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November 7, 2019

Via Email – Jami.macneil@maine.gov
And United States Mail, First Class
Jami MacNeil
Environmental Specialist III
Maine Dept. of Environmental Protection
Bureau of Land Resources
28 Tyson Drive
Augusta, ME 04330

Re: Permit Application of Jeffrey Spinney, Alna, Maine

Dear Ms. MacNeil:

Please be advised that I represent the James Erskine Philbrick Tree Farm Trust and Philbrick family members in connection with the referenced application. As you have earlier been advised, the application proposes the development of a dock and ramp which, if built, would be accessed by crossing the Trust and family land of my clients.

I note that the public comment period is still open and that you have asked the applicant a number of questions and sought clarification of the application in light of public comments that have been received by you to date. In particular, I note that you have specifically asked the applicant to provide further information regarding the nature of the intended use of the proposed boat launch given that, to date, the application has been utterly silent as to the nature of the "club" which will have access to this proposed boat launch.

We, too, are concerned and surprised that there are have not been answers to those questions to date. Attached to this correspondence is a certificate of formation for a quasi-commercial entity, the Golden Ridge Sportsman's Club, LLC, organized by Mr. Spinney in May, 2019, months prior to the DEP application currently under consideration. While the publicly available documents reflect the formation of this Limited Liability Company ("LLC"), they do not disclose the substantive nature of this club's membership, management, rules, and obligations. As you are probably aware, for an LLC to be legally effective, it must have in existence an Operating Agreement. Therefore, the answers to your questions posed on October 16, 2019, should be susceptible to forthright response. Yet, I see from the public records that none has been provided to date.

Certainly, if the proposed ramp is going to be used by club members rather than by the owner of the real estate, i.e., Mr. Spinney, in a manner which is consistent with his previous residential use of the property, then the DEP should receive answers as to whether it is a commercial enterprise; whether and how use and access may be revoked and regulated; the manner and method for proposed maintenance of the ramp and dock; and what liability protections, including insurance, are proposed to be in place. I note that Mr. Spinney has described the Club members as "dues paying." However, he does not appear to have disclosed the amounts and uses of those dues.

As you further note, if the club is really the intended user (and since a LLC has been organized that appears to be the case), an easement agreement would be necessary. Yet, as you have learned from other public comments, any claimed right to use reserved to Mr. Spinney in light of the discontinuance of Reed Road is for Mr. Spinney's access, not the general public's access. Certainly the discontinuance does not reflect that the town contemplated the reservation of a right of use for commercial or even quasi-commercial purposes, such as those of a club organized to launch boats. If you agree that an easement must be secured, it is only fair to advise that my clients have no interest in granting an easement over their land to the LLC.

The questions about the users of the club also have an impact upon your other questions regarding how the property would be maintained, including but not limited to fuel and oil spill prevention. In other words: who is in charge? I think you have the right to know that, as do the abutters and members of the community who have expressed concerns about this proposed change of the use of the waterfront area. It may very well be that the local planning board is best suited to discern the answers to these questions and how the proposed use will comply with local shoreland and land use ordinances. Perhaps no action should be taken on this application until that occurs. Surely, Mr. Spinney will need to answer the question in any event.

Furthermore, it is with dismay that I have read in the public comments by a public official a challenge to the integrity of my clients' concerns expressed in their earlier correspondence merely because some members of the Philbrick family do not live full time in the state of Maine. It is unfair to suggest to you that the Philbrick family's questions should be rejected based on their residency. As you know, their former or additional place of residence is not relevant to the standard of review for the application. If my clients' residency somehow is relevant to the merits of their questions, I note that the Philbrick family has deep roots in the community, including long-term, year round residency in the town of Alna.

Finally, I address a collateral issue only because the town of Alna's second selectman has raised it. As I am sure you know, the test concerning whether a public official must recuse himself or herself from participation in a decision making process is dependent upon the appearance of impropriety and the appearance of a conflict of interest. The decision of recusal is one owned by the person who has the potential conflict of interest. In raising the potential conflict of interest, my clients merely note what ought to be obvious, namely that a proper recusal consideration should be undertaken to assure that the permit application is never tainted by the appearance of impropriety.

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Thank you for your consideration of these comments. If I can be of any further assistance to you in seeking clarity as to the proposed "club" and its impact on the proposed use, please do not hesitate to call.

Very truly yours,



Judy A. S. Metcalf

JASM/rt

Enc.

cc: Jay Clement, Sr. Project Manager, USACE
clients

MAINE
LIMITED LIABILITY COMPANY

STATE OF MAINE

CERTIFICATE OF FORMATION

FILED
File No. 20197242DC Pages 2
Fee Paid \$ 175
DCN 2191507900001 DLLL
-----FILED-----
05/24/2019

Julie R. Flynn
Deputy Secretary of State

A True Copy When Attested By Signature

Deputy Secretary of State

Pursuant to 31 MRSA §1531, the undersigned executes and delivers the following Certificate of Formation:

- FIRST:** The name of the limited liability company is:
Golden Ridge Sportsman's club, LLC
(A limited liability company name must contain the words "limited liability company" or "limited company" or the abbreviation "L.L.C.," "LLC," "LC" or "LC" or, in the case of a low-profit limited liability company, "LJC" or "LJC" - see 31 MRSA 150E.)
- SECOND:** Filing Date: (select one)
 Date of this filing; or
 Later effective date (specified here): _____
- THIRD:** Designation as a low profit LLC (Check only if applicable):
 This is a low-profit limited liability company pursuant to 31 MRSA §1611 meeting all qualifications set forth here:
A. The company intends to qualify as a low-profit limited liability company;
B. The company must at all times significantly further the accomplishment of one or more of the charitable or educational purposes within the meaning of Section 170(c)(2)(B) of the Internal Revenue Code of 1986, as it may be amended, revised or succeeded, and must list the specific charitable or educational purposes the company will further;
C. No significant purpose of the company is the production of income or the appreciation of property. The fact that a person produces significant income or capital appreciation is not, in the absence of other factors, conclusive evidence of a significant purpose involving the production of income or the appreciation of property; and
D. No purpose of the company is to accomplish one or more political or legislative purpose within the meaning of Section 170(c)(2)(D) of the Internal Revenue Code of 1986, or its successor.
- FOURTH:** Designation as a professional LLC (Check only if applicable):
 This is a professional limited liability company* formed pursuant to 13 MRSA Chapter 22-A to provide the following professional services:

(Type of professional services)

FIFTH: The Registered Agent is a: (select either a Commercial or Noncommercial Registered Agent)

Commercial Registered Agent CRA Public Number: _____

(Name of commercial registered agent)

Noncommercial Registered Agent

J. Spinney

(Name of noncommercial registered agent)

126 Golden Ridge Rd

(physical location, not P.O. Box - street, city, state and zip code)

Alna, Me 04535


(mailing address if different from above)

SIXTH: Pursuant to 5 MRSA §105.2, the registered agent listed above has consented to serve as the registered agent for this limited liability company.

SEVENTH: Other matters the members determine to include are set forth in the attached Exhibit _____, and made a part hereof.

**Authorized person(s)

Dated 5/22/19



(Signature of authorized person)

Jeffrey A. Spinney

(Type or print name of authorized person)

(Signature of authorized person)

(Type or print name of authorized person)

*Examples of professional service limited liability companies are accountants, attorneys, chiropractors, dentists, registered nurses and veterinarians. (This is not an inclusive list - see 13 MRSA §723.7)

**Pursuant to 31 MRSA §1676.1.A, Certificate of Formation MUST be signed by at least one authorized person

The execution of this certificate constitutes an oath or affirmation under the penalties of false swearing under 17-A MRSA §453.

Please remit your payment made payable to the Maine Secretary of State.

Submit completed form to:

Secretary of State
Division of Corporations, UCC and Commissions
101 State House Station
Augusta, ME 04333-0101

Telephone Inquiries: (207) 624-7752

Email Inquiries: CEC.Corporations@Maine.gov