

Shoreline

October 2008

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Supreme Court Decision Favors Florida's Beach Program



There isn't a member of the Association who hasn't followed the case of the Florida Department of Environmental Protection and Walton County vs. Stop the Beach Nourishment, Inc.

The core issue was the constitutionality of beach restoration in Florida, specifically the establishment of Erosion Control Lines, recorded boundaries vesting title landward to riparian upland owners and seaward to the state. The first ECL was established in Dade ..

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built in the next 12 to 14 months will be briefly summarized herein. Much of this information was presented in summary at the FSBPA Annual Conference held last month at South Seas Resort. For those projects not yet underway, the ...

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Florida Beaches Assessed Following Tropical Storm Fay



US Army Corps of Engineers

Tropical Storm Fay made its way through Florida this past August making land fall in several locations. The entire state was designated as being adversely affected by the storm and Federal assistance was authorized for debris removal and emergency protective measures. Emergency protective measures (Category B) could include the construction of an emergency beach berm to protect improved property from an immediate threat. Sixteen ...

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Don Donaldson Elected 2009 FSBPA Chair



Most of you personally know Don Donaldson. He has been the Director of the Engineering Department for Martin County since 1998.

At FSBPA's annual membership meeting on Thursday September 11, 2008, Don was elected as our Chair for

the coming year. Don is one of our well-tenured Board members. He served 2 three-year terms on the Board of Directors from 2000-2005, including his first stint as Chair in 2005. He finished a vacant term in 2006 ...

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Elko Elected to FSBPA Board



FSBPA is delighted to welcome Dr. Nicole Elko to the Board. She was elected by the membership at our annual meeting on September 11th.

She brings to us her educational expertise with a Ph.D. in coastal geology, and her experience in managing

one of Florida's most successful local government beach programs. Pinellas County is the local sponsor for a 25-mile project ...

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The Florida Supreme Court Rules in Favor of Florida's Beach Program

By Debbie Flack
Director of Governmental Affairs

There isn't a member of the Association who hasn't followed the case of the Florida Department of Environmental Protection and Walton County vs. Stop the Beach Nourishment, Inc.

The core issue was the constitutionality of beach restoration in Florida, specifically the establishment of Erosion Control Lines, recorded boundaries vesting title landward to riparian upland owners and seaward to the state. The first ECL was established in Dade County in 1973. Since then, arguably 50 projects later, over 200 statute miles of ECLs have been established. Imagine the dire implications of an adverse ruling to future beach restoration projects. And no one has ever wanted to explore the potential landmines for the dozens of existing restored beaches throughout the state.



The Association, while supportive of DEP and Walton County from early on in 2004, did not formally involve itself in this litigation until the First District Court of Appeals ruled on April 28, 2006 that in establishing ECLs, "constitutionally protected rights have been deprived without just compensation." The decision was appealed on September 25, 2006. The Supreme Court, fortunately accepted jurisdiction in the case, and FSBPA went to work promoting the cause, seeking legislative assistance and counsel from the Governor's Office. Most importantly, FSBPA secured the legal services of our long-time friend, Linda Shelley. She prepared an amicus brief for the Association (and filed it on October 31, 2006 with the Supreme Court); she provided guidance during our many long conversations with other interests on the possible ramifications of an adverse decision; and she crafted a statutory property rights/benefits offset as a necessary and protective amendment to the Beach and Shore Preservation Act. With the help of the Senate Environmental and Conservation Committee and Representative Stan Mayfield during the 2007 Legislative Session, this offset is now the law should Florida's beach communities ever need it in any action alleging a taking as a result of a beach nourishment project.

Then oral arguments before the Supreme Court were heard on Thursday April 19, 2007. And then . . . we waited for a decision, which seemed like, and was, a painfully long time. However, the [Florida Supreme Court's decision](#), released Monday, September 28, 2008, was well-worth the wait.

The Supreme Court found, as many of you have reviewed by now, that Chapter 161, the Beach and Shore Preservation Act "**does not unconstitutionally deprive upland owners of littoral rights without just compensation,**" thus reversing the First District determination that section 161.191 results in a taking of upland owners' littoral rights to receive accretions and maintain direct contact with the water. *To quote from the opinion, "the Act effectuates the State's constitutional duty to protect Florida's beaches in a way that reasonably balances public and private interests. Without the beach renourishment provided for under the Act, the public would lose vital economic and natural resources. As for the upland owners, the beach renourishment protects their property from future storm damage and erosion while preserving their littoral rights to access, use, and view. Consequently, just as with the common law, the Act facially achieves a reasonable balance of interests and rights to uniquely valuable and volatile property interests."*

So let's celebrate a 5-2 decision. I must point out the scathing dissenting opinion by Justice Lewis. I am sure the Southeastern Legal Foundation and the handful of affected property owners, AKA "Stop the Beach Nourishment", are carefully reviewing their options for a rehearing or a U.S. Supreme Court review. Unfortunately, two justices that heard this case have just left the Court, both on the prevailing side, so we will just have to wait and see, and savor the moment.

I want to let you know how much member expressions of appreciation, and kind words from legislative and agency supporters, on FSBPA's contribution to this critical challenge to the foundation of Florida's beach management program have meant. Very nice to hear!

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The Florida Supreme Court Rules in Favor of Florida's Beach Program

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Sometimes, it is best said by someone one-step removed from the fray. Doug Sale, who I often turn to for wise counsel is attorney for the Bay County Tourist Development Council and Panama City Beach, and is intimately involved in their beach nourishment project. In sharing the news, Doug wrote:

“Beach nourishment is held to be constitutional. That is, setting the erosion control line and cutting off some private property rights at that point is not an unconstitutional taking without compensation. As I have always said, the court finds that the upland owner doesn't lose much and is benefited by the protection of the additional sand. The case also makes a clear statement of the public's rights in the wet sand. Prior to this opinion, there were only a couple of cases giving us any guidance.

The decision is long and scholarly, but the conclusion on page 36 is short and clear. Under this decision there can be no doubt that even without nourishment, the wet sand belongs to the state in trust for the public. (See Public Trust Doctrine discussion on page 11.) After nourishment, the state owns below the Erosion Control Line and the court holds that is constitutional.

Bottom line, no surprises - this is what we always thought and how we always acted - but now we know.

This opinion assures that every resident and tourism-related business proximate to a nourished beach can continue to benefit from the attraction of that beach to the public generally. A fine balance of the rights of the upland owners and the public.”

The final word deservedly belongs to Ms. Shelley, who on FSBPA's behalf, stated:

“We are very pleased that the Court upheld the constitutionality of the Beach and Shore Preservation Act and recognized that the Act fairly and carefully balances public and private interests. The opinion is thorough and well-reasoned and will provide needed guidance to lower courts and Florida's citizens and local governments as they undertake needed restoration of critically eroded beaches.”

[\(Read the Supreme Court Opinion\)](#)

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Beach Restoration and Nourishment Projects Underway and Anticipated for 2009

Michael R. Barnett, P.E., Chief
FDEP Bureau of Beaches & Coastal Systems

The status of beach restoration and nourishment projects either currently under construction or anticipated to be built in the next 12 to 14 months will be briefly summarized herein. Much of this information was presented in summary at the FSBPA Annual Conference held last month at South Seas Resort. For those projects not yet underway, the expectation is that all such initiatives identified will have the requisite permits and funding sufficient to realize at least mobilization on or before the end of December 2009.

Beach Restoration Projects Under Construction.

At this writing, there are two beach restoration projects actively under construction in the state of Florida. The 7.5 mile long, 3.6 million cubic yard St. Joseph Peninsula Beach Restoration Project (Gulf County, between DEP Reference Monuments R-67 and R-105.5), has been under construction since March 26, 2008. The passage of Hurricanes Gustav and Ike to the west of the peninsula, and a marine turtle take by the hopper dredge Bayport mandated only temporary shutdowns of the project, but otherwise there have been no delays in the construction phase.

The project (see photographs) is approximately 79% complete by length, with about 65% of the total volume in place. Construction commenced in the St. Joseph Peninsula State Park and has realized a southern progression of the fill. Borrow areas are located offshore of the southwest portion of the peninsula, and the sand being excavated is a very close 'match' to the native beach in both grain size distribution and color. Sand placement – which includes a 'stepped' berm at +5 and +8, as well as a dune feature with a crest elevation of +12 NAVD – is expected to continue until January 2009. The dune feature will be planted in spring 2009 with approximately 660,000 salt-tolerant plants, which will consist predominately of sea oats.



St. Joseph Peninsula Project, vicinity R-96; photo 9/27/08 courtesy MRD Assoc.



St. Joseph Peninsula Project, constructed template at R-96; photo taken 9/30/08

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Beach Restoration and Nourishment Projects Underway and Anticipated for 2009

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The Nassau County Shore Protection Project is expected to be completed on October 31, 2008. A total of 3.8 miles of Atlantic Ocean Shoreline will be restored. As with the St. Joseph Peninsula project, the passage of tropical storms and hurricanes, and more recently nor'easters near the project location since initiation of construction in July 2008 necessitated discrete delays in active construction. A total of 1.7 million cubic yards of beach-quality sand was scheduled to be excavated from a sand source located offshore and north of the project area – south of the St. Mary's Entrance Channel. In response to sand losses due to the recent storm activities, an additional 130,000 cubic yards of sand will be placed. The project (see photographs), which extends between FDEP Reference Monuments R-11 and R-34, provides storm protection as well as recreational benefits to the community of Fernandina Beach. The project additionally affords the same benefits to portions of the Fort Clinch State Park and American Beach.



Nassau County Project, completed template at R-21. Photo date 8/9/08 courtesy of Olsen Associates, Inc.



Nassau County Project, construction in vicinity R-15, September 2008 Photo courtesy of Olsen Associates, Inc.

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Beach Restoration and Nourishment Projects Underway and Anticipated for 2009

Continued from Page 5**Beach Restoration and Nourishment Projects Anticipated to be Constructed – Next 14 Months**

A brief summary of those projects that are expected to either be actively pursued or ready to proceed follows. The project name, county location and approximate shoreline length (and approximate volume, where known), are provided by region. The regions are consistent with those depicted in the statewide Strategic Beach Management Plan.

Region/	County	Project Name	Shoreline Length, Miles	Volume, CY (approx.)
<i>Panhandle Gulf</i>				
	Okaloosa	Ft. Walton Beach/Eglin AFB Restoration	8.0	3,152,000
	Okaloosa	Destin/Holiday Isle Restoration	3.2	1,395,000
	Bay	Pinnacle Port/Carillon Beach	1.5	395,000
	Bay	Panama City Beaches Nourishment	16.8	725,000
	Bay	Mexico Beach Inlet Sand Transfer	NA	NA
<i>Southwest Gulf</i>				
	Pinellas	Treasure Island Nourishment	1.5	300,000
	Pinellas	Blind Pass/Upham Beach (Bypassing)	0.8	100,000
	Manatee	Anna Maria Island Nourishment	0.6	25,000
		Coquina Beach Restoration	1.4	420,000
	Sarasota	Lido Key Nourishment	1.5	328,000
	Lee	Blind Pass Ecosystem Restoration	0.4	118,000
	Lee	Matanzas Pass (Bypassing)	TBD	TBD
	Lee	Estero Island Shore Protection Project	5.1	1,080,000
<i>Central Atlantic</i>				
	Brevard	South Reach Nourishment	3.8	750,000
	Indian River	Wabasso (Sector 3) Restoration	7.1	643,000
	St. Lucie	Fort Pierce Nourishment	1.3	500,000
	Martin	Bathtub Beach Park Restoration	0.2	30,000
<i>Southeast Atlantic</i>				
	Palm Beach	Juno Beach Nourishment	2.4	1,000,000
	Palm Beach	Singer Island Segmented Breakwaters	NA	NA
	Palm Beach	Town of Palm Beach Reach 8 Restoration	1.7	724,000
	Palm Beach	North Boca Raton Nourishment	1.4	680,000
	Palm Beach	South Boca Raton Nourishment	1.0	200,000
	Broward	Hillsboro Beach Nourishment	1.2	375,000
	Dade	Sunny Isle Nourishment	2.8	1,000,000
	Dade	Bakers Haulover Inlet (Bypassing)	NA	NA
	Dade	Bal Harbour/Miami Beach Nourishment	TBD	TBD

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Don Donaldson, Longtime
FSBPA Board Member,
Elected 2009 FSBPA Chair

By Debbie Flack
Director of Governmental Affairs

Most of you personally know Don Donaldson. He has been the Director of the Engineering Department for Martin County since 1998.

At FSBPA's annual membership meeting on Thursday September 11, 2008, Don was elected as our Chair for the coming year. Don is one of our well-tenured Board members. He served 2 three-year terms on the Board of Directors from 2000-2005, including his first stint as Chair in 2005. He finished a vacant term in 2006-2007, before being elected for a new three-year term a year ago.

You may not know that Don began his career with the Corps of Engineers, and before serving as Martin County's Coastal Engineer from 1996-1998, held the same position in Indian River County.

Don's service to the Association has been exceptional and greatly appreciated. He represented FSBPA on the Governor's Coastal High-Hazard Commission. He now brings his management expertise to the current legislatively-mandated working group review of the effectiveness of Florida's beach management program.

Don is the recent recipient of FSBPA's Local Government Award for his leadership and contributions to Martin County's beach management program as well as to this Association. He represents the level of commitment, experience, and expertise of FSBPA's Board of Directors and local government members.

We are very fortunate to again have Don as our Chair. The fiscal and policy challenges Florida's Beach Management Program is currently facing are unprecedented. His quiet leadership and direction will be invaluable assets.

A Message From the Chair ...

While I look forward to serving as the chairman of the Florida Shore & Beach Preservation Association over the coming year, I must admit the current challenges facing Florida's beach program and its coastal communities are daunting.

Over the past decade, managing our beaches has enjoyed the considerable benefits of a most successful partnership between local, state, and in many cases the federal government. How quickly and dramatically the economic downturn has undermined this intergovernmental effort. Congressional funding is no longer predictable or timely. Documentary stamp tax revenues, the source of state beach matching funds, have significantly declined in direct proportion with the housing downturn. All of us at the local government level are witnessing drastic cuts in services and expenditures at every turn. Timing is everything!

Within this setting, the statewide beach management program is increasingly being scrutinized regarding spending rates, permitting frustrations, contract management procedures, and its ability to address the concerns of other coastal interests.

These are indeed challenging times. Securing adequate funding and making corresponding program improvements to insure cost effectiveness and accountability must be front and center, as part of the Association's agenda. My number one priority is getting the funds to *construct* our approved coastal projects. I am asking each of our local government members that enjoy the benefits of FSBPA and the benefits of substantial state funding support for their beach programs to step forward. Remind local elected officials just what the beach means to your community's economic and social well-being. The message must get to Tallahassee and Washington. Keep in mind, we know even before the election that over a quarter of the members of the Florida House of Representatives for the 2009 Session will be new. The Association's professional staff can't do it alone. They need the reinforcement of each of us, our lobbying resources, and elected officials.

I believe FSBPA, specifically the local governments and professional interests it represents, is in large part responsible for the historical success of Florida's beach program. So let's keep it up. I welcome your counsel and advice.



DON DONALDSON

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Rep. Stan Mayfield, Stalwart Supporter of Florida Beaches, Dies at 52

By Debbie Flack
Director of Governmental Affairs



Rep. Stan Mayfield (Florida House of Representatives, District 80, including beach communities in Indian River, Brevard and St. Lucie Counties) passed away September 30 after a courageous battle with cancer.

Stan's legislative legacy was clearly tied to Florida's environmental agenda, and fortunately for FSBPA's coastal communities, beaches were his special beneficiaries.

Under his chairmanships of the House Environment and Natural Resources Council, and previously the Agriculture and Environment Appropriations Subcommittee, Florida's Beach Management Program received unprecedented state funding. He even creatively kept "beaches" funded at historical levels throughout the 2008 Session despite an absence of

adequate documentary stamp tax revenues, the program's only dedicated funding source.

Representative Mayfield was the House sponsor of both of the Association's most recent legislative initiatives. This past session, because of his leadership, House Bill 1426 passed unanimously. It redirects and recommits the State's beach management program to more effectively address beach erosion caused by our inlets. These new provisions to Chapter 161, the Beach and Shore Preservation Association Act, may prove in time to be a landmark addition to Florida's nationally-recognized program, and will always bear the name and common sense approach of its sponsor, Stan Mayfield. Perhaps, Rep. Mayfield's greatest contribution to statewide beach management will prove to be his 2007 committee "beaches" package which included the property/benefits offset amendment to Chapter 161, requiring that the value of a riparian right be offset by the amount the upland property benefits in any takings proceeding involving beach nourishment. In this regard, Stan's instincts were again correct in anticipating the Florida's Supreme Court's decision on Monday, September 29, 2008 upholding the constitutionality of beach nourishment, pursuant to Ch. 161.

Representative Stan Mayfield was the deserving recipient of FSBPA's 2008 Legislative Award. He was not able to join us at last month's annual conference, but he was well-aware of the recognition.

Stan was a legislative advocate and champion on behalf of Florida's beaches. We will truly miss him, and his leadership and commitment!

We extend our deepest sympathy to the family of Stan Mayfield - - his wife, Deborah; and his sons, Evan, Samuel, and Coleman.

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Florida Beaches Assessed Following Tropical Storm Fay

By Marty Durkin
Jacksonville District, USACE



Collier County After Tropical Storm Fay

Tropical Storm Fay made its way through Florida this past August making land fall in several locations. The entire state was designated as being adversely affected by the storm and Federal assistance was authorized for debris removal and emergency protective measures. Emergency protective measures (Category B) could include the construction of an emergency beach berm to protect improved property from an immediate threat. Sixteen coastal counties around Florida made requests for FEMA assistance to make up for damages to beaches caused by tropical storm Fay. Coastal engineers from Jacksonville District were called upon to conduct preliminary damage assessments (PDAs) with FEMA. The beach assessments were conducted with a FEMA representative and persons representing the state, county, and/or local beach. The Corps of Engineers provided these teams with a person of coastal expertise to estimate the quantity and value of sand loss from beaches as a result of Tropical Storm Fay. Information gathered from PDAs is used to support declaration requests and determine if damages exceed state and local resources.

Southwest Florida was the first region to feel the impacts of Fay. The storm came on shore in Monroe and Collier Counties. In Monroe County, beaches had some erosion damage due to Fay. Any sand loss to the beaches in the Keys is significant because of the additional cost involved with truck hauling sand in from the Lake Okeechobee area. In Collier County inspections revealed scarping along the beaches. To the north, Sarasota County was assessed at a later date when impacts from both Fay and Gustav had gone by, but no significant erosion was found.

Fay then moved east across the state where it entered into the Atlantic Ocean in northern Brevard County. There were two stretches of beach in Brevard County which had previously received FEMA berms for damages from storms in years past. Inspections here revealed considerable scarping and reduction of berm width. Flooding due to massive rainfall amounts caused many other problems for Brevard County as well.



Fay's Effects on Brevard County Beaches



Flagler County Following T.S. Fay

To the south of Brevard, PDAs were conducted in St. Lucie, Martin, Palm Beach, Broward, and Dade Counties. Overall there was no significant erosion to these beaches. The damages in this region due to Fay were comparable damages that would come from a moderate Nor'easter.

North of Brevard, Fay made landfall near the border of Volusia and Flagler Counties. FEMA PDAs were conducted for both of these counties. There was some reduction in berm width in parts of New Smyrna Beach, but overall condition of Volusia County after Fay appeared good and no extensive damage was observed. The beaches in Flagler County held up fairly well, however south of the Flagler Beach Pier impacts to the beach were more noticeable and several beach access walkways were damaged.

Fay's next move was westward across the state and into the Gulf of Mexico and back onto land in the Apalachicola area where its effects could be felt by beaches in the Big Bend and Panhandle Regions. PDAs for this area were conducted in Pasco, Dixie, Wakulla, Gulf, and Okaloosa Counties. While several of the beaches had some signs of erosion the inspections revealed no catastrophic impacts as a result of Fay.

The Corps beach assessment team is currently remaining on stand by to perform any PDAs potentially needed for impacts from other storms. In addition to supporting beach assessments, volunteers from Jacksonville District have also been deployed on commodities and urban search and rescue teams for hurricane relief in support of FEMA this hurricane season. One of the Corps missions is to provide assistance, within its authorities, when natural disasters or other emergencies occur. The Corps places priority on providing emergency assistance to do various missions under the Federal Response Plan.



Dixie County After Fay

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Dr. Nicole Elko Elected to FSBPA Board of Directors

By Debbie Flack
Director of Governmental Affairs



FSBPA is delighted to welcome Nicole to the Board. She was elected by the membership at our annual meeting on September 11th.

She brings to us her educational expertise with a Ph.D. in coastal geology, and her experience in managing one of Florida's most successful local government beach programs. Pinellas County is the local sponsor for a 25-mile project, federally-authorized in 1953. Active segments include Sand Key, Treasure Island, and Long Key. Treasure Island, the initial segment, was restored in 1969, the "first" west cost beach restoration project.

Since 2002, Nicole has served as Coastal Coordinator for Pinellas County. She is responsible for overseeing the entire countywide, multi-million dollar beach erosion control program. Her responsibilities include administering state and private contracts for all phases of the program. She also has overseen numerous permit applications to DEP for shore protection and inlet projects.

"FSBPA plays a major role in retaining Florida's status as the best beach management program in the country and I am honored to help guide Florida's program through future challenges" – Dr. Nicole Elko

Nicole's responsibilities, beyond managing the Pinellas County federally-authorized beach erosion control project, extend to inlet management activities involving Clearwater Pass, John's Pass, Pass-a-Grille, and the ICW maintenance of Hurricane Pass and Blind Pass, as well as park

projects at Honeymoon Island, Ft. DeSoto, and Egmont Key. Nicole's near future will involve the scheduled nourishment of Treasure Island/Long Key in 2009, Sand Key in 2010, and Honeymoon Island in 2010. She will, indeed, be busy!

FSBPA has already benefitted for a number of years from Dr. Elko's expert presentations at our Annual Meetings and National Conferences on Beach Preservation Technology. Her most recent presentation, in September, "Maintaining Sandy Shorelines: Challenges of Accelerating Sea Level Rise," was exceptional, reasoned and very well-received by our members. We expect her to bring her communication skills to our board meetings and to reinforce FSBPA's BeachWatch governmental affairs agenda by discussing challenging and complex beach management issues with locally-elected officials.

We are fortunate to have Nicole on FSBPA's Board of Directors and look forward to her counsel and future contributions.

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Calendar of Events

October 15-17, 2008

ASBPA Fall Conference
Holiday Inn Chicago Mart Plaza
www.asbpa.org

February 16-18, 2009

10th Annual CIRP Workshop
TradeWinds Island Resorts
St. Petersburg Beach, FL
<http://www.fsbpa.com/semregistration.htm>

February 18-20, 2009

National Conference on Beach Preservation Technology
TradeWinds Island Resorts
St. Petersburg Beach, FL
<http://www.fsbpa.com/semregistration.htm>

April 6-10, 2009

National Hurricane Conference
Austin Convention Center
Austin, TX
www.HurricaneMeeting.com

September 16-18, 2009

FSBPA Annual Meeting
Amelia Island Plantation
Amelia Island, FL

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**A monthly electronic publication of the
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