

FINDING OF NO SIGNIFICANT IMPACT

Clear Space Theater Inc.
Rehoboth Beach, DE

Rural Development (RD) Rural Housing Service (RHS)
U.S. Department of Agriculture

Clear Space Theater Inc.

Prepared by:
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A. INTRODUCTION

Clear Space Theater Inc., plans to submit a financing request to the U.S. Department of Agriculture, RHS to construct the proposed Clear Space Theater (Project) in Rehoboth Beach, DE. RHS is considering this financing request. Prior to taking a federal action (i.e., providing financial assistance), RHS is required to complete an environmental impact analysis in accordance with the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 et seq.), the Council on Environmental Quality's (CEQ) regulations for implementing NEPA (40 CFR Parts 1500-1508), and RD's NEPA implementing regulations, Environmental Policies and Procedures (7 CFR Part 1970). After completing an independent analysis of an environmental report prepared by Clear Space Theater Inc. and its consultant, RHS concurred with its scope and content. In accordance with 7 CFR § 1970.102, RHS adopted the report and issued it as the Agency's Environmental Assessment (EA) for the proposed Project. RHS finds that the EA is consistent with federal regulations and meets the standards for an adequate assessment. Clear Space Theater Inc., published a newspaper notice, announcing the availability of the EA for public review, in accordance with 7 CFR § 1970.102. In addition, RHS considers the proposed Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 USC 470(f), and its implementing regulation, "Protection of Historic Properties" (36 CFR Part 800).

B. PROJECT DESCRIPTION AND PURPOSE/NEED

The overall purpose of the project proposes construction of two buildings: a 256-seat theatre and a three-story studio building for rehearsals. The Theatre building (14,948 sq ft) includes the theatre auditorium, lobby, dressing rooms, and costume storage. The Spotlight Studio building (9,950 sq ft) includes three rehearsal rooms, a box office, staff offices, and a space for a leased food service facility (coffee shop). The first floor of both buildings will be constructed at street level, providing handicap access without the need for ADA facilities to enter the lobbies. RHS has reviewed the purpose and need for the Project and determined that the proposal will meet the present and future needs of Clear Space Theater Inc.

C. ALTERNATIVES EVALUATED

1. No Action

Under the No Action Alternative, RHS would not provide financial assistance to Clear Space Theater Inc., and/or the proposed Project would not be constructed. This alternative would not assist Clear Space Theatre Inc. in providing the development of a performing arts theatre facility at 413, 415 and 417 Rehoboth Avenue in Rehoboth Beach for the development of a performing arts theatre facility within a five-mile radius

2. Action Alternative (Preferred Alternative)

Under the Action Alternative, RHS would consider financing the proposed Project, and Clear Space Theater would construct the Theater they propose. The proposed project proposes construction of two buildings: a 256-seat theatre and a three-story studio building for rehearsals. The Theatre building (14,948 sq ft) includes the theatre auditorium, lobby, dressing rooms, and costume storage. The Spotlight Studio building (9,950 sq ft) includes three rehearsal rooms, a box office, staff offices, and a space for a leased food service facility (coffee shop). The first floor of both buildings will be constructed at street level, providing handicap access without the need for ADA facilities to enter the lobbies.

3..Alternatives Eliminated from Further Consideration

In addition to the No Action Alternative and Action Alternative, Clear Space Theater considered other technology and siting alternatives, which are documented in the **Alternatives** section of the EA.

D. SUMMARY OF ENVIRONMENTAL EFFECTS

The analyses in the EA documented that the proposed Project would have no adverse effects to wetlands, waterways, tidelands, Floodplains, Geology, Soils, important farmland soils, cultural resources and historic properties, threatened and endangered species, air quality, water quality, transportation, noise, coastal resources, and minority or socioeconomically disadvantaged populations. A summary of anticipated impacts on the human environment is provided below, including any mitigation measures deemed necessary to avoid or minimize impacts. The Clear Space Theater Inc. is responsible for implementing these measures. All references to Appendices and Exhibits are from the EA document.

WETLANDS, WATERWAYS & TIDELANDS

The Project Area is located within uplands, surrounded by developed upland urban land. Wetlands are not present on, or near the Project Area. The US Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI) mapping (**Appendix A**, Exhibit 4a) indicates no wetlands within or immediately adjacent to the proposed Project Area. A site visit was completed on July 26, 2018 and no indicators of wetlands was observed within the Project Area. The site is in the incorporated area of Rehoboth Beach, has been developed, and is presently being used for commercial purposes. The Delaware Department of Natural Resources and Environmental Control (DDNREC) Environmental Navigator mapping (**Appendix A**, Exhibit 4b) indicates that no wetlands, waterways and/or tidelands are mapped on or adjacent to the Project Area. The Lewes and Rehoboth Canal is located approximately 0.15 miles to the west of the Project Area. In addition, the Atlantic Ocean is located approximately 0.75 miles to the east of the Project Area.

2.1.2 Environmental Consequences

The project will not impact any wetlands, waterways or tidelands that are regulated under municipal, state, and federal wetland laws. All stormwater and wastewater will be accommodated through existing domestic water and

sanitary sewer services. The proposed project will not result in any waterways receiving untreated runoff, stormwater discharge, or effluent from the proposed development.

2.1.3 Mitigation

No mitigation will be required with project construction.

FLOODPLAINS

Flood zones are geographic areas defined by the Federal Emergency Management Agency (FEMA), reflecting the severity or type of flooding in the area. The government definition of a floodplain, or high risk zone, is an area which has at least a one in one hundred or one percent chance of flooding in any given year. The Project Area is not located within any designated floodway or floodplain. A copy of the FEMA National Flood Hazard Layer FIRMette Map and Flood Insurance Rate Map (FIRM) Number 10005C0354K, revised March 16, 2015, showing the proposed project site is included in **Appendix A**, Figures 5a and 5b. A signed Standard Flood Hazard Determination Form is included in **Appendix C**. There are no impact to floodplains will result from project construction. And no mitigation will be required with project construction.

COASTAL ZONE MANAGEMENT CONSISTENCY

The Project Area is located within the boundaries of the Delaware Coastal Zone, which is regulated by the Delaware Coastal Zone Act, Chapter 70, Title 7 Delaware Code. The entire state of Delaware has been designated as a Coastal Zone Management Area (CZMA), and therefore the project is located within the CZMA. A copy of the Coastal Barrier Resource Area Map has been obtained and confirms the project area is outside of the CBRA Buffer Zone (See **Appendix A**, Exhibits 6 and 7). The Proposed Action is consistent with the Delaware Coastal Zone Management Program, as per coordination with the Delaware Coastal Management Program (DCMP) (**Appendix C**). In accordance with 15 CFR §930.42, the public was invited to participate in the review of the USDA, Rural Development federal assistance for CSTCO. Public 5 notice of the Proposed Action was published in the Delaware State News, The News Journal, and DNREC public notices list service on September 26, 2018. The public was given twenty days to comment on the notice and no public comments were received in response to the notice. DHCA/SHPO advised DNREC that their review of the project was ongoing, as documented by DNREC's email to USDA dated October 30, 2018. The following items were noted by the participating agencies (DNREC, Division of Watershed Stewardship, Sediment and Stormwater Section; DNREC, Division of Air Quality; and Department of State, Delaware Historical and Cultural Affairs) as actions to be completed as part of construction of the Proposed Action:

- Coordination with Sussex Conservation District regarding a Sediment and Stormwater Plan is necessary before construction commences;
- The use of dust suppressants and measures to prevent transport of dust off-site from material stockpile and movement, is required; and,
- The use of covers on trucks that transport material to and from the site is required to prevent visible emissions.

All coordination with Sussex Conservation District will be conducted prior to project construction. All dust suppressants and the use of truck covers, as well as other measures to prevent transport of dust and visible emissions

off-site will be employed. No mitigation will be required with project construction.

GEOLOGY

Geologic Region/Province - Based on the map of physiographic provinces of Maryland, Delaware, and the District of Columbia, the Project Area is located within the Coastal Plain Physiographic Province. The Coastal Plain is characterized by gently rolling hills and valleys that is underlain by a southeastwardly thickening sequence of sediments that consists of sand and gravel aquifers interlayered with silt and clay confining units. Geologic Formation(s) - Based on the Delaware Geological Survey Data Viewer, the Project Area lies within the Lynch Heights Formation, which consists of a Clean, white to pale-yellow, well-sorted, fine to coarse sand with scattered very coarse sand to pebble laminae and silty clay laminae overlying light-gray to greenish-gray, compact silty clay with shell fragments. Silty clay beds grade laterally to well-sorted sands with clay laminae. The unit was deposited in a lagoon (silty clay with shell) with tidal flats (sand with clay laminae) that was prograded by spit deposits (well-sorted fine to coarse sand). **Appendix A**, Exhibit 8 shows the geologic formations in reference to the Project Area. There is no impact to unique or outstanding geologic features or formations will result from project construction, and no mitigation will be required with project construction.

SOILS

A review of the United States Department of Agriculture-Natural Resources Conservation Service (USDA-NRCS) Web Soil Survey identifies the soils present within the Project Area as consisting primarily of the Greenwich-Urban land complex, 0 to 5 percent slopes soil (GuB). Details on the soils in the Project Area are shown in **Appendix A**, Exhibit 9. The Greenwich-Urban Land Complex, 0-5 percent slopes soils, consist of brown to yellowish-brown, well-drained loamy eolian and alluvial deposits underlain by loamy and sandy alluvial sediments. Urban land soils consist of cut and fill areas, most of which have been developed for residential, commercial, or industrial use or for multilane highways. During development, the original soil horizon was destroyed in at least 70 percent of the area. Areas of both cut and fill are moderately or rapidly permeable. Where the original soil was removed, and the substratum exposed, the material remaining is rapidly permeable and extremely low in organic-matter content and fertility. Table 1. Soils in the Project Study Area. Impact to soils will result with construction of the proposed 256-seat theatre and three-story studio space. Excavation will be required for the building foundations and for the interconnection to existing utility systems including public sewer and water. All soils are moderately drained to well drained, with no shallow water table or flooding/ponding expected to occur. No other constraints or limitations for construction of the proposed project related to soil type were identified. Construction site stormwater management best management practices will be used, in accordance with the City of Rehoboth Beach and DNREC.

GROUNDWATER RESOURCES

Groundwater is expected to flow to the south/southeast in the Project Area, parallel to the surface gradient, although it should be noted that a property-specific hydrogeologic investigation was not conducted to further determine groundwater conditions within the Project Area.

Topography/Regional Drainage - The Project Area is located on the Rehoboth Beach, Delaware 7.5-minute USGS topographic quadrangle at an approximate elevation of 22 feet above mean sea level. Surface water in the Project Area is expected to drain into the stormwater drains located along the streets bordering the Project Area. Water Migratory Pathways - Potential migratory pathways for surface water and groundwater entering and exiting the Project Area are important in establishing the potential for surrounding areas to impact the Project Area or for the Project Area to impact neighboring properties that are downgradient. Local topography generally slopes to the south/southeast. Surface water is expected to flow into stormwater drains located along the streets bordering the Project Area. Although local topography slopes to the southeast, the Project Area is located within the South Lewes-Rehoboth Canal Watershed, which is the recipient of the local drainage. The Lewes and Rehoboth Canal is located approximately 0.15 miles to the west of the Project Area; the Lewes and Rehoboth Canal ultimately drains into the Atlantic Ocean, which is located approximately 0.75 miles to the east of the Project Area. The EPA Sole Source Aquifer website was reviewed, and the Project Area is not located within or adjacent to any sole source aquifers. The Project Area is not located within a Wellhead Protection Area or within a Recharge Area. However, according to the U.S. EPA DWMAPS website, the project area is located within the Hydrologic Unit Code (HUC) 12: Rehoboth Canal-Rehoboth Bay, where 62.53% of the entire watershed is within a wellhead protection area and contains twenty-two drinking water wells. See **Appendix A**, Exhibits 10 and 11 for copies of the mapping. Area specific aquifers will not be utilized for project construction, as the drinking water for the proposed project will be supplied by public water. It is not anticipated that construction of the project will intercept, utilize, or contaminate groundwater resources on, or within the vicinity of the Project Area. The project will not impact aquifers or Wellhead Protection Areas or Recharge Areas due to its location in an area outside of any known groundwater features, as identified above. No mitigation will be required with project construction.

LAND USE

The Project Area buildings are both currently vacant and were vacant when the properties were purchased. The properties were formerly occupied by Alesi, an engineering company, and Oasis Healing Center, a wellness center (415 Rehoboth Avenue), and Jeff West Home, a home décor retailer (413 Rehoboth Avenue). 417 Rehoboth Avenue is a stone parking area. Historic aerial photographs and historic fire insurance maps were obtained to determine previous uses of the Project Area. Upon review of the historical photographs and fire insurance maps, it was determined that the Project Area has been utilized as residential and/or light commercial use from at least 1922 through the current time. The Project Area are not located within key water resource areas or coral reef ecosystems. The Project Area is located within the city limits of the City of Rehoboth Beach at 413-417 Rehoboth Avenue and is presently developed and proposed to be redeveloped to accommodate the

construction of a new theatre and office/rehearsal building by the CSTCO. Municipal water and sewer service is provided to the Project Area by the City of Rehoboth Beach. No impacts to land use within or immediately adjacent to the Project Area will result from project construction, as the current land use is commercial, which will be maintained as commercial development in the Build Condition. In addition, the proposed project would not represent a conflict to any planned or targeted restoration efforts in the South Lewes-Rehoboth Canal Watershed. No mitigation is anticipated to be required with project construction.

FEDERAL LISTED THREATENED AND ENDANGERED SPECIES

The USFWS IPAC Resource List was generated on April 17, 2020, and no threatened, endangered, or candidate species were identified in association with the Project Area (See **Appendix C**). The review with the Delaware State Natural Heritage Site database completed by DDNREC Division of Fish and Wildlife indicates that there are currently no records of federally listed plants, animals, or natural communities known to exist on or near the Project Area.

4.1.2 Environmental Consequences

The proposed project construction will not result in impacts to federally listed threatened and endangered species. No mitigation will be required with project construction.

STATE LISTED THREATENED AND ENDANGERED SPECIES

An IPAC report has been completed through the US Fish & Wildlife website. There are no threatened, endangered, or candidate species on the species list provided from the search dated April 17, 2020. The Project Area is located on previously developed land and is not on lands managed by the National Wildlife Refuge. The IPAC report also identified that there are no wetlands within the Project Area. A copy of the most recent IPAC report is attached. A request for review of the possible presence of rare, threatened, or endangered species was sent to DNREC's Division of Fish & Wildlife, Natural Heritage and Endangered Species Program and a response was received on August 7, 2019 indicating that there are currently no records of state-rare or federally listed plants, animals or natural communities at the projects site. See **Appendix C**. No environmental consequences regarding State Listed T&E species are expected to occur as a result of constructing this project per the letter received from DDNREC on August 7, 2019. See **Appendix C**. No mitigation will be required with project construction.

INVASIVE SPECIES

No invasive species were indicated by DDNREC in their review of the Project Area, as indicated in the August 7, 2019, correspondence. Additionally, a field view of the project site completed on July 26, 2018, did not reveal any observed invasive plant or animal species occurring within or immediately adjacent to the Project Area. The proposed project construction will not result in the addition of invasive species to the Project Area, nor will it change the existing conditions or overall composition of the existing plant and animal communities that exist within and adjacent to the Project Area, since the entire site is located with an urbanized area, and will continue to be after project construction. No mitigation will be required with project construction.

BIRDS PROTECTED VIA THE MIGRATORY BIRD ACT

The DDNREC Division of Fish & Wildlife correspondence dated August 7, 2019, did not indicate any rare, threatened, and endangered bird species, unique natural communities, and other significant natural resources for the referenced project in regard to birds. The US Fish and Wildlife Service IPaC Resource List was generated for the Project Area for birds protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act known or expected to be on or near the project area, or that could potentially be directly or indirectly affected by activities in the project area (see **Appendix C**). A field view conducted on July 26, 2018, indicated that, except for transient species that may be temporarily occupying the Project Area, no suitable habitat for breeding, wintering, migrating, or presence year-round within the Project Area for any of the birds listed above. No adverse impact to any bird of conservation concern is anticipated to occur with the construction of the proposed project. The proposed project construction will not result in impacts to birds protected via the Migratory Bird Act or via the Bald and Golden Eagle Protection Act. No mitigation will be required with project construction.

FARMLANDS

Important Farmland: According to the USDA-NRCS Web Soil Survey, Prime farmland soils and soils of statewide importance are not mapped within or immediately adjacent to the Project Area (**Table 1**). According to the Delaware Agricultural Land Preservation online GIS map (**Appendix A**, Exhibit 12), the Project Area is already developed and located with the main business district in the City of Rehoboth Beach. No Important Farmland is located on or immediately adjacent to the Project Area. No active, productive, or protected farmlands are located adjacent to the Project Area and none will be directly or indirectly impacted with project construction. No mitigation will be required with project construction.

FORMALLY CLASSIFIED LANDS

A desktop review of online federal, state, and local databases was completed to identify potential Formally Classified Lands administered either by federal, state, or local agencies or properties that have been given special protection through formal legislative designation either within the Project Area or immediately adjacent to the Project Area. The following sites were investigated, but not found to occur within or adjacent to the Project Area: National Parks, National Monuments, National Reserves, Recreation Areas, Battlefields and Military Parks, National Seashores, National Lakeshores, National Natural Landmarks, National Parkways, Cooperative Management and Protection Areas, National Conservation Areas, Outstanding Natural Areas, Forest Reserves, Wilderness, Wilderness Study Areas, National Scenic and Historic Trails, Wild and Scenic Rivers, National Forest, National 11 Grasslands, National Wildlife Refuges, Coordination Areas, Waterfowl Production Areas, Areas of State and Local Interest, Coastal Barriers Resource Systems (See **Appendix F**). There is one Formally Classified Land that occurs within the project study area: Coastal Zones. The entire state of Delaware is considered to be located within the Coastal Zone. Section 2.3.1 addresses the existing conditions associated with the Coastal Zone Resource.

CULTURAL RESOURCES

ABOVE GROUND HISTORIC RESOURCES

This project has implemented the use of the Nationwide Programmatic Agreement among the U.S. Department of Agriculture Rural Development Programs, National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation for Sequencing Section 106 (NPA). USDA Rural Utilities Service (RUS) has applied the Nationwide Programmatic Agreement for this project among the U.S. Department of Agriculture Rural Development Programs, National Conference of State Historic Preservation Officers, and The Advisory Council on historic Preservation for Sequencing Section 106. RUS has certified that it will apply the requirements of the NPA. The applicant has received and certified the NPA Awareness Certification. Section 7.1.3.1 of this document reviews the historic property located within the project area at 413 Rehoboth Avenue, known as the Joseph House and Garage, as well as the conditions associated with the demolition of the garage prior to the conclusion of the Section 106 consultation. However, no funds will be disbursed, and no construction will begin until the Section 106 process has been completed and verified by the State Environmental Coordinator. The project can proceed to obligation with this understanding that Section 106 is completed prior to construction. The Delaware Division of Historical and Cultural Affairs, Delaware State Historic Preservation Officer (SHPO), was contacted on October 8, 2018 to identify historic and potentially historic resources listed or eligible for listing on the National Register within or directly adjacent to the Project Area (See **Appendix C**). The SHPO identified two buildings that would be demolished to accommodate the new facility at 413 - 417 Rehoboth Avenue, and requested a formal evaluation for eligibility for listing in the National Register of Historic Places. A field view was held onsite on November 27, 2018 with representatives from SHPO and USDA. SHPO recommended during this meeting that the Area of Potential Effect should encompass a broader area (perhaps within a 1 block radius of the site) given the height of the proposed building. However, based on the SHPO's review of the buildings within that area, they requested further study of only the building at 413 Rehoboth Ave. (Lot 137 on the boundary survey plan, **Appendix B**), which appeared to retain overall integrity, but its history and potential significance were unknown at the time. The building was recommended to be evaluated for its eligibility for listing in the National Register of Historic Places, which would involve further historical research on the building and its place in Rehoboth's history, and the assessment of whether the property meets criteria set by the National Park Service. After follow up coordination with the SHPO, the University of Delaware's Center for Historic Architecture and Design (CHAD) completed an evaluation of all above ground structures located on Lot 137 in the Project Area as per SHPO guidance, resulting in the recommendation that the property at 413 Rehoboth Avenue (Lot 137) meets 12 the National Register Criterion on the local level of significance. The National Register of Historic Places Registration Form for the property is included in the Documentation for Findings of No Adverse or Adverse Effect 36 CFR Part 800.11(e) Checklist in **Appendix D**. 413 Rehoboth Avenue The building and contributing garage located at this address sits on a 0.1148-acre parcel bounded on the north by a residential property, to the east and west by commercial properties, and to the south by Rehoboth Avenue. The main building, named the Joseph House, is a one-and-a-half-story, early-twentieth century small bungalow with a large, enclosed wrap-around porch that was constructed circa 1922. A gravel driveway leads to the detached

garage located at the rear of the property. The front of the dwelling faces south towards Rehoboth Avenue. At the time of construction, the Delaware, Maryland, and Virginia (DM&V) rail line ran through the middle of Rehoboth Avenue, with the train station located within walking distance of the property. The building lot for the Joseph House was previously part of the designated grounds of the Rehoboth Beach Camp Meeting Association of the Methodist Episcopal Church, established in 1873. Despite some alterations during the last quarter of the twentieth century, the Joseph House still possesses a high level of integrity of location, materials, workmanship, association, and feeling, while retaining a medium level of integrity for setting and design. The Joseph House, located at 413 Rehoboth Avenue, Rehoboth Beach, Delaware, is eligible for listing in the National Register of Historic Places under Criterion C for its early-twentieth century, small bungalow design. The dwelling also displays an early-twentieth century floor plan reflecting significant Progressive Era advances in working-class housing. Built c. 1922 and quickly expanded to its current footprint by 1931, it survives relatively intact, with a few modifications from the last quarter of the twentieth century, when the dwelling was converted into retail space. The Joseph House is significant at the local level as a rare example of a working-towards-middleclass, Progressive Era American bungalow, located within a beach community that once featured an abundance of these modest, frame dwellings. The SHPO concurred with this finding on January 23, 2020 (See **Appendix C** for correspondence regarding Determination of Eligibility for 413 Rehoboth Avenue, Rehoboth Beach, Sussex County, Delaware (SHPO Project #2018.10.08.02)). Comments received by the SHPO and USDA with the public posting of the Determination of Eligibility Forms are included in the Documentation for Findings of No Adverse or Adverse Effect 36 CFR Part 800.11(e) Checklist in **Appendix D**. Refer to **Appendix G** for documentation pertaining to public comments received in response to the proposed project or to review the Public Meeting minutes and public comments made during the public meeting held for the project. CSTCO completed a Documentation for Findings of No Adverse or Adverse Effect (36 CFR Part 800.11(e)) Checklist for the project, attached in **Appendix D**. The proposed project will require the demolition of the existing buildings located at 413 - 417 Rehoboth Avenue. Therefore, the project would have an adverse effect on the Joseph House and garage located at 413 Rehoboth Avenue, an historic architectural resource determined eligible for listing on the National Register of Historic Places. The Delaware SHPO concurred with the findings of Adverse Effect as identified in the Project's Documentation for Findings of Adverse Effect (36 CFR Part 800.11(e)) Checklist, on April 20, 2020. The following outlines the consultation completed to attempt to avoid and minimize the adverse effect.

Memorandum of Agreement

A Memorandum of Agreement (MOA) was drafted by the USDA, the SHPO and CSTCO (See **Appendix E**). The USDA shall ensure that the following measures are carried out:

I. A. Clear Space Theater shall provide the USDA and the DE SHPO with a copy of the proposal for relocation of the building(s) with explanation of how it meets the criteria defined in the RFP;

B. The DE SHPO shall comment on the proposal concerning the future location, methods to be used

for relocation, and proposed use and rehabilitation of the building(s) within thirty (30) days of submission;

C. Clear Space Theatre shall fully consider the comments provided by the DE SHPO, and share the comments with the proposal applicant;

D. Clear Space Theatre shall inform the USDA and DE SHPO of the moving schedule and immediately notify both should changes be made regarding relocation.

II. If the attempts to move the house are unsuccessful, then Clear Space shall, in consultation with SHPO, remove certain parts of the buildings, e.g. fixtures and architectural details before it is demolished. Clear Space shall engage the Rehoboth Beach community in developing a project to re-purpose the salvaged parts for display in the new theatre buildings.

III. If the house is demolished or moved, a commemorative plaque with a photograph and story of the history of the house will be prominently displayed on the property.

Public Comments and Responses Pertaining to Section 106

USDA and CSTCO held a public meeting on March 10, 2020 at the Rehoboth Beach Historical Society to review the proposed project. The project was reviewed, as was Section 106 of the National Historic Preservation Act. The USDA members outlined the DE Division of Historical and Cultural Affairs requirements to evaluate the project to determine whether the properties in the Project Area are eligible for listing in the National Register of Historical Places. The NEPA Environmental Process was reviewed and a discussion regarding the submission of an Environmental Assessment was made, along with the determination of effects, the Memorandum of Agreement, and the Public Notification of Environmental Assessment and MOA 14-day period. Mitigation of Effects on Historic Property was discussed and the meeting attendees had several suggestions as identified in **Appendix G**, Public Involvement.

Mitigation

The following section outlines the good faith effort that Clear Space Theatre Company made to date to address Items I through III of the MOA, in order to avoid, minimize, or mitigate adverse impacts to the Joseph House:

Moving the Joseph House

CSTCO developed an RFP to solicit the moving and relocation of the Joseph House, and submitted it to the Delaware SHPO for review and comment on March 23, 2020. The language included in the RFP for the relocation of the Joseph House consisted of the following:

Clear Space Theatre Company is requesting proposals from parties interested in acquiring and relocating the Joseph House and its associated outbuilding. Acquisition includes the buildings only and does not include any portion of the lot the buildings sit on. The Buildings are offered in as is condition. The Project Area is located at 413 Rehoboth Ave., Rehoboth Beach, DE 19971. The Theatre purchased this property and proposes to clear the site as part of a project to construct a new theatre building. As part of a Memorandum of Agreement (MOA) among the United States Department of Agriculture (USDA), the Delaware State Historic Preservation Office (SHPO), and Clear Space Theatre Company (Theatre), before the property can be cleared, the Theatre must attempt to market the buildings. The Theatre desires to see the buildings relocated from the site, restored, and reused.

The approved and final RFP was advertised on the Clear Space Theatre Website

(<https://www.clearspacetheatre.org/about/413-rehoboth-rfp/>) on April 8, 2020 and advertised in the following newspapers (Ads located in **Appendix C**):

- Delmarva (Salisbury) Daily Times (April 8, 2020)
- Wilmington News Journal- Delaware On-Line (April 8, 2020)
- Coastal Point (local paper in Bethany Beach and Fenwick Island, DE) (Ad ran April 10, 2020)
- Cape Gazette (Ad ran March 30, 2020)

The Joseph House relocation RFP was also featured on the following websites:

- Craigslist (Posted March 30, 2020):
<https://delaware.craigslist.org/zip/7101003001.html>
- National Trust for Historic Preservation website (Posted March 30, 2020):
<https://realestate.savingplaces.org/properties/the-joseph-house-413-rehoboth-avenue-rehoboth-beach-de/>

The Joseph House was featured in a news clip on WRDE (Local NBC Affiliate that broadcasts to the DelMarVa area) that can be viewed here: <https://www.wrde.com/story/41963314/local-theater-gives-home-away-for-free>. CSTCO also added a link to the WRDE news feature on their website (linked on the RFP web page) <https://www.clearspacetheatre.org/about/413-rehoboth-rfp/>. As indicated in **Appendix E**, several responses were received by CSTCO to move the house, however none of these responses were advanced as eligible offers. In addition, CSTCO received an assessment of the limitations and potential cost to move a house of the size and condition of the 413 Rehoboth Avenue property. East Coast Structural Movers, Inc. indicated in a letter to CSTCO, dated March 10, 2020, that the house's width of thirty-three (33) feet would limit the roads that could be accessed for the move, and the height at over eighteen (18) feet would require overhead utility relocation and re-installation, which along with the dismantling of the house, would be cost prohibitive (**Appendix C**). An asbestos survey of the buildings located at 413 and 415 Rehoboth Avenue was completed in the Project Area and samples of window glazing, red vinyl flooring on the back porch and the plaster within the pink front room of 413 Rehoboth Avenue were analyzed. The survey resulted in the presence of Chrysotile greater than 1%. The presence of asbestos containing materials will also require abatement prior to the removal and/or demolition of the Joseph House. Refer to **Section 12.0** Human Health and Safety for details on the asbestos survey, as well as **Appendix H** for a copy of the report. The Joseph House, 413 Rehoboth Avenue, will be relocated in its entirety by Fall 2020 to a new location at 20499 Lincoln Street in Rehoboth Beach, DE 19973, despite the effort and costs associated with the move and the asbestos abatement. The new owner will occupy the house and retain its historic character. All local laws for properly moving a house and closing down roadways as well as utility relocation and re-installation will be followed. The contract between the Theatre and recipient of the house was signed on June 9, 2020, and the consideration was \$1.00. The SHPO has determined no adverse effects to other properties or cultural resources by moving Joseph House to its new location. Refer to **Appendix E** for the Joseph House Relocation Agreement and related coordination. The Joseph House and garage were offered to the public as a RFP announced by CSTCO, consistent with the Draft Memorandum of Agreement between the SHPO, USDA, and CSTCO.

There were no eligible offers made for the Joseph House or garage during the RFP period. In the meantime, the garage was becoming a safety hazard with evidence of people breaking into, and occupying the building. CSTCO was contacted on May 4, 2020 by an interested party with an offer to purchase and relocate the Joseph House, but not the garage. Based on the lack response to the RFP, the expressed disinterest in the garage with the only eligible offer, and the safety concerns associated with trespassing and occupying the garage, CSTCO arranged to have the garage demolished on May 14, 2020, concurrent with the demolition of the adjacent structure at 415 Rehoboth Avenue. While CSTCO regrets its decision to demolish the garage prior to the signing of the MOA and conclusion of the Section 106 consultation, its demolition was consistent with the terms of the draft MOA that had been agreed to but not yet publicly noticed or signed.

Repurposing the Joseph House

Should relocation of the Joseph House at 413 Rehoboth Avenue not proceed as planned, consultation with the SHPO and the community on salvage and repurposing of elements of the buildings will occur, as outlined in the MOA. In addition, as part of the ongoing consultation under the MOA, CSTCO will offer the preservation of the history of the demolished garage by the disposition of a sink from the garage in the Spotlight Building. Refer to **Appendix E** for a copy of the salvage report prepared by R A Miller, LLC in reference to the structures at 413 and 415 Rehoboth Avenue.

The Generation of a Commemorative Plaque

A plaque was drafted by CSTCO for the purposes of commemorating the Joseph House and garage. The plaque includes the image of the award medallion the house received in 2005 from Rehoboth Beach Main Street, however the medallion has since been stolen from the property. Consistent with the draft MOA, the commemorative plaque with a photograph and story of the history of the Joseph House and garage will be prominently displayed on the property. The plaque design is included in **Appendix E**. The public is invited to comment on the draft plaque design, content, and placement.

ARCHAEOLOGICAL RESOURCES

A field view was held onsite on November 27, 2018 with SHPO and USDA, the SHPO concluded at this meeting that based on the previous disturbances on the lots, very little potential for the property to contain intact archaeological sites exists, therefore SHPO did not request an archaeological survey. (See **Appendix C**, Clear Space SHPO 12/12/2018 email). The Delaware SHPO has determined that this undertaking will have no direct or indirect effect on archaeological resources listed or eligible for listing on the National Register of Historic Places. No mitigation will be required with project construction.

TRIBAL COORDINATION

Tribal coordination with the Director of Cultural Resources of the Delaware Tribe of Indians and the Delaware Nation was initiated on June 14, 2019, with a request for concurrence or objection within thirty days from the receipt of the letter (See **Appendix C**). No response was received within thirty days, therefore, in accordance with 36 CFR § 800.3(c)(4), the Rural Housing Service has proceeded with the next step in review, as a desire for tribal

coordination with the proposed project has not been identified. No tribal cultural resources are anticipated to be impacted with project construction. No mitigation will be required with project construction.

AESTHETICS

The Project Area is located in a residential and light commercial area. The properties directly adjacent to and surrounding the Project Area include a five-story condo building that will allow the proposed stage fly tower to appear consistent in height to existing conditions along the street front. There are no visually sensitive areas or areas of high scenic value (e.g. designated wilderness areas, parks, recreation areas, historic sites, wild/scenic rivers, etc.) in, or directly adjacent to the Project Area. The Project Area is located within the Town limits of Rehoboth Beach at the main entrance circle to the city of Rehoboth Beach, near the historical society museum, visitor center, and many restaurants and shops. The site offers appealing street prominence and will be visible to most drivers entering the town, since Rehoboth Avenue is the main street to get to the town and beaches. As indicated above, the proposed theatre complex will be visually similar to the existing urban development, with no proposed vertical changes (Skylining) or obstructions to the surrounding landscape from any locations throughout the proposed development in the Project Area. The site has an adjacent five-story building on the east side that will allow the stage fly tower to not appear too tall for the street front. To the rear, there are residential units with a ten-foot setback provided, although a five-foot setback is required. The property to the west is a commercial shop. There are no side or front yard setback requirements. A landscaping plan will be developed as part of the lot development for the Project Area, to provide a visual blending between the proposed development and the surrounding adjacent rural landscape. No mitigation will be required with project construction.

AIR QUALITY

Conformity is required by the Clean Air Act Section 176(c). This section requires that Federal agencies do not adopt, accept, approve, or fund activities that are not consistent with State air quality goals. This project must demonstrate that it conforms with the applicable State Implementation Plan (SIP) and does not contribute to new violations of standards for ambient air quality, increase the frequency or severity of existing violations, or delay timely attainment of standards in the limit of disturbance of the proposed project. All of Delaware, except for New Castle County, is an attainment area. This was verbally confirmed by Elizabeth Frey, Air Quality Data Division, State of Delaware. Air Quality is not anticipated to be impacted outside of construction related activity. A letter dated October 17, 2018 from DNREC Division of Air & Waste Management is included in **Appendix C** and notes "This project is not forecasted to have significant impact on air quality". Regulatory requirements noted in Table 1 of the letter may apply during construction. Further evaluation would be required if the use changes. The final intended use is not an activity regulated by air quality requirements and will not involve industrial activity or release of pollutants. No mitigation will be required with project construction.

SOCIAL, ECONOMIC AND ENVIRONMENTAL JUSTICE

Social, economic, and environmental justice impacts were reviewed using the Environmental Protection Agency environmental justice screen. A standard report was pulled for the Project Area and the report indicated that no concentrations of minority and low-income households were identified within this area when compared to state levels (See **Appendix F**). The minority population within a 0.5-mile radius centered around the Project Area was indicated to be 12% of the total population, in comparison to a 37% statewide average. The low-income population within the same 0.5-mile radial distance around the Project Area was listed at 14% compared to a 27% statewide average. No environmental consequences regarding Environmental Justice Populations are expected to occur as a result of constructing this project. A 2006-38 Civil Rights Impact Analysis Form will be completed by the USDA Area Specialist to satisfy the requirements of Executive Order 12898.

NOISE/TRANSPORTATION

A Noise Assessment will not be needed since the project does not increase noise. There are residential properties adjacent to the project site. There will be noise during construction, however, this will be limited to daylight hours and consistent with the City ordinance. The proposed theatre will have activity and noise levels commensurate with the surrounding activity along Rehoboth Avenue. Noise levels within the building during productions will not be audible to the exterior areas. The development will comply with the City zoning code regarding noise levels. Transportation along Rehoboth Avenue will be temporarily impacted during construction, due to construction activity and vehicle access to the site. The project will be required to comply with the requirements of the Delaware Department of Transportation for any activity within the State right-of-way, including permitting of improvements to the property access. Traffic impacts will also be reviewed by the Delaware Department of Transportation during the permitting process although minimal traffic impact is anticipated after construction. The area is zoned for use as a theatre and the proposed use is in compliance with zoning. No permanent impacts related to or resulting from Noise or Transportation are expected to occur as a result of constructing this project. Temporary noise and transportation impacts may result during construction of the project, with the use of large excavators, earthwork equipment, and hauling trucks. The use of noise mufflers on construction equipment, where appropriate, and construction best management practices will be instituted during active construction, which is in keeping with City zoning ordinances for noise. No other mitigation is anticipated to be required with project construction.

HUMAN HEALTH AND SAFETY

A Phase I Environmental Site Assessment (ESA) was completed for the CSTCO. Project Area on August 6, 2018 in general conformance with the scope and limitations of the American Society for Testing and Materials (ASTM) Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, Designation E 1527-13. ASTM E 1527-13 is a voluntary consensus standard that constitutes "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice." The procedures included in the ASTM E 1527-13 standard comply with the United States Environmental Protection Agency (USEPA) 40 CFR Part 312, Standards and Practices for All Appropriate

Inquiries; Final Rule. A copy of the Phase I ESA completed for the project is included in **Appendix H** of this document. The Project Area consists of a stone parking area (417 Rehoboth Avenue), and two (2) two-story residential buildings formerly utilized for light commercial space, and a shed (415 and 413 Rehoboth Avenue), as identified on the Sussex County, DE Tax Map 334-13.20 as parcels 166, 165 and 164. The Phase I ESA included a records review, site reconnaissance, interviews with owners, operators, and occupants of the Project Area, interviews with local government officials, review of regulatory records held by state and federal agencies, a review of information provided by the User (i.e., the party seeking to complete an environmental site assessment of the Project Area), and preparation of a report presenting Pennoni's findings, opinions, conclusions and supporting documentation. The ESA for the Project Area did not include any testing or sampling of materials (e.g., soil, water, air, building materials). The Phase I ESA did not reveal any recognized environmental conditions (RECs), historic recognized environmental conditions (HRECs), controlled recognized environmental conditions (CRECs), or Non-ASTM Scope Considerations in connection with the Project Area. The following de minimis condition was observed: One 275-gallon aboveground storage tank (AST) for heating oil was observed along the western side of 413 Rehoboth Avenue. No staining was observed. The AST is not in use at this time and is therefore no longer be needed. The AST will be decommissioned and removed following proper state and local guidelines when the house is removed in preparation for construction. In addition, Pennoni identified the following Non-Scope Considerations in connection with the Project Area: No asbestos containing material (ACM) was definitively identified during this ESA and no sampling was performed. During the site visit, however, several suspect materials were observed including but not limited to window caulk and ceiling tiles. *Note: Samples of the suspect materials were analyzed separately during an asbestos survey by Sussex Environmental on January 28, 2020, as outlined below.* No lead based paint (LBP) was definitively identified during the ESA. No chipped or peeling paint was observed throughout the Project Area buildings at the time of the investigation. However, based upon the review of aerial photographs, the Project Area buildings have been present since at least the 1950s. As such, older layers of paint may contain LBP. Testing of the paint can be performed to determine if any of the paint is lead containing, or the materials can merely be presumed to be LBP and, subsequent to receiving proper notice of the potential presence of LBP on or in the structures, renovation or demolition contractors can take appropriate precautionary measures to prevent worker exposure and proper handling during renovation or demolition activities. As noted above, Sussex Environmental performed an asbestos survey of the buildings located at 413 and 415 Rehoboth Avenue on January 28, 2020, based on Pennoni's Phase I ESA findings. Samples of building materials were collected and sent to Aerobiology Laboratory Associates of Dulles, Virginia for Polarized Light Microscopy analysis. The report, dated January 30, 2020, indicated that no ACM was identified in the materials sampled within 415 Rehoboth Avenue. Samples of window glazing, red vinyl flooring on the back porch and the plaster within the pink front room of 413 Rehoboth Avenue reported results of Chrysotile greater than 1%. As such, the ACM must be abated within the 413 Rehoboth Avenue structure prior to building demolition. A copy of the report and associated analytical report is included

in **Appendix H**. No environmental consequences are anticipated so long as mitigation efforts are completed as outlined above. The 275-gallon AST will be removed following proper state and local guidelines. A State of Delaware licensed asbestos abatement contractor must complete abatement of ACM within 413 Rehoboth Avenue prior to the building removal/demolition. Once abatement has been completed, the building will need to be inspected to ensure all ACM was removed.

UTILITIES

As indicated previously, the City of Rehoboth Beach Public Works Department provides domestic water and sanitary sewer services. Water and sewer service lines are located in the Rehoboth Avenue street right-of-way and will be used for domestic sanitary sewer connection, domestic water service, and building fire suppression systems. Delmarva Power provides electrical service to the subject properties. Modifications to the utility services will be required for the proposed construction, including required permitting. No environmental consequences regarding utilities are expected to occur as a result of constructing this project. No impacts to existing stormwater collection systems, water mains, or sewage systems or services will result from project construction. All amendments and installations designed to protect the existing wastewater and sewage system infrastructure as well as the surrounding communities will be identified in the permits required for construction of the project. No mitigation will be required with project construction. Assessment of indirect and cumulative effects is a requirement under NEPA and under the CEQ regulations implementing NEPA. Indirect impacts are generally defined as those that are caused by a project, but unlike direct effects, they occur later in time or not especially close to the project. Growth related indirect effects are calculated as the difference between the growth that would occur regardless of the proposed project (No Build Alternative) and that which would occur if the project is built (Build Alternative). These could be rate, type, location, or amount of growth that can be attributed to the project. Non-growth related indirect effects such as downstream sedimentation, water quality issues caused by future road runoff or spillage type accidents or the eventual loss or diminishment of wetland habitats downstream of the project area due to hydrology. Indirect impacts have been addressed, specifically where possible, under each resource identified above. For any resources where indirect impacts were not specifically addressed, it is assumed that no indirect impacts (growth related or non-growth related) are anticipated to result from project construction. Cumulative effects are the impacts on the surrounding social, cultural and environmental environment which result from incremental impact of the action when added over time. No cumulative effects are anticipated with project construction. The proposed project will not result in substantial changes to demographics or build out of the surrounding area since the majority of the surrounding farmland is already in urban land use. The construction of the project will follow local, state, and federal regulations and ordinances required for building construction, earth disturbance, stormwater runoff, public drinking water and septic installation, and erosion and sedimentation control, which will prevent substantial indirect and cumulative impacts to resources in receiving surface water, groundwater, and the surrounding communities. A summary of anticipated impacts on the human environment is provided below, including any

mitigation measures deemed necessary to avoid or minimize impacts. Clear Space Theater Inc. is responsible for implementing these measures.

E. PUBLIC AND AGENCY INVOLVEMENT

A local newspaper advertisement [and as appropriate, legal notice], announcing the availability of the EA and participation under Section 106 of the National Historic Preservation Act, was/were published on December, 15, 18, 22, and 25, in The Cape Gazette, Lewes DE. A copy of the EA was available for public review at Rehoboth Beach Public Library, 226 Rehoboth Avenue, Rehoboth Beach, DE 19971. The 14-day comment period ended on December 29, 2020. RHS received no comments.

F. FINDING OF NO SIGNIFICANT IMPACT

Based on its EA, RHS has concluded that the proposed Project would have no significant effects to wetlands, waterways, and Tidelands, Floodplains Geology, Soils, important farmland soils, cultural resources and historic properties, threatened and endangered species, air quality, water quality, transportation, noise, coastal resources, and minority or socioeconomically disadvantaged populations. The proposed Project will have no effects on historic properties listed or eligible for listing on the National Register of Historic Places and no effects to federally listed species or designated critical habitat. The proposed Project would not disproportionately affect minority or low-income populations.

In accordance with the National Environmental Policy Act, as amended (42 U.S.C. 4321 et seq.), the Council on Environmental Quality Regulations (40 CFR 1500-1508), and RD's Environmental Policies and Procedures (7 CFR Part 1970), RHS has determined that the environmental impacts of the proposed Project have been adequately addressed and that no significant impacts to the quality of the human environment would result from construction and operation of the proposed Project. Any final action by RHS related to the proposed Project will be subject to, and contingent upon, compliance with all relevant federal and state environmental laws and regulations. Because RHS action will not result in significant impacts to the quality of the human environment, RHS will not prepare an Environmental Impact Statement for its potential federal action associated with the proposed Project.

G. RHS LOAN REVIEW AND RIGHT OF ADMINISTRATIVE REVIEW

This FONSI is not a decision on a loan application and therefore not an approval of the expenditure of federal funds. Issuance of the FONSI and its notices concludes RHS environmental review process. The ultimate decision on loan approval depends upon conclusion of this environmental review process in addition to financial and engineering reviews. Issuance of the FONSI and publication of notices will allow for these reviews to proceed. The decision to provide financial assistance also is subject to the availability of loan funds for the designated purpose in RHS budget. There are no provisions to appeal this decision (i.e., issuance of a FONSI). Legal challenges to the

FONSI may be filed in Federal District Court under the Administrative Procedures Act.

H. **APPROVAL**

This Finding of No Significant Impact is effective upon signature.
Dated: February 23, 2021

TERRY S. FEARINS
Community Program Director
Rural Development - Delaware and Maryland United States Department of
Agriculture

Contact Person

For additional information on this FONSI and/or EA, please contact Charles C. Mikula Sr. P.E. at Charles.mikula@usda.gov.