



# Save the Pine Bush

## August/September Newsletter

Aug/Sept 09 No. 99 • 33 Central Ave., Albany, NY 12210 • email [pinebush@mac.com](mailto:pinebush@mac.com) • phone 434-1954 • fax 434-6659 • web <http://www.savethepinebush.org> • Circ. 1000

### Vegetarian/Vegan Lasagna Dinner

Wednesday, August 26 2009, 6:00 p.m.

### Candidates Night!

Democratic Primary Candidates will Speak

## Corey Ellis

*Candidate for Mayor*

## Kathy Sheehan

*Candidate for Treasurer*

**All other candidates for city-wide office have been invited, including candidates for Mayor, Treasurer, Auditor and Common Council President**

At the First Presbyterian Church, (State and Willett Sts, Albany, please enter from State St.). All-the-vegetarian-and-vegan-lasagna-you-can-eat, garden salad, garlic bread and homemade pies. Only \$10 for adults, \$5 for students, and \$2 for children. People who make reservations are served first. For reservations, please leave a message for Rezsins Adams at 462-0891 or Lynne Jackson at 434-1954 or email [pinebush@mac.com](mailto:pinebush@mac.com). Interested people are welcomed to attend the program beginning at 7:00 for which there is no charge

### August Birding Hike in the Pine Bush Saturday, August 22

Meet: 9:00 am SUNYA Campus Circle (Collins Circle) Bus Stop picnic table  
1400 Washington Ave. Albany

**Leader:** Neal Reilly. **For more info:** Call John Wolcott at 465-8930

We will look for towhees, Prairie Warblers, Field Sparrows and a few raptors, perhaps even Turkey Vultures and their threatened nesting places in high pines. Bring camera and binoculars if you have them. Take the usual precautions against UV radiation and Lyme disease: UV sunglasses, sunscreen, wide brimmed hat, light-colored clothing, long-pants and long sleeves.

*PS: Note from John, the hike organizer: An intended bird pun is: Why do ducks and geese fly south every year?? Answer: Because it's quicker than walking! (I have two others, but they are even worse.)*

**The event is free and open to the public!**

### Butterfly Populations

#### Decimated in Albany Preserve

*by Grace Nichols, July 26, 2009*

The survival of the Federally Protected Karner Blue Butterfly in the Albany Pine Bush Preserve is in doubt here in Albany – its numbers have been critically low for at least ten years. This butterfly was first named by Vladimir Nabokov, the famous writer, and became one of the best known insect species on the East Coast.

It is a beautiful brilliant blue color when it spreads its wings, while the undersides of the wings are pale gray and purple with black and orange spots. In the early 1970s, there were 28,000 Karner Blues in a tiny area of the Pine Bush where Crossgates is now located and countless more in other spots; Albany residents observed blue butterflies spread like solid blue blankets over the land.

The Karner Blue lives in a fire dependent ecosystem which has been traditionally maintained by manmade fires since before European contact with this area. It has as a host plant for its larva, wild blue lupine plants who provided food to the plant during its larval stage. The

*continued on page 2*

### Save the Pine Bush To Argue Standing In The Court Of Appeals

*by Steve Downs*

ALBANY: On September 15, 2009, Save the Pine Bush will argue before the Court of Appeals that it was entitled to standing in the case of the proposed Marriott Hotel case. In 1991 the Court of Appeals decided in the Society of Plastics v. Suffolk County, that the test for standing to bring an action in a the State Environmental Quality Review Act (SEQRA) proceeding was whether the plaintiff would suffer a direct injury greater than the public at large (the so-called “special injury” rule). It is impossible to show special injury in most cases involving harm to wild

*continued on page 2*

### *Hotel Court Argument, from page 1*

species, public resources or general community damage like air pollution, because by definition no plaintiff can show an injury greater than the public at large when the injury is to the public itself and to public resources. For 18 years the Court of Appeals has not revisited the standing rule in the Plastics case notwithstanding an outcry of indignation from the environmental community that so many important environmental cases were being dismissed on standing grounds.

After SPB won the Hotel case in the Appellate Division 3-2 (on the ground that the City had not considered the environmental injury from the construction of a hotel to various rare species in the Pine Bush including the worm snake and the hognose snake), the City appealed to the Court of Appeals on the issue of standing claiming that SPB had not shown an injury greater than the Public at large. (The Appellate Division found that because of the extraordinary dedication of the members of SPB over 30 years they would experience the loss of the rare species in a manner greater than the public at large and so could show special injury).

At about this time a bill was introduced into the legislature to amend SEQRA to eliminate the requirement of special injury. For a time it looked like the bill would breeze through the legislature, and thus would eliminate any drama from the Court of Appeals argument on September 15, 2009. However, as we all know, at the last minute the Senate went haywire, the bill was returned to committee, and suddenly all eyes turned to the Court of Appeals again.

The City was able to appeal to the Court of Appeals as of right (and did not require permission) because of the rare circumstance that there were two dissenting judges in the Appellate Division thus requiring the Court of Appeals to hear the case. It is the first time in 18 years that the Court of Appeals has been forced to reconsider standing in SEQRA proceedings, and so it has become an important case. The New York State Attorney General, and 6 major environmental organizations have filed amicus briefs supporting the position of Save The Pine Bush. The argument in the Court of Appeals on September 15, 2009 should be lively and interesting as the Court is challenged to defend the policy (if any) behind its special injury rule.

**Mark your calendars!  
Attend the oral argument  
for standing in the Court of  
Appeals, September 15**

### *Karner Blues, from page 1*

ecology of the Karner Blue is tied to this plant. The Karner Blue Butterfly is the symbol of the globally rare Albany Pine Bush Inland Pine Barrens ecosystem.

According to Neil Gifford, the Conservation Director of the Albany Pine Bush Preserve Commission, there are 1000-2000 Karner Blue Butterflies left in the 3010 acres of the Albany Pine Bush Preserve. According to him, a total of 7,000 to 12,000 butterflies are necessary to have a sustainable population (personal correspondence with Neil Gifford, June 2009). Our regional Karner Blue expert, Kathy O'Brien of the NYS Department of Conservation's Endangered Species Unit, reports that the reason populations are down is because of consistent, year to year, heavy rainfall, and hail. She reports that Karner blues like warm, sunny weather and when it gets warm and then cold in the springtime, their populations suffer.

I requested the butterfly populations counts from Kathy O'Brien and used the Freedom of Information Act to "foil request" the DEC for them. That request was denied both verbally and in writing. This is interesting because there are few localities, nationally, in which insect reports kept top secret. I have spoken to reporters for the mainstream press who have had similar difficulties and delays in getting butterfly counts.

I was initially surprised when the NYS DEC denied publicly funded science data to the public which funded it. When I was also denied the population counts for all the other rare species I had asked about (eventually I did get some deer data), I realized that environmental secrecy is, in fact, the NYS DEC's policy. I am continuing to file additional FOIL requests at this writing.

I also scoured the Discovery Center for information about the conservation status of the Karner Blue Butterfly but could find no display, exhibit or literature addressing this key point. I was given permission to look in their public library, which contains a file drawer with papers in it. The most recent paper on insects was from before 1990.

Ironically, the Albany Pine Bush Preserve Commission gave the 2005 butterfly report to the developer who is trying to build a hotel next to prime butterfly breeding habitat. Because of this, Save the Pine Bush's pro bono lawyer Steve Downs received it as part of the Environmental Impact Statement filed by the developer. After reading the data, I knew that Karner Blue numbers were in serious trouble since at least 2004. That year, 12 of 15 monitoring sites were occupied and yet the 2nd brood which is typically 3 times as large as the first, was in fact smaller than the first. There are many possible reasons for this

including the isolation of the little subpopulations because of the segmentation of the habitat. This report also cited rainfall as the reason for critically low population levels.

Next, I foiled the Commission for more recent butterfly monitoring reports. I was given the 2008 report and some 525 pages of wildlife studies, representing, according to them, all wildlife population data from 1990-2009.

Though butterfly populations are hard to estimate, they are definitely in trouble here in Albany. In recognition of this, Neil Gifford and his staff released 600 captive raised pupa early in July of 2009 -- this year. He reports that the pupa hatched well and he has hopes for the survival of those butterflies.

Meanwhile, Sarah Clarkin, who oversees the Wilton Wildlife Park and Preserve said in early July that "if I had to take a stab in the dark at numbers, I'd estimate our populations at 3,000-5000 Karner Blue Butterflies." Wilton's acreage is somewhat less than Albany's and they are not funded by tipping fees from any landfill. In fact, their funding is far less than the funding provided to the Albany Pine Bush Preserve Commission: the total grants and contracts received from local and state governments to the Albany Pine Bush Commission is 1.4 million dollars (March 2009 Financial Report.)

I visited the Wilton Wildlife Preserve on July 13, 2009 and saw eight Karner Blue Butterflies at Old Gick Farm parcel, in Wilton, NY, off Route 30. This was a treat for me as I have never seen one before, certainly not in Albany. I returned and took some pictures of the butterflies who were curious and unafraid, and kept landing on my fingers and camera!

Why are Albany numbers down? I don't think we know but I do know that we need to find out.

Scientists like to start with the most reasonable possibilities. In this case, the unusual assaults on the environment in the Albany Pine Bush Preserve would be an obvious place to start. The landfill which was unwisely placed in the Pine Bush, comprises a huge 470 foot tall trash-mountain towering over the Preserve, releases methane and emissions that includes dioxins and many other compounds. It sits over a principal aquifer. Have we sufficiently studied the effect of the pollution from the Rapp Road Landfill on their Karner Blue numbers? Both air and water pollution may be significant factors.

If we haven't, let's look again at the \$180,000 the Preserve science team made from garbage fees last year, and also the local government grants which might not be friendly to any criticism of the landfill.

Has the Commission followed the lead of

states like Wisconsin who have modified their management so as to delay mowing and stop using herbicides during the Spring and Summer flights?

Here is what they did in Wisconsin:

"The Wisconsin Gas Company now mows grass along its power lines later in the summer so that Karner blue caterpillars have time to metamorphose. Other agencies delay herbicide and pesticides spraying on their lands until the fall, after lupine and other plants have died. *"The Road to Recovery."* (Center for Biological Diversity [www.esasuccess.org/reports/](http://www.esasuccess.org/reports/))

Has the Albany Pine Bush Preserve Commission allowed or sponsored studies to assess the impact of using herbicidal sprays on the nectar plants visited by the endangered butterfly or the lupine upon which the butterfly larvae depend?

It turns out that Minnesota researchers discovered a very small impact from certain herbicides on Karner Blue eggs, but the study was of different herbicides than the ones we use. We need similar studies to establish any herbicide/Karner blue decline connection here in Albany, NY. Currently, we just don't know if there is a connection. (<http://conservancy.umn.edu/bitstream/37197/1/Staffpaper151.PDF>)

Currently, Neil Gifford reports that the Commission uses 3 different herbicides including Roundup and Rodeo; they are used to paint stumps of unwanted trees, to spray stumps of unwanted trees and to spray more generally to kill invasive plants. Yet, it turns out that lupine are particularly sensitive to glyphosate, the active ingredient in Roundup and Rodeo; glyphosate is routinely used to eliminate them places where wildlife managers choose to do so. (The article "How to grow, propagate and kill some of the native plants in the Kluane region, southwestern Yukon" was printed in *Davidsonia: A Journal Of Botanical Science*(19:2:53) by authors Michael A. Treberg & Roy Turkington; the authors reported that lupine species were by far the most sensitive plant to administrations of glyphosate.)

Other studies show amphibians are sensitive to herbicides as well. This interests us in part because of the endangered status of some amphibians in the Pine Bush. The Spadefoot toad is a NYS threatened species, yet researchers in New Mexico report that juvenile Great Plains Spadefoot toad, will have populations reductions as juveniles when exposed to glyphosate with a standard surfactant.(in Dienhart, S., Smith, L., McMurry, S., Anderson, T., Smith P., and Haukos, D., Toxicity of a glufosinate- and several glyphosate-based herbicides to juvenile amphibians from the Southern High Plains, *Science of the Total Environment*, January 15, 2009, Copyright © 2008 Elsevier B.V.)

In addition, the recently approved Landfill Expansion Habitat "restoration" plan, will permit many more pesticides to be used in the Albany Pine Bush ecosystem soon. The Habitat Restoration Plan's "Integrated Pesticide Management" plan allows spraying of pretty much any legal herbicide on a schedule that extends from early Spring to Late Fall.

This species which numbered, in the hundreds of thousands, if not millions, in the Glacial Lake Albany before the 1970s, is now on the brink of extirpation.

We don't know why. Though the people in charge of protecting the Karner Blue here in Albany cite that weather events, our conversations with the director of the Wilton Wildlife Preserve indicate that the rainfall in Saratoga has had a much less drastic effect on the Karner Blue Butterflies of Wilton, NY than Albany County rainfall has had in the Albany Pine Bush Preserve.

I believe it is poor science to ignore the myriad environmental assaults against the Karner Blues in Albany. I think if we acknowledge these environmental pressures, we can begin to remediate them. But it all starts when we come out of denial.

There are serious flaws in the current DEC/Commission science of the declines, and the secrecy of the science. We, the public, need to question the validity of current attempts to find the causes of these drastic declines and we need to demand change.

Oh, by the way, in Wisconsin, Karner Blue populations have increased over 800% since the listing of the insect as a federally endangered species. The Albany, NY Karner Blue population has dropped over 90% since the early 1970s.

Just before this went to press, I ran into an employee of the Albany Pine Bush Preserve, an SCA intern named Jake. I asked him where he was going and he said he was doing butterfly monitoring and "no, you can't come; it's not for the public." I said, "how is it going - how many have you seen?" He said he'd seen no butterflies in the 3 monitoring sites he was monitoring 3 times a week since May (2009).

We are right to be concerned. It is the eleventh hour for the Karner Blue. The people of Albany, who want to see this beautiful, endangered creature remain amongst us, must act powerfully for clean, healthy butterfly habitat before it is too late.

[www.savethepinebush.org](http://www.savethepinebush.org)

## Save the Pine Bush July Composting Presentation

by Tim Truscott

ALBANY: We enjoyed two presentations after the July 15 Save the Pine Bush dinner.

The first presentation was by Jeff Heath of Stearns & Wheler Consulting Engineers, which is headquartered in Cazenovia, NY. Jeff's presentation was on the Delaware County Municipal Solid Waste (MSW) composting facility, located near Walton, NY.

Delaware County is a mostly rural county with no cities, only eight incorporated villages and 50,000 people. Because of its rural nature, most of the solid waste generated in the county is residential in nature. There is little commercial and industrial MSW.

Around 1988-89, long before the existing landfill approached capacity, county officials made two conscious decisions: One was that they were going to have a goal of recycling 65 percent of their municipal solid waste. The other decision was that whatever facility they developed would be for waste generated in Delaware County only; no waste would be brought into the Delaware County facility.

By the time the county issued their Request For Proposal (RFP) in 1996, they had increased the recycling and re-use goal to 70 percent (In 2007, a diversion rate of over 80 percent was actually achieved). One of the county's concerns was that a landfill containing a lot of solid waste would produce risks of leachates entering streams in the county. Since most of the county's area drains into either the East Branch or the West Branch of the Delaware, and since both the East Branch and the West Branch flow into New York City water supply reservoirs, landfilling was not a reasonable option for the county to follow. Also, since something needed to be done with the solids from the wastewater treatment plants of villages near the Delaware River's two branches, county officials thought a non-landfilling method of disposal of wastewater treatment solids was best.

A mechanized composting facility was proposed by Stearns & Wheler, based on designs which had been used in Germany for several decades. The result was a three-acre building which utilizes a steel drum 14 feet in diameter and 157 feet long.

Municipal solid waste, after it is sorted in a materials recovery facility (MRF) to remove inorganic materials such as plastic and metal, is fed into one end of the drum and, as the drum slowly rotates, the composting material slowly works its way along the 157 foot drum and comes out the other end as pretty high quality compost.

*continued on page 4*

## Composting, continued from page 3

The material being composted in the drum is controlled for temperature and humidity.

The composted material is cured for another 56 days in another area outside the drum. The compost is then screened to remove any remaining large materials. All compost is treated and stored inside the building so that air quality is controlled and contaminated air is not allowed to escape to the atmosphere.

This facility cost Delaware County approximately \$23 million. It has a capacity of treating 35,000 tons per year of MSW and 6,700 tons per year of sewage sludge. The facility became operational in 2005 and has been successfully operated since that time. The county does not fund the operation by using tipping fees, instead using a sales tax to generate revenue. The total cost to the county for operating its recycling program and composting facility is approximately \$58 per ton, a very reasonable sum.

Jeffrey Budzich of We Care Organics, based in Sherrill, NY, west of Utica provided the second presentation. This presentation involved vermiculture, i.e. using worms to decompose solid waste. This system is designed for MSW volumes smaller than those for which composting is used, and is especially good for disposing of waste food. The end product of the vermiculture method is a very high quality compost material which can be sold for as much as \$100 per ton. (ordinary compost sells for around \$5-10 per ton).

We Care Organics is currently in talks with a large Western New York supermarket chain to use vermiculture to dispose of their food waste, such as outdated produce, etc. Mr. Budzich also said that Cornell University is conducting studies to document additional benefits of using vermiculture to dispose of solid waste.

## Sign Anti-Pesticide Petition!

by Grace Nichols

The City of Albany is out-of-compliance with its Pesticide Ordinance. Save the Pine Bush wants the City to follow the law it passed in 1998 to protect residents, plants, and animals from pesticides. Please show your support for the City to follow its own laws on pesticides and sign the attached petition. Save the Pine Bush will bring the petition to the Common Council when they meet to discuss enforcement of the Pesticide Ordinance.

Read the petition and sign here:

<http://www.ipetitions.com/petition/PesticidereductionsAlbany/>

*Please note, you do NOT have to make a donation to iPetitions to sign!*

## Sally's Recycling Corner

### Recycling Mysteries: Paint

Most people already know that household paint is recyclable. But it's also important to understand that different household paints are disposed of in very different ways.

What we do with our leftover paint determines if it goes on to have a second life. In fact, the EPA estimates that Americans discard as much as 69 million gallons of paint each year. That's millions of gallons of unrecycled paint headed straight for the nation's landfills. Fortunately, many cities and communities organize household hazardous waste management programs through which residents can recycle leftover paint and paint cans. Americans discard as much as 69 million gallons of paint each year.

### So What Should I Do With My Paint?

When purchasing paint for a project, try to determine how much paint you will need so that you end up with as little excess paint as possible. Then, make every effort to use leftover paint. Give it to a friend or use it for an art or crafts

project. Consider donating the paint to local organizations, such as charities, churches, high school drama departments or Girl Scouts of America or Boy Scouts of America troops.

To recycle your paint, separate it into two groups: latex paint and oil-based paint. Never mix the two kinds together because they have to be recycled separately. Also, if possible, the paints should be in their original containers, or at least clearly labeled for identification.

For latex paint, remove the lid from the can and allow the paint to dry out and harden completely. Push a screw driver into the paint to test whether any of it is still liquid. Once the paint has dried completely, it is ready to be recycled.

In some states, leftover paint that is prepared this way and placed in garbage bins is automatically recycled. In other states, it's necessary for you to take the paint and containers to a recycling facility. Contact your local household hazardous waste (HHW) representative to learn the regulations in your state.

Oil-based paints are hazardous and should always be taken to your local HHW collection center so they can be disposed of safely. And even though the majority of latex paints are not considered to be hazardous, there are a few exceptions. Some paints have chemicals with mildew protection, and those are hazardous because they include pesticides.

Paints labeled as "wood preservative" and paints containing mercury (may apply to any paint manufactured before 1991) are also hazardous. Take latex paints that fall into this category to your local HHW collection center along with your oil-based paints.

Some communities have specific paint recycling programs that will accept both latex and oil-based paints at collection sites. To find your local paint recycling program, use Earth911's recycling search or check with your city's public works department.



### Save the Pine Bush

A Project of the Social Justice Center  
33 Central Avenue  
Albany, NY 12210

PRESORTED  
STANDARD  
US POSTAGE PAID  
ALBANY, NY  
PERMIT #509

Return Service Requested