

# Memo



**Date:** April 9/10

**To:** City Manager

**From:** Community Sustainability Division

**File No:** LUC09-0003                      **Applicant:** City of Kelowna  
OCP09-0013  
Z09-0044

**At:** Dilworth Mountain Estates      **Owner:** Various  
(see attached)

**Purpose:** TO DISCHARGE LAND USE CONTRACT 74-57 (DILWORTH MOUNTAIN ESTATES)  
TO AMEND OCP FUTURE LAND USE DESIGNATIONS WITHIN DILWORTH  
MOUNTAIN ESTATES TO RECOGNIZE FINAL DEVELOPMENT BOUNDARIES AND  
ALLOW THE DISCHARGE OF LUC 74-57  
TO REZONE THE SUBJECT PROPERTIES IN COMPLIANCE WITH ZONING BYLAW  
NO. 8000 TO ALLOW THE DISCHARGE OF LUC 74-57

**Existing Future Land Use:** Single/Two Unit Residential  
Multiple Unit Residential - Low Density  
Commercial  
Major Park / Open Space  
Educational / Major Institutional

**Proposed Future Land Use:** Single/Two Unit Residential  
Multiple Unit Residential - Low Density  
Multiple Unit Residential - Medium Density  
Commercial  
Major Park / Open Space  
Public Service/Utilities

**Existing Zone:** LUC 74-57

**Proposed Zoning:** RU1h - Large Lot Housing (Hillside Area)  
RM3 - Low Density Multiple Housing  
RM4 - Transitional Low Density Housing  
C5 - Transitional Commercial  
P3 - Parks & Open Space  
P4 - Utilities

Report Prepared by: Luke Turri & Carlie Ferguson

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## 1.0 RECOMMENDATION:

THAT Application No. LUC09-0003 to discharge Land Use Contract 74-57 in the area commonly know as "Dilworth Mountain Estates" and as shown on the attached map, in Kelowna, BC, be considered by Council;

A handwritten signature in blue ink, likely belonging to Luke Turri or Carlie Ferguson.

THAT OCP Bylaw Amendment No. OCP09-0013 to amend Map 19.1 of the Kelowna 2020 - Official Community Plan Bylaw No. 7600, by changing the Future Land Use designation of the area commonly known as "Dilworth Mountain Estates" from the Single/Two Unit Residential, Multiple Unit Residential - Low Density, Commercial, Major Park/Open Space and Educational/Major Institutional designations, to the Single/Two Unit Residential, Multiple Unit Residential - Low Density, Multiple Unit Residential - Medium Density, Commercial, Major Park / Open Space and Public Service/Utilities designations, as shown on Map "A" attached to the report of Land Use Management Department dated April 1, 2010, be considered by Council

THAT Rezoning Application No. Z09-0044 to amend City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classifications for the area commonly known as "Dilworth Mountain Estates", bounded by Dilworth Drive to the south, Silver Place to the north, Monashee Place to the east and Summit Drive to the west, from the A1 - Agriculture 1, RU1 - Large Lot Housing, and P3 - Parks & Open Space zones to the RU1h - Large Lot Housing (Hillside Area), RM3 - Low Density Multiple Housing, RM4 - Transitional Low Density Housing, C5 - Transitional Commercial, P3 - Parks & Open Space and P4 - Utilities zones as shown on Map "B" attached to the report of the Land Use Management Department dated April 1, 2010, be considered by Council;

AND THAT Council considers a Public Open House held on Wednesday, April 21th, 2010 be appropriate public consultation as required under Section 879 of the Local Government Act as outlined in the report of the Land Use Management Department dated April 9, 2010;

AND THAT the OCP Bylaw Amendment No. OCP09-0001 and the zone amending bylaw be forwarded to a Public Hearing for further consideration;

## **2.0 SUMMARY:**

This application seeks to discharge Land Use Contract 74-57 (Dilworth Mountain Estates). In addition, OCP and Zone amendment applications are required to appropriately designate the subject properties.

## **3.0 BACKGROUND:**

In 1978, a Land Use Contract (LUC 74-57) was executed between Daon Developments and the City of Kelowna which identified the terms of development for all of Dilworth Mountain. This LUC is a comprehensive agreement which references maximum development thresholds, identifies "Neighbourhood" and "Park and Open Space" areas, and outlines standards for service utility infrastructure development and maintenance. Emil Anderson Construction took over the lands and the Land Use Contract after the development of the Omineca and Cascade neighbourhoods, and remains the developer today. LUC 74-57 expired December 31, 2008, and the contract is now eligible to be discharged. The development regulations outlined in the contract remain applicable until the time of formal discharge.

### **3.1 Site Context**

This application encompasses the area commonly known as "Dilworth Mountain Estates" as shown on the attached mapping, including the Omineca, Cascade, Monashee, Purcell, Lillooet, Nahanni, Skeena, Chilcotin, Cassiar, Selkirk and Silver Place neighbourhoods, but excluding the Denali/Dilworth West neighbourhood which was not included in LUC 74-57.

### **3.2 Proposal:**

Section 930.2 (c) of the Local Government Act States that Land Use Contracts may be amended or discharged 'in the manner specified by the Land Use Contract'. Therefore, Staff are proposing to discharge the Dilworth LUC (LUC 74-57) as provided for within Section 50 of the LUC.



Part 50 (Discharge) of LUC 74-57 states:

*“Upon completion of the subdivision of the entire development area as contemplated by this Agreement, including the installation of all the works required to be installed and providing that there are zoning categories in the Zoning Bylaw of the City that would not make the agreed use of any of the residential or commercial and community areas non-conforming and providing those areas are appropriately so zoned upon the application of the City this Agreement may be discharged from the records of the Land Registry Office and this Agreement and every covenant herein contained, except Sections 29,31, 32, 33 and 34 shall cease and be determined and be of no further force or effect.”*

The LUC further states:

*“The Developer shall submit to the Approving Officer the final subdivision plan to complete the entire subdivision of the Lands within the terms and conditions of the Contract, not later than December 31, 2008.”*

As the subdivision of the entire development area has been completed, the rezoning of the subject properties to conform to the current Zoning Bylaw would allow for the formal discharge of LUC 74-57.

While the LUC provides the opportunity for the City to initiate this discharge, removing the Land Use Contract is also consistent with the civic objective to discharge LUC's as per Council Policy #282: “Strategy for Elimination of Remaining Land Use Contracts.”

Currently, all properties included within the Dilworth Land Use Contract have underlying zoning and development standards that are obsolete. Discharging the Land Use Contract eliminates the operational and logistical challenges that arise when dealing with these outdated regulations. This will provide clarity for both City staff and residents alike.

### 3.3 Proposed Zoning:

As per the LUC, formal discharge can only be achieved after the properties are rezoned to conforming uses under the current Zoning Bylaw. Presently, the majority of the area is zoned A1 - Agriculture 1, which was the underlying zoning in 1978. To enable each individual property to conform to Zoning Bylaw No. 8000, the following zones are proposed to be applied to the area:

Existing Land Use	Proposed Zoning
Single family properties	RU1h - Large Lot Housing (Hillside Area)
Townhome/strata development: 2325, 2300 Silver Place 2213 Waddington Court 2450 Selkirk Drive 588 Harrogate Lane 2425 Mount Baldy Drive 995 Dilworth Drive 971 Monashee Place 880 Christina Place	RM3 - Low Density Multiple Housing
Apartment/condominium housing: 980, 983 Dilworth Drive 2495-2527 Mount Baldy Drive	RM4 - Transitional Low Density Housing
Vacant commercial site 795 Dilworth Drive	C5 - Transitional Commercial

Existing Land Use	Proposed Zoning
Parkland/Natural Open Space All open space/parkland owned by City of Kelowna Lillooet Park (2180 Summit Drive) Youth Soccer Park (950 Dilworth Drive)	P3 - Parks & Open Space
Public Service Infrastructure/Utilities	P4 - Utilities

The zones proposed are those most congruent with the corresponding zoning within LUC 74-57.

### 3.4 Single Family Lots:

Under the LUC, development on single family lots is in accordance with the R-1a Single Family Residential zone of the former Zoning Bylaw No. 4500. The proposed RU1h - Large Lot Housing (Hillside Area) zoning would provide conformity to existing Zoning Bylaw No. 8000.

The following table describes the changes associated with this application for single family properties, (representing the majority of properties):

	R-1a	RU1h
Site Coverage	35%	40%, (50% including driveways and parking areas)
Front Yard	6.0m	3.0m; 6.0m from back of curb or sidewalk to a garage or carport having vehicular entry from the front
Max. Floor Area of Accessory Buildings	70m <sup>2</sup>	The lesser of 14% of the lot area or 90m <sup>2</sup>
Max. Number of Accessory Buildings	2	Regulated by total footprint/site coverage.
Allowable secondary uses (See Section 3.5 below)	Day care centres for no more than five (5) children	<ul style="list-style-type: none"> <li>• Bed and breakfast homes</li> <li>• Care centre, minor</li> <li>• Group homes, minor</li> <li>• Secondary suite (RU1s zone) only</li> </ul>

### 3.5 Secondary Uses within Single Family Lots:

The above referenced secondary uses are allowed in the majority of single family zones within the City, but were not contemplated in former Zoning Bylaw No. 4500. These uses provide services to the community without altering the single family character of neighbourhoods. These uses would need to comply with any additional parking, access and landscaping standards as per the Zoning Bylaw, and would require a Business License with the City of Kelowna. Further description on these uses is provided below:

**Secondary Suites:** Given the establishment of LUC 74-57 dates back to 1978, the Contract does not allow for secondary suites. **The discharge of the LUC and subsequent rezoning to the RU1h zone would not allow secondary suites outright;** however, property owners would have the ability to apply to rezone to the *RU1hs -Large Lot Housing with Secondary Suite (Hillside Area)* zone. Any property owner interested in creating a suite on their property would require an application through the Land Use Management Department. Each property would be considered by Council on a site-specific basis, as is typical of other single family neighbourhoods within the City. Specific zoning regulations apply to all secondary suites which may impact the feasibility of a rezoning to allow a secondary suite on many of the properties on Dilworth Mountain. This includes (but is not limited to) a minimum of three (3) off-street parking spaces to be provided.

**Bed and breakfast homes:** allow the accessory use of a residence in which temporary overnight accommodation and breakfast is provided to tourists up to a maximum of four (4) sleeping units with a maximum of two (2) guests per unit. The licensed operator of the bed and breakfast home must reside in the dwelling.



Care centre, minor: is typically associated with daycares (up to 10 children) and preschools (up to 15 children) which are licensed under the *Community Care Facilities Act*.

Group home, minor: is typically associated with care services licensed under the *Community Care Facilities Act* for up to six (6) persons requiring professional care, guidance and supervision. Residents would share common kitchen facilities and be assisted by up to four (4) staff. A Housing Agreement filed in the land title office on the subject property is required as a condition for a group home use.

### 3.6 Non-single family uses:

The majority of multi-family development within Dilworth Mountain Estates has already been built to the “highest and best” use as per the Land Use Contract, and the zoning changes proposed for these properties would simply allow these developments to conform to Zoning Bylaw No. 8000.

The vacant commercial property at 795 Dilworth Drive (corner of Dilworth & Mt. Baldy Dr.) would be zoned C5 - Transitional Commercial, which most closely corresponds to the commercial development for the site outlined within LUC 74-57.

The two properties owned by School District #23 and leased to the City of Kelowna for sports fields and park space would be rezoned to P3 - Parks & Open Space to reflect existing uses. The natural areas of the mountain which have not been identified for development are owned by the City of Kelowna, and would also be rezoned to P3 - Parks & Open Space. Additionally, there are two City properties in the Selkirk neighbourhood to be zoned P4 - Utilities in recognition of their use as a storm water detention facility and water reservoir.

### 3.7 OCP Amendment (Map 19.1):

The OCP Generalized Future Land Use Map 19.1 is to be amended to facilitate this application. The amendment will correct discrepancies involving land use designation categories between the current and former OCP. These changes would allow the zoning proposed above to be implemented. Details of the proposed amendments can be found on the attached Map “B”. These changes have no effect on development potential specified in LUC 74-57.

## 4.0 **CURRENT POLICY:**

Staff have reviewed this application and it may move forward without affecting either the City’s financial plan or waste management plan.

### 4.1 Council Policy #282 - Strategy for Elimination of Remaining Land Use Contracts

Executing the Land Use Contract discharge process would be congruent with the civic objective to discharge LUC’s as per Council Policy #282: “Strategy for Elimination of Remaining Land Use Contracts” which requires:

- that a Land Use Contract be discharged for any contract where there has been a change in use or density from what was originally intended by the Land Use Contract;
- that where the City of Kelowna had entered into a Land Use Contract that contains a cancellation clause contingent on failure to develop and use the lands, the City proceed to discharge the Land Use Contract;
- that the City of Kelowna initiate proceedings to discharge Land Use Contracts that have provisions enabling the City to unilaterally discharge the contracts subject to consultation with affected owners of the land and subject to prior approval by Council with regard to affected contracts;
- that Staff negotiate with owners of land under Land Use Contracts that only enabled the subdivision of land, to discharge contracts where the subdivision has been completed;

- that priority be given to terminate Land Use Contracts having a significant financial impact or those Land Use Contracts that enable development contrary to the fulfillment of community objectives.

## 5.0 TECHNICAL COMMENTS:

This application was circulated to pertinent departments and agencies, both internal and external. No concerns were raised through this circulation process.

## 6.0 LAND USE MANAGEMENT DEPARTMENT:

As it is in the City's interest to discharge Land Use Contracts where applicable, the Land Use Management Department is facilitating this application, including the associated rezoning and OCP amendments. As discussed above, the removal of this significant LUC would provide clarity for both Staff and property owners while acknowledging all impacted properties under current regulations. Staff work with current bylaws and standards daily, unlike the obsolete zoning and development regulations specified in LUC 74-57 which are much less familiar, and far less available to the general public. Creating conformance with Zoning Bylaw No. 8000 would help alleviate these logistical challenges and allow the Dilworth neighbourhood to operate as a standard hillside neighbourhood within the City. The proposed rezoning mirrors the development plan specified in LUC 74-57, applying the corresponding zone from the current Zoning Bylaw No. 8000. The OCP amendment reflects the final development boundaries of the area and considers housekeeping corrections from previous OCP mapping. Both the rezoning and OCP amendments support and facilitate the LUC discharge.

Property owners have been notified of this discharge process through individual mail-outs, and are invited to an Open House on April 21, 2010 to discuss any questions with City staff.

Submitted by:

  
Shelley Gambacort  
Director, Land Use Management

Approved for inclusion:



Jim Paterson  
GM, Community Sustainability

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### Attachments:

Subject Property Map  
Existing Zoning/Future Land Use  
Map "A" - Proposed Future Land Use Designation  
Map "B" - Proposed Zoning









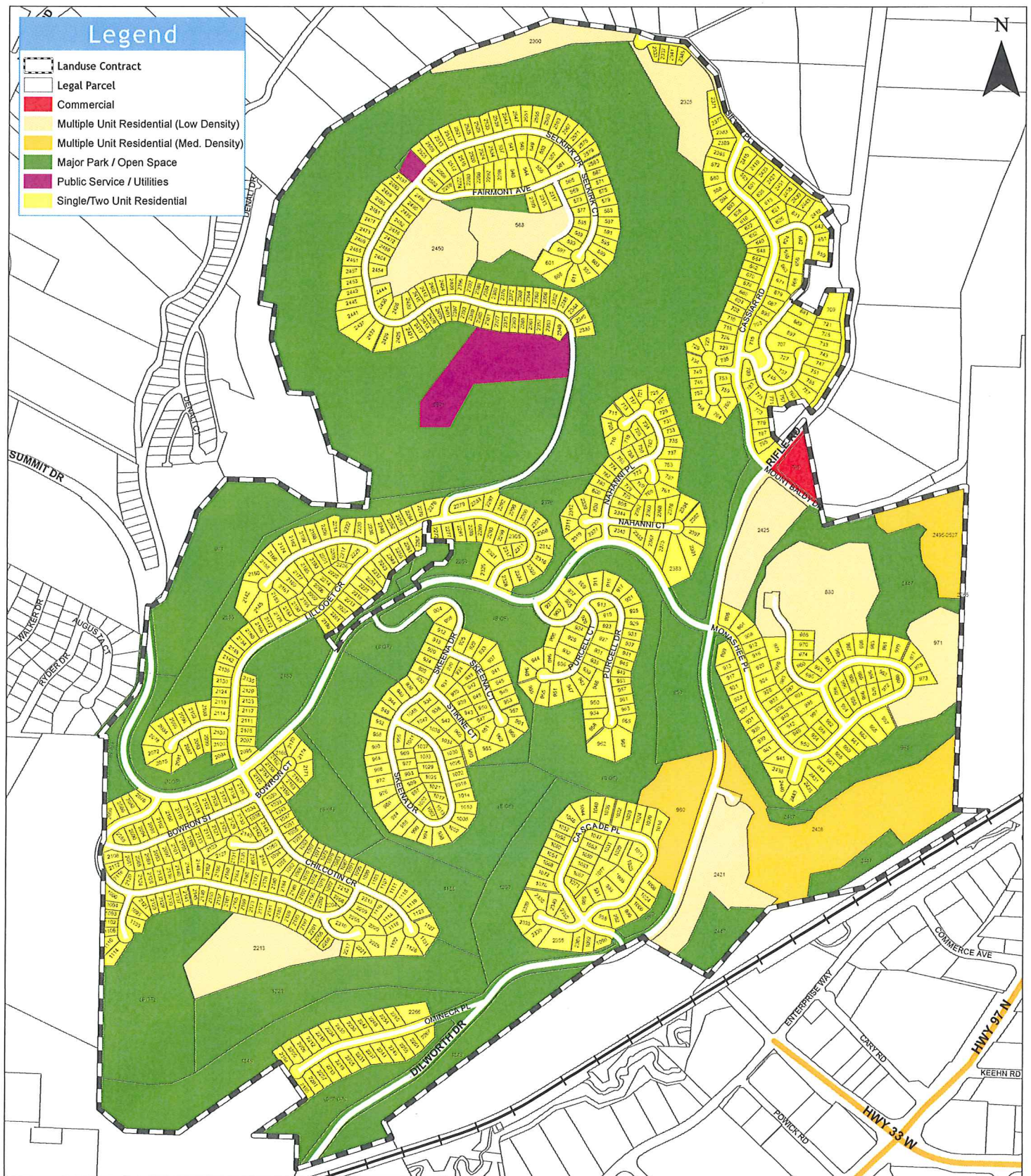
# Dilworth LUC

## Future Land Use - Existing

April 2010







# Dilworth LUC - Map "A"

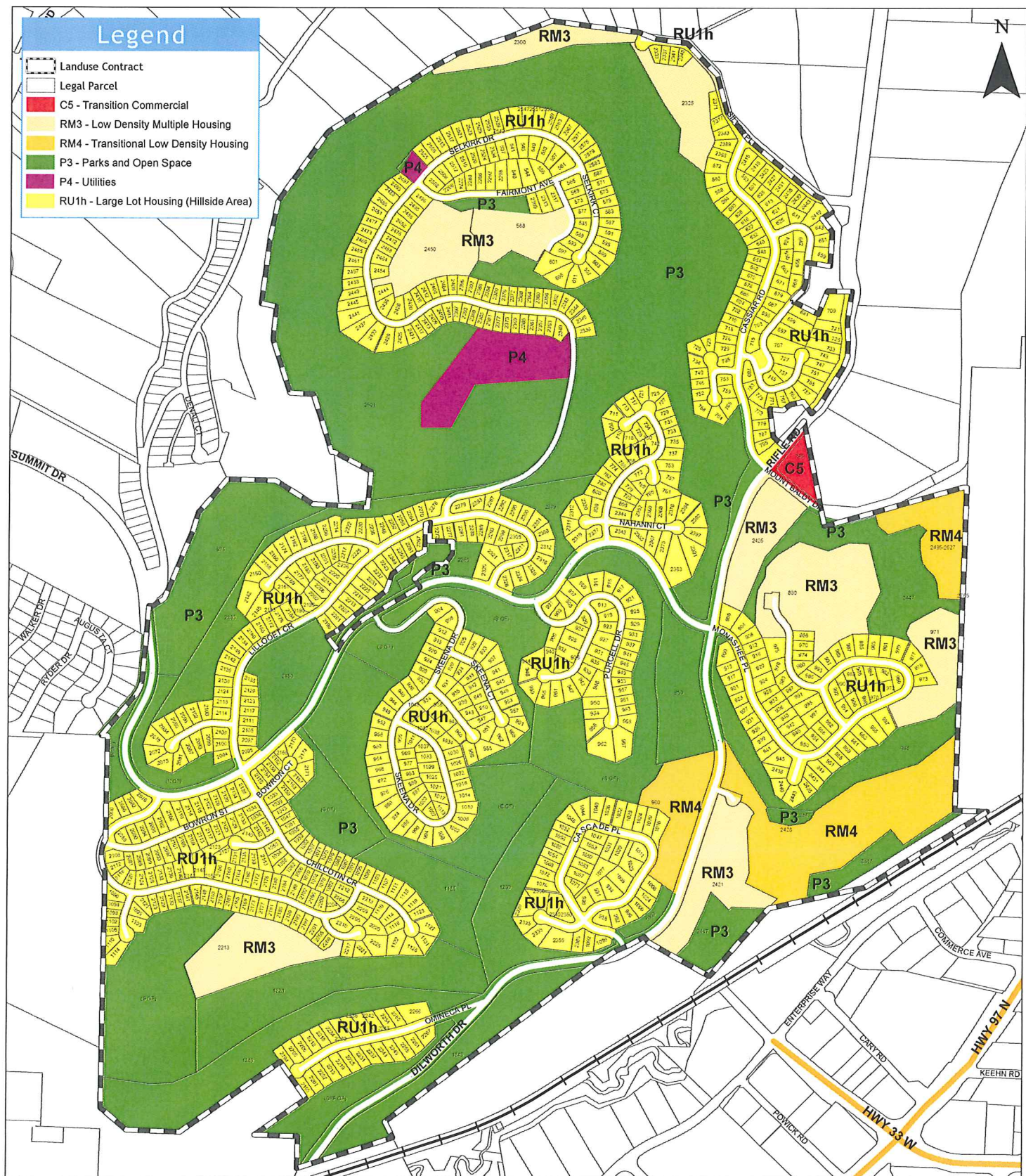
Future Land Use - Proposed

April 2010









# Dilworth LUC - Map "B"

Proposed Zoning

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