

FINAL INFORMATION: The High Cost of Poor Planning Virtual Media Conference  
March 2, 2023, at 10 a.m., Eastern, via Zoom



**DEFENDERS OF WILDLIFE**



**MEDIA ALERT**

**VIRTUAL PRESS CONFERENCE**

**ZOOM LINK:**

<https://us02web.zoom.us/j/86790067210?pwd=UENqSHhXR XU0YmNndFVlcnhVMTNzQT09>

**FINAL MATERIALS INCLUDED IN THIS DOCUMENT**

**The High Cost of Poor Planning**

**March 2, 2023, at 10:00 a.m., Eastern**

As the fastest growing state in the nation, Florida faces intensive development pressure and needs visionary and balanced leadership to ensure new development doesn't overcrowd our roads, pollute our drinking water, kill our wildlife and cost taxpayers millions.

Unfortunately, this Legislative session is shaping up as the "Session of Sprawl," the worst blow to sound community planning in more than a decade.

In his Executive Order 23-06, Governor Ron DeSantis called for Florida's Department of Environmental Protection, Department of Economic Opportunity, and local governments to work together "to improve local government long-term comprehensive planning that ensures sustainable growth while protecting our natural resources."

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But a number of legislative proposals this session would undermine this sound planning, in effect opening the floodgates for sprawling new development, discouraging citizen involvement, and circumventing Florida's constitutional requirement for government in the sunshine.

If passed, these bills will result in more traffic, more pavement, more runoff — and more problems.

Please join us at 10:00 a.m. Eastern, on Thursday, March 2, on Zoom for a half-hour presentation followed by a question-and-answer period.

Presenters will share what is at stake for Florida's citizens and local governments, and everyone's quality of life and pocketbooks. Find out about more sound and fiscally responsible ways to address Florida's tremendous growth that results in better communities for us all.

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**AGENDA**

- An Overview of Damaging Legislation and Impacts on Citizens and Communities
  - Jane West, 1000 Friends of Florida Policy & Planning Director
  - Bob Howell, Plaintiff in Challenge to Lime Rock Mining Operation
- The Fiscal and Social Impacts of Poor Planning
  - Vivian Young, AICP, 1000 Friends of Florida Communications Director
- The Impacts of Poor Planning on Florida's Waters
  - Gil Smart, VoteWater Executive Director
- The Impacts of Poor Planning on Florida's Environment
  - Eve Samples, Friends of the Everglades Executive Director
- Recommendations to the Governor and 2023 Legislature for Moving Forward
  - Richard Grosso, President of Richard Grosso, P.A., in Plantation, Fla.
- Question & Answer Period

**CONTACT INFORMATION**

- Jane West, 1000 Friends of Florida Policy and Planning Director, 904-671-4008
- Richard Grosso, President of Richard Grosso, P.A., in Plantation, Fla., Florida Conservation Voters Board Member, 954-801-5662
- Bob Howell, Plaintiff in Challenge to Lime Rock Mining Operation, 813-787-6755
- Vivian Young, AICP, 1000 Friends of Florida Communications Director, 850-264-4090
- Gil Smart, VoteWater Executive Director, 772-209-2596
- Eve Samples, Friends of the Everglades Executive Director, 772-485-8164
- April Olson, Conservancy of Southwest Florida Senior Environmental Planning Specialist, 239-262-0304, Ext 250
- Kent L. Wimmer, AICP, Defenders of Wildlife Northwest Florida Senior Representative, 850-528-5261
- Laura Rivera, Florida Conservation Voters Communications Director, 813-424-9952
- Casey Darling Kniffin, Florida Oceanographic Society Advocacy Coordinator, 561-371-3903
- Josh Sproat, Hold The Line Coalition Policy Director, 724-719-1490
- David Cullen, Lobbyist for Sierra Club Florida, 941-323-2404
- Matt DePaolis, Sanibel-Captiva Conservation Foundation Environmental Policy Director, 952-807-8472
- Kimberleigh Dinkins, Save the Manatee Senior Conservation Associate, 352-895-8693

## 2023 FLORIDA LEGISLATION OF CONCERN

### Undermining state planning law

**HB 439 Land Use Development Regulations** by Representative McClain:

- Redefines “sprawl” as nothing more than “unplanned development” requiring the extension of public facilities.
- Increases density in “agricultural enclaves.”
- Ends local government’s ability to deny zoning changes because there aren’t enough roads, schools or other infrastructure to support the development.

### Intimidating citizens to stymie local engagement

**HB 359/SB 540 Local Comprehensive Plans** by Senator DiCeglie and Representative Duggan:

- Citizens who sue over a comprehensive plan amendment and lose would have to pay the attorney fees of the “prevailing party” — the developer and local government.
- This will almost certainly deter well-meaning citizens from challenging controversial amendments.

### Keeping citizens in the dark

**HB 397 Public Meetings** by Representative Tuck:

- Would allow local governments to meet privately with developers’ attorneys who have made a Bert Harris Private Property Rights Act claim, allowing for backroom deals on important public issues.

### Shutting down citizen challenges

**HB 856/HB 41 Land Development Initiative and Referendum Process** by Senator Rodriguez and Representative Garcia:

- Would prohibit local initiatives or referendums on land development regulations, cutting off another opportunity for citizens to participate.

## **Holding local government hostage**

### **SB 170 Local Ordinances** by Senator Trumbull:

- Would require local governments to prepare a business impact estimate before enacting certain ordinances.
- Provides additional ways for businesses to sue local governments.
- One business could file a challenge against a widely supported local ordinance and prevent implementation.

## **Rubber stamping development**

### **SB 346/HB 383 Public Construction** by Senator DiCeglie and Representative Philip Wayne

“Griff” Griffiths:

- Would give local governments just 180 days to review proposed zoning changes, variance approvals and other development orders unless the developer and other parties agree to an extension.
- Many counties and municipalities communities will either be forced to hire additional staff to meet the deadline, or rubber stamp development without adequate review.

### **SB 682/HB 671 Residential Building Permits** by Senator DiCeglie and Representative Espito:

- Reduces the time a local government has to approve or deny building permits from 30 business days to 9 calendar days.
- As with SB 346/HB 383, an unfunded mandate that puts local governments under the gun to approve construction without sufficient review.



*Protecting Southwest Florida's unique natural environment and quality of life ... now and forever.*

### **HB 359 and HB439: The final blows to Florida's growth management laws**

Florida is the fastest growing state in the United States.<sup>1</sup> Citizens must have *all* tools necessary to fight bad decisions by local governments when they approve sprawling developments that illegally destroy our state's unique flora and fauna and natural areas, pollute our waters, and unlawfully burden taxpayers. However, since 2019, there has been a concerted effort by some lawmakers to disempower citizens from challenging development. Their plan of attack has been three-fold: First, make it financially unfeasible for most citizens to challenge a local government's approval of a development order. Second, make it financially unfeasible for most citizens to challenge a comprehensive plan or plan amendment. Third, severely limit the types of claims that citizens can bring to challenge a development order.

House Bill 7103 was the first blow to citizen rights. HB 7103 became law in 2019 and entitled the prevailing party in a challenge to a development order to recover attorney fees and costs (Section 163.3215(8)(c)). This means that citizens and public interest groups who lose in a challenge to a development order could be on the hook to pay enormous legal costs of deep-pocketed developers and local governments, which could be in the hundreds of thousands or even millions of dollars. Since HB 7103, only the Conservancy of Southwest Florida (Conservancy) and one other public interest group has had the fortitude and financial strength to challenge an illegal development, even though Florida has experienced dramatic growth.

The second prong of the attack is this year's House Bill 359 and its companion Senate Bill 540. HB359/SB540 include many disastrous provisions, including one that would entitle prevailing parties to recover attorney fees and costs in challenges to comprehensive plans and plan amendments, which again could be in the millions of dollars. These mandatory fee-shifting provisions are an assault on the public's right to due process. The other provision is a change to Florida's Community Planning Act, which would severely *limit* challenges to development orders by only allowing challenges to a provision that "materially alters the use or density or intensity of use on a particular piece of property rendering it not consistent with the comprehensive plan." In other words, any provision of development orders that does not materially alter the use, density or intensity of a piece of property will be immune from challenge. Numerous public interest groups are concerned about HB359/SB540, as is the Conservancy.

House Bill 439 is the third spur in the assault, and doubles down on limiting challenges to development orders by redefining the definition of "intensity". Under the Community Planning Act, "intensity" currently includes a development's ***demand on natural resources and demand on public facilities and services***. These terms are very important as local comprehensive plans consist of numerous policies designed to minimize a development's impact on natural resources,

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<sup>1</sup> <https://www.census.gov/library/stories/2022/12/florida-fastest-growing-state.html>

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such as policies to protect water resources, requirements to minimize nutrient loading and pollution of freshwater and estuarine systems, and policies to protect wetlands and habitats. Furthermore, local comprehensive plans consist of many other policies designed to minimize a development's impact on public facilities and services such as roads, schools, water, sewer, parks, and law enforcement. However, if HB439 becomes law, "intensity" would only refer to a development's measurement quantified as square feet per unit of land. Thus, the public would no longer have the right to challenge a development order due to the project's unlawful impact on natural resources and public facilities and services. HB439 would make many provisions of local comprehensive plans unenforceable.

Citizen rights to combat damaging growth must be protected. House Bill 359/SB540 and House Bill 439 strip citizen rights and remove the basis for claims related to the protection of natural resources and protection of taxpayers' wallets. If these bills become law, they will **destroy** growth management and community planning throughout the state of Florida. Please help us knock the legs out from under this triple attack that has been waged against citizen rights by urging your legislature to **reject** **HB439** and **HB359/SB540**, and by overturning the fee-shifting provision in Section 163.3215(8)(c).

## RECOMMENDATIONS

### Implementing Executive Order #23-06

In his Executive Order #23-06 released on January 10, 2023, Gov. DeSantis stated his commitment to:

Partner with the Department of Economic Opportunity and local governments to improve local government long-term comprehensive planning that ensures sustainable growth while protecting our natural resources, including prioritizing sewer connections and advanced wastewater systems that can sustain increased population demands and protecting taxpayer investments in Everglades restoration projects and major land conservation and water quality protection programs.

Following are recommendations the Governor and 2023 Florida Legislature can undertake to implement this order.

#### What the Governor Can Do

1. **Ask the Legislature not to pass, and declare that he will veto, the bad land-use planning bills currently being proposed.**
2. **Protect state resources and facilities: Florida Department of Economic Opportunity and comprehensive plan reviewing agencies.**
  - a. Require that local comprehensive plan amendments that (1) increase demands on state-maintained hurricane evacuation routes; (2) increase allowable land uses, densities or intensities within 2 miles of Everglades or Biscayne National Parks or land under consideration for inclusion in an authorized CERP Project, land owned by a water management district, DEP or FFWCC for conservation, recreation or wildlife management, or acquired in whole or in part with state funding, national marine sanctuary, or are within (3) a Coastal High Hazard Area are closely reviewed by DEO, due to their heightened potential to “adversely impact important state resources and facilities.”

This is useful because section 163.3184, Fla. Stat. limits DEO and other agency comments and challenges to local comp plan amendments only if they would “adversely impact important state resources and facilities” but that term is undefined and, lacking direction from the chief executive, the agencies, especially DEO, refrain from making substantive comments. Clearer policy direction would send a message of support for more meaningful strong comments.

- b. Direct DEO, in its review of proposed local government comprehensive plan amendments, to fulfill its responsibility to prevent adverse impacts to important state resources and facilities by providing comments and objections that ensure that local comprehensive planning decisions (1) discourage urban sprawl; (2) maintain or reduce hurricane evacuation demands and clearance times; and (3) ensure that private development is fiscally neutral relative to state and local taxpayers.

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**3. Support local land-use plans and ecosystems of statewide importance when planning for state highway projects.**

Direct the Florida Transportation Commission, Fla. Dept. of Transportation, the Fla. Turnpike Authority, and the other highway and expressway authorities to support local land-use plans and ecosystems of statewide importance by not siting or expanding roads through conservation or recreation lands acquired through public financing.

Direct all state road building agencies and county road building agencies using state funds to construct wildlife corridors and underpasses when roads are sited or expanded in areas through wildlife habitats that are adequate, based on recommendations from the Fla. Fish and Wildlife Conservation Commission, to allow for migration of wildlife needed to sustain their populations and avoid collisions.

## **What the 2023 Florida Legislature Should Do**

**1. Repeal the automatic attorney fees penalty put in the law in 2019 (currently 163.3215 (8), Fla Stat) against local citizens who lose when trying to enforce comprehensive plans when development orders allegedly violate the plans.**

Only the very wealthy can run that risk; regular people and non-profits cannot. So comprehensive plans — enacted to serve as local “constitutions” for development decisions — are practically unenforceable and local commissions are unaccountable.

**2. Relieve the Governor and Cabinet (Administration Commission) of the responsibility to rule upon Recommended Orders in comprehensive plan amendment cases.**

Under current law, after a city or county commission has enacted an amendment to its comprehensive plan and that decision is litigated in a formal administrative hearings in which an Administrative Law Judge (ALJ) from the Fla. Division of Administrative Hearings (DOAH) presides, the decision of the ALJ is considered only a recommended order which must be reviewed by either the Governor and Cabinet (if the ALJ found it violated the law) or the Department of Economic Opportunity (if the ALJ found it complied with the law).

This process substantially increases the time it takes to resolve these cases, adds to a backlog of proceedings pending before the Governor and Cabinet, and inappropriately puts the results of a legal proceeding to a vote of an elected body.

**The Legislature should amend the law to deem decisions of an Administrative Law Judge in formal evidentiary comprehensive plan amendment “compliance” proceedings under the Community Planning Act Final Orders that are directly appealable to an appellate court.**

**3. Specifically authorize the Department of Economic Opportunity to adopt a rule identifying “important state resources and facilities” that will trigger heightened state agency review when impacted by comprehensive plan amendments proposed by local governments.**

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Under current law, the phrase “important state resources and facilities” — the linchpin of heightened review of local comprehensive plan amendments by local governments — is undefined, leading to uncertainty and case by case determinations.

But the Community Planning Act currently prohibits the DEO from adopting rules to implement the Act. Authorizing a rule specific for this purpose would resolve that problem by requiring the DEO to seek input from the other state agencies with commenting authority, local government, and the public.

Examples of such resources and facilities could be state hurricane evacuation routes, Coastal High Hazard Areas, state roads, military facilities, ecosystems of statewide significance, and affordable housing.

**4. Simplify land-use litigation and take it out of the trial courts.**

Under current law, legal challenges over local land-use and development decisions are subject to a labyrinth of very different processes. Challenges to comprehensive plan changes are brought before Administrative Law Judges from the Division of Administrative Hearings. But challenges to development approvals are brought before local circuit judges, and, at that, are handled under vastly different processes depending on whether the challenge is enforcing the comprehensive plan or the land development regulations. Judges hear comprehensive plan enforcement cases as a full evidentiary trial, but handle land development regulation enforcement cases as appellate proceedings, which can lead to confusion, unnecessary duplication of judicial labor and expense and inconsistent outcomes. This divergent approach is confusing and time-consuming. Cases brought in local circuit court typically take years to resolve, compared to months in cases before the DOAH. Local circuit court judges have very heavy caseloads and are not often familiar with land-use law, as these cases represent a very small part of their broad dockets.

**The Legislature should amend Chapter 163 to place all challenges to local government development orders before the Division of Administrative Hearings, whose ALJs are familiar with comprehensive planning and land-use law, and where cases can be processed in a matter of months, not years. Challenging parties should be required to raise all issues — whether an alleged violation of a comprehensive plan or a land development regulation — in one unified formal evidentiary hearing proceeding, not multiple cases.**

**5. Fully utilize the Land Acquisition Trust Fund for purposes outlined in the Florida Constitution.**

Many land-use disputes arise because of threats to important natural resources that are in great need of protection but are subject to threatened impacts from development, road-building or extractive uses. Public acquisition of these lands can be more cost-effective and certain than drawn-out battles before local governments and courts, and often offers the most appropriate balance between preserving resources needed to keep Florida sustainable and private property interests. The Legislature should utilize all LATF funds for the constitutionally dictated purpose of the acquisition, restoration, management, and improvement of conservation and recreation land.

## BIOGRAPHIES



**Richard Grosso, President of Richard Grosso, P.A., in Plantation, Fla., and Florida Conservation Voters Board Member**

Richard is a widely recognized environmental public interest lawyer and advocate, with 36 years of experience as a litigator, appellate lawyer, advocate and counselor in federal and Florida environmental, land use, constitutional, property rights and related governmental and administrative law. He has served as a Law Professor at Nova Southeastern University in Ft. Lauderdale, Executive Director and General Counsel of the Everglades Law Center, Inc., Legal Director for 1000 Friends of Florida, and attorney for the Florida departments of Community Affairs and Environmental Regulation. He has represented numerous public interest clients and the state of Florida in federal and state administrative and judicial proceedings.



**Bob Howell, Plaintiff in Challenge to Lime Rock Mining Operation**

Robert Howell was one of the lead plaintiffs in a development order challenge to an approved lime rock mining operation in Pasco County. In 2011, the county heard concerns of the residents that lived near the parcel, including Howell, whose home is located less than 1,500 feet from the proposed mine. Yet the county approved of more intense use of the parcel, including explosive blasting activity to fracture lime rock, drag line excavation, crushing, and distribution of aggregate by large trucks using local two-lane country roads. Howell challenged the development order, won on appeal and the case was remanded back to court for a full trial. Years later, after extensive discovery, failed mediation attempts and extensive motion practice, the case was finally set for trial. Months before the matter went to trial, Governor DeSantis signed HB 7103 into law. The law provided for prevailing party attorney fees for challenges to development orders. Given the substantial risk of facing hundreds of thousands of dollars in attorney fees from the intervening mine operator, Howell instructed his attorney to dismiss the case after eight years of litigation. Today, the nearby residents, including one (who passed away) who suffered from PTSD from the Vietnam war and another autistic child, are routinely faced with startling explosive blasts from the mine that shake the foundations of homes so violently that many residents have cracks in the walls and foundations of their homes. Robert is a highly regarded Management Consultant. He has over 40 years in the computer industry in various positions from Software Engineer to Management of Worldwide engineering and support organizations. He is a 30-year resident of Florida and enjoys performance sport training his Brittanys with his wife of 39 years.

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**Eve Samples, Friends of the Everglades Executive Director**  
After two decades as a journalist, Eve Samples joined Friends of the Everglades in early 2020, recognizing an opportunity to meld her passion for environmental reporting with Friends’ legacy of grassroots advocacy and education. Eve previously worked as opinion editor for the USA TODAY Network-Florida, as a columnist and editor for TCPalm and Treasure Coast Newspapers, and as a reporter for The Palm Beach Post and Pittsburgh-Post Gazette. She is a native of Miami and a graduate of the University of North Carolina at Chapel Hill.



**Gil Smart, VoteWater Executive Director**  
With more than three decades of experience as a high-profile newspaper columnist and investigative reporter, Gil Smart is adept at taking a deep dive on complex issues in search of solutions. A long-time champion of environmental causes, he began work as Friends of the Everglades Policy Director in March 2021 and was named head of VoteWater eight months later. From 2015-2021 he worked as a columnist and editorial writer for TCPalm and Treasure Coast Newspapers in Florida, following a 21-year career as a columnist, editor, investigative reporter, blogger and video blogger at Lancaster Newspapers in his native Lancaster, PA, and five years as a community newspaper editor and writer in Pittsburgh.



**Jane West, 1000 Friends of Florida Policy and Planning Director**  
Jane provides guidance to citizens on critical growth and development issues facing communities across Florida. She advocates before the Florida Legislature for sound community planning that protects Florida’s lands, waters and quality of life, and coordinates 1000 Friends’ legal advocacy efforts. Practicing law for 21 years, Jane is an AV-rated attorney admitted to the U.S. Supreme Court, the 7th and 11th U.S. Court of Appeals and the Southern and Middle Districts of Florida. Jane has a law degree from the Shepard Broad Law Center at Nova Southeastern University and B.A.s in both International Relations and Fine Arts from the University of South Florida.



**Vivian Young, AICP, 1000 Friends of Florida Communications Director**  
Vivian has spent close to four decades working to protect and enhance the quality of life in Florida’s communities. With 1000 Friends since 1996, Vivian coordinates special projects, including *Florida 2070/Water 2070* and the upcoming *Sea Level 2040/Sea Level 2070*. She launched and coordinates the monthly *Dr. John M. DeGrove Webinar Series* which has attracted almost 35,000 attendees since 2011. Additionally, she manages 1000 Friends’ communications and media outreach. Vivian received her Master of Urban Planning degree from the University of Illinois at Urbana-Champaign, her Bachelor of Arts from Washington College, and is a member of the American Institute of Certified Planners.