IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

Case No. 2D21-2094

CONSERVANCY OF SOUTHWEST FLORIDA, INC.,

Appellant,

v.

COLLIER COUNTY, FLORIDA and
COLLIER ENTERPRISES MANAGEMENT, INC.,

Appellees.

Appeal from the Circuit Court, Twentieth Judicial Circuit,
in and for Collier County, Florida
(Case No. 11-2020-CA-000780-0001-XX)

AMICI CURIAE BRIEF OF TROPICAL AUDUBON SOCIETY AND FRIENDS OF THE EVERGLADES IN SUPPORT OF APPELLANT CONSERVANCY OF SOUTHWEST FLORIDA, INC.

November 22, 2021

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I. IDENTITY AND INTEREST OF AMICI CURIAE

Amicus Curiae Tropical Audubon Society, Inc., is a grassroots environmental and conservation organization with members throughout Florida. Tropical Audubon's mission is to conserve and restore South Florida ecosystems, focusing on birds, other wildlife, and their habitats.

Amicus Curiae Friends of the Everglades, Inc., is also a grassroots environmental and conservation organization with members throughout Florida. Friends of the Everglades' mission is to preserve, protect, and restore the only Everglades in the world.

Amici Curiae appear in this case to highlight the conflict between the trial court's interpretation of the Community Planning Act and the legislative and constitutional intent to ensure the protection of the Everglades ecosystem and natural resources through the Community Planning Act and local comprehensive plans.

II. IMPACTS OF THIS RULING ON EVERGLADES RESTORATION

The trial court's misreading of Section 163.3215(3), Florida Statutes, threatens longstanding state, federal, and tribal partnerships, billions of dollars in ecosystem investments and benefits, and natural resources like the Everglades essential for our continued ability to live in Florida. For over 20 years, residents of Florida and the Florida Legislature have made their

intent to protect the Everglades clear through a constitutional amendment, a plethora of legislation, and billions of dollars of investment. Comprehensive plans provide a critical mechanism through which these priorities are codified, protected, and implemented. *See, e.g.*, Miami-Dade Comprehensive Development Master Plan, Land Use Element Objective LU-3. ("The location, design and management practices of development and redevelopment in Miami-Dade County shall ensure the protection of natural resources and systems . . . by reflecting the management policies contained in resource planning and management plans . . . included in the Comprehensive Everglades Restoration Plan approved by Congress through the Water Resources Development Act of 2000.").[1] The trial court's interpretation of Section 163.3215(3) limiting the ability to challenge conflicts with these comprehensive plans undermines the Legislature's established commitment to protecting the Everglades ecosystem. This Court should ensure that its interpretation of Section 163.3215(3) does not undermine the legislative intent to protect the Everglades and our natural resources.

[1] *Comprehensive Development Master Plan (CDMP) Adopted Components*, Miami-Dade Cnty., https://www.miamidade.gov/planning/cdmp-adopted.asp (last visited Nov. 22, 2021).

A. Everglades and the Comprehensive Everglades Restoration Plan

The Everglades ecosystem runs from the north end of the Kissimmee River watershed to Florida Bay and the Florida Keys. In its historic natural state, the Everglades encompassed roughly 3 million acres of slow-moving water and biota and created a diverse range of ecosystems dependent on elevation and the specific quantity, quality, and timing of water. Nat'l Acads. of Scis., Eng'g, and Med., *Progress Toward Restoring the Everglades*: *The Eighth Biennial Review - 2020*, 23 (2021), https://www.nap.edu/catalog/25853/progress-toward-restoring-the-everglades-the-eighth-biennial-review-2020 (hereinafter "NAS").[2] "[T]he Everglades ecological system not only contributes to South Florida's water supply, flood control, and recreation, but serves as the habitat for diverse species of wildlife and plant life. The system is unique in the world and one of Florida's great treasures." Fla. Stat. § 373.4592(a).

However, in the late 1800s, the Everglades ecosystem began to be drained to create dry land that could be used for agriculture and development. *NAS*, at 23. In doing so, the natural hydrology of the Everglades was destroyed and the ecosystem benefits needed to sustain

[2] "[C]ourts may take judicial notice of official records of administrative agencies without more." *Freimuth v. State,* 272 So. 2d 473, 475 (Fla. 1972).

living in South Florida were decimated. *Id.* at 23–25. "Today, the federal government has listed 78 plant and animal species in South Florida as threatened or endangered, with many more included on state lists." *Id.* at 25. Urban and agricultural development have reduced the Everglades to about one-half its predrainage area, and development has contaminated its water with chemicals such as phosphorus, nitrogen, sulfur, mercury, and pesticides. *Id.* at 24–25. "The Everglades ecological system is endangered as a result of adverse changes in water quality, and in the quantity, distribution, and timing of flows, and, therefore, must be restored and protected." Fla. Stat. §373.4592(a).

In response to this problem, "a powerful political consensus developed among federal agencies, Native American tribes, state agencies and commissions, county governments, and conservation organizations" to restore this critical ecosystem. *NAS*, at 25. Their collective solution was the Comprehensive Everglades Restoration Plan ("CERP"), one of the most ambitious restoration efforts ever conceived. *Id.* at 15, 25.

As stated by the National Academy of Sciences, "[t]his unprecedented project envisioned the expenditure of billions of dollars in a multidecadal effort to achieve ecological restoration by reestablishing the hydrologic characteristics of the Everglades, where feasible, and to create a water

system that simultaneously serves the needs of both the natural and the human systems of South Florida." *Id.* at 15. This includes "restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection." Water Resources Development Act of 2000, Pub. L. No. 106-541, § 601(h)(1), 114 Stat. 2572 (2000).

CERP envisioned 68 individual projects to be constructed at a cost of $23.2 billion with a contribution of $200 million of state and $200 million of federal funds annually. *NAS*, at 30, 40. Today the partnership between state, federal, and tribal entities continues in strength, and in 2020 alone state funding for CERP projects reached nearly $373 million and federal funding totaled $247 million. *Id.* at 40–41.

B. The Florida Legislature Has Made Clear that Everglades Restoration Is a Top Priority

The Florida Legislature has long recognized and reaffirmed the importance of prioritizing Florida's natural resources and the Everglades ecosystem through legislative language, mandates, and actions. *See* Fla. Stat. § 373.616. So much so that it is embedded in our state constitution: "It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise

and for the conservation and protection of natural resources." Art. II, § 7(a), Fla. Const.

The implementation of this constitutional policy through the extensive investment in CERP and Everglades restoration is codified throughout the Florida Statutes:

> The Legislature recognizes that the Everglades ecosystem must be restored both in terms of water quality and water quantity and must be preserved and protected in a manner that is long term and comprehensive. Fla. Stat. § 373.4592(e).
>
> It is the intent of the Legislature to expedite plans and programs for improving water quantity reaching the Everglades, correcting long-standing hydroperiod problems, increasing the total quantity of water flowing through the system, providing water supply for the Everglades National Park, urban and agricultural areas, and Florida Bay, and replacing water previously available from the coastal ridge in areas of southern Miami-Dade County. Fla. Stat. § 373.4592(f).

Likewise, the federal government has repeatedly prioritized Everglades restoration by consistently passing Everglades project legislation and providing funding for such projects. *NAS*, at 41.

With shared priorities for preserving this crucial ecosystem and the South Florida communities that depend on it, the state of Florida and the federal government have formed a unique partnership that has persevered for over 20 years.

As stated by the Florida Legislature, "Everglades [restoration] represents by far the largest environmental cleanup and restoration program

of this type ever undertaken, and the returns from substantial public and private investment must be maximized so that available resources are managed responsibly." Fla. Stat. § 373.4592(h).

C. The Trial Court's Ruling Threatens Everglades Restoration and Ignores the Language of Section 163.3215(3).

Everglades restoration not only provides evidence that the Legislature did not intend to create the limitations that the trial court has created in Section 163.3215(3), but it also provides a salient example of how state priorities are incorporated into comprehensive plans, and how those priorities could be hamstrung if this Court affirms the trial court's flawed interpretation of Section 163.3215(3). The Comprehensive Development Master Plan in Miami-Dade County implements the state's Everglades priorities and contains language expressly protecting these priorities. *See, e.g.,* Miami-Dade Cnty., Comprehensive Development Master Plan, Land Use Element Objective LU-3C ("Development in the [eastern] Everglades . . . shall be limited to uses, designs and management practices which are consistent with adopted State regulations and policies, the Comprehensive Everglades Restoration Plan, and related federal, State or County policies, plans or regulations as may be formulated, consistent with the goals,

objectives and policies of this comprehensive plan.").[3] But under the trial court's reading of Section 163.3215(3), would-be challengers of proposed development orders "[in]consistent . . . with the goals, objectives and policies of [CERP]," as stated in the Miami-Dade County Comprehensive Development Master Plan, would have additional barriers to navigate in asking a court to ensure the developments do not impede CERP implementation. Such an interpretation ignores the broad legislative mandate to protect Everglades resources and misunderstands the growth management structure that the state created to allow communities both to set development priorities in their respective regions and to protect and implement statewide priorities and investments.

None of this is suggested—let alone required—by the language of Section 163.3215(3). In addition to limiting development order challenges to only those comprehensive plan inconsistencies pertaining to "use, density, and intensity," the trial court's inaccurate reading of Section 163.3215(3) also misunderstands the scope of challenges to "use, density and intensity" by

[3] *See, also,* Miami-Dade Cnty., Comprehensive Development Master Plan, Policy LU-8G (finding that Everglades National Park and certain Everglades ecosystems areas cannot be considered in expanding the urban development boundary); *id.* at p. I-77 (limiting the types of development permitted in certain Everglades ecosystem areas); *id.* at I-78 (mandating compatibility in certain areas with environmentally significant lands and CERP).

further narrowing those terms and ignoring a statutory definition which provides protections for inappropriate "use of or demand on natural resources." *See* Fla. Stat. § 163.3164 (22) (defining the term "intensity" as used in Fla. Stat. § 163.3215(3) to include "use of or demand on natural resources"). Contrary to the trial court's ruling, the language of Section 163.3215(3) enshrines the rights of challengers to ensure that development orders comport with county comprehensive plans and do not inappropriately impact the "use of or demand on natural resources." This mandate in the Community Planning Act protects the state's ability to design, commit to, and implement policies and plans like CERP that protect and restore our state's natural heritage. The trial court's ruling threatens these protections.

Despite the Everglades protections established in Miami-Dade County's Comprehensive Development Master Plan, the Everglades ecosystem and the federal and state investments associated with its restoration are under attack. Miami-Dade County has either approved or moved forward with multiple applications to expand the Urban Development Boundary[4] to allow for development in Everglades lands needed for

[4] Two especially significant threats include an attempt to build a highway extension in Everglades wetlands—wetlands critical for recharging our drinking water wells and conveying water through Everglades National Park and Miami-Dade County—and a 900-acre industrial park in a Coastal High Hazard Zone on lands the Army Corps of Engineers and state value for

restoration, flood mitigation, and drinking water; development orders with these impacts would similarly threaten Everglades resources.

Many development threats to the Everglades and the CERP investment can only be defended through the Section 163.3215(3) process as it currently stands.[5] The trial court's ruling degrades the protections that comprehensive plans and Section 163.3215(3) provide the Everglades and other critical state resources by providing a path for developers to argue that certain inconsistent development is outside the scope of Section 163.3215(3).

This Court should ensure that its interpretation of Section 163.3215(3) does not undermine the Legislature's commitment to Everglades restoration.

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inclusion in a major CERP project aimed at restoring Biscayne Bay. *Limonar Dev., LLC, et. al. vs. Miami-Dade Cnty.; Tropical Audubon Soc'y and Michelle Garcia vs. Miami-Dade Cnty.*, Fla. Admin. Recommended Order (March 30, 2020) (on file with Clerk, Div. of Admin. Hearings); Memorandum from Daniella Levine-Cava, Miami-Dade Cnty. Mayor, to Jose "Pepe" Diaz, Chairman, Miami-Dade Cnty. Bd. of Cnty. Comm'rs, and Board of County Commissioners (Sept. 9, 2021), https://www.miamidade.gov/govaction/legistarfiles/Matters/Y2021/212100.pdf.

[5] The First District Court of Appeal's interpretation of Section 163.3215(3) in *Imhof v. Walton County*, Nos. 1D19-0980, 1D19-1530, 2021 Fla. App. LEXIS 13042 (Fla. 1st DCA Sept. 15, 2021), protects the ability to challenge inappropriate impacts to Everglades ecosystems and other natural resources.

III. LEGAL ARGUMENT

A. Section 163.3215(3) Must Be Read in Harmony with Florida's Constitution and Legislation

State laws prioritizing Everglades restoration confirm the legislative intent that Section 163.3215(3) allow challenges to development that impacts important state and federal resources based on any inconsistency with a comprehensive plan. Limiting the breath of Section 163.3215(3) challenges to only use, density, and intensity—and further narrowing the definition of those words as the trial court did—undermines the clear intent of the Legislature to prioritize Everglades restoration and the protection of important state resources, and could jeopardize the partnership created between the state, federal government, and tribes and the billions of dollars invested in environmental restoration and protection.

As this Court noted in *Heine v. Lee County*, 221 So. 3d 1254, 1257 (Fla. 2d DCA 2017), "[l]egislative intent is the polestar that guides our analysis regarding the construction and application of [a] statute." *Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So. 3d 362, 367 (Fla. 2013). When the plain meaning of the text of the statute is in dispute, courts are empowered to examine legislative intent through other means. *Id.* While this Court found in *Heine* that the statute is clear and unambiguous—and therefore did not look past the plain language of only Section 163.3215(3)—the conflict

between this Court's interpretation of Section 163.3215(3) and the First District's interpretation makes clear that the statute is subject to more than one interpretation. *See Imhof*, 2021 Fla. App. LEXIS 13042, at *20. This Court is thus empowered to consider legislative intent outside the plain language of Section 163.3215(3). *Diamond*, 107 So. 3d at 367.

As discussed above, the Florida Legislature has made it clear that Everglades restoration and protecting our natural resources is a top priority in the state, and the people of Florida have codified their intent to prioritize this not only throughout legislation, but in our state constitution: "It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. *Adequate provision shall be made by law* for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources." Art II, § 7(a), Fla. Const. (emphasis added). "[P]reservation of the environment is an express constitutional policy preference." *Sierra Club v. Brown*, 243 So. 3d 903, 911 n.9 (Fla. 2018); *see Walton Cnty. v. Stop the Beach Renourishment, Inc.*, 998 So. 2d 1102, 1110 (Fla. 2008) (finding that article II, section 7(a) of the Florida Constitution establishes Florida's constitutional duty to conserve and protect Florida's beaches as important natural resources); *see United States ex rel. Lesinski v. S. Fla. Water Mgmt. Dist.*, 739 F.3d 598, 605 (11th Cir.

2014) (expressing that the state has a constitutionally mandated duty to conserve and protect the state's natural resources and scenic beauty).

The Legislature implemented this constitutional mandate through an extensive series of environmental statutes and growth management legislation and empowered the people to protect this right through, among other things, the Community Planning Act and Section 163.3215(3). *See* Fla. Stat. § 163.3215(2) (giving aggrieved parties standing to protect interests in "environmental or natural resources"); Fla. Stat. § 373.4592(e) ("It is the intent of the Legislature *to pursue comprehensive and innovative solutions* to issues of water quality, water quantity, hydroperiod, and invasion of exotic species which face the Everglades ecosystem. The Legislature recognizes that the Everglades ecosystem must be restored both in terms of water quality and water quantity and must be preserved and protected *in a manner that is long term and comprehensive*.") (emphasis added).

Based on the constitutional mandate and extensive legislation focused on environmental protection—including the Community Planning Act's focus on the intensity of use of environmental resources—it is clear that the Legislature did not intend to degrade constitutional rights, threaten billions of dollars of state and federal investment, and substantially limit the public's ability to enforce environmental rights and state priorities by drafting the

statute so narrowly. *See* Fla. Stat. § 373.4592(h) ("The Everglades Construction Project represents by far the largest environmental cleanup and restoration program of this type ever undertaken, and the returns from substantial public and private investment *must be maximized so that available resources are managed responsibly*.") (emphasis added).

Moreover, mandates in the Community Planning Act itself make the legislative intent to allow challenges to any inconsistency with a comprehensive plan even clearer. Section 163.3194(3)(a) defines what "consisten[cy] within the comprehensive plan" means within the Community Planning Act and states that "[a] development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, *and other aspects of development* permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and *if it meets all other criteria enumerated by the local government*." (emphasis added). This language further expresses the legislative intent that Section 163.3215(3) allows for challenges for inconsistency with any aspect of a comprehensive plan.

The legislative and constitutional priorities espoused throughout Florida law—and throughout the Community Planning Act itself—are

consistent with the First District's interpretation of Section 163.3215(3) allowing challenges to development orders that materially alter the use, density, or intensity of a property for *any* inconsistency with the comprehensive plan. *See Imhof*, 2021 Fla. App. LEXIS 13042, at *20. To read this statute as this Court did in *Heine*, runs afoul of the legislative intent to provide broad protection to natural resources, the people's rights espoused in the Constitution, and state priorities and investments.

Even if the Court finds that there is only one plain meaning of the text of Section 163.3215(3), "a literal interpretation of the language of [the] statute need not be given when to do so would lead to an unreasonable . . . conclusion." *Weber v. Dobbins*, 616 So. 2d 956, 958 (Fla 1993) (citing *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). The court is empowered to depart from the letter of the statute "when there are cogent reasons for believing that the letter of the law does not accurately disclose the legislative intent." *Id.* As this Court noted in *Heine*, the plain meaning of a statute does not have to control if it "leads to an unreasonable result or result clearly contrary to legislative intent." *Heine*, 221 So. 3d at 1257 (citing *State v. Burris*, 875 So. 2d 408, 410 (Fla. 2004)). Based on Florida's constitutional rights, legislative priorities, and the massive state and federal investment in Everglades

protection, it is clear that *Heine's* interpretation of Section 163.3215(3) does not accurately reflect legislative intent.

B. This Court's Prior Interpretation in *Heine* Incorrectly Applies Established Maxims of Statutory Interpretation

When reaching the conclusion in *Heine* that challenges under Section 163.3215(3) are limited to inconsistencies in the comprehensive plan that deal with use, density, and intensity, this Court and the trial court failed to give appropriate weight to Section 163.3194(3)(a). Given that the text of the statute can be interpreted in more than one way, looking at the context of the remaining text of the statute is crucial to determining legislative intent.

Section 163.3215(3) states that an aggrieved party may challenge a local government to prevent action on "*a development order* . . . which materially alters the use or density or intensity of use on a particular piece of property which is *not consistent with the comprehensive plan* adopted under this part." (emphasis added). Section 163.3194(3)(a) then goes on to define what "not consistent with the comprehensive plan" means: "A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria

enumerated by the local government." Section 163.3194(3)(a) clarifies that Section 163.3215(3) allows challenges based on any inconsistencies with a comprehensive plan.

In addressing questions of statutory interpretation, the U.S. Supreme Court has found that when a phrase can reasonably be given more than one meaning, it must be considered in light of the remaining statutory scheme. "Statutory construction, however, is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) (citation omitted). Here only one of the permissible readings of Section 163.3215(3) produces a "substantive effect that is compatible with the rest of the law."

Reading Section 163.3215(3) in context with Section 163.3194(3)(a) makes it clear that Section 163.3194(3)(a) provides the definition for "consistent with the comprehensive plan" as it is used throughout Chapter

163, including in Section 163.3215(3).[6] To read Section 163.3215(3) without considering Section 163.3194(3)(a) would make Section 163.3215(3) *incompatible* with the rest of the law.

C. Even Relying Directly on *Heine v. Lee County,* the Trial Court Misapplied This Court's Precedent.

The trial court's final order in this matter purports to fully rely on the precedent established by this Court in *Heine*. 221 So. 3d at 1254. However, the trial court misapplied this precedent by both narrowing the *Heine* holding and disregarding the portions of the holding that would provide future plaintiffs with opportunities to challenge impacts to important state resources.

1. *Heine* did not limit consistency challenges to numeric "quantitative" standards

This Court's decision in *Heine* only addressed the *Heine* plaintiff's argument "that the trial court erroneously limited the scope of claims allowed under the Consistency Statute," and this Court's holding was limited to the finding that the trial court "correctly construed the Consistency Statute as permitting only those challenges specifically authorized therein" and "properly applied the statute to the facts of th[e] case" to determine which

[6] This reading of the statute is further supported by the First District's very extensive textual analysis of this statute in *Imhof. See Imhof*, 2021 Fla. App. LEXIS 13042, at *6–20.

claims fell within the scope of Section 163.3215(3). *Id.* at 1256, 1259. This Court did not opine on the actual consistency of the challenged provisions with the Comprehensive Plan at issue. *See id.*

The Court in *Heine* did not explain what "consistent with the comprehensive plan" means or provide any further limitations on challenges beyond the fact that they must relate to "use, density, or intensity"—terms that are defined in the statute. Despite this limited holding, the trial court further narrows the scope of review under Section 163.3215(3) to challenges related to essentially quantitative metrics. *See* Final J. for Defs. ¶ 57 (R. 13300) ("[T]he Court does not believe it necessary to rely upon expert opinion in order to determine consistency here; rather the Court need only independently compare the plain text of the Development Order to the plain text of the [Growth Management Plan]."); *see also id.* ¶ 88 (R. 13309) (assessing intensity only in terms of minimum square footage requirements and maximum square footage ratios).

Nothing in this Court's opinion or Section 163.3215(3) creates this limitation. This Court in *Heine* stated that the text of Section 163.3215(3) is "clear and unambiguous," and therefore "the plain . . . meaning must control," and "the omission of . . . language is presumed to be deliberate." 221 So. 2d at 1257–58. This Court's *Heine* rationale actually prohibits the trial court's

interpretation of the statute in this manner because there is nothing in the text of Section 163.3215(3) even arguably creating a quantitative limitation. *See* Fla. Stat. § 163.3215(3). As further stated by the *Heine* Court, the trial court should "not rewrite the Consistency Statute to include language omitted by the legislature. 221 So. 2d at 1258.

If the trial court properly applied *Heine*, the court should have allowed all challenges that "fall within the ken of [use, density, and intensity]"; not merely those based on quantitative metrics. *Id. at* 1257.

2. The trial court disregarded the statutory mandated definitions of use, density, and intensity

The trial court further deviated from this Court's opinion in *Heine* through its complete disregard for the statutory definitions of use, density, and intensity. In fact, the trial court made the unprecedented decision to explicitly reject the statutorily mandated definition of "intensity." Final J. for Defs. ¶ 87 (R. 13308–09). Section 163.3164—entitled Community Planning Act; Definitions—defines "intensity" as "an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services." Fla. Stat. § 163.3164(22). The trial court, however, found that when reviewing challenges under Section 163.3215(3)

of the Community Planning Act, the definition section of the Act "does not apply to 'intensity'". Final J. for Defs. ¶ 87 (R. 13308–09). The trial court fails to cite any case to support the novel finding that the definition section of a statute does not define the terms used within that statute.

Notably, the trial court also fails to cite *Heine* for the proposition that the statutory definition does not apply to the statute. The trial court in *Heine* **explicitly** references and applies the statutory definition of intensity to determine which claims fall within the scope of Section 163.3215(3). *Heine* Order on Amended Motion for Summary Judgment of Defendant-Alico West, LLC, at 8; *Heine*, 221 So. 3d at 1259 (finding that the trial court correctly construed the statute and properly applied the statute to determine which claims fell within the scope of the statute). In fact, *Heine* found that four separate claims fit within the definition of "intensity" allowed under Section 163.3215(3) and defined by statute, including claims that dealt with the "use of or demand on natural resources".[7]

[7] *Heine* allowed intensity challenges based on the order at issue which was alleged to have 1) improperly allowed for the destruction and development of wetlands, 2) failed to provide a mix of housing types, 3) improperly allowed a development that was not the appropriate development form, and 4) improperly granted a deviation that allowed for hardening of up to 40% of the shoreline and installation of recreational beach facilities. *Heine Order* at 12.

The definition of “intensity” in the Community Planning Act should be used to define the words in the Act. The trial court should not be allowed to disregard statutory mandates and endanger the protection of natural resources in this manner.

IV. CONCLUSION

For the foregoing reasons, Amici Curiae Tropical Audubon Society, Inc., and Friends of the Everglades, Inc., respectfully request this Court reverse the trial court’s judgement and interpret Section 163.3215(3) consistent with this Amici Curiae Brief and the Appellant Conservancy of Southwest Florida, Inc.’s position.

Respectfully submitted this 22nd day of November, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed using the Florida Courts E-Filing Portal and served by Electronic Mail to all counsel listed below this 22nd day of November, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.045(b), counsel for Amici Curiae hereby certifies that the foregoing brief complies with the applicable font requirements because it is written in 14-point Arial font. Pursuant to Florida Rule of Appellate Procedure 9.045(e), counsel for Appellant further certifies that the foregoing brief contains 4563 words, excluding the parts of the brief exempted from the word count by Rule 9.045(e).

Dated: November 22, 2021

/s/ Elizabeth Fata Carpenter
Elizabeth Fata Carpenter, Esq.

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