

**AVAILABILITY OF THE FINAL “FINDINGS OF FACT AND RECORD OF DECISION” DOCUMENT, WHICH IS PART OF THE ENVIRONMENTAL ASSESSMENT WORKSHEET FOR THE PHOENIX PROJECT**

The Final “Findings of Fact and Record of Decision” document provides additional information to complete the Environmental Assessment Worksheet (EAW) process for a site between Main Street and Second Street SE west of Third Avenue SE in Minneapolis, Minnesota. Upon full development, the Phoenix site would contain 150 residential units in a stepped structure 5 stories above Main Street, and then 15 stories above Second Street, and 6,000 sq. ft. of commercial space.

Copies of the Final “Findings of Fact and Record of Decision” document and the EAW are available for review at the downtown Minneapolis Public Library located at 250 Marquette Ave, the Southeast Community Library located at 1222 SE 4th Street, and in the office of the City Planning Division at 210 City Hall. Copies of this Final “Findings of Fact and Record of Decision” document and EAW can also be provided to individuals on a compact disk by request to Michael Orange (refer to contact information below).

For further information, contact J. Michael Orange, Principal Planner, Minneapolis Planning Division, Community Planning and Economic Development Department, City Hall Room 210, 350 S. 5th Street, Minneapolis, MN 55415-1385, by telephone at 612-673-2347, or E-mail at [michael.orange@ci.minneapolis.mn.us](mailto:michael.orange@ci.minneapolis.mn.us).

If you need more information or have special needs, please call the  
Minneapolis Planning Division at 612-673-2597.

# FINDINGS OF FACT AND RECORD OF DECISION

## ENVIRONMENTAL ASSESSMENT WORKSHEET

for the

### Phoenix Lofts Project

**Location: between Main Street and Second Street SE  
west of Third Avenue SE in the  
City of Minneapolis, Hennepin County, Minnesota**

**Responsible Governmental Unit: City of Minneapolis**

**Responsible Governmental Unit**

City of Minneapolis  
J. Michael Orange , Principal Planner  
Minneapolis Planning Department  
Room 210 City Hall  
Minneapolis, MN 55415-1385  
Phone: 612-673-2347  
Facsimile: 612-673-2728  
TDD: 612-673-2157  
[michael.orange@ci.minneapolis.mn.us](mailto:michael.orange@ci.minneapolis.mn.us)

**Proposer**

Schafer Richardson Inc./Phoenix Lofts LLC  
David Frank  
615 First Avenue NE Suite 500  
Minneapolis, MN 55414  
612 359-5844  
612 359-5858  
[dfrank@sr-re.com](mailto:dfrank@sr-re.com)

**Final action (refer to Exhibit E):** Based on the Environmental Assessment Worksheet, the “Findings of Fact and Record of Decision,” and related documentation for the Phoenix Lofts Project (Project), the City of Minneapolis concluded the following on August 20, 2004:

1. The Environmental Assessment Worksheet, the “Findings of Fact and Record of Decision” document, and related documentation for the Phoenix Lofts Project were prepared in compliance with the procedures of the Minnesota Environmental Policy Act and Minn. Rules, Parts 4410.1000 to 4410.1700 (1993).
2. The Environmental Assessment Worksheet, the “Findings of Fact and Record of Decision” document, and related documentation for the Project have satisfactorily addressed all of the issues for which existing information could have been reasonably obtained.
3. The Project does have the potential for significant environmental effects based upon the above findings and the evaluation of the following four criteria (per Minn. Rules, Parts 4410.1700 Subp. 7):
  - Type, extent, and reversibility of environmental effects.

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- Cumulative effects of related or anticipated future projects.
- Extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority.
- Extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the Project proposer, or of environmental reviews previously prepared on similar projects.

Consequently, the City does not require the development of an Environmental Impact Statement for the Project.

**I. ENVIRONMENTAL REVIEW AND RECORD OF DECISION**

The City of Minneapolis prepared a Mandatory Environmental Assessment Worksheet (EAW) for the Phoenix development according to the Environmental Review Rules of the Minnesota Environmental Quality Board (EQB) under Rule 4410.4300 subpart 31, Historical Places. The Project includes the demolition of an office building constructed in 1981 that is located within a nationally designated historic district. Exhibit A includes the Project summary, and Exhibit B includes the Record of Decision.

**II. EAW NOTIFICATION AND DISTRIBUTION**

On May 7, 2004, the City caused the EAW to be published and distributed to the official EQB mailing list and to the Project's official project mailing list. The EQB published notice of availability in the *EQB Monitor* on May 10, 2004. Exhibit C includes the public notification record.

**III. COMMENT PERIOD, PUBLIC MEETING, AND RECORD OF DECISION**

Exhibit D includes the comment letters received. At its meeting on 7/15/04, the Minneapolis Planning Commission's Committee of the Whole received the EAW and the draft of this "Findings of Fact and Record of Decision" document. The Zoning and Planning Committee of the Minneapolis City Council held a public meeting on the EAW and the draft of this "Findings of Fact and Record of Decision" document during its July 15, 2004, meeting. Notification of these public meetings were distributed via the City's standard notification methods and to the official list of registered organizations (refer to Exhibit C).

#### **IV. SUBSTANTIVE COMMENTS RECEIVED AND RESPONSES TO THESE COMMENTS**

The following section includes highlights and requests for response from the eight written comments received. Exhibit D provides the complete written comment submitted by all respondents. Comments on the EAW were received from:

1. Metropolitan Council, Phyllis Hanson, June 2, 2004
2. National Park Service, JoAnn Kyril, June 3, 2004
3. Minneapolis Park & Recreation Board, Rachel Ramadhyani, June 4, 2004
4. Ted Tucker, Marcy-Holmes Neighborhood Association, June 9, 2004
5. Minnesota Historical Society, Britta Bloomberg, June 9, 2004
6. Bluff Street Development, John Wall & Steve Minn, June 9, 2004
7. University of Minnesota, The Environmental Law Group, June 9, 2004
8. Department of Natural Resources, Kathleen Wallace, June 9, 2004
9. Minnesota Pollution Control Agency, Eric Kilberg, June 3, 2004
10. University of Minnesota, The Environmental Law Group, August 11, 2004

The City's response to the comment follows each summary.

##### **1. Metropolitan Council**

**Comment:** The EAW should compare the project to heights of nearby buildings.

**Response:** Refer to Exhibit F "Nearby Building Heights."

**Comment:** "Sanitary sewer connection plans . . . need to be submitted to both the MPCA and the MCES for review and permit."

**Response:** Noted for the record.

##### **2. National Park Service**

**Comment:** "Since the publication of the Phoenix EAW, it has come to our attention a third mixed residential and commercial industrial development project adjacent to the Pillsbury A Mill is undergoing review by the city of Minneapolis. Evaluated as related actions, the three adjacent projects would exceed the threshold for a Mandatory Environmental Impact Statement under Minnesota Rules 4410.4400, subpart 21. . . . [We] ask the City to clarify its decision not to mandate and EIS for these related actions."

**Response:** The scale of these projects as described in their EAW's are as follows:

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	<b>Residential Units</b>	<b>Commercial Area</b>
A Mill Complex	1,095 units	105,000 sq. ft.
Phoenix	150 units	6,000 sq. ft.
520	62 units	none proposed
521	<u>60 units</u>	<u>9600 sq. ft.</u>
Total	1,367 units	120,600 sq. ft.

First, the combined total of 1,367 proposed residential units is 91.1% of the 1,500-unit minimum threshold for a Mandatory EIS based on the residential use alone. The combined total of 120,600 sq. ft. of proposed commercial space is 8.0% of the 1.5 million sq. ft. minimum threshold for a Mandatory EIS based on the commercial use alone. Combined, they are very close (99%) but still beneath the project standard for a Mandatory EIS required by 4410.4400 subpart 21, if all three were a single or related project.

Second, and more importantly, the City has found for the reasons discussed in part T “Diageo Site” beginning on page 23 of the “Pillsbury A Mill Draft Findings of Fact and Record of Decision,” the Pillsbury A Mill Complex and the site are not related or cumulative actions. The same reasoning found in that section is the basis for not finding the Phoenix and the 520 and 521 projects are related or cumulative actions with or without the redevelopment of the Pillsbury A Mill Complex.

Third, the EAW identifies the significant and problematic nature of the scale of the necessary variances, which are required to reach the proposed density and bulk for each of the three proposed projects, and therefore may reduce the approved number of housing units and the commercial floor area for each project.

**Comment:** “A comparison of the proposed building heights with nearby buildings should be provided.”

**Response:** Refer to Exhibit F “Nearby Building Heights.”

**Comment:** Impacts on Phoenix Mill site, Chutes’s Tunnel, and the Pillsbury Canal should be described.

**Response:** Refer to Exhibits G and I.

**Comment:** “The EAW should state how the exterior design treatments for the new construction relate to the HPC Guidelines”

**Response:** Refer to Exhibits G and I

**Comment:** “Impacts of the Phoenix proposal on resources of the MNRRA should be addressed directly and cumulatively with the other development projects . . . .”

**Response:** The response to question 27 on page 11 of the EAW addresses this issue.

**3. Minneapolis Park and Recreation Board**

**Response:** The MPRB comments provide very helpful information and corrections to the text of the EAW. The information will be especially helpful for project evaluation during the permit review phase. All comments are noted for the record.

**4. Marcy Holmes Neighborhood Association**

**Comment:** “We look forward to a successful project that will increase home ownership in the neighborhood and allow new residents to experience riverfront living here.”

**Response:** Noted for the record.

**5. Minnesota Historical Society**

**Comment:**, “[We] do not feel that its removal [the Office/Data Center Building] will adversely affect the historic district.”

**Response:** Noted for the record.

**Comment:** “The effects of the new construction on the historic district, on both the east and west bank, should have been substantively discussed in the response to Question 25a. . . . Further analysis of how the specific project design relates to the character of the historic district are needed.”

**Response:** See Exhibits G and I

**Comment:** “We concur with the recommendations the Phoenix Mill site, Chutes Tunnel, and the Pillsbury Canal are contributing archeological resources in the historic district and . . . those resources that cannot be preserved should be subject to data recovery.”

**Response:** Noted for the record. The EAW on page 11 includes the commitment by the developer to implement the recommendations of the 106 Group for data recovery.

**6. Bluff Street Development**

**Comment:** Requests preparation of an EIS to study the combined impacts of the redevelopment of the Pillsbury a Mill Complex and the Phoenix on the basis of several conditions.

**Response:**

- **Scale:** Refer to the above response to the National Park Service letter as regards project scale.

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- **Height:** The EAW on pages 11-12 discusses the height issue and applicable regulations that govern height. Also, the EAW included by reference the extensive information developed for the EAW and developed for the adjacent A Mill Complex that dealt with areawide height regulations including the following:
  - The applicable standards and guidelines for regulation of height of structures were presented in three sections of the EAW. Section 27, beginning on page 71, describes the Minneapolis enforced standards. First, the standards of the Zoning Code beginning on page 71, includes the necessary findings for any change in the standards. Second, beginning on page 74, the Guidelines of the Minneapolis Heritage Preservation Commission are provided. Third, the standards of the Mississippi River Corridor Critical Area were presented in Section 14, beginning on page 28, and expanded in two advisory letters from the DNR included in the 12 page “Appendix to Question 14” at the end of the EAW.
  - HPC Certificate of Appropriateness, Findings 28
  - PUD Finding, Findings 31
  - CUP Height Standards, Findings 8
- **Shadows:** So noted for the record.
- **Stormwater:** The EAW addresses this issue on page 6. The City’s system is adequate to handle the stormwater demands of the Project. The City will demand the Project obtain approval of a Stormwater Management Plan that will require control and removal of 70% of particulate matter before discharge to the City’s system.
- **Traffic and air quality:** The EAW addresses these issues on pages 8-9 and 22, and includes a draft Travel demand Management Plan. The plan analyzed and identified no major issues beyond mitigation.
- **Nearby resources and visual impacts:** Refer to Exhibits G and H and the EAW.

**7. University of Minnesota, The Environmental Law Group, Ltd.**

**Comment:** The EAW does not describe the nearby industrial uses, including the University’s Southeast Steam Plant, nor the Project’s compatibility with these uses. The Project may cause a groundwater dam effect that will impact the steam plant. The EAW fails to adequately evaluate important environmental considerations including the potential for groundwater infiltration resulting from proposed development in the area. It does not describe the environmental consequences including those related to air, noise, odor, and vibration of attempting to site the proposed development in the immediate proximity of a large working steam plant, as well as the cumulative effects of the similar adjacent proposed developments. Air emissions are not addressed, especially on rooftop gardens. The City should require that an EIS be prepared for the development.

**Response:**

- **Compatibility with industrial uses:** Refer to Exhibits G and I.

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- **Groundwater:** Footings for the proposed buildings will be placed above the level of the groundwater and so they will have no impact on it. See Exhibit H, Braun Intertec letter of June 23, 2004. The buildings would have not effect on groundwater at nearby sites.
- **Air emissions, odor, vibration:** The building site is approximately 1,200 distant and approximately 40 ft below the actual height and 90 to 110 ft below the effective height of the stacks. Preliminary modeling reported in the “Findings of Fact” for the Pillsbury A Mill Complex did not predict a hazard at this height or distance. The EAW for the A Mill Project analyzed a similar comment from the University. The air quality analysis examined the potential for exposure to people living in tall buildings. The analysis was of a worst case scenario, which is appropriate for environmental review. It included the following assumptions: 1) the plant’s fuel mix would maximize sulfur dioxide emissions, the primary pollutant of concern, 2) assume low-wind conditions when the pollutants tend to disperse more slowly, and 3) assume the wind direction from the steam plant towards the A Mill Project, which is the same as for the Phoenix Project. The data for 1991 show that these wind conditions happened for 13 hours (0.37% of the time) during June through July when windows are likely to be open or people may be out on balconies or roof-top gardens.

The analysis showed that under these worst case conditions, only very tall buildings, such as the 27-story building proposed for Parcel E (297 ft. high building at Main St. and Fifth Ave.) may be of concern for brief periods. Thus, Steam Plant emissions will likely be well below federal standards for all critical stack pollutants for people using the 5 and 15-story buildings proposed for the Phoenix Project.

- **Noise:** The site is well beyond the noise slant distance of the 60 dBA noise contour for the Steam Plant provided in the “Findings of Fact” prepared for the Pillsbury A Mill Complex.

**8. Department of Natural Resources**

**Comment:** The EAW should have provided the required building height and height comparison data

**Response:** Refer to Exhibit F

**Comment:** “Review, and approval by the DNR Critical Areas Program will be required for rezoning of this property since the proposed rezoning differs from the EQB-approved Ordinances and Plan for the site shown as Light Industrial. Under Minnesota Rules, a local unit of government shall enact only the plans and regulations that have the written approval of DNR. Amendments to plans and regulations shall become effective only upon approval by DNR.”, and “Critical Area staff would oppose the use of variances for permitted number of housing units and floor area. State law for approval of variances and undue hardship cannot be proved for increased units and floor area.”

**Response:** The City is engaged in an ongoing effort with the Department of Natural Resources (DNR) Critical Areas Program staff to provide the most effective and efficient implementation of the guidelines for the Mississippi River Critical Area Corridor throughout its extent in the City. We have prepared a comprehensive amendment of the City's Critical Area Plan and submitted it in draft form for review and comment by the DNR in 2003. The Planning Division Director will specifically assure the DNR's continued participation, review and comment on the City's proposed land use decisions and permitting for this proposal and other proposals within the designated Critical Area in Minneapolis.

**Comment:** The EAW indicates the proposer is considering the use of green roofs, which the DNR endorses

**Response:** Noted for the record.

**Comment:** "From a natural resources management perspective, the proposed project does not have the potential for significant environmental effects and does not require preparation of an Environmental Impact Statement (EIS)."

**Response:** Noted for the record

**9. Minnesota Pollution Control Agency**

**Response:** Permit requirements are noted for the record.

**V. ISSUES IDENTIFIED IN THE EAW**

The EAW identified the significant issues for this EAW as those relating to the intensity, scale and design of the proposal, and its relation to the plans, guidelines and regulations discussed in Section 27 of the EAW. These same issues were the focus of the comments by reviewers.

**VI. COMPARISON OF POTENTIAL IMPACTS WITH EVALUATION CRITERIA**

In deciding whether a project has the potential for significant environmental effects and whether an Environmental Impact Statement (EIS) is needed, the Minnesota Environmental Quality Board rules (4410.1700 Subp. 6 & 7) require the responsible governmental unit, the City in this case, to compare the impacts that may be reasonably expected to occur from the Project with four criteria by which potential impacts must be evaluated. The following is that comparison:

**A. Type, Extent, and Reversibility of Environmental Effects**

The EAW provided a study of the potential traffic and parking impacts for the Project and found no potential impact, and the consultant concluded the trips from the Project will not cause a violation of air quality standards; prior to Site Plan Approval the City can request additional modeling to confirm the exposure status of the Project to noise and other emissions from the University of Minnesota Steam Plant; standard construction techniques, similar to those used in other similar projects along the River will be used and regulated by City ordinances and any impacts will be non persistent; mitigation of the design can be accomplished through the HPC and the review required by the Zoning Ordinance process and conditions of approval; all limiting the potential for significant environmental effects of the Project.

The significance of the environmental effect of the loss by demolition of the existing buildings and construction of new buildings on the sites, which was the reason for the preparation of this EAW, are expanded upon in Exhibit G, and will be determined by the Minneapolis Heritage Preservation Commission and subsequent City reviews described in the EAW. The guidelines of the Minneapolis Heritage Preservation Commission, the plans and regulations of the City, and the Critical Area requirements by the Department of Natural Resources were provided in the EAW and echoed in the comments. The regulatory format and tools to assess and resolve these visual and perceptual impacts on the historic district and the adjacent public and private properties are provided in the City's comprehensive development review process.

**B. Cumulative Effects of Related or Anticipated Future Projects**

Proposed developments in the central riverfront that continue the transition from industrial use to residential and commercial uses, including the recently approved and constructed "Stone Arch" apartments at 6th Avenue SE and Main St., have been consistently found to be in conformance with the policies of the Comprehensive Plan. The construction of another residential development in this district does not create a precedent or environment for future projects. The Project is not a stage of a subsequent project and is not connected to any other development; the traffic and parking study assumed and anticipated growth in traffic and parking demand in the area, and incorporated these assumptions into its findings; all limiting the potential for significant cumulative or unanticipated environmental effects from the Project.

**C. Extent to Which the Environmental Effects are Subject to Mitigation by Ongoing Public Regulatory Authority**

The site is presently designated I1, Light Industrial. In this zoning district, and in all industrial districts in Minneapolis, all residential use, except certain community correctional facilities, is prohibited by section 550.60 of the Zoning Code. The site is also within the Industrial Living Overlay District (ILOD). Residential uses are allowed as a conditional use with an ILOD at a much reduced density as proposed. The proposer has no "as of right" permissions or standing to construct a development resembling the proposal without significant and specific discretionary amendments and permissions from the City of Minneapolis.

## **Final Findings of Fact and Record of Decision for the Environmental Assessment Worksheet for the Phoenix Lofts Project**

The process the City will use to review the proposal will be competent and open. In its review of the proposal and determination of the required mitigation, modifications and amendments necessary for approval, the City will have the opportunity to initiate similar studies, have similar information made available, and allow similar opportunities for public participation as would be provided in an EIS process.

The City has the professional staff and regulatory format to address and resolve the technical issues raised by this proposal. Its review will also provide the only accepted path, approval by our local elected officials, to resolve the major non technical, perceptual, issues of the visual relationships and impacts presented by the proposal. The record created by this EAW process will be available to inform and guide all participants. This local approval process, informed by the record created by this EAW, is the direct, effective and efficient venue to identify and encourage the elements for compatible redevelopment, and assure their implementation at this important site.

A finding by the City the EAW is adequate and no EIS is required provides no endorsement, approval or right to develop the proposal by the City. It simply allows the proposer to formally initiate the City's process for considering the specific discretionary amendments and permissions necessary for redevelopment, and for the City in this process, informed by the record of the EAW, to identify and encourage the elements for compatible redevelopment, and assure their implementation at this important site.

### **D. Extent to which Environmental Effects Can be Anticipated and Controlled as a Result of other Environmental Studies Undertaken by Public Agencies or the Project Proposer, or of Environmental Reviews Previously Prepared on Similar Projects.**

The construction of another residential building in the central riverfront of a central city follows many precedents, and is known event with known impacts.

## **VII. DECISION ON THE NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT**

Based on the Environmental Assessment Worksheet, the "Findings of Fact and Record of Decision," and related documentation for this Project, the City of Minneapolis, the Responsible Governmental Unit (RGU) for this environmental review, concludes the following:

1. The Environmental Assessment Worksheet, the "Findings of Fact and Record of Decision" document, and related documentation for the Phoenix Project were prepared in compliance with the procedures of the Minnesota Environmental Policy Act and Minn. Rules, Parts 4410.1000 to 4410.1700 (1993).
2. The Environmental Assessment Worksheet, the "Findings of Fact and Record of Decision" document, and related documentation for the Project have satisfactorily addressed all of the issues for which existing information could have been reasonably obtained.

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3. The Project does not have the potential for significant environmental effects based upon the above findings and the evaluation of the following four criteria (per Minn. Rules, Parts 4410.1700 Subp. 7):
- Type, extent, and reversibility of environmental effects.
  - Cumulative effects of related or anticipated future projects.
  - Extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority.
  - Extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the Project proposer, or of environmental reviews previously prepared on similar projects.

Consequently, the City does not require the development of an Environmental Impact Statement for the Project.

**Exhibits:**

- A. Project Description
- B. Record of Decision
- C. Public notification record
- D. Comment letters
- E. Council/Mayor action
- F. Nearby Building Heights
- G. Additional Comment on the Historic District Impact
- H. Braun Intertec letter of June 23, 2004
- I. “Archaeological Assessment for the Proposed Phoenix Lofts Project”