
PILOT

Friday, November 18, 2011 – Questions 16-23

P2005-100 Preserve Associates LLC
Adirondack Club and Resort Project
December 15, 2011



The PILOT is one financing tool identified in the 2006 application and the 2010 financial analysis (Exhibit 85).

The details of the PILOT will be finalized through a public process that engages the Franklin County Industrial Development Agency and the Applicant.

It is inappropriate for the Adirondack Park Agency Board to speculate about legal issues that will be the responsibility of the IDA Bond Counsel, including legality, terms of default and viability of the project.

Applicant and municipal parties consider this to be a financing and timing issue that is necessarily in balance at the time each section of any final plat is presented for approval prior to any offering of lots for sales. (Reply Statement of Town of Tupper Lake and Applicant)

Insofar as the project will rely on a PILOT for project financing, the actual benefits to municipal revenue will be derived from the IDA after Bond payments are made in both Tier 1 and Tier 2 levels.

The PILOT is a financing tool with PILOT phasing linked to infrastructure build out.

The Agency has an affirmative obligation to protect the public from the consequences of project failure (Section 809[(13) (a)] presented as “build it” or “bond it.”

The Agency is directed to work with local government in 809 (13) (a) “to impose reasonable conditions and requirements... to ensure that any project ...will be adequately supported by basic services and improvements made necessary by the project.”

Insofar as the project may rely on a PILOT for project financing, it is legally impossible for it to have negative fiscal consequences for the municipality. The structure of a PILOT does not allow a transfer of any portion of the bond liability to the local government or the county.

Protections to buyers and local government:

- The purchasers of lots are also protected by the Attorney General and the process of a real estate offering plan.
- The Transportation Corporation for the private sewer plant .
- By conditions the Agency may establish in consultation with the Town regarding service infrastructure to each lot or structure.

In the Agency review of the ACR project, none of the APA Act or Environmental Conservation Law criteria we administer address the question of financial viability.

“The Agency shall not approve any project...unless it first determines that such project meets the following criteria:”

- a) consistent with the land use and development plan
- b) compatible with the character descriptions and purposes, policies and objectives of the land use area(s)
- c) consistent with the overall intensity guidelines
- d) comply with the shoreline restrictions
- e) no undue adverse impact

The only APA Act interest in the PILOT as financing relates to the considerable debate about “benefit” of the project to the community.

- APA Act 809 (10)

Historically the Agency has looked at a project as it would exist and function at its finish, whenever that occurs. The following can be addressed in the wording of conditions for a large-scale project:

- Delays in implementation
- The likelihood that there might be successive principals involved
- The need for modifications based on unforeseen circumstances

Alternative Design

Thursday, November 17, 2011 – Question 70

P2005-100, Preserve Associates LLC
Adirondack Club and Resort Project
December 15, 2011



Alternatives were advanced through testimony during the Adjudicatory Hearing:

- a) drastically reducing the size of the 39 Great Camp lots ⁽¹⁾;
- b) use of Read Road ⁽²⁾;
- c) a preferred alternative (1 of 3) with all development west of Read Road ⁽³⁾;
- d) [the Dodson alternative] is not a marketable design ⁽⁴⁾;
- e) Overlap the zones of impact from development activity ⁽⁵⁾;
- f) eliminate or reconfigure Great Camp lot E ⁽⁶⁾.

(1) Protect the Adirondacks! - Post Hearing Brief and Closing Statement

(2) Adirondack Council – Dodson Testimony, 4/26/2011

(3) Adirondack Council - Pre-filed testimony of Harry L. Dodson

(4) Testimony, Jeffery Anthony, April 27, 2011, page 1207

(5) Pre-filed testimony, Dan Spada, Transcript June 23, 2011, Attachment C

(6) Ibid.

APA Hearing Staff – Closing Statement:

Testimony at hearing showed the potential for other project alternatives.

[testimony] also showed the difficulties of developing alternative designs taking into account land use boundaries and sensitive resources.

Overall, the project has not changed significantly since conceptual review by the Agency's Regulatory Programs Committee in 2004.

Project Sponsor has consistently sought Great Camp Lots on RM lands.

Project Sponsor has made specific design changes to the proposed project throughout the review process:

- high elevation residential development removed;
- eliminated Orvis Shooting School;
- combined Lots A and I;
- a forest management plan will be developed;
- wastewater treatment proposals have been modified.

Applicant's Brief of the Hearing Record and Closing Statement:

... Site constraints limit ...design options for the AC&R project. Applicant's project scale and design are reasonable and necessary...

“The project as proposed represents a very significant effort to both conserve and preserve open space in its resource management lands”

Habitat/Wildlife

Thursday, November 17, 2011 – Question 51

P2005-100, Preserve Associates LLC
Adirondack Club and Resort Project
December 15, 2011



What is the state of the record on wildlife habitat?

Wildlife Inventory and Functional Assessment Summary

- The wildlife inventory submitted by the Project Sponsor to date consists of letters from NYS DEC, NYS Natural Heritage Program and USFWS.
 - Project Sponsor submitted list of 18 species observed on project site
 - Supplemental testimony by Klemens (11 species of amphibians detected near project site in 8.5 hours)

What is the state of the record on wildlife habitat? Wildlife Inventory and Functional Assessment Summary

- The Project Sponsor provided information in response to requests for a Functional Assessment from Agency staff on 3 separate occasions.
 - “The wildlife functional assessment failed to provide a detailed species inventory and was not conducted over a number of days nor during different seasons...” “Consequently, lack of information makes it difficult to assess possible habitat fragmentation and potential wildlife impacts or to determine potential localized changes in animal species composition, diversity and function organization from the development and any changes to the biotic integrity of the site and adjacent properties.” (Project Staff/Hearing Staff Memorandum to Executive Director and Agency Board-Exhibit 50, p. 9)
 - Science and research concerning functional assessments, habitat fragmentation, edge effect, etc. as applied to the Adirondacks was different in 2005 vs. 2011
 - “... the state of our knowledge is different now than it was in 2006.” (June 23, 2011 Transcript (Spada), pp 4199-4200)

**What is the state of the record on wildlife habitat?
Wildlife Inventory and Functional Assessment Summary**

- “The board didn’t explicitly require that they do a functional assessment on the whole project or even on the resource management lands.” (Sengenberger-April 29, 2011 Transcript, p. 1647, lines 9-12)

- “Notwithstanding these issues, the project sponsor has designed the proposed project to avoid and/or minimize many of the potential impacts to wildlife habitat on RM lands.” (APA Closing Statement, p. 25)
 - “Permanent protection of ...RM as open space is the most effective way to provide broad habitat protection to mitigate the impacts of the project.” (APA Closing Statement, p. 27)
 - Draft Conditions 29, 30 and 40

Cranberry Pond for Snowmaking

Questions 36 thru 42

**From Agency Board Meeting Friday
Nov 18, 2011**

History of Cranberry Pond

- Cranberry Pond ceased being utilized as a potable water source some time between January 1983 and October 1984.
- Largest daily withdrawal from Cranberry Pond for snowmaking on record is 1,920,000 gallons during the 97-98 snowmaking season.
- The use of Cranberry Pond for irrigation by the municipal golf course was not discussed or investigated as part of the hearing record into impacts associated with Cranberry Pond.

Prior Agency Permitting

- Agency Permit 94-246 authorized the installation of an approximately 3 mile non-potable snowmaking water supply line that would have extended from the Big Tupper Ski Area to Tupper Lake. The project was never undertaken.
- Agency Permit 94-246A and 94-246B authorized the use of Cranberry Pond for snowmaking for 1 and 2 years, respectively.

97-98 Pumping Data

- Average gallons pumped per day when pumping occurred: $\approx 670,000$ gpd (≈ 465 gal/min)
- The mountain had 100% snowmaking coverage & snow cover was never lost on the mountain during the season
- 42 days when pumping occurred from Nov 13 – Mar 6. Former owner of the ski area and the Snowmaking Superintendent expected a maximum of 50 days/season of acceptable conditions for snowmaking

97-98 Pumping Data

An analysis performed by Shaun LaLonde and included in his pre-file testimony for Issue #8 stated that all 14 days where daily snowmaking withdrawal exceeded daily natural pond replenishment were days where the pumping rate was 1,600 gpm (i.e. two pumps operational) and operated for at least 8 hours.

Beaver Dam Failure

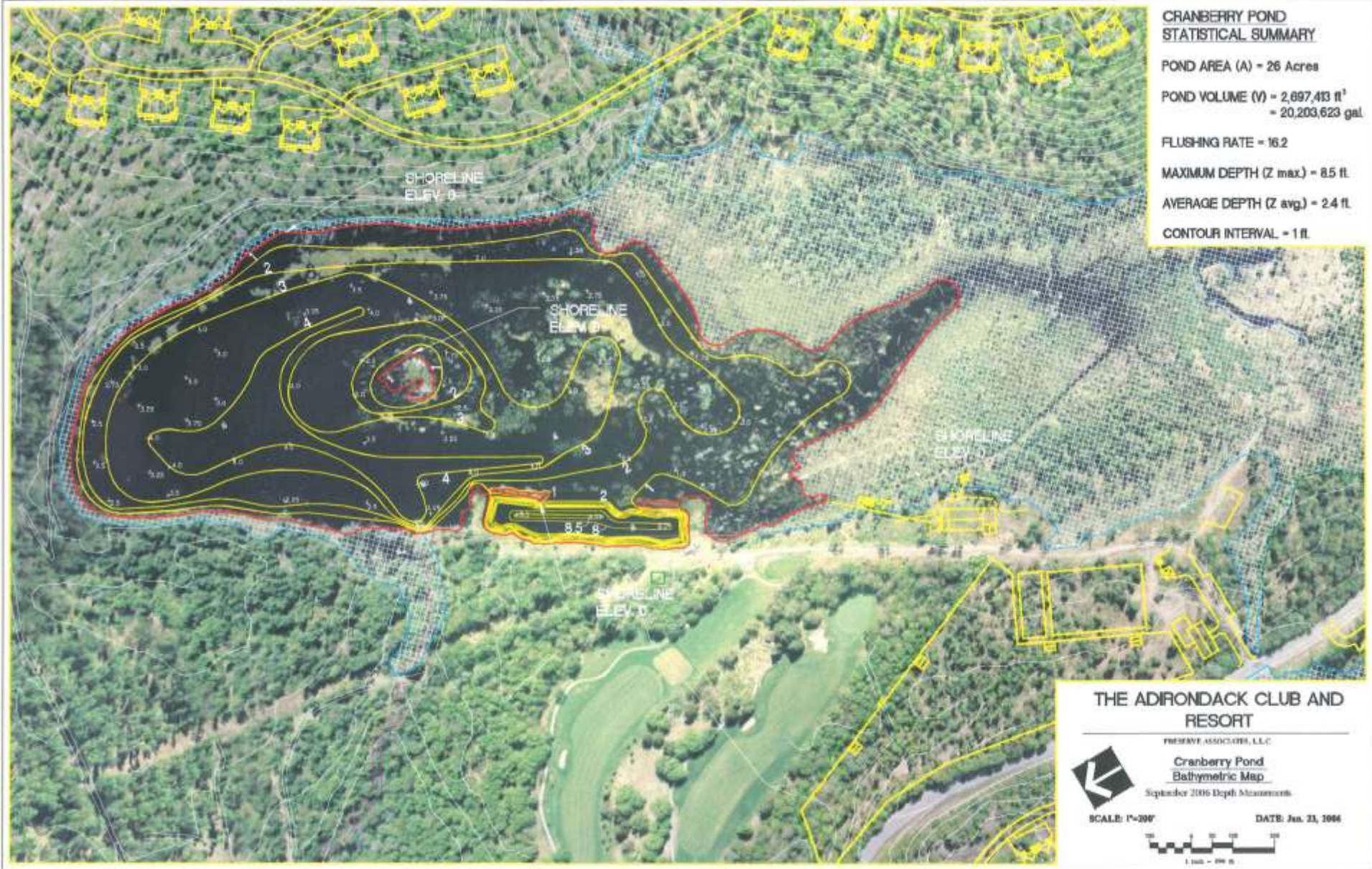
- Current Pond Capacity: \approx 20 million gallons
- Pond Capacity w/o Beaver Dam in Place: \approx 780K gallons located within the Old Tupper Lake Reservoir
- Inflow over winter months: \approx 530 gal/min
- Available Inflow w/o Beaver Dam in Place: \approx 270 gal/min

Beaver Dam Failure

If failure of the beaver dam were to occur, the Project Sponsor anticipates that priority would be given to making snow on the most popular trails for the different ability levels during the early season start-up, and other trails would need to rely on natural snowfall.

**CRANBERRY POND
STATISTICAL SUMMARY**

POND AREA (A) = 26 Acres
POND VOLUME (V) = 2,697,413 ft³
= 20,203,623 gal.
FLUSHING RATE = 16.2
MAXIMUM DEPTH (Z max.) = 8.5 ft.
AVERAGE DEPTH (Z avg.) = 2.4 ft.
CONTOUR INTERVAL = 1 ft.



**THE ADIRONDACK CLUB AND
RESORT**

RESERVE ASSOCIATES, L.L.C.

**Cranberry Pond
Bathymetric Map**

September 2006 Depth Measurements



SCALE: 1"=200'

DATE: Jan. 21, 2006



Cranberry Pond 2006 with Bathymetry

Exhibit 82 Applicants Updated Information
for Adjudicatory Hearing w/ Attachments
June 2010 p. 112



Cranberry Pond Aerial Photo 1981



Cranberry Pond Aerial Photo 1968

Worst Case Scenario

The Applicant's analysis concluded that based on the removal rates and frequency from the 97-98 snowmaking season and increased ski terrain due to proposed ski trails associated with the West Face Expansion Area, Cranberry Pond would be below full volume for a maximum duration of five consecutive days with the level of the pond being 3.0 inches below full pond volume at the lowest point.

Community Wastewater Treatment Plant Effluent into Cranberry Pond

Delaware Engineering believes that having the effluent flow through the manmade wetland provides additional treatment prior to reaching Cranberry Pond...the discharge of water into Cranberry Pond will provide for the reclamation of the water...The levels of treatment proposed for the ACR project are much more stringent than those currently in use across the United States.

Community Wastewater Treatment Plant Effluent into Cranberry Pond

It is likely that a minor change to the design will include a 30,000 gpd subsurface leach field at the equestrian center...NYSDEC has also indicated that they may want the outfall discharge location relocated just downstream of Cranberry Pond to obtain more dilution and mixing of the effluent from the treatment plant.

Ski Area

Thursday, November 17, 2011 – Questions 13, 14, 22, 24, 30

Friday, November 18, 2011 – Questions 3, 31, 32, 33, 37

P2005-100, Preserve Associates LLC
Adirondack Club and Resort Project
December 15, 2011



“As proposed the renovation and operation of the Ski Area by the Project Sponsor will only occur if the Project Sponsor believes that residential sales within the proposed project justify the investment in the Ski Area and related improvements. The Project Sponsor does not propose any significant improvement to the Ski Area until at least three years after the project is approved.” (See Revised Draft Order, October 2011, p. 49)

Applicant notes that the Ski Area is essential to project launch.

Phase I anticipates the following: (See Exhibit 81, p. 12; Exhibit 85, Table II-12)

- Rehabilitate the Lift 2 portion of the ski area (Year 1)
- Construct the ski maintenance building and paved parking (Year 2)
- Construct the permanent base lodge, parking, bridges, driveways, pond and landscaping (Year 3)
- Replace Ski Lift 2 (Year 3)
- Rehabilitate existing ski trails and begin upgrading of snowmaking (Year 3)

The April 15, 2009 Agreement between the Village of Tupper Lake and Preserve Associates, Big Tupper LLC includes seven commitments from the Project Sponsor with regards to the ski area. With regards to continued public use of the ski area, the agreement states “for as long as the Ski Area is operating during the first fifty (50) years after its initial operating under APA Permit for the ACR (APA Project No. 2005-100) the down-hill skiing will be open to the public. (See Agency Hearing Staff Closing Statement, pp. 59-62)

The ski area was initially identified with an “Empire Zone”. (See Exhibit 36, Attachment 5, p. 39) The Empire Zone designation has expired and the record has no specific details regarding financing and operation of the ski area other than HOA assessments of \$1,000.