



I D A H O

CITY OF DOVER – BUILDING AND PLANNING DEPARTMENT

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STAFF REPORT
DOVER CITY COUNCIL
REQUEST TO RECONSIDER CONDITION #13
#SUP002-19, KANIKSU LAND TRUST

PREPARED BY: Clare Marley, AICP
Senior Contract Planner, Ruen-Yeager & Associates
219 Pine Street
Sandpoint, ID 83864

PROJECT DESCRIPTION: Request by applicant to reconsider Condition #13, of the special use permit for an outdoor recreation center and private park (Pine Street Woods) approved by Dover City Council on December 12, 2019. The condition states that any modification of the operating hours of dawn to dusk must be approved through the city's modification process. The applicant requests the condition either be deleted or modified.

LOCATION: 11915 West Pine Street
RP#: RPD00000197200A

APPLICANT: Name: Kaniksu Land Trust
c/o Katie Egland Cox, Executive Director
P.O. Box 2123
Sandpoint, ID 83864

PROPERTY OWNER: Same as applicant

DATE REQUEST RECEIVED: December 23, 2019

HEARING DATE: City Council: February 12, 2020

LEGAL NOTICE PROVIDED: Newspaper notice: January 24, 2020
Notice mailed to political subdivisions, media, landowners within 300' of subject tract, school district, and airport manager: January 23, 2020;
Site Posted: January 27, 2020

STAFF REPORT ATTACHMENTS: 12/23/19; 1/8/20 & 2/4/20 KLT letters, ICS67-6535, Council decision letter, legal notice, public comment

PROJECT SUMMARY:

Dover City Council granted Kaniksu Land Trust (KLT) a special use permit to operate a private park, community forest, and recreation center (Pine Street Woods), following a public hearing on December 12, 2019. The approved permit #SUP002-19 included 13 conditions of approval. Condition #13 states: "Any modifications of the operating hours of dawn to dusk must be approved through the modification process, pursuant to Dover City Code 12-10-9 'Modifications.'"

KLT has filed a request with the City of Dover to reconsider Condition #13, under the provisions of Idaho Code §67-6535. The request will be considered by Dover City Council at a public hearing that has been noticed in accord with Idaho's Local Land Use Planning Act.

KLT contends Condition #13 is unwarranted and not supported by the public hearing proceedings (December 23rd letter). KLT also stated the Council action was beyond the scope of issues presented to it and outside the governing body's authority. The applicant requests the condition either be removed or modified. A second letter from KLT dated January 8, 2020 reiterated that it considers Condition #13 unwarranted, but if the condition is not removed, KLT requested alternative language to read: "Quiet hours from 10:30 p.m. to 6 a.m. shall be observed."

The February 12, 2020 public hearing is limited to the request to reconsider Condition #13 of the special use permit.

Idaho State Code (§67-6535) provides an opportunity for applicants or affected persons to seek reconsideration after a decision is made in a land use matter. The applicant met the 14-day deadline to file the request for reconsideration. This code sections provides four options: 1) affirm; 2) reverse; 3) modify; or 4) take no action and cause the request to be denied if no decision is made within 60 days of the request.

City Council voted to reconsider Condition #13 and requested staff prepare public hearing notices. The legal advertisement advises that the public hearing testimony is limited to the request to reconsider Condition #13 of the approved special use permit.

Pine Street Woods is a park and recreation facility, housing rental equipment such as cross-country skis, snowshoes, and mountain bikes. The recreation center will also host educational school outings. Future planned projects include a welcome shelter, expanded parking, education center, kids' educational area, caretaker's cottage, pavilion, donor recognition structure, and additional trail development. Dover issued the special use permit January 22, 2020.

APPLICABLE CODES:

The following codes apply to this application:

- Title 12 Chapter 3, Process, application content and decision-making for applications requiring public hearings;
- Title 12 Chapter 10, Special Use Permits
- Idaho Code, §67-6512, Special Use Permits
- Idaho Code, §67-6535, Approval or Denial of Any Application...

The process for consideration of the modification request will be the same as the consideration for the original permit, including proper legal notice, posting of the site, and consideration through the public hearing process.

PUBLIC COMMENTS:

The City received three written public comments as of the date of this staff report. These letters are attached to the staff report. A letter in opposition to the modification of Condition #13 included concerns about the potential for after after-dark “illicit” activities and animal/human conflicts. Letters of support for the KLT request noted that a similar community park/trail system near Sandpoint has not resulted in abuses or neighborhood complaints and use of the site before sunrise and after sundown are valuable times for recreation.

STANDARDS REVIEW:

Zoning & procedural standards	Evidence of record
<p>Title 12 Chapter 3 – Procedures and Administration Requires a public hearing for all Special Use Permits. All planning and zoning applications requiring public hearings shall be subject to the requirements of Idaho Code title 67 chapter 65 and the adopted city public hearing procedures resolution. Reconsiderations are subject to Idaho Code §67-6535 and require “applicable procedural standards” be followed.</p>	<p>Notice of the reconsideration public hearing has been provided at least 15 days prior to the public hearing in the official newspaper, to all political subdivisions within the city, the airport manager, and the school district. In addition, the city mailed notice to landowners within 300 feet of the subject property. The site has been posted at least 7 days prior to the hearing.</p>
<p>Idaho Code §67-6535, Approval or Denial of Any Application...</p>	<p>(1)(b) Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.</p>

Standards for Review by Governing Bodies Dover City Code Title 12 Chapter 10	Findings, Based upon evidence of record relating to Condition #13
<p>DCC 12-10-3A – Constitutes Special Use Will constitute a special use as established in this title for the zoning district involved</p>	<p>Dover City Code section 12-5-7 Commercial Use Table allows for private parks and recreation facilities in the Agriculture zoning district through the Special Use Permit process. Specific hours are not restricted or listed in the special use permit section of code.</p>

Standards for Review by Governing Bodies Dover City Code Title 12 Chapter 10	Findings, Based upon evidence of record relating to Condition #13
<p>DCC 12-10-3B – Objectives Will be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan and the zoning ordinance.</p> <p>Additionally, Idaho Code 67-6512 states that the special use shall not be in conflict with the comprehensive plan. Subject to the ability of political subdivisions to serve the proposed use.</p>	<p><u>Comprehensive Plan</u> The subject property is currently designated as Small-Scale Working Lands on the projected land use map. The Comprehensive Plan describes Small-Scale Working Lands as providing opportunities for “trailheads, conservation subdivisions, and conservation easements” (Dover Comprehensive Plan, Section 3, page 11).</p> <ul style="list-style-type: none"> • Economic Development: The application notes that the project will provide access to many different recreational opportunities and to all segments of the community regardless of age or ability. Kaniksu Land Trust has received grants from AARP, Community Assistance League, and Selkirk Association of Realtors to support the development of trails. City of Dover Comprehensive Plan Goal 6.G.6 supports the growth of Dover’s economy through small-scale recreational retail and services such as equipment rental. • Land Use: The 160-acre parcel of land will be maintained as a forest in its natural condition. A forest management plan has been developed and will be implemented according to the application. The land will also be used for educational purposes. The City of Dover Comprehensive Plan Section 3, implementation #14 calls for the support of private preservation of working lands, specifically mentioning the Pine Street Woods as an example. The application proposes to preserve the Pine Street Woods in their current condition with the addition of a recreation center and trail network. Policy 3.P.12 further encourages private protection of open spaces and environmentally sensitive lands. Goal 3.G.11 supports maintaining and enhancing access to recreational opportunities. • Natural Resources: The application states that the land is to be maintained in its existing condition under Kaniksu Land Trust’s ownership. • Recreation: The proposed use is for a recreation center and private park. The applicant states that the center will provide equipment rentals for the surrounding communities. Comprehensive plan goal 6.G.1 notes that Dover is characterized by excellent access to outdoor recreation. Policy 6.P.8 encourages the development of an indoor recreational facility in Dover. Policy 6.P.1 directs the support of the completion of new public spaces, parks, and plazas. While the proposed use is classified as a private park, the application states that it would be a community forest, open to the public. • Special Area or Sites and Historical Sites: The application describes historical artifacts left over from Humbird logging operations and the subsequent McMann homestead. These include horseshoes dating

Standards for Review by Governing Bodies Dover City Code Title 12 Chapter 10	Findings, Based upon evidence of record relating to Condition #13
	<p>to the early 1900s, an early Northern Pacific Railroad switch key, and the remains of two different cabins. Comprehensive Plan goal 9.G.1 encourages maintaining the natural environment and resources. Kaniksu Land Trust proposes to maintain the current forest with a specific management plan. Policy 9.P.4 calls for the support of private preservation of environmentally sensitive sites such as wetlands and hillsides. Policy 1.P.1 calls for the education of residents and visitors about Dover’s history. The application shows future phases of the project that would educate the public about historical logging operations.</p> <ul style="list-style-type: none"> • Community Design: The surrounding uses are residential or agricultural in nature. The application states that the use will provide opportunities for residents to engage with the natural, undeveloped open space while participating in a range of recreational activities. Through public outreach, The Comprehensive Plan found that outdoor recreation opportunities are highly sought after by residents as a part of their community design. Policy 3.P.9 encourages public recreational opportunities including trail systems and services such as rental facilities. • Private Property Rights: Goal 11.G.1 & 11.G.2: “Ensure land use policies, restrictions, conditions and fees do not violate private property rights, or create unnecessary technical limitations of the use of property.” “Consider fundamental property rights of all parties and the effects of decisions when adopting and applying planning policies and zoning standards.” The applicant’s letter of reconsideration states that the limitation of hours of operation from dawn to dusk impairs the intended use of the land and significantly reduces the value of its real estate. Dawn to dusk operating hours denies the applicant use of its property for “up to 62% of each day in the winter,” the letter states. <p>Written public comment noted concerns about after-dark human/animal conflict and the potential for illicit activities when the park is not closed.</p> <p><u>Zoning Ordinance</u></p> <ul style="list-style-type: none"> • Section 12-6-7 – Nuisances. Addresses noise and “quiet hours.” This section of zoning code states: Noise, Vibration: Between the hours of eleven o’clock (11:00) P.M. and seven o’clock (7:00) A.M. the next morning, there shall be no loud, excessive, disruptive, or annoying sounds produced by voices, instruments, electronic devices, machinery, animals, or other means that disturbs the peace, quiet, and

Standards for Review by Governing Bodies Dover City Code Title 12 Chapter 10	Findings, Based upon evidence of record relating to Condition #13
	comfort of any reasonable person of normal sensitivities. To be considered loud, the sound must be plainly audible one hundred fifty feet (150') or more from the source.
<p>DCC 12-10-3C – Character Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area</p>	<p>According to the application, the Recreation Center and later planned projects will be designed to blend with the natural surroundings while being construction for endurance, sustainability, and fire safety. The structures will not be visible from beyond the edge of the parcels immediately adjacent to the site with the closest parcel being more than 100' away from the Recreation Center. All signs will be required to meet the standards of Dover City Code Title 12 Chapter 11 Signs.</p> <p>Public comments and applicant letters relating to Condition #13 are a part of the reconsideration record.</p>
<p>DCC 12-10-3D – Public Facilities Will not create excessive additional requirements as to public cost for public facilities</p>	<p>No city sewer or water services are proposed. A private pit toilet is proposed for sewer.</p> <p>Condition #13 does not affect city water or sewer services.</p>
<p>DCC 12-10-3E – Detrimental Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors</p>	<p>The original application states that the use will not involve the handling or storage of hazardous substances.</p> <p>The original permit did not address operating hours. The letter of reconsideration states the applicant will use the property for maintaining/grooming ski trails; snowplowing; park and trail maintenance; ski and bike maintenance; some instructional and educational classes; nighttime skiing or biking; camp activities. The applicant states these activities are the intended uses of the property.</p>
<p>DCC 12-10-3F – Traffic Will have vehicular approaches to the property that are so designed as to not create interference with traffic and surrounding public thoroughfares</p>	<p>The current approach was reviewed and approved as a part of Encroachment Permit file #ADMIN20-19. Conditions regarding placement of a gate, stop sign, and culverting were placed on the permit by City Engineer Jay Hassell. The application states that Kaniksu Land Trust has worked with the Independent Highway District to implement safe signage around the property entry.</p> <p>Vehicular approaches are not proposed for change with the request to modify Condition #13.</p>

STAFF ANALYSIS:

Requirements of state and local code for the proper noticing of the request for reconsideration have been met. Dover City Code requires applicants to demonstrate that the proposed special use will be harmonious with the comprehensive plan, zoning ordinance, and other established uses in the vicinity. These same standards must be used to weigh the reconsideration of Condition #13.

The public record (application and public testimony) included information that the applicant planned to use the Pine Street Woods for after-school activities, camps, stargazing, nighttime skiing, and educational events. The February 4th KLT letter further outlines the uses and plans for the Pine Street Woods before dawn and after dusk. Dawn to dusk hours of operation were not specified in the application. As written, Condition #13 requires KLT to apply for a modification if it desires in the future to change the hours of operation from dawn to dusk. The modification process includes a public hearing before the City Council.

The zoning code requirements for “quiet hours” and the Private Property Rights section of the adopted comprehensive plan have particular bearing on this request. The applicant has offered an alternative Condition #13 in the event Council chooses to modify rather than strike the condition on hours of operation. The suggested hours of 10:30 p.m. to 6 a.m. differ from the city zoning ordinance quiet hours of 11 p.m. to 7 a.m. If Council desires to modify Condition #13, the condition should be in accord with the public nuisance and zoning regulations of city code.

Council has the authority both through Dover City Code Section 12-10-4, Supplemental Conditions and Safeguards, and Idaho Code §67-6512(d) to attach conditions to a special use permit to mitigate impacts, control duration of development, assure development is maintained properly or other to address other potential impacts of a proposed use.

DRAFT MOTIONS FOR GOVERNING BOARD:

MOTION TO RETAIN ORIGINAL CONDITION #13 DECISION: I move to **AFFIRM** the original decision of the Dover City Council on December 12, 2019 regarding Special Use Permit #SUP002-19 for Kaniksu Land Trust and leave in place as written Condition #13 regarding hours of operation.

MOTION TO STRIKE CONDITION #13: I move to **REVERSE** the original decision of the Dover City Council on December 12, 2019 regarding Condition #13 for Special Use Permit #SUP002-19 for Kaniksu Land Trust and strike in its entirety Condition #13 regarding hours of operation.

MOTION TO MODIFY ORIGINAL DECISION: I move to **MODIFY** the original decision of the Dover City Council on December 12, 2019 regarding Condition #13 for Special Use Permit #SUP002-19 for Kaniksu Land Trust and substitute the following Condition #13 to read as follows:

13. Condition #13 of the original Special Use Permit shall be modified to read: “Quiet hours shall be observed, in accord with Dover City Code Sections 4-1-3 A and 12-6-7 A. All other conditions of approval shall remain in effect as adopted by Dover City Council on December 12, 2019.”

ADOPTION OF FINDINGS AND REASONED STATEMENT: I further move to adopt the following findings and reasoned statement: [READ STATEMENTS, SPECIFYING WHICH FINDINGS SUPPORT DECISION.]

(If request is denied, the actions that could be taken to obtain approval are to:)

1. Submit a new application that meets the standards of the City of Dover; or
2. Pursue such remedies as provided for in Title 67, Chapter 65, Idaho Code.

REASONED STATEMENTS:

The evidence of record and received at the hearing provide the basis for the findings and reasoned decision. Based upon the record, the following reasoned statements are adopted by the Dover City Council:

1. The proposal to modify Condition #13 was reviewed for compliance with the Dover City Code Section 12-10-3, Standards for Special Use Permit Approval. The proposal **IS/IS NOT** in accord with the applicable standards, based upon the evidence of record enumerated in the findings in the staff report and based upon the specific conclusions as follows: [IF THE PROPOSAL IS NOT IN ACCORD, SELECT THE STANDARDS IT FAILS TO MEET.]
 - A. Will constitute a special use as established in this title for the zoning district involved.
 - B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan and the zoning ordinance
 - C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.
 - D. Will not create excessive additional requirements as to public cost for public facilities.
 - E. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.
 - F. Will have vehicular approaches to the property that are so designed as to not create interference with traffic and surrounding public thoroughfares.

CONDITION OF APPROVAL: (IF MODIFIED)

13. Condition #13 of the original Special Use Permit shall be modified to read: "Quiet hours shall be observed, in accord with Dover City Code Sections 4-1-3 A and 12-6-7 A. All other conditions of approval shall remain in effect as adopted by Dover City Council on December 12, 2019."