

October - December 2008



# WINGBEATS

Audubon Society of the Capital Region



## A BUTTERFLY'S DAY IN COURT IS BRIEF — CASE DISMISSED —

by David Gibson



Earlier this summer, the organization *Save the Pine Bush* lost a case in court without a single argument being made. It lost because the Appellate Division of the State Supreme Court upheld a lower court ruling which denied the organization and its local members the right to have its arguments heard in court, arguments which sought to protect the endangered Karner blue butterfly from a sprawling warehouse development in northern Clifton Park. In July, the State's highest court, the Court of Appeals, refused the organization's motion for further appeal.

In broad terms, the Town of Clifton Park had watered down legally binding decisions it had reached in 1991 and 1994 to protect known Karner blue habitat in the immediate vicinity of the development site. When in 1997 the owner of the property barred the State DEC Endangered Species Unit from

entering the property to monitor the Karner blue, the Town took no action. When by 2006 the Karner blue habitat was degraded by so many years of neglect and no more butterflies were seen there, the Town subsequently declared a half-acre preserve for the butterfly sufficient, found that the huge adjoining warehouse and parking lots had no environmental impacts, and issued the applicant final site approvals. *Save the Pine Bush* took the Town to court, arguing that the Town had failed to uphold the State Environmental Quality Review Act (known as SEQRA) which requires all levels of government to take a hard look at environmental impacts of its decisions.

However, the courts were less interested in *Save the Pine Bush's* arguments on behalf of an endangered species than in its right to argue them in the first place. The courts found that the organization lacked legal standing to bring the case about an endangered species, this despite the fact that for twenty years *Save the Pine Bush* has been successfully defending Pine Barrens habitat and endangered wildlife which depend upon it, such as the Karner blue. As the organization's Lynn Jackson told the media, if current barriers to uphold environmental laws in our State courts were in place thirty years ago, the remaining Albany Pine Bush would simply be a sea of housing development.

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## Audubon Society of the Capital Region



**Cordially Invites You To Attend Our  
Year 2008 Programs & Field Trips**



### ASCR Programs

**Unless Otherwise Specified,  
Programs To Be Held At:**

*William K. Sanford  
Colonie Town Library*

**The Canadian Atlantic**

**Thursday, October 9, 2008 @ 7:00 p.m.**

**Speakers: Scott Stoner &  
Denise Hackert-Stoner**

From the gannets of Bonaventure Island, to the tides of Fundy and the Highlands of Cape Breton; across the sea to the fjords, bogs and icebergs of Newfoundland and Labrador, Atlantic Canada is a land of spectacular scenery and wildlife. Join local bird experts Scott and Denise Stoner for an eye-popping pictorial as they recount their fabulous adventures to this special place with slides and music.

Scott Stoner is past president of both the Hudson-Mohawk Bird Club and the Audubon Society of the Capital Region. His photographic work has been published in Birder's World Magazine. Denise Hackert-Stoner is a past officer and director of the Hudson-Mohawk Bird Club. Together they have birded, explored, and photographed North America from Hawaii to Labrador.

### **The NY Dragonfly and Damselfly Survey**

**Thursday, November 13 @ 7:00p.m.**

**Speaker: Erin White**

Given an increasing public interest in the study of dragonflies, but an incomplete knowledge of their status in New York State, and the need to develop a formal conservation strategy for them, NYS DEC and the NY Natural Heritage Program embarked on a 3-year project spanning the 2005-

2008 field seasons. Join Erin White for an overview of this comprehensive survey to see some preliminary results.

Erin White, a NY Natural Heritage Program Zoologist, is the Project Coordinator for the NY Dragonfly and Damselfly Survey. She graduated from Antioch New England's Conservation Biology program in 2003 and has a strong background with wetland species.

### **The Natural History of Owls**

**Thursday, December 11 @ 7:00p.m.**

**Speaker: Kitty Rusch**

**Location: 5 Rivers Environmental Edu. Ctr.**

Come share in the holiday spirit as DEC's Kitty Rusch presents an overview of the natural history of owls, featuring an appearance by a live barred owl. An optional (short) outdoor owl prowling to known haunts will follow, for those willing. Bring a dessert that we can share over hot mulled cider, either in lieu of or after owl-prowling, as you choose.

Kitty Rusch is an Environmental Educator at NYS DEC's Five Rivers Environmental Education Center, where 7 owl species have been recorded.

### **ASCR Field Trips**

#### **Birding Vischer Ferry**

**Sunday, October 5 @ 9:00 a.m.**

**Trip Leader: Craig Thompson**

Join us on a field survey of fall migrants at Vischer Ferry Preserve, one of the Capital District's premier birding destinations. Suitable for the birding novice, this "citizen science" outing will continue our chapter's "Adopt An IBA" initiative at this site. Bring binoculars. The program is free, but please contact Craig at 756-3610 by Wednesday, October 1 to register and get directions. In the event of inclement weather, this program will be cancelled.

*Refreshments will be served. As always, we encourage you to bring your friends and family.  
For directions or details, call Greg Rucinski at the Colonie Library at (518) 458-9274.*

## Karner Blue Butterfly, from page 1 ...

What has happened? More than thirty years after SEQRA was passed in the State Legislature, it may well be that our elected judges fail to read the law which requires all state and municipal agencies to “conduct their affairs with an awareness that they are stewards of the air, water, land and living resources, and have an obligation to protect the environment for the use and enjoyment of this and all future generations.” Instead, courts today tend to defer to local governments. Too many of them, in turn, regard SEQRA as a procedural barrier to applicants for development, not as a high environmental review standard which must be met. All too often, local governments tend to impart their own biased judgment that no environmental impacts exist, without taking the necessary impartial “hard look” at potential impacts.

To be fair, applying SEQRA rigorously in small communities lacking in professional staff is a very challenging endeavor. However, when towns with plenty of resources and staff still fail to find any significant environmental impacts on any land use decision they have made over ten years (to wit, Clifton Park has not required a single Environmental Impact Statement in all that time), then one knows SEQRA review is in deep trouble. Clearly, it is time for a new generation of State DEC leaders to make a concerted effort to re-educate local officials about SEQRA.

Second, courts tend to rigidly apply parts of a 1991 Court of Appeals decision which limited the standing in that particular case only to those plaintiffs who suffered a special harm not suffered by the public at large in a specific site or “geographically centered action.” The 1991 Court said it was not defining standing rules for actions which applied indiscriminately to everybody (or to the general environment), yet it failed to provide any guidance to future lower courts about what standard they should apply in cases where the harm, such as to a lake, wetland or endangered species, is widespread throughout a community or to parts of an ecosystem. The definitive SEQRA textbook called Environmental Impact Review in New York states that “the laws of standing under SEQRA took a sharp turn with the Court of Appeals’ decision in *Society of the Plastics Industry v. County of Suffolk*. Prior to that case, plaintiffs’ standing in SEQRA cases was seldom challenged and rarely denied. Since 1991, there have been numerous challenges, and many have succeeded.”

Given current standing (and obvious financial) barriers to the courts, what can habitat advocates like Audubon do when state or local governments routinely defy SEQRA or any environmental statute? First, get behind legislation which has passed in the Assembly, pending in the State Senate, which specifically gives legal standing to any taxpayer and any resident of the town, village or city in which the development is located. Further, the bill would give standing to any not for profit corporation whose purpose is environmental protection within that geographic area and to any civic association located in that jurisdiction. That this legislation has become so important is indication enough of the deep problem of gaining access to our courts for redress of environmental grievances. The bill number is A. 2638 and its most recent sponsors are Assemblyman Adam Bradley and Senator Thomas Morahan.

Second, Audubon members can become educated in SEQRA requirements of environmental review, and inform their local town planning boards about these at every opportunity. Third, National Audubon Society and Audubon New York could harness their considerable expertise to convene a committee that helps to focus statewide attention on SEQRA and Barriers to Legal Standing. That committee could seek to have DEC Commissioner Pete Grannis and his aides make SEQRA information and awareness at the county and local levels a top priority in 2009.

## AUDUBON WELCOMES

### NEW SENATE

### MAJORITY LEADER

Since 1995, Senator Skelos has been Deputy Majority Leader of the New York State Senate, and has helped usher in many important pieces of legislation (his bio lists many of these accomplishments - <http://www.senatordeanskelos.org/9/Biography.aspx>). On the environment, Senator Skelos has been very supportive of measures to address global warming, incentives for people to reduce their carbon footprints, measures to protect open space, and has consistently helped us secure increased funding for the Environmental Protection Fund. Currently, he is the lead sponsor of legislation to eliminate the state sales tax on hybrid and high efficiency vehicles and has been successful in having this measure passed in the Senate twice. Recently, he helped secure passage of legislation to reform the Brownfields program, and last year helped immensely in securing passage of the Hudson Valley Community Preservation Act. In addition to moving these critical pieces of legislation, he has also been very helpful to Audubon New York by helping to secure a Prius for their office.

Overall, Audubon New York has had a very strong relationship with Senator Skelos, and we have every expectation that he will continue his strong focus on the environment as the new Senate Majority Leader. Should you have any questions, or need additional information, please contact Sean Mahar at 518-869-9731.



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# Audubon News

## ASCR To Host Fall Audubon Council Meeting

ASCR members are cordially invited to participate in the Fall Audubon Council of New York State meeting, which will take place October 10-12, 2008 at the Clarion Hotel in Albany. Highlights of the weekend will include field trips to the Albany Pine Bush Preserve and Thacher Park/Thompson's Lake Bird Conservation Areas. For more info, contact Audubon NY at 869-9731 or log on to <http://ny.audubon.org>

## ASCR Team Goes Low-Carb At Montezuma Bird-A-Thon

ASCR's Capitol Cuckoos birding team logged 113 species in the annual Montezuma Muckrace bird-a-thon, held at the wetlands complex on September 12. Led by board members Jane Graves and Alison Van Keuren, along with ace birders Larry Rowland and Meena Haribal, the team left a low-carbon tire-print, averaging close to 40 birds per gallon in their Prius (actual BPG may vary). The bird of the day was a Red Knot, a first ever for the 11-year Muckrace.

Funds raised by the Muckrace go to support stewardship projects at the wetlands complex. This year's project is a shorebird habitat improvement initiative. Donations, payable to "Friends of the Montezuma Wetlands Complex", will be accepted thru October 10. To support the cause, send your donation to Muckrace, 159 Sapsucker Woods Road, Ithaca, NY 14850. Last year, ASCR pledges totaled over \$700, accounting for more than 10% of the Muckrace total.

## Audubon Society of the Capital Region

### Annual Report Available On-Line

What has your chapter been up to lately? You can check out ASCR's Annual Report on line, <http://www.capitalregionaudubon.org> for a recap of our 2007-08 achievements and our Annual Plan for 2008-09.



**\*\*\* For Programs, Field Trip, & Further General  
Environmental Information, Visit Us on the Internet at:**

**[www.CapitalRegionAudubon.Org](http://www.CapitalRegionAudubon.Org)**



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