## Section C.2: Considerations for Evaluating Local Governmental Controls

An important factor to consider in evaluating the durability and protectiveness of institutional controls other than RCs is whether the control in question is one that the Department can appropriately rely upon as a long-term control.

As specified above, to be legally sufficient, institutional controls must all meet the definition of an institutional control in Section 376.301(22), F.S. (as renumbered in Ch. 2016-184, Laws of Florida) (i.e., “restriction on use or access to a site to eliminate or minimize exposure to petroleum products,’ chemicals of concern, drycleaning solvents, or other contaminants”). Local ordinances that prohibit installation or use of water wells (even in conjunction with a requirement to use of a municipal water supply) are insufficient because the exclusive authority to regulate the consumptive use of groundwater rests with the Department and water management districts (Districts).[[1]](#footnote-2) Courts have recognized and upheld this “exclusive authority.”[[2]](#footnote-3)

In addition, statutory provisions prohibit the Department and Districts from requiring a permit “for domestic consumption of water by individual users.”[[3]](#footnote-4) Because regulation of water use is preempted to the state and the state specifically exempts domestic self-supply from regulation, it would be improper to rely on such prohibitions as institutional controls.

While local ordinances that prohibit the installation or use of potable water wells are not legally sufficient, other, legally sufficient ordinances could suffice as an institutional control after a site specific evaluation. For example, ordinances that require property owners to hook up to a community, county or municipal water system without also requiring the property owners to use the water system could suffice. Or, an ordinance that prohibits the location of wells on property owned by the local government passing the ordinance could likewise suffice.

Keep in mind that legally sufficient local governmental controls must also suffice as controls that are adequately protective of human health and the environment given the specifics of the site in question to be accepted by the Department. For example, these mandatory hook-up ordinances often allow private wells for irrigation or other non-potable purposes. Site/project managers must decide whether continued use of the groundwater for non-potable use is still protective of human health and the environment.

1. *See* § 373.217(2), Fla. Stat. (stating that Chapter 373 is “the exclusive authority for requiring permits for the consumptive use of water.”); § 373.217(3), Fla. Stat. (Specifically stating that if any provision of Part II of Chapter 373, as amended, “is in conflict with any other provision, limitation, or restriction which is now in effect under any law or ordinance of this state or any political subdivision or municipality, or any rule or regulation promulgated thereunder, Part II shall govern and control, and such other law or ordinance or rule or regulation promulgated thereunder shall be deemed superseded for the purpose of regulating the consumptive use of water.” An exception is made for the Florida Electrical Power Plant Siting Act.); & § 373.217(4), Fla. Stat. (expressly preempting “the regulation of the consumptive use of water.”). [↑](#footnote-ref-2)
2. See Marion County. v. Greene, 5 So. 3d 775, 777 (Fla. 5th DCA 2009); Sw. Florida Water Mgmt. Dist. v. Charlotte County, 774 So. 2d 903, 918 (Fla. 2nd DCA 2001); Thomas v. Sw. Florida Water Mgmt. Dist., 864 So. 2d 455, 456 (Fla. 5th DCA 2003); and Heartland Environmental Council v. DCA and Highlands County, ¶ 169, DOAH Case No. 94-2095GM. [↑](#footnote-ref-3)
3. § 373.219(1), Fla. Stat. Domestic consumption includes “the use of water for the individual personal household purposes of drinking, bathing, cooking, or sanitation” and “[a]ll other uses shall not be considered domestic.” § 373.019(6), Fla. Stat. [↑](#footnote-ref-4)