUIPA substantial burden analysis proceeds in sequential steps. First we look, as a threshold question, to determine if the government has made an “individualized assessment” in its implementation of laws affecting land. 42 U.S.C. § 2000cc(a)(2)(C). Second, “the plaintiff must demonstrate that a government action has imposed a substantial burden on the plaintiff’s religious exercise.” Int’l Church of Foursquare Gospel v. City of San Leandro, 673 F.3d 1059, 1066 (9th Cir. 2011) [hereinafter Foursquare Gospel]; see 42 U.S.C. § 2000cc(a)(1) (providing that a land-use regulation “impos[ing] a substantial burden on the religious exercise of a . . . religious assembly or institution” is unlawful). Finally, “once the plaintiff has shown a substantial burden, the government must show that its action was the least restrictive means of further[ing] a compelling governmental interest.” Id.

In the United Methodist Church case, we argued the pending demolition and CUP permits qualified for RLUIPA protection. Courts have repeatedly held that a city’s “treatment of [a] Church’s [CUP] applications” which include a demolition permit “constitutes an ‘individualized assessment’” subject to RLUIPA. Foursquare Gospel, 673 F.3d at 1066; see Guru Nanak, 456 F.3d at 987 (same); Acad. of Our Lady of Peace v. City of San Diego, 09-CV962 (WQH) (AJB), 2010 WL 1329014, at *10 (S.D. Cal. Apr. 1, 2010) (examining whether a CUP that included a demolition permit was subject to RLUIPA and “conclude[ing] that RLUIPA applies in this case”).

We further argued the second part of the test, a substantial burden existed because, as a consequence of a city’s denial of a CUP—a CUP which includes a demolition permit—the religious organization suffered the “ultimate burden on the use of the [affected] land,” the burden of effective non-use of that land, quoting:

The burden on the Church's use of land in this case is not only substantial, but entire. By denying the conditional use permit, the City has effectively barred any use by the Church of the real property in question. This is not a case where the Church's proposed use of land—equated with "religious exercise" by RLUIPA—is restricted in a minor or "unsubstantial" way (e.g., by limiting a building's size or occupancy). Rather, the denial of the CUP bars the Church's use altogether, thereby imposing the ultimate burden on the use of that land.

Elsinore Christian Ctr. v. City of Lake Elsinore, 291 F. Supp. 2d 1083, 1090 (C.D. Cal. 2003), reversed on other grounds, Elsinore Christian Ctr. v. City of Lake Elsinore, 197 Fed. Appx. 718, 719 (9th Cir. 2006) (reversing the district court's holding that RLUIPA was unconstitutional but affirming the district court's holding that the City violated RLUIPA).