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Highlands Council Staff ~~Draft~~Final Recommendation Report
Proposed Highlands Redevelopment Area Designation
Borealis Compounds, LLC

Date: ~~January 15~~February 5, 2010

Re: Application Type: *Proposed Highlands Redevelopment Area Designation*
Name: *Borealis Compounds, LLC*
Municipality: *Mansfield Twp*
County: *Warren*
Highlands Act Area: *Preservation Area*
LUCM Location: *Conservation Zone (CZ) and CZ Env.-constrained Sub-zone*
Property: *Block 1301, Lot 1 & Block 1307, Lot 6*
Proposed Use: *Expanded Industrial Facility*

1.0 PROJECT DESCRIPTION

Borealis Compounds, LLC (Borealis) is a plastics manufacturing facility located on Block 1301, Lot 1 and Block 1307, Lot 6 of Mansfield Twp. The applicant is petitioning the Highlands Council for a Highlands Redevelopment Area Designation in the Preservation Area using the 70% impervious surface criteria established in the Highlands Act. The Highlands Redevelopment Area Designation allows the applicant to apply for a Highlands Preservation Area Approval (HPAA) with redevelopment waiver from the New Jersey Department of Environment Protection.

The parcels are located in the Conservation Zone (CZ) and CZ Environmentally-constrained Sub-zone. The manufacturing facilities are located on Block 1301, Lot 1, which is a 33.1 acre parcel. Block 1307, Lot 6 (9.0 acres) is undeveloped and currently used as agricultural lands. The two lots are separated by County Route 652. The lots are bounded to the north by County Road 629, to the west by a Category One (C1) stream, to the east by Blau Road and to the south by a freight railway that serves the Borealis property.

The redevelopment project intends ultimately to increase materials storage and handling capability at the site. The applicant has proposed to implement the site improvements in stages. The current development proposal (described as Phase I in the applicant's petition) includes the delineation of the Highlands Redevelopment Area boundary and the construction of a 27,200 square foot (SF) sea-

~~DRAFT FOR CONSIDERATION AT THE FEBRUARY 18, 2010
MEETING OF THE HIGHLANDS COUNCIL~~

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land container staging area facility and stormwater management on a portion of Block 1307, Lot 6. These improvements will be implemented as soon as the necessary approvals are obtained and will disturb a total of approximately 1.6 acres. The staging area will utilize the existing county roadway network and adjacent freight railway for the delivery and shipment of raw materials and finished product.

The project review performed by Highlands Council staff includes an analysis of the whether the overall application satisfies the 70% impervious surface criteria for designation of a Highlands Redevelopment Area. The review also evaluates the current development proposal for consistency with the Regional Master Plan (RMP). If inconsistencies were noted, a recommendation was included for whether a waiver from those standards is appropriate.

Borealis anticipates additional improvements (designated as future development activities) within the Highlands Redevelopment Area that will be constructed in the future. The future development activities will occur on Block 1301, Lot 1 within the proposed Redevelopment Area boundaries and may include the construction of a new building, construction of additional railroad tracks, construction of additional storage silos, and miscellaneous improvements such as stormwater management. To provide guidance to the applicant, Council staff has reviewed the potential resource impacts from the future development activities and lists several applicable permitting conditions. However until the applicant finalizes the future development activities and submits the supporting analyses, Council staff cannot fully evaluate all resource impacts and the scope of appropriate waivers.

As a condition of the designation a Highlands Redevelopment Area, the Highlands Council will reevaluate all future development activities and make final recommendations to the NJDEP on relevant HPAA permit conditions prior to their approval.

2.0 ADMINISTRATIVE PROCESS

The applicant first informally consulted with Highlands Council staff in 2007. In July 2007, prior to development of any formal Highland Council review process, Council staff visited the site with Borealis personnel and their engineering consultant. The purpose of the meeting was to become familiar with the site and the proposed redevelopment activities. In October 2007, the applicant's engineer developed site plans with a proposed boundary delineating a Highlands Redevelopment Area. In April 2008, the applicant attended a pre-application meeting with NJDEP personnel to discuss the project and the NJDEP's process for reviewing HPAA with redevelopment waivers. Council staff attended that meeting as well. ~~During these informal discussions, the question of whether the plans had satisfied the 70% impervious surface criteria was raised and remained unresolved. No formal action on the site plan was taken at this time.~~

Throughout these discussions, Highlands Council staff provided feedback to the applicant regarding the feasibility of the Highlands Redevelopment Area delineation and potential impacts to RMP resources. The applicant explored several alternatives to their initial design, including: relocation of railway extensions away from historic and agricultural resources and a reduction of impervious storage areas within the Highlands Open Water protection area.

The applicant presented revised site plans to the Council in August 2008 and requested a pre-application meeting with the Highlands Council. Following adoption of the Council's Highlands Redevelopment Area Procedures, staff issued formal comments ~~on the revised Borealis plans~~ in November 2008. The letter identified potential resource impacts that the project might create and provided recommendations on how to avoid, minimize and mitigate those effects.

However, an outstanding issue related to the identification of ~~acceptable~~ impervious surfaces remained. Impervious surfaces are a critical issue for applications petitioning for the HPAA redevelopment waiver using the 70% impervious surface criteria. The existing site is a complex collection of buildings, rail beds and lines, parking areas, material storage areas, paths, etc. Therefore, NJDEP and Council staff met the applicant on-site on February 10, 2009 to evaluate their delineated impervious areas, resulting in minor modification to the extent of the Highlands Redevelopment Area boundary. Based on that meeting and the Council's formal comments, the applicant again submitted revised plans addressing resource concerns and satisfying the impervious surface criteria. The petition also introduces the applicant's desire to phase the redevelopment activities and to limit the resource impacts in the initial phase of construction.

3.0 FINDINGS AND RECOMMENDATIONS

Council staff has reviewed the revised petition application package. The digital site plan was analyzed to verify the reported sizes of the proposed Highlands Redevelopment Area and the areas of impervious surface. Detailed analysis of consistency with the Regional Master Plan is provided in the Highlands RMP Consistency Determination for this project. Findings include:

- **Impervious Surface Requirement:** Based in part on the results of the February 2009 site visit, the calculations were verified and the proposed Highlands Redevelopment Area was found to contain at least 70 percent impervious surface as required by the Highlands Act.
 - Existing Impervious Surface = 638,897 square feet (SF)
 - Allowable Highlands Redevelopment Area = 912,704 SF
 - Proposed Highlands Redevelopment Area = 912,704 SF
- **Resource Assessment:** Based upon a review of the site plan and Highlands Council GIS data layers, the current development proposal will incorporate a paved container staging area within a Highlands Open Waters (HOW) buffer. A detention basin to manage stormwater from the area is also proposed within the buffer. In addition to being a Highlands Open Waters buffer, those areas are identified as critical habitat for grassland birds. (The applicant alleges that the area does not constitute critical habitat. Rebuttal of critical habitat mapping is permissible under both the RMP and the NJDEP Highlands Rules and may be considered as part of the HPAA review process.) The open waters buffer area is currently used for agriculture. The proposed staging area extends approximately 100 ft. into the buffer, with 200ft nearest the stream left undisturbed. The applicant has stated that they have redesigned the container staging area to minimize the disturbance, but total avoidance cannot be achieved because Block 1301, Lot 1 lacks sufficient space to incorporate the staging area with appropriate access to the manufacturing area. This encroachment into a Highlands Open waters buffer and critical habitat is inconsistent with several RMP policies and requires those standards to be waived by the Highlands Council, and likewise would require a waiver

by NJDEP under the Highlands Rules at N.J.A.C. 7:38-6.7. The applicant is proposing an HOW protection area mitigation plan, which is still to be developed, in the riparian area between the paved area and the stream. Highlands Council staff recommends that the buffer design address both water quality and critical habitat issues. The stormwater management for the staging area should utilize low impact development (LID) techniques and limit the need for new disturbance as much as possible. The applicant should investigate whether performance targets for water quality, water quantity and recharge can be achieved using the proposed buffer mitigation. If agriculture continues in the HOW protection area, at the discretion of the landowner, appropriate soil and water conservation practices should be incorporated into the mitigation plans. A directly-connected discharge to the C1 stream should be avoided. The Highlands Open Waters protection area mitigation plan design should ensure that the project results in no net loss of water quality and habitat value, or even improve the riparian area around the stream.

- Smart Growth and Sustainable Economic Development:** From an economic standpoint, the application represents an expansion and increase of intensity of an existing manufacturing site. The applicant has stated that without the ability to expand, they would have to relocate their operations outside the Highlands, resulting in this site being phased out. The current development proposal will utilize existing roadway and railway networks on a previously developed parcel. The project is therefore consistent with many RMP and Highlands Act goals of encouraging redevelopment and expanding the economic base with appropriate and compatible development.

The Highlands Act allows a waiver of any provision of a Highlands permitting review on a case-by-case basis for a redevelopment proposal, conditioned upon the finding by NJDEP that it meets the requirements of the narrative criteria described in Section 36 of the Act (N.J.S.A 13:20-34). It is the opinion of the Highlands Council staff that the proposed project meets these criteria, which are addressed as follows:

Requirement	Staff Analysis
1) would have a de minimis impact on water resources and would not cause or contribute to a significant degradation of surface or ground waters;	The proposed project does not require additional potable water and would not generate any additional wastewater. The HOW protection area mitigation plan should be designed to reduce water quality impacts from current <u>the new development and the absence of a riparian buffer between agricultural fields and an existing C1 stream.</u>
2) would cause minimal feasible interference with the natural functioning of animal, plant and other natural resources;	The project encroaches into areas identified as habitat for grassland bird species, although this area is actively used for agriculture. The HOW protection area mitigation plan should be designed to improve habitat values for the species of concern- <u>if the presence of such species is not successfully rebutted by the applicant.</u>

Requirement	Staff Analysis
3) will result in minimum feasible alteration or impairment of the aquatic ecosystem;	The HOW protection area mitigation plan should be designed to reduce water quality impacts from current <u>resulting from the new development and the absence of a riparian buffer between</u> agricultural fields and an existing C1 stream. Stormwater regulations must be followed in the project design upon permitting and achieve performance targets using LID and non-structural measures. (See response to #7 and discussion in Resource Assessment).
4) will not jeopardize the continued existence of endangered animal or plant species;	See response to #2
5) is located or constructed as to neither endanger human life or property nor otherwise impair public health, safety and welfare;	The proposed Highlands Redevelopment Area is compatible with existing municipal zoning. It is the policy of the RMP to promote compatible redevelopment in the Preservation Area at sites with 70% or greater impervious surfaces designated by the Highlands Council as Highlands Redevelopment Areas
6) would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas, and existing public scenic attributes; and	The site does contain historic areas; those resources have already been degraded by current and past activities at the site. No current development activities will encroach on the historic area.
7) meets all other applicable NJDEP standards, rules, and regulations and State laws.	Compliance with all remaining NJDEP standards will be addressed through the HPAAs with redevelopment waiver permit process.

It is the Highlands Council staff's recommendation that the Council approve the proposed Highlands Redevelopment Area designation and current development proposal subject to the following conditions:

1. that a Highlands Open Water protection area mitigation plan, reviewed and approved by the Highlands Council and NJDEP, must be implemented to ensure no net loss of water quality and buffer value, through mitigation of the impacts ~~from prior agricultural uses and of the proposed impervious container staging areas.~~ Low Impact Development techniques should of the proposed impervious container staging areas. Implementation and maintenance of the mitigation plan should be a permanent condition of the conservation easement. Future agricultural practices, if retained at the discretion of the landowner, should incorporate appropriate soil and water conservation practices into the required HOW and critical habitat mitigation plans and be maintained as long as agriculture

- continues. The mitigation plans must also account for the impacts should agricultural operations cease in the future. The Low Impact Development techniques must also be used;
2. that the design of the Highlands Open Water protection area mitigation plan shall also ensure no net loss of habitat value for the grasslands species of concern through improvement of habitat on the remainder of Block 1307, Lot 6, unless the applicant successfully rebuts the presence of such species;
 3. that the remainder of Block 1301, Lot 1 and Block 1307, Lot 6 outside of the proposed Redevelopment Area must be deed restricted to prevent future development, but will allow for continued agricultural uses with the establishment and maintenance of appropriate soil and water conservation measures;
 4. that stormwater management must utilize LID techniques and non-structural measures to the maximum extent feasible. Natural hydrology and vegetation should be used to the maximum extent possible to achieve required stormwater performance targets. A directly-connected discharge to the C1 stream must be avoided;
 5. that no modification to the water allocation permit or NJPDES permits be granted for an increase in flows for either, or for an increase in pollutant loadings or concentrations for the latter;

Related to the Highlands Redevelopment Area not affected by the current development proposal, Council staff recommends the following potential permit conditions for the future development activities proposed by the applicant. These conditions should not be construed as an approval of any future development proposal. Furthermore, they are subject to HPA A approval by NJDEP, which will require that the applicant submit finalized plans and supporting analyses for review by the Highlands Council:

6. that the Highlands Council provide a consistency determination regarding any proposed modifications to their water allocation permit, as required under Section 74 of the Highlands Act, and regarding any proposed modifications to their NJPDES permits, as required under N.J.A.C. 7:38-1.1;
7. that Borealis provide information that no increased pollutant loadings will occur in the wellhead protection areas through an increased discharge (i.e., no increased NJPDES discharge limits for any pollutant). Borealis should also provide an Operations and Contingency Plan regarding the facility's discharge prevention plans regarding any hazardous materials stored or handled on-site, to meet Tier 2 requirements of the RMP;
8. that prior to extension of the rail sidings over carbonate rock formations, Borealis should provide either 1) geotechnical investigation that karst topography and associated hazards do not exist at the site, or 2) demonstrate that the proposed rail improvements do not constitute an unacceptable risk of discharge or to public safety.