

FINDINGS OF FACT AND RECORD OF DECISION

ENVIRONMENTAL ASSESSMENT WORKSHEET For the Pacific Block Development

Location: the entire block bounded by Washington Avenue N. on the south, by 3rd Avenue N. on the west, by 2nd Street N. on the north, and by 2nd Avenue N. on the east in the City of Minneapolis, Hennepin County, Minnesota

Responsible Governmental Unit: City of Minneapolis

	<u>Responsible Governmental Unit</u>
Contact Person	City of Minneapolis
Title	Rebecca Farrar
Address	Senior Planner
	Planning Division
	Community Planning & Economic Development Department
	City of Minneapolis
	210 City Hall
	350 South 5th Street
City, state, ZIP	Minneapolis, MN 55415
Phone	612-673-3594
Fax	612-673-2728
E-mail	Rebecca.Farrar@ci.minneapolis.mn.us

	<u>Proposer</u>
Contact person	Pacific Flats, LLC
Title	Walter H. Rockenstein II
Address	Attorney for Pacific Flats, LLC
	Faegre & Benson LLP
	2200 Wells Fargo Center
	90 South Seventh Street
City, state, ZIP	Minneapolis, MN 55402-3901
Phone	612-766-7208
Fax	612-766-1600
E-mail	WRockenstein@faegre.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 above project, the City of Minneapolis concluded the following on September 1, 2006:

1. The Environmental Assessment Worksheet, this “Findings of Fact and Record of Decision” document, and related documentation for the Pacific Block Development 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, this “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 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.
4. The finding by the City that the EAW is adequate and no EIS is required provides no endorsement, approval or right to develop the proposal by the City and cannot be relied upon as an indication of such approval. This finding allows the proposer to formally initiate the City’s process for considering the specific discretionary and ministerial 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.

Consequently, the City makes a Negative Declaration and 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 Pacific Block Development Project according to the Environmental Review Rules of the Minnesota Environmental Quality Board (EQB) under Rule 4410.4300 Subpart 19 Residential Development and Subpart 31, Historical Places. The project proposes construction of more than 375 attached residential units and demolition of structures within the National Register of Historic Places Minneapolis Warehouse

District, and with the exception of the building at 212 Second Avenue North, within the Minneapolis Heritage Preservation Commission's North Loop Warehouse Area District. Exhibit A includes the project summary, and Exhibit B includes the Record of Decision.

II. EAW NOTIFICATION AND DISTRIBUTION

On June 31, 2006, the City caused the EAW to be published and distributed to the official EQB mailing list and to the project mailing list. The EQB published notice of availability in the *EQB Monitor* on July 3, 2006. Exhibit C includes the public notification record and these mailing lists.

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

Exhibit D includes the 38 comment letters received. The Zoning and Planning Committee of the Minneapolis City Council considered the EAW and the "Findings of Fact and Record of Decision" document during its August 24, 2006 meeting. Notification of this public meeting was 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

For the purpose of review and response to the comments received they have been divided into three sections. First, four State agencies made no comment on the EAW nor requested an EIS be prepared for the project, but did request consideration or identified permits that will be required as the project moves forward. Second, five persons or agencies made comments on the adequacy, completeness and accuracy of the EAW and/or requested an EIS be prepared for the development. Last, 29 comments were received from residents and business people in the area of the project opposing approval of either of the project alternatives described in the EAW, but not commenting on the adequacy, completeness and accuracy of the EAW or requesting the preparation of an EIS.

The complete comments are available for review in Exhibit D.

A. State Agency Comments

1. Minnesota Historical Society / State Historical Preservation Officer (SHPO)

SHPO found that buildings in both alternatives exceeded the heights appropriate for both the National and Local Historic Districts, that the rear of the Northwestern Building should not be permitted to be demolished, and that reconsideration should be given to the

statement in the EAW in section 25, page 28 a. that an archeological survey is not warranted.

Response. The Minneapolis HPC will specifically address these issues as part of its mandated review of this proposed project. SHPO's comments have been provided to the HPC staff.

2. Minnesota Pollution Control Agency (MPCA)

The MPCA identified the staff contact persons and the permits required as the project proceeds.

Response. These permits and others were identified in section 9 on page 10 of the EAW

3. Minnesota Department of Natural Resources (DNR)

The DNR has reviewed the EAW and had no comments.

Response. Noted for the record

4. Minnesota Department of Transportation (MNDOT)

MNDOT noted any work in MNDOT right of way would require a MNDOT permit

Response. Noted for the record.

B. Comments on the Completeness, Accuracy and Adequacy of the EAW and the Need for an EIS.

5. Metropolitan Council

The Metropolitan Council found the EAW to be incomplete pending additional information on net new wastewater flows and specific connection information and a statement on the consistency of the alternatives with the City's Comprehensive Plan, requested consultation on transit issues and noted the nearby Cedar Lake Regional Trail.

a. Wastewater Flow. The Metropolitan Council while noting the project does not appear to have a negative effect on the wastewater disposal system, did request a net new flow analysis be prepared. They also requested more detail on the proposed connection points than provided in the EAW in section 18 a. "Existing sanitary sewers located in 3rd Avenue N., 2nd Street N., and 2nd Avenue N. receive sewage from the Project Site. The City has indicated that adequate sewer capacity is available to serve the Project."

Response. This information will be developed as the project moves forward and the detailed building designs for the approved project are prepared. This information will be

provided to the Metropolitan Council as part of the required MCES permit process as noted in the comment and in Table 8-1 on page 10 of the EAW.

b. Comprehensive Plan. The Metropolitan Council requested the points of conflicts and conformity of the alternatives be explicitly addressed in the EAW.

Response. In Minneapolis the consistency and conflicts with the Comprehensive Plan are identified and conformity with the Plan determined through the City's Land Use Application Review Process. This process provides professional staff comment, public comment at hearings, and final decisions by appointed and elected officials. The request of the Metropolitan Council cannot be competently addressed at this stage of the City's process.

c. Transit issues. The Metropolitan Council identified potential bus stop and bus layover issues adjacent to the project site.

Response. This comment has been provided to the Department of Public Works for their consideration of inclusion in the TDMP for this project.

6. Eric Galatz of Leonard Street and Deinard on behalf of the Rock Island Lofts Association.

The Rock Island Lofts are located at 111 Fourth Avenue N. and their Association is opposed to the height of the both the proposed alternatives and the precedent for other tall buildings in the area that the approval could establish.

a. Study of Additional Alternatives Needed. The Association requested an EIS to study alternatives for the development of the block and mitigation techniques to avoid the height and certain other potential significant impacts of the alternatives presented in the EAW.

Response. The height of the proposed tall buildings in both alternatives, and the conflict of these proposed heights with the guidelines of the HPC, the comment of SHPO and the height of surrounding buildings were identified in the EAW as the most important environmental impact of the project. This issue will be directly addressed, appropriate building heights determined, potential alternative designs evaluated and mitigation techniques identified and mandated through the City's HPC and Land Use Application Review Process. This Process provides for a dialogue with the project proposer, recommendations by professional staff, comment from the public and discussion and decisions by appointed and elected officials.

b. Soil and Groundwater Contamination. The Association requests an EIS to develop more information on this environmental hazard at the site and for surrounding properties.

Response. This topic is discussed in section 9 of the EAW beginning on page 12 d. Potential Environmental Hazards Due to Past Site Uses, and concludes on page 15 (4)

Plan to Mitigate Project Site Contamination. This section identifies the potential hazards and describes the various MPCA Plans, Permits and Programs the developer of this site is subject to. These plans, permits and programs are also identified in Table 8-1 on page 10 of the EAW. The proposer is engaged with the MPCA to address these hazards at the site.

The statutory and regulatory responsibility to address these hazards rests with the MPCA and to a lesser extent the DNR. Neither of these agencies has requested an EIS be prepared to assist them in addressing these hazards.

c. Cumulative Wastewater and Traffic impacts of the Two Twenty Two and Twinsville developments. The Association requests an EIS to investigate the cumulative affects of the Pacific Flats Development and these developments.

These developments are not “connected” or “phased” developments by the Rules of the EQB. The EQB Rules 4410.2000 Subp. 5. Related actions EIS, provides “An RGU may prepare a single EIS for independent projects with potential cumulative environmental impacts on the same geographic area if the RGU determines that review can be accomplished in a more effective or efficient manner through a related actions EIS. A project must not be included in a related actions EIS if its inclusion would unreasonably delay review of the project compared to review of the project through an independent EIS.” The Two Twenty Two development received approval by the City Planning Commission on August 14, 2006. Pending an appeal, this represents the final government decision on this project. Twinsville has not been defined as a project at this time and will probably be of the scale requiring an EAW or and EIS at the time that project is defined.

The wastewater flow from Pacific Flats and the Two Twenty Two projects will be diminutive in the context of the wastewater flows from central Minneapolis and those treated at the St. Paul wastewater treatment plant.

The combined or cumulative affect of the traffic generated by the Pacific Flats and the Two Twenty Two developments has been anticipated by the Public Works Department and they are reviewing and commenting on both projects jointly. See the second page of their comment below at 9, section 7.

d. Noise. The noise modeling reported in section 24 f beginning on page 25 indicates the present condition around the block is in violation of noise standards. An increase of noise of one to two decibels is anticipated due to increased traffic in either the build or no build cases. The Association asks for additional study of mitigation of this effect.

Response. As part of the City’s Land Use Application Review Process compliance with State Noise Standards is implemented. As the final building designs for the project are reviewed through this Process, the noise exposure of those living, working and visiting the development can be addressed.

e. Demolition and Construction Dust. The Association seeks the duration, quantities and intensity of the dust generated during the demolition and construction of the project.

Response. That information is not available at the level of detail and point in the design process of the EAW. The topic is discussed in section 24 of the EAW in part d, where the proposer commits to using best management practices to mitigate this inevitable effect of demolition and excavation.

7. Walter Rockenstein on behalf of the Proposer, Pacific Flats LLC

The project proposer found two assertions in the EAW to be erroneous or seriously misleading and asked they be corrected.

a. The EAW states on page 31 “the HPC will determine the appropriateness of the design of all the elements of either alternative in the North Loop Warehouse Area (Local District)”. Mr. Rockenstein finds there is no legal basis for HPC review and approval of the 40-story tower of Alternative Two as it is located outside the Local District boundary.

Response. If the development on the parcel excluded from the Local Historic District boundary is solely supported and permitted by the FAR, parking, setbacks, etc. drawn from the excluded site and is therefore truly independent of the development in the Historic District part of the block, he is correct. However, as described in EAW, the development of the excluded parcel is not independent of the development of the remainder of the block in the district. The proposed excluded parcel development in both alternatives could be permitted only because for example, parking is provided in the District, FAR that allows the proposed building is earned in the District and transferred to the excluded parcel, and the building on the excluded parcel extends into the District avoiding the need for setbacks. Because these connections are so fundamental to the development on the excluded parcel, it could be considered part of the development in occurring in the District and therefore this appendage of the development of the block could be reviewed by the HPC as part of the development occurring in the District.

b. There is no legally binding precedent will be created by approval of the taller buildings at this site.

Response. In section 29 on page 33 of the EAW discussing the potential cumulative effects of the alternatives if approved the statement “Approvals of either of the proposed alternatives will set a precedent that may have the cumulative effect of allowing taller infill buildings in the future throughout this District” is made. Whether or not a legal right is created, an assumed precedent, depending on the facts and conditions on similar sites, could be created in the eyes of some observers by the decision to allow either alternative.

8. Lisa Rahne and Michael Nekich, 111 Fourth Avenue N. The Nekichs assert and find more study and an EIS are needed on the effects of either alternative in fundamentally altering the character and scale of the neighborhood, causing severe damage to the Warehouse District, cutting off sunlight and views of surrounding residents, negatively impacting traffic flow and permitting the same density and height as downtown though not zoned the same as downtown.

Response. Each of these issues will be specifically addressed during the City's HPC and Land Use Application Review Process for the redevelopment of this site.

9. The City's Public Works Department shared their comments on the TDMP referenced in the EAW. Public works submitted their comments on the issues and adequacy of the Draft TDMP discussed in the EAW.

Response. These comments enrich the EAW discussion of the traffic impacts and are a welcome addition to the review. Prior to approval of the TDMP the issues will be resolved to the Department's satisfaction.

C. Comments from Area Residents and Business People in Opposition to the Project and Asking it Not Be Approved, but not Commenting on the Need for an EIS.

Twenty-nine comments stating opposition to approval of the project were received. Many referred to the comment of Elizabeth and Peter Belfiore, 9 North Fourth Avenue as representing their views. All the comments are made part of the record and can be found in Exhibit D for review. The Belfiore comment is the first comment in this section.

Response. The topics of these comments will be specifically addressed during the City's HPC and Land Use Application Review Process for the redevelopment of this site.

V. ISSUES IDENTIFIED IN THE EAW

The most important environmental issue identified in the EAW was the impact of the project's design on the character of the national and local historic districts that are the site of the project. This impact will be directly assessed through the City's HPC approval process.

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 significant environmental effect identified in the EAW are the project's inconsistency with the provisions of the Guidelines for the North Loop Warehouse Area District, and by the comment of SHPO both alternatives are inappropriate by the Secretary of the Interior's Guidelines for development in the National Register of Historic Places

Minneapolis Warehouse Historic District. The extent and mitigation of this conflict, if mitigation is possible, will be considered by the HPC review process, and including a possible appeal to the City Council.

B. Cumulative Effects of Related or Anticipated Future Projects

Mixed-use development at this site is consistent with the overall objective of the Plan and the zoning regulations of the City. The bulk of the proposed structures will be subject to allowance of the bonuses and premiums provided in the Code. The specific design elements of this proposal may be mitigated during the City's HPC and Land Use Approval Review Process. No other project is related to this project.

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

The City has discretionary authority through its HPC and Land Use Approval Review Process, and ministerial authority through the permit approvals required for this project, to address, mitigate or avoid the environmental effects identified in the EAW.

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 this mixed use development on the edge of the downtown of a central city follows a number of similar projects constructed during the last ten years, many of which have been subject to environmental review. This is a known event with known effects.

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, this “Findings of Fact and Record of Decision” document, and related documentation for the Pacific Block Development 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, this “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 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.
4. The finding by the City that the EAW is adequate and no EIS is required provides no endorsement, approval or right to develop the proposal by the City and cannot be relied upon as an indication of such approval. This finding allows the proposer to formally initiate the City's process for considering the specific discretionary and ministerial 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.

Consequently, the City makes a Negative Declaration and 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

EXHIBIT A

Project Description

The Pacific Block Development is a mixed commercial, hotel, office, and residential development totaling approximately 750,000 gross square feet proposed on the block bounded by Washington Ave. N., 3rd Ave. N, 2nd St. N., and 2nd Ave. N. in Downtown Minneapolis. The residential component comprises 450 condominium units in two buildings. The Pacific Block is within the National Register “Minneapolis Warehouse Historic District” and, except for one parcel, is within the “North Loop Warehouse Area”, a historic district designated by the City of Minneapolis.

EXHIBIT B

Environmental Review Record for the Pacific Block Development Project Environmental Assessment Worksheet

CHRONOLOGY IN COMPLIANCE WITH THE PROCEDURES OF THE MINNESOTA ENVIRONMENTAL POLICY ACT

<u>DATE</u>	<u>ITEM</u>
6/30/06	City staff distributes EAW to official EQB mailing list and Project List.
7/3/06	Minnesota Environmental Quality Board (EQB) publishes notice of availability in <i>EQB Monitor</i> . 30-day comment period commences.
8/2/06	End of EAW public comment period.
8/24/06	Zoning and Planning Committee (Z & P) of the City Council considers the “Findings of Fact and Record of Decision” report, provides recommendation to the City Council.
9/01/06	City Council approves Z & P Committee recommendation and makes a finding of Negative Declaration: the EAW is adequate and no EIS is necessary.
9/08/06	Mayor approves Council action regarding EAW
9/09/06	City publishes notice of Council/Mayor decision in Finance and Commerce. Moratorium on issuance of final permits lifted.
9/12/06	City publishes and distributes Notice of Decision and availability of final “Findings” report to Official EQB List and the Project List
9/25/06	EQB publishes Notice of Decision in <i>EQB Monitor</i> .

EXHIBIT C

Public Notification Record

The following describes the public notification process of the Planning Division for the Pacific Block Development Project EAW:

1. The City maintains an updated list based on the EQB Contact List. The Planning Division also distributes copies of the EAW to elected and appointed officials, City staff and others who have expressed interest in the project.
2. A notice of the availability of the Pacific Block Development Project EAW, the dates of the comment period, and the process for receiving a copy of the EAW and/or providing comment was published in the EQB Monitor on July 3, 2006, and provided to the City's Communications/Public Affairs office for notice and distribution.
3. The Planning Division distributed the Notice of Decision with information regarding the final "Findings" document to the EQB Contact List and the project list.
4. The EQB published the Notice of Decision in the *EQB Monitor*.

Attached:

EQB Contact List

Pacific Block Project List

EXHIBIT D

Comments Received on the Pacific Block Development Project EAW

Following are the written comments received on the EAW for this Project

EXHIBIT E

Council /Mayor Action

Published September 9, 2006, in Finance and Commerce

Council Chamber, 350 South 5th Street, Minneapolis, Minnesota

September 1, 2006 - 9:30 a.m

The following reports were signed by Mayor Rybak on September 8, 2006. Minnesota Statutes, Section 331A.01, Subd 10, allows for summary publication of ordinances and resolutions in the official newspaper of the city.

REPORTS OF STANDING COMMITTEES

The **ZONING & PLANNING** Committee submitted the following report:

Z&P - Your Committee, having under consideration the environmental review process for the Pacific Block Development: a mixed commercial, hotel, office and residential (comprised of 450 condominium units) development totaling approximately 750,000 gross square feet proposed on the block bounded by Washington Ave N, 3rd Ave N, 2nd St N, and 2nd Ave N, and the recommendation of Community Planning & Economic Development staff that development of an Environmental Impact Statement not be ordered, therefore making a negative declaration, and to adopt the Findings of Fact and Record of Decision document set forth in the staff report, now recommends that the subject matter be **sent forward without recommendation**.

Schiff moved to amend the report by deleting the language, "the subject matter be sent forward without recommendation," and inserting in lieu thereof, "approval of the staff recommendation." Seconded.

Adopted upon a voice vote.

The report, as amended, was adopted 9/1/2006.