

No. \_\_\_\_\_

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**In the Supreme Court of the United States**

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MORRIS COUNTY BOARD OF CHOSEN FREEHOLDERS,  
THE MORRIS COUNTY PRESERVATION TRUST FUND  
REVIEW BOARD, JOSEPH A. KOVALCIK, JR., IN HIS  
OFFICIAL CAPACITY AS MORRIS COUNTY TREASURER,

*Petitioners,*

v.

FREEDOM FROM RELIGION FOUNDATION AND  
DAVID STEKETEE,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF NEW JERSEY

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

In *Trinity Lutheran v. Comer*, this Court held that, under the Free Exercise Clause, a church could not be excluded from a state’s playground resurfacing program solely because of its religious character. 137 S. Ct. 2012 (2017). The Court suggested, however, that it would reserve for another day how its ruling would apply to other government programs. *Id.* at 2024 n.3. Since that time, courts have divided on whether houses of worship can be excluded from historic preservation programs consistent with the Free Exercise Clause. The Supreme Courts of New Jersey and Massachusetts have upheld exclusions, concluding that using funds to repair or restore the exterior of a house of worship is a “religious use” far removed from the spending for playground safety at issue in *Trinity Lutheran*. The Supreme Court of Vermont and the United States Court of Appeals for the Sixth Circuit, in contrast, have held that exclusion would conflict with *Trinity Lutheran* and violate the Free Exercise Clause by denying a public benefit to an otherwise eligible entity just because it is religious. This petition thus presents the following questions:

1. Whether using generally available historic preservation funds to repair or restore a house of worship constitutes a “religious use” that falls outside the scope of *Trinity Lutheran*.
2. Whether the categorical exclusion of all active houses of worship from historic preservation grants violates *Trinity Lutheran* and the First Amendment as an exclusion based on religious status.

**PARTIES TO THE PROCEEDING**

Petitioners, who were Defendants below, are the Morris County Board of Chosen Freeholders, the Morris County Preservation Trust Fund Review Board, and Joseph A. Kovalcik, in his official capacity as Morris County Treasurer.

Respondents, who were Plaintiffs below, are Freedom From Religion Foundation and David Steketee.

The Presbyterian Church in Morristown, First Presbyterian Church of New Vernon, St. Peter's Episcopal Church, First Reformed Church of Pompton Plains, Church of the Redeemer, Community of St. John Baptist, Stanhope United Methodist Church, Church of the Assumption of the Blessed Virgin Mary, First Presbyterian Church of Boonton, St. Peter's Episcopal Church in Mountain Lakes, Ledgewood Baptist Church, and Community Church of Mountain Lakes were Defendants below and may participate as Respondents here under Rule 12.6.

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## INTRODUCTION

Time takes its toll on all things—including historic places of worship. Accounting for this melancholy truth, federal, state, and local governments have long allocated funds for the preservation of historic sites, secular and religious alike. This effort has the noble purpose of maintaining connections to the past, honoring history’s most striking achievements, and preserving the character and beauty of our nation’s diverse communities.

But in recent years, several courts, including the Supreme Court of New Jersey here, have held that houses of worship *must* be excluded from historic preservation programs because of their religious character. This holding cannot be squared with the Court’s ruling in *Trinity Lutheran v. Comer* that forcing a house of worship to “renounce its religious character” to “participate in an otherwise generally available public benefit program, for which it is fully qualified” triggers “the ‘most rigorous’ scrutiny.” 137 S. Ct. 2012, 2024 (2017) (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993)). Thus, in contrast, other courts have held that houses of worship *cannot* be excluded from historic preservation programs without violating the First Amendment’s Free Exercise Clause.

This split in authority arises largely from footnote three in *Trinity Lutheran*, where four Justices in the majority indicated that their decision was limited to “express discrimination based on religious identity with respect to playground resurfacing” and that they were not addressing “religious uses” of

government funding. 137 S. Ct. at 2024 n.3. Granting *certiorari* would allow the Court to resolve the split of authority and clarify that the use of generally available government funds to repair or restore historic houses of worship is not a “religious use” outside the scope of *Trinity Lutheran*. Petitioners therefore respectfully ask the Court to grant their petition and set this matter for plenary review or, in the alternative, to summarily reverse and confirm that excluding houses of worship from New Jersey’s historic preservation program violates the First Amendment.

### **OPINIONS BELOW**

The decision of the New Jersey Superior Court granting summary judgment for Petitioners and the Church Respondents, and denying summary judgment to Respondents, is unpublished and is included in the Appendix (App.) at 58a. The New Jersey Supreme Court’s order granting a motion for direct certification is available at 169 A.3d 974 (N.J. 2017). The New Jersey Supreme Court’s decision reversing the Superior Court is available at 181 A.3d 992 (N.J. 2018) and is included in the Appendix at 1a. The New Jersey Supreme Court’s order denying rehearing is unreported but is included in the Appendix at 93a.

### **JURISDICTION**

The New Jersey Supreme Court issued its opinion on April 18, 2018. App.2a. The New Jersey Supreme Court’s judgment denying a motion for rehearing was entered on May 21, 2018. App.93a. On July 31, 2018, Justice Alito extended the time within which to file the petition for a writ of certiorari to and including

September 18, 2018. The jurisdiction of this Court is based on 28 U.S.C. § 1257(a).

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This case involves the following constitutional provisions:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const. Amend. I.

No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform.

N.J. Const. Art. I, ¶ 3

### **STATEMENT OF THE CASE**

***Morris County and its churches.*** Morristown, New Jersey, was founded in 1715 and became the county seat in 1739. App.204a. Morristown gained

prominence during the Revolution when George Washington quartered the Continental Army there during the winters of 1777 and 1779. App.207a. As a result, Morristown became known as the “military capital” of the American Revolution. App.100a. In recognition of the town’s crucial role in the Revolution, Morristown National Historic Park—the nation’s first national historic park—was formed in 1933.

After the Revolution, Morris County’s economy continued to thrive, sustained by growing agricultural and industrial sectors. Throughout the 19th and 20th centuries, railroads brought workers and their families from New York City to live and worship in Morris County. These workers in turn brought their New York taste in architecture to the region.

Morris County’s churches reflect these different periods of its rich history. The First Reformed Church of Pompton Plains was originally built in 1771 in the Wren-Gibbs Colonial style. When it was rebuilt after a fire in 1939, renowned architect Hobart Upjohn oversaw the design. The First Presbyterian Church in Morristown, originally built in 1740, also predates the revolution. Architect J.C. Cady designed their current sanctuary in 1893.

The first Catholic church in Morris County was built in the borough of Madison in 1839. The original Church of the Assumption of the Blessed Virgin Mary was built just ten years later. This Catholic congregation’s current home was built in 1872 in the High Victorian Gothic style, while the Church’s ministry center (originally a private residence) was

built in 1872 in the Stick Style. The Catholic Community of St. John the Baptist was later completed in 1915.

Other congregations built their houses of worship in Morristown as the community continued to grow. Stanhope United Methodist Church, for example, was finished in 1920 in the Gothic Revival style, and St. Peter's Mountain Lakes Episcopal Church was built in 1926. Its rectory nearby is a Hapgood residence built in the Craftsman style dating to around 1916. Each of these buildings contributes to the rich history foundational to Morris County's culture and community today.

***The historic preservation program.*** In 1967, New Jersey put in place a trust fund to preserve "all historic sites within the state." App.63a. The state has an extensive review process for determining whether sites, including religious sites, meet the criteria for historic preservation funding. The state has also authorized its counties to initiate their own grant programs for local historic preservation projects.

In 2002, to preserve examples of its history, Morris County took advantage of New Jersey's historic preservation program and established a grant for local historic preservation projects by referendum.

Grants are distributed through a competitive application process. Only sites in Morris County that are listed on the New Jersey Register of Historic Places or the National Register of Historic Places, or are certified by the State Historic Preservation Office as eligible to be on the Registers, may receive

funding. App.103a. The grant process is competitive and requires submission of extensive application materials testifying to a site's historic pedigree. Applicants must also describe in detail how the grant will be used to enhance the site's historic value. App.64a.

Grants are available for four purposes: (1) "to document the historic nature of a structure"; (2) "to develop written preservation plans"; (3) to prepare construction documents; and (4) "to help fund actual preservation work." App.64a-65a. Recipients of grants for construction projects must cover 20% of the projects' costs. App.109a. A consultant must ensure that each project complies with the U.S. Department of Interior's Standards for the Treatment of Historical Properties. Grantees also accept specific limitations on their use of the land: for 30 years following the award, an easement is granted to the County by way of a deed restriction which ensures public access to the site and prevents the grantee from making any "inappropriate alteration[s] of the property." App.65a.

Morris County has awarded grants to a number of historic properties, including cemeteries, libraries, schoolhouses, and houses of worship. Houses of worship receive construction grants only for work on "the exterior building elements, and the building's structural, mechanical, electrical, and plumbing systems." App.108a. Out of the 117 grants awarded between 2012 and 2015 (the period at issue in this case), less than one-third were made to preserve structures owned by active religious congregations.

The oldest of these recipients, the Presbyterian Church in Morristown, dates to 1740. Other grant recipients highlight the work of world-renowned architects. St. Peter's Episcopal Church, for example, was designed by McKim, Mead and White. Some also contain rare Tiffany stained glass. All reflect the history, architecture, and character of Morris County, and all preserve important aspects of the community for future generations.

Plaintiffs Freedom From Religion Foundation and Mr. Steketee (collectively, FFRF) filed suit in New Jersey Superior Court on December 1, 2015. Petitioners removed the case to the U.S. District Court for the District of New Jersey on January 12, 2016. Finding that the case presented no federal question even if the defendants planned to raise a constitutional defense, the district court remanded the case on January 21, 2016. FFRF then filed an amended complaint adding church recipients of grants as defendants on April 26, 2016. The current complaint is the Second Amended Complaint, filed May 16, 2016.

FFRF claims that Morris County's program violates Article I, Paragraph 3 of the New Jersey Constitution: its "no-aid" clause. The parties filed cross motions for summary judgment on stipulated facts, and on January 9, 2017, the Superior Court granted the Petitioners' motion for summary judgment. App.86a. The superior court held the New Jersey Constitution must be "read in conjunction with the State's longstanding tradition of neutrality in church-state relations." App.10a. It explained that excluding churches from the grant program would "be tantamount to impermissibly withholding \* \* \*

general benefits to certain citizens on the basis of their religion.” App.83a (citing *Everson v. Bd. of Educ.*, 330 U.S. 1, 16 (1947)).

FFRF appealed, and Petitioners moved for a direct appeal to the New Jersey Supreme Court. On June 2, 2017, the Supreme Court granted Petitioners’ motion.

On April 18, 2018, a six-justice majority of the New Jersey Supreme Court held that grants to active houses of worship violate New Jersey’s no-aid clause. App.31a. The court then considered whether the no-aid clause conflicts with the Free Exercise Clause under *Trinity Lutheran*. App.31a-32a. It held that “[t]he holding of *Trinity Lutheran* does not encompass the direct use of taxpayer funds to repair churches and thereby sustain religious worship activities.” App.45a. Thus, it reversed the judgment of the lower court and entered summary judgment in favor of FFRF. App.47a. The Court did not, however, reverse any awards already made to the churches, holding that its decision would apply prospectively. *Ibid.*

Justice Solomon filed a separate concurrence. “[U]nder the facts of this case,” he agreed that the grants violated the no-aid clause. App.49a. He explained, however, that he could not join the majority because its “blanket exclusion” created a “categorical[] bar [on] churches with active congregations,” which violated the Free Exercise Clause and *Trinity Lutheran*. *Ibid.* Instead, Justice Solomon argued that because some churches “sought funding to continue religious services” and were named as eligible applicants in the grant program,

the program was “neither facially neutral nor neutral in its application.” App.56a-57a.

## REASONS FOR GRANTING THE PETITION

### I. Courts are divided over how *Trinity Lutheran* applies to historic preservation programs.

In *Trinity Lutheran*, the Court held that excluding a church from Missouri’s playground safety grant program violated the Free Exercise Clause. 137 S. Ct. 2012 (2017). The Court made clear that “otherwise eligible recipients” may not be excluded “from a public benefit solely because of their religious character.” *Id.* at 2021.

But footnote three of the Court’s opinion suggested its holding was limited to instances of “express discrimination based on religious identity with respect to playground resurfacing” and that the Court was not addressing “religious uses of funding or other forms of discrimination.” *Trinity Lutheran*, 137 S. Ct. at 2024 n.3. Only four Justices joined footnote three. Two of the six Justices in the majority expressly rejected it, stating they “harbor[ed] doubts” that any meaningful line could be drawn between “religious *status* and religious *use*.” *Id.* at 2025 (Gorsuch, J., concurring, joined by Thomas, J.) (emphasis in original). They emphasized that future cases should instead be governed by the opinion’s “general principles, rather than ad hoc improvisations.” *Id.* at 2026 (internal quotation marks and citation omitted). But in a separate concurrence, Justice Breyer also underscored that his agreement with “much of what the Court says and with its result” had to be viewed in light of “the

particular nature of the ‘public benefit’ here at issue.” *Id.* at 2026 (Breyer, J., concurring in the judgment). Considering that “[p]ublic benefits come in many shapes and sizes,” he indicated he would “leave the application of the Free Exercise Clause to other kinds of public benefits for another day.” *Id.* at 2027.

The result of all this is that governments and lower courts have been left to puzzle over what uses of funding are “religious,” what uses are “secular,” and when it makes a difference.<sup>1</sup> This case presents a unique opportunity to resolve questions that have arisen within the discrete but critical area of historic preservation. Federal, state, and local governments have compelling economic and cultural—even existential—reasons to help preserve historic sites within their boundaries. For Petitioner, as one example, there is no authentic Morristown Green (the historic park at the heart of its county seat) without the majestic edifices—including the J.C. Cady-designed Presbyterian Church—that give

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<sup>1</sup> Academia has been quick to note this confusion. See, e.g., Richard W. Garnett & Jackson C. Blais, *Religious Freedom and Recycled Tires: The Meaning and Implications of Trinity Lutheran*, 2016 Cato Sup. Ct. Rev. 105, 123-25 (2016-2017) (discussing footnote three and various interpretations of “religious use”); Douglas Laycock, *Churches, Playgrounds, Government Dollars—and Schools?*, 131 Harv. L. Rev. 133, 158-63 (Nov. 2017) (addressing the relationship between *Locke v. Davey* and *Trinity Lutheran*); Tobias A. Mattei, *Trinity Lutheran v. Comer: Footnote 3, Gorsuch’s Opinion and Scalia’s Legacy of a Law of Rules*, 122 Penn State L. Rev. 14, 21 (2018) (“[T]he outcome of any future legal case, no matter how similar to *Trinity Lutheran v. Comer* it may be, is still uncertain.”).

it character and beauty. Yet the New Jersey Supreme Court's reading of *Trinity Lutheran* led it to hold that using generally available preservation funds to repair a church's exterior and mechanical functions constituted a "religious use[]" that was "well beyond" the scope of *Trinity Lutheran*. App.38a.

Courts are split 2-2 on this issue, with the Supreme Court of New Jersey and the Supreme Court of Massachusetts holding that historic preservation furthers a "religious use" in violation of *Trinity Lutheran*, and the United States Court of Appeals for the Sixth Circuit (even before *Trinity Lutheran* was decided) and the Supreme Court of Vermont concluding that the *exclusion* of houses of worship from historic preservation funding raises constitutional problems.

This Court has also already had one case before it that obliquely addressed this issue. In *Harvest Family Church v. Federal Emergency Management Agency*, No. 17A649 (Dec. 15, 2017), several houses of worship challenged their exclusion from FEMA's disaster recovery funding. This came before the Court on an application for temporary injunction pending appeal but became moot when the federal government "revised the challenged policy to remove the exclusion of religious facilities." Solicitor General's Letter to the Court (January 3, 2018), <https://s3.amazonaws.com/becketnewsite/17A649-Harvest-Family-Church-letter.pdf>.

Courts are also split on how the carve-out in footnote three fits with *Trinity Lutheran's* clear admonition that the categorical exclusion of individuals and institutions based on their religious

status violates the Constitution. Here, New Jersey concluded that excluding all houses of worship was constitutional because the funding went toward a “religious use.” Vermont and Massachusetts, however, rejected this categorical approach in light of *Trinity Lutheran*’s holding that conditioning available benefits based on “willingness to [] surrender [one’s] religiously impelled status” violated the Free Exercise Clause. 137 S. Ct. at 2020.

Both splits present narrow issues that warrant immediate resolution by the Court.

**A. Courts are divided over whether houses of worship can be excluded from generally available historic preservation programs.**

**1. New Jersey and Massachusetts hold that providing historic preservation funds to houses of worship constitutes a “religious use” outside the scope of *Trinity Lutheran*.**

Two courts have concluded that funding the preservation and restoration of a church’s structural components constitutes a “religious use” of public funding, pushing it outside the scope of *Trinity Lutheran*. In both cases, the courts expressed concern that preservation funds would impermissibly advance religious worship by, for example, freeing up private funding for other religious uses.

In the case under review, the New Jersey Supreme Court addressed a historic preservation fund that used public money to restore and repair a broad array of historic buildings, including houses of

worship, in Morris County. Applications were considered based on a number of secular criteria, including “the project’s relationship to heritage education and tourism.” App.6a. And the work for houses of worship was limited to “construction projects for a building’s exterior as well as its mechanical, electrical, and plumbing systems, and other items.” *Ibid.* Relying on footnote three in *Trinity Lutheran*, the court held that historic preservation goes “well beyond playground resurfacing” and instead allows public funds to go to actual “religious uses.” App.38a (quotation marks and citations omitted). The court also expressed its concern that the churches receiving funds had “active congregations” and conducted “regular worship services” in the repaired structures. *Ibid.* (quotation marks and citations omitted). Thus, the court concluded, this did “not involve the expenditure of taxpayer money for non-religious uses, such as the playground resurfacing in *Trinity Lutheran*.” App.40a. Instead, by “sustain[ing] the continued use of active houses of worship for religious services,” the grants constituted “an impermissible religious use of public funds.” *Ibid.*

In *Caplan v. Town of Acton*, the Supreme Court of Massachusetts reviewed a preservation grant to the Acton Congregational Church. 92 N.E.3d 691, 694 (Mass. 2018). The funds were designated to repair “the main church building, where the church conducts its worship services,” along with two adjacent homes from the mid-Nineteenth Century that were “originally \* \* \* private residences but were later acquired by the church” and “rented to local families.” *Id.* at 709, 694-95. Additional funds

were marked for the renovation of “stained glass windows, which feature explicit religious imagery and language.” *Id.* at 709.

With respect to the stained-glass windows, the court stated that although it could not “ascertain whether there [was] a motivating purpose behind this grant other than historic preservation, its effect [was] to substantially aid the church in its essential function.” *Caplan*, 92 N.E.3d at 711. The court remanded for further consideration of the grants for the other buildings but warned the lower court that its analysis must be “more fact-intensive.” *Ibid.* The court expressed concern that the church had been “candid in its grant applications” in “explaining that—faced with declining membership and contributions—it would need the town’s ‘help’ in order to preserve its buildings.” *Id.* at 707. The court further noted that the building grants “would help defray planning and restoration costs that the church would otherwise have to shoulder on its own, allowing the money saved to be used to support its core religious activities.” *Ibid.* Thus, the court suggested that “restoration of the main church building [would] implicate risks different from those arising from the restoration of the adjoining residences,” warranting especially “careful scrutiny.” *Id.* at 711-12, 710.

The concurring opinion noted that “line drawing in this intensely contested area of constitutional law is difficult” but that preservation grants were “vastly different from the nonreligious rubberized playground services” at issue in *Trinity Lutheran*. *Caplan*, 92 N.E.3d at 718. (Kafker, J., concurring). In contrast, and anticipating the split with other courts,

the dissent warned that the heightened “careful scrutiny” for preservation grants going to “active religious institutions” violated both “the plain text of the [state’s] anti-aid amendment” and the *Trinity Lutheran* decision by putting “historic religious building[s]” with “active congregation[s]” at “a distinct disadvantage when seeking funds under the act.” *Id.* at 720, 723 (Cypher, J., dissenting) (internal quotation marks and citations omitted).

This same issue has arisen in the closely related context of disaster recovery funding. In a matter briefly before the Court recently, several houses of worship were denied disaster recovery funding by the federal government. *Harvest Family Church v. FEMA*, No. CV H-17-2662, 2017 WL 6060107, at \*4 (S.D. Tex. Dec. 7, 2017), *order vacated, appeal dismissed*, No. 17-20768, 2018 WL 386192 (5th Cir. Jan. 10, 2018). A Texas federal district court upheld this denial even though such funding was available to comparable secular organizations—even a stamp collecting club. See Br. of Appellants at 22, *Harvest Family Church v. FEMA*, No. 17-20768, 2018 WL 386192 (5th Cir. Jan. 10, 2018). According to the district court, the use of public funds to “rebuild facilities used primarily to promote religious activities” constituted “use \* \* \* for religious purposes,” removing the case from the confines of *Trinity Lutheran*.<sup>2</sup> *Harvest Family Church*, 2017 WL 6060107, at \*4.

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<sup>2</sup> The federal government has taken the lead on ending discrimination against houses of worship in several other areas. In California, for example, \$10 million in federal grants were

The case then came before the Court on an emergency application for a temporary injunction pending appeal. While that application was pending, FEMA issued new guidance to resolve this issue. As the agency explained, “[i]n light of the *Trinity Lutheran* decision, FEMA has \* \* \* determined that it will \* \* \* not \* \* \* exclude houses of worship from eligibility for FEMA aid on the basis of the religious character or primarily religious use of the facility.” *Public Assistance Program and Policy Guide, FR-14-009-2*, U.S. Department of Homeland Security (January 2018), <http://s3.amazonaws.com/becketnewsite/FEMA-PAPPG-3d-Edition-1-2-18-Final.pdf>.

These cases thus highlight a common misreading of *Trinity Lutheran*: that it is limited to situations essentially identical to playground resurfacing. Yet, and as the courts that follow have held, this is incorrect. Regardless of its full scope, *Trinity Lutheran* certainly extends to funding programs like

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given to “to restore and repair California missions and associated artwork and artifacts.” Stacey L. Mahaney, *The California Missions Preservation Act: Safeguarding Our History or Subsidizing Religion?*, 55 Am. U. L. Rev. 1523, 1525-26 (2006). This funding had the broad support of the “California congressional delegation and \* \* \* sailed through the House of Representatives without difficulty[.]” *Ibid.* Similarly, “[t]he National Historic Preservation Act expressly authorizes governmental historic preservation grants to religious properties \* \* \* provided that ‘the purpose of the grant is secular, does not promote religion, and seeks to protect those qualities that are historically significant.’” *Id.* at 1528.

those discussed here, in which there is a clear secular purpose (historic preservation and disaster recovery) and only a secondary religious benefit. Indeed, all seven Justices in the majority agreed that—at minimum—houses of worship could not be cut off from basic services such “police and fire protection.” 137 S. Ct. at 2027 (quoting *Everson*, 330 U.S. at 17-18). Yet providing aid after a natural disaster like a hurricane can be no more “religious” than aid during a fire, and aid addressing the ravages of time can be no more “religious” than aid following a natural disaster. Historic preservation programs are simply FEMA in slow motion.

**2. Vermont and the Sixth Circuit hold that providing historic preservation funds to houses of worship constitutes a “secular use” within the scope of *Trinity Lutheran*.**

The above decisions lie in sharp contrast with decisions of the Vermont Supreme Court and the Sixth Circuit, which have both recognized that government cannot single out religious institutions for exclusion from generally available public funding for historic preservation.

In *Taylor v. Town of Cabot*, the Vermont Supreme Court upheld a historic preservation fund’s grant to the United Church of Cabot that would be used to pay “a portion of the cost for painting three exterior sides of the church building and examining window sills for structural damage.” 178 A.3d 313, 322-23 (Vt. 2017). Unlike in the cases above, the court held that such grants have a clear secular purpose: to “enhance the quality of life and character of the

Town, promote commercial development consistent with the scale and character of the community, \* \* \* and improve community infrastructure, facilities, and services.” *Id.* at 325. Grants were also made available based on neutral criteria to a broad array of eligible applicants. *Id.* at 314. The court, applying *Trinity Lutheran*, thus held that “[t]he fact that the ultimate recipient of these funds is a church does not itself establish a violation[;] \* \* \* the critical question is whether the funds will support worship.” *Id.* at 323. What is more, and unlike the cases discussed on the other side of this split, the court concluded that even if the funds might free up other money for the organization to pursue religious ends, this incidental religious benefit did not undermine the secular purpose of the grant. The court therefore explained that the funding was akin to paying “for a new playground surface” as in *Trinity Lutheran*. *Ibid.* Excluding active houses of worship was therefore impermissible.

The Sixth Circuit reached the same conclusion. As part of a revitalization effort to prepare for the 2006 Super Bowl, Detroit provided funding for downtown building owners to repair “exterior lights, pieces of masonry and brickwork, outdoor planters, exterior doors, concrete ramps, entrance ways, overhangs, building trims, gutters, fencing, curbs, shrubbery and irrigation systems.” *American Atheists, Inc. v. City of Detroit Downtown Dev. Auth.*, 567 F.3d 278, 282, 292 (6th Cir. 2009). When grants to religious congregations were challenged, the Sixth Circuit—in an opinion authored by Judge Sutton—rejected this attack and upheld the program, commenting specifically on its “breadth, evenhandedness and

eminently secular objectives.” *Id.* at 292. Even without the benefit of *Trinity Lutheran*, the court emphasized that “[e]xcluding the churches from taking part in the program \* \* \* would send a far stronger message—a message not of endorsement but of disapproval.” *Ibid.* The court then expressed concern that the denial of funding could violate the First Amendment due to lack of neutrality. *Id.* at 302. (“[T]he key concern of both Religion Clauses [is] that the government will not act neutrally toward religion or among religions.”).

In both cases on this side of the split, the courts grappled with the line between the Establishment Clause and the Free Exercise Clause, applied prevailing Supreme Court precedent, and concluded that the exclusion of religious organizations from a historic preservation program was impermissible because, as in *Trinity Lutheran*, the programs advanced a legitimate secular purpose. The rule applied in both Vermont and in the Sixth Circuit thus cannot be reconciled with that in Massachusetts and New Jersey.

Resolving this split in authority is a logical next step following *Trinity Lutheran*. While the aid at issue here moves from church playgrounds to church buildings, the aid is still generally available and serves a legitimate secular purpose. Governments are not required to sit idly by while many of their communities’ greatest artistic and cultural achievements submit to the ravages of time. And rejecting a policy of iconoclasm by neglect does not amount to a religious use just because some houses of worship incidentally benefit. The Court should thus grant *certiorari* to clarify that historic preservation

programs fit well within the scope of *Trinity Lutheran*.

**B. The decision below conflicts with Massachusetts and Vermont over whether categorically excluding active congregations from historic preservation funding constitutes status-based discrimination.**

The New Jersey Supreme Court held that “*Trinity Lutheran* does not encompass the direct use of taxpayer funds to repair churches and thereby sustain religious worship activities.” App.45a. It then categorically excluded *all* active houses of worship from the historic preservation program based on their status as religious institutions. This categorical exclusion creates a second distinct split, conflicting with the rule adopted by both the Vermont and Massachusetts Supreme Courts, and drawing a line inconsistent with this Court’s precedent in other areas.

The court applied a simple rule in this case: if a historic structure is in use by an “active congregation,” it cannot receive historic preservation funding. This is clear from the court’s opinion, as it did not even *consider* whether the specific facts of each grant might warrant a different result.<sup>3</sup> Instead, it found all “grants that sustain the continued use of active houses of worship for

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<sup>3</sup> Many of the grants challenged in this case were for non-church buildings, including community centers and rectories. See, e.g., App.163a; App.244a.

religious services \* \* \* [to] constitute an impermissible religious use of public funding.” App.40a.<sup>4</sup> This across-the-board exclusion led Justice Solomon (while concurring “under the facts of this case”) to write separately expressing his “opinion that [New Jersey’s] Religious Aid Clause *cannot categorically bar churches with active congregations* from receiving funds that promote a substantial government purpose, such as historic preservation” without “violat[ing] the Free Exercise Clause of the United States Constitution.” App.49a (Solomon, J., concurring) (internal citations omitted) (emphasis added).

This case lies in sharp contrast to the rule adopted by both Vermont and Massachusetts. In *Cabot*, the Vermont Supreme Court held that the complete exclusion of houses of worship from historic preservation funding “might raise concerns under the Free Exercise Clause”; it then chose not to apply such a rule and instead asked whether “the funds will support worship.” 178 A.3d at 323. In doing so, the court looked to the specific funding in question before explaining: “we cannot conclude that such funds [for the external renovation of historic buildings] support worship.” *Id.* at 324. This conclusion was driven by the court’s fact-specific analysis, which, among other

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<sup>4</sup> Cf. *Mitchell v. Helms*, 530 U.S. 793, 809 (2000) (Thomas, J., writing for the plurality) (“If the religious, irreligious, and areligious are all alike eligible for governmental aid, no one would conclude that any indoctrination that any particular recipient conducts has been done at the behest of the government.”).

things, clarified that “[t]he cost of these two projects is only a small fraction of the overall cost of the renovation project,” and the “painting [of] three sides of the exterior of the church building” did not “squarely run into” the antiestablishment interests behind the state’s no-aid law. *Id.* at 325. This fact-specific analysis was thus crucial to the court’s decision and highlighted its rejection of the categorical approach.

In *Caplan*, the Massachusetts Supreme Court also rejected the categorical exclusion of active houses of worship from historic preservation programs, while remanding with instructions for the trial judge to ferret out any impermissible “hidden purpose” before making a final decision on the facts of the case. 479 Mass. 69, 87 (2018). The court even recognized that a “categorical prohibition urged by the plaintiffs \* \* \* invites the danger of overbreadth—and of hubris.” *Id.* at 83.

The New Jersey Supreme Court’s decision to categorically exclude all active houses of worship from otherwise available funding therefore constitutes a clean break from the other state supreme courts to address this question and presents an opportunity for the Court on a discrete but significant issue to clarify the scope of *Trinity Lutheran*.

## **II. The decision below contradicts this Court’s ruling in *Trinity Lutheran*.**

The opinion below fundamentally misconstrues both *Trinity Lutheran* and *Locke v. Davey*, 540 U.S. 712 (2004). This led the court to wrongly conclude that *Trinity Lutheran* and the Free Exercise Clause

do not apply to grants with a valid secular purpose if funds are given to a house of worship, and thus that the categorical exclusion of houses of worship from historic preservation programs is permissible.

The New Jersey court's confusion is exacerbated by its fundamental misunderstanding of what constitutes a First Amendment anti-establishment interest that is strong enough to justify an exclusion of religious organizations from a generally available government program.

**A. The decision below is flatly inconsistent with *Trinity Lutheran's* interpretation of religious use.**

The New Jersey Supreme Court centered its opinion on "*Trinity Lutheran's* analysis of *Locke*," which it found "particularly instructive." App.40a. The court emphasized that the plaintiff in *Locke* "was not denied a scholarship because of who he *was*; he was denied a scholarship because of what he proposed *to do*—use the funds to prepare for the ministry." *Ibid.* (quoting *Trinity Lutheran*, 137 S. Ct. at 2023) (emphasis in New Jersey opinion). It deemed the "same construct" to apply in this case: "the Churches are not being denied grant funds because they are religious institutions; they are being denied public funds because of what they plan to do—and in many cases have done: use public funds to repair church buildings so that religious worship services can be held there." *Ibid.* With this, the court concluded that "[t]his case does not involve the expenditure of taxpayer money for non-religious uses," *ibid.*, and thus that it could categorically exclude all churches with "active congregations" that

“have conducted regular worship services in one or more structures repaired with grant funds,” App.4a.

But this reasoning directly contradicts *Trinity Lutheran*. To start, all the grant funds have a patently secular purpose: preserving historically significant buildings. The County’s regulations carefully cabin use of the funds to ensure this purpose. To be eligible, a property must “be listed on the National Register of Historic Places or the New Jersey Register of Historic Places” or “be certified as eligible for listing by the State Historic Preservation Office.” App.103a. Thus, only properties with independently established historical value can receive funds. Moreover, for religious institutions, the grants can only be used for the planning and completion of “construction activities for the exterior building elements, and the building’s structural and MEP systems (mechanical, electrical and plumbing).” App.108a. In addition, “the funds are not released until architects certify that the specific work has been performed. Thus, any diversion of grant funds to support sectarian activities is impossible.” App.68a. Under these rigorous restrictions, the only religious impact of the funds is strictly incidental.

Nevertheless, the court expressed concern that revitalization grants to churches “enable[d] religious worship services to continue” and “fund[ed] repairs to religious imagery,” which constituted “religious uses.” App.45a. But these concerns are misplaced. *Trinity Lutheran* rejected the argument that funding to Church property was inherently religious. The playground in that case was on Church property, and the dissent noted the undisputed facts that the playground was part of a church ministry designed

“to teach the Gospel to children of its members, as well to bring the Gospel message to nonmembers.” 137 S. Ct. at 2027-28 (Sotomayor, J., dissenting). Anyone who has sat through a religious service with kids can attest that the playground at times may indeed be a more effective setting than the sanctuary for reaching the hearts and minds of young children. But just as the grant’s purpose in *Trinity Lutheran* of preventing “a few extra scraped knees” made an incidental religious benefit irrelevant, 137 S. Ct. at 2025, so too does the grants’ purpose of preserving historic structures make any incidental religious benefit to the churches irrelevant.

*Trinity Lutheran’s* analysis of *Locke* makes this clear. The Court in *Trinity Lutheran* noted that, in *Locke*, it had allowed a scholarship restriction prohibiting the use of funds for a degree in devotional theology because the scholarship program otherwise “went ‘a long way toward including religion in its benefits.’” 137 S. Ct. at 2023 (quoting *Locke*, 540 U.S. at 724). Students were still “free to use their scholarships at ‘pervasively religious schools,’” including taking “devotional theology courses” generally. *Ibid* (internal citation omitted). And they could use their scholarship money to fund a degree at one institution, thus freeing up funds allowing them to “study[] devotional theology at another.” *Ibid*. “The only thing [they] could not do was use the scholarship to pursue a *degree* in that subject.” *Id.* at 2024. But here, the New Jersey Supreme Court imposed a *de facto* bar on all active congregations for obtaining any funding—even for non-church edifices. It did not just prevent them from using that funding for an

immediately religious end like the clerical training at issue in *Locke*.

By holding that funding for churches with active congregations is inherently problematic, App.45a, the New Jersey Supreme Court has made clear that it would require church applicants to “choose between their religious beliefs and receiving a government benefit,” *Trinity Lutheran*, 137 S. Ct. at 2023. This interpretation creates a loophole in *Trinity Lutheran* that allows governments to do exactly what it prohibited: “single out the religious for disfavored treatment.” *Id.* at 2020.

Nor does the fact that churches have acknowledged the incidental benefit to their congregations change this analysis. The New Jersey court suggested that the “churches sought funding for repairs to continue to conduct worship services.” App.38a. But that characterization ignores that the grant application specifically asks applicants to “[d]escribe any impact of proposed project on existing use of site.” *E.g.*, App.146a. Several of the church applicants acknowledged they would benefit from the grant along with the community as a whole. For example, the Presbyterian Church of Morristown responded that the proposed project of “eliminating moisture infiltration and halting the resulting structural deterioration” would “historically preserve the building allowing its continued use by our congregation for worship services as well as by the community and many other outside organizations that use it on a regular basis.” *Ibid.*

Relying upon this and similar statements, the court concluded that “[t]his case does not involve the

expenditure of taxpayer money for non-religious uses.” App.40a. But rather than suggest that the historic preservation funds are essential for the church congregations’ continued existence, the statements demonstrate that funding would allow the churches to continue serving the community broadly. That the churches’ own members are part of the community that will benefit should come as no surprise.

Moreover, even if the grants do help a religious organization remain in existence and continue their worship, this does not exempt the program from scrutiny under the Free Exercise Clause. Excluding churches because the funding would allow them to “continue to conduct worship services” is the same as excluding them because they are religious. This becomes clear in the context of disaster relief funds or municipal emergency funding. Without police and fire protection, for example, many houses of worship would not be able to continue operating. The fact that historic preservation funds incidentally support a congregation’s continued ability to meet in its historic buildings does not mean they can be excluded from the basic protections of the Free Exercise Clause.

**B. The court’s reliance on New Jersey’s disestablishment interest conflicts with *Trinity Lutheran*.**

The New Jersey court’s opinion conflicts with *Trinity Lutheran*’s narrow reading of the disestablishment interest in *Locke*. In *Locke*, the Court addressed whether the State of Washington could bar students from using state scholarship funds to pursue a “degree in devotional theology,” which

was narrowly defined as a degree “designed to induce religious faith.” 540 U.S. at 715-16 (internal citation omitted). Thus, the restriction in *Locke* was extremely limited: it only barred aid to a “distinct category of instruction.” *Id.* at 721. And the Court stated it could think of “few areas in which a State’s antiestablishment interests come more into play.” *Id.* at 722. “[R]eligious instruction,” the Court emphasized, is “of a different ilk.” *Id.* at 723 (emphasis added).

The New Jersey court claimed that the interest laid out in New Jersey’s no-aid provision in “ensur[ing] that taxpayer funds [are] not \* \* \* used to build or repair houses of worship” is comparable to the interest identified in *Locke*. App.42a. But the court’s main support for that argument was the fact that the no-aid provision dates back to 1776. App.42a.

A restriction’s age alone does nothing to show a strong anti-establishment interest. In *Trinity Lutheran*, for example, the dissent argued that thirty-eight of the states have no-aid provisions that, “as a general matter, date back to or before [their] original Constitutions.” 137 S. Ct. at 2037 (Sotomayor, J., dissenting). Yet that was deemed insufficient to justify excluding the church in *Trinity Lutheran* from Missouri’s playground safety program. *Id.* at 2024.

Moreover, the court provided no facts to demonstrate that New Jersey’s anti-establishment interest against funding to “build or repair houses of worship” was based on anything other than the general concern at the nation’s founding over

dedicated taxes supporting religious worship. App.42a; see Douglas Laycock, *The Underlying Unity of Separation and Neutrality*, 46 Emory L.J. 43, 49 (1997) (noting that the Founders' concern was not funding that "fell within the neutrally drawn boundaries of some larger category of activities to be supported by the state," but funding that "singled out [religion] for special support because the state deemed it to be of special value."); Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part i: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2146-59 (2003) (noting that antiestablishment interest against "public financial support" of religion arose from concern over "land grants" and compulsory "tithes" (taxes) specifically for "the support of churches and ministers").

The New Jersey court argued that "of the twelve states that adopted constitutions from 1776 to 1780, none included a compelled support clause as precise and clear" as New Jersey's. App.15a-16a. But like a provision's age, the specificity of its language is alone insufficient to override a religious institution's Free Exercise right to equality of treatment. And if the specific language in New Jersey's no-aid provision reflected an interest unique or broader than the *federal* anti-establishment interest (hypothetically, for example, one that extended to taxes for secular purposes that only incidentally benefitted religion), then Plaintiffs or the court could reasonably have been expected to identify that interest, along with supporting historical facts, before imposing the *categorical* exclusion of all houses of worship with active congregations. And even then, there would still

have to be a showing that such an interest were sufficiently compelling to override the Free Exercise Clause.

Indeed, it would be illogical to conclude that a state's anti-establishment interest against building or repairing houses of worship could extend to generally available programs designed to preserve sites of historical significance. The Court has "long recognized that an accurate account of human history frequently requires reference to religion: 'The history of man is inseparable from the history of religion.'" *American Atheists, Inc. v. Port Auth. of N.Y. & N.J.*, 760 F.3d 227, 239 (2d Cir. 2014) (quoting *Engel v. Vitale*, 370 U.S. 421, 434 (1962)). To assume with no historical evidence that a state's anti-establishment interest is so strong that even efforts to preserve history must be devoid of benefits to religion would go far beyond any anti-establishment interest ever recognized by this court. See *Van Orden v. Perry*, 545 U.S. 677, 699 (2005) (Breyer, J., concurring) (observing that "Establishment Clause does not compel the government to purge from the public sphere all that in any way partakes of the religious.").

In short, *Trinity Lutheran* emphasized that the exclusion in *Locke* was justified because it was limited to the narrow area of paying for clerical instruction and did not preclude use of scholarships at religious institutions generally or even for purposes of taking religious courses, so long as the student's degree itself was not in devotional theology. *Trinity Lutheran*, 137 S. Ct. at 2023; see also *id.* at 2025 (Thomas, J., concurring) (noting that *Locke* "did not suggest that discrimination against religion

outside the limited context of support for ministerial training” would escape “exacting review”). In contrast, the New Jersey ruling—rather than going “a long way toward *including* religion”—categorically bars any historic preservation grants to houses of worship, thus completely *excluding* religion without pointing to any risk of establishment that is at all comparable to “the training of clergy.” *Id.* at 2023 (quoting *Locke*, 540 U.S. at 724) (emphasis added). Here, as in *Trinity Lutheran*, “there is no question that [a house of worship] was denied a grant simply because of what it is—a church.” *Ibid.*

**III. This case raises an issue of national importance and is an ideal vehicle for this Court to resolve the dispute over how *Trinity Lutheran* applies to historic preservation programs.**

As Congress has recognized, “the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.” National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515. This is also of great importance to states and municipalities across the country. “Over the past 50 years, all 50 States and over 500 municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic importance.” *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 107 (1978). Unfortunately, however, “many cherished buildings, essential parts of the Nation’s architectural and cultural heritage, have fallen before the wrecker’s ball.” *Lutheran Church in Am. v. City of New York*,

35 N.Y.2d 121, 133 (1974). “Indeed, more than 50% of the 12,000 buildings listed in the Historic American Building Survey, commenced in 1933 by the Federal Government, have since been razed.” *Id.* at 133-34.

Historic houses of worship have played an important role in our Nation’s diverse history and are in acute need of assistance. “[O]f the six hundred landmarked sites [covered by New York’s Landmark Law], over fifteen percent are religious properties.” *Rector, Wardens, & Members of Vestry of St. Bartholomew’s Church v. City of New York*, 914 F.2d 348, 354 (2d Cir. 1990) (recognizing “the importance of religion, and of particular churches, in our social and cultural history”). And according to the National Historic Trust, “[c]hurches, synagogues, temples and mosques are often the most ambitious, beloved, and architecturally significant buildings in any given urban neighborhood \* \* \* and they attest to the diverse traditions that have created cities and towns across the country.” Christen Sproule, *Federal Funding for the Preservation of Religious Historic Places: Old North Church and the New Establishment Clause* 5, Georgetown University Law Center (2004).

But despite their historic and cultural significance, “20% of all historic houses of worship are expected to suffer partial collapse or worse in the next five years.” *Id.* at 9. Such losses are devastating—from a historic, cultural, and even economic perspective; indeed, “the average historic sacred place in an urban environment generates over \$1.7 million annually in economic impact.” Partners for Sacred Places, *The Economic Halo Effect of Historic Sacred Places* 4, <http://www.sacredplaces.org>

/uploads/files/16879092466251061-economic-halo-effect-of-historic-sacred-places.pdf. For example, “[w]ith over 700 active historic houses of worship each in Chicago and Philadelphia, and close to 350 in Fort Worth, this translates into over \$3 billion in annual impact for the three cities combined.” *Ibid.* Historic houses of worship, the same study found, “support jobs and local businesses,” “subsidize the work of secular nonprofits,” “are community hubs, providing a variety of flexible and affordable space,” and are “important supports of early childhood education,” just to name a few of their benefits. *Id.* at 5.

In many instances, these historic houses of worship struggle just to keep the lights on, much less preserve their historic character for future generations. See, e.g., Catherine Maxson, “*Their Preservation Is Our Sacred Trust*”—*Judicially Mandated Free Exercise Exemptions to Historic Preservation Ordinances Under Employment Division v. Smith*, 45 B.C.L. Rev. 205, 214 (2003) (“The financial burden of landmark status can be substantial, and many churches find it interferes with their ability to run charitable or educational programs.”); Karen L. Wagner, *For Whom the Bell Tolls: Religious Properties As Landmarks Under the First Amendment*, 8 Pace Envtl. L. Rev. 579, 582 (1991) (“[E]conomic factors, such as dwindling congregations and increasing maintenance costs, make landmark status uniquely burdensome”).

Yet the New Jersey Supreme Court’s ruling would prevent municipalities from lifting a finger to avert this destruction so long as the building is used by religious individuals. This Court’s intervention is

necessary to provide a much-needed course correction and to ensure that states and municipalities, recognizing the secular historic and cultural value of these buildings, can continue to protect them without fear of violating the Constitution.

This case is also a good vehicle for the Court to clarify that historic preservation serves a secular purpose. As Congress itself has recognized, “the preservation, stabilization, restoration, or rehabilitation of religious propert[ies] listed in the National Register,” is a valid and secular purpose. National Preservation Program, 54 U.S.C. § 302905. It thus allocated funding to churches across the country “to protect qualities that are historically significant,” with the sole caveat that these funds do not go toward religious uses. *Ibid.*

This is exactly what Morris County sought to do by providing funding limited to exterior preservation and assistance with keeping the building’s internal mechanical components running. Such funding certainly serves the secular purpose of preserving iconic facades across Morris County.

There is also no question that this issue is ripe for the Court’s review. The clarity of this split (each case is nearly identical in almost all relevant respects except for the court’s outcome), the development of this issue across multiple courts of last resort, and the bountiful scholarship addressing these same questions provide this Court with both the diversity of perspectives and the deep development of this particular issue that make this case an ideal candidate for review by this Court.

**IV. In the alternative, this Court should summarily reverse the decision below as inconsistent with *Trinity Lutheran*.**

Should this Court find that *Trinity Lutheran*'s holding controls the outcome here, summary reversal is appropriate. As described above, the New Jersey Supreme Court has chosen to *categorically* exclude all active congregations from eligibility for historic preservation funding. See *supra* Part II.A. However, as Justice Solomon made clear in his dissent: “[s]uch a blanket exclusion violates the Free Exercise Clause \* \* \* and \* \* \* *Trinity Lutheran*.” App.49a (Solomon, J. concurring).

This case therefore not only creates and furthers two splits, but also directly contradicts the key holding of *Trinity Lutheran*: religious individuals and institutions cannot be *categorically* barred from receipt of generally available funding—such exclusion constitutes discrimination on the basis of religious status. By choosing to exclude *all* active congregations from receipt of historic preservation funds—without leaving room for a case-specific analysis of the use to which those funds will be put—the New Jersey Supreme Court has made its position clear. “The rule is simple: No [religiously-active] churches need apply.” *Trinity Lutheran*, 137 S. Ct. at 2024. This categorical exclusion of houses of worship from historic preservation funding—due solely to their religious status—cannot stand.

**CONCLUSION**

The Court should grant this petition or alternatively summarily reverse in light of *Trinity Lutheran*.

Respectfully submitted.

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SEPTEMBER 2018

## **APPENDIX**

SUPREME COURT  
OF NEW JERSEY  
A-71 September  
Term 2016  
079277

FREEDOM FROM RELIGION  
FOUNDATION and DAVID  
STEKETEE,

Plaintiffs-Appellants,

v.

MORRIS COUNTY BOARD OF  
CHOSEN FREEHOLDERS, THE  
MORRIS COUNTY  
PRESERVATION TRUST FUND  
REVIEW BOARD, JOSEPH A.  
KOVALCIK, JR., in his official  
capacity as Morris County  
Treasurer, THE PRESBYTERIAN  
CHURCH IN MORRISTOWN,  
FIRST PRESBYTERIAN  
CHURCH OF NEW VERNON,  
ST. PETER'S EPISCOPAL  
CHURCH, FIRST REFORMED  
CHURCH OF POMPTON  
PLAINS, CHURCH OF THE  
REDEEMER, COMMUNITY OF  
ST. JOHN BAPTIST, STANHOPE  
UNITED METHODIST  
CHURCH, CHURCH OF THE  
ASSUMPTION OF THE  
BLESSED VIRGIN MARY,  
FIRST PRESBYTERIAN  
CHURCH OF BOONTON, ST.  
PETER'S EPISCOPAL CHURCH

IN MOUNTAIN LAKES,  
LEDGEWOOD BAPTIST  
CHURCH, and COMMUNITY  
CHURCH OF MOUNTAIN  
LAKES,

Defendants-Respondents.

Argued October 23, 2017 – Decided April 18, 2018

On appeal from the Division, Somerset Superior Court, Chancery County.

Paul S. Grosswald argued the cause for appellants Freedom from Religion Foundation and David Steketee (Paul S. Grosswald, on the brief, and Andrew L. Siedel and Ryan D. Jayne, of the Wisconsin bar, admitted pro hac vice, on the briefs).

John M. Bowens argued the cause for respondents Morris County Board of Chosen Freeholders, the Morris County Preservation Trust Fund Review Board, and Joseph A. Kovalcik, Jr., in his official capacity as Morris County Treasurer (Schenck, Price, Smith & King, attorneys; John M. Bowens, on the briefs).

Kenneth J. Wilbur argued the cause for respondents The Presbyterian Church in Morristown, et al. (Drinker Biddle & Reath, attorneys; Kenneth J. Wilbur and Justin M. Ginter, on the briefs).

Alex J. Luchenitser (Americans United for Separation of Church and State) a member of the District of Columbia bar, admitted pro hac vice, argued the cause for amici curiae American Civil Liberties Union, American Civil Liberties Union of

New Jersey, and Americans United for Separation of Church and State (American Civil Liberties Union of New Jersey; Barry, Corrado & Grassi; Americans United for Separation of Church and State; and American Civil Liberties Union Foundation, attorneys; Edward L. Barocas, Jeanne M. LoCicero, Rebecca Livengood, Frank Corrado, Alex J. Luchenitser, Richard B. Katskee, a member of the District of Columbia and Maryland bars, admitted pro hac vice, and Daniel Mach, a member of the District of Columbia and New York bars, admitted pro hac vice, on the brief).

Cameryn J. Hinton, Deputy Attorney General, submitted a brief on behalf of amicus curiae New Jersey Historic Trust (Christopher S. Porrino, Attorney General, attorney; Melissa Dutton Schaffer, Assistant Attorney General, of counsel, Cameryn J. Hinton and Susan M. Scott, Deputy Attorney General, on the brief).

Thomas A. Gentile submitted a brief on behalf of amicus curiae The Becket Fund for Religious Liberty (Wilson Elser Moskowitz Edelman & Dicker and The Becket Fund for Religious Liberty, attorneys; Thomas A. Gentile, on the brief, and Hannah Clayson Smith, Luke William Goodrich, and Diana Marie Verm, members of the Court of Appeals of the District of Columbia bar, admitted pro hac vice, on the brief).

CHIEF JUSTICE RABNER delivered the opinion of the Court.

From 2012 to 2015, Morris County awarded \$4.6 million in taxpayer funds to repair twelve

churches, as part of a historic preservation program. This appeal raises two questions: whether the grant program violated the Religious Aid Clause of the New Jersey Constitution and, if so, whether the Religious Aid Clause conflicts with the Free Exercise Clause of the United States Constitution.

The Religious Aid Clause has been a part of New Jersey's history since the 1776 Constitution. The clause guarantees that "[n]o person shall \* \* \* be obliged to pay \* \* \* taxes \* \* \* for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry." N.J. Const. art. I, ¶ 3. The clause reflects a historic and substantial state interest. We find that the plain language of the Religious Aid Clause bars the use of taxpayer funds to repair and restore churches, and that Morris County's program ran afoul of that longstanding provision.

Morris County and the grant recipients claim that to withhold grants from eligible churches would violate their rights under the Free Exercise Clause of the First Amendment. The County and the churches rely heavily on *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. \_\_\_, 137 S. Ct. 2012 (2017), for support.

In the case before us, all of the churches have active congregations, and all have conducted regular worship services in one or more structures repaired with grant funds. Several churches specifically explained that they sought funds in order to be able to continue to host religious services. We do not believe *Trinity Lutheran* would require that grants be considered and extended to religious institutions

under those circumstances. We therefore reverse the trial court's decision to uphold the grants.

I.

A.

In 1992, the voters of Morris County approved a referendum to create a trust for open space and farmland preservation. The trust was funded by a county property tax. Ten years later, the voters authorized the County Freeholder Board to permit historic preservation funding under the trust. Today, the trust is known as the Morris County Open Space, Farmland, Floodplain Protection and Historic Preservation Trust Fund.

At the time of the grants in question, the trust considered applications to stabilize, repair, rehabilitate, renovate, restore, improve, protect, or preserve historic properties. To be eligible for consideration, a property had to be located in Morris County and either be listed on the National or New Jersey Register of Historic Places or be eligible for listing by the State historic preservation office.

Only four kinds of entities could apply for grants: municipal governments within Morris County; Morris County government; charitable conservancies whose purpose includes historic preservation; and religious institutions.

A review board evaluated applications and made recommendations to the Freeholder Board. Among other things, the review board considered the significance of the property, its physical condition and proposed use, the applicant's ability to match the

funds requested, and the project's relationship to heritage education and tourism.

The Freeholder Board approved final awards. For religious institutions, grants could fund assessment reports, preparation of construction documents, construction projects for a building's exterior as well as its mechanical, electrical, and plumbing systems, and other items.

Certain conditions applied to grant recipients. Successful applicants that received construction grants of more than \$50,000 cumulatively, over any number of funding cycles, had to execute a thirty-year easement agreement with the County. The "easement is a deed restriction that is used to assure long-term preservation of a historic property through proper maintenance and by limiting changes in use or appearance and preventing demolition of the property."

Grantees were also required to provide public access to properties that received grant funds. The County and the grant recipient were to "negotiate the days and hours that the property [would] be open to the public."

All work on a project had to be completed within two years once a grant was awarded; a one-year extension could be sought. Applicants who received funding also had to list their property on the National and New Jersey Registers of Historic Places.

## B.

From 2012 to 2015, the Freeholder Board approved a total of \$11,112,370 in grants from the trust fund. The Board awarded \$4,634,394, or 41.7

percent, to twelve churches. The grants funded the preparation of construction documents and plans, and the restoration of church buildings, towers, parish houses, windows, and other items.

According to the parties' joint statement of stipulated facts, all twelve churches "have active congregations" and all "have conducted regular worship services in one or more of the structures" for which grant funds have been or will be used. All twelve houses of worship are Christian churches.

In addition to the stipulation, the record also includes the grant applications that the churches submitted, which detailed how the requested funds would be used and why they were needed. Several successful applicants specifically stated that funds were needed to allow the church to offer religious services. The Presbyterian Church in Morristown, for example, sought funds to restore the exterior of its chapel. The Church explained that a grant would "historically preserve the building allowing its continued use by our congregation for worship services as well as by the community and many other outside organizations that use it on a regular basis." The Church received a preservation grant to repair the chapel's roof and the air shaft in the church building; to pay for finishes, moisture protection, and other costs; and to finance interior carpentry, masonry, and concrete work.

The Church of the Redeemer received grants for the restoration of the exterior of its church building and parish house. As to the building, the Church wrote in its application that "[t]he impact of restoring the large slate roof and tower is entirely positive. It will restore a key structural element that has failed

and assist in assuring that the building can continue in its existing use as a church and as an important building in Morristown.”

Saint Peter’s Episcopal Church of Morristown sought and received funds to repair the interior of its church tower. The Church observed that the funding would “ensure continued safe public access to the church for worship, periods of solitude and meditation during the week, and several concerts throughout the year, as well as the treasures the church and tower contain.”

The First Baptist Church of Ledgewood received funds to create preservation plans, in particular, for “the tower, heating system, and the original stained glass window.” The application noted that “[p]reservation of the Ledgewood Baptist Church will enable the congregation to continue to provide religious and community activities to the county’s diverse population.”

At least one application reveals that grant funds financed the restoration of religious imagery. The First Presbyterian Church of Boonton received funds to restore its “Rose Window” and “Walk to Emmaus” window.<sup>1</sup> Interior photos of both windows are in the record. The Rose Window is above the entrance to the chapel; the “long, arched” Emmaus Window is located directly in front of the altar and depicts Jesus and two disciples. The Church explained in its application that “[p]reservation and repair of stained glass windows increase the beauty and the ambiance of the

<sup>1</sup> In *Luke* 24:13-53 (King James), Jesus appears after the Resurrection to two of his disciples as they walk from Jerusalem to Emmaus.

structure, as viewed from inside and outside.” It is not clear from the record whether the stained glass windows at the First Baptist Church of Ledgewood, noted above, depict religious images.

C.

On December 1, 2015, the Freedom from Religion Foundation (FFRF) and David Steketee, a member of the group and a Morris County resident and taxpayer, (plaintiffs), filed a complaint in Superior Court. The complaint named the Freeholder Board, the review board, and the Morris County Treasurer, in his official capacity, (collectively, Morris County), as defendants. Plaintiffs asserted that the grants were unconstitutional and violated Steketee’s substantive constitutional rights under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c).

Defendants removed the matter to the United States District Court for the District of New Jersey. The District Court later granted plaintiffs’ motion to remand the case to state court. The court observed that plaintiffs “opted to allege a violation of their state rights, placing this case squarely within the state court,” and explained that “[a]lthough Defendants’ arguments center around potential federal defenses they may raise, that does not bring Plaintiffs’ original cause of action within [federal] jurisdiction.” After the remand, plaintiffs amended the complaint to include the grant recipients—the twelve churches—as defendants (Churches).

All parties moved for summary judgment. On January 9, 2017, the trial court granted defendants’ motion and denied plaintiffs’ cross-motion.

In a statement of reasons, the trial court noted that the case implicated several provisions of the New Jersey Constitution and centered on the Religious Aid Clause. The court concluded “that the only thing that is clear about [the Religious Aid Clause’s] intended meaning is that it is not meant to be read literally” and that the grants were examples of “benevolent neutrality” on the part of the government, consistent with “the spirit of our state and federal Constitutions.” For support, the court relied on *Resnick v. East Brunswick Township Board of Education*, 77 N.J. 88 (1978), *Everson v. Board of Education of Ewing*, 133 N.J.L. 350 (E. & A. 1945), *aff’d*, 330 U.S. 1 (1947), and *American Atheists, Inc. v. City of Detroit Downtown Development Authority*, 567 F.3d 278 (6th Cir. 2009), which are addressed below.

“[T]o correctly interpret the meaning of [the Religious Aid Clause] in this particular instance, given these particular facts,” the trial court found that the provision must be read “in conjunction with the State’s longstanding tradition of neutrality in church-state relations \* \* \* and the adoption of pro-neutrality provisions of the State Constitution, such as Art. I, Para. 4 and 5.” The court added that the Religious Aid Clause “must also be harmonized with” provisions in the Constitution that allow for eminent domain and the funding of historic preservation.

The court also noted that “[e]xcluding historical churches from receipt of reimbursements available to all historical buildings would be tantamount to impermissibly withholding \* \* \* general benefits to certain citizens on the basis of their religion,” contrary to federal law.

We granted plaintiffs' motion for direct certification. 230 N.J. 478 (2017). We also granted the following motions for leave to appear as amicus curiae: a joint application by the American Civil Liberties Union, the American Civil Liberties Union of New Jersey, and Americans United for Separation of Church and State (collectively, ACLU); and individual applications from the New Jersey Historic Trust (NJHT) and the Becket Fund for Religious Liberty (Becket).

## II

This appeal involves a pure question of law. We therefore review the trial court's grant of summary judgment to defendants de novo. *See Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 378 (1995).

To help frame the issues, we begin with an overview of parts of the State and Federal Constitutions that are relevant to this appeal.

### A.

The modern Constitution of 1947 includes the Religious Aid Clause. N.J. Const. art. I, ¶ 3. The clause states that no person shall "be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform." *Ibid.*

The text of the Constitution has deep roots in our State's history. *The CONCESSIONS and Agreement of the Lords Proprietors of the Province of New*

*Cesarea or New Jersey to and with all and every the Adventurers and all such as shall settle or plant there (Concessions)*, dated February 10, 1664, is considered the first document for the governance of what was then a province. See Samuel Smith, *The History of the Colony of Nova-Caesaria, or New Jersey* 61, 512-21 (1877). It expressly guaranteed religious liberty by recognizing that all persons may “fully have and enjoy \* \* \* their Judgments and Conciences in matters of Religion throughout” the province. *Concessions* ¶ 7, [https://www.njstatelib.org/wp-content/uploads/slic\\_files/imported/Research\\_Guides/Historical\\_Documents/nj/CONCESS1.html](https://www.njstatelib.org/wp-content/uploads/slic_files/imported/Research_Guides/Historical_Documents/nj/CONCESS1.html). At the same time, the document found that State-sponsored religion was compatible with liberty of conscience, so long as people could also support the religion of their choice. To that end, the General Assembly of the province was granted the power to “appoint such and soe many Ministers or Preachers as they shall think fitt, and to establish their maintenance.” *Id.* ¶ 8.

In the years that followed, charters were enacted for the governance of East and West New Jersey, and each contained a provision in support of religious freedom. See *Charter or Fundamental Laws of West New Jersey* ch. XVI (1676), [http://www.njstatelib.org/wp-content/uploads/slic\\_files/imported/Research\\_Guides/Historical\\_Documents/nj/NJ05A.html](http://www.njstatelib.org/wp-content/uploads/slic_files/imported/Research_Guides/Historical_Documents/nj/NJ05A.html); *Fundamental Constitutions for the Province of East New Jersey in America* art. XVI (1683), [http://avalon.law.yale.edu/17th\\_century/nj10.asp](http://avalon.law.yale.edu/17th_century/nj10.asp). Despite the new charters, however, the *Concessions* appear to have retained vitality, at least in East Jersey. See Edward Q. Keasbey, *The Early Constitutions of New Jersey*, 1 N.J. L. Rev. 20, 32-33

(1915). Also, the lifespan of the two charters was limited by the eventual surrender of both Jerseys to the Crown in 1702. *See id.* at 33; Carl H. Esbeck, *Dissent & Disestablishment: The Church-State Settlement in the Early American Republic*, 2004 BYU L. Rev. 1385, 1469 (2004).

In that year, Edward Hyde, Lord Cornbury, was appointed Governor of both New Jersey and New York. Keasbey, 1 N.J. L. Rev. at 34. The Crown provided Cornbury with detailed instructions on how to govern; they included directions on religious liberty: “You are to permit a liberty of conscience to all person (except Papists) so they may be contented with a quiet and peaceable enjoyment of the same \* \* \*.” *Instructions for our Right Trusty and well beloved Edward Lord Cornbury* ¶ 51 (1702), <http://iplaw.rutgers.edu/statutes/LS/LS8.pdf#page=32>.

Notwithstanding the intervening *Instructions* and charters, the *Concessions* remained an influential resource for the drafters of the first Constitution in 1776. *See* Charles R. Erdman, Jr., *The New Jersey Constitution of 1776* 4 (1929). It appears, though, that the establishment of religion provided for in the *Concessions* was successful on paper only. Esbeck, 2004 BYU L. Rev. at 1470-71. In reality, “a diverse array of religious traditions” took hold in New Jersey and “produced a spirit of toleration and liberty by the time independence was declared.” *Id.* at 1468. And “in 1776, New Jersey settled any lingering uncertainty concerning church-state affairs by expressly prohibiting in its constitution the establishment of religion.” *Id.* at 1472.

New Jersey's first Constitution, adopted on July 2, 1776, rejected the establishment of and compelled support for religion in two clauses. The first clause contains an express guarantee of the right to freedom from compelled support. The Religious Aid Clause in the 1776 Constitution provided as follows:

That no Person shall ever within this Colony be deprived of the inestimable Privilege of worshipping Almighty God in a Manner agreeable to the Dictates of his own Conscience; nor under any Pretence whatsoever compelled to attend any Place of Worship, contrary to his own Faith and Judgment; *nor shall any Person within this Colony ever be obliged to pay Tithes, Taxes, or any other Rates, for the Purpose of building or repairing any Church or Churches, Place or Places of Worship, or for the Maintenance of any Minister or Ministry, contrary to what he believes to be right, or has deliberately or voluntarily engaged himself to perform.*

[N.J. Const. of 1776 art. XVIII (emphasis added).]

The second provision contains language similar to the federal Establishment Clause:

That there shall be no Establishment of any one religious Sect in this Province in Preference to another; and that no *Protestant Inhabitant* of this Colony shall be denied the Enjoyment of any civil Right merely on Account of his religious Principles; but that *all Persons, professing a Belief in the Faith of any*

*Protestant Sect*, who shall demean themselves peaceably under the Government as hereby established, shall be capable of being elected into any Office of Profit or Trust, or being a Member of either Branch of the Legislature, & shall fully & freely enjoy every Privilege & Immunity enjoyed by others their Fellow-Subjects.

[N.J. Const. of 1776 art. XIX (second emphasis added).]

The two clauses, in combination, reveal that (1) the freedom from being compelled to fund religious institutions through taxation—including the repair of churches—was a grant of personal liberty, and (2) unlike other rights, that freedom was not limited to Protestants.

The fact that New Jersey's first Constitution included a Religious Aid Clause is highly significant. First, it underscores the fundamental nature of the religious freedom clauses in our State's history. The 1776 Constitution is a brief document that outlines the organization of government and the powers of the executive, the legislative council, and the general assembly. The document guarantees only a few distinct rights: the right to vote, *id.* art. IV; the right to religious freedom, *id.* arts. XVIII-XIX; the right of an accused to have counsel and call witnesses, *id.* art. XVI; and the right to trial by jury, *id.* art. XXII. Viewed in that context, it is telling that the founders devoted careful attention to religious liberty in the first Constitution.

Second, of the twelve states that adopted constitutions from 1776 to 1780, none included a

compelled support clause as precise and clear as the Religious Aid Clause. South Carolina adopted a compelled support provision in its second constitution, which it framed exclusively in terms of worship: “No person shall, by law, be obliged to pay towards the maintenance and support of a religious worship that he does not freely join in, or has not voluntarily engaged to support.” S.C. Const. of 1778 art. XXXVIII.

Pennsylvania and Vermont adopted compelled support clauses that are similar to each other; both are more expansive than South Carolina’s but less detailed than New Jersey’s. *See* Pa. Const. of 1776, Decl. of Rights, art. II (“[N]o man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent \* \* \* .”); Vt. Const. of 1777 ch. I, ¶ 3 (“[N]o man ought, or of right can be compelled to attend any religious worship, or erect, or support any place of worship, or maintain any minister, contrary to the dictates of his conscience \* \* \* .”).

North Carolina’s first constitution, which took effect several months after New Jersey’s, contained a provision most like the Religious Aid Clause:

[N]either shall any person, on any pre[t]ence whatsoever, be compelled to attend any place of worship contrary to his own faith or judgment, nor be obliged to pay, for the purchase of any glebe, or the building of any house of worship, or for the maintenance of any minister or ministry, contrary to what he believes right, [or] has voluntarily and personally engaged to perform[.]

[N.C. Const. of 1776 art. XXXIV.]

Even that relatively detailed clause, though, does not mention the “repair” of houses of worship or ban payment of “taxes.” See N.J. Const. of 1776 art. XVIII. New Jersey’s Religious Aid Clause thus stands out as particularly specific for its time.

It is also worth noting that among the first states to adopt a constitution, some did not prohibit compelled support. Maryland’s first constitution permitted the legislature to collect tax dollars “for the support of the Christian religion.” Md. Const. of 1776, Decl. of Rights, art. XXXIII. Massachusetts, the last of the earliest states to disestablish, Esbeck, 2004 *BYU L. Rev.* at 1458, permitted towns, “at their own expense,” to support “the institution of the public worship of God” and “Protestant teachers of \* \* \* religion.” Mass. Const. of 1780 art. III.

The Religious Aid Clause in New Jersey’s first Constitution also stands out in the broader context of the process states followed to ban the establishment of and compelled support for religion. That process reflected the views of some “religious sects [that] opposed establishment on the ground that it injured religion and subjected it to the control of civil authorities. Guaranteed state support was thought to stifle religious enthusiasm and initiative.” Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 *Harv. L. Rev.* 1409, 1438 (1990).

“Disestablishment was not an abrupt legal development brought about at the national level as a consequence of the Revolution,” but rather a change that “unfolded \* \* \* gradually, state by state, and

somewhat differently in each state, depending on the state's unique colonial background." Esbeck, 2004 *BYU L. Rev.* at 1393. The process began in the Middle Colonies such as New Jersey and Delaware, which both adopted constitutions in 1776, and continued through 1833. *Id.* at 1393, 1457-58. The States thus disestablished individually, in response to their own experiences, well before the religion clauses of the First Amendment were applied to the States.<sup>2</sup>

"Most States that sought to avoid an establishment of religion around the time of the founding placed in their constitutions formal prohibitions against using tax funds to support the ministry." *Locke v. Davey*, 540 U.S. 712, 723 (2004). Most also adopted "a prophylactic rule against the use of public funds for houses of worship." *Trinity Lutheran*, 137 S. Ct. at 2036 (Sotomayor, J., dissenting). Such prohibitions are commonly known as "compelled support clauses" and were initially "enacted to address the colonists' concern for church and state separation." Ellen M. Halstead, Note, *After Zelman v. Simmons-Harris, School Voucher Programs Can Exclude Religious Schools*, 54 *Syracuse L. Rev.* 147, 170 (2004).

Today, twenty-nine constitutions, including New Jersey's, have compelled support clauses.<sup>3</sup> Ten other

<sup>2</sup> "[T]he Free Exercise Clause was expressly deemed incorporated into the Fourteenth Amendment in 1940 in *Cantwell v. Connecticut*, 310 U.S. 296," while "[t]he Establishment Clause was not incorporated in the Fourteenth Amendment until *Everson*[,] 330 U.S. 1, was decided in 1947." *Walz v. Tax Comm'n of N.Y.C.*, 397 U.S. 664, 702 (1970).

<sup>3</sup> The following states adopted compelled support clauses to their constitutions in the years listed in parentheses; the citations are

constitutions simply prohibit the use of public money in aid of religion.<sup>4</sup> Thus, although the States eventually included disestablishment and compelled support provisions in their constitutions, *see Trinity Lutheran*, 137 S. Ct. at 2036 (Sotomayor, J., dissenting), New Jersey did so early on and in quite concrete terms. The Religious Aid Clause's precision stressed New Jersey's departure from the *Concessions*, *see* Esbeck, 2004 BYU L. Rev. at 1457, and, perhaps, from authority in other states at the time. The clause also highlighted that New Jersey was at the forefront of a historic and substantial change, and signaled its longstanding and vigorous commitment to religious liberty and freedom from compelled support.

to the current constitutions: Ala. Const. art. I, § 3 (1819); Ark. Const. art. II, § 24 (1836); Colo. Const. art. II, § 4 (1876); Conn. Const. art. VII (1818); Del. Const. art. I, § 1 (1792); Idaho Const. art. I, § 4 (1890); Ill. Const. art. I, § 3 (1818); Ind. Const. art. I, § 4 (1816); Iowa Const. art. I, § 3 (1846); Kan. Const., Bill of Rights, § 7 (1861); Ky. Const., Bill of Rights, § 5 (1792); Md. Const., Decl. of Rights, art. XXXVI (1776); Mich. Const. art. I, § 4 (1835); Minn. Const. art. I, § 16 (1857); Mo. Const. art. I, § 6 (1820); Neb. Const. art. I, § 4 (1866); N.M. Const. art. II, § 11 (1911); Ohio Const. art. I, § 7 (1803); Pa. Const. art. I, § 3 (1776); R.I. Const. art. I, § 3 (1843); S.D. Const. art. VI, § 3 (1889); Tenn. Const. art. I, § 3 (1796); Tex. Const. art. I, § 6 (1845); Vt. Const. ch. I, art. III (1777); Va. Const. art. I, § 16 (1830); W. Va. Const. art. III, § 15 (1863); Wis. Const. art. I, § 18 (1848); *see also* N.H. Const., Bill of Rights, art. 6 (1784).

<sup>4</sup> *See* Ariz. Const. art. II, § 12; Cal. Const. art. XVI, § 5; Fla. Const. art. I, § 3; Ga. Const. art. I, § 2, ¶ 7; Mass. Const., Amends., art. XVIII, § 2 (as amended by Amends., arts. XLVI, CIII); Okla. Const. art. II, § 5; Or. Const. art. I, § 5; Utah Const. art. I, § 4; Wash. Const. art. I, § 11; Wyo. Const. art. I, § 19.

## B.

New Jersey adopted its Second Constitution in 1844. The document began with a detailed list of individual rights and, among other things, moved the Religious Aid Clause to a new Article I, Paragraph 3:

No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

The words “other” and “the purpose of” do not appear in the Religious Aid Clause in the second Constitution, and no record explains those edits.

A streamlined Establishment Clause, which removed all restrictions to Protestants, can be found at Paragraph 4:

There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles.

[N.J. Const. of 1844 art. I, ¶ 4.]

## C.

The Religious Aid Clause and the rest of Paragraph 3 were left virtually untouched in the modern Constitution of 1947. A revised Establishment Clause, along with strong non-discrimination language inspired by a similar provision in the New York Constitution, *see* 3 *Proceedings of the Constitutional Convention of 1947* (Proceedings) 451, appears in Paragraphs 4 and 5. The text of those provisions remains unchanged since 1947:

3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

5. No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of

religious principles, race, color, ancestry or national origin.

[N.J. Const. art. I, ¶¶ 3 to 5.]

The above history makes clear that New Jersey's Religious Aid Clause can be traced to the establishment of an independent government in the State in the 1700s. The provision was not inspired by the "Blaine Amendment"; nor was it a response to anti-immigrant or anti-Catholic bias.

"[T]he Blaine Amendment is a remnant of nineteenth-century religious bigotry promulgated by nativist political leaders who were alarmed by the growth of immigrant populations and who had a particular disdain for Catholics." Joseph P. Viteritti, *Blaine's Wake: School Choice, the First Amendment, and State Constitutional Law*, 21 Harv. J.L. & Pub. Pol'y 657, 659 (1998). The label stems from a failed federal constitutional amendment introduced by Maine Congressman James G. Blaine in 1875. *Id.* at 670. The proposed amendment nevertheless "propelled" a movement among the states; fourteen "had enacted legislation prohibiting the use of public funds for religious schools" by 1876, and twenty-nine "had incorporated such provisions into their constitutions" by 1890. *Id.* at 670-73.

As the United States Supreme Court has observed, Blaine Amendments have "a shameful pedigree that we do not hesitate to disavow." *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality opinion). New Jersey's Religious Aid Clause long pre-dated the Blaine Amendments and reflected a concern for religious freedom, not discrimination or hostility toward a particular religion.

## D.

The parties also reference two other clauses in the State Constitution which provide for funding for historic preservation. *See* N.J. Const. art. VIII, § 2, ¶¶ 6, 7. Paragraph 6 of Article VIII was adopted in 1996 and amended several times; paragraph 7 was adopted in 1998. Neither offers any details about the meaning or scope of “historic preservation” projects, and the provisions make no mention of religious institutions.

Amicus NJHT also references two statutes meant to preserve historic resources: the New Jersey Historic Trust, N.J.S.A. 13:1B-15.111 to -15.127, and the Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 to -57. Neither act, however, refers to religious institutions. Cf. 54 U.S.C. § 302905(a) (sanctioning federal grants for the preservation of religious properties listed on the National Register if the grant’s purpose “does not promote religion”).

## E.

The First Amendment to the United States Constitution, of course, also protects religious freedom. The Free Exercise Clause provides that “Congress shall make no law \* \* \* prohibiting the free exercise” of religion. U.S. Const. amend. I. The Establishment Clause states that “Congress shall make no law respecting an establishment of religion.” *Ibid.* Both are discussed below.

Under the Supremacy Clause, the Federal Constitution is “the supreme Law of the Land.” U.S. Const. art. VI, cl. 2. State “constitutional provisions that conflict with the Federal Constitution are ‘without effect.’” *Comm. to Recall Robert Menendez*

*From the Office of U.S. Senator v. Wells*, 204 N.J. 79, 103 (2010) (quoting *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981)).

### III.

Plaintiffs argue that the plain language of the Religious Aid Clause prohibits the use of tax revenues to repair churches with active congregations and that no other state constitutional provisions require a departure from that plain-language reading. According to plaintiffs, the challenged grants fall squarely within the Religious Aid Clause's prohibition and are unconstitutional.

In plaintiffs' view, the Federal Constitution does not compel a different result. Plaintiffs assert that the Religious Aid Clause does not violate either the Free Exercise or the Equal Protection Clauses. "*Trinity Lutheran's* free exercise protections do not apply to this case," plaintiffs contend, because "[b]uilding or repairing houses of worship directly advances religion, *even if that is not the government's intent.*" Plaintiffs distinguish between church buildings that are active houses of worship and facilities that either never were or are no longer used for religious purposes.

In addition, plaintiffs contend that the County's program would be unlikely to pass muster under the federal Establishment Clause.

The ACLU agrees with plaintiffs' interpretation of the Religious Aid Clause and adds that the history of the clause does not support an exception for "historical preservation." The ACLU also submits that no other part of the State Constitution overrides the Religious Aid Clause. Like plaintiffs, the ACLU

maintains that the Free Exercise Clause does not compel funding of historic-preservation grants that support religious worship. In addition, the ACLU argues that the federal Establishment Clause would not permit the grants.

The Churches dispute plaintiffs' interpretation of the Religious Aid Clause. They assert that the clause, read in context, permits religious institutions to participate in programs that advance secular government interests and are governed by neutral criteria. According to the Churches, the language of the Religious Aid Clause cannot properly be read in isolation.

The Churches also argue that plaintiffs' interpretation of the Religious Aid Clause violates the First Amendment under *Trinity Lutheran*. According to the Churches, the grants challenged in this case cannot be distinguished from the program at issue in *Trinity Lutheran*.

The Churches add that the federal Establishment Clause does not call for a different result. Finally, the Churches maintain that there are no grounds to order them to refund the grants.

Like the Churches, the Morris County defendants focus on *Trinity Lutheran* and argue that "the First Amendment jurisprudence of the United States Supreme Court requires" that the grants be upheld. Morris County adds that excluding churches from the list of eligible grant applicants "would force the County to deny religious institutions equal protection under the Fourteenth Amendment to the United States Constitution." They join the Churches in

asking the Court to uphold the grant program and affirm the trial court.

Becket agrees with defendants that the grant program here is governed by *Trinity Lutheran* because it “is a generally available public benefit whose recipients are selected through a competitive grant application process based on secular criteria and \* \* \* is open to ‘all historic sites within the State’ without reference to religious status.” Becket stresses that to exclude religious groups from the program “because of their religious status” would “violate[] the Free Exercise Clause under *Trinity Lutheran*.” According to Becket, “New Jersey’s anti-establishment interest” in this matter “is nil,” and any such state interest “would be insufficient because the grant program does not even come close to violating the federal Establishment Clause.”

The NJHT represents that it has awarded “grant funds for historic preservation of eligible properties owned by religious institutions for decades.” To exclude religious institutions from public benefits “based solely on their religious status,” the NJHT asserts, would conflict with the State and Federal Constitutions and related case law. The NJHT contends that “the trial court aptly analogized Morris County’s program to Detroit’s revitalization program considered in” *American Atheists*. The NJHT also argues that because the programs have a “neutral public purpose and are administered in a way that ensures secular use of funds,” the programs pass muster under the religion clauses.

## IV.

The first step in our analysis is to determine whether the historic preservation grants awarded to repair twelve churches violated the Religious Aid Clause of the State Constitution. In light of the plain language of the clause, the question answers itself.

To determine the meaning of a constitutional provision, courts look first to the language the drafters used. *State v. Buckner*, 223 N.J. 1, 15 (2015). If it is clear, the words “must be given their plain meaning.” *State v. Trump Hotels & Casino Resorts*, 160 N.J. 505, 527 (1999). With that in mind, we return to the text of the Religious Aid Clause:

No person shall \* \* \* be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform.

[N.J. Const. art. I, ¶ 3.]

The clause does not prevent local or State authorities from providing taxpayer-funded police, fire, and emergency services to houses of worship. *See Resnick*, 77 N.J. at 103. Nor does it preclude the provision of other services tied to general public safety. Instead, for more than 240 years, the Religious Aid Clause has banned the use of public funds to build or repair any place of worship.

Here, the County awarded \$4.6 million to twelve churches to repair active houses of worship—from roofs to bell towers, from stained glass windows to

ventilation systems. The use of public funds to pay for those repairs violated the plain language of the Religious Aid Clause.

The clause does not ask about the governing body's intent—that is, whether the authorities meant to fund repairs to churches, to preserve history and promote tourism, or both. In fact, the change from the 1776 Constitution to the 1844 Constitution removed the bracketed phrase “no taxes \* \* \* for [the purpose of] building or repairing any church.” Compare N.J. Const. of 1776 art. XVIII, with N.J. Const. of 1844 art. I, ¶ 3. Thus, for most of its existence, the Religious Aid Clause has banned public funding to repair a house of worship without regard to some other non-religious purpose.<sup>5</sup> In short, there is no exception for historic preservation.

Nor is there a basis to distinguish between “restoration” and “repair” under the Religious Aid Clause. The terms mean the same thing. *See Oxford English Dictionary* (3d ed. 2009) (defining “repair” as “[t]o restore (a damaged, worn, or faulty object or

<sup>5</sup> The Massachusetts Constitution, by comparison, bars the “grant, appropriation or use of public money \* \* \* *for the purpose of* founding, maintaining or aiding any church, religious denomination or society.” *Caplan v. Town of Acton*, 92 N.E.3d 691, 693 (Mass. 2018) (ellipsis in original) (emphasis added) (quoting Mass. Const., Amends., art. XVIII, § 2 (as amended by Amends., arts. XLVI, CIII)). To assess whether a grant of public funds to renovate an active church is constitutional under the Massachusetts Constitution, the Supreme Judicial Court adopted a three-factor test. *Id.* at 694. The test, in part, requires judges to consider the purpose and effect of the grant. *Ibid.* The plain language of the New Jersey Constitution does not call for that type of inquiry about the expenditure of public funds to repair a church.

structure) to good or proper condition by replacing or fixing parts; to mend, fix”; and noting that definition was in place before and after 1776).

There is very little case law that construes the Religious Aid Clause, and no case is directly on point. Some cases have focused on the prohibition against “the maintenance of a minister or ministry,” not the “repair” of “any church.” See *Resnick*, 77 N.J. at 102-04 (relating to a school board’s permitting a religious group to rent school property for religious instruction and services during non-school hours); *Everson*, 133 N.J.L. at 366-67 (Case, J., dissenting) (relating to the use of public funds to reimburse parents for the cost of bus transportation to private and parochial schools).

Thus, nothing in the prior case law requires a departure from the plain language of the Religious Aid Clause. Nor do the other provisions about religion in the State Constitution. See N.J. Const. art. I, ¶¶ 4, 5. Neither Paragraph 4 nor Paragraph 5 addresses the allocation of tax dollars for the repair of active houses of worship, a practice forbidden by the Religious Aid Clause.

The Churches point to a debate at the Constitutional Convention of 1947 in response to the decisions by the Court of Errors and Appeals and the United States Supreme Court in *Everson*. In that case, the New Jersey high court upheld public funding for transporting students to Catholic parochial schools. 133 N.J.L. at 356. The United States Supreme Court affirmed that judgment. 330 U.S. at 18.

Opponents of the decisions proposed a Blaine Amendment at the Convention, *see* 5 Proceedings 789-806, and the proposal did not succeed, 2 Proceedings 1247-49. We do not glean much from the discussion and believe that the debate has little impact on the meaning of the Religious Aid Clause.

The proposal before the Committee on Taxation and Finance centered on school funding. No consideration was given to the interplay between the proposal and other constitutional provisions, including the repair language of the Religious Aid Clause. In other words, the debate did not relate to the Religious Aid Clause's prohibition against the use of taxpayer funds to repair churches. Those in opposition instead alluded to the tension between the proposal and the *Everson* decisions. 5 Proceedings 794-98, 804-06. To be sure, had the debate ended differently, no State constitutional amendment could have overruled the United States Supreme Court's extension of public welfare legislation to religious schools. 330 U.S. at 16. The 1947 Constitution, in fact, added a provision to "provide for the transportation of children \* \* \* to and from any school." N.J. Const. art. VIII, § 4, ¶ 3.

Defendants and amici also suggest that Article VIII of the State Constitution affects the plain meaning of the Religious Aid Clause. Article VIII addresses funding for historic preservation and does not conflict with the clause. The relevant provisions do not even mention historic preservation of houses of worship. *See* N.J. Const. art. VIII, § 2, ¶¶ 6, 7. Because the two Articles do not compete and readily co-exist, there is no need to harmonize their provisions. *See State v. Muhammad*, 145 N.J. 23, 44

(1996) (“[C]ompeting clauses of a constitution should be harmonized to give [them] effect \* \* \*.”).

Similarly, Article VIII neither expressly overrides the Religious Aid Clause nor repeals it by implication. *See Mahwah v. Bergen Cty. Bd. of Taxation*, 98 N.J. 268, 281 (1985) (“Every reasonable construction should be applied to avoid a finding of implied repealer [of a statute.]”); *see also City & County of San Francisco v. County of San Mateo*, 896 P.2d 181, 186 (Cal. 1995) (“Implied repeals are disfavored. So strong is the presumption against implied repeals that we will conclude one constitutional provision impliedly repeals another only when the more recently enacted of two provisions constitutes a revision of the entire subject addressed by the provisions.” (citations and internal quotation marks omitted)). Just the same, the statutes amici cite do not address houses of worship and, in any event, could not override a constitutional guarantee. *See* N.J.S.A. 13:1B-15.111 to -15.127; N.J.S.A. 13:8C-1 to -57.

We therefore find that the County’s grants ran afoul of the State Constitution’s Religious Aid Clause.

## V.

We turn now to a more challenging question: whether New Jersey’s Religious Aid Clause is at odds with the Federal Constitution. If so, the clause cannot stand, notwithstanding its history. *Comm. to Recall Robert Menendez*, 204 N.J. at 105 (“Bound as we are to adhere to the supreme law of the land, we cannot permit a provision of the State Constitution to remain in force if it conflicts with the Federal Constitution.” (citing *Chamber of Commerce of U.S. v. State*, 89 N.J.

131, 141 (1982) (citing, in turn, U.S. Const. art. VI, cl. 2))). Based on our understanding of the current state of the law, including the United States Supreme Court’s recent decision in *Trinity Lutheran*, we conclude that the Religious Aid Clause does not conflict with the Free Exercise Clause.

A

The question before the Supreme Court in *Trinity Lutheran* was whether the policy of the Missouri Department of Natural Resources “of categorically disqualifying churches and other religious organizations from receiving grants under its playground resurfacing program \* \* \* violated the rights of Trinity Lutheran [Church] under the Free Exercise Clause of the First Amendment.” 137 S. Ct. at 2017.

Missouri’s Scrap Tire Program offered “reimbursement grants to qualifying nonprofit organizations that purchase playground surfaces made from recycled tires.” *Ibid.* The Department awarded grants “on a competitive basis to those scoring highest based on several criteria.” *Ibid.*

In 2012, the Trinity Lutheran Church Child Learning Center (Center), “a preschool and daycare center” that operated under the auspices of Trinity Lutheran Church, applied for a grant. *Ibid.* The Department ranked the application fifth among 44 applicants and awarded 14 grants that year, but it declared the Center “categorically ineligible to receive a grant.” *Id.* at 2018. The Department explained “that, under Article I, Section 7 of the Missouri Constitution, the Department could not provide financial assistance directly to a church.”

*Ibid.* That section of the Missouri Constitution provides

[t]hat no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.

[Mo. Const. art. I, § 7.]

Trinity Lutheran filed a complaint against the Director of the Department in Federal District Court and asserted that the Department's policy violated the Free Exercise Clause. *Trinity Lutheran*, 137 S. Ct. at 2018. The District Court found the case indistinguishable from *Locke*, 540 U.S. 712, in which the Court "upheld against a free exercise challenge the State of Washington's decision not to fund degrees in devotional theology as part of a state scholarship program." *Ibid.* The District Court therefore dismissed the action. *Ibid.* A majority of the Eighth Circuit panel that heard the appeal affirmed. *Ibid.*

The Supreme Court reversed. *Id.* at 2025. The Court's opinion focused on the Free Exercise Clause because, unlike in this case, the parties agreed that the Establishment Clause did not prevent Missouri from awarding the challenged grant. *Id.* at 2019.

The Court held that the Department's policy violated the Free Exercise Clause by "expressly

denying a qualified religious entity a public benefit solely because of its religious character.” *Id.* at 2024.

The Court stressed that “laws that target the religious for ‘special disabilities’ based on their ‘religious status’” must be subject “to the strictest scrutiny.” *Id.* at 2019 (quoting *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993)). In that regard, the Court emphasized “that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest ‘of the highest order.’” *Ibid.* (quoting *McDaniel v. Paty*, 435 U.S. 618, 628 (1978) (plurality opinion)).

The Court found that “[t]he Department’s policy expressly discriminate[d] against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character.” *Id.* at 2021. By doing so, the Department forced an untenable choice: “participate in an otherwise available benefit program or remain a religious institution.” *Id.* at 2021-22. The Court underscored that “[t]he express discrimination against religious exercise here is not the denial of a grant, but rather the refusal to allow the Church—solely because it is a church—to compete with secular organizations for a grant.” *Id.* at 2022.

The Court distinguished between Missouri’s policy of excluding religious organizations from the Scrap Tire Program and the scholarship restrictions in *Locke v. Davey*. *Id.* at 2022-23. “Washington’s restriction on the use of its scholarship funds was different,” the Court noted, because the claimant in *Locke* “was not denied a scholarship because of who

he *was*; he was denied a scholarship because of what he proposed *to do*—use the funds to prepare for the ministry.” *Id.* at 2023. By contrast, the Court continued, “[h]ere there is no question that Trinity Lutheran was denied a grant simply because of what it is—a church.” *Ibid.*

Of particular note in the case before us, the Court added that, in *Locke*, “Washington’s choice was in keeping with the State’s antiestablishment interest in not using taxpayer funds to pay for the training of clergy; in fact, the Court could ‘think of few areas in which a State’s antiestablishment interests come more into play.’” *Ibid.* (quoting *Locke*, 540 U.S. at 722). The Court observed that the funding sought in *Locke* was “for an ‘essentially religious endeavor \* \* \* akin to a religious calling as well as an academic pursuit,’ and opposition to such funding ‘to support church leaders’ lay at the historic core of the Religion Clauses.” *Ibid.* (alteration in original) (quoting *Locke*, 540 U.S. at 721-22).

The Court then returned to the central problem raised by Missouri’s program: that Trinity Lutheran’s status as a church—not its intended use of the funds—prevented it from participating in the grant program. “[T]here is no dispute that Trinity Lutheran *is* put to the choice between being a church and receiving a government benefit. The rule is simple: No churches need apply.” *Id.* at 2024.

The Court, however, did not opine on whether that key principle—that “a qualified religious entity” cannot be denied “a public benefit solely because of its religious character,” *ibid.*—extends to religious uses of funding. Footnote 3 of the majority opinion states that “[t]his case involves express

discrimination based on religious identity with respect to playground resurfacing. We do not address religious uses of funding or other forms of discrimination.” *Id.* at 2024 n.3. Four members of the Court joined footnote 3: Chief Justice Roberts and Justices Kennedy, Alito, and Kagan.

Next, the Court concluded that “Missouri’s policy preference for skating as far as possible from religious establishment concerns” could not “qualify as compelling.” *Id.* at 2024. The state’s interest, therefore, was “limited by the Free Exercise Clause.” *Ibid.* (quoting *Widmar v. Vincent*, 454 U.S. 263, 276 (1981)).

There were three concurring opinions and one dissent. Justices Thomas and Gorsuch, who joined the majority opinion aside from footnote 3, each filed a concurrence in which the other joined. Justice Thomas expressed doubts about the Court’s holding in *Locke* but noted that no party had asked the Court to reconsider it. *Id.* at 2025 (Thomas, J., concurring). Justice Gorsuch questioned the majority’s distinction between “religious *status* and religious *use*” to distinguish *Locke*. *Ibid.* (Gorsuch, J., concurring). Justice Gorsuch also expressed concern that footnote 3 might be “mistakenly read \* \* \* to suggest that only ‘playground resurfacing’ cases, or only those with some association with children’s safety or health, or perhaps some other social good we find sufficiently worthy, are governed by the legal rules recounted in and faithfully applied by the Court’s opinion.” *Id.* at 2026.

Justice Breyer concurred in the judgment but wrote separately to “emphasize[] the particular nature of the ‘public benefit’ here at issue.” *Ibid.*

(Breyer, J., concurring in judgment). He noted that in *Everson*, the Court made clear that a state could not exclude church schools from services like police and fire protection. *Id.* at 2027. Justice Breyer saw “no significant difference” between that and Trinity Lutheran’s “participation in a general program designed to secure or to improve the health and safety of children.” *Ibid.* “Public benefits come in many shapes and sizes,” Justice Breyer added, noting that he “would leave the application of the Free Exercise Clause to other kinds of public benefits for another day.” *Ibid.*

Justice Sotomayor, joined by Justice Ginsburg, dissented from the opinion as a whole. The dissent first noted that “[t]he Establishment Clause [did] not allow Missouri to grant the Church’s funding request because the Church uses the Learning Center, including its playground, in conjunction with its religious mission.” *Id.* at 2028 (Sotomayor, J., dissenting). The dissent declined to accept the parties’ agreement that the Establishment Clause posed no issue and remarked that “[c]onstitutional questions are decided by this Court, not the parties’ concessions.” *Ibid.*

The dissent then turned to the Free Exercise Clause and focused in particular on the state’s interest in denying the grant in question. Justice Sotomayor “looked to history for guidance” and reviewed the “Nation’s early experience with, and eventual rejection of, established religion.” *Id.* at 2032. The dissent canvassed efforts across the states “to end the public funding of religion” and the “powerful” reasons for those steps—“all stemming from the basic premise that the practice harmed both

civil government and religion.” *Id.* at 2033-35. The dissent concluded that, “as in *Locke*, Missouri’s Article I, §7, is closely tied to the state interests it protects.” *Id.* at 2038. The dissent found those interests “weighty.” *Id.* at 2041.

Justice Sotomayor disagreed with the Court’s decision to use strict scrutiny to evaluate Missouri’s program, as well as the Court’s application of the test. *Id.* at 2038-41. The dissent also questioned whether Missouri’s Scrap Tire Program, which Justice Sotomayor described as “a selective benefit for a few recipients each year,” was a “generally available benefit.” *Id.* at 2040.

## B

*Trinity Lutheran’s* scope is important because the facts of this case extend well beyond playground resurfacing. Indeed, the public funds awarded in this case actually went toward “religious uses.” It is clear from the stipulated facts in the record that the Churches all “have active congregations that regularly worship, or participate in other religious activities,” and all hold “regular worship services in one or more of the structures that they have used, or will use,” taxpayer-funded grants to repair.

In addition to the stipulation, a number of the applications expressly stated that churches sought funding for repairs to continue to conduct worship services. As noted earlier, The Presbyterian Church in Morristown, for example, sought and received a grant to “historically preserve the building *allowing its continued use by our congregation for worship services* as well as by the community and many other outside organizations that use it on a regular basis.”

(emphasis added). The Church of the Redeemer sought and received funding to repair the slate roof—”a key structural element that has failed”—to “*assist in assuring that the building can continue in its existing use as a church and as an important building in Morristown.*” (emphasis added). Saint Peter’s Episcopal Church of Morristown similarly requested and received funds to repair the interior of the church tower to “*ensure continued safe public access to the church for worship, periods of solitude and meditation during the week, and several concerts throughout the year, as well as the treasures the church and tower contain.*” (emphasis added).

In certain cases, public funds were used to repair stained glass windows. The First Presbyterian Church of Boonton sought and received grant monies to repair religious imagery above the church altar—a stained glass window that depicts Jesus and two disciples on their walk from Jerusalem to Emmaus. The Church also received funds to repair a second stained glass window above the entry door to the Church.

The First Baptist Church of Ledgewood received funds to develop a preservation plan for several areas of the church building—both exterior and interior space—including the “tower, heating system, and the original stained glass windows,” which “increase the beauty and the ambiance of the structure, as viewed from inside and outside.” The application noted that a preservation grant “will enable the congregation to continue to provide religious and community activities.”

As that grant reveals, restoration awards were not limited to repairs to the exterior of church structures

but also to finance repairs to interior space where prayer services were held. Saint Peter's Episcopal Church of Morristown, for example, also received funds for interior work to its ventilation system.

In light of the record in this case, *Trinity Lutheran's* analysis of *Locke* is particularly instructive. Once again, as the Court noted, "Davey was not denied a scholarship because of who he *was*; he was denied a scholarship because of what he proposed *to do*—use the funds to prepare for the ministry." *Trinity Lutheran*, 137 S. Ct. at 2023. The same construct applies here: the Churches are not being denied grant funds because they are religious institutions; they are being denied public funds because of what they plan to do—and in many cases have done: use public funds to repair church buildings so that religious worship services can be held there.

This case does not involve the expenditure of taxpayer money for non-religious uses, such as the playground resurfacing in *Trinity Lutheran*. The appeal instead relates to grants that sustain the continued use of active houses of worship for religious services and finance repairs to religious imagery. In our judgment, those grants constitute an impermissible religious use of public funds. See *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 774 (1973) (invalidating under the Establishment Clause the "maintenance and repair" provision of a New York law that allowed grants of state funds to nonpublic schools—"given largely without restriction on usage"—on ground that funds could be used to pay "salaries of employees who maintain the school chapel, or the cost of renovating classrooms in which religion is taught, or the cost of

heating and lighting those same facilities,” which would have “a primary effect that advances religion in that it subsidizes directly the religious activities of sectarian \* \* \* schools”); *Tilton v. Richardson*, 403 U.S. 672, 683-84, 689 (1971) (recognizing that funding “chapel[s]” or buildings “otherwise used to promote religious interests” would “have the effect of advancing religion,” and therefore striking down under the Establishment Clause the twenty-year limit obligating institutions not to use facilities built with federal grant money “for sectarian instruction or religious worship”). *Nyquist* and *Tilton* seem at odds with defendants’ claim that, even when active houses of worship need repairs to continue hosting religious services, “there is nothing inherently religious about roofing.”

*Trinity Lutheran* also read *Locke* to mean that

Washington’s choice was in keeping with the State’s antiestablishment interest in not using taxpayer funds to pay for the training of clergy; in fact, the Court could “think of few areas in which a State’s antiestablishment interests come more into play.” *Locke*, 540 U.S. at 722. The claimant in *Locke* sought funding for an “essentially religious endeavor \* \* \* akin to a religious calling as well as an academic pursuit,” and opposition to such funding “to support church leaders” lay at the historic core of the Religion Clauses. *Id.* at 721-22. Here nothing of the sort can be said about a program to use recycled tires to resurface playgrounds.

[137 S. Ct. at 2023 (alteration in original).]

As a result, the Court in *Trinity Lutheran* did not find the state interest in Article I, Section 7 of the Missouri Constitution sufficiently compelling to survive strict scrutiny. 137 S. Ct. at 2024; *see also Widmar*, 454 U.S. at 276.

New Jersey's Religious Aid Clause and the grants awarded in this matter stand in stark contrast to the setting in *Trinity Lutheran*. As the history of the New Jersey Constitution reveals, the interest the Clause seeks to advance "is scarcely novel." *See Locke*, 540 U.S. at 722. The Religious Aid Clause reflects a substantial concern of the State's founders in 1776: to ensure that taxpayer funds would not be used to build or repair houses of worship, or to maintain any ministry. That choice reversed the approval of established religion in the earlier *Concessions*; it also diverged from the practice of other states that allowed established religion at the time.

The Religious Aid Clause reflects the experience of many of the nation's earliest settlers:

A large proportion of the early settlers of this country came here from Europe to escape the bondage of laws which compelled them to support and attend government-favored churches. \* \* \* With the power of government supporting them, at various times and places, Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one shade of belief had persecuted Catholics of another shade of belief, and all of these had from time to time persecuted Jews. In efforts to force loyalty to whatever religious group

happened to be on top and in league with the government of a particular time and place, men and women had been fined, cast in jail, cruelly tortured, and killed. Among the offenses for which these punishments had been inflicted were such things as speaking disrespectfully of the views of ministers of government-established churches, non-attendance at those churches, expressions of non-belief in their doctrines, and failure to pay taxes and tithes to support them.

These practices of the old world were transplanted to and began to thrive in the soil of the new America. The very charters granted by the English Crown to the individuals and companies designated to make the laws which would control the destinies of the colonials authorized these individuals and companies to erect religious establishments which all, whether believers or non-believers, would be required to support and attend. An exercise of this authority was accompanied by a repetition of many of the old-world practices and persecutions. \* \* \* *And all of [the] dissenters were compelled to pay tithes and taxes to support government-sponsored churches* \* \* \*.

\* \* \* *The imposition of taxes to pay ministers' salaries and to build and maintain churches and church property aroused [the] indignation [of "the freedom-loving colonials"]*.

It was these feelings which found expression in the First Amendment. \* \* \* [P]eople

[throughout the Colonies] reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group.

[*Everson*, 330 U.S. at 8-11 (emphases added).]

As in *Locke*, New Jersey's antiestablishment interest in not using public funds to build or repair churches or maintain any ministry "lay at the historic core of the Religion Clauses." See *Trinity Lutheran*, 137 S. Ct. at 2023. New Jersey's historic and substantial interest against the establishment of, and compelled support for, religion is indeed "of the highest order." See *McDaniel*, 435 U.S. at 628.

Also as in *Locke*, the antiestablishment interest New Jersey expressed in 1776 did not reflect animus toward any religion. See *Locke*, 540 U.S. at 725. The Religious Aid Clause was enacted before the Federal Constitution; it is not a Blaine Amendment. No history of discrimination taints the provision. Cf. *Am. Atheists*, 567 F.3d at 301 (noting that Article I, Section 4 of the Michigan Constitution "grows out of the Blaine Amendments, the product of a mid-nineteenth century political movement with no roots in the Religion Clauses of the United States Constitution").

At oral argument and in the briefs, the parties and amici compared the grants in this appeal to Detroit's revitalization program in *American Atheists*. In that case, the Sixth Circuit upheld grants to several churches as part of a program to "refurbish[] the

exteriors of downtown buildings and parking lots \* \* \* in a discrete section of downtown Detroit” in anticipation of the 2006 Super Bowl. *Id.* at 281. Projects at three churches were among the ninety-one completed. *Id.* at 281-84. In total, “[t]he three churches received about \$737,000 from the agency,” or “6.4% of the \$11.5 million in reimbursements.” *Id.* at 284.

The parties recognize that the Sixth Circuit upheld the grants against a challenge under the Establishment Clause. There are other key differences as well. The revitalization grants did not enable religious worship services to continue or fund repairs to religious imagery. In short, the grants did not involve religious uses of funding.

The holding of *Trinity Lutheran* does not encompass the direct use of taxpayer funds to repair churches and thereby sustain religious worship activities. *See* 137 S. Ct. at 2024 n.3. We therefore find that the application of the Religious Aid Clause in this case does not violate the Free Exercise Clause.

### C

Had the Free Exercise Clause permitted the awards, we would need to evaluate the grants under the federal Establishment Clause. In that regard, we believe that the grant program poses questions under any articulation of the current standard. *See Town of Greece v. Galloway*, 572 U.S. \_\_\_, 134 S. Ct. 1811, 1818-20 (2014); *Zelman v. Simmons-Harris*, 536 U.S. 639, 648-49, 662-63 (2002); *Mitchell*, 530 U.S. at 844-45 (O’Connor, J., concurring); *Agostini v. Felton*, 521 U.S. 203, 218, 234 (1997); *Nyquist*, 413 U.S. at 770-74; *Tilton*, 403 U.S. at 677-78; *Lemon v. Kurtzman*,

403 U.S. 602, 612-13 (1971); *McKelvey v. Pierce*, 173 N.J. 26, 40-41 (2002).

Morris County's preservation grants are not one-time awards of the type the Sixth Circuit reviewed in *American Atheists*. In this case, recipients of grants that totaled more than \$50,000 embarked on a thirty-year relationship with the County marked by an easement agreement between each church and local authorities. Grantees were required to negotiate with the County as to when their property would be open to the public. They also had to register their buildings on the National and New Jersey historic registers.

That said, because we need not reach the question in this appeal, we refrain from conducting a detailed analysis of the Establishment Clause.

#### D.

Finally, we note Morris County's argument that denying grants to the Churches would violate the Equal Protection Clause of the Fourteenth Amendment. Defendants do not offer persuasive legal support for that theory. Courts, in general, approach religious discrimination claims through the First Amendment religion clauses. *See* Bernadette Meyler, *The Equal Protection of Free Exercise: Two Approaches and Their History*, 47 B.C. L. Rev. 275, 283-85 (2006); *See also Eulitt v. Me. Dep't of Educ.*, 386 F.3d 344, 353-54 (1st Cir. 2004) (rejecting effort to frame a free exercise claim under "the rubric of equal protection" as a "crabbed approach [that] will not wash" because the Free Exercise Clause "defines the scope of the fundamental right to religion incorporated by the Fourteenth Amendment's equal protection guarantee").

The Churches' brief reliance on the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc(b)(1), is also unavailing. The Churches' conclusory assertion that "[t]he County program is a landmarking law" that subjects it to RLUIPA does not persuade us that the statute applies here.

#### VI.

Today's opinion clarifies and reaffirms the vitality of the Religious Aid Clause in light of more recent federal case law. The County awarded the grants in question from 2012 to 2015. We do not know the extent to which those funds have already been spent in good faith reliance on the grant process and the trial court's ruling. As a result, we do not attempt to unwind the awards at this late date. For all of those reasons, the principles outlined above will apply prospectively.

#### VII.

We reverse the judgment of the trial court and enter summary judgment in favor of plaintiffs.

JUSTICES LaVECCHIA, ALBIN, PATTERSON, FERNANDEZ-VINA, and TIMPONE join in CHIEF JUSTICE RABNER's opinion. JUSTICE SOLOMON filed a separate, concurring opinion.

SUPREME COURT  
OF NEW JERSEY  
A-71 September  
Term 2016  
079277

FREEDOM FROM RELIGION  
FOUNDATION and DAVID  
STEKETEE,

Plaintiffs-Appellants,

v.

MORRIS COUNTY BOARD OF  
CHOSEN FREEHOLDERS, THE  
MORRIS COUNTY  
PRESERVATION TRUST FUND  
REVIEW BOARD, JOSEPH A.  
KOVALCIK, JR., in his official  
capacity as Morris County  
Treasurer, THE PRESBYTERIAN  
CHURCH IN MORRISTOWN,  
FIRST PRESBYTERIAN  
CHURCH OF NEW VERNON,  
ST. PETER'S EPISCOPAL  
CHURCH, FIRST REFORMED  
CHURCH OF POMPTON  
PLAINS, CHURCH OF THE  
REDEEMER, COMMUNITY OF  
ST. JOHN BAPTIST, STANHOPE  
UNITED METHODIST  
CHURCH, CHURCH OF THE  
ASSUMPTION OF THE  
BLESSED VIRGIN MARY,  
FIRST PRESBYTERIAN  
CHURCH OF BOONTON, ST.

PETER'S EPISCOPAL CHURCH  
IN MOUNTAIN LAKES,  
LEDGEWOOD BAPTIST  
CHURCH, and COMMUNITY  
CHURCH OF MOUNTAIN  
LAKES,

Defendants-Respondents.

JUSTICE SOLOMON, concurring.

I join with the majority in reversing the trial court's decision to uphold the monetary grants to defendant religious institutions. I agree that under the facts of this case the distribution of the grant money to the religious institutions was contrary to the plain language of the Religious Aid Clause, N.J. Const. art. I, ¶ 3. I write separately to express my opinion that the Religious Aid Clause cannot categorically bar churches with active congregations from receiving funds that promote a substantial government purpose, such as historic preservation. Such a blanket exclusion violates the Free Exercise Clause of the United States Constitution and the United States Supreme Court's opinion in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. \_\_\_, 137 S. Ct. 2012 (2017).

Pursuant to the Supremacy Clause of the United States Constitution, "a provision of [a] State Constitution [cannot] remain in force if it conflicts with the Federal Constitution." *Comm. to Recall Robert Menendez From the Office of U.S. Senator v. Wells*, 204 N.J. 79, 105 (2010). Thus, a state constitutional provision that conflicts with the United States Constitution is preempted. See U.S. Const. art. VI, cl. 2.

The First Amendment to the United States Constitution provides in pertinent part that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I. The Free Exercise Clause “protect[s] religious observers [and religious entities] against unequal treatment’ and subjects to the strictest scrutiny laws that target the religious for ‘special disabilities’ based on their ‘religious status.’” *Trinity Lutheran*, 137 S. Ct. at 2019 (quoting *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533, 542 (1993) (first alteration in original)).

Therefore, while the majority, in discussing the plain language of the Religious Aid Clause, correctly notes that, “[t]he clause does not ask about the governing body’s intent,” ante at (slip op. at 30), and concludes that “there is no exception for historic preservation,” ante at (slip op. at 31), application of the limiting provisions of the Religious Aid Clause is restricted by the Free Exercise Clause of the United States Constitution, *see* U.S. Const. art. VI, cl. 2.

#### I.

In *Trinity Lutheran*, the United States Supreme Court determined that a categorical ban “disqualifying churches and other religious organizations from receiving grants under [a state/governmental] playground resurfacing program” violated the Free Exercise Clause. 137 S. Ct. at 2017. Accordingly, a “generally available benefit” cannot be denied to an organization based

solely on its religious identity.<sup>1</sup> *Id.* at 2019; *see also* *McDaniel v. Paty*, 435 U.S. 618, 629 (1978) (striking down statute which disqualified ministers from serving as state legislators). “At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.” *Lukumi*, 508 U.S. at 532. It is in this context that the United States Supreme Court examined the words and purpose of local ordinances in *Lukumi*. *See ibid.*; *see also* *Locke v. Davey*, 540 U.S. 712, 715-16 (2004).

*Lukumi*, though not directly applicable to the case at hand, is instructive. That case concerned local ordinances prohibiting animal sacrifices. 508 U.S. at 526. The Court noted that “if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral and \* \* \* is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest.” *Id.* at 533 (citation omitted). Application of that principle

<sup>1</sup> However, not all government action that intersects with a citizen’s religious beliefs is contrary to the Free Exercise Clause. Government action that does not “coerce individuals into acting contrary to their religious beliefs” does not run afoul of the Free Exercise Clause. *Lyng v. Nw. Indian Cemetery Protective Assoc.*, 485 U.S. 439, 449 (1988) (finding that decision to harvest timber for construction on tract of land with religious significance to Native American tribe was not prohibited by Free Exercise Clause). Additionally, generally applicable laws passed without regard to religion do not offend the tenets of the Free Exercise Clause. *Emp’t Div., Dep’t of Human Res. of Or. v. Smith*, 494 U.S. 872, 872 (1990) (rejecting Free Exercise claim and finding that members of religious organization were not entitled to dispensation from criminal law which prohibited use of peyote).

requires examining the purpose of the law, which in turn requires scrutinizing its text to determine whether it is neutral on its face—but the text is not determinative. *Id.* at 533-34. “Masked” “governmental hostility” is also invalid, and examination of a statute’s underlying purpose is appropriate. *Id.* at 534. In examining the challenged law, the Court found that the ordinances were “consistent with the claim of facial discrimination” and, more importantly, that they were passed to “suppress[] \* \* \* the central element of [a religion].” *Ibid.* Thus, the purpose underlying passage of the ordinances was impermissible. *Id.* at 534-35.

More recently, in *Locke*, 540 U.S. at 715, the Supreme Court balanced the limitations of the Free Exercise Clause against Washington State’s “antiestablishment interest” as expressed in its state constitution. In that case, Joshua Davey, a student pursuing a double major in pastoral ministries and business management/administration at a private, Christian college received a scholarship from a state-run scholarship program that prohibited the disbursement of funds to a qualified student pursuing a degree in devotional theology. *Id.* at 716-17. The Court found that the program did not violate the Free Exercise Clause, noting that the state’s “antiestablishment interest”—its interest in not supporting the ministry or “funding the pursuit of [a] devotional degree[]”—“is scarcely novel.”<sup>2</sup> *Id.* at 722-23, 725. In distinguishing the ordinances at issue in

<sup>2</sup> In noting the commonality of this interest, the Court references other similar state constitutional provisions, including Article XVIII of the New Jersey Constitution of 1776. *Locke*, 540 U.S. at 723.

*Lukumi* from the program in *Locke*, the Court explained that the program “goes a long way toward including religion in its benefits” because scholarship recipients may “attend pervasively religious schools” and “are still eligible to take devotional courses.” *Id.* at 724-25. The Court concluded that “neither \* \* \* the history or text of Article I, § 11 of the Washington Constitution, nor \* \* \* the operation of the [scholarship program] \* \* \* suggests animus towards religion.” *Id.* at 725. Finally, the Court noted that the “historic and substantial state interest at issue” also weighed against finding that the program was unconstitutional. *Ibid.*<sup>3</sup> Importantly, the only state interest considered by the United States Supreme Court in *Locke* was Washington State’s “antiestablishment interest” which was balanced against the boundaries of the Free Exercise Clause. *Id.* at 720-22. Most recently, in *Trinity Lutheran*, the Court considered the Trinity Lutheran Church Child Learning Center’s application for a state grant administered by the Missouri Department of Natural Resources (the Department) to reimburse qualifying nonprofit organizations that install playground surfaces made from recycled tires. 137 S. Ct. at 2017. “[T]he Department had a strict and express policy of denying grants to any applicant owned or controlled by a church, sect, or other religious entity.” *Ibid.* The State rejected the application citing Article I, Section 7 of the Missouri Constitution, which states: “[N]o money shall ever be taken from the public

<sup>3</sup> I note that Justice Scalia’s dissent in *Locke* illustrates a discord in the test’s application, asserting that the program “facially discriminates against religion.” 540 U.S. at 726 (Scalia, J., dissenting).

treasury, directly or indirectly, in aid of any church, sect or denomination of religion \* \* \*.” *Ibid.* (quoting Mo. Const. art. I, § 7). In concluding that the Department’s denial of the application violated the Free Exercise Clause, the Court noted, “only a state interest ‘of the highest order’ can justify the Department’s discriminatory policy.” 137 S. Ct. at 2024 (quoting *McDaniel*, 435 U.S. at 628). The Court found that the purported interest—the “policy preference for skating as far as possible from establishment concerns”—was unavailing because the doctrine of separation between Church and State “is limited by the Free Exercise Clause.” *Ibid.* (quoting *Widmar v. Vincent*, 454 U.S. 263, 276 (1981)). Thus, the Court found that the State’s pursuit of its antiestablishment policy went “too far” in “denying a qualified religious entity a public benefit solely because of its religious character.” *Ibid.*

## II.

Consistent with the precedent established in *Lukumi* and *Locke* and reaffirmed in *Trinity Lutheran*, a state’s antiestablishment interest is not without its limits. Thus, I believe that the Free Exercise Clause requires an examination of the enabling legislation and underlying motive or purpose of state action aimed at benefiting a house of worship.<sup>4</sup> See *Trinity Lutheran*, 137 S. Ct. at 2024.

<sup>4</sup> In *Caplan v. Town of Acton*, 92 N.E.3d 691, 693–94 (Mass. 2018), the Supreme Judicial Court of Massachusetts analyzed the disbursement of grant funds to an active church, which was characterized as a “historic resource.” In assessing the constitutionality of the grant under the State’s anti-aid amendment, the court applied a three-factor test: (1) is “a motivating purpose of each grant \* \* \* to aid the church”; (2)

New Jersey's Constitution recognizes the preservation of historic structures as an important government purpose by "providing funding, including loans or grants \* \* \* for historic preservation." N.J. Const. art. VIII, § II, ¶ 7. Pursuant to that important government purpose and N.J.S.A. 40:12-15.2,<sup>5</sup> "[t]he Morris County Board of Chosen Freeholders created the Morris County Historic Preservation Trust Fund \* \* \* to help support the preservation of the county's exceptional abundance of historic resources." Morris County Office of Planning & Preservation, Historic Preservation (2018), <https://planning.morriscountynj.gov/divisions/prestrust/historic/>. The expressed purpose of Morris County's program is to advance New Jersey's substantial interest in historic preservation.

New Jersey's substantial interest in historic preservation as expressed in our Constitution distinguishes this case from *Locke*. In *Locke*, the Court found that the state's decision not to fund devotional degrees was constitutional given the state's antiestablishment interest. 540 U.S. at 722-23,

"whether the grant will have the effect of substantially aiding the church"; and (3) "whether the grant avoids the risks of the political and economic abuses that prompted the passage of the anti-aid amendment." *Id.* at 694. Although the Massachusetts Court distinguished its case from *Trinity Lutheran*, as the anti-aid amendment did not impose a categorical ban on the grant of funds to a religious institution, and applied its own test to determine the validity of the grants, *see id.* at 704-05, I find its analysis informative.

<sup>5</sup> N.J.S.A. 40:12-15.2(a)(1)(e) allows the submission of a referendum to county voters to authorize the "imposition of an annual levy" for "historic preservation of historic properties, structures, facilities, sites, areas, or objects."

725. However, the Court made clear in *Trinity Lutheran* that a state's reliance on antiestablishment principles, even those grounded in the state's constitution, is not without limits. 137 S. Ct. at 2024. Thus, an antiestablishment interest cannot justify the categorical ban of a religious institution from a public benefit based solely on its religious character. *Ibid.* Here, New Jersey's interest in historic preservation, N.J. Const. art. VIII, § II, ¶ 7, counters its antiestablishment interest expressed in the Religious Aid Clause. I believe, therefore, that New Jersey's antiestablishment interest is less compelling than was the state's interest in *Locke*.

The majority concludes that the present case exceeds the scope of *Trinity Lutheran* since Morris County's taxpayer-funded grants "went toward 'religious uses.'" Ante at (slip op. at 42). In reaching this conclusion, the majority refers for support to Footnote 3 of the *Trinity Lutheran* decision, 137 S. Ct. at 2024 n.3. However, that conclusion ignores New Jersey's separate and substantial government interest at stake in this case—historical preservation. I believe that had Morris County's program been applied in a fundamentally neutral manner, the Religious Aid Clause could not bar funding to an otherwise qualified religious institution.

Nevertheless, I am constrained to concur with the majority because as the majority points out: there will be a protracted relationship between Morris County and defendant religious institutions; 41.7 percent of the grant money was awarded to twelve churches which, in some instances, sought funding to continue religious services; and the program's Rules and Regulations explicitly name

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religious institutions as eligible applicants. Therefore, the grant program at issue here is neither facially neutral nor neutral in its application.

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Review Board, and  
Joseph A. Kovalcik, Jr.

FILED  
JAN 09 2017  
SUPERIOR COURT  
SOMERSET COUNTY

FREEDOM FROM RELIGION FOUNDATION, <i>et al.</i> ,  Plaintiffs  -against-  MORRIES COUNTY BOARD OF CHOSEN FREEHOLDERS, <i>et al.</i> ,  Defendants
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SUPERIOR COURT OF  
NEW JERSEY  
CHANCERY DIVISIOIN  
SOMERSET COUNTY

DOCKET NO.  
SOM-C-12089-15

Civil Action

**ORDER**

THIS MATTER having come before the Court on August 19, 2016 upon Notice of Motion by Schenck, Price, Smith & King, LLP, attorneys for defendants, The Morris County Board of Chosen Freeholders, The Morris County Preservation Trust Fund Review Board, and Joseph A. Kovalick, Jr. (in

his official capacity as Morris County Treasurer) (collectively, “Defendants”), for an Order for summary judgment with prejudice in the above-captioned action, and the Court having considered the papers filed herein; and for good cause shown;

**IT IS**, on this *9th* day of ~~October, 2016~~, *January, 2017*

**ORDERED** that Defendant’s motion for summary judgment is hereby granted and Plaintiff’s Complaint is hereby dismissed with prejudice; and

**IT IS FURTHER ORDERED** that a copy of this Order be served upon all counsel of record herein within seven (7) days from the date on which the executed Order is received by counsel for Defendants.

/s/ Margaret Goodzeit

Margaret Goodzeit, P.J.Ch. J.S.C.

*See Attached Statement of Reasons*

Papers received from movant:

- Notice of Motion
- Affidavit in Support of Motion
- Certification in Support of Motion
- Proposed Order
- Letter brief in Support of Motion
- Proof of Service
- Brief in Support of Motion for Summary Judgment

Papers received from respondents:

- Notice of Cross-Motion
- Affidavit in Support of Cross-Motion
- Certification in Support of Cross-Motion

- Affidavit in Opposition to Motion
- Certification in Opposition to Motion
- Proposed [counter-] Order
- Brief in Support of Cross-Motion
- Brief in Opposition to Motion
- Proof of Service
- 

Responsive papers received:

- Reply Affidavit
- Reply Certification
- Reply Brief
- Affidavit in Opposition to Cross-Motion
- Certification in Opposition to Cross-Motion
- Brief in Opposition to Cross-Motion
- Proof of Service
- Other:

### **STATEMENT OF REASONS**

The Freedom From Religion Foundation and David Steketee have filed suit to enjoin Morris County from distributing funds to participating churches through their Historic Preservation Trust Fund, claiming that Morris County has violated Article I, Paragraph 3 of the New Jersey Constitution. Defendant Morris County is joined by a coalition of churches that would be affected by the imposition of said injunction. The parties agreed to a statement of stipulated facts (“Stipulation”) on which the Court relies and which is incorporated herein by reference.<sup>1</sup>

<sup>1</sup> For ease of reference, both plaintiffs shall be referred to as “FFRF” and all defendants as “Morris County.”

The crux of the FFRF's argument is that the plain language of the New Jersey Constitution prohibits the government from funding the repair or construction of churches for any reason, and that higher courts have recognized the plain language interpretation. Morris County argues that the FFRF's interpretation is too literal and confuses the letter of the law with the intended purpose of the law, as demonstrated by the holdings of several cases addressed below. Additionally, Morris County asserts that the Equal Protection Clause of the 14th Amendment and Religious Land Use and Institutionalized Persons Act require rejection of the FFRF's position. However, given the facts and circumstances of the present case, this Court arrives at its conclusion independently of either.

The FFRF claims that "the heart of this case is the interpretation of" Art. I, Para. 3:

No person shall be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform.

Although the FFRF relies primarily on Art. I, Para. 3 of the New Jersey Constitution, there are other

New Jersey Constitutional provisions the Court must consider. Art. I, Para. 4 guarantees that:

There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

Art. I, Para. 5 further guarantees that:

No person shall be denied enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.

Finally, the state Constitution specifically authorizes use of public funds for historic preservation and appropriates revenues for this purpose. *See* N.J. Const. Art. VIII, Sec. II, Para. 6, 7.

By statute, historic preservation is “an essential governmental function of the State.” N.J.S.A. 13:1B-15.111. Since 1966, the Department of Environmental Protection has been charged with establishing comprehensive State-wide policies for historic preservation, N.J.S.A. 13:1B-15.105(a), and in 1967, the Legislature created the New Jersey Historic Trust to fund historic preservation projects. N.J.S.A. 13:1B-15.111. The New Jersey Register of Historic Places, created in 1970, provides criteria for identifying historic structures, and these criteria establish eligibility thresholds for other funding and preservation programs. *See* N.J.S.A. 13:1B-15.128 *et seq.*

By their express terms embracing “all historic sites within the State[,]” N.J.S.A. 13:1B-15.105(a), New Jersey’s historic preservation programs provide no basis for excluding a historic structure because it is also a house of worship. The State Register has, at least since 1972, included active houses of worship.<sup>2</sup> One of the earliest grants listed on the New Jersey Historic Trust website is a 1990 grant to the 1850 Solomon Wesley Church, an active house of worship originally built to serve as a community of freed slaves.<sup>3</sup> Since then the New Jersey Historic Trust has made grants to various other active houses of worship.

On the local level, the Municipal Land Use Law (MLUL) provides for historic preservation as part of a municipal Master Plan, N.J.S.A. 40:55D-28, and authorizes municipalities to designate and protect historic sites in addition to those on the State or National Register of Historic Places. *See* N.J.S.A. 40:55D-107-112. Complementing State and local efforts, in 1997, the Legislature authorized counties to seek, by referendum, authority to impose a levy for “historic preservation of historic properties, structures, facilities, sites, areas, or objects, and the acquisition of such properties, structures, facilities, sites, areas, or objects for historic preservation purposes.” N.J.S.A. 40:12-15.2(a)(1)(e).

<sup>2</sup> *See* New Jersey and National Registers of Historic Places - Essex County, [http://www.nj.gov/dep/hpo/identify/nr\\_sr\\_lists/Essex.pdf](http://www.nj.gov/dep/hpo/identify/nr_sr_lists/Essex.pdf)

<sup>3</sup> [http://www.njht.org/dca/njht/funded/sitedetails/solomon\\_wesley\\_church.html](http://www.njht.org/dca/njht/funded/sitedetails/solomon_wesley_church.html).

In 2002, Morris County, by referendum under N.J.S.A. 40:12-15.1, adopted a dedicated tax to fund historic preservation and instituted a competitive grant program administered by its Board of Chosen Freeholders through its Historic Preservation Trust. The program requires detailed submissions establishing the historic significance of the subject, including proof of the eligibility for inclusion on the National or State Registers. Historical properties that are “owned by religious institutions or used for religious purposes” are eligible for the New Jersey Register of Historic places if they meet the criteria listed in N.J.A.C. 7:4-2.3(a)(2). In addition to satisfying these criteria, there are other strict conditions to be met by religious properties to be considered eligible for the Morris County program, some of which are discussed later in this decision.

The grant applications must also establish how the specific work for which the grant is sought would enhance the historical value of the structure at issue. Recipients are required to fund 20% of the cost of any approved construction project. The County and the New Jersey Historic Preservation Office have a memorandum of understanding under which the County employs a qualified consultant to ensure that the program applies the Standards for the Treatment of Historical Properties promulgated by the U.S. Dept. of the Interior,<sup>4</sup> which have been adopted by the New Jersey Preservation Office for its oversight of preservation activity in the State.

The County Grants are of four basic types: (1) grants to document the historic nature of a

<sup>4</sup> See Stipulation, 82, Ex. N.

structure; (2) grants to develop written preservation plans; (3) grants to prepare construction documents; and (4) grants to help fund actual preservation work. For religious properties, such as the churches in question, the construction grants are limited to preservation of exterior building elements and the building's structural, mechanical, electrical, and plumbing systems.<sup>5</sup> The program draws upon the County's general authority to acquire easements for the benefit of the County residents, *see* N.J. Const. Art. IV, Sec. VI, pursuant to N.J.S.A. 13:8B-3, which allows local governments to acquire such easements for historic preservation purposes. Any recipient's grant agreement requires execution of an easement agreement stipulating public access to the property and prohibiting inappropriate alteration of the property for 30 years.<sup>6</sup> Through this process, from 2012 to 2015, the County made one or more grants to 55 religious and nonreligious recipients.<sup>7</sup>

In response to these grants, the FFRF has filed suit. It contends that Art. I, Para. 3 of the New Jersey State Constitution prohibits use of government funds to advance a public purpose if those funds would be paid to any church, places of worship or ministry. Complaint 51. The FFRF further states in its complaint that because "this constitutional language is unambiguous" and

<sup>5</sup> *See* Historic Preservation -Morris County Homepage, <http://morriscountynj.gov/planning/divisions/pretrust/historic>.

<sup>6</sup> *See* Stipulation, 18, Ex. A (Program R. 5.16).

<sup>7</sup> *Funded Sites*, Historic Preservation, Morris County, <http://morriscountynj.gov/planning/divisions/pretrust/historic/funded/sites>.

because “courts have not interpreted this constitutional provision \* \* \* [t]he Court should begin by considering the provision’s plain language.” Complaint at 3-4, *FFRF and Steketee v. Morris County Board of Chosen Freeholders, et al.*, N.J. Super. Ct. Ch. Div. Dec. 1, 2016.

The FFRF relies on two New Jersey cases as binding precedent for their argument that their interpretation of the state Constitutional provision is correct. The first is *Resnick v. East Brunswick Township Board of Education*, 77 N.J. 88 (1978) and the second is *ACLU v. Hendricks*, 445 N.J. Super. 452 (App. Div. 2016). In its analysis of both cases, however, this Court finds that *Hendricks* is fact-specific and distinct from the present case, whereas *Resnick* is actually helpful to Morris County. In addition to these cases, the Court has examined *Everson v. Bd. Of Educ. Of Ewing Tp.*, 133 N.J.L. 350 (E & A 1945), aff d, 330 U.S. 1 (1947) and a markedly similar case in 6th Circuit, *Am . Atheists, Inc. v. City of Detroit Downtown Dev. Auth.*, 567 F.3d 278 (6th Cir. 2009).

In *Resnick*, New Jersey Supreme Court held that religious groups who fully reimbursed school boards for related out-of-pocket expenses could use school facilities on a temporary basis for religious education. *Resnick*, 77 N.J. at 102. While the religious groups were required to reimburse the school boards, the Supreme Court approved the use of a public school for the purpose of religious education by a religious group. *Resnick* did not exclude religious groups from the use of public property, but provided for “rentals to religious groups which would fully cover extra utility,

heating, administrative and janitorial costs which result from the leasing by these groups.” *Id.* at 103. In other words, the costs of use by the religious groups were to be fully satisfied by the users.

Additionally, contrary to the FFRF’s claim that Art. I, Para. 3 has not been previously interpreted, *Resnick* did interpret Article I, Paragraph 3. The New Jersey Supreme Court wrote that it was “a provision which, fairly read, specifically prohibits the use of tax revenues for the maintenance or support of a religious group.” *Id.* at 102. The New Jersey Supreme Court then tempered that statement, however, and noted that “[t]his constitutional position is not carried to an extreme.” *Id.* at 103. That, “[n]o one suggests that the State must withhold such general services as police or fire protection,” even though the tax-exempt nature of some of these religious organizations means that they are exempt from funding these services. *Id.*

Furthermore, the New Jersey Supreme Court explained that:

Contrary to the literal approach to the Establishment Clause advocated by plaintiff, in total disregard of historical reality, the Supreme Court has never required that government adopt a posture of total indifference towards religion. In fact, a more accurate assessment of the requirements of the First Amendment is that the preferred governmental stance is one of benevolent neutrality.

77 N.J. 88, 118-19 (1978).

Accordingly, this Court is bound by the language of *Resnick* to at least consider the facts of this case, and how they might differ or resemble past cases dealing with the same issue within New Jersey, instead of simply taking the language of Art. I, Para. 3, at face value as the FFRF suggests.

Morris County's historic preservation grant program limits grants to specified and clearly defined historic elements of the structures. More importantly, the funds are not released until architects certify the specific work has been performed. Thus, any diversion of grant funds to support sectarian activities is impossible. Accordingly, while FFRF suggests that the historic preservation grants serve to support religion, it is clear that there is no direct provision of funds which would support religious purposes. As to indirect support of religion, to the extent that the reimbursement of 80% of the funds previously expended for specific, limited, and approved construction expenses may ultimately lighten a religious institution's construction budget and thus leave it with greater funds to spend for other purposes, including religious purposes, such claims of indirect support of religion have been addressed and rejected by our Supreme Court.

Indeed, in *Resnick*, permitting religious groups to rent—at cost—space in public schools essentially enabled those religious groups to avoid paying market rent (or mortgage costs) for maintenance of their own buildings, thus freeing up funds for other purposes, including religious purposes. Yet this was not found to be problematic. The *Resnick* Court seems to suggest a spectrum of governmental

financial involvement with religious institutions, marked by the impermissible state sponsored establishment of a church at one extreme, and, at the other extreme, the permitted provision of general services such as police and fire protection to churches. See, 77 N.J. 88 at 103; *Clayton v. Kervick*, 56 N.J. 523, 529 (1970), *as modified*, 59 N.J. 583 (1971). Within this range, the *Resnick* Court found that the rental activities earlier described are permissible. A tax exemption for churches also falls on the permitted end of the spectrum, *id.*, as does using public funds to transport children to sectarian schools. *Everson*, 133 N.J.L. 350, 356 (E. & A. 1945) (See discussion below). On the other hand, distributing bibles to public schools falls on the prohibited side. *Tudor v. Board of Ed. Of Borough of Rutherford*, 14 N.J. 31 (1953). Similarly, the funding of a yeshiva and a seminary with no purpose besides religious education falls is also prohibited. *ACLU v. Hendricks*, 445 N.J. Super. 452 (App. Div. 2016).

In *Hendricks*, the Appellate Division held that Art. I, Para. 3 barred grants under the GO Bond Act and the Higher Education Technology Infrastructure (“HETI”) Fund to Beth Medrash Govoha Yeshiva and Princeton Theological Seminary because both institutions would ultimately use the grants to support religious instruction. 445 N.J. Super. 452 (App. Div. 2016). To the Yeshiva, two grants totaling \$10,635,747 were awarded to fund the construction of libraries, faculty offices, classrooms, and other academic buildings. *Id.* at 459. The Seminary was awarded three grants totaling \$645,323 for the purposes of

upgrading IT infrastructure for the purposes of theological research, on-site and distance training for students and staff, and online education. *Id.*

Because “the constitutional analysis under Article I, Paragraph 3 is controlled by the New Jersey Supreme Court’s opinion in *Resnick*,” the Appellate Division relied on *Resnick* as precedent. *Id.* at 454-55. The Court in *Hendricks* noted that despite the fact that “the intended meaning of Article I, Paragraph 3 of the Constitution—a provision included in our State’s first Constitution in 1776 and readopted in the 1844 and 1947 Constitutions—is not entirely clear,” *Resnick* has not been overruled or called into question. *Id.* Therefore, though acknowledging the debatable historic lineage of Art. I, Para. 3, the *Hendricks* Court found that as it was a case dealing with funds being directed to religious education, it was bound by *Resnick*, which applied to religious institutions using public schools for religious education. *See, supra.*

The case at bar, however, concerns historic preservation of structures, not funding of religious education, as does *Hendricks*. The *Hendricks* Court did not need to harmonize Art. I, Para. 3 with Art. VIII, Sec. II, Para. 6 and 7, and the State’s long history of making historic preservation grants to active houses of worship. *Hendricks* also did not address a religious entity’s rights under Art. I, Para. 5. Above all, *Hendricks* did not deal with the circumstances of a County, under Art. IV, Sec. VI, acquiring discrete property rights for the benefit of the public in return for the grant.

Finally, *Hendricks* dealt with the direct funding of two private institutions devoted to religious education. The primary purpose of the HETI Fund was to improve technology infrastructure at higher education institutions, and because of that purpose, it inevitably advanced religious education at both the Yeshiva and the Seminary. In contrast, the primary purpose of Morris County's historic preservation grants is to preserve historic structures for the sake of the citizens of Morris County. This purpose can be achieved without directly furthering the goals and ideology of churches.

This contrast results in a clear distinction between giving a religious school funding to build new classrooms and libraries or to enable them to better conduct distance learning and giving a church with historical value a reimbursement to ensure that its historical properties remain preserved. The general public does not benefit from the grants awarded to either the Yeshiva or Seminary, whereas the historic preservation grants allow the churches to continue to contribute to the character of their communities and to the heritage tourism industry.<sup>8</sup>

Until the *Hendricks* decision was handed down, “[n]o reported New Jersey cases since *Resnick* had interpreted the ‘religious aid’ prohibition of Article I, Paragraph 3.” *Hendricks*, 445 N.J. Super. at 473. However, prior to the *Resnick* decision, *Everson v. Bd. Of Educ. Of Ewing Twp.*, 133 N.J.L. 350 (E. & A. 1945) addressed the issues that arose

<sup>8</sup> See: <http://www.njht.org/dca/njht/touring!NJHT%20-%20TE@200xford%20report%2007-12-2013.pdf>

when Ewing Township's board of education, acting under a New Jersey statute, reimbursed the parents of children attending parochial schools for the money they expended for bus transportation. The Court of Errors and Appeals, at the time the highest court in New Jersey, found that, of Art. I, Para. 3 and other provisions of the state Constitution of 1844, "neither their language, meaning, intent, nor effect are violated by the statute, *supra*, or the resolution challenged in this proceeding." 133 N.J.L. at 351. As set forth earlier, Art. I, Para. 3 of the 1844 New Jersey Constitution, relied upon by the Court of Errors and Appeals in *Everson*, was not altered upon the adoption of the 1947 Constitution.

The US Supreme Court's affirmance of the Court of Errors and Appeals' *Everson* decision relied upon a discussion of the First Amendment - the federal Constitution's analogue to Art. I, Para. 3. 330 U.S. 1 (1947). New Jersey courts historically have compared Art. I, Para. 3 of the New Jersey Constitution with the Federal Establishment Clause. As the New Jersey Supreme Court has noted:

In our judgment, the letter and spirit of these New Jersey constitutional provisions, taken together, are substantially of the same purpose, intent and effect as the religious guaranties of the First Amendment and have probably always been regarded as such in this State.

*Schaad v. Ocean Grove Camp Meeting Ass'n of United Methodist Church*, 72 N.J. 237, 266-67 (1977), *overruled in part on other grounds*.

Accordingly, New Jersey courts may look to how these issues are resolved under the federal Constitution. *See, E.g., Ran Dav's Country Kosher, Inc. v. State*, 129 N.J. 141, 151 (1992) (noting that the “interpretation of the state constitutional standard is informed by an understanding of federal constitutional doctrine concerning the establishment of religion”).

It was in the *Everson* affirmance that Justice Hugo Black used Thomas Jefferson’s metaphor of “a wall of separation between church and state” 330 U.S. at 16. Justice Black’s wall was one of words:

“Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. *No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.* Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.”

*Everson*, 330 U.S. at 15-16 (emphasis added).

Justice Black's language reveals the error the FFRF makes in focusing on a literal interpretation of the latter third of Art. I, Para. 3. Because despite the stringent language of Justice Black's directive, his decision in *Everson* held that the First Amendment did not invalidate a N.J. program to reimburse parents of parochial school students for school bus fares using tax-raised funds because such a program was made a public purpose. 330 U.S. at 8. Justice Black informs us that such a narrow reading of the constitutional provision ignores the fact that "other language of the [First] amendment commands that New Jersey cannot hamper its citizens in the free exercise of their own religion" and that it cannot exclude persons "from receiving the benefits of public welfare legislation" simply on account "of their faith, or lack of it." *Id.* at 16. In attempting to protect New Jersey from "state-established churches," the Court must be wary of "inadvertently prohibit[ing] New Jersey from extending its general state law benefits to all its citizens without regard to their religious belief." *Id.*

The FFRF suggests that the ultimate result of receiving these funds will further sectarian causes, such as religious activities conducted by the church. It is obvious "that in aiding a religious institution to perform a secular task, the State frees the institution's resources to be put to sectarian ends. If this were impermissible, however, a church could not be protected by the police and fire departments, or have its public sidewalk kept in repair. The Court never has held that religious activities must be discriminated against in this way." *Roemer v. Bd. of*

*Pub. Works*, 426 U.S. 736, 747 96 S. Ct. 2337 (1976). Furthermore, *Everson* indicates that providing a general rebate to the parents of parochial school students does not constitute support. This is in spite of the fact that Justice Black acknowledges that “it is undoubtedly true that children are helped to get to church schools” and that if not for the State’s aid, “some of those children might not be sent to church schools.” *Everson*, 330 U.S. at 17. General services that are extended to all do not constitute favoritism or sponsorship because a recipient of such a service is a religious entity. *Id.* at 17-18 (noting that religious buildings are permitted to have sewer lines extended to them).

A case tried in the 6th Circuit is remarkably similar, both factually and legally, to the case at bar. *Am. Atheists, Inc. v. City of Detroit Downtown Dev. Auth.*, 567 F.3d 278 (6th Cir. 2009), dealt with similar grants aimed at revitalizing the [sic] a “discrete section of downtown Detroit but reached out to all property in that area, including property owned by religious organizations.” *Id.* at 281. Just as Morris County’s program is not limited to historic structures belonging to a specific group of people, but all historic structures in Morris County, the Detroit program rather was available to all structures in a part of Detroit.

For reference, Michigan’s Constitutional provisions read similarly to New Jersey’s: “[n]o person shall be compelled \* \* \*. to contribute to the erection or support of any place of religious worship” and “[n]o money shall be appropriated or drawn from the treasury for the benefit of any religious sect.” *Id.* at 301 (citing Mich. Const. Art. I, § 4).

Similarly, as New Jersey courts have done, Michigan courts have “construed the state and federal guarantees in the same way.” *Id.* Despite the seemingly strict language of the Michigan provision, the 6th Circuit Court held that the Detroit city agency allocating exterior repair grants on a neutral basis, without regard to the religious, non-religious or areligious nature of the entity, did not violate the Establishment Clause or the Michigan Constitution. After all, “a brick, gutter or bush (unless burning) cannot be coopted to convey a religious message.” *Id.* at 293.

The 6th Circuit did not overrule the ability of a local government to provide funding for the historic preservation of religious buildings when a non-religious goal existed. *Am. Atheists* notes that “cosmetic repairs to walls, doors, awnings and parking lots, as well as limited landscaping” have secular uses that cannot be “diverted” to religious ones. *Id.* The “the mechanics of the [Detroit] program ensured that the aid would go just to the approved uses.” *Id.* at 296. Some mechanics referenced are the “the neutrality of the program, the breadth of beneficiaries and the secular nature of the aid provided.” *Id.* Additionally, as with the Morris County program, the City of Detroit was not footing 100% of the bill. *Id.*

In addition, *Am. Atheists* recognized what both our Court of Errors and Appeals and the United States Supreme Court saw in *Everson*: that the extension of a general service to religious groups did not constitute sponsorship. 567 F.3d at 291. While tax exemptions, by their very nature, are different from historic preservation

reimbursements, the end effect of allowing the religious groups to free up funds to use for sectarian purposes is the same. See *Walz v. Tax Com. of New York*, 397 U.S. 664, 680 (1970) (holding that the grant of a tax exemption was not sponsorship of religious organizations). Accordingly, that “cash reimbursements” were used in lieu of the city sending uniformed workers (analogous to police officers and firemen), “does not invalidate the program.” *Am. Atheists*, 567 F.3d at 296-97. Ultimately, “what matters is not the form of the reimbursement takes but the benefit it represents.” *Id.* at 297; See *Comm. for Pub. Educ. & Religious Liberty v. Regan*, 444 U.S. 646, 657 (1980).

*Am. Atheists* points out that it is nonsensical that “a city may save the exterior of a church from a fire,” but “it cannot help that same church with peeling paint or tuckpointing—at least when it provides the same benefit to all downtown buildings on the same terms.” *Id.* at 292. The 6th Circuit explicitly states what both Resnick and *Hendricks* have suggested, but did not directly address due to the limited scope of either case - extending the idea of a “general service” to the very same types of grants Morris County has awarded. The 6th Circuit’s rationale for doing so is based on the fact that the Detroit churches, like Morris County’s, are registered on registries of historical buildings. *Id.* at 300. Furthermore, the churches are subject to the same “public health regulations” applicable to their exteriors for public safety. *Id.* In a situation like this, “[i]t would be strange to read the Religion Clauses to say that churches may be subjected to

neutral and generally applicable laws, but may not receive neutral and generally applicable benefits.” *Id.*

The FFRF implies that Morris County knows that the churches’ primary function is to promote their type of worship, based on their grant applications, and therefore, Morris County is effectively promoting religion and violating the Constitution. In doing so, the FFRF does not distinguish between the motivations of the churches in question and the motivations of Morris County. While it is certainly true that the applicant churches have filled their applications (see Stipulation) with language indicating religious motivations, those motivations cannot be attributed Morris County. It is only reasonable that a church’s congregation is interested in worshipping in their church. It clearly would be unreasonable and unconstitutional if Morris County dispensed said funds for this reason alone. According to *Mitchell v. Helms*, “presumptions of religious indoctrination are normally inappropriate when evaluating neutral school-aid programs under the Establishment Clause.” 530 U.S. 793, 858 (2000) (O’Connor, J. concurring in the judgment). While the present case does not involve school” aid, the Court agrees with Justice O’Connor that a presumption of religious indoctrination is unfair. “To establish a First Amendment violation, plaintiffs must prove that the aid actually is, or has been, used for religious purposes.” *Id.* at 857. The FFRF has failed to do so.

In addressing the FFRF’s concerns, the Court also considers the implication that even though

Morris County's historical preservation grants have no ulterior motives or hidden agenda, it may still have the *primary effect* of advancing religion, and therefore, is in violation of Art. I, Para. 3. A four-factor test was used by the 6th Circuit Court in *Am. Atheists* to determine whether a program has a primary effect of advancing religion:<sup>9</sup>

- 1) [A] program may have the primary effect of advancing religion if it employs skewed selection criteria that stack the deck in favor of groups that engage in religious indoctrination, encouraging potential recipients to take part in religious activity by rewarding them for doing so.
- 2) [A] program may have the primary effect of advancing religion if it leads to "religious indoctrination" that "could reasonably be attributed to governmental action."
- 3) [A] program may have the primary effect of advancing religion if the benefit itself has an inherently religious content.
- 4) [A] program may have the primary effect of advancing religion if the recipient "divert[s]" secular aid to further its religious mission.

*Am. Atheists*, 567 F.3d at 291-93, *internal citations omitted*.

<sup>9</sup> This four-factor test was developed from the "Lemon test" as utilized by the Supreme Court in *Agostini v. Felton*, 521 U.S. 203 (1997), further defined by Justice O'Connor's concurrence in *Mitchell v. Helms*, 530 U.S. 793 (2000). *See, Lemon v. Kurtzman*, 403 U.S. 602 (1971).

In her analysis of *Mitchell v. Helms*, Justice O'Connor notes that the factors are not necessarily based on constitutional requirements, but "are surely sufficient to find that the program at issue here does not have the impermissible effect of advancing religion." 530 U.S. 793, 867 (2000) (O'Connor, J., concurring in the judgment).

An examination of the record before the Court reveals that Morris County has not violated any of the factors listed above. In addition, as referenced in Part 5 of The Morris County Open Space, Farmland, Floodplain Protection and Historic Preservation Trust Fund, the Morris County program has safeguards, including but not limited to, strict application criteria and rigorous inspection and reimbursement conditions, in place to prevent the possibility of misuse.<sup>10</sup> Specifically, Part 5 outlines required conditions for the receiving grants in §16, including an easement limiting changes and preventing demolition, the requirement of public access, review by the New Jersey Historic Preservation Office, adherence to a two year timetable, listing on both the National and New Jersey Register of Historical places, and accountability of funds dedicated to the preservation project. Furthermore, the use of any grant funds appropriated to religious institutions is limited to Historic Structure Reports, Preservation Plans, Assessment Reports, construction and construction documents for exterior building elements, and the building's structural and mechanical, electrical, and plumbing systems by §8, Para. 7. A review board made up of a diverse group of representatives from

<sup>10</sup> See Stipulation, Exhibit A, Part 5, Historic Preservation.

Morris County and professionals with expertise in various aspects of historic preservation review the applications based on criteria listed under §5, Para. 13.

Morris County desires to sustain historic landmarks, not just historic churches. Just because the religious groups have put Morris County on notice that they intend to use their churches for worship does not mean that Morris County is somehow inextricably entangled with religion. The issue in the present case is whether Morris County has a legitimate purpose for awarding historical preservation grants besides the furtherance or sponsorship of religion. The Court should not enjoin Morris County because its laws coincides with the desires of those benefitted by the law. As Justice Black wrote in *Everson*, “[t]he fact that a state law, passed to satisfy a public need, coincides with the personal desires of the individuals most directly affected is certainly an inadequate reason for us to say that a legislature has erroneously appraised the public need.” 330 U.S. at 6.

The New Jersey Constitution should not be read “with the narrow literalism of a municipal code or a penal statute, but so that its high purposes should illumine every sentence and phrase of the document and be given effect as part of a harmonious framework.” *State v. Muhammad*, 145 N.J. 23, 44 (1996) (internal citation omitted). It is a “living charter -designed to serve the ages.” *Vreeland v. Byrne*, 72 N.J. 292, 328 (1977). The relief sought by the FFRF seeks to nullify the will of the people, expressed through their duly elected representatives. Further, the Court must be ever

mindful of the strong presumption that a legislative enactment is valid and “will not be ruled void unless its repugnancy to the Constitution is clear beyond a reasonable doubt.” *Muhammad*, 145 N.J. at 41. Given that Morris County’s program has met the stringent requirements referenced above and that the legislative body of Morris County has chosen to spend their funds in such a manner, the Court believes it should defer to the lawmakers’ choice as to the means devised to serve the public purpose. *Roe v. Kervick*, 42 N.J. 191, 229 (1964).

The Court recognizes the FFRF’s mission and its endeavor to promote a healthy separation of church and state. Without organizations like the FFRF, one check that keeps the balance even disappears. However, in the case at bar, precedent clearly indicates that to adhere strictly to the literal interpretation of Article I, Paragraph 3 of the New Jersey Constitution, as advocated by FFRF, would be a mistake.

*Resnick*, *Hendricks*, and *Everson* indicate that the only thing that is clear about Art. I, Para. 3’s intended meaning is that it is not meant to be read literally. Therefore, to correctly interpret the intended meaning of Art. I, Para. 3 in this particular instance, given these particular facts, the Court must read it in conjunction with the State’s longstanding tradition of neutrality in church-state relations which has been manifested in judicial decisions such as *Everson* and the adoption of pro-neutrality provisions of the State Constitution, such as Art. I, Para. 4 and 5. It must also be harmonized with the grant to counties of the power to protect public health, safety and welfare by acquiring

easements and other interests in real property for the benefit of county residents. N.J. Const. Art. IV, Section 6, Para. 3. Finally, it must be harmonized with the fact that Art. VIII, Sec. II, Para. 6 and Para. 7 of the New Jersey Constitution allow for the funding of historic preservation.

Given the facts and legal precedent before the Court, it finds that in this instance “the preferred governmental stance is one of benevolent neutrality.” *Resnick*, 77 N.J. at 118-19. When a “government endorses everything, it endorses nothing,” as Morris County has done here. *Am. Atheists*, 567 F.3d at 294. Excluding historical churches from receipt of reimbursements available to all historical buildings would be tantamount to impermissibly withholding of general benefits to certain citizens on the basis of their religion, *Everson*, 330 U.S. at 16, and would be inconsistent with the spirit of our state and federal Constitutions, as reflected in the decisions discussed above.

For the foregoing reasons, the FFRF’s motion for summary judgment seeking a declaration that Morris County’s grants of historic preservation funds to houses of worship violate Art. I, Para. 3 of the New Jersey Constitution is denied, and Morris County’s motion for summary judgment dismissing the FFRF’s complaint with prejudice is granted.

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SUPERIOR COURT  
SOMERSET COUNTY

FREEDOM FROM  
RELIGION  
FOUNDATION and  
DAVID STEKETEE,

Plaintiffs

*v.*

MORRIS COUNTY  
BOARD OF CHOSEN  
FREEHOLDERS; THE  
MORRIS COUNTY  
PRESERVATION TRUST  
FUND REVIEW BOARD;  
and JOSEPH A.  
KOVALCIK JR. (in his  
official capacity as Morris  
County Treasurer) THE  
PRESBYTERIAN  
CHURCH IN

SUPERIOR COURT  
OF NEW JERSEY  
CHANCERY  
DIVISION  
SOMERSET COUNTY

DOCKET NO.  
SOM-C-12089-15

**CIVIL ACTION**

MORRISTOWN; FIRST  
PRESBYTERIAN  
CHURCH: OF NEW  
VERNON; ST. PETER'S  
EPISCOPAL CHURCH;  
FIRST REFORMED  
CHURCH OF POMPTON  
PLAINS; CHURCH OF  
THE REDEEMER;  
COMMUNITY OF ST.  
JOHN THE BAPTIST;  
STANHOPE UNITED  
METHODIST CHURCH;  
CHURCH OF THE  
ASSUMPTION OF THE  
BLESSED VIRGIN  
MARY; FIRST  
PRESBYTERIAN  
CHURCH OF BOONTON;  
ST. PETERS EPISCOPAL  
CHURCH IN  
MOUNTAIN LAKES;  
LEDGEWOOD BAPTIST  
CHURCH; AND  
COMMUNITY CHURCH  
OF MOUNTAIN LAKES,

Defendants

**ORDER**

This matter comes before on a Motion for Summary Judgment by Defendant Preservation Grant Recipients. The Court, having considered the

Motion and any opposition or reply thereto, will GRANT the Motion.

**WHEREFORE**, it is this *9th* day of *January* 2016~~7~~ hereby:

**ORDERED**, that the Motion shall be, and hereby is **GRANTED**; and it is further

**ORDERED**, that the summary judgment is entered in favor of Defendant Preservation Grant Recipients as to each and every count of Plaintiffs' Complaint; and it is further

**ORDERED**, that each and every count of Plaintiffs' Complaint is **DISMISSED** with prejudice.

*A copy of this Order shall be served on all interested parties within 7 days of receipt.*

**SO ORDERED.**

/s/ Margaret Goodzeit

Hon. Margaret Goodzeit, P.J. Ch.

*See Statement of Reasons attached to Order at even date on Schenck Price letterheard.*

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FREEDOM FROM  
RELIGION  
FOUNDATION, *et al.*,  
Plaintiffs  
-against-  
MORRIES COUNTY  
BOARD OF CHOSEN  
FREEHOLDERS, *et al.*,  
Defendants

SUPERIOR COURT OF  
NEW JERSEY  
CHANCERY DIVISIOIN  
SOMERSET COUNTY  
DOCKET NO.  
SOM-C-12089-15  
Civil Action  
**ORDER**  
FILED  
JAN 09 2017  
SUPERIOR COURT  
SOMERSET COUNTY

This matter having been presented to the Court by:

1. a Motion for Summary Judgment brought by John M. Bowens, of the law firm Schenck, Price, Smith & King, LLP, attorneys for Morris

County Board of Chosen Freeholders; The Morris County Historic Preservation Trust Fund Review Board; and Joseph A. Kovalcik, in his official capacity as Morris County Treasurer (hereinafter “the Morris County Defendants”);

2. a Motion for Summary Judgment brought by Kenneth J. Wilbur, of the law firm Drinker Biddle & Reath LLP, attorneys for The Presbyterian Church in Morristown; First Presbyterian Church of New Vernon; St. Peter’s Episcopal Church; First Reformed Church of Pompton Plains; Church of the Redeemer; Community of St. John Baptist; Stanhope United Methodist Church; Church of the Assumption of the Blessed Virgin Mary; First Presbyterian Church of Boonton; St. Peter’s Episcopal Church in Mountain Lakes; Ledgewood Baptist Church; and Community Church of Mountain Lakes (hereinafter “the Grant Recipient Defendants”); and
3. a Cross-Motion for Summary Judgment brought by Paul S. Grosswald, a solo practitioner; Andrew L. Seidel, in-house counsel to Freedom From Religion Foundation, admitted to this Court *pro hac vice*; and Ryan D. Jayne, in-house counsel to Freedom From Religion Foundation, admitted to this Court *pro hac vice*; attorneys for Freedom From Religion Foundation and David Steketee (hereinafter “the Plaintiffs”); and

the Court having considered all of the papers and arguments submitted in support of and in opposition to each of the Motions and Cross-Motions described above, including an oral argument held on October 13, 2016, and for good cause shown;

It is on this *9th* day of *January*, [2017], ORDERED as follows:

1. The Morris County Defendants' Motion for Summary Judgment is ~~DENIED~~. *GRANTED*.
2. The Grant Recipient Defendants' Motion for Summary Judgment is ~~DENIED~~. *GRANTED*.
3. Plaintiffs' Cross-Motion for Summary Judgement is ~~GRANTED~~. *DENIED*.
4. This Court hereby **DECLARES** that the Morris County Historic Preservation Trust Fund program, as applied to the building or repairing of any church or churches, place or aces of worship, or for the maintenance of any minister or ministry, violates Article I, ¶ 3 of the New Jersey Constitution. **DENIED**.
5. This Court hereby **DECLARES** that the grants issued to the Grant Recipient Defendants from 2012 through 2015 pursuant to the Morris County Historic Preservation Trust Fund program violated Article I, ¶ 3of the New Jersey Constitution. **DENIED**.
6. This Court Hereby **DECLARES** that the unconstitutional activity described herin has caused a deprivation of rights to Plaintiff David Steketee, a Morris County taxpayer who objects to his tax money being used to build or repair any church or churches, place of places of worship, or for the maintenance of any minister of ministry, contrary to what he believes to be right and has deliberately and voluntarily engaged to perform. **DENIED**.

7. This Court hereby **DECLARES** that the unconstitutional activity described herein has caused a deprivation of rights of Plaintiff Freedom From Religion Foundation, as an organizational representative of Morris County taxpayers who object to having their tax money being used to build or repair any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what they believe to be right and have deliberately and voluntarily engaged to perform. **DENIED.**
8. This Court hereby **DECLARES** that the deprivations of rights described herein violate the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c). **DENIED.**
9. In order to prevent further violations of Article I, ¶ 3 of the New Jersey Constitution and the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c), the Morris County Defendants are hereby **PERMANENTLY ENJOINED** from issuing any further grants pursuant to the Morris County Historic Preservation Trust Fund program to any church or churches, place or places of worship, or minister or ministry. **DENIED.**
10. The Morris County Defendants are hereby **ORDERED** to pay Plaintiff David Steketee an award of actual damages in the amount of \$40. **DENIED.**
11. The Morris County Defendants are hereby **ORDERED** to pay Plaintiff David Steketee an award of nominal damages as defined by N.J.S.A. 2A:15-5.10, in the amount of \$499.99. **DENIED.**

12. The Morris County Defendants are hereby ORDERED to pay the Plaintiffs' reasonable attorney's fees and costs, pursuant to N.J.S.A. 10:6-2(f). The Plaintiffs shall submit an application for attorney's fees and costs, with supporting documentation, within \_\_\_ days of the date of this Order. The Morris County Defendants shall file any objections to same within \_\_\_ days of the date on which the Plaintiffs file their application. The Plaintiffs shall file any reply to any such objections within \_\_\_ days of the date on which the Morris County Defendants file their objections. Oral argument with respect to Plaintiffs' application for attorney's fees and costs will be heard on \_\_\_\_\_. DENIED.
13. The Grant Recipient Defendants are hereby ORDERED to refund to Morris County all grant money they received from 2012 through 2015 pursuant to the Morris County Historic Preservation Trust Fund program, within \_\_\_ days. DENIED.
14. A copy of this Order shall be served by Plaintiffs' counsel upon all counsel of record with 7 days of its ~~entry~~ receipt.

/s/ Margaret Goodzeit

Hon. Margaret Goodzeit, P.J. Ch.

The Morris County Defendants' Motion for Summary judgment was opposed by the Plaintiffs.

The Grant Recipient Defendants' Motion for Summary judgment was opposed by the Plaintiffs.

The Plaintiffs' Cross-Motion for Summary judgment was opposed by the Morris County Defendants and the Grant Recipient Defendants.

*See statement of Reasons attached to Order of even date on Schenck Price letterhead.*

SUPREME COURT OF NEW JERSEY  
M-1188 September Term 2017  
079299

FILED  
May 21, 2018  
Mark Neary  
CLERK

FREEDOM FROM RELIGION  
FOUNDATION, ET AL.,  
Plaintiffs,

v.

MORRIS COUNTY BOARD OF  
CHOSEN FREEHOLDERS,  
ET AL.,  
Defendants,

ORDER

AND

THE PRESBYTERIAN CHURCH IN  
CHOSEN FREEHOLDERS, ET AL.  
Defendants-Movants

It is ORDERED that the motion for reconsideration of  
the Court's opinion is denied.

WITNESS, the Honorable Stuart Rabner, Chief  
Justice, at Trenton, this 15th day of May, 2018.

/s/ Mark Neary  
CLERK OF THE SUPREME  
COURT

**The Morris County Open Space, Farmland,  
Floodplain Protection and Historic  
Preservation Trust Fund**

Hereinafter referred to as “The Morris County  
Preservation Trust Fund”

**1. Introduction**

The State of New Jersey enacted legislation which permits “...the governing body of any County in which the voters of the County have approved in a general or special election, a proposition authorizing the acquisition of lands for conservation as open space and/or as farmland may annually raise by taxation a sum not to exceed the amount or rate set forth in the proposition approved by the voters...”

Acknowledging the need to preserve open space and farmland, the Morris County Board of Chosen Freeholders passed a resolution on August 12, 1992 authorizing the placement of a public question on the November 3, 1992 ballot. The voters of the county, in order to assure Morris County’s long standing tradition of maintaining a high quality of life through the acquisition of open space, recreational lands, and areas of environmental significance, approved a non-binding referendum by a margin of 2 to 1 for the creation of the Morris County Open Space and Farmland Preservation Trust (“trust fund”) to be funded by a tax not to exceed \$.02 per \$100 of total county equalized real property valuation.

As a result of voter approved referendum, the Board of Chosen Freeholders established the trust fund by resolution on December 22, 1992. The fund commenced on July 1, 1993 with a tax equal to one-half cent per \$100 of total county equalized real

property valuation. The Board of Chosen Freeholders annually reviews and sets the collection rate. Since its inception, five amendments have been approved by nonbinding referenda; these amendments permit additional uses of trust fund dollars in accordance with Chapter 24 and increase the maximum collection rate. Rules and Regulations for the administration of the Morris County Preservation Trust Fund were formally adopted by the Board of Chosen Freeholders on December 14, 1994 pursuant to N.J.S.A. 40:12-19, and have been periodically amended as necessary.

The trust fund is divided into five program areas: 1) Open Space Preservation; 2) Farmland Preservation; 3) Historic Preservation; 4) Trail Construction and 5) Park Improvement Trust Fund (administered by the Park Commission). The Open Space Program is further divided into four program areas: 1) Municipal and/or qualified charitable conservancy projects; 2) Morris County Park Commission; 3) Morris County Municipal Utilities Authority; and 4) Flood Mitigation.

The Morris County Open Space Committee was created by the Board of Chosen Freeholders to review and evaluate applications under the Municipal and/or qualified charitable conservancy program and provide recommendations for funding. All recommendations are subject to the final approval of the Board of Chosen Freeholders.

The Morris County Park Commission was formed by referendum in 1955 to acquire and develop land for leisure and recreational use. The determination of which properties are to be acquired under this program shall be the responsibility of the Park

Commission, subject to the final approval of the Board of Chosen Freeholders.

The Morris County Municipal Utilities Authority (M.U.A.) supports many efforts focused on protecting the environment including purchasing open space to protect the water supply, aquifers and their recharge areas. The determination of which properties are to be acquired under this program shall be the responsibility of the Municipal Utilities Authority, subject to the final approval of the Board of Chosen Freeholders.

The Morris County Agriculture Development Board (CADB) was created by the Board of Chosen Freeholders in 1983 to oversee preservation of farmland in accordance with the Agriculture Retention and Development Act (N.J.S.A. 4: 1C). The determination of which properties are to be acquired under this program shall be the responsibility of the CADB, subject to the final approval of the Board of Chosen Freeholders.

The Morris County Historic Preservation Trust Fund Review Board was created by the Board of Chosen Freeholders in 2002 to review and evaluate applications under the Historic Preservation Trust Fund Program and provide recommendations for funding. All recommendations are subject to the final approval of the Board of Chosen Freeholders. Sections 5.1 and 5.2 provide further details on the background of this program.

In September of 2011, P.L. 1997, c.24 (N.J.S.A. 40:12-15.1 et seq.) was amended and authorization expanded specifically to include "Blue Acres Projects", additionally the name of these municipal open space

trust funds could be changed to be “Municipal Open Space, Recreation, Floodplain Protection and Farmland and Historic Preservation Trust Funds.” The bill defines “Blue Acres Project” to mean any project to acquire, for recreation and conservation purposes, lands that have been damaged by, or may be prone to incurring damage caused by, storms or storm-related flooding, or that may buffer or protect other lands from such damage, and includes the demolition of structures on, the removal of debris from and the restoration of those lands to a natural state or to a state useful for recreation and conservation purposes.

The Morris County Flood Mitigation Program was created by the Board of Chosen Freeholders in March 2012 in response to increased, repetitive flooding in New Jersey, and especially the excessive flooding caused by Hurricane Irene in 2011. This program provides funding for the buyout of flood-prone residential properties (“Blue Acres Projects”); please see Section 6 for details. The Morris County Flood Mitigation Committee was created by the Board of Chosen Freeholders to review and evaluate applications under this program and provide recommendations for funding. All recommendations are subject to the final approval of the Board of Chosen Freeholders.

In May 2016, the Morris County Board of Chosen Freeholders adopted the Trail Construction Grant Program and created the Trail Program Advisory Committee. The development of the program was supported by the results of a survey performed during the creation of the 2013 Preservation Trust Fund Analysis and Strategy Report and the subsequent ballot question approved by voters. The Program will

distribute grants to municipalities for the construction of trails on permanently preserved public parkland. The Trail Program Advisory Committee will review and evaluate applications under this program and provide recommendations to the Board of Chosen Freeholders for approval.

### **1.1 Allocation of Funds**

- a. The monies for the Park Improvement Trust Fund shall be allocated by resolution by the Board of Chosen Freeholders on an annual basis.
- b. The monies for the Farmland Preservation program, Historic Preservation program, Trail Construction program and Open Space Preservation programs: (1) Municipal and/or qualified charitable conservancy projects; 2) Morris County Park Commission; 3) Morris County Municipal Utilities Authority; and 4) Flood Mitigation shall be allocated by resolution by the Board of Chosen Freeholders on an annual basis.

#### *Ancillary*

The Morris County Board of Chosen Freeholders may allocate funds by resolution to an ancillary category for County costs associated with property acquisition or trail construction.

### **1.2 Allocation of Funds-Interest on Investments (Amended by Resolution #18, 12/23/2013)**

Any interest earned on the investment of funds from the Morris County Preservation Trust Fund shall be retained within the trust fund. Commencing in 2014, the total amount of interest credited from

January to December shall be added to the following year's dedicated tax amount and distributed in accordance with Section 1.1b.

**1.3 Allocation of Added and Omitted Assessments**

Any Added and Omitted Assessment for a given year shall be allocated among all Preservation Trust Fund Programs in the following year in accordance with the Freeholder Resolution adopted in the following year.

## **5. Historic Preservation**

### **5.1 Introduction**

The Morris County Historic Preservation trust fund was created by the Morris County Board of Chosen Freeholders to help support the preservation of the county's exceptional abundance of historic resources. The trust fund is being established under N.J.S.A. 40:12-15, et seq., which states that the selection of projects must be in agreement with a historic preservation plan prepared and adopted by the county. The county's Historic Preservation Element of the county Master Plan, together with the Morris County Historic Sites Survey, are the principal documents that have guided county and municipal preservation planning efforts for the last two decades. Reflecting its diverse history as the military capital of the American Revolution and as an important iron-producing region and agricultural center, Morris County has hundreds of sites and scores of districts listed on the New Jersey Register of Historic Places. The State Historic Preservation Office's most recently published list of county sites on the New Jersey and National Register of Historic Places can be viewed at the following website:

[http://www.nj.gov/dep/hpo/lidentifV/nrsr\\_lists/Morris.pdf](http://www.nj.gov/dep/hpo/lidentifV/nrsr_lists/Morris.pdf)

### **5.2 Historic Preservation Planning in Morris County**

To assess the financial and technical assistance needs related to historic preservation, the County's former Department of Planning & Development conducted a survey of municipalities and historic sites and organizations in the spring of 2002. The survey

results, and other counties' and state preservation grant programs were reviewed and carefully considered by a Freeholder-appointed Blue Ribbon Advisory Committee on Historic Preservation which developed rules and regulations for a historic preservation funding program. Morris County voters approved a referendum on November 5, 2002 authorizing the Board of Chosen Freeholders to permit historic preservation funding under the Open Space Trust Fund, as allowed by state law. The Board of Chosen Freeholders adopted the Historic Preservation Trust Fund Program Guidelines on December 11, 2002.

### **5.3 Program Overview**

The Morris County Historic Preservation Trust Fund will consider grants for the acquisition, stabilization, rehabilitation, restoration or preservation of historic resources by the County, municipalities and qualified charitable conservancies whose purpose includes historic preservation. Grant applications for plans and reports associated with the implementation of a historic preservation project are also eligible. All historic resources must be eligible, or certified as eligible, for the New Jersey and National Registers of Historic Places.

There are three types of applications available. Projects that are principally construction-related should be detailed in the Construction application. Grant requests for acquisition and preservation planning documents should be completed on the Preservation Planning application. Grant requests for the preparation of Construction Documents should be completed on the Construction Documents application. All applications should be submitted to

the Morris County Department of Planning & Public Works, Division of Planning & Preservation whose staff will conduct a preliminary review to determine eligibility and application completeness. The application will then be reviewed by the Historic Preservation Trust Fund Review Board, who will also visit the site and rate each application according to established criteria. The Review Board's recommendations will be forwarded to the Board of Chosen Freeholders who will determine grant awards.

Applicants will be notified of their award and will receive a grant agreement setting out their State statutory and County requirements. The agreement must be executed by the applicant and the Board of Chosen Freeholders prior to any disbursement of funds from the County.

#### **5.4 Goals of Program**

1. Foster comprehensive preservation planning to ensure the continued preservation of historic resources.
2. Stimulate preservation activity by providing funding for technical assistance and restoration projects.
3. Encourage long-term facilities planning and capital budget planning of historic resources.
4. Further the stewardship of the built and natural environment by helping preserve historic structures on open space tracts.
5. Heighten the public's awareness of Morris County's irreplaceable historic character.
6. Increase opportunities for heritage tourism in the County.

7. Help insure that preservation planning is an integral part of community development.

### **5.5 Eligible Applicants**

1. Municipal governments within Morris County
2. Morris County Government
3. Charitable conservancies whose purpose includes historic preservation of historic properties, structures, facilities, sites, areas or objects, or the acquisition of such properties, structures, facilities, sites, areas or objects for historic preservation purposes. Charitable conservancies submitting applications must include documentation of their tax-exempt status. This includes charitable conservancies whose purpose is to preserve state and federal owned historic sites.
4. Religious institutions

### **5.6 Eligible Properties**

1. The property must be located in Morris County.
2. The property must be listed on the National Register of Historic Places or the New Jersey Register of Historic Places, individually or as part of a historic district listed on the New Jersey Register and National Register.
3. If not listed on either Register, the property must be certified as eligible for listing by the State Historic Preservation Office, either as an individually listed site or as part of a historic district. A Certificate of Eligibility letter or a State Historic Preservation Officer Opinion (SHPO Opinion) issued by the New Jersey State

Historic Preservation Officer or proof of State and National Register status must be included with the application.

### **5.7 Ownership of Project Properties**

1. Owner consent is required to submit any application, except for an acquisition.
2. For Construction Grants: If the applicant is not the owner, then the applicant must be able to prove possession and significant control over the property through a valid lease. The unexpired term of the lease must be 20 years from the date of application.
3. For Preservation Planning and Construction Documents Grants: If the applicant is not the owner or lessee with a 20 year unexpired lease term, then the applicant must be able to prove significant involvement with the property's preservation. Additionally, applicants for the preparation of a New Jersey Register of Historic Places nomination require an owner's consent to place the property in the Register.
4. All properties that are to be purchased must be purchased in fee simple and the purchasing entity must have full control of the land.

### **5.8 Eligible Activities**

All of the eligible activities listed below must be in conformance with the Standards for the Treatment of Historic Properties 1995 (also known as the Secretary of the Interior's Standards for Rehabilitation). These regulations must be followed as currently in effect or as they may be subsequently modified, changed or amended.

Charitable Conservancies that plan to submit construction grant requests exceeding \$50,000 must have prepared a Preservation Plan and obtained professional construction cost estimates based on construction documents before they are eligible to apply for funding toward the actual construction. Applicants may apply for a Non-Construction Grant that includes the preparation of a Preservation Plan, construction documents, construction cost estimates by a State of New Jersey-certified professional cost estimator, and/or relevant reports or analysis. The construction cost estimate must be escalated two (2) years to the anticipated construction period.

After obtaining a professional construction cost estimate, the applicant may apply for a Construction Grant that includes bidding, construction, and construction administration.

Construction grant applications must include a Maintenance Plan which conforms to the guidelines in the most current version of *Historic Structure Reports & Preservation Plans – A Preparation Guide* from the New Jersey Historic Preservation Office.

1. Acquisition - the purchase in fee simple of an eligible property, structure, facility, site, area or object by the County, a municipality or charitable conservancy. The applicant must meet the following requirements:
  - a. The property must be purchased by an eligible applicant.
  - b. Applicant must submit at least one independent market appraisal in accordance with the historic preservation appraisal requirements, Section 5.15.

- c. No grant money may be used toward appraisals, attorney fees or other closing costs.
- d. The applicant must provide at least 50 percent of the acquisition cost.
- e. The Historic Preservation Program's match shall not exceed 50% of the Accepted Market Value (AMY) as defined in Section 5.15.5.
- f. The applicant must provide written assurance that the grant would go toward reducing the mortgage with any balance dedicated to future rehabilitation and restoration of the property.

Generally, an applicant would not have closed on the property prior to the grant award. However, if they have closed on the property prior to award, the above submission criteria would still apply. However, in no event may the title to the property be acquired earlier than one year prior to the application submission deadline.

The acquisition of most historic sites eligible under the Historic Preservation Trust Fund Program are also eligible acquisitions under the Municipal and/or Qualified Charitable Conservancy Open Space Program of the Morris County Preservation Trust Fund Program (See Section 3.3.2.2).

There are different application and appraisal requirements for each program. Applicants who intend to seek acquisition funding from either the Morris County Historic Preservation Trust

Fund or Open Space Programs are strongly encouraged (required?) to have a pre-application meeting with Division of Planning & Preservation staff to discuss all funding options and the most appropriate program depending upon applicant goals and intended use of the historic site.

2. Stabilization - the essential protection of a deteriorated structure, facility or object as it exists at present, establishing structural stability and a weather-resistant enclosure.
3. Rehabilitation - the act or process of making possible the compatible use of a property through repair and alteration while preserving those portions or features which convey its historical, cultural or architectural value.
4. Restoration - the act or process of accurately depicting the form, features and character of a property as it appears at a particular period of time by means of the removal of features from other periods and reconstruction of missing features from the restoration period.
5. Preservation - the act or process of applying measures necessary to sustain the existing form, integrity and material of a historic property.
6. Plans and Reports - permitted when related to the development, and implementation of historic preservation projects, including the preparation of:
  - a. Architectural plans, designs, specifications, cost estimates and other contract documents

- b. Feasibility studies
  - c. Historic structures reports
  - d. Historic landscape reports
  - e. Archeological reports
  - f. Engineering reports
  - g. Historic research reports
  - h. Preservation Plans
  - i. National Register of Historic Places nomination forms
7. Religious institutions - eligible activities include Historic Structure Reports, Preservation Plans, and Assessment Reports; and the preparation of construction documents and completion of construction activities for the exterior building elements, and the building's structural and MEP systems (mechanical, electrical and plumbing).
8. Cemeteries that are individually listed on or eligible for the New Jersey or National Register of Historic Places: Eligible activities include the preparation of reports, assessments and studies that document the conditions of tombstones or other elements of the cemetery; and the preparation of construction documents and completion of construction activities for all historic cemetery elements.

### **5.9 Requirements for Matching Funds**

To be eligible for a grant that requires match funding, the applicant shall, as part of the application, show evidence of matching funds in hand or

demonstrate clearly the ability to match the grant requested.

**Match Funding Requirements by Grant Type and Amount**

Grant Type	Trust Fund will pay:	Applicant will pay
Construction	80%	20%
Acquisition	50%	50%
Preservation Planning & Construction Documents If less than or equal to \$5,000	100%	0%
If more than \$5,000	80%	20%

An applicant's matching share shall consist only of cash raised or on hand. Once a grant agreement has been signed and proof of match submitted to the Trust Fund, a "Notice to Proceed" authorizing the approved project application will be sent to the applicant.

**5.10 Ineligible Activities**

1. Reconstruction
2. Administrative or operational costs of the agency
3. Ceremonial expenses
4. Publicity expenses
5. Bonus payments of any kind

6. Charges in excess of the lowest qualified bid when competitive bidding is required
7. Charges for deficits or overdrafts
8. Interest expense (or other financing costs)
9. Damage judgments arising from construction or equipping a facility, whether determined by judicial process, arbitration, negotiation, or otherwise
10. Contract cost overruns, not approved, which exceed the allowable amount under the contract specifications
11. Fundraising or lobbying
12. Work including construction, research, and preparation of plans and reports performed outside the approved project period
13. Work not intended in the scope of work set forth in the agreement, including construction, research and preparation of plans and reports
14. Work that does not comply with the Secretary of the Interior's Standards. Work performed on behalf of a municipal government that has not been awarded in compliance with the State Contracts Law (NJ.S.A.52:32-1 et seq.)
15. Work performed on behalf of a nonprofit corporation which has not been awarded in compliance with public bidding requirements if the costs of any contract for the historic preservation project funded with a historic preservation grant exceeds \$50,000.

16. Routine or ongoing maintenance work such as grounds maintenance, painting or cleaning that is not part of a comprehensive project.
17. Relocation of structures, buildings or objects unless all of the following standards are met:
  - a. Relocation is necessary to preserve the historic resource; and
  - b. The relocation re-establishes the property's historic orientation, the immediate setting, and the general environment; and
  - c. The State Historic Preservation Officer determines that the property, as relocated, will continue to meet New Jersey Register criteria.
18. Interpretive activities such as displays, signs, etc.

#### **5.11 Historic Preservation Trust Fund Review Board**

The Historic Preservation Trust Fund Review Board ("Review Board") shall review, prioritize and make recommendations to the Morris County Board of Chosen Freeholders on the funding of historic preservation projects under the Historic Preservation Trust Fund.

All nominees to the eleven member Review Board shall be reviewed according to standard County procedures in order to avoid any potential conflict of interest. The Morris County Board of Chosen Freeholders shall appoint the Review Board based upon the recommendations from the various municipalities and/or entities as follows:

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Number of Appointees	Appointee Representation
4	Municipal representatives, with one representative from each of the Historic Preservation Regions as stipulated below and on Figure 2
2	At-Large members
1	Morris County Heritage Commission from its membership
1	Professional with expertise in Historic Preservation from the discipline of Preservation Architecture
1	Professional with expertise in Historic Preservation from the discipline of Architectural History
1	Professional with expertise in Historic Preservation from the discipline of Preservation Architecture
1	Professional with expertise in Historic Preservation, with a background as an archeologist, historic

	landscape specialist, historic site manager, historic site curator or engineer with historic preservation expertise
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Region	Municipalities
I	Chester Boro., Chester Twp., Dover, Mendham Boro., Mendham Twp., Mine Hill, Mt. Olive, Randolph, Victory Gardens, Washington
II	Denville, Jefferson, Mt. Arlington, Netcong, Rockaway Boro., Rockaway Twp., Roxbury, Wharton
III	Boonton Town, Boonton Twp., Butler, Kinnelon, Lincoln Park, Montville, Mt. Lakes, Parsippany, Pequannock, Riverdale
IV	Chatham Boro., Chatham Twp., East Hanover, Florham Park, Hanover, Harding, Long Hill, Madison, Morris Plains, Morristown, Morris Twp.

All municipal and at-large representatives shall have served on a historic preservation commission,

committee or board for five years or have demonstrated related historic preservation experience.

All members shall abide by the County's Policy and Procedures for Attendance of Volunteer Members of Advisory Bodies at Scheduled Meetings and Conflict of Interest.

All Committee members shall be residents of Morris County and shall be required to properly file a financial disclosure statement as required by NJ.S.A. 40A:9-22.1.

#### **5.12 Term of Office**

The municipal members shall serve for no more than two terms of three years each. The Heritage Commission appointee shall serve no more than two terms of three years each. The At-Large representatives shall be appointed for no more than two terms of four years each.

In order to create staggered terms for the appointees with professional expertise in historic preservation, the following terms of office shall be applied for members with professional expertise in historic preservation. No explicit term limits apply to the members with professional expertise.

The appointment for the appointee with background as an archeologist, historic landscape specialist, historic site manager, historic site curator or engineer with historic preservation expertise, shall commence for 1 year for calendar year 2011. Subsequent appointments shall be for terms of 4 years each.

The appointment for the appointee with professional expertise in historic preservation from the discipline of preservation architecture shall commence for 2 years for calendar years 2011 and 2012. Subsequent appointments shall be for terms of 4 years each.

The appointment for the appointee with professional expertise in historic preservation from the discipline of architectural history shall commence for 3 years for calendar years 2011 through 2013. Subsequent appointments shall be for terms of 4 years each.

The appointment for the appointee with professional expertise in historic preservation from the discipline of building restoration commencing in calendar year 2011 and subsequent appointments shall be for terms of 4 years each.

### **5.13 Application Review**

The Morris County Department of Planning & Public Works, Division of Planning & Preservation will review submitted applications for eligibility and completeness. Applicants are encouraged to consult with the Department staff about any aspect of the application that requires clarification. All eligible and complete applications will be forwarded to the Historic Preservation Trust Fund Review Board who will evaluate them and may visit the sites under consideration during the application review period.

#### **5.13.1 Evaluation Criteria**

- a. Construction Projects
  1. Significance of the resource
  2. Physical condition of the property

3. Proposed use of the site and/or quality of the interpretive program
  4. Quality of the preliminary planning or contract documents, including credentials of the project team, and feasibility of the budget and work schedule
  5. Ability of the applicant to match the funds requested
  6. Ability of the applicant to complete the proposed work, maintain the property, administer the grant funds, and develop programs to sustain and interpret the property
  7. Relationship of the project to community revitalization, preservation of the built or natural environment, and heritage education and tourism
  8. Degree to which the project promotes preservation activity and represents innovative design and extent to which the project reaches new audiences
- b. Preservation Planning & Construction Documents Projects
1. Significance of the resource
  2. Physical condition of the property
  3. Ability of the applicant to match the funds requested
  4. Ability of the applicant to complete the proposed work

5. Potential of the project to foster preservation of the historic property; to promote other preservation activity or related cultural or economic activity; and to foster appropriate site management practices that sustain the long-term use of a property
6. Overall quality of the work proposed for funding
7. Degree to which the project promotes preservation activity and represents innovative design and/or reaches new audiences
8. Impact of the project, including:
  - a. Heritage tourism opportunities and public access
  - b. Proposed use and interpretive program for the site
  - c. Plans for the continued preservation of the structure after the expenditure of historic preservation grant money.

**5.14 Application Procedures**

**5.14.1 Schedule**

January	Applications available
Last Friday in March	Applications must be received by the Morris County Department of Planning & Public Works, Division of Planning & Preservation by this date

June	The Historic Preservation Trust Fund Review Board will make its grant recommendations to the Board of Chosen Freeholders
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#### **5.14.2 Professional Services Checklist**

All applicants seeking funding for a) Professional Services and/or b) Construction activities requiring Professional Services shall complete and submit the Professional Services Checklist, which is incorporated by reference herein. “Professional Services” shall mean services provided by professionals that are involved with the planning, designing and construction of historic preservation projects, including Architect, Structural Engineer, MEP (Mechanical, Electrical, Plumbing) Engineer, Landscape Architect, Cost Estimator, Conservator, Contractor/Craftsman, and personnel responsible for Paint Analysis and Mortar Analysis, and others.

This checklist is intended to clearly identify all consultants involved in a proposed project; and to clarify the associated requirements pertaining to the submission of documentation and affiliated services by Preservation Professionals if funding is awarded. This checklist and its associated Professional Proposals must be submitted as part of the applicable grant application or the application would not be considered for funding. If funded by the Trust Fund, this completed checklist and associated Professional Proposals will become the basis for the review of Professional Services.

### **5.14.3 Historic Structure Report & Preservation Plan Checklist**

All applicants seeking funding for the preparation of Historic Structure Reports or Preservation Plans shall complete and submit the Historic Structure Report & Preservation Plan Checklist, which is incorporated by reference herein. This checklist and the Project Personnel sections should reflect the information that will be provided and the participating team members if the project is funded by the Trust Fund. If funded, the completed checklist will become the basis for the document review.

## **5.15 Requirements for Historic Property Appraisals**

### **5.15.1 Purpose**

To establish requirements for appraisals and appraisal reports submitted by County, municipalities and Charitable Conservancies seeking funding for acquisition of property through the Morris County Historic Preservation Trust Fund.

### **5.15.2 Applicability**

All applicants seeking funding for acquisition of real or personal property shall have one real or personal property appraisal that is documented by a written report that is prepared in compliance with Section 5.15. All appraisals and reports of real and personal property must be prepared by an appraiser who is either a New Jersey State Certified General Real Estate Appraiser for real property appraisals or an Accredited Member or Accredited Senior Appraiser of the American Society of Appraisers, or an equivalent professional organization specializing in

the valuation of personal property, and who is registered to do business in the State of New Jersey.

The Planning & Preservation Division staff shall have the right to disqualify any appraisal that does not meet the criteria outlined in Section 5.15.

### **5.15.3 Submission Requirements**

The deadline for appraisal submission shall be the same as the application deadline. Applicants are required to submit two hard copies of the appraisal report and an electronic copy in PDF format to the Planning and Preservation Division staff. Any applicant that does not meet the appraisal submission deadline shall have its application deemed incomplete and not be eligible for consideration in that funding year.

### **5.15.4 Appraisal Requirements**

All appraisals must specifically include the Morris County Open Space, Farmland and Historic Preservation Trust Fund as an Intended User of the appraisal and appraisal report.

For purposes of Section 5.15, “pre-appraisal estimated value” shall mean the anticipated appraised value for the subject property and is only for use in determining which type of appraisal to prepare. The applicant may consult tax records and/or the municipal tax assessor for assistance and guidance in this determination.

For properties that have a pre-appraisal estimated value approaching the \$250,000 limit, the applicants are encouraged to have an appraisal report prepared in compliance with 2014-2015 USPAP Standard 2.2 (a)

for valuations of real property and Standards 8.2 (a) for personal property.

If the applicant chooses to prepare the Restricted Use Appraisal Report as defined by 2014-2015 USPAP Standard 2.2(b) or Standard 8.2(b), documentation must be provided with the funding application that substantiates the estimated value of the property at less than \$250,000. Based on the pre-appraisal estimated value, the following Appraisal Requirements shall apply:

a. For Acquisition of Real Property (Fee Simple)

The applicant's appraiser shall prepare an appraisal of the subject property and submit a written report, commonly known as a "**Summary Appraisal Report**," of its opinion of the market value of the subject property in accordance with the definition of "Market Value" as set forth in the most current edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

The appraisal and report must contain at a minimum the Scope of Work necessary to develop credible assignment results. The Appraisers specific Scope of Work for the assignment must be expressly disclosed in the appraisal report.

The appraiser must fully comply with the most recent requirements of USPAP's COMPETENCY RULE that states an appraiser must be competent to perform the assignment; or must acquire the necessary competency to perform the assignment; or must decline or withdraw from the assignment. An affirmation of the appraiser's competency must

be included in any appraisal report submitted for consideration.

The “As of Date” of the appraisal shall be the application deadline of the application year or the date of the property inspection with the property owner, whichever date is more current to the date of the appraisal. If an appraisal and report have already been prepared, the “As of Date” must be no earlier than April 1 of the year prior to making the application.

The applicant’s appraiser shall separate the land value from the value of all structures or improvements for all properties that are the subject of the application, and shall provide a discrete land value separated from the value of all structures and improvements.

The applicant’s appraiser shall be provided with a structural engineer’s report from a licensed professional detailing the structural integrity and weaknesses of the improvements on the subj etc. land. A copy of this report, which is signed and sealed by the licensed professional, shall be included and attached in the appraisal report. The Planning and Preservation Division staff, at their sole discretion, shall have the right to disqualify any structural engineering report that does not contain sufficient detail.

Where there is an assertion of development potential for the land, the applicant’s appraiser shall be provided with a report from the municipal engineer or licensed professional planner of the

municipality in which the subject property is located, demonstrating the development potential of the subject property.

This report shall include an evaluation of the development potential of the Subject Property including but not limited to: municipal land use ordinances and regulations, environmental restrictions; such as, wetlands, Category 1 streams, sub-soil conditions and steep slopes. A copy of this report, which is signed and sealed by the municipal engineer or licensed professional planner, shall be included and attached in the appraisal report. The Planning and Preservation Division staff, at their sole discretion, shall have the right to disqualify any development potential report that does not contain sufficient detail.

The applicant's appraiser shall not prepare an appraisal or issue a report based on any unsubstantiated "extraordinary assumptions and/or hypothetical conditions" relative to the structural integrity of the improvements, or the development potential or any environmental conditions of the subject property. The appraiser must rely upon the appraiser's expertise as well as the information provided by the structural engineer, and/or the municipal engineer or professional planner in formulating their opinion of the Market Value of the Subject Property.

If the municipal engineer or professional planner does not provide such analysis, the municipality or the non-profit must hire independent consultants to prepare reports on the structural integrity of the

improvements, and/or the land's development potential for consideration by the appraiser.

b. For Acquisition and Funding of Personal Property

All applicants seeking funding for acquisition of personal property shall have one personal property appraisal that is documented by a written report, which is prepared in compliance with Section 5.15.

An appraiser who is currently an Accredited Members or Accredited Senior Appraiser of the American Society of Appraisers, or an equivalent professional organization specializing in the valuation of personal property and who is registered to do business in the State of New Jersey must prepare all appraisals and reports of personal property submitted for funding consideration.

Two hard copies of the appraisal report and an electronic copy in PDF format shall be submitted to the Planning and Preservation Division staff.

The applicant's appraiser shall prepare an appraisal of the subject property and submit a written report, commonly known as a "**Summary Appraisal Report,**" of their opinion of the market value of the subject property in accordance with the definition of "Market Value" as set forth in the most current edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

The appraisal and report must contain at a minimum the Scope of Work necessary to develop credible assignment results. The Appraisers

specific Scope of Work for the assignment must be expressly disclosed in the appraisal report.

The appraiser must fully comply with the most recent requirements of USPAP's COMPETENCY RULE that states an appraiser must be competent to perform the assignment; or must acquire the necessary competency to perform the assignment; or must decline or withdraw from the assignment. An affirmation of the appraiser's competency must be included in any appraisal report submitted for consideration.

The "As of Date" of the appraisal shall be the application deadline of the application year or the date of the property inspection with the property owner, whichever date is more current to the date of the appraisal. If an appraisal and report have already been prepared, the "As of Date" must be no earlier than April 1 of the year prior to making the application.

All appraisals must be prepared in accordance with 2014-2015 USPAP Standard 7, Personal Property Appraisal Development, and reported in compliance with Standard 8, Personal Property Appraisal Reporting. All appraisal reports must be prepared using at minimum the requirements of 2014-2015 USPAP Standard 8.2 (a).

#### **5.15.5 County Appraisal Review**

All appraisals submitted for funding through the Morris County Historic Preservation Trust Fund shall be reviewed by an appraiser hired by Morris County ("Review Appraiser") who is currently at a minimum a

New Jersey State Certified Real Estate Appraiser (SCGREA) and is on the current List of Approved Appraisers of the New Jersey Green Acres program.

The Review Appraiser shall review the appraisal and issue a written review report in accordance with the most current edition of USPAP's Standard 3, Appraisal Review, Development and Reporting, requirements. If applicable, the Review Appraiser shall develop questions regarding development of the opinion of value and transmit these to the applicant's appraiser with copy to the applicant.

The Review Appraiser shall contact the applicant's appraiser (via e-mail, phone, or letter) to address any questions regarding the development of the opinion of value that are not addressed in the appraisal report or resolved via written correspondence from the applicant's appraiser.

It is the applicant's sole responsibility to directly contact their appraiser to respond to the Reviewer's questions regarding development of the value conclusion and the final value conclusion that may occur because of the appraisal review.

The Review Appraiser shall develop an opinion as to the credibility, completeness, accuracy, relevance, adherence to appraisal guidelines and reasonableness of the analysis in the work under review given law, regulations and intended user requirements applicable to the work under review.

If the Review Appraiser concludes the applicant's appraiser provides reasonable and credible documentation to support the assumptions and analysis in the report and adequately addresses all questions raised, the value conclusion shall be deemed

Morris County's **Accepted Market Value** (AMV) upon which Morris County may provide 50% funding for the project. The AMV is not a certified value for any other purpose whatsoever and is not an average of appraised values.

Various program areas receive funding allocations from the Morris County Preservation Trust Fund. These are the Park Commission, Municipal Utilities Authority, Agriculture Development Board, Municipal/Non Profit Open Space Program, Historic Preservation Program, and Flood Mitigation Program. Morris County's maximum 50% funding of the cost of acquisition on a project shall include sources of funds from all of these programs, not to exceed the AMV. Funding participation by other partners and the applicant is encouraged.

The Historic Preservation program may provide no more than 50% funding of the cost of acquisition on a project up to the lower of either the contract value or AMV.

If the Review Appraiser concludes the applicant's appraiser does not provide reasonable and credible documentation to support the assumptions, analysis and value conclusion in the report, and if the applicant's appraiser fails to adequately address all questions raised leaving significant issues unresolved, then the Review Appraiser shall, at the direction of the Historic Preservation Trust Fund Review Board, develop an independent opinion of value which shall be deemed the AMV for Morris County acquisition funding.

### **5.16 Conditions for Receiving Grant Funds**

All applicants selected for funding must complete and sign a grant agreement within 60 days of receipt of the grant agreement which details the scope of work and project schedule, as well as schedules for project reports and reimbursement requests. All grantees agree to abide by the Secretary of the Interior's Standards in performing funded work. Grant recipients must also agree to meet other conditions of the grant program before money is disbursed. These include, but are not limited to:

1. Easements - The County will draft, and the applicant (and all others with an ownership interest in the property) must execute an easement agreement with a 30-year term with the County of Morris. An easement is a deed restriction that is used to assure long-term preservation of a historic property through proper maintenance and by limiting changes in use or appearance and preventing demolition of the property. An easement is required for a) all acquisition projects at time of funding and b) construction grants over \$50,000, applied cumulatively over any number of funding cycles. The easement must be executed prior to the County's final payment on the particular construction grant. Once an easement has been executed, the scope of subsequent construction projects will be added as amendments to the existing easement with new 30-year terms. Easements are not required for non-construction projects resulting in plan development. In no way does this easement supersede any requirements pursuant to

Section 106 of the National Historic Preservation Act of 1966 or New Jersey Register of Historic Places Act.

2. Public Access - Public access to all properties funded through this grant program is required. The County and the grantee will negotiate the days and hours that the property will be open to the public, based on the type of work funded by the grant. Public access requirements are stipulated in the easement agreement. No additional public access is necessary for properties open to the public on a regular basis, such as museums.
3. Required Historic Preservation Office Review - The County of Morris and the New Jersey Historic Preservation Office (HPO) have executed a Memorandum of Understanding which permits the County to retain qualified professional staff to review funded projects for compliance with the Secretary of the Interior's Standards. If the project, for which funding is requested, has already been authorized by the HPO, the authorization letter must be submitted with the grant application. For more information, contact the New Jersey Historic Preservation Office, Technical Review Section at (609) 292-2023. No construction can begin on any project until an administrative approval letter is received from the County of Morris.
4. Project Timetable - All work on projects funded through this program must be completed within two years of appropriation of grant funds. If an applicant is unable to complete the work within the two years of appropriation of grant funds,

the applicant must come before the Historic Preservation Trust Fund Review Board before the expiration of the two years to officially request an extension. The Review Board could recommend to the Board of Chosen Freeholders up to a one-year extension of the grant agreement which would also specify the work to be completed within the extended time period.

5. National and New Jersey Register of Historic Places - All applicants receiving funding must list their property on the National and New Jersey Registers of Historic Places. The Grant Agreement between the applicant and the County will outline a timetable for the submission of a nomination to the State Historic Preservation Office. An applicant that has received funding for an individual property not yet listed on the National and New Jersey Registers of Historic Places must have a Register nomination accepted by the State Historic Preservation Office for transmission to the New Jersey State Review Board for Historic Sites before additional funding from the Trust Fund can be considered.
6. Accountability - All money dedicated for the preservation project must be kept separate from other agency or organization funds; funds may not be diverted from eligible to ineligible activities once a grant agreement has been approved. Any misuse of funds, misrepresentation, or non-compliance will result in termination of the grant agreement and penalties as specified in the agreement. Receipts and invoices submitted for activities

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deemed ineligible for funding under this program will not be reimbursed. Grantees must retain all financial records and other documents pertinent to their projects for three years after completion of the project.

\* \* \* \*

HISTORIC SITE MASTER PLAN  
THE PRESBYTERIAN CHURCH IN MORRISTOWN  
MORRISTOWN, MORRIS COUNTY, NEW JERSEY

**PROJECT DIRECTORY**

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**PROJECT**

HISTORIC SITE MASTER PLAN  
THE PRESBYTERIAN CHURCH IN MORRISTOWN  
Church on the Green, Chapel, Howard House and  
the Parish House

**CLIENT**

THE PRESBYTERIAN CHURCH IN MORRISTOWN  
65 South Street  
Morristown, New Jersey 07960

**INVESTIGATING TEAM**

CONNOLLY & HICKEY HISTORICAL ARCHITECTS,  
LLC  
P.O. Box 1726  
2 N. Union Avenue Cranford,  
New Jersey 07016  
973-746-4911

- Thomas B. Connolly, AIA  
Principal Architect
- Margaret M. Hickey, R.A.  
Historic Preservation Specialist
- Kate Cowing Architectural  
Conservator

- Christine Yewaisis  
Architectural Conservator

**CONSULTANTS**

Engineering:

- James B. Huffman, P.E.  
Professional Consulting Engineer  
762 Village Road West  
Princeton Junction, New Jersey 08550

**PROJECT FUNDING**

The preparation of this Historic Site Master Plan has been made possible, in part, through the Morris County Historic Preservation Trust Fund administered by the Morris County Preservation Trust.

**CONDITIONAL STATEMENT**

The statements and opinions expressed herein are solely for the use and information of The Presbyterian Church in Morristown. The opinions reflect the professional judgment of a Registered Architect and Professional Engineers performing services that are usual and customary. These services are performed with care and skill ordinarily used by other Registered Architects and Professional Engineers when dealing with similar historic structures at the same time and in the same or similar localities. Conclusions drawn in this report are based on those conditions and surfaces that were accessible to the unaided visual observations of the Architect and Engineers. No warranties or guarantees can be inferred from, or implied by, the statements or

opinions contained in this report.

## **EXECUTIVE SUMMARY**

The Historic Site Master Plan for The Presbyterian Church in Morristown addresses the historical evolution and existing conditions of the Church on the Green (church building), Chapel, Howard House and Parish House (former South Street Presbyterian Church building). It is a preservation planning document that will serve the congregation in planning future restoration and repair work at these four distinctive buildings based on their historical significance and evolution, and their existing conditions.

The Presbyterian Church in Morristown consists of two distinct complexes. The first complex, located on the east side of the Morristown Green, consists of three buildings that stand in a row beginning from the north with the Chapel and proceeding to the south to the Church on the Green followed by the Howard House. All the buildings face the Morristown Green. An expansive burying ground sits to the east of these three buildings. The burying ground is distinctive in that it contains many eighteenth-century burials and many notable persons who had a hand in the early development of Morristown. The Chapel is the oldest of the three buildings on site and is a one-and-one-half story masonry building with a steeply pitched gable roof and one story

additions at its east end that incorporates many elements of the early Gothic Revival style in its exterior architecture. The Church on the Green, which was constructed in 1894, is an architect-designed Romanesque Revival building of light-colored limestone that is composed of a large central sanctuary space with a curved narthex wall facing the Green and a curved apse wall facing the burying ground. A four-story bell tower and vestibule arcade clip the northwest corner of the curve and a one-story corresponding vestibule arcade clips the southwest corner. The church building roof is clad with slates and is detailed with an exaggerated wood cornice with dentils. The main gable roof is punctuated by a series of dormers that bring light into the main sanctuary at the clerestory level. There is also a series of stained glass windows at the narthex and sanctuary. The Church on the Green is adjoined with the Chapel on their east sides via a one-story connector building, referred hereafter as the hyphen. The Howard House is a free-standing two-and-one-half-story limestone masonry building of the Queen Anne style. The building, a former manse, is distinctive for its varied window types, deep recessed front porch, and compact roof consisting of a series of intersecting gables punctuated by dormers with hipped and gabled roofs. The vehicle entrance to the property is to the south of the Chapel and connects with a narrow parking lot set between the buildings and the burying ground. The exit

drive is located to the south of the Howard House. The site drops precipitously to the south adjacent to the drive.

The second complex consists of the South Street Presbyterian Church, referred to as the Parish House, as well as a Sexton's cottage and a large parking lot. The South Street Presbyterian Church is the focus of this report and is a one-and-one-half-story brownstone ecclesiastic building detailed using Gothic Revival nomenclature to express its asymmetrical facade with dominant three-story tower located in its northeast corner. The main building has a steeply pitched gable roof clad with slate roofing. Two large dormers punctuate the east and west sides of the roof to add light into the almost square plan of the original sanctuary. The church has had a number of additions to its rear (west) that were constructed within the period of significance and have a similar architectural styling, massing and use of materials as the original building. The interior of the building has been modified and no longer serves as a church. Today it serves as the Parish House with offices, classrooms, meeting rooms, a gymnasium and other support facilities. As such, much of the original plan and detailing of the sanctuary has been covered by modern finishes.

The congregation has a long and complicated history that is outlined in the historical overview. In summary, The Presbyterian

Church in Morristown was established c. 1740 and the congregation grew throughout the early development of Morristown often being involved in the decision-making of its development as they owned the Green. As the congregation grew and as with other church congregations in the mid-nineteenth century, the congregation split and a Second Presbyterian Church, located on South Street, was established in 1840. Both churches grew and expanded throughout the late-nineteenth and early-twentieth-centuries and eventually rejoined in 1925. At that time, the Church on the Green remained the location for religious services while many of the support activities were located at the South Street Presbyterian Church site, making it the Parish House.

The Historic Site Master Plan summarizes the history and development of the church buildings and congregation, analyzes the overall conditions of the buildings on the exterior, and makes recommendations for repair and upgrade. The plan addresses any conditions that might threaten the structural integrity of the buildings, but also provides a broad picture of conditions and recommendations that will ensure its long-term preservation for continued and viable use as a place of worship and support facilities for the functioning of the church. The Historic Site Master Plan attempts to look at the buildings, although located on two different sites, holistically and addresses some of the use

requirements of the Parish House including barrier-free access and life-safety.

The **Introduction** identifies the need for the preparation of a Historic Site Master Plan for The Presbyterian Church in Morristown and outlines the scope of the study and the methodology for undertaking the report. It places the church and its congregation in the context of its surroundings within Morristown, a major commercial center and vibrant residential community since its origins in the early-eighteenth century.

The **Developmental History** provides a brief history of Morristown and of the church since its establishment in 1740. The report includes a summary of known changes or modifications to the buildings since their construction. All of the buildings in the study area are contributing resources within the Morristown Historic District, which is listed on the New Jersey and National Registers of Historic Places.

The **Conditions Assessment** summarizes the findings of in-field investigations of the exteriors of each building including their structural conditions and mechanical, electrical and plumbing systems where readily accessible, and finds the buildings are in overall good condition with noted areas of deterioration, particularly where the materials have reached, or are reaching, the end of their useful life. The significant architectural features are unique to

each building and are identified. Both the Church on the Green and the South Street Presbyterian Church were designed by renowned architect]. Cleveland Cady and both buildings are exemplary examples of their particular style of architecture: for the Church on the Green, the Romanesque Revival style; and for the South Street building, the Gothic Revival style. The Chapel and Howard House are also fine examples of their building types and architectural styles but are more vernacular in nature and in essence complement the more dominant Church on the Green.

A **Preservation Philosophy** has been established based on the findings of the historical overview, chronology of construction and condition assessment for each building. The preservation philosophy finds that the treatments for both church buildings, Chapel and Howard House generally fall under preservation and restoration. The restoration work should be planned, undertaken and supervised in compliance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties*.

The **Conclusions and Recommendations** draw from the evaluation of the existing conditions and the identified needs. These conclusions and recommendations are based on the information available at the time of this report, and help to form the detailed treatment plan, which is the basis for the estimates of probable cost. The conclusions generally consist

of the following:

- The building complexes are utilized year-round, and appear, overall, to be well maintained.
- The building complexes exhibit areas of wear and deterioration.
- On the exterior, the exterior stone masonry is in overall good condition and has been impacted where failures in the roofing are evident, where moisture is present, and where the paving abuts the masonry. As such, the stone masonry has isolated areas of visible deterioration including mortar loss, biological growth and limited eroded stones and displacement.
- The slate roofing shingles at the several of the buildings are nearing the end of their useful life.
- The roof flashings have reached or are nearing the end of their useful life.
- There is a mix of incompatible metals on each of the buildings.
- The gutters and leaders are in poor condition.
- The paint on all of the buildings has reached the end of its useful life.

The recommendations generally consist of the following. These are not stated in their order of priority and are not inclusive of all recommendations.

- Restore the exterior finishes and features to their period of significance, including the repair of deteriorated building fabric.

- Restore the slate roof and make necessary upgrades to the flashings and roof drainage systems.
- Undertake any necessary structural upgrades.
- Undertake any upgrades to the existing mechanical, electrical and plumbing systems.
- Undertake any upgrades for the buildings to comply with current codes, particularly for life-safety.

The **Recommendations** include phasing of the work programs in at least thirteen phases including one small phase that includes urgent work. The phases are typically broken out first by building and then arranged to address the most pressing conditions, typically beginning from the roof and working down the building. Only the initial phase proposes to address conditions at three of the four buildings within the study area and focuses on severely deteriorated chimneys. Many of the proposed larger phases can be broken down further as funding permits.

The **Recommendations** section presents a conceptual budget of approximately \$4,000,000 for construction work at both complexes, including a contingency of fifteen percent, to be undertaken in phases over a period of ten to fifteen years.

Morris County Historic Preservation Trust Fund  
**2013 CONSTRUCTION GRANT APPLICATION**

DEADLINE: FRIDAY, MARCH 29, 2013, 5:00  
P.M. E.S.T.

SUBMIT TO: MORRIS COUNTY HISTORIC  
PRESERVATION TRUST FUND  
DEPT. OF PLANNING &  
DEVELOPMENT  
PO BOX 900, MORRISTOWN, NJ  
07963-0900  
973-829-8120

Please do not attach any materials which are not expressly requested in this application as these materials will not be accepted.

Please submit two paper copies and one electronic copy for the following:

1. Application Forms
2. Proposals from Professionals, Consultants, Contractors

Please submit all electronic files on one CD/DVD, including:

1. All photos as JPEG images, minimum 200 dpi at 4"x6" (500 KB)
2. Preservation Plans and other large documentation in PDF format (with prior County approval)
3. All other supporting documentation (preferably in PDF format)

No submissions will be accepted via e-mail. Please collate all submissions. Double-sided printing is

encouraged. Paper submittals shall be bound by staple, paper clip or binder clip only. The use of binders, plastic separators, non-recyclable materials, etc. are strongly discouraged. Submittals will not be evaluated on the basis of the aesthetic of the package.

If submitting more than one application, please prioritize each project.

PLEASE BE ADVISED THAT HANDWRITTEN SUBMISSIONS OF APPLICATION WILL NOT BE ACCEPTED.

**Name of Project:** Phase I: Exterior Restoration of the Chapel

Priority: \_\_\_\_\_

(If more than one application)

### **Applicant**

1. Name: The Presbyterian Church in Morristown  
(Attachments A and C required for Charitable Conservancy)  
Street Address: 65 South Street  
Town/State/Zip: Morristown, New Jersey 07960  
Chief Executive Officer: Walter Fleischer
2. Contact Person: David B. Krimmel  
Phone: Work: 9008-581-9406  
Ext. \_\_\_ Home /Mobile: 973-598-8686  
Fax Number: 973-538-7879  
E-Mail: dbk@dbkbuilders.com
3. Relationship of applicant to historic resource:  
(Attachment B required for all applicants)  
 Applicant owns property  
 Applicant leases property. Owner's

Name: \_\_\_\_\_

If applicant is different than owner, submit copy of valid lease indicating possession and significant control over property.

[ ] Other (describe): \_\_\_\_\_

**Property**

4. Name (Historic, from NR/SR nomination: First Presbyterian Church  
Name (Present): The Presbyterian Church in Morristown  
Street Address: 57 Park Place  
Municipality: Morristown State NJ Zip 07960  
Block/Lot: Block:4901 Lot 13
5. Date Built: 1893  
Major addition(s) and date(s): \_\_\_\_\_  
Original use : Church & public functions  
Architectural style(s): Romanesque Revival  
Architect(s), if known: James Cleveland Cady  
Builder(s), if known: \_\_\_\_\_
6. Register of Historic Places Status (Insert date for all that apply; Attachment D required). Note: Preference will be given to Register-listed properties  
[X] National Register of Historic Places \_\_\_\_\_  
individual x \_\_\_\_\_ district  
[X] NJ Register of Historic Places  
\_\_\_\_\_ individual x \_\_\_\_\_ district  
[ ] Certified NJ Eligible \_\_\_\_\_ individual  
x \_\_\_\_\_ district  
[X] Locally designated \_\_\_\_\_ individual  
x \_\_\_\_\_ district  
The property is currently:

Occupied  Unoccupied

Gross square footage of the property Chapel:  
6145 heated space; 4320 basement sq. ft.

7. Describe concisely the architectural, cultural and historical significance of the property.

The Presbyterian Church in Morristown, as the town's 1st church, is one of its oldest and most influential establishments, integral in the public life of the town. The 1st edifice was built in 1740 and for a time in 1777 served as a small pox hospital for the Revolution. The current sanctuary, designed by renowned architect J. C. Cady, was built in 1893 to replace the original structure at the same location "on-the-green"; property then owned by the church and later deeded to the town. The Gothic Revival Chapel, built in 1869 along side the sanctuary also replaced an earlier constructed smaller meeting house. The last structure built at the Park Place site was a Queen Anne style manse now known as the Howard House.

8. Current physical condition of the property:

Excellent (No visible repair work needed)

Good (Need for general maintenance)

Fair (in need of more than routine maintenance)

Poor (in need of major repairs)

Describe any conditions, inappropriate use or preservation need threatening the property. If it is endangered, explain the nature of the threats.

The slate roofs at the Chapel are in poor condition and in need of replacement including upgrading of the associated masonry, gutters & leaders. The brick piers in the Chapel basement are disintegrating and there is little bearing of the wood joists at the first floor framing.

Existing Use of Site: Worship services, related functions, public concerts

Proposed Use of Site: Worship services, related functions, public concerts

Describe any impact of proposed project on existing use of site:

This Phase of construction is dedicated to eliminating moisture infiltration and halting the resulting structural deterioration. The result will historically preserve the building allowing its continued use by our congregation for worship services as well as by the community and many other outside organizations that use it on a regular basis.

Site location based on Street Map (8 1/2 x 11)

Photographs (Attachment E)

Existing Deed Restrictions: None

Encumbrance and Utility: None

Easements (if any): None

9. Stewardship: Who is responsible for budgeting, supervising and performing maintenance work?

The Buildings and Grounds Committee of the Session of The Presbyterian Church in Morristown, the Business Administrator, the sextons and volunteers are responsible, in that order, for the budgeting, supervising and performance of all maintenance.

How will the property be maintained once the funded work is complete? (Complete Attachment F if project is \$50,000 or over.)

The Session of the church establishes a budget annually for the maintenance of the buildings and grounds.

Provide the total operating budget for the property for the last three years. Include maintenance, operations, programs and special events, and staff salaries.

	2010
Total Revenues	\$1,392,929
Total Expenses	\$1,383,832

	2011
Total Revenues	\$1,304,074
Total Expenses	\$1,299,325

	2012
Total Revenues	\$1,328,289
Total Expenses	\$1,320,082

\* \* \* \*

**EXHIBIT 2:  
APPROVED PROJECT DESCRIPTION**

Grantee(s): First Presbyterian Church of New Vernon

Address: 2 Lee's Hill Road, PO Box 555, New Vernon,  
NJ 07976

Phone: (973) 538-8394

Fax: (973) 538-8394

E-Mail: donvellekamp@ymail.com

Contact Person: Don Vellekamp

Project Name: First Presbyterian Church of New  
Vernon

Project Location: 2 Lee's Hill Road

Block 49 Lot 1

Type of Application: Preservation Plan

Grant Award: \$33,566.00

Project Period: Two years from date of execution by the  
County, this date being Wednesday, September 24,  
2014

Public Access: 365 days/year at completion of project

Scope of Work:

The Scope of Work shall include all items as described  
under the proposal "Preservation Plan for First  
Presbyterian Church of New Vernon", dated Mar. 5,  
2012, as prepared by Historic Building Architects,  
submitted as part of the 2012 grant application from  
the First Presbyterian Church of New Vernon.

Morris County Historic Preservation Trust Fund  
**2014 CONSTRUCTION GRANT APPLICATION**  
DEADLINE: FRIDAY, MARCH 28, 2014, 1:00 P.M.  
E.S.T.

SUBMIT TO: MORRIS COUNTY HISTORIC  
PRESERVATION TRUST FUND  
DEPT. OF PLANNING &  
DEVELOPMENT  
PO BOX 900, MORRISTOWN, NJ  
07963-0900  
973-829-8120

Please do not attach any materials which are not expressly requested in this application as these materials will not be accepted.

Please submit two paper copies and one electronic copy for the following:

1. Application Forms
2. Proposals from Professionals, Consultants, Contractors

Please submit all electronic files on one CD/DVD, including:

1. All photos as JPEG images, minimum 200 dpi at 4"x6" (500 KB)
2. Preservation Plans and other large documentation in PDF format (with prior County approval)
3. All other supporting documentation (preferably in PDF format)

No submissions will be accepted via e-mail. Please collate all submissions. Double-sided printing is

encouraged. Paper submittals shall be bound by staple, paper clip or binder clip only. The use of binders, plastic separators, non-recyclable materials, etc. are strongly discouraged. Submittals will not be evaluated on the basis of the aesthetic of the package.

If submitting more than one application, please prioritize each project.

PLEASE BE ADVISED THAT HANDWRITTEN SUBMISSIONS OF APPLICATION WILL NOT BE ACCEPTED.

**Name of Project:** Phase I: Exterior Restoration of the Chapel

Priority: \_\_\_\_\_ (If more than one application)

**Applicant**

1. Name: St. Peter's Episcopal Church  
(Attachments A and C required for Charitable Conservancy)  
Street Address: 70 Maple Ave.  
Town/State/Zip: Morristown, New Jersey 07960  
Chief Executive Officer: Rev. Janet Broderick
2. Contact Person: Dee Klikier  
Phone: Work: 973-538-0555  
Ext. 11 Home /Mobile: 908-507-7284 (cell)  
Fax Number: 973-538-7790  
E-Mail: dklikier@stpetersmorristown.org
3. Relationship of applicant to historic resource:  
(Attachment B required for all applicants)  
 Applicant owns property  
 Applicant leases property. Owner's  
Name: \_\_\_\_\_  
If applicant is different than owner, submit  
copy of valid lease indicating possession and

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significant control over property.

Other (describe): \_\_\_\_\_

**Property**

4. Name (Historic, from NR/SR nomination):  
St. Peter's Church

Name (Present): St. Peter's Church

Street Address:

Municipality: Morristown State NJ Zip 07960

Block/Lot: Block:6204 Lot 12

5. Date Built: 1887-1909

Major addition(s) and date(s): Sacriety 1947

Original use : Church

Architectural style(s): Gothic revival

Architect(s), if known: McKim, Mead and White

Builder(s), if known: Sturgis Bros., Morristown  
(Tower

6. Register of Historic Places Status (Insert date for all that apply; Attachment D required). Note: Preference will be given to Register-listed properties

National Register of Historic Places \_\_\_\_\_  
individual x \_\_\_\_\_ district

NJ Register of Historic Places \_\_\_\_\_  
individual x \_\_\_\_\_ district

Certified NJ Eligible \_\_\_\_\_  
individual \_\_\_\_\_ district

Locally designated \_\_\_\_\_  
individual \_\_\_\_\_ district

The property is currently:

Occupied  Unoccupied

Gross square footage of the property Church

21,000/tower (say) 2,509 sq. ft.

7. Describe concisely the architectural, cultural and historical significance of the property.

The Church is an important example of Gothic Revival architecture. It was designed by McKim, Mead and White at the peak of their prominence. The firm also supervised its construction over the period of 1887-1908. The campus of the church, Rectory and Parish hall are all built of ashlar granite. Together they make a complex of notably integrated design and visual impact and are a key element of the Morristown Historic District.

The church contains some rare early Tiffany glass, and a working manual carillon. Installed in 1924. The fence round the property is believed to contain some iron bars from the Speedwell Iron Foundry installed around the property in 1844.

8. Current physical condition of the property:

Excellent (No visible repair work needed)

Good (Need for general maintenance)

Fair (in need of more than routine maintenance)

Poor (in need of major repairs)

Describe any conditions, inappropriate use or preservation need threatening the property. If it is endangered, explain the nature of the threats.

The preservation work done in 2013-4 addressed water intrusion problems at the top

of the tower that threatened its structural integrity. This phase will complete the work by removing interior impermeable parging (concrete skim coat) which holds the water inside the tower walls.

Existing Use of Site: Church  
worship/community space

Proposed Use of Site: Church  
worship/community space

Describe any impact of proposed project on existing use of site:

This Phase of construction is dedicated to eliminating moisture infiltration and halting the resulting structural deterioration. The result will historically preserve the building allowing its continued use by our congregation for worship services as well as by the community and many other outside organizations that use it on a regular basis.

Site location based on Street Map (8 1/2 x 11)

Photographs (Attachment E)

Existing Deed Restrictions: None known

Encumbrance and Utility: None known

Easements (if any): None known

9. Stewardship: Who is responsible for budgeting, supervising and performing maintenance work?

The wardens and Vestry of St. Peter's Church

How will the property be maintained once

the funded work is complete? (Complete Attachment F if project is \$50,000 or over.)

Provide the total operating budget for the property for the last three years. Include maintenance, operations, programs and special events, and staff salaries.

	2011
Total Revenues	\$937,967
Total Expenses	\$1,006,464

	2012
Total Revenues	\$929,642
Total Expenses	\$1,005,874

	2013
Total Revenues	\$976,801
Total Expenses	\$977,503

\* \* \* \*

Morris County Historic Preservation Trust Fund  
**2013 CONSTRUCTION GRANT APPLICATION**  
DEADLINE: FRIDAY, MARCH 29, 2013, 5:00 P.M.  
E.S.T.

SUBMIT TO: MORRIS COUNTY HISTORIC  
PRESERVATION TRUST FUND  
DEPT. OF PLANNING &  
DEVELOPMENT  
PO BOX 900, MORRISTOWN, NJ  
07963-0900  
973-829-8120

Please do not attach any materials which are not expressly requested in this application as these materials will not be accepted.

Please submit two paper copies and one electronic copy for the following:

1. Application Forms
2. Proposals from Professionals, Consultants, Contractors

Please submit all electronic files on one CD/DVD, including:

1. All photos as JPEG images, minimum 200 dpi at 4"x6" (500 KB)
2. Preservation Plans and other large documentation in PDF format (with prior County approval)
3. All other supporting documentation (preferably in PDF format)

No submissions will be accepted via e-mail. Please collate all submissions. Double-sided printing is

encouraged. Paper submittals shall be bound by staple, paper clip or binder clip only. The use of binders, plastic separators, non-recyclable materials, etc. are strongly discouraged. Submittals will not be evaluated on the basis of the aesthetic of the package.

If submitting more than one application, please prioritize each project.

PLEASE BE ADVISED THAT HANDWRITTEN SUBMISSIONS OF APPLICATION WILL NOT BE ACCEPTED.

**Name of Project:** First Reformed Church of Pompton Plains – Church Bldg

Priority: Second (If more than one application)

**Applicant**

1. Name: The First Reformed Church of Pompton Plains  
(Attachments A and C required for Charitable Conservancy)  
Street Address: 529 Newark-Pompton Turnpike  
Town/State/Zip: Pompton Plains, New Jersey 07444  
Chief Executive Officer: Kathleen Edwards-Chase, Lead Pastor
2. Contact Person: Frank X. Chara, Director of Operations  
Phone: Work: 973-835-1144  
Ext.16 Home /Mobile: 973-476-2643  
Fax Number: 973-835-0566  
E-Mail: frcfrank@optonline.net
3. Relationship of applicant to historic resource:  
(Attachment B required for all applicants)  
 Applicant owns property

Applicant leases property. Owner's Name: \_\_\_\_\_

If applicant is different than owner, submit copy of valid lease indicating possession and significant control over property.

Other (describe): \_\_\_\_\_

**Property**

- 4. Name (Historic, from NR/SR nomination: First Reformed Church of Pompton Plains  
Name (Present): First Reformed Church of Pompton Plains  
Street Address: 529 Newark-Pompton Turnpike  
Municipality: Pequannock Township State NJ  
Zip 07444  
Block/Lot: Block:2201 Lot 13
- 5. Date Built: 1771  
Major addition(s) and date(s):1813, 1871, 1939  
(largely rebuilt after fire)  
Original use: Religious  
Architectural style(s): Wren-Gibbs Colonial  
Architect(s), if known: Hobart B. Upjohn (1939 reconstruction)  
Builder(s), if known: \_\_\_\_\_
- 6. Register of Historic Places Status (Insert date for all that apply; Attachment D required).  
Note: Preference will be given to Register-listed properties  
 National Register of Historic Places  
12/12/2012  
\_\_\_\_\_ individual x \_\_\_\_\_ district  
 NJ Register of Historic Places 10/10/2012  
individual x \_\_\_\_\_ district  
 Certified NJ Eligible \_\_\_\_\_

158a

individual x \_\_\_\_\_ district

Locally designated \_\_\_\_\_ individual  
\_\_\_\_\_ district

The property is currently:

Occupied  Unoccupied

Gross square footage of the property 4,355 sq.  
ft.

7. Describe concisely the architectural, cultural and historical significance of the property.

The First Reformed Church of Pompton Plains, inclusive of the church building; Grace Chapel; the Giles Mandeville House; and the cemetery, is one of Pompton Plains most visible landmarks and continues to reflect the influence and religious traditions of the region's early Dutch settlers. The church building was constructed in 1771, expanded in 1813 and 1871, and largely rebuilt in 1939 after a devastating fire. It is a fine example of a Colonial church that utilizes the Wren-Gibbs form.

\* \* \* \*

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**Name of Project:** Parish House: Phase 1B Exterior Restoration

Priority: \_\_\_\_\_ (If more than one application)

**Applicant**

1. Name: Church of the Redeemer  
(Attachments A and C required for Charitable Conservancy)  
Street Address: 36 South Street  
Town/State/Zip: Morristown, New Jersey 07960  
Chief Executive Officer: The Rev. Cynthia Black, D.D.
2. Contact Person: Wayne Walton  
Phone: Work: 908-903-3088  
Ext.\_\_\_\_ Home /Mobile: 9082229106  
Fax Number: \_\_\_\_\_  
E-Mail: wwalton@chubb.com;  
wrusswalt@verizon.net
3. Relationship of applicant to historic resource:  
(Attachment B required for all applicants)  
 Applicant owns property  
 Applicant leases property. Owner's  
Name: \_\_\_\_\_  
If applicant is different than owner, submit

copy of valid lease indicating possession and significant control over property.

[ ] Other (describe): \_\_\_\_\_

**Property**

4. Name (Historic, from NR/SR nomination:

Church of the Redeemer

Name (Present): Church of the Redeemer

Street Address: 36 South Street

Municipality: Morristown State NJ Zip 07960

Block/Lot: Block:220 Lot 14 and 15

5. Date Built: 1927

Major addition(s) and date(s): \_\_\_\_\_

Original use: Parish House of Episcopal Church

Architectural style(s): Gothic Revival

Architect(s), if known: Wesley S. Bessell

Builder(s), if known:

\_\_\_\_\_

6. Register of Historic Places Status (Insert date for all that apply; Attachment D required).

Note: Preference will be given to Register-listed properties

[X] National Register of Historic Places \_\_\_\_\_  
individual x \_\_\_\_\_ district

[X] NJ Register of Historic Places \_\_\_\_\_  
individual x \_\_\_\_\_ district

[ ] Certified NJ Eligible

\_\_\_\_\_  
individual \_\_\_\_\_ district

[ ] Locally designated

\_\_\_\_\_  
individual \_\_\_\_\_ district

The property is currently:

Occupied [ ] Unoccupied

Gross square footage of the property estimated  
10,000 plus Parish House only sq. ft.

7. Describe concisely the architectural, cultural and historical significance of the property.

The Parish House is an architect-designed edifice that utilized the collegiate-influenced Gothic Revival style of architecture. The granite stone building was designed to be sympathetic with the more dominant Church Building of the Church of the Redeemer. The Parish House employed the latest construction technologies being widely used in the early 20th century, such as structural steel, terra cotta, and steel windows, in its traditional design. The Parish House is significant due to its association with the growth and development of Morristown. The Parish House is recognized a contributing resource in the Morristown Historic District and has since its construction served as a much visited community center.

8. Current physical condition of the property:

[ ] Excellent (No visible repair work needed)

[ ] Good (Need for general maintenance)

Fair (in need of more than routine maintenance)

[ ] Poor (in need of major repairs)

Describe any conditions, inappropriate use or preservation need threatening the property. If it is endangered, explain the nature of the threats.

The slate roofs at the Chapel are in poor condition and in need of replacement including upgrading of the associated masonry, gutters & leaders. The brick piers in the Chapel basement are disintegrating and there is little bearing of the wood joists at the first floor framing.

Existing Use of Site: Parish House of Church/Community Center

Proposed Use of Site: Parish House of Church/Community Center

Describe any impact of proposed project on existing use of site:

This Phase of construction is dedicated to eliminating moisture infiltration and halting the resulting structural deterioration. The result will historically preserve the building allowing its continued use by our congregation for worship services as well as by the community and many other outside organizations that use it on a regular basis.

Site location based on Street Map (8 1/2 x 11)

Photographs (Attachment E)

Existing Deed Restrictions: None

Encumbrance and Utility: Utility

Easements (if any): None

9. Stewardship: Who is responsible for budgeting, supervising and performing maintenance work?

Maintenance comes from the Church's annual budget. The Church's Building Committee has

overall responsibility for restoration projects and maintenance. On larger projects independent professions are retained to inspect and approve the work of outside contractors.

How will the property be maintained once the funded work is complete? (Complete Attachment F if project is \$50,000 or over.)

The Parish House will continue to be maintained by funds contributed by parishioners and by other gifts and grants as they may be received.

Provide the total operating budget for the property for the last three years. Include maintenance, operations, programs and special events, and staff salaries.

	2010
Total Revenues	\$398,063
Total Expenses	\$403,712

	2011
Total Revenues	\$391,560
Total Expenses	\$417,120

	2012
Total Revenues	\$364,504
Total Expenses	\$380,782

\* \* \* \*

CONSTRUCTION DOCUMENTS GRANT  
Budget Summary

Figures must match totals from Budget Table #18.

10. Total Project Cost:	<u>\$367,263</u>
Match:	<u>\$293,810</u>
Grant Request:	<u>\$73,453</u>
Anticipated construction cost:	<u>\$367,263</u>

Project Concept

11. Project Profile

The Morris County Historic Preservation Trust Fund Review Board gives strong preference to those projects for which an approved preservation planning document has been prepared prior to requesting funding for the preparation of Construction Documents or request for construction funding. Please contact the Trust Fund Coordinator to discuss the specific needs of your site.

Based on a:

Preservation Plan

Prepared by Connolly & Hickey f/k/a  
HJGA Consulting Date Jan 2010

Schematic design/design development

Prepared by \_\_\_\_\_ Date \_\_\_\_\_

Other Study (identify) \_\_\_\_\_

Prepared by \_\_\_\_\_ Date \_\_\_\_\_

The predominant treatment(s) in this project  
(Refer to "Eligible Activities" listed in the Grant

Rules and Regulations; Check the one that best characterizes the project):

Exterior

Preservation  Restoration

Rehabilitation  Stabilization  No exterior work

Interior

Preservation  Restoration

Rehabilitation  Stabilization  No interior work

The current project design status is (check all that apply):

Scope of work

Prepared by \_\_\_\_\_ Date \_\_\_\_

Schematic design/design development

Prepared by \_\_\_\_\_ Date \_\_\_\_

Final construction documents

Prepared by Connolly & Hickey Historical Architects Date March 23, 2013

12. Describe the research, investigation and planning you have completed that substantiates the preservation objectives of the project. (attachment G)

An Historic Preservation Plan was obtained from approved preservation architects. The architects prepared plans and drawings for the exterior restoration with partial funding from a MCHPTF grant. Next, work, was accomplished in phases pursuant to the approved plans and

drawings, remedying pressing preservation needs of the building as Church and grant funding became available. This grant application for Phase 1 B work aims to complete the remaining necessary work on the Parish House exterior in Phase One of the building restoration (which is essentially restoring the entire exterior except for restoration of the slate roof).

13. Describe the goals of the project. What are the problems and needs of the resource that you will address in your project?

Goals: (1) To complete the last phase of the Parish House exterior restoration Phase One; (2) Remedy deterioration on three facades of the building and put these facades back to original appearance.

Problems addressed in this phase: Remedy structural issues by restoring granite and terra cotta masonry and restore metal windows.

#### Scope of Work

14. Describe concisely the scope of work proposed in this grant request. For non-construction aspects of the work, list task and include a copy of a fee proposal on consultant's and each sub-consultant's letterhead that clearly identifies each task to be completed by each firm. (Professional fees under \$5,000 can be described in the principal consultant's proposal). Also include Attachment H and completed Professional Services Checklist (Policy H-1).

Please Note: Applicants are encouraged to

break-down scope of work to identify prioritized and phased implementation to accommodate reduced available construction funding.

The focus of Phase 1 B of the Parish House is to complete the exterior restoration work at the south, east, and north elevation including: terra cotta and granite masonry; repair and replacement of deteriorated steel lintels; repair and restoration of metal windows; and miscellaneous other repairs per the drawings and technical specifications prepared for the project.

15. Provide projected dates (month and year) for each task. e.g. 09/13.

Note: No grant-funded activities may commence prior to the execution of a grant agreement. Any work completed prior to the agreement, including professional services, will be ineligible for reimbursement from the Morris County HP Trust Fund.

Done Complete planning/pre-design

\_\_\_\_\_ Bid opening

Done Complete design

10/13 Start construction

Done Identify qualified contractors

09/14 Complete construction

#### Project Team

16. Name(s) of proposed consultant(s) or contractor(s). Attach statement of credentials for each proposed firm and key personnel.

Include Attachment H and completed Professional Services Checklist (Policy H-1).

Note: Applicants are encouraged to meet The Secretary of the Interior's Historic Preservation Professional Qualification Standards (available under Application link on the Morris County Historic Preservation Trust Fund web site) for their related discipline. If the principal team leader does not meet the requirements as outlined above, include an explanation as to why the selected principal consultant is well suited for the project.

Connolly & Hickey Historical Architects-Consultant

17. Name and date of firm or individual providing cost estimates.

Note: Non-profit organizations with construction grant requests exceeding \$50,000 must have obtained professional costs estimates from an independent; New Jersey certified cost estimator based upon Construction Documents before they are eligible to apply for funding towards the actual construction.

Architect: Connolly & Hickey Historical Architects

Engineer: \_\_\_\_\_

Contractor(s): \_\_\_\_\_

Independent Cost Estimator: \_\_\_\_\_

Other (identify profession): \_\_\_\_\_

Cost estimates for proposed construction work are based on (check one that best applies):

Contractor's proposal

Preliminary/ballpark estimates based on design professional's opinion of cost (Not recommended)

Quantity takeoffs from measured drawings by New Jersey certified cost estimator (required for projects over \$50,000)

Competitive bids based on construction documents (a minimum of 3 competitive bids are required for all funded applications whose anticipated budget exceeds \$50,000)

Is the preparer of the cost estimate a NJ certified professional estimator?

Yes  No

Does the estimator include escalation that anticipates the date of construction?

Yes  No

Budget

18. Grant Project Budget (Please round up numbers.)

This grant project includes work on:

a single structure  Multiple structures

If more than one structure, prepare the separate Project Budget page for other structure(s).

Name of structure/Priority of work: Parish House of Church of the Redeemer Ph1B

Note: All costs must be escalated to assume Grant Agreement execution by October 1st with

construction activities for most projects beginning the following spring. Budgets for all work must correlate with submitted cost estimates. For grant requests of more than \$150,000, provide breakdown / priority for each area including professional services, exterior work, etc. Use multiple Project Budget pages to describe priorities as necessary for clarity.

#### I. Professional Services

Activity	Total	Local Match	Grant
Bidding/Negotiations	\$	\$	\$
Construction Administration			
Archaeology			
Subtotal, Professional Services	\$	\$	\$

#### II. General Conditions/Mobilization/Project Close-out

Activity	Total	Local Match	Grant
General Conditions	\$48,500.00	\$9,700.00	\$38,800.00
Temporary Facilities	\$2,200.00	\$440.00	\$1,760.00
Building	\$12,600.00	\$2,520.00	\$10,080.00

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Access	0		0
Subtotal	\$63,300.0	\$12,660.0	\$50,640.0
, General Condi- tions	0	0	0

III. Construction: Exterior

Activity	Total	Local Match	Grant
Masonry	\$93,300.00	\$18,660.00	\$74,640.00
Demolition, Metals	\$10,050.00	\$2,010.00	\$8,040.00
Car-pentry/Mois- ture Protec- tion	\$11,675.00	\$2,335.00	\$9,340.00
Doors & windows	\$178,853.00	\$35,770.00	\$143,083.00
Remainder	\$10,085.00	\$2,017.00	\$8,068.00
Subtotal, Construc- tion: Exte- rior	\$303,963.00	\$60,792.00	\$243,171.00

IV. Construction: Interior

Activity	Total	Local Match	Grant
----------	-------	-------------	-------

	\$	\$	\$
Subtotal, Construc- tion: Inter- ior	\$	\$	\$
Grand To- tal Eligi- ble Costs (I+II+III+ IV)	\$367,263. 00	\$73,452. 00	\$293,811. 00

19. Cash-in-hand matching funds: Itemize and describe the source and status of funds that will be used to match the County grant requested, indicate under “status” the date the funds were received or are expected. (Attachment J must contain letters of commitment for any funds not yet on deposit in your account.)

Source of Funds	Status	Amount
Church of the Redeemer, Capital Campaign	On hand	\$73,452.00

		Total
--	--	-------

20. If adequate matching funds are not currently available, explain your plans and schedule for raising the matching funds.

Public Benefit

21. Public access to the property:

	Current	At end of Project
Open to the public	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Open to the public on a regular basis- # Days/yr	365	365
Open to the public on a regular basis - # hrs/day	365	365
Open by appointment only	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no
Number of visitors per years	Over 60,000	Over 60,000
How was this number calculated?	<input checked="" type="checkbox"/> actual <input type="checkbox"/> estimated	Source of count: soup kitchen-actual, church & outside

		est.
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22. Please provide any additional information helpful for review, including interpretive program, innovative design; how project achieves local community revitalization, preservation of the built or natural environment, heritage education, tourism; how project promotes preservation activity and reach new audiences.

The historic stone Parish House serves as a community center available for service to the needy and hungry of Greater Morristown. The Church uses its Parish House as a living resource for the community. Restoration of this attractive historic building near the Morristown Green will promote historic preservation activity in the area.

23. Accessibility

Is the property compliant with the American Disabilities Act?  yes [ ] No

If not, when will your organization conduct an "ADA Self-Assessment Survey and Planning Tool"?

Month / Year \_\_\_\_\_

How does the facility currently accommodate individuals with disabilities? Will accommodations be improved following the proposed project?

Yes. No improvement with this project. Current accommodations are: (1) A ramp into the building (used by Community Soup Kitchen guests with mobility issues) In 2013 additional handrails will be installed on the handicapped

ramp. (2) Barrier free bathrooms are on the 1st floor.

The applicant certifies the following:

- a. The filing of this application has been approved by the governing body of the applicant;
- b. The facts, figures, and information contained in this application, including all attachments, are true and correct;
- c. Matching funds in the amount of \$73,452.00 are currently available, or will be available by \_\_\_\_\_ (date) for this project;
- d. Any funds received will be expended in accordance with the grant agreement to be executed with the Morris County Historic Preservation Trust Fund;
- e. The individual signing this agreements has been authorized by the organization to do so in its behalf, and by his/her signature binds the organization to the statements and representations contained in the application;

Acting as a duly authorized representative for the applicant organization, I am submitting this request for assistance from the Morris County Historic Preservation Trust Fund.

Name: Wayne R. Walton

Title: Warden, Church of the Redeemer

Signature of Individual Wayne R. Walton

Date March 27, 2013

CHARITABLE CONSERVANCY – Attachment A  
Organization Information

Please submit a copy of each of the following:

- The organization's by-laws
- Proof qualification as an eligible charitable conservancy
- Most recent financial audit
- 1. Date of incorporation 1854
- 2. Estimated membership 300
- 3. Number of staff 1 full-time paid 3 part-time paid
- 4. Volunteers:    full-time paid    part-time paid
- 5. State the mission of your organization.

An Episcopal church with a strong outreach commitment that welcomes everyone.

Project Specific Information

- 6. Briefly describe why it is important to preserve this resource and how the resource fits into your organization's mission. (Attachment J)

Preserving the stone collegiate-style Gothic Revival Parish House, which complements the Church Building of Church of the Redeemer, will assure that a fine example of early 20th century ecclesiastical architecture remains a resource for future generations. A well-preserved building will enhance the Morristown Green/ South

Street neighborhood. The building is an essential resource for the Church's outreach activities to the community. The Church shares the Parish House with the Community Soup Kitchen and Outreach Center, an ecumenical organization, that serves meals to the hungry and needy 6 days a week year-round in the space.

7. Explain what would happen to the resource if the charitable conservancy ceased to exist? Church of the Redeemer is subject to the canons of the national Episcopal Church and the Episcopal Diocese of Newark. Should the Church of the Redeemer cease to exist as a congregation, all assets of Church of the Redeemer, including its buildings, revert to the Episcopal Diocese of Newark.

\* An eligible charitable conservancy is a corporation or trust whose purpose includes historic preservation of historic properties, structures, facilities, sites, areas or objects, or the acquisition of such properties, structures, facilities, sites, areas or objects for historic preservation purposes. Conservancy is exempt from federal income taxation under paragraph (3) of subsection (c) of section 501 of the Federal Internal Revenue Code of 1986 (26 U.S.C. s.501(c)(3)).

## **Strategic Plan for Church of the Redeemer 2009**

### **Who Are We?**

#### **Vision and Mission**

The Church of the Redeemer has a long history in the town of Morristown and has dedicated itself to providing care and attention to all its neighbors. A diverse and welcoming community, its 350 families have committed to living out the Gospel mandate to love and respect the dignity of every human being. This is reflected in the Vision statement of their purpose as a community that reads; “The Church of the Redeemer is a Christian Liberation Community in the Episcopal tradition. We experience God, the sacred, the Spirit, primarily within those actions and events that liberate people from that which prevents them from reflecting their dignity and value as daughters and sons of God. Building on our valued Christian and Episcopal roots, this parish is actively creating a contemporary model of what it means to be a community of faith. “

This vision is the over arching principle that guides this “Liberation Community in the Episcopal tradition “ as they pursue their mission in the world. Everything done through worship, ministries, education programs, and business affairs is guided by this vision. In its 157-year history, the Church of the Redeemer has opened its doors and hearts to those who are in need within their own town and beyond. Then generosity of spirit and resources has extended as far as Cameroon Africa, where they actively support an orphanage and a primary school named “The Redeemer School” in their honor.

**How Is this Mission and Vision Lived Out?**

The core values of love, respect, inclusively, justice and radical hospitality are reflected in the very rich and active ministries that are flourishing at Redeemer. For example, over 30,000 meals are served annually to the hungry in the Community Soup kitchen housed in the historic Parish Hall. Additionally, The Literacy Volunteer Program of Morristown also has its home in the Redeemer Parish Hall. This year alone five hundred people have been screened and assisted in the learning of English and writing skills. Three hundred volunteers help individuals from the United States and abroad to improve their English, and to assist them in their job seeking skills Programs such as AA and NA actively utilize Parish House facilities in order to support those who are struggling with their addictions. Also, as part of the church's participation in the interfaith Hospitality Network, four weeks a year the Parish House is converted into housing for families without homes.

And last, but not least, is the Eric Johnson House that occupies the former rectory. As a liberation community committed to justice, in 1993 the Redeemer community responded to the AIDS crisis and created the Eric Johnson House for people living with AIDS. This home provides comfort, housing, medical and psychosocial support, and dignity for ten full time residents.

**What Lies Ahead?**

As Redeemer prepares to redefine themselves and their community with the calling of a new Rector, these existing ministries are the inspiration and the moral true north for their planning. Paramount to

their strategic plan is to continue to support, maintain and grow these ministries. Additionally, their plan acknowledges that the church and the community must continue to expand and attract more members to the church. In planning for the future, they have identified one area of growth as that related to families and children.

A major commitment has been made to support the Youth Education program that currently provides Christian education for school age children. In order to attract more families and to accommodate those presently in the community, the Church has committed to a very ambitious Capital Campaign. This campaign has already realized a commitment of close to 1 million dollars from the Parish community. The focus of this campaign will be to improve overburdened facilities, address much needed deferred maintenance issues, and to create a new and inviting educational center that is both code compliant and handicap accessible.

Additionally, the needs of teenagers and preteens are of paramount importance. Two Youth groups consisting of 16 children meet biweekly in the Parish Hall. Participants are part of a sacred listening space where they are able to explore their thoughts and feelings about issues facing them and the world. We have provided designated space in our basement levels for these programs, but they are woefully inadequate due to the dingy surroundings and water damaged facilities

However, there is terrific potential here for the creation of community space for children inside and outside the church community. There exists a full size gymnasium in the Parish Hall that historically housed

a flourishing community center in the 1930's through the 1960's: The possibilities for this area abound if the issues of drainage and damage to the foundation of the building can be addressed. As part of our strategic plan we hope to renovate and improve this area so that it can become a drop in center for our teens.

As we move ahead in our planning, it is not unreasonable to imagine a collaborative ministry between a church sponsored teen center, the Community Soup Kitchen and the Literacy Volunteer Program. An after school homework club housed in the Parish Hall that would assist "latch key" children in their schoolwork has been discussed. In discussions with The Community Soup kitchen they have expressed great interest in this idea. They see it as an opportunity to be able to expand their daily lunch program and to include dinners served to needy children and their families.

This is just one vision of how we can proceed forward in our planning. The possibilities for programs that benefit the church and the community housed out of Church of the Redeemer buildings are extraordinary. However, the demands of all of the existing ministries have taken a heavy toll on the condition of our buildings. In order for Redeemer to grow and to continue to support existing ministries, major renovation and financial resources have to be redirected to all of these facilities.

All of the ministries at Redeemer have blossomed over time to address growing social needs. There currently exist many other ministries in our church such as the Green Environmental Group, the Peace Ministry and a burgeoning ministry to our elderly and retired community members. The only factor that

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hinders their expansion is adequate and healthy space  
and imagination.

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**2014 CONSTRUCTION GRANT APPLICATION**  
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E.S.T.

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Name of Project: Exterior Restoration (Roof), Church Building

Priority: \_\_\_\_\_ (If more than one application)

Applicant

1. Name: Church of the Redeemer  
(Attachments A and C required for Charitable Conservancy)  
Street Address: 36 South Street  
Town/State/Zip: Morristown, New Jersey 07960  
Chief Executive Officer: The Rev. Cynthia Black, D.D.
2. Contact Person: Wayne Walton  
Phone: Work: 9089033088  
Ext. \_\_\_ Home /Mobile: 9082229106  
Fax Number: \_\_\_\_\_  
E-Mail: walton@chubb.com;  
wrussalt@verizon.net
3. Relationship of applicant to historic resource:  
(Attachment B required for all applicants)  
 Applicant owns property  
 Applicant leases property. Owner's

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Name: \_\_\_\_\_

If applicant is different than owner, submit copy of valid lease indicating possession and significant control over property.

[ ] Other (describe): \_\_\_\_\_

Property

4. Name (Historic, from NR/SR nomination: Church of the Redeemer  
Name (Present): Church of the Redeemer  
Street Address: 36 South Street  
Municipality: Morristown State NJ Zip 07960  
Block/Lot: Block: 220 Lot 14 and 15
5. Date Built: 1917  
Major addition(s) and date(s): None  
Original use: Church  
Architectural style(s): Gothic Revival  
Architect(s), if known: Parish & Schroeder  
Builder(s), if known:  
\_\_\_\_\_
6. Register of Historic Places Status (Insert date for all that apply; Attachment D required).  
Note: Preference will be given to Register-listed properties  
[X] National Register of Historic Places \_\_\_\_\_  
individual x \_\_\_\_\_ district  
[X] NJ Register of Historic Places \_\_\_\_\_  
individual \_\_\_\_\_ district  
[X] Certified NJ Eligible x \_\_\_\_\_  
individual \_\_\_\_\_ district  
[X] Locally designated  
\_\_\_\_\_  
individual x \_\_\_\_\_ district

The property is currently:

Occupied  Unoccupied

Gross square footage of the property 7000 sq. ft.

- 7 Describe concisely the architectural, cultural and historical significance of the property.

The Church Building is a fine example of the Gothic Revival style of the early 20th century. The ecclesiastical building uses many of the key architectural elements of its style including its overall form and massing, detailing in stone, with two types of stone delineating the body of the building, the use of a distinctive rose window, the use of tracery and stained glass windows to emphasize the fenestration, the distinctive and impressive bell tower. The Church is significant due to its association with the growth and development of Morristown.

8. Current physical condition of the property:

Excellent (No visible repair work needed)

Good (Need for general maintenance)

Fair (in need of more than routine maintenance)

Poor (in need of major repairs)

Describe any conditions, inappropriate use or preservation need threatening the property. If it is endangered, explain the nature of the threats.

The 95 year old slate roof leaks (constant repairs) impacting the interior of the building and staining the interior stone walls. The

Preservation Plan for the Church Building (Jan 2010) identified the roof replacement as the priority need project.

Existing Use of Site: Church

Proposed Use of Site: Church

Describe any impact of proposed project on existing use of site:

The impact of restoring the large slate roof and tower is entirely positive. It will restore a key structural element that has failed and assist in assuring that the building can continue in its existing use as a church and as an important building in Morristown.

Site location based on Street Map (8 1/2 x 11)

Photographs (Attachment E)

Existing Deed Restrictions: None

Encumbrance and Utility: None

Easements (if any): None

9. Stewardship: Who is responsible for budgeting, supervising and performing maintenance work?

The Wardens and Vestry establish an annual budget that includes building maintenance. Three Vestry members prioritize non-routine maintenance work and select outside contractors. Outside professionals inspect and approve work on major projects.

How will the property be maintained once the funded work is complete? (Complete Attachment F if project is \$50,000 or over.)

The Church Building will continue to be maintained by funds contributed by parishioners and by other gifts and grants as they are received.

Provide the total operating budget for the property for the last three years. Include maintenance, operations, programs and special events, and staff salaries.

	2011
Total Revenues	\$385,181
Total Expenses	\$421,202
INVESTMENT	(\$421,202)

	2012
Total Revenues	\$388,021
Total Expenses	\$391,453
INVESTMENT	\$20,919

	2013
Total Revenues	\$348,527
Total Expenses	\$363,103
INVESTMENT	\$37,149

Figures do not include Capital Campaign, Memorial or Designated offerings, and Vision Endowment Income and Expense.

\* \* \* \*

**United States Department of the Interior  
National Park Service**

**National Register of Historic Places  
Registration Form**

This form is for use in nominating or requesting determinations of eligibility for individual properties or districts. See instructions in *How to Complete the National Register of Historic Places Registration Form* (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If an item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials and areas of significance, enter only categories and subcategories listed in the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

**1. Name of Property**

Historic name The Community of St. John Baptist  
other names/site number \_\_\_\_\_

**2. Location**

Street & number 82 West Main Street [ ] not for  
publication  
City or town Mendham [ ] vicinity  
State New Jersey code NJ county Morris code \_\_\_\_\_  
zip code 07943

**3. State/Federal Agency Certification**

As the designated authority under the National Historic Preservation Act, as amended, I certify that this  nomination  request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property  meets  does not meet the National Register criteria. I recommend that this property be considered significant  nationally  statewide  locally. See continuation sheet for additional comments.

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Signature of certifying official/Title      Date

---

State or Federal agency and bureau

In my opinion, the property  meets  does not meet the National Register criteria.  see continuation sheet for additional comments.

---

Signature of Certifying official/Title      Date

---

State    or    Federal    agency    and    bureau

**4. National Park Service Certification**

I hereby certify that this property is:  
 entered in the National Register  
 see continuation sheet  
 determined eligible for the National Register.

- see continuation sheet
- determined eligible for the National Register
- removed from the National Register
- other, (explain)

The Community of St. John the Baptist

Name of Property

Morris County, NJ

County and State

**5. Classification**

**Ownership of Property**

(Check as many boxes as apply)

- private
- public-local
- public-State
- public-Federal

**Category of Property**

(Check only one box)

- building(s)
- district
- site
- structure
- object

**Number of Resources within Property**

(Do not include previously listed resources in the count.)

Buildings: Contributing: 3 Noncontributing:

Sites: Contributing: 2 Noncontributing:

Structures: Contributing: Noncontributing:

Objects: Contributing: Noncontributing:

Total: Contributing: 5 Noncontributing:

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Name of related multiple property listing  
(Enter "N/A" if property is not part of a multiple  
property listing.)

N/A

Number of contributing resources previously listed  
in the National Register:

0

**6. Function or Use**

**Historic Functions**

(Enter categories from instructions)

DOMESTIC/institutional housing

FUNERARY/cemetery

RELIGION/church-related residence

LANDSCAPE/garden

**Current Functions**

(Enter categories from instructions)

DOMESTIC/institutional housing

FUNERARY/cemetery

RELIGION/church-related residence

LANDSCAPE/garden

**7. Description**

**Architectural Classification**

(Enter categories from instructions)

Tudor Revival

French Eclectic

**Materials**

(Enter categories from instructions)

Foundation Concrete

Walls Stucco, Brick

Roof Ceramic Tile

Other \_\_\_\_\_

**Narrative Description**

(Describe the historic and current condition of the property on one or more continuation sheets.)

The Community of St. John the Baptist  
Name of Property

Morris County, NJ  
County and State

**8. Statement of Significance**

Applicable National Register Criteria

(mark "x" in one or more boxes for the criteria qualifying the property for National Register listing.)

A. Property is associated with events that have made a significant contribution to the broad patterns of our history.

B. Property is associated with the lives of persons significant in our past.

C. Property embodies the distinctive characteristics of a type, period or method of construction or represents the work of a master, or possesses high artistic values, or represents as significant and distinguishable entity whose components lack individual distinction.

D. Property has yielded, or is likely to yield, information important in prehistory or history.

Criteria considerations

(mark "x" in all the boxes that apply.)

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Property is:

A. owned by a religious institution or used for religious purposes.

B. removed from its original location.

C. a birthplace or grave.

D. a cemetery.

E. a reconstructed building, object or structure.

F. a commemorative property.

G. less than 50 years of age or achieved significance within the past 50 years.

**Narrative Statement of Significance**

(Explain the significance of the property on one or more continuation sheets.)

**Areas of Significance:**

(Enter categories from instructions)

ARCHITECTURE

**Period of Significance:**

1908-1946

**Significant Dates:**

1908, 1915

**Significant Person:**

(Complete if Criterion B is marked above)

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**Cultural Affiliation**

**Architect/Builder**  
Mills and Greenleaf  
William M. Cordingley

Narrative Statement of Significance  
(Explain the significance of the property on one or more continuation sheets.)

**9. Major Bibliographical References**

Bibliography  
(cite the books, articles, and other sources used in preparing this form on one or more continuation sheets.)

Previous documentation on file (NPS):

- preliminary determination of individual listing (36 CFR 67) has been requested
- previously listed in the National Register
- previously determined eligible by the National

Primary location of additional data

- State Historic Preservation Office
- Other State agency
- Federal agency
- Local government

Morris County Historic Preservation Trust Fund  
**2015 CONSTRUCTION GRANT APPLICATION**  
DEADLINE: FRIDAY, MARCH 27, 2017, 1:00 P.M.  
E.S.T.

SUBMIT TO: MORRIS COUNTY HISTORIC  
PRESERVATION TRUST FUND  
DEPT. OF PLANNING &  
DEVELOPMENT  
PO BOX 900, MORRISTOWN, NJ  
07963-0900  
973-829-8120

Please do not attach any materials which are not expressly requested in this application as these materials will not be accepted.

Please submit two paper copies and one electronic copy for the following:

1. Application Forms
2. Proposals from Professionals, Consultants, Contractors

Please submit all electronic files on one CD/DVD, including:

1. All photos as JPEG images, minimum 200 dpi at 4"x6" (500 KB)
2. Preservation Plans and other large documentation in PDF format (with prior County approval)
3. All other supporting documentation (preferably in PDF format)

No submissions will be accepted via e-mail. Please collate all submissions. Double-sided printing is

encouraged. Paper submittals shall be bound by staple, paper clip or binder clip only. The use of binders, plastic separators, non-recyclable materials, etc. are strongly discouraged. Submittals will not be evaluated on the basis of the aesthetic of the package.

If submitting more than one application, please prioritize each project.

PLEASE BE ADVISED THAT HANDWRITTEN SUBMISSIONS OF APPLICATION WILL NOT BE ACCEPTED.

**Name of Project:** SUMC – South Façade Repairs

Priority: \_\_\_\_\_ (If more than one application)

**Applicant**

1. Name: Stanhope United Methodist Church  
Board of Trustees  
(Attachments A and C required for Charitable Conservancy)  
Street Address: 2 Route 183  
Town/State/Zip: Netcong, NJ 07857  
Chief Executive Officer: Amanda E. Rush
2. Contact Person: Amanda E. Rush  
Phone: Work: 973-601-6639  
Ext. \_\_\_ Home /Mobile: 973-527-1509  
Fax Number: 973-426-0412  
E-Mail: stanhopeumc@gmail.com & amanda.rush@verizon.net
3. Relationship of applicant to historic resource:  
(Attachment B required for all applicants)  
 Applicant owns property  
 Applicant leases property. Owner's  
Name: \_\_\_\_\_  
If applicant is different than owner, submit copy of valid lease indicating possession and

significant control over property.

Other (describe): \_\_\_\_\_

**Property**

4. Name (Historic, from NR/SR nomination: Church in the Glen  
Name (Present): Stanhope United Methodist Church  
Street Address: 2 Route 183  
Municipality: Netcong State NJ Zip 07857  
Block/Lot: Block:16 Lot 1
5. Date Built: 1920  
Major addition(s) and date(s): Education Building, 1965  
Original use: Church  
Architectural style(s): Gothic Revival  
Architect(s), if known: Floyd Yard Parsons  
Builder(s), if known: Gallo Brothers
6. Register of Historic Places Status (Insert date for all that apply; Attachment D required).  
Note: Preference will be given to Register-listed properties  
 National Register of Historic Places  
Individual:  District  
 NJ Register of Historic Places  
Individual:  District  
 Certified NJ Eligible \_\_\_\_\_  
Individual:  District  
 Locally designated  
Individual:  District

The property is currently:

Occupied  Unoccupied

Gross square footage of the property 34,848 sq. ft.

7. Describe concisely the architectural, cultural and historical significance of the property.

Iron mines, forges, a furnace, the Morris Canal and the railroad contributed to population growth in Netcong. In 1917, construction began on a new church. The Drake-Bostedo Company donated the land in Netcong. The church was designed by architect Floyd Parsons of New York City. The war prevented the completion of the building until October 1920, when the "Church in the Glen" was completed at a cost of about \$20,000. The church was built in the late Gothic Revival style. Chestnut woodwork adorns the Sanctuary. The green clay tile roof was donated by prominent Netcong citizen, Dorsen Drake. The church has 17 stained glass windows. The main building is built from native field stone with twin rounded staircases.

\* \* \* \*

HISTORIC PRESERVATION PLAN CHURCH OF  
THE ASSUMPTION OF THE BLESSED VIRGIN  
MARY MORRISTOWN, MORRIS COUNTY, NEW  
JERSEY

## 1. INTRODUCTION

### 1.2 Location

Morristown is located in northern New Jersey in Morris County. The town is situated along the eastern edge of the Highlands physiographic province of New Jersey, which adjoins the Piedmont region to the southeast. The Highlands extend across northwestern Passaic, Morris and Hunterdon counties and southeastern Sussex and Warren counties in a northeast to southwest direction. The province is composed of primarily metamorphic rocks with deep valleys of tightly infolded and infaulted Paleozoic rocks. Morristown is an area of the Highlands bordering the Triassic Lowlands that is composed of gently rolling forested hills, giving the region a picturesque quality. Morristown lies mostly within the Whippany River Valley. The river makes a U-shaped bend separating the northern portion from the larger southern section of the town.<sup>1</sup>

Morristown is located in southeastern Morris County and is completely encapsulated by Morris Township, which is estimated to be about five times the area of Morristown. Nearby municipalities include Morris Plains to the north, Harding Township to the south, Hanover Township to the east

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<sup>1</sup> Morris County Heritage Commission, *Morris County Historic Sites Survey*. 39 vols. "Morristown." Morristown, NJ: Morris County Heritage Commission, 1987, 25.

and Mendham to the west. The county seat of Morris County, Morristown has a total area of 7.8 km<sup>2</sup> and an estimated population of 18,523 as of 2012. Morristown is reached by Interstate 287, U.S. Route 202, and State Highway 24/124. Located approximately twenty-six miles west of New York City, Morristown is served by New Jersey Transit along the Morristown branch of the Morris-Essex Line.

The Church of the Assumption of the Blessed Virgin Mary is located at 91 Maple Avenue in Morristown and consists of a complex of buildings including the church building, rectory, ministry center, and parish office. The Assumption School is located south of the main church complex across MacCulloch Avenue. The Holy Rood Cemetery is located on Whippany Road in neighboring Morris Township. The complex in Morristown is located within a single block between Maple and MacCulloch Avenues, less than a mile south of the Morristown Green. The church building occupies the northeast corner of the block at the intersection of Maple Avenue and Madison Street. To the west of the church building are the rectory and parish office. At the southwest corner of the block, at the intersection of MacCulloch Avenue and Perry Street, is the ministry center. The site is landscaped with a lawn, mature trees, and various other plantings, and there is a large paved parking lot south of the church building. Surrounding the church complex are densely-packed residential buildings, including five houses adjacent to the parish office and rectory.

## **2. DEVELOPMENTAL HISTORY**

### **2.1 Historical Overview**

#### *2.1.1 Town of Morristown*

This history of Morristown is not meant to be all-inclusive, but examines the historical trends of the region and how Morristown developed based on surrounding influences. This information will show that the Church of the Assumption developed as part of the larger surrounding community.

As part of larger Morris County, the lands of Morristown were known to European settlers by the late- seventeenth century. While the exact date of settlement is uncertain, it is known that on June 6, 1695, Arent Schuyler, with associates including Anthony Brockholst and Samuel Byard, purchased land from the Lenape and Delaware Indians.<sup>2</sup> This purchase included all the land between “the Passaic on the South, the Pompton on the North, and between the foot of the hills on the East and on West.”<sup>3</sup> In “November of that year [they] purchased 5,500 acres lying east of the Pequannock River...The next year [1696] Schuyler, Brockholst, and Byard purchased a tract of 1500 acres or thereabouts, and other lands on the west side of the river, including all the present Pompton Plains”.<sup>4</sup> It is estimated that by

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<sup>2</sup> Frank Marshall Hock, “A Comparative Analysis of the Development of Single-Family Residential Architecture and Construction in Morristown, New Jersey Since 1715,” (Master's thesis, Newark College of Engineering, Newark, NJ, 1974), 1.

<sup>3</sup> From Hock (quoting the history of Morris County), 18.

<sup>4</sup> From Hock (quoting the history of Morris County), 18.

1700 settlement of the region had begun including improvement to the land associated with the 1695 Morris County purchase.<sup>5</sup>

Morris County was officially created by an Act of Legislature on March 15, 1739.<sup>6</sup> Taking its name from the state's first governor, Lewis Morris, the County was created by separating from larger Hunterdon County.<sup>7</sup> At the time of its creation, Morris County also included present-day Sussex and Warren Counties. Boundary changes in the state continued throughout the period, including the division of Sussex from Morris in 1753.<sup>8</sup> Within several years, many townships had also formed, including that of Morris (not to be confused with “Morristown”).<sup>9</sup>

It is generally agreed that the village of Morristown was settled between 1710 and 1715. A 1767 church history written by Jacob Green, the third pastor at the Presbyterian Church of Hanover,

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<sup>5</sup> From Hock (quoting the history of Morris County), 18

<sup>6</sup> Morris County Government Website; available from <http://www.co.morris.nj.us/>; Internet; accessed November 2006.

<sup>7</sup> From 1726 to 1738, Sussex and Morris Counties had been part of Hunterdon County. Source: Peter O. Wacker, *Land & People; A Cultural Geography of Preindustrial New Jersey: Origins and Settlement Patterns* (New Brunswick, NJ: Rutgers University Press, 1975), 145.

<sup>8</sup> Peter O. Wacker and Paul G.E. Clemens, *Land Use in Ear! J New Jersey: A Historical Geography* (Newark, NJ: New Jersey Historical Society, 1995), 223.

<sup>9</sup> Morris County Government Website; available from <http://www.co.morris.nj.us/>; Internet; accessed November 2006.

states that “ ... about the year 1710 a few families removed from Newark and Elizabeth, etc., and settled on the west side of the Passaic River, in that which is now Morris County.”<sup>10</sup> A deed transferring surrounding lands to Lord Sterling in 1769 verifies Green's dating through reference to a survey date of 1715.<sup>11</sup> Another source states that “In the area of Morristown, first known as West Hanover, 5,711 acres were acquired by proprietors John Kay, Thomas Stevenson, John Helby, Hannah Scott, and Thomas Lambert, as a result of the Indian purchase of 1713. Kay's tract, two thousand acres, included what is now the Village Green and Washington's headquarters.”<sup>12</sup> Known as the village of West Hanover at the time (although called “New” Hanover in some histories<sup>13</sup>, the area was settled by English Presbyterians from New York and Connecticut. These settlers originally inhabited a location still known today as “The Hollow,” where they built their first small dwellings.<sup>14</sup>

By mid-century, village life slowly began to move uphill from “The Hollow” to center around

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<sup>10</sup> *Morris County Historic Sites Survey*, 8-9.

<sup>11</sup> *Morris County Historic Sites Survey*, 8-9.

<sup>12</sup> “The Founding of Morris County, New Jersey,” from the book *Colonial and Revolutionary Morris County*, by Theodore Thayer; available from <http://www.altlaw.com/EdBall/morris.htm>; Internet; accessed November 2006.

<sup>13</sup> Frank Marshall Hock, “A Comparative Analysis of the Development of Single-Family Residential Architecture and Construction in Morristown, New Jersey Since 1715” (1v!aster's thesis, Newark College of Engineering, Newark, NJ, 1974), 1.

<sup>14</sup> *Morris County Historic Sites Survey*, 9

the “Green” which was owned by the local Presbyterian Church of Hanover.<sup>15</sup> Soon, the village claimed 250 settlers, along with two churches, two schools, and several taverns, stores and mills to provide for their needs.<sup>16</sup> As the growing center of Morris County, the village was soon renamed “Morristown” and designated as the County seat of government.<sup>17</sup> A courthouse was built on the Green in 1755<sup>18</sup> and it is said that the town grew largely due its construction.<sup>19</sup> By the 1770s, Morristown had begun to evolve into a rural village, due to its status as a stage-coach stopover, and a 1776 map “indicates that it formed the hub of a transportation system which led to many rural communities including Boonton, Mendham, Basking Ridge, and Sussex. The park formed the center of the town, and growth proceeded in stages from there.”<sup>20</sup>

The end of the century brought the American Revolution to Morristown, leaving a lasting mark on the still young village. The town first became involved in the war effort in 1774, when Morris County as a whole pledged its support for the revolutionary effort. On June 6, residents of

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<sup>15</sup> *Morris County Historic Sites Survey*, 9.

<sup>16</sup> Joan M. Williams, *Images of America: Morristown* (Charleston, SC: Arcadia Publishing, Inc., 1996), 7.

<sup>17</sup> Morris County Government Website; available from <http://www.co.morris.nj.us/>; Internet; accessed November 2006.

<sup>18</sup> *Morris County Historic Sites Survey*, 9.

<sup>19</sup> Wacker, *Land & People*, 397.

<sup>20</sup> Hock, 13.

Monmouth County had adopted a resolution calling Boston's cause "the cause of all"<sup>21</sup> followed soon thereafter by Essex, Bergen and Morris Counties.

Morristown is often cited as a strategic location during the War. Its position was significant as it guarded the Highlands, protecting the ranges of the Watchung Mountains to the south.<sup>22</sup> It also lay within close distance to Philadelphia, the center of government at that time.<sup>23</sup> In addition, the hills to the north of Morristown were rich with iron resources and housed accompanying iron and powder mills, which were vital resources during the War.

Morristown is perhaps most well-known for its association with the Continental Army and its leader, General George Washington. During the winter of 1777, Washington and the Continental Army first settled in Morristown, with Washington establishing his headquarters at Jacob Arnold's Tavern on the Morristown Green. In February of this harsh winter season, Washington took action to prevent disease by ordering all soldiers and civilians to be inoculated with smallpox, an order which was later considered successful.<sup>24</sup> During the winter of 1779 to 1780, Washington and his troops returned to the Morristown area, this time to stay at Jockey Hollow.<sup>25</sup> About 12,000 troops settled here

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<sup>21</sup> John T. Cunningham, *America's Main Road* (Garden City, NY: Doubleday Publishing, 1966), 87.

<sup>22</sup> Cunningham, *America's Main Road*, 104.

<sup>23</sup> *Morris County Historic Sites Survey*, 10.

<sup>24</sup> Cunningham, *America's Main Road*, 104.

<sup>25</sup> *Morris County Historic Sites Survey*, 10.

throughout that winter, considered to be the worst of the eighteenth century.<sup>26</sup>

Throughout New Jersey in general, the war stimulated agriculture, industry and commerce.<sup>27</sup> In Morris County, specifically, the post-revolutionary period was one of expansion.<sup>28</sup> One source states that the Revolutionary War's "most lasting practical mark was the stimulus it gave to industry."<sup>29</sup> This industrial growth had its start during the war, when demand for munitions stimulated the iron industry. At this time, forty-five forges were in operation in Morris County, along with sawmills and gristmills along most streams.<sup>30</sup> The iron industry, after a period of stagnation, grew in the early-nineteenth century; the industry is considered one of the most important factors in the development of Morristown and neighboring communities during this period.<sup>31</sup> The County became an industry leader due its wealth of iron ore, nearby streams to provide power for mills, and embracing advances in transportation.<sup>32</sup> In addition, as the County's population grew and

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<sup>26</sup> Cunningham, *America's Main Road*, 109.

<sup>27</sup> *The WTA Guide to 1930s New Jersey*, compiled and written by the Federal Writers' Project of the Works Project Administration for the State of New Jersey (New Brunswick, New Jersey: Rutgers University Press, 1986 (reprint); originally published 1939), 429.

<sup>28</sup> Hock, 17.

<sup>29</sup> *Morris County Historic Sites Survey*, 11.

<sup>30</sup> *WTA Guide*, 284.

<sup>31</sup> *WTA Guide*, 284.

<sup>32</sup> Morris County Government Website; available from <http://www.co.morris.nj.us/>; Internet; accessed November 2006.

transportation improved, new businesses developed that used iron ore for their final products.<sup>33</sup> In Morristown, specifically, Stephen Vail established the Speedwell Iron Works on Speedwell Lake in 1812. By 1880, Morris County ranked as the third county in the nation in the amount of ore mined, but by 1882 the “Morris iron dynasty” had already begun to drastically decline when superior sources were found in the western United States.<sup>34</sup>

In addition to industry, Morristown had also begun to mature in other areas in the eighteenth century. For example, the town's first postmaster was commissioned in 1782,<sup>35</sup> and its public water system had “notably early beginnings” when the Morris Aqueduct was granted charter of incorporation in 1799.<sup>36</sup> Like many small villages at the time, though, it was with the improvement of its transportation systems that Morristown truly began to develop. The organization of turnpike companies was the first step toward Morristown's transportation expansion. Between 1801 and 1829 the New Jersey Legislature chartered fifty-one turnpikes; 550 miles of improved roadways eventually ran through northern New Jersey.<sup>37</sup> The Morris Turnpike Company was founded by Gabriel Ford,<sup>38</sup> with the objective to construct a road from Essex County through Morris and Sussex

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<sup>33</sup> Morris County Government Website.

<sup>34</sup> Morris County Government Website.

<sup>35</sup> *Morris County Historic Sites Survey*, 11

<sup>36</sup> *Morris County Historic Sites Survey*, 11.

<sup>37</sup> Cunningham, *America's Main Road*, 131.

<sup>38</sup> Hock, 17.

Counties.<sup>39</sup> Its first section would run from Elizabethtown (“Elizabeth” today) to Morristown, with the road eventually ending in Milford, Pennsylvania.<sup>40</sup>

The evolution of transportation within Morris County as a whole and Morristown specifically continued throughout the early half of the nineteenth century, first with the building of the Morris Canal, and soon after with the establishment of a railroad line in the area. In 1831, the Canal, developed by Morristown resident George F. MacCulloch, was completed. For many years during the nineteenth century the Morris Canal played a significant role in industrialization throughout northern New Jersey, with the transportation of such materials as anthracite coal and iron ore.<sup>41</sup> Many towns grew with the construction of the canal, with increased residential settlement and commercial development following its path. By 1834, Thomas Gordon's *Gazetteer of the State of New Jersey* reported that Morristown had four churches of varying denominations, one academy, a courthouse, and various businesses from taverns and stores to printing offices and a bank.<sup>42</sup>

In 1838, the tracks of the Morris & Essex Railroad reached Morristown, further connecting the village to surrounding areas.<sup>43</sup> The railroad's backers had

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<sup>39</sup> *Morris County Historic Sites Survey*, 11.

<sup>40</sup> Cunningham, *America's Main Road*, 131.

<sup>41</sup> Morris County Government Website.

<sup>42</sup> *Morris County Historic Sites Survey*, 13

<sup>43</sup> Morris County Government Website.

chosen its path based mainly on residents' willingness to donate land or buy stock<sup>44</sup> and it became the first New Jersey railroad to climb hills, in this case the Orange Mountains. On January 1, 1838, the train opened to Morristown, providing eastbound and westbound trains for commuting businessmen working in New York City.<sup>45</sup> The Morris & Essex Railroad “transformed and strengthened the areas through which it ran.”<sup>46</sup> After the initial changes that came with the creation of the turnpikes and the railroad, Morristown remained much the same between the late 1830s and the Civil War. Manufacturing and commercial activity did not dramatically increase, and there was little industry aside from that centered at the Speedwell Iron Works.<sup>47</sup>

Like many northern towns, though, Morristown experienced a period of expansion in the post-Civil War years. The first major change came on April 6, 1865, when the Senate and General Assembly of the State of New Jersey approved a bill that incorporated Morristown as an official city.<sup>48</sup> Until that time, Morristown had been only the village center of Morris Township; the incorporation set boundaries and established “Morristown” as the area's official name. Other improvements included the erection of a consolidated school building on Maple Avenue in

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<sup>44</sup> Cunningham, *America's Main Road*, 139.

<sup>45</sup> Cunningham, *America's Main Road*, 139.

<sup>46</sup> Cunningham, *America's Main Road*, 140

<sup>47</sup> *Morris County Historic Sites Surory*, 14.

<sup>48</sup> *Morris County Historic Sites Surory*, 15.

1869 and the successful expansion of the Morristown Gas Light Company by the 1870s.<sup>49</sup>

Further changes centered mainly on the railroad. It is said that "Just as the turnpikes had rescued Morristown from its eighteenth century isolation, it was the railroad that assured marked residential and industrial growth during the remainder of the nineteenth century."<sup>50</sup> By making Morristown easily accessible to visitors, the railroad encouraged growth in the town. With the help of the popular press, which praised and promoted Morristown for such qualities as its ideal climate, the town became increasingly attractive as both a vacation destination and permanent place of residence. By mid-century the town had become a favorite resort for invalids, and hotels and boarding houses soon began to flourish.<sup>51</sup> The permanent population also increased at this time, with the subdivision of large land parcels into building lots.<sup>52</sup> Between 1880 and 1890, the population increased from 5,418 to 8,156.<sup>53</sup>

By the late 1880s and early 1890s, Morristown had evolved into a very different town than it had been a century before. The iron industry in Morris County had begun to falter, and Morristown was becoming a shopping and residential center.<sup>54</sup> At the same time, civil improvement and the period of

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<sup>49</sup> *Morris County Historic Sites Surory*, 16.

<sup>50</sup> *Morris County Historic Sites Surory*, 13

<sup>51</sup> *Morris County Historic Sites Surory*, 14 and 15.

<sup>52</sup> *Morris County Historic Sites Surory*, 15.

<sup>53</sup> *Morris County Historic Sites Surory*, 21.

<sup>54</sup> *WPA Guide*, 285.

Romanticism would leave their mark on the appearance of Morristown. First, civil improvement, common for many towns in the post-Civil War years, resulted in such activities as tree planting and the installation of slate sidewalks.<sup>55</sup> The period of Romanticism, with its emphasis on the picturesque, also left its influence on the town through landscaping and architecture. The Morristown Green became an expression of this picturesque ideal<sup>56</sup> with its emphasis on open, green space, which had been maintained since 1816 when the local Presbyterian Church decided to deed this land. The deed specified that no buildings of any kind were to be constructed on this common space, “except a meetinghouse, courthouse or jail, and a market house.”<sup>57</sup> The town's architecture also began to take on new forms and meaning, adapting to the Victorian trends of the period, which encouraged more asymmetrical forms and elaborate decorative features.

Morristown had mostly been changed, however, by the flood of commuters the railroad brought to the town. The railroads helped create suburbs as commuters sought a reprieve from city life. The first commuters, who had braved long train journeys in the pre-Civil War days, were now joined by newly wealthy families, following the advice of the promoters of the Picturesque movement. It is said that "By 1900 the nation's business and financial leaders, seeking escape from New York City, the financial capital of the nation, discovered Morris

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<sup>55</sup> *Moms County Historic Sites Surory*, 40.

<sup>56</sup> *Moms County Historic Sites Surory*, 17.

<sup>57</sup> *Moms County Historic Sites Surory*, 12.

County, its isolation, ideal climate and unspoiled countryside, and started the construction of large country estates. Within a few years it was claimed that more millionaires lived within a one mile radius of the Morristown Green than elsewhere in the world.”<sup>58</sup> The character of the town had drastically changed and had become so famous for its wealth, that the 8:25 AM train to New York City was nicknamed the “Millionaires' Express”.<sup>59</sup>

Eventually, though, this period of extravagance came to an end. In the early twentieth century, the First World War brought on a new sense of social responsibility. Then, the stock market crash of 1929 left its impression, even on wealthy areas like Morristown. By 1929, 55,000 New Jersey residents were already on the relief rolls as industry slowed.<sup>60</sup> Larger estates were subdivided for residential development and trolleys and automobiles replaced the railroad as primary, and cheaper, forms of transportation. Soon, Morristown had become more of a middle class suburb.<sup>61</sup> The *TVPA Guide to New Jersey*, written in the 1930s, states that “Today Morristown is being taken over by the well-to-do middle class.”<sup>62</sup> The guide also provides a brief description of the physical layout of the town, stating that “From this Colonial green all important streets take their courses. Office buildings and two of the

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<sup>58</sup> Morris County Government Website.

<sup>59</sup> *Moms County Historic Sites Surory*, 19.

<sup>60</sup> Cunningham, *America's Main Road*, 290.

<sup>61</sup> *Moms County Historic Sites Surory*, 21.

<sup>62</sup> *WPA Guide*, 283.

larger churches front on the park, with its winding pathways beneath great old trees.”<sup>63</sup> The guide also reveals that about 1,200 residents still commuted daily to outlying cities.<sup>64</sup>

In the mid-twentieth century, the Second World War boosted the nation's economy as well as that of individual towns. By the 1950s, Morristown had become a shopping center for Morris County, with South Street transformed from a residential street to a business district, along with Green and Speedwell Avenues.<sup>65</sup> Within the next decade, suburbanization had begun to decentralize goods and services, with highway development and shopping malls competing for Morristown's business. By the middle of the 1960s, Morristown was suffering as a result of this decentralization, and due to its position as the urban focal point for Morris County, began to experience “inner-city problems in microcosm.”<sup>66</sup> Urban renewal projects were instituted, but it would be over a decade before positive results would be seen.

By the late-twentieth century, Morristown had again become easily accessible to visitors from the metropolitan area, this time as a result of completion of Interstate 287.<sup>67</sup> Corporate headquarters and

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<sup>63</sup> *WPA Guide*, 284.

<sup>64</sup> *WPA Guide*, 285.

<sup>65</sup> *Morris County Historic Sites Survey*, 21.

<sup>66</sup> *Morris County Historic Sites Survey*, 22.

<sup>67</sup> Interstate 287 is a major interstate highway in New Jersey and New York that acts as a partial beltway around New York City. Construction of I-287 began in Middlesex and Somerset counties in 1958, with the first sections of the highway opened in the early 1960s. There was stiff resistance

branches began to relocate in Morris County, and developers became interested in the area as a new location for luxury housing.<sup>68</sup> Battles between those representing residential Morristown and those supporting development erupted, and continued into the early-twenty-first century.<sup>69</sup> For example, part of Morristown's redevelopment has continued with its designation as a "Transit Village," as established in 2000. In 1999, Morristown's zoning ordinance was changed to designate the area around the train station as a "Transit Village Core" for mixed use. This designation has been named as partially responsible for new development that included high-end condominiums.

Despite such development plans, Morristown's central focus today continues to radiate from the historic Green and its surrounding streets. This area surrounding the Green is filled with restaurants, bars, retail stores and other commercial enterprises that fill with people especially on nights and weekends. Today, in addition to its connection to I-287 and Route 24, Morristown is served by NJ

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to the proposed route in Morristown in particular, in fact as "Interstate 287 was to cut a 250-foot-wide swath through the community of 18,000 residents, some of whom dressed in the uniforms of Revolutionary War soldiers to protest the freeway." Use of the road was well underway by 1965, but it had the largest segment of incomplete interstate road until 1993, when it was finished through Mahwah, New Jersey, thereby officially linking Morristown to the rest of the region. Source: "Interstate 287 (New Jersey)"; available from <http://hvwww.nycroads.com/roads/I-287 NJ/>; Internet; accessed November 2006.

<sup>68</sup> *Morris County Historic Sites Survey*, 22.

<sup>69</sup> *Morris County Historic Sites Survey*, 22.

Transit on the Morris & Essex Line. As of 2010, Morristown's population was estimated at 18,411 residents.<sup>70</sup>

*Development of Churches in Morristown*

The first established church in Morristown was the First Presbyterian Church, established in 1733, when Morristown was still called West Hanover, and the same year that Morris County was laid out. The church had separated from the First Presbyterian Church at Hanover. Its initial membership of approximately 100 persons drew from surrounding municipalities. The first building, situated on Morris Street, was constructed circa 1740 and was expanded in 1760. As the town and congregation grew, a second church was constructed in 1795. This church building, which also was expanded over time, was replaced by the current Church on the Green in 1893. The building was designed by a prominent New York Architect, J. Cleveland Cady, in the Romanesque Revival style.

The second congregation, the Baptist Church, was first organized at Piscataway in 1689, but a congregation was not established at Morristown until 1752. It was a much smaller congregation, less than twenty persons, and established a church building a distance from the Morristown Green. The congregation also grew in the mid-eighteenth century necessitating the construction of a new church on the Green in 1771.<sup>71</sup> This church served the Baptist

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<sup>70</sup> According to the 2010 Census data.

<sup>71</sup> Andrew M. Sherman, *Historic Morristown, New Jersey: The Story of Its First Century*, (Morristown, NJ: Howard Publishing

congregation until 1897 when a new building was constructed on Washington Street.<sup>72</sup>

The third church, the United Methodist Church, was constructed in 1827 at the corner of Market Street and Maple Avenue. This building was replaced by a larger one in 1866, and the original church building moved to Spring Street to serve the African Methodist Church.<sup>73</sup>

An Anglican congregation was first organized in the region of Morristown in 1791, worshipping in various places until St. Peter's Episcopal Church was established in 1827; its first building was constructed in 1828. In 1852, some members of the congregation separated from St. Peter's Church to form a second Episcopal congregation in Morristown, Church of the Redeemer. The reason for separation was generally due to differences in some of the doctrine between the two congregations. The St. Peter's congregation continued to grow amidst this separation, and the existing church building was enlarged in 1858. This growth continued into the late-nineteenth century, necessitating the start of construction of a new church complex in 1887. The complex, designed primarily by the architectural firm McKim, Mead & White, began first with the Chapel, completed in 1890, followed by the sanctuary in 1892, the tower in 1908 and the Parish House, which was designed by

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Company, 1905); available from Digital Antiquaria, accessed: December 28, 2010.

<sup>72</sup> John W. Rae, *Monistown: A Military Headquarters of the American "Revolution*, (Charleston, SC: Arcadia Publishing, Inc., 2002), 146.

<sup>73</sup> Rae, 147.

Bertram Goodhue of New York, in 1914.<sup>74</sup> The immensity and design of the building reflected the general affluence of its congregants during a time when Morristown was attracting numerous wealthy individuals and families.

In January 1841, the Second Presbyterian Church was organized from 207 members of the First Presbyterian Church, and later the same year a church building was constructed on South Street.

The nearest Catholic services were held in Madison until 1848. At that time, the Church of the Assumption of the Blessed Virgin Mary was constructed in Morristown at the corner of Maple Avenue and Madison Street to support a growing Irish immigrant population. The building was replaced in 1873 by the current brick and stone Gothic Revival style building.

### *2.1.2 Catholicism in New Jersey*

The earliest Catholics in the area that would later become New Jersey arrived in the late seventeenth century. While Protestants enjoyed religious toleration in Colonial New Jersey, the few Catholic settlers in the area did not. The tenure of New York Governor Thomas Dongan (1683-1688), an Irish Catholic appointed by King James II, allowed for a brief period of religious toleration that extended to Catholics. At this time, most Catholics were located in Woodbridge, New Jersey, where they were visited by Fathers Harvey and Gage, Jesuit priests that had

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<sup>74</sup> *St. Peter's Episcopal Church: Parish History*. available from [http://www.stpetersmorristown.org/about us/parish history](http://www.stpetersmorristown.org/about_us/parish_history); Internet; accessed December 28, 2009.

arrived in the colonies with Dongan.<sup>75</sup> When King James II was overthrown, Dongan was forced out of his position as governor and anti-Catholic sentiment prevailed.<sup>76</sup> A law enacted in New York in 1698 had great consequences for Catholics in New Jersey. The law declared that all Christians should have freedom of religion, “provided this shall not extend to any of the Romish religion the right to exercise their manner of worship contrary to the laws and statutes of England.”<sup>77</sup> When Lord Cornbury was appointed governor of New York and New Jersey in 1701, he was ordered to allow freedom of religion to all except Catholics.<sup>78</sup> This officially-sanctioned discrimination lasted well into the nineteenth century.

In the years leading up to the Revolution, Catholics in New Jersey began to congregate in small communities. A glassworks located at Alloways Creek in Salem County was established in 1740 and employed skilled German and Irish Catholic craftsmen.<sup>79</sup> Reverend Theodore Schneider began visiting this community in 1743. Ironworks in Northern New Jersey near Macopin, Mount Hope,

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<sup>75</sup> Joseph M. Flynn, *The Catholic Church in New Jersey* (New York: The Publishers' Printing Co., 1904), 6.

<sup>76</sup> Raymond J. Kupke, *Living Stones: A History of the Catholic Church in the Diocese of Paterson* (Marceline, MO: Walsworth Publishing Company, 1987), 4.

<sup>77</sup> Flynn, 12.

<sup>78</sup> Flynn, 12.

<sup>79</sup> Joseph F. Mahoney, “Roman Catholic Church,” in *Encyclopedia of New Jersey*, Maxine N. Lurie and Marc Mappen, eds. (New Brunswick, New Jersey: Rutgers University Press, 2004), 703.

and Greenwood Lake employed Irish Catholics that were visited by Reverend Ferdinand Steinmeyer (Father Farmer).<sup>80</sup> Father Farmer arrived in Pennsylvania from Germany in 1752 and was known as the “apostle of New Jersey,” helping to spread the Catholic faith throughout the state. He had two mission chapels built in Lancaster and followed missionary routes throughout Pennsylvania before making his first visit to New Jersey in 1759.<sup>81</sup> Beginning in 1764, Father Farmer added new stops in New Jersey to his mission circuit each year, a practice he continued beyond the Revolutionary War. Stops included Ringwood, Basking Ridge, Charlottenburg, Mount Hope, Springfield, and many other towns.<sup>82</sup>

In spite of the growth of the Catholic Church in New Jersey, discrimination continued following the Revolutionary War. The New Jersey Constitution, written in 1776, prohibited Catholics from holding public office. This proviso was not removed until the rewriting of the state constitution in 1844, but other anti-Catholic laws slowly began to disappear from state code before that date.<sup>83</sup> The growth of the Church prompted American clergy to petition Rome for a bishop in 1788. Their request was granted, and in May 1789, Baltimore was selected as the see city of the new diocese and John Carroll was named the first bishop.<sup>84</sup> The new diocese, which included all of the

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<sup>80</sup> Mahoney, 703.

<sup>81</sup> Kupke, 7.

<sup>82</sup> Kupke, 9.

<sup>83</sup> Kupke, 27.

<sup>84</sup> Kupke 30.

United States, was officially established by Pope Pius VI on November 6, 1789.<sup>85</sup> New Jersey remained within the Baltimore diocese until 1808, when Baltimore became a metropolitan archdiocese and was divided into four new dioceses: Boston, New York, Philadelphia, and Bardstown, Kentucky. In New Jersey, Bergen, Essex, Morris, and Sussex Counties became part of the New York diocese, and the remainder of the state belonged to the Philadelphia diocese.<sup>86</sup>

Prior to the mid-nineteenth century, Catholics in northern New Jersey did not have many options if they wished to attend church. The first Catholic Church in New Jersey, St. John's in Trenton, was constructed in 1814 and was far removed from the northernmost counties. The closest churches to Catholics in northern New Jersey were St. Peter's at Barclay Street in New York City, constructed 1786, and St. John's in Newark, constructed 1828. In 1839, the French community in Madison fulfilled this need for a church by constructing St. Vincent Martyr Church. St. Vincent's became the focal point of Catholic missionary activity in northern New Jersey. Reverend Dominic Senez became priest of the Madison Mission in 1845; it was during his tenure that the Madison parish, including Morris, Sussex, and Warren Counties, experienced significant growth. Sacramental registers from St. Vincent's reveal far-ranging mission trips to towns such as Boonton and Dover to the north; Springfield and New Providence to the south; and Hackettstown

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<sup>85</sup> Kupke, 30.

<sup>86</sup> Kupke, 30.

and Stanhope to the west.<sup>87</sup> Catholic churches were built at Dover and Boonton Falls in 1847 and the first Catholic church in Morristown, the original Church of the Assumption of the Blessed Virgin Mary, was dedicated in March of 1849. There were a total of 23 Catholic churches in the Madison parish by 1892.<sup>88</sup>

The growth of the Catholic Church in New Jersey continued at a steady rate in the second half of the nineteenth century and throughout the twentieth century. In 1853, the Holy See acknowledged this growth by establishing a new diocese at Newark for all Catholics in New Jersey. Reverend James Roosevelt Bayley was named the first bishop of the diocese. Among his many accomplishments as bishop was the establishment of Seton Hall College in 1856, a school that prepared students for theological study and ordination to priesthood.<sup>89</sup> Following the Civil War, there was a large influx of immigrants from southern and eastern Europe, and by the end of Bayley's tenure in 1872 there were 113 churches in the diocese of Newark.<sup>90</sup> In the late-nineteenth century, new parishes, Catholic schools, and social services institutions were established. By 1880, the system of parochial and preparatory schools in New Jersey served about 30,000 students.<sup>91</sup> At that time the diocese of Newark was divided in two, with the seven northernmost counties of New Jersey

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<sup>87</sup> Kupke, 34.

<sup>88</sup> Flynn, 35.

<sup>89</sup> Mahoney, 703.

<sup>90</sup> Mahoney, 703.

<sup>91</sup> Mahoney, 703.

remaining in the diocese of Newark and the remaining fourteen southern counties belonging to the newly-formed diocese of Trenton.

Catholic immigration remained at high levels until World War I, when it slowed slightly. In 1937, Newark was made an archdiocese and the new dioceses of Paterson and Camden were created. At this time, most Catholics in New Jersey were urban and working-class. In the years following World War II, however, New Jersey Catholics were largely middle-class and many moved to the suburbs, prompting the construction of new churches and schools in these areas.<sup>92</sup> A new diocese at Metuchen was established in 1981 to accommodate this suburbanization. Catholic immigrants continued to arrive in large numbers in the twentieth century, especially from Latin America and Asia. The estimated Catholic population in New Jersey was about 3.5 million in 2002.<sup>93</sup>

### *2.1.3 Church of the Assumption of the Blessed Virgin Mary*

The first organized Catholic preaching in the broader Morristown area began in 1839 with the construction of St. Vincent Martyr Church in Madison (then Chatham Township)<sup>94</sup> As St. Vincent's was the only church in the area, Catholics from Morristown traveled to Madison to attend

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<sup>92</sup> Mahoney, 704.

<sup>93</sup> Mahoney, 704.

<sup>94</sup> Rev. Joseph M. Flynn, *The Story of a Parish; The First Catholic Church in Morristown, N.J., Its Foundation and Development; 1847-1892* (NY: The Columbus Press, 1892), 31.

services. The first Catholic mass in Morristown likely took place around 1845 in a private home. In 1845, Reverend Dominic Senez became pastor of the Madison parish and is credited with encouraging the growing Catholic community in Morristown to form their own church. Father Senez became affiliated with the New York diocese in 1846 and was assigned to Morris, Sussex and Warren Counties in New Jersey,<sup>95</sup> which included Madison.

In 1847, land was purchased for a church in Morristown on the south side of present-day Maple Avenue (the site of the Rectory today), for \$400 from John Kennedy of Philadelphia.<sup>96</sup> This area of Morristown was predominantly Irish and came to be known as “Little Dublin.” Father Senez returned to his native France the following year and Father McQuaid became the pastor of St. Vincent's. McQuaid then took over building the new church in Morristown; he is credited with paying for the land and construction of the church building.<sup>97</sup> The first church building is depicted as modest one-story frame structure with a gable roof (Figure No. 5). It measured fifty-eight by thirty-eight feet and could hold three hundred people.<sup>98</sup> Father McQuaid dedicated the building on August

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<sup>95</sup> *The Story of a Parish*, 32.

<sup>96</sup> *The Story of a Parish*, 36-37.

<sup>97</sup> *The Story of a Parish*, 37.

<sup>98</sup> Jeanette C. and Robert J. Fredericks, *We Built a Family Together; The History of the Parish of the Assumption of the Blessed Virgin Mary, Morristown, New Jersey* (Signature Book Printing: 2011), 13-14.

15, 1848, the date of the Feast of the Assumption. The Church of the Assumption of the Blessed Virgin Mary was named in honor of this feast. The first mass was held in the new church on Christmas Day, 1848, and was attended by forty to seventy people; the church did not yet have pews and the altar was said to consist simply of planks placed on barrels.<sup>99</sup> Bishop John Hughes, the Bishop of New York, dedicated the church on March 5, 1849.

That year, Father McQuaid estimated one hundred and twenty people belonged to the Morristown mission. St. Mary's School opened in 1850 and operated out of the basement of the new church.

The Morristown mission separated from the Madison mission in 1860 and received its first resident priest, Father Hoey. In 1861, a lot was purchased behind the church for \$150 and construction of the first rectory began. Around this time the church also purchased land to be used as its first burial ground.<sup>100</sup> The congregation was beginning to outgrow its existing buildings; in 1865 the basement schoolroom was enlarged and in 1871, the parish decided to construct a new church building.

The corner of Maple Avenue and Madison Street was the chosen site for the new church; this lot had been used as the burial ground, and bodies had to be disinterred and reburied at a different

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<sup>99</sup> *The Catholic Church in New Jersey*, 217.

<sup>100</sup> Fredericks, 15.

location. The new church was designed by architect Lawrence J. O'Connor, AIA, who designed many churches, schools, rectories and convents in New Jersey and New York. Construction bids were received in the spring of 1872 and M. M. Parsons was awarded the job for \$37,000.<sup>101</sup> The cornerstone was laid in June of 1872, and the completed church was blessed on Ascension Thursday, May 22, 1873.<sup>102</sup> The church, 122 feet long by 52 feet wide, was constructed of brick with Ohio sandstone trim and designed with elements of the Gothic Revival style (Figure No. 8). Characteristics of that style included pointed-arch windows, stepped buttresses, a polychrome combination of red brick and light sandstone, and a central rose window (replaced in 1956). In plan, the church featured a central nave ending in an apse, side aisles with clerestory windows above, and a side tower with steeple. The footprint of the new church can be seen on the 1874 Map of Morristown<sup>103</sup> and the 1876 Bird's-Eye View of Morristown;<sup>104</sup> next to the church is the original church building and behind it are the original

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<sup>101</sup> *The Story of a Parish*, 74.

<sup>102</sup> Fredericks, 17.

<sup>103</sup> George L. Hull, *Map of Morristown, Morris County, N.J.* (Geo. L. Hull, 1874). Map available at the North Jersey History & Genealogy Center at the Morristown Library

<sup>104</sup> T. M. Fowler, "Bird's Eye View of Morristown, Morris County, New Jersey," (Milwaukee: Fowler & Bulger, 1876). Available online through the Library of Congress, Geography and Map Division at <http://www.loc.gov/item/2009584332#about-this-item> (Accessed November 2013).

rectory and the burial ground (Figure Nos. 9 and 10). Over the next decade, the church was further embellished through the addition of the stained-glass windows, a bell for the steeple, and the decoration of the interior.<sup>105</sup>

The Church of the Assumption's campus continued to grow and change in the late-nineteenth century. The original church building was altered for use as St. Mary's School, which would occupy the entire building rather than only the basement, and two Sisters of Charity were brought on to serve the school. Within ten years, a new St. Mary's School was constructed behind the rectory on the site of the earlier burial ground to accommodate the growing parish. The interred bodies were relocated to the Holy Rood Cemetery about a mile away, which the church had established in 1875.<sup>106</sup> The new school opened in 1887. Three years later, the current rectory was constructed on the site of the original church building, which was purchased by a Mr. Holly, then moved and converted into a residence. The original rectory then became the convent for the Sisters of Charity. St. Mary's was eventually renamed the Bayley School. In 1908, the Bayley High School moved into the convent (former rectory) behind the church building and the grammar school remained in the original building. In 1916, the church

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<sup>105</sup> Church of the Assumption, "Church of the Assumption of the B.V.M., Morristown, New Jersey; A Compilation of Historical Data [from 1898-1994]," (Morristown, NJ: Church of the Assumption, 1996?), 102. On File at the North Jersey History & Genealogy Center at the Morristown Library.

<sup>106</sup> Fredericks, 22.

purchased a residence at the corner of MacCulloch Avenue and Perry Street (the current Ministry Center) and converted it into a new convent. The previous convent (former rectory) was then remodeled and expanded to house the Bayley High School.

In around 1892, the confessional at the west side of the church's rear was expanded and a side entrance vestibule (D116) was added to the Madison Street side (east) elevation of the church.<sup>107</sup> A baptistery was added to the church in 1896, and the whole building was wired for electricity in 1889. The main front entry vestibule (D101) at Maple Avenue was constructed by 1909.<sup>108</sup> The church interior was redecorated on several occasions, including in 1914 and in 1948 when the Assumption parish celebrated the one hundredth anniversary of its founding. In 1957-58, a sacristy addition was constructed onto the rear of the church building. The existing Bayley Grammar School and Bayley High School buildings at the rear of the church were demolished at this time to make room for the sacristy addition and a parking lot; the new Assumption School had been constructed in 1955-1957 on MacCulloch Avenue to

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<sup>107</sup> "Church of the Assumption of the B.V.M., Morristown, New Jersey; A Compilation of Historical Data [from 1898-1994]," 103.

<sup>108</sup> Sanborn Map Company, *Insurance Maps of Morristown including Morristown Suburbs, Whippany, Morris Plains and Mt. Tabor, Morris County, New Jersey* (NY: Sanborn Map Company: 1909), sheet 11. Available online through Princeton University at <http://libraru.princeton.edu/libraries/firestone/rbcs/aids/sanborn/morris/morristown.html> (Accessed November 2013).

replace the Bayley School.<sup>109</sup>

Despite the church suffering financial strain in the 1960s and 1970s, the exterior and interior of the church building were repaired and upgraded during this time. At the exterior, repair work was done on the slate roof, roof drainage system, masonry walls, wooden elements, and the windows.<sup>110</sup> The interior was extensively renovated and redecorated between 1972 and 1978 including installation of new lighting, furniture, confessionals, altar and floors; painting the walls; repairing the canvas ceiling; and enlarging the vestibule, among other changes.<sup>111</sup> After all this work was done to repair and upgrade the church, the building suffered a devastating fire in 1985 (Figure No. 34). On April 10, 1985, air conditioning was being installed in the church and a worker left a lamp on in the ceiling crawlspace, which ignited the wood in the space.<sup>112</sup> The roof and much of the church walls were destroyed, but the building was not lost. It took eighteen months for the church to be rebuilt and restored, and the first mass celebrated in it was Christmas Eve, 1986.

In 1994, a Parish Center was constructed onto the

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<sup>109</sup> The Church of the Assumption, "Church of the Assumption, Morristown, New Jersey," (Hackensack, NJ: Custombook, Inc., 1972), 22.

<sup>110</sup> "Church of the Assumption of the B.V.M., Morristown, New Jersey; A Compilation of Historical Data [from 1898-1994]," 107-108.

<sup>111</sup> "Church of the Assumption of the B.V.M., Morristown, New Jersey; A Compilation of Historical Data [from 1898-1994]," 107-109.

<sup>112</sup> Fredericks, 46.

rear of the church building to provide additional meeting space (Figure No. 35). The addition was designed by the architectural firm of Daniel Krief Associates of New York City. The same firm designed an interior renovation of the church in 2007. Most recently, in 2011, the church steeple was repaired. Today, the Church of the Assumption continues to play a vital role in Morristown Community, serving a parish community of nearly 3,000 families.

### The Rectory

Before the construction of the first rectory at the Church of the Assumption, clergy typically lived at St. Vincent's rectory in Madison or at a boarding house in Morristown.<sup>113</sup> Rev. Lawrence Hoey first lived at the home of Mr. John Rogers, where visiting clergy often stayed Morristown, but fought for the construction of a Morristown rectory.<sup>114</sup> The first rectory of the Church of the Assumption was constructed in 1861 on Madison Street behind the location of the present church building (Figure No. 7). Rev. Lawrence Hoey was the first priest to permanently reside there .. An addition to the original rectory was constructed in 1880, but as the parish grew and employed more priests, a new rectory was desired.

The present rectory was constructed in 1890 on the site of the original church building, which had been moved by this time. Augustus Eichorn, AIA, was chosen as the architect for the new rectory. Eichorn, based in Orange, New Jersey, was the architect for

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<sup>113</sup> Fredericks, 69.

<sup>114</sup> *The Catholic Church in New Jersey*, 219.

the First Presbyterian Church in Caldwell, New Jersey.<sup>115</sup> Construction of the new rectory began on March 22, 1890.<sup>116</sup> Lonergan & Brown served as the carpenters; Malley, Dempsey & Cooney were the masons and plasterers; Kay Bros. served as the plumbers; and Thatcher served as the painters.<sup>117</sup> The rectory was completed that fall and the priests moved into the home on November 25, 1890. The building was designed in the Gothic Revival style and was described at the time by Rev. Joseph M. Flynn:

The building is of brick and Waterloo granite trimmings. It has a frontage of 52 feet, and depth of about 65 feet. It is a beautiful structure, showing an octagon bay-window on the west corner and a tower on the east side, the front highly ornamented yet chaste in design, the roof-line showing a finish in battlemented walls, the entrance and windows vaulted and superbly trimmed with the stone finish, the upper sash of the windows showing a neat tracery and cathedral glass.

Entering the first floor through ample doors, we find a vestibule and a hall 9 x 6 feet that opens into another that is 50 feet long, and runs right through the building from east to west. There is a parlor 12 x 16 feet, and a study for the Rector, of which the

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<sup>115</sup> "National Register of Historic Places; New Jersey - Essex County," Internet; available at <http://www.nationalregisterofhistoricplaces.com/nj/Essex/state2.html> (Accessed December 2013).

<sup>116</sup> *The Story of a Parish*, 235.

<sup>117</sup> *The Story of a Parish*, 235.

octagon forms a part - a cheerful, commodious room that will delight the heart of the occupant. Back of it, and across the hall, is the Bishop's room, 14 feet and 6 inches by 13 feet and 10 inches. The dining-room is also splendidly proportioned, being 14 x 17 feet. The butler's pantry is 7 x 12 feet, and the kitchen 15 x 18 feet. On this floor there is also a fire and burglar proof vault for the preservation of valuable records.

The upper floors are also well arranged, and the whole structure is an ornament to that part of the town and a valuable addition to what is a splendid church property.<sup>118</sup>

A two-story frame structure, possibly an enclosed porch, bordered the southeast corner of the building at the rear and side. This was either an original feature or added soon after the construction of the building because it is seen on an 1896 Sanborn insurance map.<sup>119</sup> Several small frame additions were also constructed onto the rear of the rectory in the early twentieth-century, as evidenced by 1909 and 1918 Sanborn insurance maps. By 1909, a one-story addition was built onto the east side of the kitchen (today the Breakfast Room). Also by 1909, a small one-story extension was built onto the rear (south)

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<sup>118</sup> *The Story of Parish*, 236

<sup>119</sup> Sanborn-Perry Map Co., "Insurance Maps of Morristown including Whippany, Morris Co., New Jersey," (New York: Sanborn-Perry Map Co., Limited, 1896), sheet 9. Available online through Princeton University at <http://library.princeton.edu/libraries/firestone/rbsc/aids/sanborn/morris/morristown.html> (Accessed November 2013).

side of the earlier two-story porch (today an Office).<sup>120</sup> By 1918, a two-story extension was added to east side of the earlier two-story porch (today the Meeting Room). Also by 1918, a small one-story entry vestibule was added to the rear of the kitchen.<sup>121</sup> Sometime between 1937 and 1948, the Rectory was “remodeled ... to meet more modern conditions of living.”<sup>122</sup> Other minor upgrades have been made at the rectory in the twentieth century, including the replacement of a number of windows with vinyl sash. The central dormer (W318 and W319) at the front elevation was originally smaller and only contained a single narrow window; sometime after

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<sup>120</sup> Sanborn Map Company, “Insurance Maps of Morristown including Morristown Suburbs, Whippany, Morris Plains and Mt. Tabor, Morris County, New Jersey,” (New York: Sanborn Map Company, 1901), sheet 11. Available online through Princeton University at <http://library.princeton.edu/libraries/firestone/rbcs/aids/sanborn/morris/morristown.html> (Accessed November 2013).

<sup>121</sup> Sanborn Map Company, “Insurance Maps of Morristown, Morristown Suburbs, Whippany, Morris Plains and Mt. Tabor, Morris County, New Jersey,” (New York: Sanborn Map Company, 1918), sheet 10. Available online through Princeton University at <http://library.princeton.edu/libraries/firestone/rbcs/aids/sanborn/morris/morristown.html> (Accessed November 2013).

<sup>122</sup> Sanborn Map Company, “Insurance Maps of Morristown, Morristown Suburbs, Whippany, Morris Plains and Mt. Tabor, Morris County, New Jersey,” (New York: Sanborn Map Company, 1918), sheet 10. Available online through Princeton University at <http://library.princeton.edu/libraries/firestone/rbcs/aids/sanborn/morris/morristown.html> (Accessed November 2013).

1948 it was widened to feature a pair of windows. Despite these minor upgrades, the exterior of the Rectory has been little changed since the first decade of the twentieth century. Today, the building continues to serve its original function, housing the Church of the Assumption's priests and visiting clergy.

### Ministry Center

The building that houses the Ministry Center was originally constructed in 1872 as a residence for Mrs. Andrewetta Sims Brinley (nee Rowlett). Born in Virginia in 1831, Andrewetta was the widow of Edward Brinley, Jr., a civil engineer who served in the United States Navy from 1840 to 1856 before retiring due to an illness. After the navy he served as the Surveyor General of the East Jersey Proprietors and the Commissioner of Pilotage for the State of New Jersey.<sup>123</sup> Edward died in 1867, leaving Andrewetta and their four children, Francis M., Edward, John R. and Godfrey M.<sup>124</sup> At that time, Andrewetta lived in Perth Amboy with her two youngest sons,<sup>125</sup> but in 1872 moved to Morristown

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<sup>123</sup> Huntington Library, "Finding aid for Papers of Edward Brinley, Jr., 1823-1925 (bulk 1840-1856)," Internet; available online through Huntington Digital Library at <http://hdl.huntington.org/cdm/search/searchterm/Remarkable> (Accessed December 2013).

<sup>124</sup> Judith B. Cronk, compiler, *Intestates and Other from the Orphans Counry Books of Monmouth Co., NJ 1785-1906* (Baltimore: Clearfield Company, Inc., 2002), 136.

<sup>125</sup> 1870 Federal Census, City of Perth Amboy, Middlesex County, New Jersey, page 33. Online at Ancestry.com. *1870 United States Federal Census* [database on-line]. Provo, UT, USA: Ancestry.com Operations, Inc., 2009. Images reproduced by FamilySearch.

and had a house built at the corner of MacCulloch Avenue and Perry Street, currently the Ministry Center.

Mrs. Brinley hired David H. Wilday, a local carpenter and builder in Morristown. Her home was the first building contract Wilday received after going into business for himself in 1872; he went on to become one of the most prominent builders in Morristown.<sup>126</sup> The home he built for Mrs. Brinley was a two-story, gabled, frame house with a full-width front porch, a three-story integrated tower at its east end with an adjacent two-story projecting bay, and a two-story hipped-roof extension at the rear elevation. The house was designed with elements of the Stick Style including characteristic wood “sticks” applied to the wall surface that are meant to be decorative and not reflective of underlying structure.<sup>127</sup> The sticks are applied around window and door openings and in horizontal bands. The house first appears on an 1874 Map of Morristown, where it is labeled as the property of Mrs. A. S. Brinley.<sup>128</sup> (Figure No. 9) The footprint of the building shows the main block with the rear two-story tower extending at the east/southeast corner. Andrewetta would have initially lived in the house with her two youngest sons, John R. and Godfrey M. Sometime between 1887 and 1895, she subdivided

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<sup>126</sup> *Biographical and Genealogical History of Moms Counry, New Jersry; Illustrated, VoL II* (New York: Lewis Publishing Company, 1899), 531-532.

<sup>127</sup> Janet W. Foster, “Mail Order Plans, Mail Order Houses,” *GardenStateLegacy.com*, Issue 10 (December 2010), no page.

<sup>128</sup> Hull, *Map of Morristown, Morris County, N.J.*

her property and a house was constructed for her son John on the new lot located north of her house on Perry Street. John Rowlett Brinley (1861-1946) went on to found the well-known landscape architecture firm of Brinley & Holbrook, which had offices in Morristown and New York City.<sup>129</sup>

A bird's-eye view drawing of Morristown from 1876 depicts Andrewetta's house with a three-story integrated tower with a hipped roof at its front east/southeast corner and a two-story tower-like extension behind it at the rear corner.<sup>130</sup> It is unknown when Andrewetta Brinley ceased to own the house, but the next known owners bought it at a sheriff's sale, meaning Andrewetta likely lost the home due to unpaid taxes. After leaving Morristown, she appears to have next lived with her children. By 1895, she was living with her son, Godfrey, a clergyman and teacher, in Concord, New Hampshire.<sup>131</sup> By 1912, she lived with another son,

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<sup>129</sup> The Cultural Landscape Foundation, "Brinley & Holbrook," Internet; available at [tclf.org/pioneer/brinley-holbrook](http://tclf.org/pioneer/brinley-holbrook) (Accessed December 2013).

<sup>130</sup> T. M. Fowler, "Bird's Eye View of Morristown, Morris County, New Jersey," (Wilwaukee: Fowler & Bulger, 1876). Available online through the Library of Congress, Geography and Map Division at <http://www.loc.gov/item/2009584332#about-this-item> (Accessed November 2013).

<sup>131</sup> "Concord, New Hampshire City Directory, 1895," page 94, available through Ancestry.com *U.S. City Directories, 1821-1989* [online database] (Accessed December 2013); 1900 Federal Census, Concord, Merrimack, New Hampshire, Ward 7, sheet 14; available through Ancestry.com *1900 United States Federal Census* [online database] (Accessed December 2013).

Francis, in New York City.<sup>132</sup> Andrewetta died in New York in 1928 at the age of ninety-eight.<sup>133</sup>

In 1902, George G. Frelinghuysen and his wife, Sara L. (nee Ballantine) purchased the home at the corner of MacCulloch Avenue and Perry Street at a sheriffs sale.<sup>134</sup> Both George and Sara were from prominent New Jersey families. George was the son of Frederick T. Frelinghuysen, Secretary of State under President Chester A. Arthur.<sup>135</sup> George was a leading patent lawyer and president of P. Ballantine & Sons Company, the major brewery founded by his wife's grandfather. Ballantine Brewery, founded by Peter Ballantine in 1840, produced one of the oldest American brands of beer and was, at its peak, the fourth largest brewer in the country;<sup>136</sup> today the brand is

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<sup>132</sup> The Social Register Association, *Social Register, New York, 1912* (New York: Social Register Association, 1911), 71

<sup>133</sup> "Deaths," *New York Times* (December 15, 1928), page 17. Online database ProQuest Historical Newspapers: The New York Times (1851-2009) available at <http://search.proquest.com/hnpnewyorktimes> (Accessed December 2013).

<sup>134</sup> Deed between The Church of the Assumption of the Blessed Virgin Mary and The Assumption Housing Corporation, Inc., dated September 19, 1984, Morris County Clerk, Deed Book 2754, Page 802. This deed references earlier transactions of the property including when George G. Frelinghuysen purchased it and when he and his wife sold it to Isabel A. Ballantine.

<sup>135</sup> John W. Rae and John W. Rae, Jr., *Morristown's Forgotten Past "The Gilded Age:" The Story of a New Jersey Town, Once a Society Center for the Nation's Wea/try* (Morristown, NJ: John W. Rae, 1979), 108.

<sup>136</sup> Lurie and Mappen, eds., 52.

owned by Pabst Brewing Company. George and Sara married in Newark in 1881, in one of that city's most impressive weddings for the joining of two such prominent families.<sup>137</sup> The couple settled in Manhattan, and in 1891, built a large summer home called "Whippany Farms" in Morris Township, New Jersey (repeatedly referred to as Morristown) .<sup>138</sup> They were active in the Morristown social scene; Sara was one of the eight founding members of the Morris County Golf Club, and George served as the club's president and member of its board of trustees.<sup>139</sup> The couple purchased the former Brinley residence in 1902, likely as an investment, and never actually lived there. According to the 1910 Federal Census, the home was being rented by James W. Norby, a groom at a private stable, and his wife and two children.<sup>140</sup> During the Frelinghuysens' ownership of the home, a small rear kitchen wing was added to the house; the addition first appears on a 1909 Sanborn insurance map.<sup>141</sup> (Figure No. 20)

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<sup>137</sup> "Frelinghuysen-Ballantine. Trinity Episcopal Church, Newark, the Scene of an Impressive Ceremony," *New York Times* (April 27, 1881), page 5. Online database ProQuest Historical Newspapers: The New York Times (1851-2009) available at <http://search.proquest.com/hnpnewyorktimes> (Accessed December 2013).

<sup>138</sup> Wae, 108.

<sup>139</sup> Wae, 108.

<sup>140</sup> 1910 Federal Census, Morristown, New Jersey, Ward 4, District 0031, sheet 1A. Available through Ancestry.com (online database) *1910 United States Federal Census* [database on-line] (Accessed December 2013).

<sup>141</sup> Sanborn Map Company, "Insurance Maps of Morristown

In 1912, George and Sara Frelinghuysen sold the house to Sara's sister, Isabel A. Ballantine.<sup>142</sup> Isabel, sometimes called Isabella in documents, was born in 1864. She never married and lived with her mother, also named Isabel, for many years at the family's estates in Newark and Morris Plains (then Hanover Township). After the death of her mother in 1911, the younger Isabel then lived in New York City and Morris Plains. She traveled to Europe on several occasions in the early-twentieth century. She was a member of the Colony Club in New York City, the city's first private social club established by and for women, and also was a member of the Morris County Golf Club.<sup>143</sup> Isabel owned the house on MacCulloch Avenue in Morristown for only four years, and it is unknown whether or not she lived there. In 1916, she sold the home to the Church of the Assumption for \$8,500.<sup>144</sup>

The Church of the Assumption converted the home into a convent for the Sisters of Charity, who

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including Morristown Suburbs, Whippany, Morris Plains and Mt. Tabor,” (New York: Sanborn Map Co., 1909), sheet 11. Available online through Princeton University Library at <http://libraru.princeton.edu/libraries/firestone/rbsc/aids/sanborn/morris/morristown.html> (Accessed December 2013).

<sup>142</sup> Deed, Church of the Assumption to Assumption Housing Corporation.

<sup>143</sup>Ancestry.com, “Isabel A. Ballantine Obituary,” *Historical Newspapers, Birth, Marriage & Death Announcements*, 1851-2003 (online database) available at Ancestry.com (Accessed December 2013).

<sup>144</sup> Fredericks, 78.

were assigned to the church's Bayley Grammar and High Schools. There were twelve sisters at the time, but the home was renovated to accommodate up to twenty women. A large three-story addition was constructed onto the east/southeast end of the house, which is seen on the 1918 Sanborn insurance map (Figure No. 24).<sup>145</sup> The building served as a convent until 1976, when it was rented to the Sisters of Charity as a formation center and novitiate for women joining the order. At this time, there were only four sisters remaining at Assumption, and they were moved to a smaller house nearby.

In 1982, the building was converted into housing for thirty seniors and renamed the Dericks Residence. The non-profit Assumption Housing Corporation was formed, and used \$550,000 in state and federal funds to renovate the building including the installation of a barrier-free accessible ramp at the west end, an elevator at the rear, and other upgrades. The project was completed in 1984, and the church deeded the building to the non-profit group. In 2005, the Church of the Assumption acquired the building again after the Dericks Residence closed due to financial problems. The Church made the building into the Ministry Center, a use it continues to serve today, housing many parish outreach activities.

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<sup>145</sup> Sanborn Map Company, "Insurance Maps of Morristown, Morristown Suburbs, Whippany, Morris Plains and Mt. Tabor, New Jersey (New York: Sanborn Map Co., 1918), sheet 10. Available online through Princeton University at <http://library.princeton.edu/libraries/firescone/rbsc/aids/sanborn/morris/morristown.hem!> (Accessed November 2013).

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Morris County Historic Preservation Trust Fund  
**2013 PRESERVATION PLANNING GRANT  
APPLICATION** (Also for Acquisition Grant Applications)

DEADLINE: FRIDAY, MARCH 29, 2013, 5:00 P.M.  
E.S.T.

SUBMIT TO: MORRIS COUNTY HISTORIC  
PRESERVATION TRUST FUND  
DEPT. OF PLANNING &  
DEVELOPMENT  
PO BOX 900,  
MORRISTOWN, NJ 07963-0900  
973-829-8120

Please do not attach any materials which are not expressly requested in this application as these materials will not be accepted.

Please submit two paper copies and one electronic copy for the following:

1. Application Forms
2. Proposals from Professionals, Consultants, Contractors

Please submit all electronic files on one CD/DVD, including:

1. All photos as JPEG images, minimum 200 dpi at 4"x6" (500 KB)
2. Preservation Plans and other large documentation in PDF format (with prior County approval)
3. All other supporting documentation (preferably in PDF format)

No submissions will be accepted via e-mail. Please

collate all submissions. Double-sided printing is encouraged. Paper submittals shall be bound by staple, paper clip or binder clip only. The use of binders, plastic separators, non-recyclable materials, etc. are strongly discouraged. Submittals will not be evaluated on the basis of the aesthetic of the package.

If submitting more than one application, please prioritize each project.

PLEASE BE ADVISED THAT HANDWRITTEN SUBMISSIONS OF APPLICATION WILL NOT BE ACCEPTED.

Name of Project: Church of the Assumption – Historic Preservation Plan

Priority: \_\_\_\_\_ (If more than one application)

Applicant

1. Name: Church of the Assumption of the Blessed Virgin Mary  
(Attachments A and C required for Charitable Conservancy)  
Street Address: 91 Maple Avenue  
Town/State/Zip: Morristown, New Jersey 07960  
Chief Executive Officer: Rev. Msgr. John E. Hart
2. Contact Person: Robert J. Fredericks, Ph.D.  
Phone: Work: \_\_\_\_\_  
Ext. \_\_\_ Home /Mobile: 973-267-1571  
Fax Number: 973-267-1571  
E-Mail: fred3484@verison.net
3. Relationship of applicant to historic resource:  
(Attachment B required for all applicants)  
 Applicant owns property

Applicant leases property. Owner's Name: \_\_\_\_\_

If applicant is different than owner, submit copy of valid lease indicating possession and significant control over property.

Other (describe): \_\_\_\_\_

Property

4. Name (Historic, from NR/SR nomination): Church of the Assumption; Rectory; A.S. Brinley Hs.  
Name (Present): Church of the Assumption: Church Building, Rectory, Ministry Center  
Street Address: 91 Maple Avenue  
Municipality: Morristown State NJ Zip 07960  
Block/Lot: Block:6205 Lot 1
5. Date Built: 1872  
Major addition(s) and date(s): early-20<sup>th</sup> century (rectory); late-20<sup>th</sup> century (Ministry Center)  
Original use: Church Building, Rectory, Private Residence  
Architectural style(s): High Victorian Gothic (church building, rectory); Stick Style (Ministry Center)  
Architect(s), if known: L.J. O'Connor (Church Building)  
Builder(s), if known: \_\_\_\_\_
6. Register of Historic Places Status (Insert date for all that apply; Attachment D required). Note: Preference will be given to Register-listed properties  
 National Register of Historic Places \_\_\_\_\_ individual 10/30/1973 district  
 NJ Register of Historic Places \_\_\_\_\_

individual 09/06/1973 district

Certified NJ Eligible \_\_\_\_\_  
individual \_\_\_\_\_ district

Locally designated \_\_\_\_\_  
individual \_\_\_\_\_ district

The property is currently:

Occupied  Unoccupied

7. Describe concisely the architectural, cultural and historical significance of the property.

The Church of the Assumption of the Blessed Virgin Mary in Morristown was founded in 1848 as the first Catholic parish in Morristown. The Church Building and Rectory, designed in the High Victorian Gothic style, and the Ministry Center, designed in the Stick style, are all fine examples of their respective architectural styles. The complex of buildings that make up the Church of the Assumption has a distinct presence along Maple and MacCulloch Avenues and has played a significant role in the community since the mid-nineteenth century.

\* \* \* \*

**EXHIBIT 2:  
APPROVED PROJECT DESCRIPTION**

Grantee(s): First Presbyterian Church of  
Boonton

Address: 513 Birch street, Boonton, NJ  
07005

Phone: (973) 334-3535

Fax:

E-Mail: awh@quartetfs.com

Contact Person: Allen Whipple

Project Name: First Presbyterian Church of  
Boonton

Project Location: 513 Birch Street  
Block 10 Lot 1

Type of Application: Window Preservation

Grant Award: \$109,840.00

Project Period: Two years from date of execution  
by the County, this date being  
Wednesday, September 28, 2016

Public Access: 312 days/year at completion of  
project.

Scope of Work:

First Presbyterian Church of Boonton

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Escalation to Oct. 1, 2014	\$15,680
Contingency – Lighting adjustment, optional Lexan	\$4,00
Rose window & sash repair	\$26,000
Emmaus window & sash repair	\$62,560
A/E Assistance Allowance	<u>\$1,600</u>
Total:	\$109,840

The Scope of Work shall include items described in “Short Form Proposal: Stained-Glass Window Restoration, First Presbyterian Church of Boonton”, prepared by Connolly & Hickey Architects, dated Mar. 20, 2014, and “Proposal prepared for First Presbyterian Church of Boonton, NJ”, prepared by Bonnie Hook of Georgia's Stained Glass Werks, dated Feb. 10, 2014, both submitted as part of the 2014 grant application from the First Presbyterian Church of Boonton.

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**FIRST PRESBYTERIAN CHURCH**

513 Birch Street,  
Boonton, New Jersey 07005  
973-334-3535  
www.fpcboonton.org  
The Rev. Jennifer M. Van Zandt, Pastor

March 24, 2014

Ray Chang, P.P., Director  
Morris County Preservation Trust  
P.O. Box 900  
Morristown, NJ 07963-0900

Dear Mr. Chang,

On behalf of the First Presbyterian Church of Boonton, I am pleased to submit an application for a construction grant. The two projects outlined in the application for 2014 are among work identified by our Historic Preservation Plan funded in 2010 by a non-construction grant from the Morris County Historic Preservation Trust.

The construction grant would fund 1) repair and preservation of altar Emmaus window at rear of church, and 2) repair and preservation of round Rose window at the front of the building.

As was noted in 2010, the Church bylaws included with the application cannot directly name historic preservation as a purpose of the Church, since the sole purpose of a church is spreading the gospel of Jesus Christ. Additionally, all Presbyterian churches are

governed by ecclesiastic law and therefore all property of any Presbyterian church is held in trust for the use and benefit of the Presbyterian Church (USA). That said, we are firmly committed to maintaining the historic integrity of the building, since the property is part of the Boonton Historic District and is listed on the national and state historic registries, and the Morris County Heritage Commission. This is further evidenced by our commitment to historic preservation and the investment and the completion of the Historic Preservation Plan in 2011 and the ongoing approvals for additional work by the First Presbyterian Church of Boonton Session on March 10, 2014.

We appreciate your consideration of our 2014 application. Please feel free to contact me (973334-3535) or Allen Whipple (917) 363-0663 if you have any questions.

Sincerely,

The Rev. Jennifer Van Zandt

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Morris County Historic Preservation Trust Fund  
**2015 CONSTRUCTION DOCUMENTS GRANT  
APPLICATION**

DEADLINE: FRIDAY, MARCH 27, 2015, 1:00 P.M.  
E.S.T.

SUBMIT TO: MORRIS COUNTY HISTORIC  
PRESERVATION TRUST FUND  
DEPT. OF PLANNING &  
DEVELOPMENT  
PO BOX 900, MORRISTOWN, NJ  
07963-0900  
973-829-8120

Please do not attach any materials which are not expressly requested in this application as these materials will not be accepted.

Please submit two paper copies and one electronic copy for the following:

1. Application Forms
2. Proposals from Professionals, Consultants, Contractors

Please submit all electronic files on one CD/DVD, including:

1. All photos as JPEG images, minimum 200 dpi at 4"x6" (500 KB)
2. Preservation Plans and other large documentation in PDF format (with prior County approval)
3. All other supporting documentation (preferably in PDF format)

No submissions will be accepted via e-mail. Please

collate all submissions. Double-sided printing is encouraged. Paper submittals shall be bound by staple, paper clip or binder clip only. The use of binders, plastic separators, non-recyclable materials, etc. are strongly discouraged. Submittals will not be evaluated on the basis of the aesthetic of the package.

If submitting more than one application, please prioritize each project.

PLEASE BE ADVISED THAT HANDWRITTEN SUBMISSIONS OF APPLICATION WILL NOT BE ACCEPTED.

**Name of Project:** St. Peter's Roof Replacement Construction Documents

Priority: Second (If more than one application)

**Applicant**

1. Name: St. Peter's Episcopal Church  
(Attachments A and C required for Charitable Conservancy)  
Street Address: 215 Boulevard  
Town/State/Zip: Mountain Lakes, NJ 07046  
Chief Executive Officer: Elizabeth Muller, Senior Warden
2. Contact Person: Bethany Russo  
Phone: Work: 973-849-2576  
Ext. \_\_\_ Home /Mobile: 917-864-9086  
Fax Number: \_\_\_\_\_  
E-Mail: bethanyrusso143@gmail.com
3. Relationship of applicant to historic resource:  
(Attachment B required for all applicants)  
 Applicant owns property  
 Applicant leases property. Owner's Name: \_\_\_\_\_  
If applicant is different than owner, submit

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copy of valid lease indicating possession and significant control over property.

[ ] Other (describe): \_\_\_\_\_

**Property**

4. Name (Historic, from NR/SR nomination): Saint Peter's Episcopal Church  
Name (Present): Saint Peter's Episcopal Church  
Street Address: 215 Boulevard  
Municipality: Mountain Lakes State NJ Zip 07046  
Block/Lot: Block:55 Lot 58
5. Date Built: Main Church Building: 1926  
Major addition(s) and date(s):Parish Hall: 1955  
Original use : Church  
Architectural style(s): Gothic Revival  
Architect(s), if known: \_\_\_\_\_  
Builder(s), if known: \_\_\_\_\_
6. Register of Historic Places Status (Insert date for all that apply; Attachment D required).  
Note: Preference will be given to Register-listed properties  
[X] National Register of Historic Places \_\_\_\_\_  
individual Sept. 2005 district  
[X] NJ Register of Historic Places \_\_\_\_\_  
individual July 2005 district  
[ ] Certified NJ Eligible \_\_\_\_\_  
individual x \_\_\_\_\_ district  
[ ] Locally designated \_\_\_\_\_  
individual x \_\_\_\_\_ district  
The property is currently:  
[X] Occupied [ ] Unoccupied  
Gross square footage of the property 57,200 sq. ft.

7. Describe concisely the architectural, cultural and historical significance of the property. The St. Peter's Church property consists of 1) the Main Church Building was erected in 1926, with a Parish Hall added in 1955, and 2) the Rectory, which is a Hapgood residence built in 1916. Both buildings are contributing buildings to the Mountain Lakes Historic District. The Church is in the Gothic Revival style and the Rectory epitomizes a Hapgood house in the District, influenced by the Craftsman style. The two buildings exhibit many elements in the District that were vital in the town's planning. Both are set into the natural landscape and use materials such as stucco, slate and boulderstone. St. Peter's Church is highly visible from the Boulevard and is a widely used facility, serving as a center for community cultural events and activities.

\* \* \* \*

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Morris County Historic Preservation Trust Fund  
**2013 PRESERVATION PLANNING GRANT  
APPLICATION**

DEADLINE: FRIDAY, MARCH 29, 2013, 5:00 P.M.  
E.S.T.

SUBMIT TO: MORRIS COUNTY HISTORIC  
PRESERVATION TRUST FUND  
DEPT. OF PLANNING &  
DEVELOPMENT  
PO BOX 900,  
MORRISTOWN, NJ 07963-0900  
973-829-8120

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2. Preservation Plans and other large documentation in PDF format (with prior County approval)
3. All other supporting documentation (preferably in PDF format)

No submissions will be accepted via e-mail. Please collate all submissions. Double-sided printing is encouraged. Paper submittals shall be bound by staple, paper clip or binder clip only. The use of binders, plastic separators, non-recyclable materials,

etc. are strongly discouraged. Submittals will not be evaluated on the basis of the aesthetic of the package. If submitting more than one application, please prioritize each project.

PLEASE BE ADVISED THAT HANDWRITTEN SUBMISSIONS OF APPLICATION WILL NOT BE ACCEPTED.

Name of Project: LedgeWood Baptist Church Preservation Plan

Priority: \_\_\_\_\_ (If more than one application)

Applicant

1. Name: First Baptist Church of LedgeWood (aka LedgeWood Baptist Church)  
(Attachments A and C required for Charitable Conservancy)  
Street Address: 233 Main Street  
Town/State/Zip: LedgeWood, New Jersey 07852  
Chief Executive Officer: Rev. David Holwick, Pastor
  
2. Contact Person: David R. VanHorn  
Phone: Work: 908-399-7985  
Ext.\_\_\_\_ Home /Mobile: 908-399-7985  
Fax Number: 973-352-2219  
E-Mail: vanhorn625@gmail.com
  
3. Relationship of applicant to historic resource:  
(Attachment B required for all applicants)  
 Applicant owns property  
 Applicant leases property. Owner's Name: \_\_\_\_\_  
If applicant is different than owner, submit copy of valid lease indicating possession and significant control over property.  
 Other (describe): \_\_\_\_\_

Property

4. Name (Historic, from NR/SR nomination):  
Ledgewood Baptist Church  
Name (Present): Ledgewood Baptist Church  
Street Address: 233 Main Street  
Municipality: Roxbury State NJ Zip 07852  
Block/Lot: Block: 6406 Lot 5.01
  
5. Date Built: 1917  
Major addition(s) and date(s): Rear addition  
(1938)  
Original use: Church  
Architectural style(s): Gothic Revival  
Architect(s), if known: N/A  
Builder(s), if known: Gallo Bros (also built the  
Palace Theater in Netcong, NJ)
  
6. Register of Historic Places Status (Insert date  
for all that apply; Attachment D required).  
Note: Preference will be given to Register-listed  
properties  
 National Register of Historic Places \_\_\_\_\_  
individual \_\_\_\_\_ district  
 NJ Register of Historic Places \_\_\_\_\_  
individual Approved 2013 district  
 Certified NJ Eligible \_\_\_\_\_  
individual \_\_ district  
 Locally designated \_\_individual  
\_\_district  
The property is currently:  
 Occupied  Unoccupied
  
7. Describe concisely the architectural, cultural  
and historical significance of the property.

The cobblestone church was built in 1917, replacing the original building constructed in 1874, and has retained its historic character since that time. The asymmetric cross-gable plan incorporates Gothic Revival motifs, including pointed arch openings and a three-story crenellated bell tower. The 20 original pointed arch stained glass windows are believed to be from a studio in Newark, NJ. The pulpit, constructed by a member of the congregation, and the pews from a New York City church are original. The church is located near other National Register properties, including the former Morris Canal, King Store and Homestead, and the Silas Riggs House.

Current physical condition of the property:

- Excellent (No visible repair work needed)
- Good (Need for general maintenance)
- Fair (in need of more than routine maintenance)
- Poor (in need of major repairs)

Describe any conditions, inappropriate use or preservation need threatening the property. If it is endangered, explain the nature of the threats.

There is no immediate threat to the preservation of the church. However, the congregation is aware that several areas of the building are in need of repair, including the tower, heating system, and the original stained glass windows.

Existing Use of Site: Church

Proposed Use of Site: Church

Describe any impact of proposed project on existing use of site:

No impact is anticipated. The building would continue to function as a church for Sunday worship and during the weekdays for church-

related activities.

Site location based on Street Map (8 1/2 x 11)

Photographs (Attachment E)

Existing Deed Restrictions: None

Encumbrance and Utility: Oil heat for the church, natural gas for other buildings

Easements (if any): None

9. Stewardship: Who is responsible for budgeting, supervising and performing maintenance work? The Board of Trustees, a volunteer, rotating board consisting of 9 members of the congregation and the pastor. The church also employs a part-time custodian and has many volunteers participating in building improvement projects.

How will the property be maintained once the funded work is complete? (Complete Attachment F if project is \$50,000 or over.)

The Board of Trustees will remain the primary party responsible for budgeting, supervising, and performing maintenance work. The trustees will continue to retain a part-time employee and rely on volunteers for repairs and maintenance of the church.

Provide the total operating budget for the property for the last three years. Include maintenance, operations, programs and special events, and staff salaries.

	2010
Total Revenues	\$346,597
Total Expenses	\$349,027

	2011
Total Revenues	\$321,349
Total Expenses	\$344,288

	2012
Total Revenues	\$368,932
Total Expenses	\$354,174

### Budget Summary

Figures must match Budget Table, #16.

10. Total Project Cost: \$32,500  
 Match: \$6,500 (20% of project cost)  
 Grant Request: \$26,000 (80% of project cost)  
 Type of Application: Refer to “Eligible Activities” list in the Grant Rules and Regulations.  
 Acquisition (fee simple)  
 Preservation Planning Document  
 National Register Nomination

### Project Concept

11. Describe the goals of the project. What are the problems and needs of the resource that you will address in your project?  
 The trustees are seeking professional services to conduct a thorough investigation of the building and provide guidance on how best to address repairs. At this time, the trustees are aware that modifications to the tower are needed to ensure that storm water is adequately drained away from the building. Investigation and preservation of the stained glass windows is needed, and the oil furnace will soon need replacement.
12. Describe the research, investigation and planning you have completed that substantiates the preservation objectives of the project. If acquisition project, submit a copy of a

recent property appraisal. (Attachment G)  
The trustees are deeply involved and proactive in addressing church repairs, as evidenced by the amount of work done in the last 12 to 18 months at the congregation's expense. In 2011, the tower was repointed at a cost of \$15,780. Following the exterior work, the trustees repaired interior sections of the church that showed signs of water damage below the tower. This work has temporarily mitigated storm water penetration, but additional work is necessary to ensure that storm water is adequately drained away from the building. In 2012, 23 new windows were installed at a cost of \$4,450. The trustees also did a significant amount of work investigating the conversion of the church's old oil heating system to a natural gas system, including discussions with contractors and procurement of bids. The heating project, expected to cost about \$50,000, was deferred when the church's 37-year-old roof had to be replaced because of leaks in the sanctuary. The roof work was performed in January 2013 at a cost of approximately \$35,000. The appendix to this application includes bids received for a new natural gas furnace and water heater in 2012, and the approved bid for the bell tower repairs. (An excerpt from the church minutes of 1936 shows that leaks in the tower have been a long-standing issue.) An building analysis done in March 2011 is also included.

\* \* \* \*

## Public Benefit

## 19. Public access to the property:

	Current	At end of Project
Open to the public	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Open to the public on a regular basis- # Days/yr	All days	All days
Open to the public on a regular basis - # hrs/day	9am-10pm	9am-10pm
Open by appointment only	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no
Number of visitors per years	15,000	15,000
How was this number calculated?	<input type="checkbox"/> actual <input checked="" type="checkbox"/> estimated	Source of count: Attendance at church events

20. Please provide any additional information helpful for review, including interpretive program, innovative design; how project achieves local community revitalization, preservation of the built or natural environment, heritage education, tourism; how project promotes preservation activity and reach new audiences.

Preservation of the LedgeWood Baptist Church will enable the congregation to continue to provide religious and community activities to the county's diverse population. The church currently serves multicultural congregations in

Morris, Sussex, and Warren counties. Besides the traditional congregation of 120 families, the church's Latina Mission reaches a new and expanding audience of 70 people. Few, if any, congregations in Morris County have the same level of cultural diversity. The church's new Fellowship Center, though not a historic structure, is a vital community resource for various organizations outside of the church, including sports clubs. The church holds special events throughout the year, in particular the Peach Festival and Vacation Bible School in the summer, that attracts families from throughout the area.

21. Accessibility  
Is the property compliant with the American Disabilities Act?  yes  No  
If not, when will your organization conduct an "ADA Self-Assessment Survey and Planning Tool"?  
 Yes  No Month/Year \_\_\_\_\_  
How does the facility currently accommodate individuals with disabilities?  
Handicapped accessibility is afforded via a ramp into the church and a handicapped bathroom.

\* \* \* \*

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Morris County Historic Preservation Trust Fund  
**2015 PRESERVATION PLANNING GRANT  
APPLICATION**

DEADLINE: FRIDAY, MARCH 27, 2015, 1:00 P.M.  
E.S.T.

SUBMIT TO: MORRIS COUNTY HISTORIC  
PRESERVATION TRUST FUND  
DEPT. OF PLANNING &  
DEVELOPMENT  
PO BOX 900, MORRISTOWN, NJ  
07963-0900  
973-829-8120

Please do not attach any materials which are not expressly requested in this application as these materials will not be accepted.

Please submit two paper copies and one electronic copy for the following:

1. Application Forms
2. Proposals from Professionals, Consultants, Contractors

Please submit all electronic files on one CD/DVD, including:

1. All photos as JPEG images, minimum 200 dpi at 4"x6" (500 KB)
2. Preservation Plans and other large documentation in PDF format (with prior County approval)
3. All other supporting documentation (preferably in PDF format)

No submissions will be accepted via e-mail. Please

collate all submissions. Double-sided printing is encouraged. Paper submittals shall be bound by staple, paper clip or binder clip only. The use of binders, plastic separators, non-recyclable materials, etc. are strongly discouraged. Submittals will not be evaluated on the basis of the aesthetic of the package.

If submitting more than one application, please prioritize each project.

PLEASE BE ADVISED THAT HANDWRITTEN SUBMISSIONS OF APPLICATION WILL NOT BE ACCEPTED.

**Name of Project:** Community Church (CCML) Preservation Plan

Priority: \_\_\_\_\_ (If more than one application)

**Applicant**

1. Name: The Community Church of Mountain Lakes  
(Attachments A and C required for Charitable Conservancy)  
Street Address: 48 Briarcliff Road  
Town/State/Zip: Mountain Lakes, NJ 07046  
Chief Executive Officer: Rev. Dr. Debra Duke
2. Contact Person: Glen Kolides  
Phone: Work: 973 334 6500  
Ext. \_\_\_ Home /Mobile: 973 331 9619 / 908 723 7057  
Fax Number: 973 334 8635  
E-Mail: Comchurch@optimum.net
3. Relationship of applicant to historic resource:  
(Attachment B required for all applicants)  
 Applicant owns property  
 Applicant leases property. Owner's

265a

Name: \_\_\_\_\_

If applicant is different than owner, submit copy of valid lease indicating possession and significant control over property.

[ ] Other (describe): \_\_\_\_\_

**Property**

4. Name (Historic, from NR/SR nomination: The Community Church of Mountain Lakes  
Name (Present): The Community Church of Mountain Lakes  
Street Address: 48 Briarcliff Road  
Municipality: Mountain Lakes State NJ Zip 07046  
Block/Lot: Block:78 Lot 28
5. Date Built: 1913  
Major addition(s) and date(s): Church house addition 1926, Chapel and education wing 1957  
Original use : Religious Institution, place of worship and community activities  
Architectural style(s): \_\_\_\_\_  
Architect(s), if known: \_\_\_\_\_  
Builder(s), if known: Hapgood, builder no. 33
6. Register of Historic Places Status (Insert date for all that apply; Attachment D required). Note: Preference will be given to Register-listed properties  
[X] National Register of Historic Places \_\_\_\_\_  
individual NR# 05000963 district  
[X] NJ Register of Historic Places SN ID# 3625 individual \_\_\_\_\_ district  
[ ] Certified NJ Eligible \_\_\_\_\_  
individual \_\_\_\_\_ district

266a

Locally designated \_\_\_\_\_  
individual \_\_\_\_\_ district

The property is currently:

Occupied  Unoccupied

7. Describe concisely the architectural, cultural and historical significance of the property.

This was The first church building in Mountain Lakes. Hapgood donated the land 1913. The congregation built the building.

\* \* \* \*

267a

**COUNTY OF MORRIS  
DEPARTMENT OF PLANNING & PUBLIC  
WORKS**

Board of Chosen Freeholders

*Director:* Kathryn A. DeFillippo

*Deputy Director:* John Cesaro, Douglas R  
Cabana John Krick.us Hank Lyon, Thomas J.  
Mastrangelo David Scapicchio

*County Administrator:* John Bonanni

*Director:* Deena Leary

973-829-8120

FAX 973-326-9025

dleary@co.morris.nj.us

October 22, 2015

Ms. Miriam Morris, President

Roxbury Historic Trust; Inc.

209 Main Street

Ledgewood, NJ 07852

**Re: Administrative Approval Letter for the  
2015 Morris County Historic Preservation  
Trust Fund**

**King Homestead Museum**

268a

Dear Ms. Morris,

Morris County's historic preservation consultant, Preservation Design Partnership, reviewed the plans and specifications for the King Homestead Museum 2015 Structural Stabilization grant. The plans and specifications were found to be in compliance with the Secretary of the Interior's Standard for the Treatment of Historic Properties. The project does not constitute an encroachment under the New Jersey Register of Historic Places Act. Therefore, this action does not require further review under the Act and Roxbury Historic Trust, Inc. may proceed with the project.

Sincerely,

Deena Leary  
Deena Leary, Director  
Morris County Planning &  
Public Works  
Daniel D. Saunders  
Daniel D. Saunders  
Deputy State Historic  
Preservation Officer

cc: Christine Marion, Morris County Planning  
Director Dominique Hawkins, Preservation Design

**Board of Chosen Freeholders  
Morris County, New Jersey**

Resolution No. 17

Adopted: February 26, 2014

**WHEREAS**, the County of Morris (County) administers the Morris County Historic Preservation Trust Fund Program (Program); and

**WHEREAS**, the County executed a Memorandum of Understanding (MOU) with the New Jersey Historic Preservation Office (HPO) in 2003 and a Renewal of Memorandum of Understanding in 2006 and 2009 to permit the County to conduct the reviews required to obtain project authorization under the New Jersey Register of Historic Places Act for individual Program funded projects which are to be undertaken by qualified non-profits, municipalities or the County; and

**WHEREAS**, the County has retained a consultant professionally qualified to apply the Secretary of the Interior's Standards for the Treatment of Historic Preservation Properties (36 C.F.R. Part 68) (Standards) to the review of Program funded projects; and

**WHEREAS**, the Renewal of MOU expires at the end of three years after its execution; and

**WHEREAS**, following an HPO review of the Program as requested by the County, the HPQ and County agree that the Program has been successful for the last three years, both expediting and ensuring consistency of review for the Program; and

**WHEREAS**, both the County and HPO agree to

enter into a Renewal of Memorandum of Understanding to continue the reviews needed for the operation of the Program.

**NOW THEREFORE, BE IT RESOLVED,** by the Board of Chosen Freeholders of the County of Morris in the State of New Jersey that the Director of the Board of Chosen Freeholders is hereby authorized to sign and execute a Renewal of Memorandum of Understanding with the New Jersey Bistolic Preservation Office, and the clerk to attest to the same, a copy of which is on file in the office of the Department of Planning & Public Works and made a part hereof by reference.

I hereby certify the above to be a true copy of a resolution adopted by the Board of Chosen Freeholders of the County of Morris at a regular meeting held on February 26, 2014.

Diane M. Ketchum, Clerk of the Board

**RENEWAL OF  
MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE COUNTY OF MORRIS AND  
THE NEW JERSEY STATE HISTORIC  
PRESERVATION OFFICE**

**WHEREAS**, the County of Morris (County) administers the Morris County Historic Preservation Trust Fund Program (Program), which is funded under the Morris County Open Space, Farmland and Historic Preservation Trust Fund (P.L. 1999 c. 24 NJSA 40:12-15 et seq.); and

**WHEREAS**, the purpose of the proposed Understanding is to permit the County to conduct the review required to obtain project authorization under the New Jersey Register of Historic Places Act for individual grant program funded projects which are to be undertaken by qualified non-profits, municipalities or the County; and

**WHEREAS**, the Historic Preservation Office (HPO) has the responsibility under N.J.A.C. 7:4 to coordinate, on behalf of the Department of Environmental Protection (DEP), reviews under the New Jersey Register of Historic Places Act (P.L. 1970 c. 268); and

**WHEREAS**, pursuant to N.J.A.C. 7:4-7.2 the HPO must review applications for encroachment review pursuant to the New Jersey Register of Historic Places Act for technical and professional completeness and to determine whether the proposed project constitutes an encroachment; and

**WHEREAS**, an encroachment is defined in N.J.A.C. 7:4-1.3 and is determined by applying the Criteria for Determining Whether an Undertaking Constitutes an Encroachment or will threaten or destroy the historic property (N.J.A.C. 7:4-7.4) which further state: “An undertaking that would otherwise be found to be an encroachment pursuant to (a) above may be considered by the Department as not being an encroachment when:.....2. The undertaking is limited to the rehabilitation, restoration, or reconstruction of buildings and structures and is conducted in a manner that preserves the historical and architectural value of the affected historic property through conformance with the Secretary of the Interior’s Standards for the Treatment of Historic Preservation Properties (36 C.F.R. Pan 68) (Standards) and “Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings”... and

**WHEREAS**, both the HPO and County have determined that, by the requirements of the Program, all funded projects (a) are limited to the rehabilitation, restoration, stabilization, preservation, or acquisition of buildings and structures; (b) affect properties already listed in the New Jersey Register of Historic Places or which will be listed as a condition of the grant; and (c) are required to meet the Standards; and

**WHEREAS**, both the HPO and County have determined that the County has or will retain a consultant professionally qualified to apply the Standards to the projects funded by the Program and it is essential that the Standards be applied consistently under the New Jersey Register of

Historic Places Act; and

**WHEREAS**, the HPO and County agree that the Program has been successful for the last three years, both expediting and ensuring consistency of review; and

**NOW, THEREFORE**, the HPO and County agree that the Program shall be administered in accordance with the following stipulations to satisfy New Jersey Register of Historic Places Act review requirements for all individual undertakings of the Program.

### **STIPULATIONS**

County will ensure that the following stipulations are carried out:

#### **I. Personnel**

- A. County will employ a consultant who meets or exceeds the attached Secretary of the Interior's Professional Qualifications Standards for architectural history, archaeology or historic architecture (36 CFR 61)

#### **II. Review of Grant Program Projects**

- A. All Grant Program projects will be treated in the following manner:
  - 1. County will review all plans and specifications (or other documents as appropriate) for Grant Program projects for conformance with the recommended approaches in the Standards.
  - 2. County shall furnish a copy of any Historic Structure Reports, Preservation Plans, Existing Condition Surveys

funded by the County Grant Program to HPO.

3. County staff shall meet as needed with the review staff of the HPO to discuss projects under development. County shall verbally advise HPO staff of any potential conflicts with the Standards. HPO shall provide technical assistance regarding compliance with the Standards within 15 working days of a request by County.
4. If County determines that the final plans and specifications for a project meet the Standards, the County shall issue an administrative approval letter which will be co- signed by the HPO within 15 days of receipt.
5. County shall maintain a record of each approval decision along with a repository containing documentation upon which the decision was based.
6. The County depository shall include the following information:
  - a. The project description.
  - b. Final plans and specifications
  - c. Photographs of existing conditions.
  - d. Historical information which informed the review, such as a Historic Structure Report, Preservation Plan, Existing Conditions Survey, or historic photographs.

7. If County or the HPO determines that the Standards cannot be met for any project under their review, the project shall be considered an encroachment and shall be reviewed pursuant to the procedures listed in N.J.A.C. 7:4-7.2 (e).

B. Treatment of Archaeological Resources

1. Ground disturbing activity for all project plans will be reviewed by a qualified archaeologist to verify conformance to the Standards. For each project involving ground disturbance, except for the excavation of demonstrably disturbed soil, County will consult with RPO staff to assess the potential of the ground disturbance to affect significant archaeological resources.
2. If the affected area is deemed to have high archaeological potential by HPO staff, an archaeological survey will be carried out for the grant recipient by an archaeologist who meets the National Park Service's Professional Qualification Standards for Archaeology. The scope of work shall be developed in consultation with the RPO. A report (meeting the HPO Report Guidelines) detailing the findings of the investigation shall be submitted to the HPO for review and approval.
3. Significant archaeological resources shall be avoided or preserved in place whenever feasible. When preservation

in place is not possible, in whole or in part, a treatment for “data recovery” consistent with the Advisory Council’s Handbook, Treatment of Archaeological Properties, and the Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716) will be developed and implemented in consultation with HPO.

4. In the event that previously unidentified and undocumented, high density archaeological deposits are unearthed during construction, the County shall make a telephone request for an archaeologist from HPO to make an on-the-spot appraisal of the significance of the remains. If the remains are assessed as significant, County and HPO will explore ways to avoid or reduce damage to them.

### **III. Duration and Renewal**

This Memorandum of Understanding will continue in full force and effect for three years from the date that all parties have signed this agreement. At any time in the six-month period prior to this date, the County may request the HPO in writing to review the County’s Grant Program and consider an extension or modification of this MOU. No extension or modification will be effective unless all parties to the MOU have agreed to it in writing.

Any party to this MOU may request that it

be amended, whereupon the parties will consult to consider such amendment.

Any party to this MOU may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the County and HPO will comply with N.J.A.C.7:4.-7 ("Review Procedures for Projects Encroaching upon New Jersey Register Properties") with regard to individual undertakings covered by this MOU.

Signatures:

Historic Preservation Office

By: Daniel D. Saunders, Administrator, Deputy State Historic Preservation Officer

Date: 1/28/14

County of Morris

By: Thomas J. Mastrangelo, Director, Board of Chosen Freeholders