

**American Bar Association
Section of Environment, Energy, and Resources**

**State and Federal Administrative Mechanisms for Protecting Instream Flows:
Key Issues in the East**

Florida's Approach: Minimum Flows and Levels and Reservations of Water

Michelle Diffenderfer* and Tara W. Duhyy
Lewis, Longman & Walker, P.A.
West Palm Beach, Florida**

**Eastern Water Resources: Emerging Issues in Competition, Science and Politics
Miami, Florida
May 11, 2006**

I. Introduction – Florida Water Law – The Context within which Reservations Work

In order to understand how reservations are meant to work and how they actually do work to preserve water resources within Florida, it is important to understand the Florida water law system in general.

In the west, water resources are governed pursuant to variations of the prior appropriations system, while eastern water law is characterized by the common law riparian system. Water law in the State of Florida today, however, does not fall neatly into either category. Rather, in 1972, the State Legislature passed the Florida Water Resources Act, abolishing the common law riparian system in Florida and replacing it with a statutory-based modified riparian system.¹ The statutory regime adopted in 1972 was modeled after A Model Water Code.² The idea of the Model Water Code was to blend elements of both the riparian system and the prior appropriations system.³

The distinguishing characteristics of the modified riparian system in Florida, as opposed to the prior appropriations and common law riparian systems, are that: 1) all waters in the state of

* Michelle Diffenderfer is a Shareholder in the West Palm Beach office of the law firm of Lewis, Longman & Walker, P.A. Mrs. Diffenderfer's areas of practice include environmental, land use and administrative law, specifically permitting and enforcement, water, wetlands, endangered species and Everglades issues. Mrs. Diffenderfer graduated with honors from Brown University in 1990 and earned her Juris Doctor, cum laude, in 1994 from the University of Miami, School of Law.

** Tara W. Duhyy is an Associate in the West Palm Beach office of the law firm of Lewis, Longman & Walker, P.A. Ms. Duhyy's areas of practice include environmental, land use and administrative law. Ms. Duhyy graduated from Northwestern University in 1997 and earned her Juris Doctor in 2004 from the University of Colorado.

¹ FLA. STAT. ch. 373.013, et seq. (2006).

² FRANK E. MALONEY, ET AL., A MODEL WATER CODE (1972).

³ Id. at vii.

Florida are held in trust for the benefit of the State's citizens; 2) ownership of land abutting a water body does not constitute ownership of the water nor does it give the landowner the right to use the water; and 3) the use of water is regulated by the State through various regional water management districts.⁴

Thus, in the Florida system, like the riparian system, water is held as a common resource for the benefit of the public and there are no property rights in water. The Florida system is also like the prior appropriations system in that the right to use water is not limited to those whose property abuts water, and existing uses are given consideration. The Consumptive Use Permit ("CUP") is the primary mechanism used to regulate the consumptive use of water within the State of Florida and it represents a blend of both riparian and prior appropriation concepts.⁵ CUPs are issued on a case-by-case basis to parties who can demonstrate that the proposed consumptive use of water 1) is reasonable-beneficial, 2) will not interfere with existing legal uses and 3) is consistent with the public interest.⁶

A reasonable-beneficial use is defined as "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest."⁷ Generally, a use is reasonable-beneficial if:

- The proposed use of water is the most efficient means of using water for the intended purpose
- The proposed withdrawal of water will not cause environmental harm such as wetland drawdown, saltwater intrusion, or sinkhole formation
- Water conservation measures are being employed to the extent technically, environmentally, and economically possible
- The lowest quality water, including reclaimed wastewater, is being used to the extent technically, environmentally, and economically possible
- The proposed withdrawal of water will not cause a violation of established minimum flows and levels
- Other existing legal users will not have their withdrawal capacity reduced by more than 10% or to an extent that their ability to use water is significantly impaired.

For purposes of evaluating CUP applications, existing uses are those authorized under a valid permit or those uses which are otherwise exempt from permitting requirements.⁸ Examples of public interest factors considered in the CUP application process are: environmental protection, flood protection, water quality protection and water resource protection. While the duration of CUPs

⁴ While the Florida Department of Environmental Protection is the head state agency overseeing water law in Florida, the bulk of water law policy implementation has been delegated to water management districts created pursuant to FLA. STAT. ch. 373.069 (2006). Specifically, there are five water management districts in Florida: the Northwest Florida Water Management District, the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District and the South Florida Water Management District. Each District operates pursuant to the general mandate of the Florida Water Resources Act of 1972 and has the authority to implement its own specific rules and regulations, which are codified in Title 40 of the Florida Administrative Code.

⁵ See, generally, FLA. STAT. ch. 373.203, et seq. (2006). For specific permitting criteria, see the various water management district rules at Title 40 of the Florida Administrative Code.

⁶ FLA. STAT. ch. 373.223(1) (2006).

⁷ FLA. STAT. ch. 373.019(16) (2006).

⁸ See, FLA. STAT. ch. 373.213 (2006); FLA. STAT. ch. 373.224 (2006).

varies, they may last up to 20 years as long as there are reasonable assurances that the permit conditions will continue to be met.⁹

CUPs operate in conjunction with the various District Water Supply Plans and any applicable Regional Supply Plans. District Water Supply Plans are required to address water supply, water quality, flood protection and floodplain management and natural systems issues within each district.¹⁰ Regional Plans are created for areas where “existing sources of water are not adequate to supply water for all existing and future reasonable-beneficial uses and to sustain water resources and related natural systems for the planning period.”¹¹ In times of water shortage, CUP uses are reduced based on the source and type of use, pursuant to a Water Shortage Plan¹² and in conjunction with minimum flows and levels (“MFLs”). District Water Shortage Plans are designed to protect state water resources from harm and to provide equitable distribution of water resources among classes of use during water shortages, based on predetermined MFLs.

The Florida Water Resources Act requires each water management district to establish MFLs for all surface water bodies within their jurisdictions.¹³ “The minimum flow for a given watercourse shall be the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.”¹⁴ The minimum water level, on the other hand, “shall be the level of groundwater in an aquifer and the level of surface water at which further withdrawals would be significantly harmful to the water resources of the area.”¹⁵

While the CUP is the primary means of allocating and regulating the right to consumptively use water, MFLs provide a threshold below which further withdrawals should not be permitted.¹⁶ MFLs are to be calculated based on the “best information available,” and may reflect seasonal variations.¹⁷ The “water resources” sought to be protected pursuant MFLs include fish and wildlife resources, water quality and quantity and recreation and navigation interests.

II. Reservations in Theory

In Florida, the primary, yet-to-be-fully-utilized tool for protecting in-stream flows is the “reservation.” A reservation is a certain quantity of water set aside by a water management district pursuant to its rulemaking process, for fish and wildlife protection and public health and safety.¹⁸ Once reserved, the subject quantity of water is no longer available for consumptive use.¹⁹ Reservations are subject to periodic review and may be revised in light of changed conditions.²⁰ Any

⁹ FLA. STAT. ch. 373.236 (2006).

¹⁰ FLA. STAT. ch. 373.036(2) (2006).

¹¹ FLA. STAT. ch. 373.0361(1) (2006).

¹² FLA. STAT. ch. 373.246 (2006).

¹³ FLA. STAT. ch. 373.042 (2006).

¹⁴ FLA. STAT. ch. 373.042(1)(a) (2006).

¹⁵ FLA. STAT. ch. 373.042(1)(b) (2006).

¹⁶ FLA. STAT. ch. 373.246 (2006).

¹⁷ FLA. STAT. ch. 373.042(1) (2006).

¹⁸ FLA. STAT. ch. 373.223(4) (2006) (“The governing board or the department, by regulation, may reserve from use by permit applicants, water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. Such reservations shall be subject to periodic review and revision in light of changed conditions. However, all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest.”).

¹⁹ Id.

²⁰ Id.

use existing prior to the Districts' issuance of a reservation is protected so long as "such use is not contrary to the public interest."²¹

It is useful to compare reservations to CUPs and MFLs in order to better understand what a reservation is meant to accomplish. A CUP represents the right of the permit-holder to use water, whereas a reservation represents water unavailable for CUP permitting purposes. Reservations are for fish and wildlife protection and public health and safety issues, whereas CUPs will only be issued for reasonable/beneficial uses. Finally, a CUP is a permit which expires where as a reservation is a rule which has no set expiration date.

It is more difficult to distinguish reservations from MFLs. Simply put, both reservations and MFLs relate to maintaining instream flows for protection of environmental resources and public health and safety. MFLs represent the minimum amount of water necessary to prevent significant harm to a water body. However, establishing an MFL does not guarantee that the specific water body will receive sufficient water to prevent harm, but rather it is a trigger which requires the District to implement a recovery plan. A reservation, on the other hand, seeks to maintain sufficient water to protect fish and wildlife and public health and safety by reserving it from consumptive use. In concept, a reservation may be considered as a means of ensuring that a water body does not go below the minimum flow and level set for that water body. Further, in theory, reservations may retain more water in a water body than what is required to maintain that water body's MFL.

After a reservation is set by District rule, the reservation will be evaluated as a factor in the CUP permit evaluation process in the same manner as MFLs are considered.²² Further, reservations are a factor considered when existing CUPs come up for renewal.²³

Reservations play a role generally in protecting fish and wildlife and public health and safety, as discussed above, and specifically, they are needed as a means for the State to fulfill its obligations with respect to the Everglades. The U.S. Army Corps of Engineers in cooperation with the South Florida Water Management District and various other state and local agencies, pursuant to the Water Resources Development Act of 2000 ("WRDA 2000")²⁴ established the Comprehensive Everglades Restoration Plan to ensure the conservation and restoration of the Everglades. CERP is a plan that is implemented on a project-by-project basis as the Legislature so authorizes.²⁵ Reservations are one means of achieving the goals of CERP – to decrease the draw on natural and regional systems feeding into the Everglades, to create additional storage and to better manage the entire system.

Section 601(h)(2)(A) of WRDA 2000 requires that the State reserve certain quantities of water. Specifically:

In order to ensure that water generated by the Plan will be made available for the restoration of the natural system, ... the President and the Governor enter into a binding agreement under which the State shall

²¹ Id. Note that water management districts are directed to take existing reservations into account with respect to alternative supply projects pursuant to FLA. STAT. ch. 373.0361(2)(a)2 and district regional water supply plans are to include a list of existing reservations pursuant to FLA. STAT. ch. 373.0361(2)(h).

²² See, FLA. STAT. ch. 373.223 (2006) and specific district rules regarding CUP application review at Title 40 of the Florida Administrative Code.

²³ Id.

²⁴ Pub. L. No. 106-541, § 601, 114 STAT. 2572, 2680 (2000).

²⁵ Water Resources Development Act, Pub. L. No. 106-541, § 601(b)(2)(A), 114 STAT. 2572, 2681 (2000); see also, Official Website of the Comprehensive Everglades Restoration Plan, About CERP: A Brief Overview, available at http://www.evergladesplan.org/about/about_cerp_brief.cfm (last visited April 5, 2006).

ensure, by regulation or other appropriate means, that water made available by each project in the Plan shall not be permitted for a consumptive use or otherwise made unavailable by the State until such time as sufficient reservations of water for the restoration of the natural system are made under State law in accordance with the project implementation report for that project and consistent with the Plan.²⁶

In addition, Section 601(h)(4)(A) provides that a project implementation report shall:

- (IV) identify the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system;
- (V) identify the amount of water to be reserved or allocated for the natural system necessary to implement, under State law, subclauses (iv) and (vi);
- (VI) comply with applicable water quality standards and applicable water quality permitting requirements under subsection (b)(2)(A)(ii)....²⁷

Thus, reservations are required pursuant to State²⁸ and Federal law regarding CERP to ensure a means by which water can be quantified and legally protected for specific CERP projects as they are authorized. Given the dual role of reservations resulting from the interplay of State and federal law, reservations operate on both a system-wide and federal project-specific level. Pursuant to State law, initial system-wide reservations may be set for natural system needs identified by looking at indicator regions.²⁹ Pursuant to CERP, additional reservations will be used to set aside quantities of water (above and beyond those set aside pursuant to initial reservations) necessary for a specific CERP project.³⁰ This quantity is identified in the Project Implementation Report on a project by project basis.³¹ The reservation must be executed pursuant to State law before any project cooperation agreement between the local government and the federal government can be executed as to the project.³²

While in theory reservations provide a valuable tool for protecting instream flows, in practice, reservations have scarcely been used. Further, as discussed below, where they have been used, reservations have faced severe legal challenge.

III. Reservations in Reality

A. The DEP Reservation Rule

In order to provide the various water management districts with guidance as to how to implement reservation rules, on December 20, 2002, the Florida Department of Environmental Protection (“DEP”) proposed Rules 62-40.474 and 62-40.410(3). The rules were challenged by the

²⁶ Water Resources Development Act, Pub. L. No. 106-541, § 601(h)(2)(A), 114 STAT. 2572, 2687 (2000).

²⁷ Water Resources Development Act, Pub. L. No. 106-541, § 601(h)(4)(A), 114 STAT. 2572, 2689 (2000).

²⁸ FLA. STAT. ch. 373.470(3)(c) (2006).

²⁹ FLA. STAT. ch. 373.223(4) (2006).

³⁰ Water Resources Development Act, Pub. L. No. 106-541, § 601(h)(2)(A), 114 STAT. 2572, 2687 (2000).

³¹ Water Resources Development Act, Pub. L. No. 106-541, § 601(h)(4)(A), 114 STAT. 2572, 2689 (2000).

³² Water Resources Development Act, Pub. L. No. 106-541, § 601(h)(4)(B), 114 STAT. 2572, 2690 (2000).

Association of Florida Community Developers as an invalid exercise of delegated legislative authority.³³

Specifically, Petitioner claimed that the DEP did not have authority to issue the rules and had expanded the instances where reservations could be used beyond what was statutorily authorized.³⁴ In the Final Order issued on February 24, 2006, the Administrative Law Judge (“ALJ”) upheld the validity of both rules.³⁵ The ALJ held that DEP is authorized to adopt rule 62-40.474, that the rule does not enlarge, modify or contravene the specific provision of law implemented and that the rule is not vague or arbitrary and capricious.³⁶

With respect to Petitioner’s argument that the rule improperly enlarged the specific instances where a reservation may be used beyond that authorized by Section 373.233(4), the relevant sections of proposed Rule 62-40.474 state:

(1) ...

(a) Reservations may be used for the protection of fish and wildlife to:

1. Aid in a recovery or prevention strategy for a water resource with an established minimum flow or level;
2. Aid in the restoration of natural systems which provide fish and wildlife habitat;
3. Protect flows or levels that support fish and wildlife before harm occurs;
4. Protect fish and wildlife within an Outstanding Florida Water, an Aquatic Preserve, a state park, or other publicly owned conservation land with significant ecological value; or
5. Prevent withdrawals in any other circumstance required to protect fish and wildlife.

(b) Reservations may be used for the protection of public health and safety to:

1. Prevent sinkhole formation;
2. Prevent or decrease saltwater intrusion;
3. Prevent the movement or withdrawal of groundwater pollutants; or
4. Prevent withdrawals in any other circumstance required to protect public health and safety.

In finding that the rule did not improperly expand the instances where reservations may be used, the ALJ focused on the introductory language in Sections (1)(a) and (b).³⁷ The ALJ held that “DEP intends the introductory phrase to limit the use of water reservations in all the examples that follow to the overarching purpose of protection of fish and wildlife. In all circumstances, the water reservation must be required for the protection of fish and wildlife.”³⁸

³³ Ass’n of Fla. Cmty. Developers v. DEP, Case No. 04-0880RP (Fla. Div. Admin. Hrgs. 2006).

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Id. at *29-*43.

³⁸ Id. at *29. The ALJ also upheld the language at Section (3) of the rule, which states: “Reservations can be adopted prospectively for water quantities anticipated to be made available. When water is reserved prospectively, the reservation rule shall state when quantities

Petitioners have appealed the ALJ's decision to the Florida District Court of Appeal for the First District.

B. Water Management District Reservation Rules

Thus far, only the St. Johns River Water Management District ("SJRWMD") and the Northwest Florida Water Management District ("NFWMD") have adopted reservation rules for waters within their jurisdictions.

The SJRWMD was the first District to make an initial reservation pursuant to Section 373.223(4), Florida Statutes. Specifically, in 1994, the SJRWMD adopted rule 40C-2.302, which states:

The Governing Board finds that reserving a certain portion of the surface water flow through Prairie Creek and Camps Canal south of Newnans Lake in Alachua County, Florida, is necessary in order to protect the fish and wildlife which utilize the Paynes Prairie State Preserve in Alachua County, Florida. The Board therefore reserves from use by permit applicants that portion of surface water flow in Prairie Creek and Camps Canal that drains by gravity through an existing multiple culvert structure into Paynes Prairie. This reservation is for an average flow of 35 cubic feet per second (23 million gallons per day) representing approximately forty five percent (45%) of the calculated historic flow of surface water through Prairie Creek and Camps Canal.³⁹

The validity of the SJRWMD reservation rule (and the accompanying amendment to the District's exemption rule)⁴⁰ was challenged in 1994 by the operators of sports fishing facilities on Orange Lake in north central Florida on the grounds that the SJRWMD failed to follow applicable rulemaking procedures and had exceeded its rulemaking authority.⁴¹ In addition, Petitioners challenged the rule as vague and arbitrary and capricious.⁴²

Specifically, Petitioners alleged that the reservation rule, in conjunction with the amendment to the exemption rule, is vague and invalid for failing to comply with the requirements of Section 373.223(4) and for improperly allocating a specific quantity of surface water flow without establishing an MFL.⁴³ The Petitioners also claimed that the District was required to approve the reservation through the CUP process.

After examining the hydrologic data supporting the District's decision to implement the reservation rule for that particular area, the Hearing Officer upheld the SJRWMD reservation rule and

will be adjusted if the actual water made available is different than the quantity anticipated." Id. at *41-*43.

³⁹ FLA. ADMIN CODE r. 40C-2.302 (2006).

⁴⁰ The SJRWMD has also passed a rule exempting from its consumptive use permitting requirements, the use of "water, whether withdrawn or diverted, when used for purposes of protection of fish and wildlife or the public health and safety when and where the Governing Board [of the District] has ... reserved said water from use by permit applicants" FLA. ADMIN CODE r. 40C-2.051(6) (2006).

⁴¹ Smith v. St. Johns River Water Management District, 1994 WL 1028083 *17 (Fla. Div. Admin. Hrgs. 1994).

⁴² Id.

⁴³ Id. at *17.

the accompanying amendment to the exemption rule. The Hearing Officer concluded that the District was not required to establish an MFL for a water body prior to its adopting a reservation rule for that water body.⁴⁴ In reaching this conclusion, the Hearing Officer distinguished reservations and MFLs as “two different tools at the disposal of the District for protecting water resources.”⁴⁵ The Hearing Officer then reasoned that, “[w]hile both programs are required and should be consistently carried out, there is nothing ... that provides that, if one program is not carried out, the other program is prohibited from being carried out.”⁴⁶

The Hearing Officer also concluded that, because no consumptive use permits had been issued for the subject water, the reservation rule could not be interfering with existing uses in contravention of Section 373.223(4).⁴⁷ Petitioners’ argument that a reservation must be established through the CUP process was also dismissed by the Hearing Officer.⁴⁸

As to Petitioners’ claim that the SJRWMD reservation rule was invalid for vagueness, the Hearing Officer held that the rule was neither vague as to the location of the proposed reservation nor the quantity. Specifically, the Hearing Officer held that the language in the rule stating that “that portion of surface water flow in Prairie Creek and Camps Canal that drains by gravity through an existing multiple culvert structure into Paynes Prairie,” provided sufficient detail as to the location of the reservation. Further, the Hearing Officer held that same language provided sufficient detail as to the quantity of the reservation.

Subsequent language in the rule that stated “this reservation is for an average flow of [35] cubic feet per second (23 million gallons per day), representing approximately forty five percent (45 percent) of the calculated historic flow of surface water through Prairie Creek and Camps Canal,” was found to be superfluous.⁴⁹ In effect, the Hearing Officer’s conclusions with regard to Petitioners’ vagueness claims establish that water management districts do not have to specify an exact quantity of water when adopting reservations by rule. It is sufficient for a reservation rule to tie the quantity to be reserved to hydrologic conditions.

With the experience of the SJRWMD in mind, the NFWFMD established reservations of water within its jurisdiction.⁵⁰ On February 27, 2006, the NFWFMD adopted rule 40A-2.223, which reserves water from the main stem of the Apalachicola River, the main stem of the Chipola River and the Chipola Cutoff.⁵¹ Withdrawals of water from the Chipola River by the City of Port St. Joe are

⁴⁴ Id. at *21.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id. at *22.

⁴⁸ Id.

⁴⁹ Id. at *23.

⁵⁰ FLA. ADMIN CODE r. 40A-2.223 (2006).

⁵¹ Id. The rule states:

- (1) At U.S. Geologic Survey gauging station No. 02358000, Apalachicola River at Chattahoochee, the magnitude, duration and frequency of observed flows are reserved for the protection of fish and wildlife of the river, floodplain and Apalachicola Bay.
- (2) At U.S. Geologic Survey gauging station No. 02358700, Apalachicola River near Blountstown, the magnitude, duration and frequency of observed flows are reserved for the protection of fish and wildlife of the river, floodplain and Apalachicola Bay.
- (3) At and below U.S. Geological Survey gauging station No. 02359170, Apalachicola River near Sumatra, the magnitude, duration and frequency of observed flows are reserved for the protection of fish and wildlife of the river, floodplain and Apalachicola Bay.

exempted from the effects of the reservation.⁵² In addition, the NFWFMD reservation includes an expiration date, after which the District’s Governing Board may extend the reservation.⁵³ It remains to be seen as to whether the NFWFMD rule can withstand any challenges it may face.

IV. Conclusions – Practical Issues for the Future of Reservations

While Florida has a powerful tool in its statutory tool-belt for the preservation of instream flows, as discussed above, that tool has been rarely used. So what does the future hold for the use of reservations in Florida? The answer to that question involves the consideration of several realities.

First – science. The reality is that the science of reservations has not caught up with the theory of reservations. The amount of water required “for the protection of fish and wildlife” and “public health and safety” is not clear and remains highly debated, as evidenced by the language of the SJRWMD reservation rule and the legal battle that ensued over it.

Second – demographics. As the population of the State increases, so do the pressures on the State’s waters. Reservations of water will increasingly collide with the needs of the growing population and the agricultural, commercial and residential development that accompany it.

Third – CERP. While the language of Section 373.223(4) makes the adoption of reservations discretionary rather than mandatory, the language of CERP legislation is mandatory. Thus, as CERP moves forward, so too will the need for reservations.

(4) At U.S. Geological Survey gauging station No. 02359000, Chipola River near Altha, the magnitude, duration and frequency of observed flows are reserved for the protection of fish and wildlife of the Chipola River, Apalachicola River, the associated floodplains and Apalachicola Bay.

(5) The Governing Board finds that consumptive withdrawals of surface water from the main stem of the Apalachicola River are not in the public interest and therefore reserves from use by permit the flows specified in subsections (1), (2), and (3). Such reservation is made for all seasons of the year.

(6) The Governing Board finds that consumptive withdrawals of surface water from the main stem of the Chipola River and the Chipola Cutoff are not in the public interest and therefore reserves from use by permit the flows specified in subsection (4). Such reservation is made for all seasons of the year.

(7) For purposes of this Rule 40A-2.223, F.A.C., consumptive withdrawals shall mean withdrawals minus returns but shall not include evaporative losses. Diversions of surface water for cooling purpose, fish and wildlife propagation, fish and wildlife refuge, water based migratory bird hunting refuges and similar diversions are exempt from the provisions of this Rule 40A-2.223, F.A.C., provided that such diverted water, minus evapotranspiration, is returned to the Apalachicola River Basin.

(8) Nothing in this section shall exempt diversions as specified in subsection (7) from obtaining consumptive use permits required elsewhere in this Chapter 40A-2, F.A.C.

(9) The Governing Board finds that surface water withdrawals by the City of Port St. Joe from the Chipola River is an alternative water supply as contemplated by Sections 373.019 and 373.196, F.S., and therefore exempt from the provisions of this Rule 40A-2.223, F.A.C. Nothing in this section shall exempt the City of Port St. Joe from the permitting requirements of this Chapter 40A-2, F.A.C.

(10) This section shall terminate on January 1, 2016 unless specifically extended by the Governing Board.

⁵² FLA. ADMIN CODE r. 40A-2.223(9) (2006).

⁵³ FLA. ADMIN CODE r. 40A-2.223(10) (2006).