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| Agenda No: | 7.1 |
| Mtg Date: | Feb 11/21 |

Regional Board Report

TO: Regional Board

FROM: Murray Kopp,
Director – Parks Services

DATE: February 11, 2021

SUBJECT: Black Mountain - sntsk'il'ntən Regional Park - Covenant

Voting Entitlement: *All Directors – Weighted Stakeholder Vote – Simple Majority – LGA 209*

Purpose: To seek Regional Board approval to enter into a conservation covenant with the Central Okanagan Land Trust (COLT) covering 125.18 hectares of park land in Black Mountain - sntsk'il'ntən Regional Park.

Executive Summary:

In 2017, the Regional District purchased two properties for inclusion at Black Mountain - sntsk'il'ntən Regional Park. The funding sources for the land acquisition was obtained from the 2016 regional parkland acquisition reserve and capital reserve funds, the Habitat Stewardship Program and a \$15,000 contribution commitment from COLT in exchange for a registered conservation covenant on title.

In 2020, the Regional District and COLT completed negotiations and preparation of the final draft of the conservation covenant for the lands identified as the N ½ of District Lot 4508, ODYD and the NW ¼ of Section 21, Township 27, ODYD. If approved by the Regional Board, the conservation covenant will be registered on the two property titles and in return COLT will provide \$15,000 towards the land acquisition.

RECOMMENDATION:

THAT the Regional Board approve and authorize it's signing officers to enter into a conservation covenant with the Central Okanagan Land Trust covering 309.31 acres (125.18 hectares) of Black Mountain - sntsk'il'ntən Regional Park identified as the N ½ of District Lot 4508, ODYD and the NW ¼ of Section 21, Township 27, ODYD.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Murray Kopp".

Murray Kopp, Director – Parks Services

Prepared by: Sandy Mah, Parks Planner

Approved for Board's Consideration

A handwritten signature in black ink, appearing to read "Brian Reardon".

Brian Reardon, CAO

Implications of Recommendation:

- Strategic Plan:** The proposed conservation covenant with our COLT partner meets the boards strategic values of relationships, collaboration, transparency, and resiliency and is directly in alignment with the Environment strategic priority.
- General:** Regional Board support for the conservation covenant with COLT will strengthen our long-standing partnership with COLT in regional parks and provide financial support for initiatives and projects at Black Mountain - sntsk'il'ntən Regional Park.
- Organizational:** The conservation covenant will have minimal impact on planning and operational resources, additional consultation on larger projects within the park will be required and is consistent with the planning steps required for large capital or planning projects.
- Financial:** The Central Okanagan Land Trust will donate \$15,000 to the Regional District in exchange for registering a conservation covenant over the park properties identified as the N ½ of District Lot 4508, ODYD and the NW ¼ of Section 21, Township 27, ODYD. The \$15,000 contribution will be placed into the regional parks capital reserve fund.
- Policy:** The partnership with COLT on the conservation covenant is consistent with the Black Mountain - sntsk'il'ntən Regional Park Management Plan objectives and the Regional Parks and Greenways Plan for the Central Okanagan (2008 – 2020).
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Background:

In 2014, the Regional District had acquired a total of 1,265 acres (512 hectares) of private lands and a Crown land License of Occupation surrounding Black Mountain to form a new regional park, known as Black Mountain - sntsk'il'ntən Regional Park.

In 2016, as part of the Regional Parks Legacy Program, a Ten-Year Land Acquisition Strategy, the Regional District was presented with an opportunity to acquire 313.14 acres (126.73 hectares) of private lands from Longhorn Farms Ltd., located to the north and east of Black Mountain - sntsk'il'ntən Regional Park. The two properties identified for purchase from Longhorn Farms Ltd. included the N ½ of District Lot 4508, ODYD and the NW ¼ of Section 21, Township 27, ODYD.

The land acquisition was financed through a combination of funds coming from the 2016 regional parkland acquisition reserve fund, capital facility reserve fund and a Government of Canada Habitat Stewardship Program (HSP) grant valued at \$200,000. In addition, COLT had also expressed interest in assisting with the land purchase and had committed to contributing \$15,000 towards the purchase, and in return was seeking a conservation covenant to be registered over these properties.

In 2017, the Regional District completed the acquisition of the lands from Longhorn Farms for a final purchase price of \$2,350,000 as part of Black Mountain - sntsk'il'ntən Regional Park. Within the report to the Board to seek authorization to complete the acquisition, it was noted that COLT would be contributing \$15,000 towards the acquisition costs in exchange for a conservation covenant in favour of COLT. At that time the covenant or details about the covenant had not been finalized or been worked through and both parties agreed to work on the covenant as time and priorities became available.

Since 2019, parks staff and COLT have been working on a draft covenant that would meet the needs for both parties. For COLT, the covenant would allow them to be able to access funding to assist in projects to protect our natural areas and demonstrate to the broader community their ability in playing a part in protecting our environment. For the Regional District the covenant should provide the ability to work with COLT to access funds not available to local government. Both parties agree that the covenant should benefit both parties and not be so restrictive that the operations and small projects within the park cannot be performed without additional oversight. The additional oversight would occur when a park management plan is being completed or an update to it, or when a large capital project is being planned. In both scenarios it is common practice for parks staff to engage our partners in these discussions.

As a result of the time and energy provided by both parties, the final draft conservation covenant agreement meets the concepts and philosophy's that formed the basis of purpose for the covenant. For both parties, their respective solicitors have reviewed the content of the agreement and are in agreement that the arrangement will be beneficial to both parties while allowing the parks to complete its day to day operations and small project work without additional oversight.

A summary table of the benefits and constraints associated with entering into the conservation covenant with COLT is provided below.

| Benefits | |
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| Partnership | Strengthens and supports the long standing, successful partnership between the Regional District and COLT in regional parks. Examples include Robert Lake, Mission Creek Greenway and Johns Family Nature Conservancy Regional Parks and the Mission Creek Restoration Initiative. |
| Funding Opportunities | COLT can access and secure additional sources of funding through grant programs where the Regional District would not be eligible. An example of this is the Munson Pond and Mission Creek dike setback projects between COLT and the City of Kelowna, COLT was able to secure \$112,500 in funding towards the development of Munson Pond and \$400,000 for the dike setback on Mission Creek, in both cases the City wasn't eligible. |
| Funding Opportunities | COLT can assist with fundraising and establishment of an endowment fund for projects and initiatives at Black Mountain - sntsk'il'ntən Regional Park. An example being Munson Pond, a partnership between COLT and City of Kelowna and a newly created Munson Pond Endowment Fund by COLT, which will help with projects to enhance and protect the pond ecosystem and wildlife. |
| Public Engagement | COLT can assist in public engagement and education through their activities as a community liaison to promote the protection of natural areas, ecological restoration and to strengthen regional biodiversity in the Okanagan, and is a champion supporting Regional Parks. |

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| Ecological Restoration | COLT can assist the Regional District in ecological restoration projects and provide annual monitoring of the conservation covenant lands. In addition, COLT is another resource that has been successful in securing volunteer assistance towards ecological restoration such as weed pulls and planting opportunities. |
| Park Presence | COLT can assist the Regional District by being an additional presence in the park and can notify the Regional District about any issues or concerns occurring on the park properties. Their connection to the land through the covenant increases their awareness and interest in protecting the land as a regional park. |

| Constraints | |
|--|--|
| Land Title | The conservation covenant will be registered on the title of both park properties. This will be an encumbrance that runs with the lands in perpetuity. |
| Consultation | A minor increase in staff resource time will be required to meet the terms of the covenant, which in general is related to management plan updates and larger capital development projects or planning related projects. |
| Park Operational and Development Impacts | The conservation covenant will have minor impacts on park operations and capital development by restricting or limiting the type of development, activities and uses on the lands in order to protect and conserve the ecosystem and wildlife values, which correlates directly to the park management plan and identified park management zones in the park which guide where park development is to occur. |

In conclusion, staff believe the benefits to the Regional District and the greater community through entering into a conservation covenant with COLT, outweigh any potential replicated oversight on the lands within Black Mountain - sntsk'il'ntən Regional Park. The strengthened partnership with COLT at Black Mountain - sntsk'il'ntən Regional Park will provide numerous opportunities and benefits for the future development and sustainable management of Black Mountain - sntsk'il'ntən Regional Park. In particular, the greatest benefits will be the continued growth in support of the Regional District's partnership with COLT and the opportunity to access grant funding that the Regional District would not otherwise be able to access. In addition, the covenant has been drafted in a manner that meets the needs of COLT to operate their societal interests and for the Regional District to operate the park as a Regional Park on behalf of our residents.

Financial Considerations:

As part of the arrangement between the Regional District and the Central Okanagan Land Trust, the \$15,000 contribution will be placed into a capital reserve fund for future use.

Alternative Recommendation:

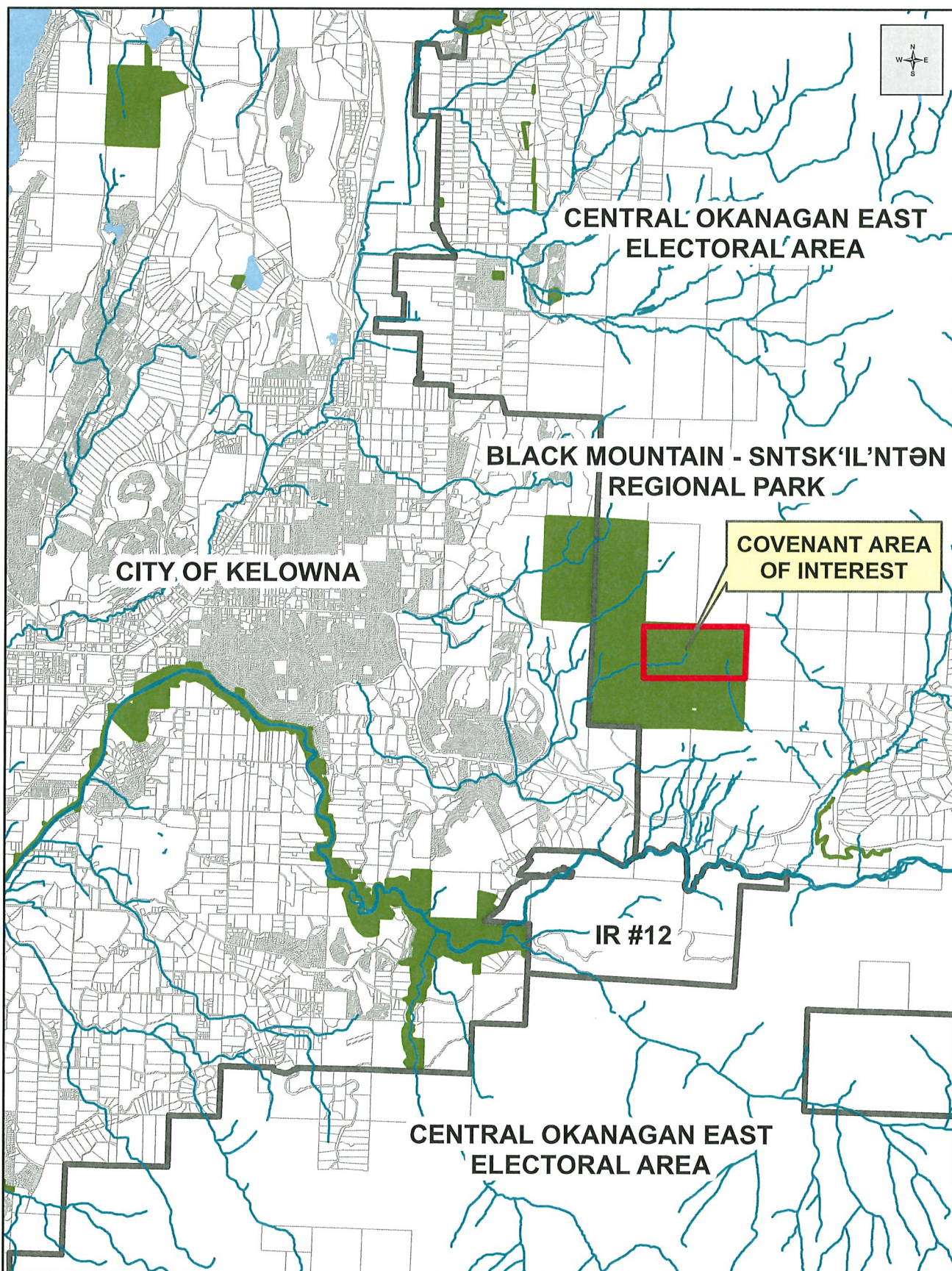
THAT the Regional Board **not** approve and authorize it's signing officers to enter into a conservation covenant with the Central Okanagan Land Trust covering 309.1 acres/ 125.18 hectares of Black Mountain - sntsk'il'ntən Regional Park identified as the N ½ of District Lot 4508, ODYD and the NW ¼ of Section 21, Township 27, ODYD.

Considerations not applicable to this report:

- *Legal/Statutory Authority*
- *External Implications*

Attachment(s):

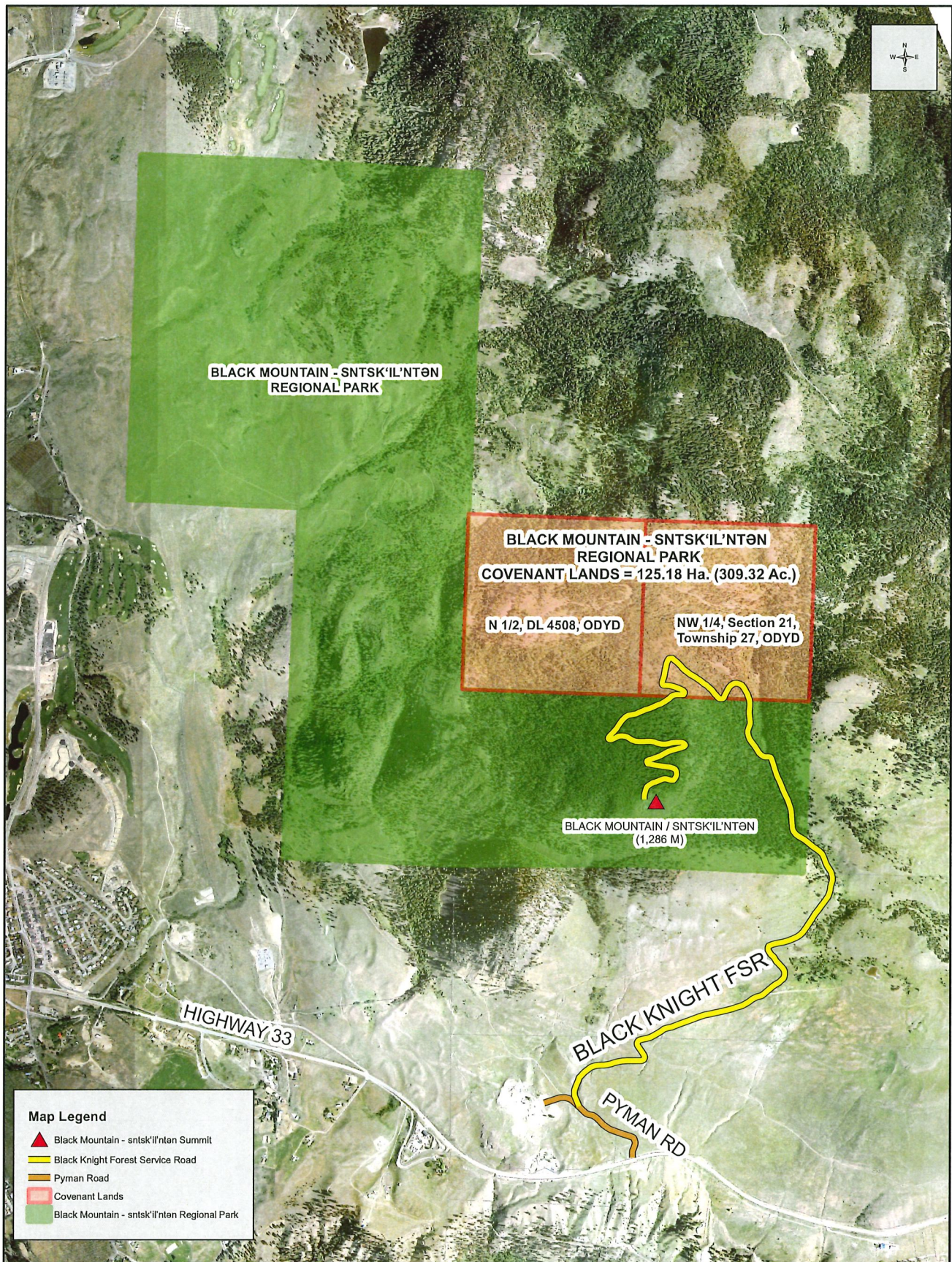
- Location Map – Black Mountain - sntsk'il'ntən Regional Park
- Conservation Covenant Area Map – Black Mountain - sntsk'il'ntən Regional Park
- Draft Conservation Covenant for Black Mountain - sntsk'il'ntən Regional Park



**BLACK MOUNTAIN - SNTSK'IL'NTƏN REGIONAL PARK
LOCATION MAP**

1:85,000





BLACK MOUNTAIN - SNTSK'IL'NTƏN REGIONAL PARK CONSERVATION COVENANT AREA



TERMS OF INSTRUMENT- PART 2

THIS AGREEMENT made the ____ day of _____ 2021,

BETWEEN:

REGIONAL DISTRICT of CENTRAL OKANAGAN
1450 K.L.O. Road
Kelowna, British Columbia V1W 3Z4

(the "**Regional District**")

AND:

CENTRAL OKANAGAN LAND TRUST
#306 – 1726 Dolphin Avenue
Kelowna, British Columbia V1Y 9R9

("COLT")

- A) WHEREAS the Regional District is the registered owner in fee simple of all and singular that certain parcel(s) or tract(s) of land and premises, situate, lying and being in the Kelowna Assessment Area, in the Province of British Columbia, more particularly known and described as:

Parcel identifier: 001-713-744
The North ½ of District Lot 4508 Osoyoos Division Yale District

Parcel identifier: 001-713-736
The North West ¼ of Section 21 Township 27 Osoyoos Division Yale District

(hereinafter called the "**Lands**");

- B) AND WHEREAS pursuant to section 219 of the Land Title Act, R.S.B.C. 1996 c.250, a covenant may be registered against the title to the Lands in favour of COLT and is enforceable against the Regional District and the successors in title of the Regional District even if the covenant is not annexed to land owned by COLT;
- C) AND WHEREAS a covenant registrable under section 219 of the Land Title Act may be of a negative or positive nature and may include provisions in respect of the use of land or the use of a building on or to be erected on land and may further include provisions that land or a specified amenity in relation to the land be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant and to the extent provided in the covenant including any natural, environmental, wildlife or plant life value relating to the land that is subject to the covenant;
- D) AND WHEREAS the Regional District has agreed to the preservation, conservation, and protection of amenities of that portion of Lands, excluding the 1.55 hectare section of the gazetted Black Knight Forest Service Road right-of-way (registered under DF M10491), shown in bold on the map attached hereto as Schedule A, (the "**Black Knight FSR**"); and

- E) AND WHEREAS COLT has an interest concerning the preservation, conservation and protection of amenities of the Lands and other matters as provided herein.

NOW THEREFORE in consideration of the promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree, pursuant to section 219 of the *Land Title Act*, as follows:

- 1) The Regional District covenants and agrees that the Lands shall be used for the conservation, preservation, protection and enhancement of amenities and the naturally occurring ecosystems found within the Lands, in accordance with the Black Mountain - sntsk'il'nten Regional Park Management Plan, as that Plan may be amended or replaced from time to time, and that except as contemplated under or permitted by that Plan or this Agreement, the Regional District will let the natural process of habitat creation proceed, where appropriate, within the Lands.
- 2) The Regional District covenants and agrees to prepare a baseline inventory report for the Lands, which will serve as an objective information baseline to enable both parties to monitor compliance with this Agreement.
- 3) The Regional District covenants and agrees that COLT, by its officers, employees, contractors and agents, may enter the Lands at least once per year, upon reasonable notice being given to the Regional District, for the purposes of inspection of the Lands so as to determine compliance with this Agreement.
- 4) The Regional District agrees that COLT will have no obligation to ensure compliance with or enforce the terms of this Agreement.
- 5) COLT acknowledges and agrees the Westbank First Nation may have access to the Lands and its resources to exercise their Aboriginal Rights and Title for members' access and traditional use.
- 6) COLT acknowledges and agrees that the Regional District may permit members of the public to access and use the Lands for recreation and park enjoyment purposes, on foot and with horses, bicycles and motor assisted cycles on roads and trails from time to time located on the Lands.
- 7) COLT acknowledges and agrees that nothing in this Agreement shall affect or restrict the use of the Black Knight FSR or any unsurveyed informal roadways, nor shall anything in this Agreement affect or restrict the rights of the holders of any charges from time to time registered against title to the Lands, including any easements and any statutory rights of way under section 218 of the *Land Title Act*, or the rights of the holders of any park access permits issued by the Regional District from time to time for access through the Lands including using motorized vehicles and horses.
- 8) The Regional District, through the Black Mountain - sntsk'il'nten Regional Park Management Plan planning process and including any subsequent updates and revisions to that plan, agrees to confer with COLT as a key stakeholder. The Regional District agrees to also confer with COLT on major capital and planning projects for the Lands with regards to decisions concerning the preservation, recreation, conservation, and protection of the Lands, and the location of access routes within the Lands.
- 9) COLT acknowledges and agrees that the Regional District may develop and construct and install improvements, utilities, services and public amenities on and to the Lands, in accordance with, or contemplated, proposed or suggested under, the Black Mountain - sntsk'il'nten Regional Park Management Plan as amended or replaced from time to time, including to facilitate public access to and upon and through the Lands.

- 10) COLT acknowledges agrees that the Regional District may remove dangerous trees and invasive plant species from the Lands and may make other alterations to the Lands and its amenities as the Regional District may consider necessary or desirable for the Regional District to manage and operate the Lands as a regional park or to address, mitigate or otherwise deal with a hazard or emergency situation which may threaten human health, property or safety.
- 11) COLT shall not be permitted to assign this Agreement, without the prior written consent of the Regional District.
- 12) Any notice which may be or is required to be given under this Agreement must be in writing and may be sent by Express Post or other form of registered mail or delivered by hand.

a. to the Regional District at the following address:

REGIONAL DISTRICT of CENTRAL OKANAGAN
1450 K.L.O. Road
Kelowna, B.C. V1W 3Z4
ATTENTION: Parks Services

b. to the COLT at the following address:

CENTRAL OKANAGAN LAND TRUST
#306 – 1726 DOLPHIN AVENUE
Kelowna, BC, V1Y 9R9
ATTENTION: Director

or to such other addresses as the Regional District or the COLT may advise in writing.

- 13) Pursuant to section 219 of the *Land Title Act*, this Agreement shall run with, and bind the successors in title to, the Lands.
- 14) There are no representations, promises, warranties or other commitments of any party except as set out in this Agreement.
- 15) Nothing contained in this Agreement shall impair or affect the exercise by the Regional District of its statutory functions, including all rights and powers under any enactments, letters patent, bylaws, orders, regulations or other source of authority.
- 16) Where a dispute arises between the Regional District and COLT with respect to the interpretation of this Agreement or Regional District compliance with this Agreement, the parties will attempt in good faith to resolve the dispute within 30 days following the delivery of a Dispute Notice by one party to the other, or such longer period as the parties may agree in relation to the particular dispute, including, if they agree that the Regional District is not in compliance with this Agreement they will also attempt to identify what steps the Regional District is to take in response to such non-compliance.

As evidence of their agreement to be bound by this Agreement, the Regional District and COLT have executed the *Land Title Act* Form C attached to and forming part of this Agreement.

Schedule A

