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KANIKSU Land Trust

**REQUEST TO RECONSIDER AND/OR MODIFY**

TO: Dover City Council
P.O. Box 115
699 Lakeshore Ave.
Dover, ID 83825

FROM: Kaniksu Land Trust
1215 Michigan St. Suite A
P.O. Box 2123
Sandpoint, ID 83864

RE: File No. SUP002-19

ATTENTION: CITY COUNCIL MEMBERS

This Request to Reconsider and/or Modify the terms of Special Use Permit No. 002-19 is being made this 23rd day of December, 2019. The basis for this request relates to Condition No. 13 of the Special Use Permit, which provides that "any modification of the operating hours of dawn to dusk must be approved through the modification process, pursuant to Dover City Code 12-10-9 Modifications." It is the position of Kaniksu Land Trust that the imposition of Condition No. 13 is unwarranted and not supported by the proceedings brought before the Council at the hearing held on December 12, 2019. The basis for this motion and the factors that should be considered in ruling on this request are as follows:

1. The application for the Special Use Permit did not address operating hours. There will be activities undertaken on the property during the early morning hours, as well as in the evenings. These activities will be outside of the time allowed for under the proposed Condition No. 13.

2. During the hearing on December 12, 2019, there was no public testimony or any discussion relating to hours of operation until after the public comment period had been terminated. The imposition of Condition No. 13 on the application is beyond the scope of the issues presented and should be deemed *ultra vires* and invalid.

3. The City of Dover determined that Pine Street Woods be considered a private park and, as such, a Special Use Permit was needed. Limiting activities from dawn to dusk on private property significantly impairs not only the intended use of the property but also significantly reduces the value of the real estate owned by Kaniksu Land Trust. The limitations imposed by Condition No. 13 of the Special Use Permit are arguably a "regulatory taking" of private property rights for which Kaniksu Land Trust has not been compensated. Dawn to dusk hours deny KLT the use their property for up to 62% of each day in the winter.

4. Activities that are already scheduled and planned, which would violate Condition No. 13 of the Special Use Permit include, but are not necessarily limited to, the following:

1. Operational Activities

   (a) Maintenance and grooming of cross-country trails, which are typically performed in the early morning hours or in the evenings and are dependent upon snowfall and temperature. These activities are generally performed during times when the public is not using the trail system.

   (b) Snowplowing activities will also likely be done during early morning and evening hours.

   (c) Park trail and road maintenance that cannot occur during times of public use.

2. Programmatic Activities

   (a) Waxing and maintenance of skis and/or bikes in the Outdoor Recreation Center will primarily be performed in the evening hours after the workday has concluded for participants, who are typically volunteers.

   (b) Some of the instructional and educational classes and clinics for both youth and adults will take place during the evening hours. These hours are necessary in order to deliver our programs to adults and children who are typically working or in school during daylight hours.

   (d) It is anticipated that periodically throughout the year, there will be a gathering of individuals to take advantage of moonlight skiing and/or biking, which are programs that have been ongoing for several years throughout the Greater Sandpoint community.

   (e) Camp Kaniksu, Kaniksu Land Trust's summer education program, has one overnight session during each weeklong camp. This overnight is part of our teen camp program.

## CONCLUSION

Based upon the foregoing, Kaniksu Land Trust, as the Applicant, hereby requests as follows:

1. That the Dover City Council reconsider its decision and remove Condition No. 13 from the Special Use Permit in its entirety;

2. Alternatively, Applicant requests that the Dover City Council modify Condition No. 13 to allow activities to occur that are consistent with its intended use of the property in question; and

3. In that Kaniksu Land Trust is a non-profit corporation, and given that the imposition of Condition No. 13 appears to be *ultra vires*, Kaniksu Land Trust requests that the fees and costs associated with any potential additional public hearing be waived.

Respectfully submitted this 23rd day of December, 2019.

KANIKSU LAND TRUST

By: KATIE COX, Executive Director

cc: Clare Marley, City Planner
Stephen Snedden, City Attorney