



Report To: C. D. Coates, Chief Administrative Officer  
 From: Laura Beckett, Planner  
 Date: November 16, 2011  
**SUBJECT: Rezoning Application RZ-01-08 (899 Finlayson Arm Road)**  
 File: RZ-01-08

**RECOMMENDATION**

**THAT Council refer application RZ-01-08 to the APC.**

**PROPOSAL SUMMARY**

<b>PROPOSAL</b>	Rezone parcel to allow for 2 additional residential parcels
<b>Owner/Applicant:</b>	Kent Willner
<b>Location:</b>	889 Finlayson Arm Road
<b>Size:</b>	12.02 hectares (29.7 acres)
<b>Legal:</b>	Lot 8, Section 74 and 75, Plan 20576, Highland District
<b><i>Current</i></b>	
<b>Current Zone:</b>	Green Belt 2 (GB2) (Permitted uses: residential; agriculture; home-based business; accessory uses, buildings and structures)
<b>Current OCP Designation:</b>	Rural
<b>Current Uses:</b>	Single family dwelling, outbuildings, access road, meadow, "light" agriculture (gardens and horses)
<b>Current Density:</b>	One dwelling unit per 12 hectares (30 acres)
<b><i>AMENDED Proposed</i></b>	
<b>Proposed Zone:</b>	Rural 3 (R3) or very similar density and identical use
<b>Proposed OCP Designation:</b>	No change
<b>Proposed Uses:</b>	No change
<b>Proposed Density:</b>	One dwelling unit per 4 hectares (9.88 acres), with minimum lot size of 2.8 hectares (7 acres) resulting in 2 new lots
<b><i>Adjacent Land Use/Zoning</i></b>	
<b>...to North:</b>	Highlands' Rural 3 (R3)
<b>...to East:</b>	Highlands' Rural 3 (R3)
<b>...to South:</b>	Highlands' Bear Mountain Comprehensive Development 1 Zone
<b>...to West:</b>	Goldstream Park (BC Parks within City of Langford)

**LOCATION MAP**



## BACKGROUND AND RELEVANT HISTORY

This rezoning application was originally submitted early in 2008, and thus bridged between two Councils. The original application sought a total of four residential lots. One of the lots was proposed to also have a tourist accommodation use with six such units. For ease of reference, staff provides the committees' and APC's recommendations from that original proposal:

**APC:** **THAT** the APC supports the application as presented, but have the following concerns:

- Size of cottages
- Should cooking facilities be allowed in each unit?

**CISSC:** **THAT** from the point of view of community infrastructure, Rezoning Application RZ-01-08—899 Finlayson Arm Road has no significant negative impact on the community.

**THAT** the Committee recommends that Council consider water storage for fire protection in the Upper Finlayson Arm area as a condition of approval for Rezoning Application RZ-01-08—899 Finlayson Arm Road.

**FESC:** **THAT** the Fiscal and Environmental Select Committee recommends that the rezoning application RZ-01-08 889 Finlayson Arm Road be approved if and only if the following

5 conditions are met:

1. **THAT** A condition for the recommendation for approval be that a Section 219 covenant be placed on the hilltop of the proposed lot #1 to keep it in its natural state.
2. **THAT** a condition for the recommendation for approval is that the Fiscal and Environmental Select Committee recommends that this proposal should be considered as an amenity rezoning because of the proposed significant increase in density in addition to the 6 tourist accommodations.
3. **THAT** a condition for the recommendation for approval is that Fiscal and Environmental Select Committee recommends that the maximum area for proposed tourist accommodation be 360 square meters, where no single unit be larger than 100 square meters.
4. Fiscal and Environmental Select Committee recommends **THAT** the turnaround at the end of the cul-de-sac should be in the cleared area, slightly to the south of the area shown in the plan map of December 5, 2007.
5. Fiscal Environmental Select Committee recommends **THAT** a Section 219 covenant be placed, restricting proposed Lots 2, 3 and 4 from having tourist accommodations.

Following these recommendations and the results of the referrals, staff prepared a report for the July 21, 2008 Council Meeting. This report considered the original application with the select committees' and APC's recommendations, the results of the referrals, and a deeper evaluation of the application against various OCP policies. That analysis resulted in staff recommending denial of that original application.

However, in that report there were three alternatives that staff considered worth presenting. From that July 21, 2008 Council Meeting's staff report:

Staff appreciates that portions of the application have merit, and that this application has been difficult to evaluate. For this reason, staff supported sending the application for further review and discussion. Upon this further review, and upon staff's own further review, staff cannot support the application as it stands.

However, staff may support one of the following:

- The proposed tourist accommodation use, because it is in the OCP. Staff agrees with a cap on size of buildings, but prefers no kitchenettes to avoid cabins becoming long-term rental accommodations. However, should this resurface as a proposal, staff would examine the pros and cons of kitchenettes. OR
- Rezoning to accommodate a 3-lot subdivision. This means two new lots. This is in keeping with the surrounding zoning. Should the applicant choose to make the new lots strata ownership, staff suggests that any roadways be built to municipal standards. This could be a condition of subdivision approval. OR
- Rezoning to accommodate a 4-lot subdivision, providing an appropriate amenity is offered. This means three new lots, and is in keeping with the actual density in the area. Should the applicant choose to make the new lots strata ownership, staff suggests that any roadways be built to municipal standards. This could be a condition of subdivision approval.

Council's resolution at this meeting was:

THAT the application be referred back to the applicant to consider the concerns of Council.

The landowner amended the application requesting three additional residential lots if amenities of \$8,769 per lot and a 2-party covenant protecting an eco-sensitive portion of the land and prohibiting future subdivision were provided. The 2006-2008 Council had directed staff to prepare a bylaw for the requested change in density.

The current (2009-2011) Council's last discussion of the proposal is noted in the attached February 16, 2009 Council Minutes. This was this Council's last interaction with the application. The resolution from that meeting was:

THAT the applicant be requested to submit a pro forma to the District and to bring forward better options for protection of the sensitive hill top area.

Staff recalls that the proposed density was a concern for Council at that time.

### **LATEST APPLICATION AMENDMENT**

The applicant has now returned with a further amendment to his application. Please see attached explanation and maps. The applicant now requests two additional lots, and remains inclined to covenant the hilltop area for conservation of the sensitive ecosystem while still allowing an area for typical residential uses – home, parking, etc. Staff expects that the request could be accomplished by rezoning the property to the Rural 3 (R3) zoning. This would need to be verified by survey to assure adequate land for minimum parcel size, lot averaging, and roadway. Staff anticipates this would occur should Council wish to consider the amended application.

Potential items for consideration, should Council further the amended proposal, include various sustainability issues recently vetted in other applications. These include house size and lot coverage (not currently regulated in the R3 Zone), green building practices, and invasive species management for roadway development.

### **Analysis**

Upon requesting staff's input, the applicant used the July 21, 2008 staff report quoted above for direction as to how to proceed with his application. The applicant understands that this in no way binds Council or staff. Staff's rationale for recommending this scenario is based on the surrounding R3 zoning, which is less dense than the actual residential density in this neighbourhood.

A logical question is how this amended application responds to Council's request. Council's recent policy change regarding a pro forma now renders a portion of the request moot. The applicant's proposal for better protection of the hill top is reducing the proposed density while still covenanting the hilltop via a two-party covenant. The applicant no longer wishes to have the subdivision restriction in the covenant. Subdivision is secured through zoning, and having it in a covenant is only truly useful in a three-party covenant scenario. Staff has not recently investigated a three-party covenant scenario, but certainly there was previous support from The Land Conservancy (TLC), providing a \$10,000 endowment fund was provided. The applicant is not interested in pursuing a three-party covenant scenario. His agreement is a critical component to success of such a covenant.

### **NEXT STEPS**

Two years and nine months have passed since Council considered this application. The last page of this report provides Council with the web links to the previous staff reports and Council minutes, should Council wish more information.

Council's duty in regard to applications is to consider them. For rezoning applications, the critical points are use and density. If these are not satisfactory to Council, then an application should be rejected. Certainly this application has spanned two Councils, and one Council's actions cannot fetter another's. Thus, Council's first action is to put its mind to whether the proposed change in density – from one dwelling unit per 12 hectares (30acres) to one dwelling units per four hectares (10 acres) – is acceptable.

Should Council be in favour of furthering the amended proposal, below are some points for consideration:

***New Council Policies: Amenity Rezoning Considerations Policy and Sustainability Appraisal Form Policy*** The newly adopted Sustainability Appraisal Form Policy has not been applied to this application because it was submitted significantly prior to the policy's approval. Staff has indicated that requesting a pro forma from the applicant is no longer applicable because of the new Amenity Rezoning Considerations Policy. Therefore, applying this same logic to the Sustainability Appraisal Form Policy would guide staff to apply the new policy and fill out the form with the applicant. While the applicant would also be advised of the new amenity policy, staff feels it is not consistent with comments made in the July 2008 staff report.

Staff has respectfully chosen to not present the applicant with the Sustainability Appraisal Form prior to Council review of the amended proposal for two reasons:

1. This application has been in-stream for a significantly long time, and
2. Filling in the form consumes time for the applicant and staff.

Much staff resources have already been spent on this application. In order to most effectively use these, staff wishes to seek Council's general leaning regarding this application prior to investing any more time into it.

***Select Committees and APC*** This application, in its original iteration, was referred to these groups. Their recommendations are at the beginning of this report. Staff is of the opinion that the essential change to the proposal is its density, and thus it is appropriate to send it only to the APC for planning-related comment. Conversely, Council may be satisfied with the input they have received from the groups, and prefer to only review the Sustainability Appraisal Form as filled out by the applicant and staff.

## **OPTIONS**

1. *(Recommended.)* Council may wish to further the application by sending it to the APC. This would implicitly involve staff inviting the applicant to fill out the Sustainability Appraisal Form with staff, or staff filling out the form alone. Staff would also advise the applicant of the new amenity policy. The Sustainability Appraisal Form review would return to Council at the same time as APC's review. This option could take the form of the following motion:

**THAT Council refer application RZ-01-08 to the APC.**

2. Council may consider APC and select committee review adequate, and may wish to further the application by reviewing it with respect to the Sustainability Appraisal Form. Likewise, this would implicitly involve staff advising the applicant of the new amenity policy. This option could take the form of the following motion:

**THAT Council consider application RZ-01-08 upon receipt of its review with the Sustainability Appraisal Form from staff.**

3. Council may wish to deny the application.
4. Council may wish to request more information.

*Original Signed*

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*Respectfully submitted by Laura Beckett, MCIP*

**CAO Concurrence**

*Original Signed*

*C. D. Coates, Chief Administrative Officer*

**Previous Reports and Council Minutes**

Date	Staff Report Web Link	Council Minutes Web Link
<b>April 7, 2008</b>	<a href="https://docs.google.com/viewer?a=v&amp;pid=explorer&amp;chrome=true&amp;srcid=0B-gy5l_4w3GMjEwN2JmZWmtNml4OS00YTdjLTgzOTYtOTA4YzBiODQwNTQ3&amp;hl=en_US">https://docs.google.com/viewer?a=v&amp;pid=explorer&amp;chrome=true&amp;srcid=0B-gy5l_4w3GMjEwN2JmZWmtNml4OS00YTdjLTgzOTYtOTA4YzBiODQwNTQ3&amp;hl=en_US</a>	<a href="http://www.highlands.ca/minutes/council/2008/04_07_Council.pdf">http://www.highlands.ca/minutes/council/2008/04_07_Council.pdf</a>
<b>June 2, 2008</b>	<a href="https://docs.google.com/viewer?a=v&amp;pid=explorer&amp;chrome=true&amp;srcid=0B-gy5l_4w3GOTI2MGU5YjAtN2JIMi00MDZjLTllNjYtYjZkMjgyMzYzQ4&amp;hl=en_US">https://docs.google.com/viewer?a=v&amp;pid=explorer&amp;chrome=true&amp;srcid=0B-gy5l_4w3GOTI2MGU5YjAtN2JIMi00MDZjLTllNjYtYjZkMjgyMzYzQ4&amp;hl=en_US</a>	<a href="http://www.highlands.ca/minutes/council/2008/06_02_Regular.pdf">http://www.highlands.ca/minutes/council/2008/06_02_Regular.pdf</a>
<b>July 21, 2008</b>	<a href="https://docs.google.com/viewer?a=v&amp;pid=explorer&amp;chrome=true&amp;srcid=0B-gy5l_4w3GNjcxYjA3M2UtzWm5YS00NmM5LTk5MzYtNWlyNDU5Y2MzNjZj&amp;hl=en_US">https://docs.google.com/viewer?a=v&amp;pid=explorer&amp;chrome=true&amp;srcid=0B-gy5l_4w3GNjcxYjA3M2UtzWm5YS00NmM5LTk5MzYtNWlyNDU5Y2MzNjZj&amp;hl=en_US</a>	<a href="http://www.highlands.ca/minutes/council/2008/07_21_Council.pdf">http://www.highlands.ca/minutes/council/2008/07_21_Council.pdf</a>
<b>August 18, 2008</b>	<a href="https://docs.google.com/viewer?a=v&amp;pid=explorer&amp;chrome=true&amp;srcid=0B-gy5l_4w3GYTdmZGI0N2MtMzk3NS00ZGI2LWE2ZGUtZTkxYTQzMzRiNDc0&amp;hl=en_US">https://docs.google.com/viewer?a=v&amp;pid=explorer&amp;chrome=true&amp;srcid=0B-gy5l_4w3GYTdmZGI0N2MtMzk3NS00ZGI2LWE2ZGUtZTkxYTQzMzRiNDc0&amp;hl=en_US</a>	<a href="http://www.highlands.ca/minutes/council/2008/08_18_Council.pdf">http://www.highlands.ca/minutes/council/2008/08_18_Council.pdf</a>
<b>October 20, 2008</b>	<a href="https://docs.google.com/viewer?a=v&amp;pid=explorer&amp;chrome=true&amp;srcid=0B-gy5l_4w3GOTlwZGY2MzMtOGMwOS00N2QxLWFmMjltOTE5OTZlYzq1ZWVm&amp;hl=en_US">https://docs.google.com/viewer?a=v&amp;pid=explorer&amp;chrome=true&amp;srcid=0B-gy5l_4w3GOTlwZGY2MzMtOGMwOS00N2QxLWFmMjltOTE5OTZlYzq1ZWVm&amp;hl=en_US</a>	<a href="http://www.highlands.ca/minutes/council/2008/10_20_Council.pdf">http://www.highlands.ca/minutes/council/2008/10_20_Council.pdf</a>
<b>January 26, 2009</b>	<a href="https://docs.google.com/viewer?a=v&amp;pid=explorer&amp;chrome=true&amp;srcid=0B-gy5l_4w3GYjA5MGNjYzQtM2U2OC00MWZhLWJiNTEtYzVIODYyNmRmM2My&amp;hl=en_US">https://docs.google.com/viewer?a=v&amp;pid=explorer&amp;chrome=true&amp;srcid=0B-gy5l_4w3GYjA5MGNjYzQtM2U2OC00MWZhLWJiNTEtYzVIODYyNmRmM2My&amp;hl=en_US</a>	<a href="http://www.highlands.ca/minutes/council/2009/01_26_Council.pdf">http://www.highlands.ca/minutes/council/2009/01_26_Council.pdf</a>
<b>February 16, 2009</b>	<a href="http://www.highlands.ca/agendas/council/2009/documents/Item9a.pdf">http://www.highlands.ca/agendas/council/2009/documents/Item9a.pdf</a>	<a href="http://www.highlands.ca/minutes/council/2009/02_16_Council.pdf">http://www.highlands.ca/minutes/council/2009/02_16_Council.pdf</a>

9. **BYLAWS**

- a) Report – Laura Beckett, Planner  
**RE: REZONING APPLICATION RZ-01-08 – 889 FINLAYSON ARM ROAD AND  
BYLAW NO. 313 - HIGHLANDS ZONING BYLAW, 1998, AMENDMENT NO. 29, (R5 ZONE - 889  
FINLAYSON ARM ROAD) BYLAW NO. 313, 2008**

**MOTION: 53/ 2009**  
**MOVED BY: COUNCILLOR ROESSINGH**  
**SECONDED: COUNCILLOR**

THAT application RZ-01-08 be denied as it is currently presented.

Motion lost due to a lack of seconder.

**MOTION: 54/ 2009**  
**MOVED BY: COUNCILLOR MCLEAN**  
**SECONDED: COUNCILLOR JOHANNESSEN**

THAT the applicant be requested to submit a pro forma to the District.

CARRIED

**MOTION: 55/ 2009**  
**MOVED BY: COUNCILLOR JOHANNESSEN**  
**SECONDED: COUNCILLOR ROESSINGH**

THAT motion number 54/2009 be amended to include better options for protection of the sensitive area on the hill top area.

CARRIED

The main motion as amended was adopted, with the final wording being as follows:

That the applicant be requested to submit a pro forma to the District and to bring forward better options for protection of the sensitive hill top area.

**MOTION: 56/ 2009**  
**MOVED BY: COUNCILLOR WILLIAMS**  
**SECONDED: COUNCILLOR GILL**

THAT a 3<sup>rd</sup> party covenant be registered on the property regarding the sensitive hill top area.

Motion Withdrawn

## Laura Beckett

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**From:** Kent Willner [REDACTED]  
**Sent:** Saturday, October 15, 2011 11:39 AM  
**To:** Laura Beckett  
**Subject:** RE: Willner Rezoning  
**Attachments:** Proposed Covenant Area.pdf; Willner Proposed Lot layout approximation.jpg

Hi Laura

Attached is a copy of the proposed covenanted area on the hill top which includes the house site. Second attachment is the proposed lot layout.

The lot layout by enlarge is dictated by the geographical terrain.

Lot 3

Has the existing residence goes right across the north side to the east side in part, to add a built in buffer to the Property to the north (Spencer) as well as a portion of the property to the east (Barclay).

Lot 2

The anticipated boundary would be if not on, near the seasonal stream. The house site, due to terrain and required set backs from the stream would be set back towards the south. This lot has a large area for which a house could be situated. As for the east side, the natural terrain creates a boundary for the house location which in turn assists with separation for privacy from the property on the east (Barclay).

Lot 1

House and protected area as per attachment.

Note:

Driveway access is already in place and will only require completion.. Likely a strata driveway.

The proposed lot layout and house sites are arranged with the intention of minimal impact while creating desirable living accommodation.

It is my intention to create these 2 new lots in a way which has minimal negative impact on the environment, including my neighboring properties.

I feel that by creating a two party covenant on the sensitive ecosystem area on the hill top this has good value to the community

I will be away from Sunday October 16 until likely Friday October 21. I will have internet access at some point during the week.

Thanks Laura

Kent

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**From:** Laura Beckett [<mailto:lbeckett@highlands.ca>]  
**Sent:** Thursday, October 13, 2011 3:00 PM  
**To:** Kent Willner  
**Subject:** RE: Willner Rezoning

Hi Kent,

WILLNER PROPERTY  
PROPOSED LOT LAYOUT  
SCALE 1"=200'  
OCTOBER 2011



