



P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050

**APA Project Permit
2005-261**

Date Issued: **July 19, 2006**

In the Matter of the Application of

**TICONDEROGA PROPERTY DEVELOPMENT, LLC,
Applicant and
LEON W. CATLIN AND DAN E. CATLIN,
Landowners and Co-applicants**

for a permit pursuant to §809
of the Adirondack Park Agency Act
and 9 NYCRR Part 578

To the County Clerk: This permit
must be recorded on or before
September 18, 2006. Please index
this permit in the grantor index
under the following names:

- 1. Ticonderoga Property
Development, LLC**
- 2. Leon W. Catlin**
- 3. Dan E. Catlin**

SUMMARY AND AUTHORIZATION

Ticonderoga Property Development, LLC, Leon W. Catlin and Dan E. Catlin are granted a permit, on conditions, authorizing a new commercial use in excess of 40 feet in height, new development and placement of fill in wetlands and a two-lot subdivision involving wetlands in an area classified Hamlet by the Official Adirondack Park Land Use and Development Plan Map in the Town of Ticonderoga, Essex County.

This project may not be undertaken until this permit is recorded in the Essex County Clerk's Office. This permit shall expire unless so recorded on or before September 18, 2006, in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the project site on the recordation date.

This project shall not be undertaken or continued unless the project authorized herein is in existence within two years from the date the permit is recorded. The Agency will consider the project in existence when the foundation for the commercial use building has been completed.

Nothing contained in this permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

AGENCY JURISDICTION

The project consists of a new commercial use in excess of 40 feet in height, new land use and development and placement of fill in wetlands and a subdivision involving wetlands in a Hamlet land use area, a Class A regional project requiring an Agency permit pursuant to §§809(2)(a) and 810(1)(a)(1) and (4) of the Adirondack Park Agency Act and a regulated activity requiring a wetlands permit pursuant to 9 NYCRR 578.2(a) and 578.3(n)(1)(i) and (iii).

PROJECT SITE

The project site comprises 27.73 acres of a 30.26-acre parcel of land located on the east side of Wicker Street (New York State Route 9N), improved by a preexisting single family dwelling and barn housing a farm supply store, in the Town of Ticonderoga, Essex County in an area classified Hamlet on the Adirondack Park Land Use and Development Plan Map. The parcel is identified on Town of Ticonderoga Tax Map Section 150.02, Block 3 as Parcel 7.1. The project site is described in the following three deeds from Phyllis M. Robinson Catlin to Leon W. Catlin and Dan E. Catlin: a deed dated June 15, 1976 recorded January 20, 1977 in the Essex County Clerk's Office in Liber 629 of Deeds at Page 115, a deed dated January 3, 1995 recorded March 20, 1995 in Liber 1083 of Deeds at Page 155, and a deed dated September 22, 1997 recorded October 15, 1997 in Liber 1157 of Deeds at Page 70.

PROJECT DESCRIPTION AS PROPOSED

The project as proposed and conditionally approved herein is summarized as follows:

- The 30.26-acre parcel is to be subdivided into the following three parcels: Lot 1, a 2.53 acre parcel which contains the preexisting single family dwelling and farm supply store to be retained by the current landowners; Lot 2, a 27.02 acre vacant parcel on which the commercial use and related improvements are to be located; and Lot 3, a 0.71 acre vacant parcel to be retained by the current landowners. The creation of Lot 1 by subdivision is not subject to Agency jurisdiction since it contains no jurisdictional wetlands. Lots 2 and 3 are jurisdictional since they contain jurisdictional wetlands.
- Construction of a new commercial use consisting of a 124,051-square foot building and attached 28,829-square foot garden center on a concrete slab which is partially roofed on Lot 2 to be leased as a "Lowe's Home Improvement Store." This building will measure approximately 64 feet in overall height. Its exterior walls will consist of various shades of beige colored concrete, a dark blue peaked west facing (front) façade bearing an internally-lighted, approximately 245-square foot in size,

white-lettered wall-mounted "Lowe's" sign. The top of the sign will be about 30 feet 7 inches in height above finished grad. A 20-foot high chain link fence will enclose the attached partially-covered garden center.

- In addition to the wall-mounted sign, a 20-square foot, free-standing, externally lighted sign 19 feet 6 inches in height is proposed adjacent to Wicker Street.
- Municipal water supply and wastewater treatment facilities will serve the commercial use. A section of an existing sanitary sewer line crossing the project site is to be replaced in a relocated sanitary sewer easement which has been dedicated and accepted by the Town.
- A 36-foot diameter, 20±-foot high steel water storage tank having a capacity of 110,000 gallons is to be constructed for fire protection purposes.
- An existing paved access road and sidewalk leading from Wicker Street through the project site to adjoining Wal-Mart property north of the project site is proposed to be realigned pursuant to a draft agreement between Walmart Real Estate Business Trust, holder of an easement for the existing road over the project site, and the applicant. A proposed paved access road around the building will provide access to entrances and loading docks on the north, east and south sides of the building. A 441-space paved parking lot is proposed on the west side of the store building.
- Exterior lighting will consist of pole-mounted (37-foot high) and wall-mounted light fixtures located in the parking lot and access road around the building which will be hooded and directed downward to confine light to the project site.
- Landscaping will consist of the planting of various trees and shrubs throughout the area of the project site to be developed to enhance the appearance of the project. No clearing of existing forested areas is proposed.
- Stormwater runoff from the portions of the site to be developed will be collected by a series of catch basins and directed into a proposed stormwater detention pond for treatment and discharge to an existing stream which crosses the project site. Off-site improvements to existing stormwater and sanitary sewer lines will also be made to alleviate stormwater ponding and reduce stormwater from entering a sanitary sewer line "downstream" from the project site in the vicinity of North Wayne Avenue as part of this project.
- Construction of the parking lot and a 12-foot wide gravel access road leading to the stormwater detention pond will result in the loss of 0.07 acre of jurisdictional wetland area. Compensatory wetland mitigation by means of a 0.27 acre of wetland area to be created within the stormwater detention pond is proposed.

The project is shown on and described in the following documents which were submitted as part of the permit application:

- The proposed subdivision is shown on a map entitled "Proposed Subdivision Plan, Lands Now or Formerly of Leon W. Catlin and Dan E. Catlin, 1096 Wicker Street" prepared by C.T. Male Associates, P.C. and dated June 22, 2005 (referred to herein as the "subdivision map").
- A set of plans (13 sheets) entitled "Site Plans for Lowe's Home Center, Inc." prepared by C.T. Male Associates, P.C. and dated February 2006 (referred to herein as the "project plans"). Drawings P4, P6 and P7 of the project plans were revised on May 4, 2006. A reduced-scale copy of Drawing P4 (Grading Plan) is attached as part of this permit.
- Building elevations plan entitled "Exterior Color Elevations, Lowe's of Ticonderoga, Ticonderoga, New York" with a "Criteria Issue Date" of April 5, 2006 and received May 10, 2006.
- Building floor plan entitled "Floor Plan, Lowe's of Ticonderoga, Ticonderoga, New York" with a "Criteria Issue Date" of July 8, 2005 and received May 10, 2006.
- Plans for off-site improvements to municipal stormwater and sanitary sewer lines are shown on a set of plans (5 sheets) entitled "Storm Sewer and Sanitary Sewer Improvements, Ticonderoga, NY" prepared by C.T. Male Associates, P.C. and dated November 2005.
- Report entitled "Stormwater Pollution Prevention Plan (SWPPP) for Lowe's of Ticonderoga" prepared by C.T. Male Associates, P.C., dated July 26, 2005 and revised May 8, 2006.
- Report entitled "Lowe's Stormwater Management & Wetland Mitigation/Monitoring Operation & Maintenance Manual, Lowe's of Ticonderoga, Town of Ticonderoga, Essex County, New York" prepared by C.T. Male Associates, P.C. and dated May 8, 2006
- Report entitled "Manual for the Maintenance and Monitoring of the Wetland Vegetation Created in the Stormwater Detention Pond, Lowe's Retail Store Site, Town of Ticonderoga, Essex County, New York" prepared by The LA Group and dated May 2006.

The original, full-scale maps and plans referenced in this permit are the official plans for the project.

CONDITIONS

BASED UPON THE FINDINGS BELOW AND INFORMATION CONTAINED IN THE PROJECT FILE, THE PROJECT IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The project shall be undertaken as described in the completed application, the Project Description as Proposed and Conditions herein. In the case of conflict, the Conditions control.

Failure to comply with the permit is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the permit.

2. This permit is binding on the applicant, all present and future owners of the project site and all contractors undertaking all or a portion of the project. Copies of this permit and all the maps, plans and reports referred to herein shall be furnished by the applicant to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permit 2005-261 issued July 19, 2006, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
3. At the request of the Agency, the applicant shall report in writing the status of the project including details of compliance with any terms and conditions of this permit.
4. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

Wetlands

5. Beyond that authorized herein, no "regulated activity" as defined in the Agency's Freshwater Wetland Regulations (9 NYCRR Part 578) shall occur on the project site affecting existing or newly created wetlands without prior Agency approval in the form of a new or amended permit. Such activities include, but are not limited to, new land use or development in, subdivision of, or dredging or filling of a wetland, or any other activity, whether or not occurring within wetlands, which pollutes or substantially impairs wetland functions, benefits or values.
6. Sediment shall be prevented from entering wetlands by strict adherence to the erosion and sedimentation control plan contained in the project plans and the stormwater pollution prevention plan.
7. By no later than December 31 for each of the five years following construction of the proposed wetlands, the owner of Lot 2 shall provide the Agency with annual monitoring reports as proposed in the compensatory wetland mitigation plan. These reports shall also include all actions taken or to be taken to insure that both

proposed wetland area and function have been successfully established in accordance with the mitigation plan. Annual reporting may no longer be required only if the Agency determines in writing that all Mitigation Success Standards contained in mitigation plan have been met sooner.

Water Resources

8. The commercial use authorized herein shall not open for business until all proposed water supply and wastewater treatment facilities have been installed and are functioning properly and the Agency is provided with written certification from a New York State licensed professional engineer that these facilities are functioning properly.
9. All exposed soil areas that may be created by the project shall be promptly stabilized and successfully revegetated with uniform perennial grass ground cover or in shrub and tree planting beds.
10. No waste material generated by the project shall be disposed of on-site. All such material that may be disposed of within the Adirondack Park shall be properly disposed of in a lawful sanitary landfill, non-wetland area designated as Hamlet on the Adirondack Park Land Use and Development Plan Map or an Agency permitted waste disposal area. Any other disposal location within the Adirondack Park shall require prior Agency review and written approval in the form of a new or amended permit.

Visual/Open Space Protection

11. Unless the Agency grants the requested variances to its "Standards for Signs Associated with Projects" (9 NYCRR Appendix Q-3), the applicant shall provide to the Agency and receive written approval of revised signage plans documenting conformity to these standards.
12. Except as shown on the project plans, no trees, shrubs or other woody-stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed and no grading shall occur on the project site without prior Agency review and approval. This condition shall not be deemed to prevent the removal of dead or diseased vegetation or of rotten or damaged trees or of other vegetation that presents a safety or health hazard.
13. All proposed tree and shrub plantings shall be completed by no later than the end of the first growing season following completion of construction of the commercial use. Any of these trees or shrubs that do not survive shall be promptly replaced

annually such that all plants are perpetually established in a healthy growing condition.

Outdoor Lighting

14. All free-standing and building mounted outdoor lights shall employ full cut-off fixtures, that is, they shall be fully shielded to direct light downward and not into the sky. The fixtures shall be oriented so as to not cast light toward any public road or adjoining property. The intent is to reduce nighttime light pollution (glare, light trespass and sky glow).

Review of Future Development

15. There shall be no further subdivision of Lots 2 and 3 or new land use or development on these lots without a new or amended Agency permit.

FINDINGS OF FACT

Background

1. In a letter dated March 29, 2006 and accompanying bound information, the applicant requested that the Agency grant variances to the size and height requirements set forth in the Agency's "Standards for Signs Associated with Projects" (9 NYCRR Appendix Q-3) for signage proposed for this project. This request relates specifically to the proposed wall-mounted sign. Since conformity to the sign standards is the only unresolved issue relating to the project, the Agency has determined to issue this permit for the project which requires sign conformity unless variances are granted. A public hearing pertaining to the requested variances, as required by the Adirondack Park Agency Act, is to commence on July 25, 2006. A separate decision on the variances will be made by the Agency subsequent to the public hearing.
2. In a February 1, 2005 Contract of Sale, Leon W. Catlin and Dan E. Catlin agreed to sell a 28+ acre portion of the project site (i.e., Lot 2) to Ticonderoga Property Development, LLC, a limited liability company pursuant to the Delaware Limited Liability Company Act. Ticonderoga Property Development, LLC intends to construct a new commercial use on Lot 2, as described above, and will then lease that lot to Lowe's Companies, Inc.

Existing Environmental Setting

3. Soils on the project site are classified by the USDA Soil Conservation Service as Vergennes, deep clay soils which are

highly erodible and very slowly permeable. These soils are also classified as farmland soils of Statewide significance by the State Department of Agriculture and Markets.

4. Slopes throughout the northerly approximate one-half of the project site where most of the development is to occur are slight to moderate, generally ranging from 0 to 8%. Steeper slopes (8 to 25+%) exist in the south one-half of the project. Site topography is shown on the project plans.
5. The commercial use, parking area and roads are to be located in open hay field and successional field areas which are predominant throughout the project site. Shrub growth areas and isolated wooded areas also exist on the project site. Vegetative covertypes are shown on Drawing P3 of the project plans.
5. Wet meadow covertype wetlands, having an overall value rating of "4" pursuant to 9 NYCRR 578.6, exist on the project site as shown on Drawing P1 of the project plans. An intermittent stream flows through Wetland No. 1, shown on this drawing as a ditch.
6. Except for the existing road and sewer line traversing it, the project site is an undeveloped open field vegetated with grasses and some shrub and tree areas which is essentially surrounded by commercial uses along Wicker Street and to the north and by residential uses to the south and east.

Public Notice and Comment

7. The Agency notified all adjoining landowners and other persons as statutorily required by §809 of the Adirondack Park Agency Act and published a Notice of Complete Permit Application in the Environmental Notice Bulletin. The Agency received a letter from a nearby resident and two others from a citizen expressing support for the project. The Agency received one letter from a citizen expressing concerns about that the project and a propane tank are too close to a residential area, the project will create flooding and adversely impact wetlands, potential impacts from earthquakes, and that the proposed commercial use is too big. The Agency also received a letter from an area Congressman expressing support for the requested variance to the Agency's Sign Standards.

Other Regulatory Permits and Approvals

8. By resolution adopted August 16, 2005, the Zoning Board of Appeals of the Town of Ticonderoga granted an area variance to the applicant allowing 442 parking spaces for the project rather than the 1,529 spaces normally required by the Town's Zoning Ordinance.

9. By resolution adopted January 4, 2006, the Planning Board of the Town of Ticonderoga approved a three-lot subdivision of the project site which is proposed as part of this project
10. By resolution adopted January 4, 2006, the Planning Board of the Town of Ticonderoga approved the applicant's Site Plan application for the project on Lot 2.
11. By letter dated December 30, 2005, the New York State Department of Environmental Conservation (DEC) approved wastewater plans for the project and the proposed off-site stormwater and wastewater improvements in the vicinity of North Wayne Avenue. The stormwater pollution prevention plan includes a Notice of Intent for the project that is required to be filed with DEC for stormwater discharges under State Pollutant Discharge Elimination System General Permit # GP-02-01.
12. By letter dated December 23, 2005, the New York State Department of Health approved plans for water service, backflow prevention devices and related appurtenances for the project.

PROJECT IMPACTS

Wetlands

13. The project will result in the loss of 0.07 acre of a jurisdictional wetland. This loss is the only reasonable alternative that would allow vehicular access to the proposed detention pond for maintenance and for the routing of adequate vehicular access around the proposed building given the size and location of the building and its parking area. This loss of wetland area will, however, be adequately compensated for by the 0.27 acre wetland area to be created as proposed.
14. Beyond the project as proposed, other new land use or development in or proximate to wetlands on the project site should be avoided and, if unavoidable, should first be reviewed and approved by the Agency so that adverse impacts to wetlands can be properly assessed and avoided or mitigated.

Water Resources

15. Installation and proper functioning of water supply and wastewater treatment facilities which are to be connected to existing municipal systems will adequately protect groundwater quality from contamination from wastewater and the groundwater levels since on-site water supply facilities are not proposed.

16. Adherence to the proposed erosion and sedimentation control plan contained in the project plans and the stormwater pollution prevention plan including prompt revegetation of disturbed soil areas will serve to avoid adverse impacts to surface water and wetland resources from soil erosion and sedimentation.
17. Project construction is estimated to generate approximately 30,000 cubic yards of unusable soils, to be disposed of at off-site location(s). Proper disposal of this material and other wastes from the project will avoid adverse impacts soil erosion and sedimentation into water and wetland resources.

Open Space/Aesthetics

18. The project site currently provides undeveloped open space in an area surrounded by commercial and residential uses. Protection of the site's open space and aesthetic character is warranted to avoid undue adverse impacts to these resources. Retention of existing trees and other vegetation outside of the areas of the project site to be developed and successful tree and shrub plantings as proposed will serve to mitigate adverse impacts to existing open space and aesthetic resources.
19. The proposed "Lowe's" sign on the building does not comply with the Agency's "Standards for Signs Associated with Projects" (9 NYCRR Appendix Q-3). Unless the Agency finds in the variance proceeding that there are practical difficulties or unnecessary hardships in complying with its sign standards and grants the requested variances, signage should conform to the Appendix Q-3 sign standards.

Traffic

20. A July 5, 2005 "Traffic Impact Study, Ticonderoga Home Improvement Store" was prepared by Creighton Manning Engineering, LLP. This study concludes that the project will generate 198 new trips during the PM peak hour (99 trips entering, 99 trips exiting) and 356 trips during the Saturday peak hour, a level of service analysis indicates that nearby road intersections will operate at acceptable levels of service during the PM and Saturday peak hours, and that sight distances at the access road intersection with Wicker Street exceed recognized guidelines. This study does not recommend a left-turn lane on Wicker Street at the access road intersection, but does recommend installation of a traffic signal at this location. The New York State Department of Transportation has verbally advised that it agrees in concept that no left-turn lane should be constructed at this time and agrees that a traffic signal should be installed.

Economic/Fiscal Factors

21. The project has been sized at 153,000± square feet to accommodate an anticipated regional market for building, remodeling, and gardening materials. The project site is within an area characterized by a growing number of commercial activities including a major regional retailer (Wal-Mart) as well as other businesses including restaurants and lodging facilities.
22. The proposed operation is expected to employ 131 people on a full-time, year-round basis and 44 people on a part-time, year-round basis. Seasonal employment is projected for an additional 17 people including 12 who will be employed full-time and 5 part-time.

During the 39 week construction period, it is expected that the project will generate 400 full-time equivalent jobs in the construction trades.

23. The current real property tax assessment of the 30.26 acre parcel is \$690,000. The project cost (land and structure) has been estimated at \$10.25 million and will be considered by the local real property tax officials in establishing a revised real property tax assessment after project completion. The applicant may apply for a NYS Real Property Tax Law §485.b business investment exemption to reduce its property tax liability over a ten year period following completion of the project. The §485.b program allows a maximum 50 percent tax reduction in the first year and provides for a 5 percent annual increase in tax liability through the balance of the 10 year period.
24. The retail project, once in operation, is expected to generate over \$2 million annually in sales tax revenue to the State of New York and Essex County. New York State is expected to receive \$1.04 million based on its 4 percent tax rate. Essex County is expected to receive \$975,000 based on its 3.75 percent tax rate. In Essex County, sales tax revenues are not shared with other local jurisdictions (towns/villages) on a formula basis. Projected annual sales tax generation from the project to New York State is \$1.04 million and \$780,000 to Essex County.
25. Off-site improvements to existing municipal stormwater and sanitary sewer lines to be made as part of this project will alleviate stormwater ponding and reduce stormwater from entering a municipal sanitary sewer line "downstream" from the project site in the vicinity of North Wayne Avenue. The project's contribution to these improvements will reduce the cost to the Town and result in more effective stormwater and sanitary sewer treatment.

Historic Sites or Structures

26. A July 2005 "Phase IA Literature Review and Archeological Sensitivity Assessment" and an October 2005 "Phase IB Archeological Field Reconnaissance for the Lowe's Home Improvement Warehouse Project" were prepared by Hartgen Archeological Associates, Inc. for the project. These reports were provided to the New York State Office of Parks, Recreation and Historic Preservation for its review. The Phase IB report recommended that no further archeological field investigation was warranted since there is a "lack of precontact or significant historic cultural resources." In a letter dated December 30, 2005, the New York State Office of Parks, Recreation and Historic Preservation advised that the project will have no impact upon cultural resources in or eligible for inclusion in the State and Federal Registers of Historic Places. Therefore, the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Part 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

CONCLUSIONS OF LAW

The Agency has considered all statutory and regulatory criteria for project approval as set forth in §809(10) of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Part 574; and §24-0801(2) of the NYS Freshwater Wetlands Act (ECL, Article 24, Title 8) and 9 NYCRR 578.10. The Agency hereby finds that the project is approvable and complies with these criteria, provided it is undertaken in compliance with the conditions herein.

