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## **Conservation Options for Species at Risk on Small Private Lots**

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# Environmental Law Clinic

UNIVERSITY OF VICTORIA

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From: Colin Edstrom, Law Student, University of Victoria Environmental Law Centre  
Subject: Conservation Options for Species at Risk on Small Private Lots  
Date: Summer 2008

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## **Introduction**

The following is a legal strategy that can be used to better protect species at risk on multiple small adjacent private lots. Although this opinion will focus on the sharp-tailed snake, it is written so as to be easily adopted to protect any species at risk or natural resource.

## **Brief Answer**

I have outlined three conservation options:

- local government conservation measures
- conservation covenants
- voluntary stewardship by landowners

Below is a discussion of the three conservation options noted above.

## **A. Local Government Conservation Measures**

### **Overview**

In many cases local government land use laws and regulations are the most effective and comprehensive way to protect species at risk. A comprehensive guide to such local government measures is the *Green Bylaws Toolkit* produced by Debra Curran and the UVic Environmental Law Clinic. Many of the strategies below are excerpted directly from the *Green Bylaws Toolkit*. The *Green Bylaws Toolkit* can be found at <http://www.greenbylaws.ca>. Also, see *Species at Risk and Local Government: A Primer for BC* [www.speciesatrisk.bc.ca](http://www.speciesatrisk.bc.ca)

In brief, local governments can protect species at risk through:

- identifying species at risk and their habitats by mapping sensitive ecosystems before development occurs;
- directing development away from sensitive ecosystems through regional strategies, zoning, site-specific regulation, and setbacks from sensitive areas;
- avoiding development activities that disturb sensitive ecosystems and preventing polluting activities in or near sensitive ecosystems;
- requiring buffers between sensitive ecosystems and developed areas;
- protecting and, where needed, restoring sensitive ecosystems by designing recreation activities carefully, using covenants to retain sensitive ecosystems, planting native species, and eradicating alien invasive species (See *Green Bylaws Toolkit*, p. 47.)

The following is a list of applicable local government measures:

### **Mapping**

In order to make effective use of stewardship bylaws, local governments must have some understanding of the location and quality of ESAs within their land base. Mapping provides that information. It is the first step in creating effective regional conservation strategies because it creates a common understanding of the importance of ecosystem values on specific pieces of property and engages and motivates staff and decision makers to protect ESAs.

ESA mapping can include sensitive ecosystems, locations of species at risk, special features, and rare landscape elements. Although the Salt Spring Island Conservancy has done an excellent job in tracking the sharp-tailed snake, snake habitat and location are still somewhat unknown. This is caused largely by the facts that the snakes exist in small numbers, are relatively small in size, and are primarily subterranean. Although the Salt Spring Island Conservancy has done an excellent job mapping the sharp-tailed snake – considering its small numbers, varied habitat and the organization’s administrative limitations -- a more focused emphasis on mapping is paramount.

### **Regional Growth Strategies**

A Regional Growth Strategy (RGS) is an agreement between member municipalities and a regional district on social, economic, and environmental goals and priority actions. A growth strategy guides decisions on growth and development within the regional district.

One of the goals of a RGS is to protect environmentally sensitive areas [*Local Government Act* s.849(1)(d)]. A RGS can include (or adopt by reference) a regional conservation strategy that deals explicitly with maintaining and restoring ecosystem functioning in a region.

The *Local Government Act* states that the purpose of a RGS is to “promote human settlement that is socially, economically, and environmentally healthy and make efficient use of public facilities and services, land and other resources” (section 849). A RGS must cover a twenty-year period and must include a comprehensive statement on the future of the region, including the economic, social, and environmental objectives of the governing board in relation to projected population requirements for housing, transportation, regional district services, parks and natural areas, and economic development.

Local governments can use a RGS to get agreement on acquiring priority environmentally sensitive areas as parkland and to designate regional greenways and habitat corridors. A RGS can map or designate sensitive ecosystems and can incorporate regional conservation strategies and other regional documents that detail the protection of green infrastructure (see below). It may also promote integrated watershed management involving several local governments.

All regional district bylaws and plans, and all official community plans of member local governments, must be consistent with the RGS. Note that both a RGS and Official Community Plans can integrate and implement a Regional Conservation Strategy that, among other things, maps species at risk and sensitive ecosystems and sets out conservation strategies.

See the *Green Bylaws Toolkit* (pp. 37-50 and Appendix C) for specific RGS provisions that could optimally protect species at risk.

### **Official Community Plans**

An Official Community Plan (OCP) and its component sub-plans such as neighbourhood plans, local area plans, and/or watershed plans set a general direction for development and conservation in a community. OCPs may contain policies for the “preservation, protection, restoration and enhancement of the natural environment, its ecosystems and biological diversity” (s.878 of the *Local Government Act*). They articulate the community’s objectives and policies regarding land use, community development, and operations. OCPs also designate Environmental Development Permit Areas and guidelines for protecting those environmentally sensitive areas.

The policies in an OCP can help a variety of persons and agencies, including planning staff and councils or boards, decide whether a proposed development fits with the community’s goals and desired pattern of land use. It provides information that can guide the development sector and landowners toward the most appropriate form of development. OCPs also help councils and boards assess the merits of development proposals and make decisions on applications for variance permits.

OCPs do not authorize or require local governments to undertake specific works or projects, but any development proposals, works, or projects must be consistent with the OCP. Because OCPs guide a community's overall development, the more specific and detailed the OCP policies are, the more direction landowners and staff will have about public expectations for conservation and the regulatory changes that are needed to implement the OCP. Several local governments now divide the natural environment chapter of the OCP into ecosystem types, with specific policies for each type.

See the *Green Bylaws Toolkit* for specific relevant OCP provisions that could optimally protect species at risk. (Note p. 56 and the OCP provisions referenced there and in Appendix D.)

### **Environmental Development Permit Areas**

Local governments may designate environmental development permit areas (EDPAs) to protect the natural environment, its ecosystems, and biological diversity; to regulate the form and character of development; and to influence the siting of development on a parcel. DPAs are a more fine-grained tool than standard zoning for shaping how development occurs on a site.

EDPAs enable staff and council to make site-specific decisions about protecting sensitive ecosystems. They can specify conditions and standards that a developer must meet. Environmental protection staff agree that EDPAs are the best way to protect sensitive ecosystems. EDPAs are also the best way to prohibit site disturbance before approval of a development project. A landowner must obtain a development permit for land in an EDPA before:

- subdividing it;
- constructing, adding onto, or altering a building or other structure on it; or
- altering the land

EDPAs often complement other tools such as zoning, impact assessments, and regulatory bylaws. They are flexible and can vary or supplement zoning and subdivision regulations (except land use or the density of the use). For example, an EDPA can:

- specify protection measures, including planting or retaining vegetation or trees in order to conserve, protect, restore or enhance fish habitat or riparian areas, control drainage, control erosion, or protect banks;
- impose conditions on the sequence and timing of construction;
- specify areas of land that must remain free of development, except in accordance with any conditions contained in the permit;
- specify natural features or areas to be preserved, protected, restored, or enhanced

See the *Green Bylaws Toolkit* for specific provisions to optimally protect species at risk. Note that Chapter 7 and Appendix F have specific EDPA provisions.

## **Zoning**

Zoning allows local governments to regulate the use to which a landowner can put a piece of land and how much of that use (density) is allowed on a specific part of the land. On a neighbourhood or site-specific level, use and density are the primary means local governments have to shape development. On a municipal, regional district, or watershed level, zoning is the primary means of preventing development in locations where it can harm sensitive ecosystems and directing development towards more appropriate locations.

Zoning for conservation is the most straightforward way to direct development away from green infrastructure. Once mapping has identified the location of sensitive ecosystems and desired greenways, zoning can create larger lot sizes and setbacks to maintain undeveloped landscape-level corridors. If existing zoning allows relatively intensive development, local governments can rezone to decrease the density or intensity of use in areas that warrant more protection for ecological features (e.g. critical habitat). Local governments do not have to pay any compensation to landowners for changes in the value of land due to rezoning enacted in the public interest (see Section 5.4 and section 914 of the *Local Government Act*). Conservation zoning can be politically unpopular, but when used with other tools, it is a simple way to prevent development in Environmentally Sensitive Areas.

In Canada, local governments can approve conservation zoning for legitimate community purposes, such as ecosystem protection, as long as the zoning does not restrict the private property to a public use (e.g., a park). Rezoning that reduces density is politically unpopular because it can decrease the value of property by limiting its uses. However, it is the most effective way to revise historic zoning errors in order to contain urban development and preserve an undeveloped landscape for greenways and ESAs. It is also a routine and straightforward legal tool.

Rezoning for conservation is standard practice in B.C. It is usually part of an application to rezone and subdivide a large parcel of land on which development will be clustered and a portion of which will be preserved as parkland. Several local governments, e.g., Islands Trust (Denman Island) and the District of Highlands, have used conservation zoning to implement environmental protection priorities and to correct zoning enacted in the 1970s and 1980s that was not sensitive to ecological values.

### *Zoning – Cluster Development*

Cluster development refers to the rezoning and subdivision of larger parcels so that new development can “cluster” on a portion of the new properties (or property if it is a comprehensive development zone) away from sensitive ecosystems and greenways. The landowner can then register a conservation covenant on the remainder of the parcel or on sensitive ecosystems outside a housing or development zone. This approach is

attractive for developers because they often combine clustering with an amenity density bonus to obtain more density or more lots in return for placing a conservation covenant on the remaining property, creating parkland, or restoring ecosystems. Clustering also reduces servicing and road construction costs.

The following are tools for accomplishing clustering:

- density averaging, or transferring density from one part of a site in a comprehensive development zone to another;
- amenity density bonuses;
- bare-land strata; and
- comprehensive development zoning.

Clustering works in all sizes of community. It can preserve significant tracts of sensitive ecosystem and also provide a buffer for the green infrastructure. Some planners believe that limiting the extent of the footprint of the subdivision on the landscape is ecologically more important than the total number of units in a subdivision. The effectiveness of clustering increases when a local government has completed the landscape mapping that will help staff and Council understand the location and extent of sensitive ecosystems.

#### *Zoning – Amenity Density Bonus*

Amenity zoning is the general term for often unique zoning that provides an incentive to developers to provide an amenity such as parkland, clustering, waterfront access, daycare facilities, or affordable housing as part of a rezoning package. Amenity zoning and amenity density bonus zoning provisions are often used interchangeably because a development may rely on both an increase in density that would be prohibited unless the owner provided an amenity and rezoning that addresses limitations on the use of the land and setbacks from ESAs.

Amenity density bonus works best for large-lot rural settings. In rural areas with large lot sizes, amenity density bonus-clustering packages are attractive for both landowners and local governments because they can reduce servicing costs, protect green infrastructure, and limit the footprint of a subdivision. Zoning that creates large-lot minimums in rural areas gives landowners an incentive to explore the amenity density bonus and clustering because of the high cost of servicing. Local governments often use amenity density bonus zoning along with other techniques such as cluster development and conservation covenants to protect environmentally sensitive areas.

See the *Green Bylaws Toolkit* (pp. 59-72 and Appendix E) for specific zoning provisions that could optimally protect species at risk. Note that when dealing with very large parcels/development, the section on Comprehensive Development zoning may be helpful.

## **Regulatory Bylaws**

Regulatory bylaws are used to regulate activities, impose requirements on the method of carrying out activities, and in some cases prohibit activities that have an impact on the green infrastructure. Regulatory bylaws serve several proactive and reactive purposes. Proactively, they can require landowners to obtain permits before carrying out activities that have an impact on the green infrastructure. This provides staff with an opportunity to educate landowners and developers about best management practices. District of North Vancouver staff have found that, after a decade, the public is well aware of the District's Environmental Protection Bylaw, and residents often contact the municipality to discuss best management practices when contemplating activities on private property.

Regulatory bylaws are reactive because they enable staff to enforce the bylaw, for example, when a landowner cuts a tree without a permit or lets sediment foul a watercourse. Regulatory bylaws also bolster the setbacks in zoning bylaws and EDPA conditions by making enforcement simpler through ticketing. They create offences that can act as the basis for court action. Finally, they are most effective in managing the kind of incremental changes that can degrade habitat and cause pollution, for example, when activity on a parcel does not involve rezoning or subdivision, or when the property is not located in an EDPA. The effectiveness of regulation relies to a large extent on how well landowners and development applicants understand bylaws or standards, and on whether or not a local government enforces regulatory bylaws strategically and effectively. Adequate staff time, training, and resources for investigating, monitoring, and enforcement is essential.

See the *Green Bylaws Toolkit* for specific regulatory bylaw provisions that could optimally protect species at risk.

## **The Advantage of Local Government Measures**

Local government measures can be proactive, and prevent problems before it's too late. The best way to increase conservation is to ensure development is done sustainably and with the environment in mind. In many cases this can best be accomplished by advocating for stronger laws and regulation at the local government level.

Education is perhaps the best tool in the Salt Spring Island Conservancy's belt. It is prudent to engage in a broad-range of public education and communications activities, designed not only to appeal to landowners and prospective donors, but also to build support for land conservation among municipal authorities and the residents of neighboring communities. Educating the community on the impact of development will increase voluntary stewardship and help pressure local government authorities. The Salt Spring Island Conservancy already does an excellent job in this regard. However, concentrating efforts on community awareness will make the conservancy's voice

stronger vis-à-vis the Island Land Trust, and the legislation of stronger conservation measures by local governments.

## **B. Conservation Covenants**

### **Overview**

A landowner can enter a legal agreement with a conservation organization which permanently protects natural features of the land. Such conservation covenants can restrict certain uses/developments on the land, prohibit subdivision, and require that the land be managed and conserved in a specified manner. Authorized under section 219 of the *Land Title Act* such covenants are registered on title and bind both the landowner and subsequent owners. It is a flexible tool that allows the landowner to retain ownership/use of the land, while protecting nature. Covenants can be tailored to meet the desires of both parties and the land's unique values.

For a more detailed overview of conservation covenants, please read West Coast Environmental Law's guide to conservation covenants entitled, *Leaving a Living Legacy: Using Conservation Covenants in BC*. It can be found online at

<http://www.wcel.org/wcelpub/10362/10362.html>

Also, see *Greening Your Title: A Guide to Best Practices for Conservation Covenants*, 2d edition, at the same website. A number of other publications discuss covenants:

- *Stewardship Options: For Private Land Owners in British Columbia* (<http://www.stewardshipcentre.bc.ca/publications/>)
- *Protecting Your Land* ([www.conservancy.bc.ca/content.asp?sectionack=protectingyourland](http://www.conservancy.bc.ca/content.asp?sectionack=protectingyourland))
- *Conservation Options* (<http://www.landtrustalliance.bc.ca/options.html>)

### **Problem**

Conservation covenants can maintain the natural areas of a parcel of land. However, they can be complicated and costly to negotiate and implement. Expenses can include the cost of doing an environmental assessment, a baseline study of current environmental conditions, appraisal, survey, covenant negotiations and preparation, etc. The cost of entering into numerous conservation covenants on multiple small lots can make it prohibitively expensive for conservation societies. This problem is exacerbated by the long term expense of monitoring and enforcing multiple covenants.

### **Where Conservation Covenants Could Be Useful For Numerous Lots**

In many cases placing conservation covenants on numerous small individual parcels of land will not be economically viable. However, in certain circumstances covenants to protect natural values on small lots could be useful. Two possibilities come to mind:

- employing a group negotiating structure or
- registering a conservation covenant on a large development when all the land is still owned by the developer owner.

### *Group Negotiating Structure*

Under a group negotiating structure, owners of multiple adjacent private lots that wish to enter into conservation covenants would designate a single spokesperson for the entire group. This single spokesperson would negotiate a single covenant across the multiple adjacent private lots in question. In theory, this would decrease the legal start up costs because only the spokesperson's legal counsel would be used. In addition, a negotiating structure can cut costs by allowing for a common baseline report and common overarching terms.

However, there are disadvantages to using a negotiating structure. Firstly, it requires the goodwill and unanimity of each landowner involved. Most property owners are reticent to give up control over their land. Giving up negotiating rights to a common spokesperson amplifies this problem. Secondly, as an extension of the first point, it is likely that, because each property is unique, each property owner will ultimately seek independent legal advice from a trusted lawyer prior to signing the covenant. This will often lead to further negotiations and costs. Such legal costs defeat the purpose of entering into negotiating arrangement.

This possibility of using the group negotiation method was raised by Margaret Sasges. Ms. Sasges is a lawyer with the law firm Clay & Company. The feasibility of using a negotiating structure was further discussed with Andrew Gage of West Coast Environmental Law.

### *Registering Conservation Covenants on a Large Development*

In a situation where a single developer is subdividing a large parcel and still has ownership of all the land, it may be possible to negotiate a single conservation covenant on the entire property. The covenant would survive after the subdivision and protect all the lots. Entering into the agreement with the developer before subdivision could reduce the costs entailed in negotiating multiple covenants with all the subsequent owners.

However, there are difficulties with this method. First, the developer has to be willing to register the covenant on the land. This requires goodwill. A developer may be unwilling to enter into a legally binding arrangement with a party that protests the existence of the development itself. Moreover, registering the covenant may have a deleterious impact on the price of the lots. It may take some persuasion to show the developer how marketing the natural features and natural protection of covenanted lots could actual increase, rather than decrease, the value of the lots.

Second, second-generation land owners may not be as willing to abide by the rules of the covenant. Although conservation covenants are legally binding, they are difficult to enforce. If a second generation landowner does not feel morally obliged to follow the covenant and a society is logistically incapable of enforcement, then the covenant may be of limited practical use.

On the other hand, if there is a pre-existing covenant on the land, then the annual monitoring visit by the conservation group may provide an opportunity to meet with the new landowners and inform them of the precious natural values on their land – and how to preserve them. It may provide an excellent chance to enhance education and stewardship.

There is precedent for registering conservation covenants on large developments. This tool was brought to my attention by Bill Turner, O.C. and Executive Director of The Land Conservancy.

### **Voluntary Stewardship Initiatives may be a Better Alternative**

Increasing voluntary stewardship may be the best method of protecting species at risk on small developed lots. Education and awareness is perhaps the most useful tool on Salt Spring Island – an area that is relatively conservation friendly. Many landowners will be reluctant to enter into conservation covenants because they are reticent to give up any control over their land. Stewardship programs allow landowners to enter into non-binding conservation agreements with conservation organizations. Landowners are more likely to enter into conservation arrangements that do not have implications on their legal title.

According to Bill Turner, conservation covenants may not be the most effective way to protect species at risk on private lots. Species movement across lots and land alteration caused by climate change and other factors make the protection of species at risk by way of conservation covenant difficult. Moreover, enforcing conservation covenants requires extensive effort and supervision. Even if effective supervision is possible, it is nearly impossible to prevent an unwilling landowner from killing something like a sharp-tailed snake on their property. In Mr. Turner's opinion, the best way to protect Species at Risk on private land may well be through a landowner contact program or stewardship program. For him, the protection of Species at Risk is about education – not regulation. Accordingly, I have outlined some stewardship strategies in the next section of this paper.

### **Conclusions on Covenants**

Placing an early conservation covenant on an entire large development when it is still owned by just one owner may be a way to conserve natural values in a new subdivision. And in certain circumstances using a group negotiating structure could reduce the cost of placing conservation covenants on a number of existing lots owned by different people.

However, the success of a covenant is often dependent on the willingness of the developer/owner and the enforcement capacity of a society. Therefore, encouraging

stewardship and increasing community awareness will often be a better option for protecting species at risk on private lots.

**For further information on covenants, contact:**

Bill Turner, President and Executive Director of The Land Conservancy

Ph: 1-877-485-2422

Andrew Gage, West Coast Environmental Law Association

Ph: 604-684-7378

Margaret Sasges, Lawyer, Clay & Company

Ph: 250-386-2261

### **C. Voluntary Stewardship**

Private environmental stewardship is arguably the most important and most effective conservation strategy for protecting species at risk on multiple small private lots. Landowners practice stewardship when they manage their lands in an ecologically sound manner, attempting to maintain natural values and systems.

The following is a modified excerpt from Chapter 7 of *Greenspace and Growth* by Calvin Sandborn.

**Landowner contact programs** are one of the most effective ways of delivering stewardship information to landowners. In a typical program, a stewardship representative contacts the landowner initially by letter or phone, then follows up with a personal visit. Together, the representative and the landowner discuss future plans for the land and the owner's conservation concerns and needs. The program spokesperson distributes conservation materials, provides information about important natural features on the land and notes possible habitat enhancements. For example: "If you want to enhance habitat for elk on your land, you might want to try this type of grasslands management; if you want to support overwintering migratory birds, you might plant these type of plants; if you want to attract this type of wildlife, the Ministry of Environment can help you; if you want to enhance your wetland area, this kind of financial assistance is available." Receptive landowners will be asked to make a commitment to conservation, which is simply a non-binding "handshake agreement" to conserve important natural values on the land. The informal agreement is frequently acknowledged by the gift of a plaque or certificate. The stewardship representative often follows up this initial visit with conservation newsletters and fact sheets, invitations to educational workshops, and assistance for owners who want to provide al protection of their land -for example, by placing a conservation covenant on the land.

Landowner contact programs have a number of advantages:

- They educate owners about important features of their land and how conservation techniques can be applied.
- They encourage a practical conservation land ethic, because even the simple act of making a verbal agreement to work with others can reinforce an owner's commitment to conservation.
- They provide landowners with a single point of personal contact where they can have their land management questions answered without getting lost in the bureaucracy.
- They help conservation organizations learn about the land, and about the landowners and their management needs and problems.

- They show conservation organizations what areas are in imminent jeopardy and help them shape a strategy that deals directly with the threatened sites so that resources are not wasted.
- They build a relationship of trust among government, conservation organizations and landowners, leading to the possibility of joint initiatives.
- They can eventually lead to an owner placing conservation covenants or other more permanent forms of protection on the land.
- They are relatively inexpensive for the protection obtained and are generally popular with landowners.

Although they are just handshake agreements, landowner contact programs get stewardship information and techniques out to landowners. In a large number of cases - perhaps half - owners will voluntarily enter into a non-binding agreement to protect their land. In a smaller number of cases, contact will lead to subsequent discussions that may result in owners agreeing to more permanent and legally enforceable protection of the land by means of arrangements such as conservation covenants.

### **Why this could work on Salt Spring Island**

The Salt Spring Island Conservancy already lists land stewardship as one of its core functions. As such, it has a solid foundation upon which to build a more extensive land stewardship program. Moreover, Salt Spring Island is generally comprised of eco-friendly and environmentally-aware residents. Although stewardship programs are not legally binding, they are very flexible. This allows landowners who are reluctant to enter into conservation covenants because of the binding obligations, to still enter into a conservation agreement.

Stewardship programs that reward landowners who practice conservation would also be beneficial. Awards do not have to be monetary. Certificates and public recognition is likely enough. Moreover, setting up sharp-tailed snake 'neighbourhood watch' programs could be useful. Organizing and educating neighbourhoods to look out for sharp-tailed snakes would help. These neighbourhood watch groups could be self-enforcing and neighbourhood conservation knowledge would likely trickle down to the rest of the community.

### **For More Information on Stewardship Programs, Take a Look At...**

- Chapter 7 of Calvin Sandborn's *Green Spaces Report*.
- The following reports on the Stewardship Centre website (<http://www.stewardshipcentre.bc.ca>)
  - a. Landowner Contact
  - b. Naturescape: Caring for Wildlife Habitat at Home

- c. On the Ground: A volunteer's Guide to Monitoring Stewardship Agreements
  - d. Stewardship Options: For Private Land Owners in British Columbia
- The following manuals on the Habitat Acquisition Trust website (<http://www.hat.bc.ca/>)
    - a. Sharp-tailed Snakes Stewardship Project
    - b. HAT Manual

### *Species at Risk Act*

The federal *Species at Risk Act (SARA)* is beyond the scope of this paper, and we suggest that you contact Ecojustice, West Coast Environmental Law Association, and federal Species at Risk websites for more information on how SARA may be helpful in some circumstances. Also see *Species at Risk and Local Government: A Primer for BC* [www.speciesatrisk.bc.ca](http://www.speciesatrisk.bc.ca)

Speaking in general terms, *SARA* is the federal law that protects species considered threatened, endangered or extirpated in Canada. The act prohibits the destruction of residences of threatened and endangered species, and allows for critical habitat to be identified and protected through management and recovery plans.

*SARA* is primarily aimed at providing protection to species on federal lands, and to species under federal jurisdiction like fish and international migratory birds. Thus *SARA* regulations don't provide much protection to species (other than fish and migratory birds) on private lands.

However, the federal and provincial governments do prepare recovery strategies and action plans for species listed under *SARA*, and there may be opportunities for community groups to work collaboratively in enhancing such recovery and rehabilitation efforts.

In addition, the federal government has a putative discretion to apply *SARA*'s prohibitions against harming a species if *the province has failed to provide adequate*

*protection for a listed species.* In that unusual circumstance, the federal government can theoretically step in to protect a species that is not on federal land or otherwise under federal jurisdiction<sup>ii</sup>. It can act by way of emergency order if it wishes<sup>iii</sup>. However, the choice to do so lies in the discretion of the federal government – and similar discretionary mechanisms in other Canadian environmental legislation are not often used. We suggest that you obtain further information about SARA from the sources listed above.

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<sup>i</sup> *Species at Risk Act*, R.S.C. 2002, c. 29.

<sup>ii</sup> See sections 34 and 61 of SARA.

<sup>iii</sup> Section 80, SARA.