

# FORESIGHT



Karen & Paul Shidel

FOCUS ON

## Citizen Participation

### Citizen Enforcement of Comprehensive Plans Upheld

BY TERRELL ARLINE, LEGAL DIRECTOR

The court found an apartment complex in Martin County to be inconsistent with the local comprehensive plan. Saying that the developer had acted “in bad faith” and constructed the project while the lawsuit was pending, the court required the developer to tear down the illegal buildings, at a cost of more than \$3 million.

“You do the right things for the right reasons in life,” Ms. Shidel told a reporter for the *St. Petersburg Times*. “There are very few things you fight for. The things you do fight for are your home, your family, your friends. This is one of those things.”

Shidel, a secretary, and her husband, Paul, bought a one-acre lot in Pinecrest Lakes in 1986. They built their home, raised two sons, and looked forward to their retirement years in this quiet, middle-class neighborhood in Jensen Beach. In 1995, the developer of Pinecrest

As a result of the determination of one ordinary citizen, Karen Shidel, courts have issued a landmark ruling in support of growth management that has statewide ramifications. The Fourth District Court of Appeal has upheld the right of citizens to require local governments to follow their comprehensive plans.



All of our lives were changed by the tragic events of September 11. During this time of healing, we extend our heartfelt prayers and wishes to the many affected by this tragedy.

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Foresight is published quarterly by 1000 Friends of Florida, a nonprofit membership organization founded in 1986. 1000 Friends of Florida's mission is to protect and improve Florida's quality of life by advocating responsible planning for the state's population growth.



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# HINDSIGHT

The *Pinecrest* case, although unusual in its facts, does not stray very far from the analysis that the Florida Supreme Court has required of the review of a development order for consistency with the comprehensive plan. And, all too typically, the decision took years to reach while the controversy wound its way through the court system. In the end, Pinecrest Lakes Inc.'s risky decision to go forward with building the apartments during the extensive court proceedings has had serious financial consequences to the developer.

But the toll on citizen groups and other parties in light of the uncertainties during

## A Land Use Board of Appeals for Florida?



NANCY E. STROUD, A SHAREHOLDER WITH WEISS SEROTA HELFMAN PASTORIZA & GUEDES, SPECIALIZES IN LAND USE ISSUES AND CHAIRS 1000 FRIENDS' LEGAL ADVOCACY COMMITTEE.

such court proceedings is also high. Many persons and groups simply do not have the financial resources or staying power to endure the effort and time involved in litigation and appeal proceedings. No doubt there will be some who use *Pinecrest* to argue that the role of citizens and the remedies available under the current law should be changed and limited. I think it may be time to provide changes in the law that benefit all parties by establishing a Florida Land Use Board of Appeals.

A number of states have established specialized courts to hear appeals from local land use decisions. Perhaps most notable is the Oregon Land Use Board of Appeals, or "LUBA," established in 1979, six years after adoption of that state's landmark planning law that was in many ways the progenitor of the Florida growth management legislation.

LUBA hears all appeals of land use decisions made by cities, counties and special districts. Where the local decision is quasi-judicial, LUBA reviews the decision based on the

evidence presented in the local government hearings, much like the circuit court in Florida reviews quasi-judicial matters on petition for writ of certiorari. LUBA also reviews local "legislative" decisions, in a manner similar to the "de novo" review authority of the Florida circuit courts.

LUBA was created to reduce the procedural complexity that had evolved within the Oregon

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*There is a movement afoot to reverse, if not this decision, then the principle of citizen enforcement of local comprehensive plans.*

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# FROM THE DIRECTOR



Charles G. Pattison

**A**s we go to press, the Legislature’s special session to deal with the state’s budgetary crisis has ended, with another on the same topic likely before year’s end. For now, the two biggest funding programs we follow—Forever Florida land acquisitions and the Sadowski Act affordable housing funding—are intact. Vigilance, and a loud voice if things change, will be key.

Currently brewing in the background could be an unfortunate reaction to the recent Pinecrest Lakes decision (see page 1). There is a movement afoot to reverse, if not this decision, then the principle of citizen enforcement of local comprehensive plans. The fine affirmation rendered by the Fourth District Court of Appeal regarding citizen rights and enforcement of local comprehensive

## Ramifications of Pinecrest

plan policies is testament to the sound and fundamental concept of public involvement in planning. Many still do not understand that most often it is an individual citizen that sees to it that local government planning policies are carried out.

Contrary to what those opposed to it say, this decision does not violate local government authority to interpret the policies of the local comprehensive plan. The court carefully examined and attempted to defer to Martin County’s interpretation. However, as the court points out, no local government has the discretion to not apply its comprehensive plan policies. In this particular case, the court found that the placement of the multifamily apartments was clearly inconsistent with the Martin County plan. So now that a citizen has “won,” those opposed argue it is necessary to restore deference to local decisions of this type, regardless of the outcome. Nothing could do more damage to our current system of growth management.

Along with other groups, 1000 Friends has voiced concern about reducing state oversight of local comprehensive plans and plan amendments. We have also agreed that eliminating the review of routine changes would be appropriate, as long as all affected parties agree on the identification of those “routine” changes. Still, citizen enforcement of these plans is crucial to an effective growth management system. There is no reason to alter these existing statutory provisions unless the real motivation is to destroy growth management once and for all. Perhaps this is the time to revive the discussion about replacing court proceedings with a land use board of appeals, as in Oregon (see page 2). While there is always room to refine the citizen participation process, compromising the principle on which this rests would be unconscionable.

# SUCCESSFUL COMMUNITIES

**E**mpowering citizens to build better communities across Florida has long been a goal of 1000 Friends of Florida. Under the auspices of the Florida Panhandle Initiative, we have undertaken a series of activities to help citizens better protect rural resources while promoting compatible economic development in this predominantly rural but growing corner of the state.

## Nature-Based Tourism

In cooperation with The Nature Conservancy, on October 10, 1000 Friends of Florida and The Nature Conservancy held a workshop in Milton on compatible nature-based tourism in the Florida Panhandle. Goals were to explore opportunities for nature-based tourism in the region, and assess interest in creating a compatible tourism development team and strategy. Participants agreed that the Florida Panhandle offers a wide range of outdoor

recreation resources, and that nature-based tourism in the region is likely to grow over the coming years. If planned and executed with care, nature-based tourism can contribute a sustainable source of income to the local economy and occur in a way that preserves the natural resources on which it depends.

As a result of the meeting, a group is being formed to begin crafting a set of strategies for developing nature-based tourism as an enduring and high-value component of the region's economy. These will identify existing key

tourism assets and specify steps to enhance and market those assets. The result will be a blueprint to help ensure development of a sustainable tourism industry.

## Rural Resource Protection

1000 Friends partnered with the Florida Chapter of the American Planning Association to conduct workshops on rural and natural resource protection in Niceville and Marianna on October 16 and 17. The workshops focused on the variety of tools available to help land owners and local governments in Florida conserve farmlands and sensitive environmental resources within farm landscapes.

Speakers covered rural conservation tools including conservation easements, state and federal agricultural programs that promote the protection of the land, pending conservation programs for Florida, and a range of local government tools for protecting sensitive lands and agricultural areas. The workshops wrapped up with a group discussion of future opportunities and needs in the region.

As a part of this effort, a "White Paper" has been drafted outlining tools available to help Floridians better protect rural resources. This draft includes information on a wide range of local, state and federal programs available to protect rural lands and promote economic development in Florida. The final version will be available on-line at [www.1000friendsofflorida.org](http://www.1000friendsofflorida.org) in January of 2002. To review and comment on a draft version, e-mail [dpennington@1000fof.org](mailto:dpennington@1000fof.org).

## Technical Assistance

To assist in addressing problems associated with land use and development, and to foster actions that help preserve the Florida Panhandle's biodiversity, 1000 Friends of Florida is looking for at least three local partners. Partners can be local governments, non-profits or a combination of the two that are working to promote smart growth and natural resource system protection in three designated Panhandle eco-regions.

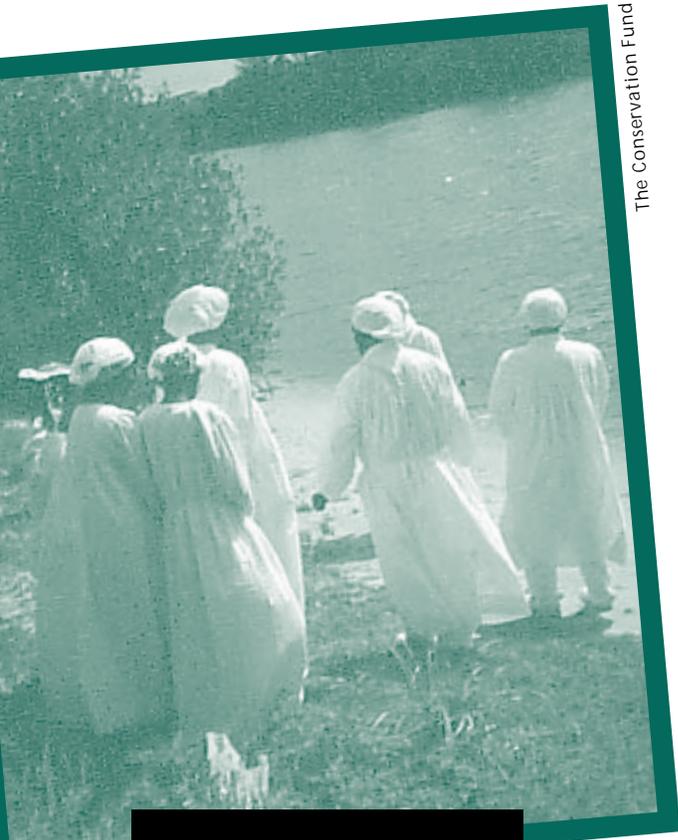
For more information on assistance available through the Florida Panhandle Initiative, e-mail Dan Pennington at [dpennington@1000fof.org](mailto:dpennington@1000fof.org) or call him at 850.222.6277.

This work is being funded in part by the Doris Duke Charitable Foundation.

## Citizen Involvement in the Florida Panhandle

BY DAN PENNINGTON, COMMUNITY PLANNER





The Conservation Fund

A baptism taking place in the historic community of Limestone Creek.

As Palm Beach County's population continues to grow at a rapid pace, smart growth advocates are redirecting some of that growth to established urban areas. They are promoting techniques such as redevelopment and compatible infill development to accomplish their objective. To head off potential problems associated with gentrification and displacement in lower-income urban areas, the "Development Without Displacement" project was created. In 1999 the John D. and Catherine T. MacArthur Foundation funded the FAU/FIU Joint Center for Environmental and Urban Problems and 1000 Friends of Florida to partner in this critical initiative.

# Development Without Displacement

To date, the project has produced the *Development Without Displacement Community Handbook*, a "tool kit" for citizens to promote compatible redevelopment in their neighborhoods. The handbook has been disseminated to key community leaders in the region and is available on line at [www.1000friendsofflorida.org](http://www.1000friendsofflorida.org) (under "Publications"). Now the Joint Center and 1000 Friends are using this tool in working with residents of Limestone Creek and Delray Beach to address specific redevelopment issues facing their communities. For more information, contact Joanne Davis at 561.820.9385 or [capercat@bellsouth.net](mailto:capercat@bellsouth.net).

Citizen participation is the bedrock on which Florida's growth management process rests. It takes an active and informed citizenry to help shape a quality community through the development, implementation, and oversight of the local planning and permitting process. An active and misinformed citizenry has the opposite effect. Participation by a misinformed citizenry can frustrate the local planning process and undermine the community's comprehensive plan.

In the early part of the twentieth century, courts began to uphold a community's ability to zone to protect the "health, safety and welfare" of its citizens. The initial concept was positive—a factory spewing noxious fumes should not be located next to someone's home. A skyscraper should not block all the sun from a neighboring apartment. Uses instead should be "good neighbors." When uses are not good neighbors, neighborhood opposition is good citizenship.

But sometimes neighborhood opposition is anything but good citizenship; such is the case when neighborhood opposition to a residential development is based upon prejudice. This is what happens all too often in the development of

## Affordable Housing NIMBYism: Citizen Participation Gone Awry



BY JAIMIE ROSS, AFFORDABLE HOUSING DIRECTOR

Continued on next page

## SUCCESSFUL COMMUNITIES

### Citizen Participation Gone Awry

Continued from previous page

affordable housing. Either because of malice or misinformation, “neighborhood” opposition argues traffic considerations, overcrowded schools, and other ostensibly legitimate concerns when the opposition is actually based upon fear of race or ethnic diversity, or simply socioeconomic differences.

Oftentimes arguments surround misconceptions about diminished property values, based on the misconception that affordable housing is poorly constructed or designed. NIMBY (the sentiment of “Not In My Back Yard”) opposition is easy to spot with one simple test: ask yourself if the opposition would go away if it were an upscale residential development rather than an affordable residential development.

NIMBYism based on discrimination against low income families or people with disabilities is clearly citizen participation gone awry. Neighborhood residents are, at best, undermining local land use and comprehensive planning and, at worst, violating state and federal civil rights and fair housing laws.

Before launching into opposition against a proposal impacting your neighborhood, please get all the facts. Find out what local plans and land development regulations allow. Familiarize yourself with applicable state and federal laws.

Of equal importance is the need for more citizen planners to participate as proponents for affordable housing. Affordable housing production and preservation is critical to the implementation of smart growth and healthy communities. As the *Pinecrest* case has shown, citizens can effectively promote enforcement of their comprehensive plans. When you hear about local government or private sector efforts to plan for or produce affordable housing, show your support. For assistance with affordable housing issues, contact Jaimie Ross, Affordable Housing Director at 850.222.6277.

# AROUND FLORIDA

Four pilot transportation projects in Florida are being planned over the next two years using a cooperative process known as Efficient Transportation Decision Making (ETDM). The ETDM process will bring agency interaction forward into the early stages of transportation, identify critical issues early, and facilitate early issuance of permits.

Over the past 18 months, the Florida Department of Transportation (FDOT) worked with the Federal Highway

## Streamlined Transportation Planning

Administration, Federal Transit Administration and other governmental organizations to develop the ETDM process. The stage was set by the Transportation

Equity Act for the 21st Century (TEA-21), which contained provisions for a streamlined approach for conducting National Environmental Policy Act (NEPA) reviews. 1000 Friends recently completed a series of five regional forums around Florida to discuss this process. Public comment from the forums is available at [www.1000friendsofflorida.org](http://www.1000friendsofflorida.org) under “Transportation.”

The FDOT’s four pilot projects include one focusing on the Environmental Impact Statement for the Green River Parkway in Martin County. The second, planned for Hillsborough County, will test the Long-range Transportation Plan and the Transportation Improvement Program portions of ETDM. The third, in Collier and Lee Counties, will test the secondary and cumulative impact aspects of ETDM. The fourth project will test the ETDM process in a non-urban county in FDOT District Five.

To promote agency interaction in the early stages of transportation planning, agency reviewers will be able to access an interactive project database on the Internet. Substantial data also will be available for view by the public. NEPA decisions and construction permits would be issued together at the end of the project development stage of FDOT’s process.

If you have any questions about the pilot projects or the ETDM process, please contact Larry Barfield of the Florida Department of Transportation, by email at [larry.barfield@dot.state.fl.us](mailto:larry.barfield@dot.state.fl.us) or by phone at 850.922.7217.



## 2002 Growth Management **ALERT**

Once again, as the 2002 Legislative Session approaches, 1000 Friends is keeping a close eye on growth management-related activities. As noted in the article on Pinecrest Lakes (see page 1), we anticipate there may be an effort to limit the ability of citizens to enforce their comprehensive plans.

We are also following other issues that may arise in the 2002 session. Governor Bush informed the Florida Home Builders Association in October that growth management would be less of a priority for the 2002 session. Even so, he indicated the need for discussion of a system other than impact fees to fund roads, sewers and other facilities needed to support new development. While the bill to create a formal committee on full cost accounting failed last session, a working group has been established at the Department of Community Affairs to analyze the fiscal impacts of development. 1000 Friends' Thaddeus Cohen has been appointed to this group.

Also in October, the Florida Senate issued several Interim Project Reports. Among these were Interim Project Report 2002-125 on the integration of water supply and local government comprehensive planning, and 2002-126 which focuses on educational facility planning and Development of Regional Impact reform options.

In preparation for the upcoming session, 1000 Friends intends to reactivate its Growth Management Alert E-Mail System. If you would like to be added to this list, go to [www.1000friendsofflorida.org](http://www.1000friendsofflorida.org) and click on "E-Mail Alert," or e-mail your name, address, and phone number to [vyoung@1000fof.org](mailto:vyoung@1000fof.org). Once again, your support will be critical to ensure that any changes made to our system of growth management are for the better.

# FRIENDS UPDATE

**T**errell Arline, 1000 Friends' Legal Director since 1996, will return to private practice this winter, where he will specialize in land use, environmental and administrative law before trial and appellate courts and state agencies. "We wish Terrell well in this," says Executive Director Charles Pattison. "His departure will be a tremendous loss for 1000 Friends, but we know he will continue to represent the best interests of the people of Florida in his new capacity."

At 1000 Friends, Arline provided citizens, groups and local governments with advice on implementing the local comprehensive plan process, and networked with private attorneys and planners around the state. He also worked with the Board's legal advocacy committee to monitor and participate in administrative, judicial and appellate proceedings involving growth management issues.

## Farewell to Terrell Arline



While Legal Director, Terrell championed over two dozen major administrative and appellate cases that have statewide significance. He supported the rights of citizens to sue to enforce comprehensive plans, expanded the legal requirements for agencies to consider secondary impacts of development on the environment, and fought against regressive private property rights initiatives. According to Allen Watts,

a land use attorney and President of 1000 Friends, "Terrell leaves a legal legacy as a public interest lawyer that few will surpass."

Please join us in wishing Terrell well. You can contact him directly at 850.894.4722 or [terrellkarline@home.com](mailto:terrellkarline@home.com). As this issue of *Foresight* goes to press, 1000 Friends is in the process of hiring a new Legal Director.



The Board of Directors of 1000 FRIENDS OF FLORIDA invites you to a reception honoring the recipients of the

### 2002 GROWTH MANAGEMENT AWARDS

*Wednesday, the Twentieth of March 2002*

Awards Ceremony from 6:00 p.m. to 6:30 p.m.  
Reception from 6:30 p.m. to 8:00 p.m.

R.A. Gray Building  
500 South Bronough Street, Tallahassee, Florida

## 1000 Friends' Wish List

In addition to monetary contributions, 1000 Friends also welcomes the donation of equipment and supplies. We have put together a list of items that would assist us in our activities:

- 2 Pentium III computers, 700 MHz minimum
- 2 15- or 17-inch color monitors
- laptop computer, 133 MHz minimum
- digital camera with at least 2 megapixel resolution
- power point projector
- small TV/VCR for presentations
- mail folding machine
- shredder
- toaster oven
- flag pole and flag
- landscaping materials (shrubs, etc.)

If you have an item in good working order that you would like to donate, please contact Vivian Young at 850.222.6277 or [vyoung@1000fof.org](mailto:vyoung@1000fof.org). As 1000 Friends is a 501(c)(3) nonprofit organization, all contributions are tax deductible to the extent allowed by law.

# A Land Use Board for Florida?

Continued from page 2

land use system, where different types of land use challenges were split between multiple forums, including trial courts and administrative agencies. Significantly, LUBA also was created with the express legislative policy statement that “time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review.”

According to 1000 Friends of Oregon, LUBA has been very successful in doing both. Its decisions have been made in almost half the time as those which were made by the circuit courts when they had jurisdiction. LUBA’s review process is subject to strict deadlines, and the legislature has also imposed a deadline on the Court of Appeals for making decisions on appeal from LUBA. The filing fee and deposit for costs at LUBA total \$200. Attorneys fees and time-related costs are controlled by the expedited review schedule.

In Oregon, many citizens have been able to represent themselves effectively before LUBA, without hiring a lawyer. The quality of the LUBA decisions may be interpreted in part by the success rate on appeal to the Court of Appeal; 70 to 74 percent of LUBA decisions have been upheld by the appellate court, nearly twice the affirmance rate of the circuit courts land use decisions before LUBA was created.

What would a Florida LUBA look like? It could be similar to Oregon’s. The Land Use Board of Appeals is a panel of three attorneys (“referees”) appointed by the Governor and confirmed by the Senate. Attorneys appointed to LUBA have had experience representing local governments, developers and citizen groups. Or it could be a specialized department within Florida’s Division of Administrative Hearings, which for more than fifteen years has had responsibility to review comprehensive plan challenges and challenges to certain local government land use decisions in areas of critical state concern. In Oregon, LUBA has statewide jurisdiction. Given Florida’s population, the LUBA here might be organized into regional bodies, as the caseload may require.

The Florida Supreme Court has recently expressed concern in two different cases about the disparate ways in which the state circuit courts review local government quasi-judicial decisions. It is time to seriously consider whether a Land Use Board of Appeals could increase procedural uniformity, the timeliness of decisions, the quality of review and the accountability of the process.



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nouncement high-

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of 1000 Friends of

Florida. This PSA

aired on several

Palm Beach County

television stations

during the month

of October.

# Citizen Enforcement Upheld

Continued from front cover

Lakes sought to change the site plan for a 21-acre strip of land abutting the Shidel's property, from 29 single family homes to 136 rental units in 19 two-story, multifamily buildings. After numerous, often contentious public hearings, Martin County authorized the site plan change.

Maintaining that the revised site plan was not consistent with the Martin County Comprehensive Plan, Ms. Shidel brought suit against the county. The developer then joined the challenge on the side of the county. While the case was pending, the developer proceeded with construction of the most controversial portion of the development—a luxury apartment complex, building directly behind the Shidels' home.

The Circuit Court had ruled in Ms. Shidel's favor in 1999, finding the buildings inconsistent with Martin County's plan and calling for the controversial structures to be demolished. In September of this year, the appellate court agreed with both findings. While this court opinion has drawn fire from industry groups and some local government officials, it simply applies laws that have been on the books since 1975.

For more than 25 years, Florida law has required local governments to act "consistent with" the adopted comprehensive plan when approving development. There are no exceptions. And in this particular case, the Martin County Comprehensive Plan was unambiguous: it created a type of transition area where new structures have to be compatible with existing single family development and established policies requiring a tiering of densities. For years citizens have been able to enforce the consistency mandate in court, precisely what Ms. Shidel sought to do.

In upholding Shidel's position, the appellate court noted that the Supreme Court of Florida had asserted in 1993 that local land use decisions are subject to "strict scrutiny" by the courts in order to ensure that development would be consistent with the comprehensive plan. The court said Florida law was "a command to cities and counties that they must comply with their own Comprehensive Plans."

Citing court cases as far back as 1987, the appellate court observed that state law demonstrates "a clear legislative policy in favor of the enforcement of comprehensive plans by persons adversely affected by local action." By specifically rejecting the developer's focus on the high cost of demolition, the court correctly concluded that it would render the consistency mandate "meaningless and ineffectual" if developers could "build in defiance of the limits and then escape compliance by making the cost of correction too high."

While the Pinecrest case is clearly based on established precedent and existing law, some are wrongly touting the case as judicial activism. Certainly the case will be appealed to the Supreme Court of Florida. It is also expected that the Legislature will be asked by industry and local government interests to reverse the decision.

Because of the statewide ramifications of this case, 1000 Friends of Florida filed an amicus brief in support of Ms. Shidel and stands ready to do the same when the case reaches the Florida Supreme Court. 1000 Friends remains committed to fight any limit on a citizen's ability to enforce the local comprehensive plan. In this day when many are pushing in favor of delegating planning decision-making to the local level, the ability of citizens to compel their local governments to follow the comprehensive plan must remain strong and effective.

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1000 Friends of Florida's mission is to protect and improve Florida's quality of life by advocating responsible planning for the state's population growth. Our planners, attorneys, and community activists work to fight urban sprawl, promote sensible development patterns, provide affordable housing, and protect natural areas. Above all, we strive to give citizens the tools they need to keep their communities livable.

**FROM THE CHAIRMAN EMERITUS**



Florida is precariously balanced between change and preserving what we have and love. Government, organizations and individuals must ensure that we grow sensibly and equitably. 1000 FRIENDS OF FLORIDA wants to be a part of the solution. We are determined to see Florida's quality of life protected and preserved.

Please use the form below to mail in your contribution. I hope you will support 1000 FRIENDS OF FLORIDA and be a key to Florida's future.

Nathaniel Reed  
Chairman Emeritus, 1000 Friends of Florida



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*Note: A copy of the official registration and financial information may be obtained from the Division of Consumer Services by calling toll free (1-800-435-7352) within the State. Registration does not imply endorsement, approval or recommendation by the State.*

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