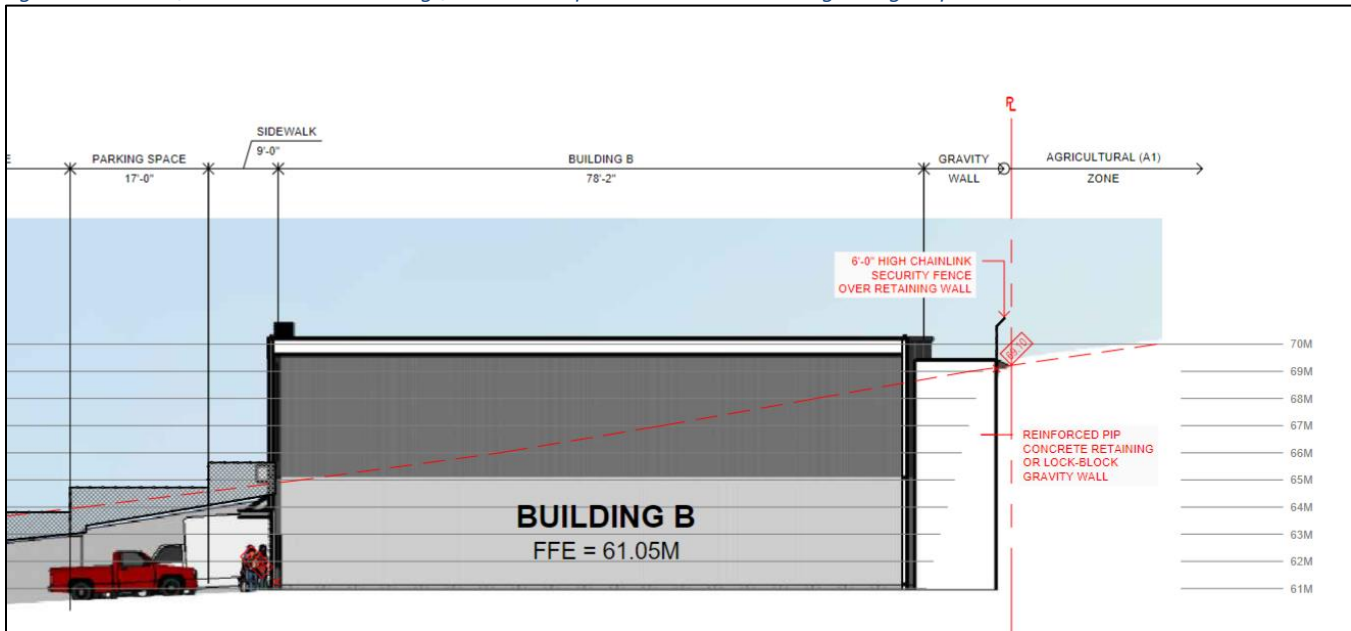


Following the issuance of the development permit, the property owner commenced excavation works on the property, resulting in a steep embankment at the rear of the property (west boundary) approximately eight to nine metres in height. The development permit issued for the property identified a building near the rear of the cut, a retaining structure, and a six-foot-high chain link fence at the top of the slope (see Figure 2).

Figure 2 - Detail from DP000194 showing future development and intended re-grading/slope treatment.



A building permit for the commercial buildings was never issued, and work on the site ceased following the completion of the excavation and anchoring of the west embankment to retain it. The property is now listed for sale, and staff have seen no indication that the property owner intends to proceed with the commercial development authorized in the development permit.

Temporary fencing was installed when the excavation works were occurring but was removed from the site, leaving the embankment exposed and without any barrier at the top of the embankment (Photo 1). After many attempts to have the property owner re-install a safety fence, a chain link fence was installed near the top of the embankment this summer. However, it appears the site has been over-excavated, leaving little or no land at the top of the embankment to install the fence as specified in the development permit. As a result, the chain link fence has been anchored to the face of the embankment. As the top of the embankment does not follow a straight line, there are large gaps along the base of the fence that are exposed to the embankment, leaving the potential for persons, animals or objects to fall under the fence and down the embankment. The installation of the chain link fence has reduced the hazard. However, because there is not a continuous barrier along the top of the embankment, staff believe a serious hazard still exists.

Photo 1 - Unprotected embankment, April 2023



Photo 2 - Installed chain link fence, August 2023



Photo 3 - Example of the gap at the base of the fence.



A registered letter (Attachment 2) was sent to the property owner on August 10, 2023, requesting that the hazardous condition be resolved. The letter requests a response by no later than October 2, 2023. Staff have received no response to date and are seeking a remedial action requirement from Council in advance of the October 2 deadline so that action can be initiated with minimal delay to remedy the hazard should the property owner not do so as requested.

DISCUSSION

The Hazard:

The owners of the property immediately west of the subject property have contacted the Municipality multiple times about the hazard and how it has impacted their ability to use their property. They cannot use the east side of their property or allow family and visitors access for fear of them falling down the embankment. Their property is in the Agricultural Land Reserve and zoned for agricultural use, but they cannot keep animals on the east side of their property because of the exposed hazard. Wildlife on the property is similarly at risk.

Chris Derouin, Senior Building Inspector and Rob Conway, Director of Planning and Building, attended the subject property and have concluded that the chain link fence installed this summer does not fully protect against the hazard. The gaps at the base of the fence are large and could easily allow a person or animal to fall under the fence and down the embankment, potentially resulting in injury or death. It is the opinion of staff that the embankment is a significant health and safety hazard, and the fencing that has been installed does not adequately protect the public, animals, and wildlife from the hazard.

Proposed Solution:

The proposed solution is to attach chain link mesh to the fence and anchor it to the ground so there are no exposed gaps at the base of the fence. This has been discussed with the owners of 7374 Mays Road, and they support it as a temporary solution for achieving the protection necessary to regain the use of their property. The specific method for installing the mesh would need to be confirmed with a fencing contractor, and it may require on-site modifications to address site conditions along the length of the bank edge and adjacent property.

Completion of Requirements:

Staff have tried obtaining voluntary compliance to address the hazard. The owner has taken some action by installing the chain link fence but did so without consulting municipal staff. Staff have requested the owner to take further action to address the hazard, but if that does not happen, a more forceful directive from Council may be needed. Issuing a remedial action requirement would put the property owner "on notice" that the hazard must be remedied within a specified timeframe and allow the Municipality to undertake the necessary works if the property owner is not responsive. If the Municipality is forced to undertake the works, it may recover expenses by collecting them in the same manner as property taxes.

Section 76 of the *Community Charter* requires that property owners be given a minimum of 30 days to respond to a remedial action requirement and must be notified of the requirement in writing. Property owners also have a right to have the remedial action requirement reconsidered by Council (s. 78), provided the reconsideration request is submitted within 14 days of the notice being issued.

However, Section 79 allows Council to set a timeframe for compliance that is less than 30 days and a reconsideration request period of less than 14 days if Council considers there to be a significant risk to health and safety if action is not taken earlier. Staff believe this situation presents a significant public safety risk and should be resolved quickly. Due to the nature of the hazard and the notice previously given, staff recommend a deadline of October 12, 2023, with a seven-day reconsideration request period. Should Council issue the remedial action requirement and the property owner does not complete the work necessary to resolve the hazardous condition by the specified deadline, Municipal staff would proceed with hiring a fencing contractor to complete the work.

Other Considerations:

The chain link fence and recommended modifications to make it safe are temporary measures to provide protection from a hazardous condition. It appears the excavation works on the subject property have extended beyond what was authorized in the development permit and may have encroached on to 7374 Mays Road. This will need to be confirmed by survey before the development of the site proceeds and may require modifications to the embankment or amendments to the development permit. The requested remedial action requirement does not address the potential trespass issue or non-compliance with the development permit.

Summary and Conclusion:

Staff consider the unresolved hazardous condition at 7900 Mays Road a significant risk for people and animals. Efforts to resolve the issue to date have been unsuccessful, and the hazard may persist if the Municipality does not take action to resolve it. A remedial action order would impose a requirement on the property owner to remedy the hazardous condition and allow the Municipality to take direct action if the property owner does not comply with the remedial action requirement. Issuance of a remedial action requirement with a compliance deadline of October 12, 2023, and a seven-day reconsideration period is recommended.

OPTIONS

1. Declare the inadequately protected embankment on the west side of 7900 Mays Road a hazardous condition and issue a remedial action requirement to require the property owner to install a secure barrier at the top of the embankment on the west side of the property by October 12, 2023, with a seven-day reconsideration period. *(See wording for motion provided under the Recommendation section)*
2. Declare the inadequately protected embankment on the west side of 7900 Mays Road a hazardous condition and issue a remedial action requirement to require the property owner to install a secure barrier at the top of the embankment on the west side of the property by October 27, 2023, with a 14-day reconsideration period. *(See wording provided for motion under the Recommendation section with amendments to the date and reconsideration period in bullets (3) and (4))*
3. THAT Council direct staff to take no further action in relation to the exposed embankment with the owner of 7900 Mays Road at this time.
4. THAT Council direct staff to:

(1) [Council to identify what alternative action they would like staff to take]

IMPLICATIONS

Issuing a remedial action requirement will provide a directive to the property owner to resolve the hazardous condition and allow the Municipality to take direct action to remedy it if the owner fails to do so, with the cost of the work transferred to the owner. This is the most expeditious approach for resolving the hazardous condition but could result in the owner challenging the decision.

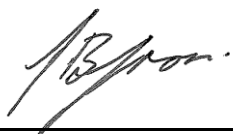
Taking no action would leave the hazardous condition unresolved. Staff would continue to request the owner to install a secure barrier that removes the hazard but would have no ability to require it or to take direct action to resolve it. The hazardous condition could remain unresolved indefinitely, leaving the potential for people, animals, or property to fall below the fence and down the steep embankment.

RECOMMENDATION

THAT Council:

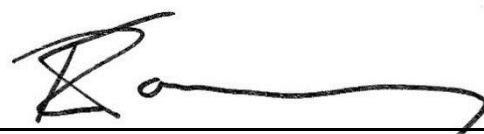
- (1) Declare the embankment on the west side of 7900 Mays Road (the "Property"), legally described as Lot A, Section 12, Range 5, Somenos District, Plan EPP25465, PID 029-614-929 to be a hazardous condition;
- (2) Declare the hazardous condition to be a significant risk to health and safety that requires action earlier than the minimum time limit for compliance set out in section 76 of the *Community Charter*;
- (3) Order that the owner of the Property, 4A Craft Concepts Inc. (the "Owner"), must, by October 12, 2023, install chain link mesh that provides a secure barrier between the fence on the western side of the Property and the land on the west side of the fence. The mesh must be securely anchored to the fence and the ground in a manner that will prevent the potential for people, animals or objects from falling under the fence and down the embankment;
- (4) Establish a reduced reconsideration request period, as set out in section 77 of the *Community Charter*, of seven days due to the significant risk to health and safety associated with the hazardous condition; and,
- (5) Direct that if the Owner does not complete the remedial action requirement, that District staff, its agents or contractors may enter onto the Property and complete the remedial action, and any costs of the action shall be treated as a debt owed to the Municipality of North Cowichan. If the costs remain unpaid at the end of the calendar year in which the work was completed, it will be added to the property taxes pursuant to section 258 of the *Community Charter*.

Report prepared by:



Tim Byron
Chief Building Inspector

Report reviewed by:



Rob Conway, MCIP, RPP
Director, Planning and Building

Approved to be forwarded to Council:



Ted Swabey
Chief Administrative Officer

Attachments:

- (1) Development permit site plan
- (2) August 10, 2023, letter to Owner