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ONSHORE IMPACT IN FLORIDA OF OFFSHORE ENERGY DEVELOPMENT

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INTRODUCTION

Interest in the development of offshore energy sources in United States coastal waters has increased in recent years. The activities accompanying this development in the coastal zone, including oil and gas production, shipping and deepwater ports, and offshore power plants, may have serious impact on adjacent coastal areas. Thus, in addition to the evolution of the federal energy policy,¹ many states have begun to devise coastal zone management programs designed to protect these environmentally sensitive areas.² Unfortunately, these concurrent efforts to regulate energy-related activity could result in a confrontation between state and federal authority threatening both the nation's emerging energy policy and the states' attempts to protect the coastal environment.

In Florida, the impact of offshore energy activity on the coastal environment is expected to be great.³ Most of Florida's population resides along the coast,⁴

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1. For a historical perspective on federal energy policy, see generally Mills & Woodson, *Energy Policy: A Test for Federalism*, 18 ARIZ. L. REV. 405 (1977).

2. For example, the state of Washington attempted to prohibit supertankers carrying oil from entering Puget Sound. *Ray v. Atlantic Richfield Co. & Seatrain Lines, Inc.*, 435 U.S. 151 (1978). In addition to commenting on the Environmental Impact Statement (E.I.S.) prepared in connection with the lease sale of 40 of 154 tracts located off the coast of New Jersey (known as the O.C.S. Lease Sale), a group of New York counties and towns unsuccessfully attempted to block the sale in federal court by challenging the sufficiency of the E.I.S. *County of Suffolk v. Secretary of the Interior*, 562 F.2d 1368 (2d Cir. 1977), cert. denied, 434 U.S. 1064 (1978).

3. See STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION, THE FLORIDA COASTAL MANAGEMENT PROGRAM, LEGISLATIVE DRAFT 17-19 (March 1, 1978) [hereinafter cited as LEGISLATIVE DRAFT].

4. From 1950 to 1970, Florida's population grew by four million. During the early 1970's new residents arrived at the rate of over 6,000 each week. The population estimate in the coastal planning areas was 6.4 million in 1976. Seventy-five percent of the state's population lives within the coastal zone, which is 25% of Florida's land area. See LEGISLATIVE DRAFT, *supra* note 3, at 13.

and the economy depends heavily on tourists who enjoy the coastal environment.⁵ Although protection is necessary to preserve the coastal environment for the native population and to ensure stability of the tourist-based portion of the economy, Florida, which already imports 81 percent of all its energy,⁶ must find new energy sources to support development. Because there are few onshore resources, the state must look for new sources offshore.⁷

By creating a framework for cohesive government regulation of offshore energy activity, the Florida Coastal Zone Management Act of 1978⁸ may signal a new direction in Florida coastal policy. Instead of enacting a single comprehensive coastal policy, the legislature has chosen to rely on existing state and local laws and regulations to implement the state coastal protection program. These existing schemes are used to encourage, discourage, or control offshore energy development and corresponding onshore energy activity.

Because decisions affecting offshore activity are made at federal and state levels,⁹ local governments are often left to cope with onshore impact. Consequently, local governments' problems are usually handled on an ad hoc basis using reactive controls.¹⁰ Municipal and county officials are often unaware of the range of options available to them in reacting to or planning for the effect of offshore activity.¹¹ Thus, despite the Coastal Zone Management Act's emphasis upon coordinating state and local government regulation, development of a single comprehensive coastal policy may be difficult.

Offshore energy activities have two types of impact on local communities: first, environmental effects of construction and operation of energy-related facilities such as ports, drilling platforms, and power plants; second, development of onshore support facilities¹² associated with the energy activity. Each

5. In the last two decades, Florida has experienced the transition from a primarily agricultural to a more urban economy with tourism coming to the forefront as the major industry in the state. In 1975, 25 million visitors to the state spent over nine billion in tourist dollars. Sales tax from these expenditures is a major source of public revenue. *Id.* at 14.

6. Florida produces only enough oil and natural gas to meet 19% of its energy needs and is therefore heavily dependent on imports of domestic and foreign energy sources. The diversity and distribution of Florida's fuel sources are unfavorable. In 1976, 88% of the energy used in Florida came from oil and natural gas, compared to only 75% nationally. Coal and nuclear energy account for a smaller segment of total supply in Florida than the national average. FLORIDA ENERGY OFFICE, ANNUAL REPORT TO THE LEGISLATURE 3 (1977-1978).

7. Both oil and natural gas are produced from onshore fields in Florida. Commercial quantities of petroleum were discovered in 1943. The major producing field is located at Jay in northwest Florida. Two other small fields are located in the southwest part of the state. In 1974 the Jay field contributed 87.4% of total state production of oil and gas. Yet the state must still import over 80% of its energy needs. A. PEARMAN & J. STAFFORD, FLORIDA COASTAL POLICY STUDY, IMPACT OF OFFSHORE OIL DEVELOPMENT 20 (1975).

8. 1978 Fla. Laws, ch. 78-287.

9. See generally Mills & Woodson, *supra* note 1.

10. M. BARAM, ENVIRONMENTAL LAW AND THE SITING OF FACILITIES (1976). See also LEGISLATIVE DRAFT, *supra* note 3.

11. CENTER FOR GOVERNMENTAL RESPONSIBILITY, ANALYSIS OF LAWS RELATING TO FLORIDA COASTAL ZONE MANAGEMENT (1976).

12. See text accompanying notes 87-109 *infra*.

process may significantly affect local communities.¹³ Many methods of local control, however, are available to plan for the impact.¹⁴

Three types of local governmental units — municipalities, counties, and port authorities — may be able to affect directly offshore energy development decisions. Each unit has a different jurisdiction and source of authority. In analyzing potential methods of influence, it is important to remember which unit or units have jurisdiction over the land or activity in question.¹⁵ For example, local land use control measures may not apply within the boundaries of a port authority. In contrast, county platting ordinances may apply to land within municipalities.

Municipalities derive their power from the state.¹⁶ The jurisdiction of each municipality, established either in its charter or by special act of the legislature, may extend to submerged land.¹⁷ For example, by special act of the legislature, Key West's police powers and jurisdiction extend 300 feet into the tidal waters adjacent to the corporate limits for certain enumerated purposes.¹⁸ Many cities have boundaries extending well into the coastal waters.¹⁹ Because of the variety of special acts and charters controlling municipal authority,²⁰ however, it is difficult to generalize about local authority beyond the mean high tide line.

The sources of power for county governments include the Florida Constitution,²¹ the Florida Statutes,²² and any county charter adopted by the voters of the county.²³ County boundaries are defined in chapter 7 of the Florida Statutes. Many county boundaries extend to the three mile or three marine league limit.²⁴ This jurisdictional extension may enable a county to directly influence or control activity off its shore.²⁵

13. See THE CONSERVATION FOUNDATION, *ONSHORE IMPACTS OF OUTER CONTINENTAL SHELF OIL AND GAS DEVELOPMENT* §III (1977).

14. See text accompanying notes 112-208 *infra*.

15. See text accompanying notes 72-84 *infra*.

16. FLA. CONST. art. VIII, §2(b). See also FLA. STAT. §166.021 (1977).

17. FLA. CONST. art. VIII, §2; FLA. STAT. ch. 171 (1977).

18. KEY WEST, FLA., CHARTER ch. A, art. 1, §9 (1975). By special act of the state legislature, 1970 Fla. Laws, ch. 70-762, Key West may extend its police powers and jurisdiction 300 feet into the tidal waters for the purposes of abating nuisances, enforcing sanitary laws and regulations, regulating zoning and suppressing crime. This extended jurisdiction gives the city power to protect its environment from the harmful effects of actions marginally outside the city limits.

19. See, e.g., DAYTONA BEACH, FLA., CHARTER pt. A, §2 (1971) which extends Daytona Beach's boundary two miles into the Atlantic.

20. The Miami Beach Charter, for example, grants limited rights of eminent domain, empowering the city to acquire title to submerged lands and riparian rights and to establish an Atlantic Ocean "harbor line" extending into the coastal waters. MIAMI BEACH, FLA., CHARTER §6 (1974). See also text accompanying note 18 *supra*.

21. FLA. CONST. art. VIII, §1(f), (g).

22. FLA. STAT. ch. 125 (1977).

23. Upon adoption by the voters, charters can serve as a source of powers in matters addressed by the charter as prescribed by law. FLA. STAT. §125.60 (1977).

24. Although they are seldom exercised, the powers of counties that border navigable waters extend seaward to the extent of their boundaries, which are the territorial extent of state boundaries. FLA. STAT. ch. 7 (1977).

25. See text accompanying notes 38, 39, 186 & 203 *infra*.

Port authorities and port districts are quasi-governmental entities with a broad range of powers. Many port authorities are autonomous bodies created by special act of the state legislature,²⁶ with the authority and jurisdiction of the port and the degree of local control specified by law. Other port authorities are created and controlled by local government,²⁷ with the authority and jurisdiction of the port authority or district specified by local ordinance.²⁸ The amount of control a local government has over a port authority is significant because much onshore activity associated with offshore oil and gas development will require port facilities.

This article discusses offshore energy activity and the extent to which these local governments can encourage, discourage, or regulate the onshore impact. The activities considered are offshore oil and gas development, deepwater ports and shipping, and offshore power plants.

OFFSHORE OIL AND GAS DEVELOPMENT

Offshore Leases

The sale of offshore leases for oil and gas exploration is the event that sets the entire development machinery in motion. The activities initiated by the leases may have serious environmental, social, and fiscal impacts on adjacent communities. The most obvious environmental danger is the threat of an oil spill, during either drilling or transportation.²⁹ Other serious environmental impacts include the demand for land for onshore activities, water and air pollution, water and energy consumption, waste disposal, and noise and aesthetic pollution.³⁰ Large scale oil and gas development can also alter the

26. See, e.g., Broward County Port Authority (Port Everglades) created by special act, 1959 Fla. Laws, ch. 59-1157; Canaveral Port Authority (Port Canaveral), also created by special act, 1953 Fla. Laws, ch. 28922.

27. See, e.g., KEY WEST, FLA., CODE §§8-2 to -3 (1975); Key West Ordinance 74-24 (Oct. 21, 1974); MIAMI BEACH, FLA., CHARTER ch. 7 (1974).

28. FLA. STAT. §315.03 (1977). Chapter 315 of the Florida Statutes enumerates the powers given to any port district, port authority, county or municipality regarding port facilities. This chapter is supplemental to powers conferred by general, special or local laws. FLA. STAT. §315.10 (1977).

29. An estimate of the range of possible oil spills as a result of the Baltimore Canyon development activities has been made, based on statistics from offshore oil operations from 1966 to 1976, principally in the Gulf of Mexico. A few major accidents have caused most of the oil spilled into the marine environment. The Office of Technology Assessment estimates the range of oil spilled over the projected 30-year life of the fuel will be from 5,000 to 860,000 barrels resulting from 1 to 40 spill incidents. The most probable amount is 40,000 barrels and 18 spill incidents. Depending on the season, the size of the spill, and prevailing ocean conditions, impact on the shoreline could be severe. Tourists and commercial fishing incomes, and natural resources such as estuarine areas and wildlife preserves could be drastically affected. The extent of this latter damage would be difficult to quantify. OFFICE OF TECHNOLOGY ASSESSMENT, COASTAL EFFECTS OF OFFSHORE ENERGY SYSTEMS: AN ASSESSMENT OF OIL AND GAS SYSTEMS, DEEPWATER PORTS, AND NUCLEAR POWER PLANTS OFF THE COAST OF NEW JERSEY AND DELAWARE (1976).

30. The major environmental impacts of OCS development occur not offshore, but onshore, from the construction and operation of support facilities. See text accompanying notes 87-93 *infra*. Because most of these onshore facilities require waterfront sites, the pressure for

social characteristics of a community, especially the rural, retirement, or tourist-oriented communities throughout Florida. The effect of large-scale development may be to change the economic base of the community. Further, development may entail secondary impacts, such as needs for schools, roads, and housing, which local government must confront. Fiscally, local governments may be faced with huge tax deficits during construction periods created by an increased demand for services prior to any increase in property tax revenue. Although local governments must consider all of these effects, this study focuses on the environmental impacts of offshore activities.

Local governments have little control over the federal government's decisions to lease Outer Continental Shelf (OCS) lands for oil and gas development, because no local permission is required prior to lease sales.³¹ However, local governments have several vehicles for expressing sentiment regarding the proposed development. First, before any lease sale of OCS land occurs, an Environmental Impact Statement (EIS) is required under the National Environmental Protection Act.³² Local governments may comment on the proposed leases during the preparation of the EIS.

A second opportunity for local government comments is provided in the new Continental Shelf Lands Act.³³ This Act requires the Secretary of the Interior to prepare a five year oil and gas leasing program, including a schedule of proposed lease sales,³⁴ and to approve a development and production plan accompanying offshore and onshore facilities.³⁵ Local governments may submit comments for the Secretary's consideration prior to the adoption of either plan.³⁶ However, the recommendations submitted by the affected local government must be submitted to the Governor before submission to the Secretary.³⁷ One weakness of the program in relation to Florida is that lessees in the Gulf of Mexico are not required to draft a development and production plan.³⁸

coastal land development increases dramatically. Wetland alteration, channel dredging, grading and site preparation can be expected to adversely affect marine biology. Air emissions, waste water discharges, solid waste, and noise associated with the operation of the onshore facilities will exist to varying degrees, depending on the type of operations involved. AD HOC SELECT COMMITTEE ON OUTER CONTINENTAL SHELF, *Effects of Offshore Oil and Natural Gas Development on the Coastal Zone*, 94th Congress (1976).

31. 43 U.S.C. §1331(b) (1970).

32. 16 U.S.C. §1456 (1976). NEPA requires preparation of a detailed environmental impact statement whenever major federal action is proposed that will significantly affect the quality of the human environment. Two questions arise under this provision: whether there is federal action and whether the action significantly affects the environment. 42 U.S.C. §4231 (1976). Federal action is clearly involved when the project is directly undertaken by the federal government. Federal action probably exists when state, local, or private parties act subject to federal approval. Thus, offshore energy leasing, exploration, and production are covered by NEPA. See generally *Union Oil Co. of Cal. v. Morton*, 512 F.2d 743 (9th Cir. 1975).

33. Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. No. 95-372, §208, 92 Stat. 629.

34. *Id.* §18.

35. *Id.* §25.

36. *Id.* §19.

37. *Id.*

38. *Id.* §25.

A third means by which local governments may gain some input into the lease sale is the consistency provision of the Coastal Zone Management Act (CZMA).³⁹ Should Florida adopt a state Coastal Zone Management Plan which meets federal requirements, the state may attempt to block any lease sale inconsistent with the state's plan.⁴⁰ Although local participation in the Coastal Zone Management program is voluntary,⁴¹ Florida's Local Government Comprehensive Planning Act requires local governments to complete a Coastal Zone Protection Element.⁴² If the local plan is deemed by the state Department of Environmental Regulation to be consistent with the state plan, the local government, as a participant in the state program, can express views on whether the state should attempt to block the lease sale.⁴³ The final decision on leasing OCS lands is made by the federal government,⁴⁴ however, and local resistance is unlikely to have much impact on this federal decision.

If the proposed lease involves lands inside state waters,⁴⁵ local government may have a more direct impact. No oil and gas lease encumbering state lands within corporate limits may be granted without corporate consent.⁴⁶ Additionally, before lands in the tidal waters of the state abutting or immediately adjacent to the corporate limits of a municipality or lands within three miles of the limits seaward of the mean high tide line are leased, the municipality

39. 16 U.S.C. §1451 (1976). The CZMA provides that federal agencies shall conduct activities and undertake projects in a manner which is "to the maximum extent practicable, consistent with approved state management programs." 16 U.S.C. §1456(c)(3) (1976). Applicants for federal licenses or permits must acquire state certification that the activity is consistent with the approved state management program.

40. If a state does not act upon an applicant's certification within six months, the project is conclusively presumed to be consistent with the state's plan. If the state disagrees with the federal government's certification of a project, the Secretary is required, after detailed comments from state and federal agencies, to make a finding of consistency with the objectives of the CZMA. If a proposed activity is found inconsistent with CZMA objectives, a permit can still be issued if it is in the interest of national security or commerce. 16 U.S.C. §1456(c)(3) (1976). Although this national security provision is untested, it could permit federal activities to escape the theoretical state control provided in the Act.

Defense and international affairs power is an absolute source of federal authority. If a matter is held to rest firmly on the basis of defense or international affairs, no state may contravene federal activity. D. ENGBAHL, *CONSTITUTIONAL POWERS: FEDERAL AND STATE* 220-21 (1974).

41. 1978 Fla. Laws, ch. 78-287.

42. FLA. STAT. §163.3177(6)(g) (1977). The coastal element requires establishing policies for: (1) maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values; (2) continued existence of optimum populations of all species of wildlife; (3) the orderly and balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources; (4) avoidance of irreversible and irretrievable commitments of coastal zone resources; (5) ecological planning principles and assumptions to be used in the determination of suitability and extent of permitted development; and (6) proposed management and regulatory techniques.

43. Coastal Zone Management Act of 1972, Pub. L. No. 92-583, §307(c), 86 Stat. 1280.

44. See note 31 *supra*.

45. Submerged Land Act of 1953, 43 U.S.C. §1301 (1970). See also *United States v. Florida*, 420 U.S. 531 (1975).

46. FLA. STAT. §253.61(1)(a) (1977).

must consent by resolution.⁴⁷ County commission approval is necessary if the leased lands abut, are adjacent to, or lie seaward and within three miles of an improved beach located outside an incorporated town or municipality.⁴⁸ As a result, local governments have a veto power over leases up to three miles offshore on the Gulf Coast.⁴⁹ Counties have a veto power only if the lease sale is adjacent to unincorporated land.

Offshore Development Activity

Once offshore leases are sold, development activity will occur both onshore and offshore. The primary offshore activities will involve exploratory rigs, construction of drilling platforms, and the construction of pipelines to transport oil and gas from the wells to onshore storage facilities.

Local governments should be aware of some of the potential environmental, economic, and other impacts associated with an offshore platform. The greatest environmental dangers are a blowout during drilling or an oil spill during pumping, handling, transportation, storage or processing.⁵⁰ However, the cumulative effects of various discharges from many platforms may be a more severe problem. Certain by-products and chemicals are discharged into the sea during platform operations, including drill cuttings and mud, certain chemicals, water separated from gas and oil, and sand produced with the oil.⁵¹ "Strict government regulations forbid dumping human sewage, solid wastes, or other pollutants and debris into the sea."⁵²

Economically, the largest direct impact of the offshore platform will be on commercial fishing. Because the platform may act as an artificial reef, fishing may improve. However, these subsea structures are a hazard to fish nets. Jack-up rigs⁵³ or permanent platforms take up two to five acres of bottom land, and

47. FLA. STAT. §253.61(1)(b) (1977).

48. FLA. STAT. §253.61(1)(c) (1977).

49. In 1960, Florida and Texas were granted extended jurisdiction off the coast of the Gulf of Mexico (to approximately nine miles) by reason of historical grants previously recognized by the United States. *United States v. Louisiana*, 393 U.S. 1 (1960), *rehearing denied*, 364 U.S. 856 (1960); *United States v. Florida*, 363 U.S. 121 (1960). Two 1975 cases, *United States v. Maine*, 420 U.S. 515 (1975), and *United States v. Florida*, 420 U.S. 531 (1975), reaffirmed the division of jurisdiction established in the Submerged Lands Act. See also note 24 *supra*.

50. A. PEARMAN & J. STAFFORD, *supra* note 7, at 60. Severe oil spills can cause major damage to marshlands if the spill reaches onshore, to waterfowl if large quantities of oil reach their habitat, to bottom dwelling marine life if quantities sink and to most fish, plants, and other biota if the oil concentration is high. Commercial fishermen also could be adversely affected as a result of fish contamination or if damage to spawning and feeding grounds were to reduce the yield. See generally OFFICE OF TECHNOLOGY ASSESSMENT, *supra* note 29, at 165.

For the period 1953 through 1972, of the 43 major accidents occurring in the United States outer continental shelf, 19 were associated with drilling, 15 with production, 4 with pipelines, 3 with weather, and 2 with ship collisions. During this same period 8 blowouts were recorded in state waters. See A. PEARMAN & J. STAFFORD, *supra* note 7, at 139.

51. A. PEARMAN & J. STAFFORD, *supra* note 7, at 139.

52. *Id.*

53. The jack-up rig used in exploration drilling is a floating, barge-type hull which supports a drilling rig. When it reaches the drill site (usually towed by tugs), legs "jack-up" the rig from the sea bottom and the rig becomes a drilling platform. See generally THE CONSERVATION FOUNDATION, *supra* note 13, at §11.

a semi-submersible occupies 325 acres of bottom land.⁵⁴ Although the secondary economic effects on the tourist industry caused by a blowout could be most significant, other negative impacts include the potential hazard to navigation and the aesthetic effect of platforms within sight from land.

After offshore land is leased for oil and gas development, local governments can do little to either encourage or discourage the construction of platforms, for this decision is governed by the likelihood of economic success for the leaseholder. In those areas where local approval is required for issuance of a lease, however, similar approval is necessary for the state's issuance of a permit to drill a well.⁵⁵ Unless the resulting platform is situated in an offshore area under local jurisdiction, a local government has no control over platform and drilling activities. A platform located within a municipal or county boundary, though, could be subject to local government air and water pollution control standards stricter than the standards enforced by the state when licensing the platform.⁵⁶

The major environmental impacts normally occur during pipeline construction. Channels must be dredged, which disrupt the bottom lands and cause sedimentation problems that could affect areas up to 2,500 feet from the channel.⁵⁷ Disruption is heightened when the pipeline landfall occurs in marshlands and estuaries. Once the pipeline is ashore, it may affect use of land and cause aesthetic unpleasantness. In addition to these normal impacts, a pipeline break could occur, causing greater potential impacts depending on the size and location of the break.

The typical pipeline network occasioned by offshore oil and gas development consists of three segments: the offshore pipelines, the pipeline landfall, and the onshore pipelines. Each segment presents different possibilities to local governments for encouraging, discouraging, or prohibiting construction, and regulating construction once the decision to build has been made.

Pipelines — Offshore

The threshold question regarding installation of pipelines is whether a private company has a right to lay pipeline over land offshore. The submerged land within the state and territorial limits is presumably owned by Florida as sovereignty land.⁵⁸ Although petroleum pipeline companies do not have eminent domain rights to land owned or operated by the state or its political subdivisions, they have rights to permits on those lands subject to reasonable regulations.⁵⁹

54. Semi-submersible drilling is the most recent development in floating platforms. The major buoyant support is in pontoons which ride on the surface when the rig is moving and which are sunk well below the water line when it is drilling. The rig is anchored in place during drilling. *Id.*

55. FLA. STAT. §377.24 (1977).

56. FLA. STAT. §403.182(6) (1977).

57. Interview with Larry Shanks, Biologist, United States Fish and Wildlife Service (Oct. 23, 1978).

58. 43 U.S.C. §§1301-1315 (1970).

59. FLA. STAT. §361.06 (1977).

Chapters 403 and 253 of the Florida Statutes govern the issuance of state permits for oil and gas pipelines but allow for exemptions in certain cases. Subaqueous transmission and distribution lines are exempted from the permit requirement if "laid on, or embedded in, the bottom of waters of the state, other than in Class II [shellfish] waters."⁶⁰ "Embedded in" is defined as "placement of lines into the bottoms of waters . . . by minimal displacement of bottom material and without the creation of a trench, or trough."⁶¹

Additionally, no chapter 403 permit is required if the pipeline is entrenched in rights of way where entrenchment of similar scope and impact has occurred previously and where adequate turbidity controls are employed to meet state standards.⁶² "Entrenched" is defined as "the placement of lines . . . by creation of a defined trench or trough, through the use of such devices as clamshells, dredges, trenching jets, or other devices [producing] similar results."⁶³ Although a chapter 403 permit may not be required in this situation, a permit under chapter 253 would be required for installing a subaqueous oil and gas transmission and distribution line entrenched in,⁶⁴ laid on, or embedded in the bottom waters of the state.⁶⁵

Local governments may enact their own dredge and fill permit programs under the general police power.⁶⁶ For the local program to have any effect, local jurisdiction must extend beyond the mean high tide line. Absent this extended jurisdiction, a local government can do little to directly encourage, discourage, or regulate the offshore segment of a pipeline network. However, local governments, through their onshore land use controls, can indirectly encourage or discourage the location of offshore pipelines by permitting or prohibiting the attendant pumping and storage facilities.

Pipelines — Landfall

The most severe environmental impact of pipelines is likely to occur in the area of their landfall.⁶⁷ Marshlands and estuaries are most susceptible to disruption by the construction associated with laying pipelines. Effects of oil spills may be greater because of the sensitivity of these areas.

Once again, the threshold question is the company's right to lay pipelines over particular land. Land below the mean high water line⁶⁸ is presumably

60. 7 FLA. ADMIN. CODE ch. 17-4.04(10)(q).

61. *Id.* at 4.02(14).

62. *Id.* at 4.04(10)(q).

63. *Id.* at 4.02(15).

64. Entrenchment should not exceed 10,000 cubic yards of dredging. *Id.* at 4.29(3)(f).

65. *Id.*

66. Local governments have concurrent power with the state and federal governments to regulate the public health, safety, and welfare. *See generally* Askew v. American Waterways Operators, Inc., 411 U.S. 325 (1973).

67. ECOLOGICAL ANALYSTS, INC., BIOLOGICAL IMPACTS OF THE THREE OFFSHORE ENERGY TECHNOLOGIES, prepared for OFFICE OF TECHNOLOGY ASSESSMENT, VOLUME II WORKING PAPERS; COASTAL EFFECTS OF OFFSHORE ENERGY SYSTEMS (1976).

68. The mean high tide line is a point on the bank up to which the presence or action of the water is so continuous as to leave a distinct high tide boundary by erosion. The mean of this boundary serves as a jurisdictional line. *See* LEGISLATIVE DRAFT, *supra* note 3, at 163.

owned by the state.⁶⁹ Further, chapter 253 recognizes conveyances of submerged sovereignty lands to private individuals. Land above the mean high water mark is also susceptible to private ownership. As stated previously, petroleum pipeline companies have no eminent domain right over public lands but may obtain permits over the land subject to reasonable regulation.⁷⁰ As to privately owned lands, petroleum pipeline companies have the right of eminent domain.⁷¹

Considerable jurisdictional overlap exists in the area where a pipeline comes ashore. Because state jurisdiction under chapter 253 only extends inward to the mean high tide line, no permit is required under that statute for dredging and filling landward of the line.⁷² Chapter 403 jurisdiction extends landward to the vegetation line.⁷³ Landward of the mean high tide line, jurisdiction for a chapter 403 permit includes submerged lands⁷⁴ and the transitional zone.⁷⁵ As mentioned in the previous section, though, many oil and gas pipelines are exempt from this chapter 403 permit.⁷⁶ Because local jurisdiction sometimes extends to the mean high water mark, however, local dredge and fill permits may be required. Furthermore, the pipeline landfall could occur in the area of a port. The degree of local control over the port authority or district would then be important because in a highly autonomous port district, local land use controls may not apply, and a local dredge and fill permit may not be required.⁷⁷

Chapter 161 of the Florida Statutes establishes a coastal construction setback line 50 feet shoreward of the mean high water line.⁷⁸ The Department of Natural Resources (DNR) may grant a waiver or variance of this setback for pipelines extending outward from the shoreline unless it determines that construction would cause beach erosion. Many local governments have adopted their own construction setback lines. Counties have been granted the authority to regulate and supervise all physical work or activity along the shoreline that is likely to have a material physical effect on existing coastal conditions or natural shore processes.⁷⁹ This authority includes the right to issue permits but is subject to consent by DNR, any municipality, and any other political authority involved (presumably port authorities or port districts).

69. 43 U.S.C. §§1301-1315 (1970); FLA. STAT. §253.12 (1977). *See also* Brickell v. Trammell, 77 Fla. 544, 82 So. 221 (1919); Broward v. Marby, 58 Fla. 398, 50 So. 826 (1909); *State ex. rel. Ellis v. Gerbing*, 56 Fla. 603, 47 So. 353 (1908).

70. FLA. STAT. §361.06 (1977).

71. *Id.*

72. FLA. STAT. §253.12 (1977).

73. FLA. STAT. §§403.021, .061, & .087 (1977); 7 FLA. ADMIN. CODE 17-4.28(2). The vegetation line is seen in the outer bounds of a river bed where the soil has been covered by water for a period of time sufficient to destroy its value for agricultural purposes. *Tilden v. Smith*, 94 Fla. 502, 113 So. 708 (Fla. 1927).

74. 7 FLA. ADMIN. CODE 17-4.02(17).

75. 7 FLA. ADMIN. CODE 17-4.02(19). The transitional zone is the land between submerged lands and upland area.

76. *See* text accompanying notes 60 & 62 *supra*.

77. *See* text accompanying notes 27-28 *supra*.

78. FLA. STAT. §161.052(1), (5) (1977).

79. FLA. STAT. §161.35(1) (1977).

Local governments may prevent certain lands from becoming pipeline landfalls by borrowing state money to purchase land for establishing and maintaining a public beach.⁸⁰ The resulting public ownership would end the eminent domain rights of pipeline companies under chapter 361.⁸¹ Alternatively, a local government could request the state to create a Historic Preservation Board of Trustees over a given area with powers to prohibit pipeline landfalls.⁸²

Although local land use and zoning controls may be used to prohibit pipelines on certain lands,⁸³ a prohibitive land use or zoning regulation which forbade all pipeline landfalls would probably be impermissible.⁸⁴

Pipelines — Onshore

The onshore portion of the pipeline may terminate at a storage facility located in one jurisdiction or pass through that jurisdiction to a storage facility elsewhere. As a result, a land use policy prohibiting the necessary storage facilities will not automatically preclude pipelines from coming ashore or passing through a local jurisdiction. On the other hand, local governments can encourage pipeline development by allowing the requisite storage facilities. In addition, because the pipeline company needs land to lay the pipeline under or upon, local governments may encourage development by providing easements across public lands. Counties are permitted to grant licenses⁸⁵ along county roads not in a municipality. Discouraging a pipeline may be more difficult, because if the pipeline company acquires no access to public lands, the company has eminent domain rights to private lands.⁸⁶ Another means of discouraging pipelines is to prohibit their location in certain zoning districts, such as those zoned residential.

Local governments also have power to begin regulating pipelines upon determination that construction will occur within their jurisdiction. Regulation might entail performance standards, including aesthetic standards. A standard which might discourage construction because of economic considerations would be a requirement that all pipelines be buried.

Onshore Development Activity

The most serious environmental impacts caused by the associated onshore

80. FLA. STAT. §375.065 (1977). Recreation must be the prime purpose of the purchase. *Id.*

81. FLA. STAT. §§361.05-.06 (1977). See text accompanying note 70 *supra*.

82. FLA. STAT. ch. 266 (1977).

83. Many forms of local land use and zoning controls can be implemented to encourage, discourage, or control onshore activities. These mechanisms include land use plans, land development regulations, the DRI process, economic measures, pollution regulations, port controls, historic preservation districts, critical state concern designations, and interlocal agreements. See MIAMI, FLA., CHARTER §72 (1975), which empowers the City Commission to adopt and continue comprehensive plans and implement them through controls on uses of lands/waters, zoning and subdivision controls, and construction and housing codes.

84. Such a regulation would likely violate the Federal Coastal Zone Management Act's mandate that regional energy needs be considered. 16 U.S.C. §1455 (1976).

85. FLA. STAT. §125.42 (1977).

86. FLA. STAT. §361.06 (1977).

development activities are: demands for land, water and power requirements, air and water pollution, aesthetic unpleasantness, and noise pollution.⁸⁷ Major activities onshore may include pipeline landfalls and continuation; onshore terminal and storage facilities; onshore support and service facilities; pipe-coating yards; gas processing facilities; crude treatment sweetening plants; refineries; petrochemical industries; and a platform construction industry. Although all of these activities would not necessarily occur in response to offshore drilling, local authorities should realize that such potential exists.

Because of the many variables involved, it is difficult to predict the type and size of onshore storage facilities. The size will vary depending on whether oil and gas is to be processed locally or shipped or pipelined elsewhere.⁸⁸ For example, a 150,000 barrel pipeline shore terminal will typically require 40 acres of land and include a pump station, three 50,000 barrel tanks, pipeline connections both from offshore to the facility and from the facility to a refinery storage area, and possibly an office and radio tower.⁸⁹ If oil is shipped elsewhere for refining, storage up to several million barrels may be required.⁹⁰ A nearby refinery would include its own storage area.

The typical support and service facility would require about 50 acres of land, including sufficiently deep channels⁹¹ and berthing areas for large supply ships.⁹² In addition to the marine facilities, a supply and support base would normally include a warehouse, material storage area, a pipeline storage and marshalling area, loading docks, heliport, office space, parking area, crane service, railroad and highway connections, and a storage area for fuel and water to be used offshore.⁹³

Pipeline pipes must be coated and weighted prior to use offshore. The requisite pipe-coating yard may encompass 100 to 150 acres, with about 95 percent of the site used for storage of pipes.⁹⁴ Additional siting requirements for the onshore facilities include approximately 750 feet of wharf space.⁹⁵ Fifteen thousand gallons of water per day, one million kilowatts of electricity, and 12-13 million cubic feet per year of natural gas are required.⁹⁶ Air⁹⁷ and noise pollution and aesthetic appearance of the facility may also present problems requiring community planning.

While limited processing may occur on the platform, gas is generally pressurized and piped onshore for processing. The plant necessary for such

87. For a more detailed description of each activity, its components, and impacts, see NEW ENGLAND RIVER BASIN COMMISSION, *ONSHORE FACILITIES RELATED TO OFFSHORE OIL AND GAS DEVELOPMENT—FACTBOOK* (1976) [hereinafter cited as *FACTBOOK*]. Additional impacts are beyond the scope of this paper but should be considered. These include the fiscal, economic, and social impacts that onshore development activities have on local communities.

88. A. PEARMAN & J. STAFFORD, *supra* note 7, at 60.

89. *Id.* at 95.

90. *Id.* at 60.

91. Fifteen feet is usually considered sufficient.

92. A. PEARMAN & J. STAFFORD, *supra* note 7, at 62.

93. *Id.* at 62, 93.

94. *FACTBOOK*, *supra* note 87, at §§9.1-2.

95. *Id.* at §9.1.

96. *Id.*

97. *Id.* at §9.2.

processing requires approximately 20 acres of land and would have a per day processing capacity ranging from 90 to 500 million cubic feet (mmcf).⁹⁸ Storage tanks and facilities, transportation facilities, and pipeline connections to a distribution network may also be required. The processing facility would consume an estimated 15,000 gallons of makeup water and 1,800 kilowatt hours of electrical energy per day.⁹⁹

Construction of a special treatment facility, called a crude treatment sweetening plant, may be necessary if the crude oil and natural gas discovered offshore contains over 0.5 percent of sulphur by weight.¹⁰⁰ While the basic processing unit has a capacity of 12,000 to 24,000 barrels per day, the optimum method of operation would be to combine enough units at a single site to generate a processing capacity of 100,000 to 200,000 barrels per day. Such a facility would require between 100 and 200 acres of land.¹⁰¹

Because oil and gas can be piped or shipped elsewhere, offshore production of oil and gas will not automatically require refinery construction. If built, however, a refinery would likely have a capacity of 100,000 to 300,000 barrels per day¹⁰² and would require storage facilities capable of holding five to ten days output.¹⁰³ The minimum land requirement for a 200,000 barrel-per-day plant is between 1,200 and 1,400 acres.¹⁰⁴ Water consumption could range from nine to eighteen million gallons per day, unless the water is air-cooled, a process which could drop the requirement to two million gallons per day.¹⁰⁵ Also, the refinery would require electrical power ranging from approximately 610,000 to 1,260,000 kilowatt hours per day.¹⁰⁶

Construction of a refinery may spawn various types of industrial development in the coastal community. For example, because petro chemicals are derived from refined products and natural gas liquids, petro chemical industry development may occur near a refinery.¹⁰⁷ Such a complex requires approximately a minimum of 300 acres, 24 million gallons of water per day, and 600 million kilowatts per year of electricity.¹⁰⁸ Further, because most shipyards are not designed for the construction of production platforms, platforms would probably be towed to drilling sites from existing platform fabricating facilities along the Gulf Coast of Texas, Louisiana and Mississippi.¹⁰⁹ There exists, however, the potential for the local development of this type of industry.

98. A. PEARMAN & J. STAFFORD, *supra* note 7, at 63.

99. *Id.*

100. *Id.* at 66. A crude treatment sweetening plant is required in the refining process if the crude oil and natural gas discovered contain large quantities of undesirable contaminants. For example, the presence of hydrogen sulfide and other sulfur compounds have a bad odor and are highly corrosive. Therefore, treatment of the crude prior to shipment to a refinery would be necessary. *Id.* at 65.

101. *Id.* at 65.

102. *Id.* at 68.

103. *Id.*

104. *Id.*

105. *Id.* at 68-69.

106. *Id.* at 69.

107. *Id.* at 72.

108. *Id.*

109. *Id.* at 56-58.

Although local governments have little control over leasing decisions and offshore activity,¹¹⁰ many mechanisms are available to encourage, discourage or control corresponding onshore activity. These mechanisms include land use plans, land development regulations, the DRI process, economic measures, pollution regulations, port controls, historic preservation districts, critical state concern designation, and interlocal agreements.¹¹¹

Local Land Use Plans

The Local Government Comprehensive Planning Act¹¹² requires local governments to adopt comprehensive local development plans by July 1, 1979. All public and private development must be in conformity with the elements of the comprehensive plan,¹¹³ and all development orders and land development regulations, which include zoning, subdivision, building and construction regulations,¹¹⁴ must be consistent with the plan and its elements.¹¹⁵ Through careful adoption of the elements of their plans, local governments can encourage or discourage onshore development activities.¹¹⁶ For example, land suitable for refineries or supply bases may or may not be provided in the community's future land use element. The issues of pipelines and pipeline landfalls may be addressed in conservation, coastal zone, and public services and facilities elements. Because a port facility is essential to an onshore supply base, a local government may similarly encourage or discourage supply activity through the port facilities element. Industrial development can be encouraged through the economic element.

A local government may be unable to totally prohibit onshore development activities, however, because local plans must be compatible with the state comprehensive plan.¹¹⁷ Furthermore, the plan of a local government participating in the coastal zone management program must be consistent with the state coastal zone management plan. Under the federal Coastal Zone Management Act,¹¹⁸ local controls within participating states cannot unreasonably restrict uses of regional benefit. When a regional need for certain onshore development

110. See text accompanying note 31 *supra*.

111. See generally A. PEARMAN & J. STAFFORD, *supra* note 7. Offshore oil and gas development and attendant onshore facilities will have many secondary impacts on local traffic, housing, schools, parks, police and fire protection, and community facilities. Such secondary effects are beyond the scope of this article.

112. FLA. STAT. ch. 163, pt. 2 (1977).

113. FLA. STAT. §163.3161(5) (1977).

114. FLA. STAT. §163.3194(2)(b) (1977).

115. FLA. STAT. §163.3194(1) (1977).

116. By giving local governments more power and responsibility, the Local Government Comprehensive Planning Act is intended to encourage rational development of land and the protection of natural resources. The Act requires a coastal zone protection element for all local governments lying within the coastal zone. The comprehensive plan includes utility and intergovernmental coordination elements. The Act also provides for a number of optional elements such as a scenic preservation or historical element which sets out plans and programs for those structures or lands in the area having scenic or historical significance. See generally FLA. STAT. §§163.01-708 (1977).

117. FLA. STAT. §§163.3177(4), 163.3184(2), (6) (1977).

118. 16 U.S.C. §§1451-1464 (1972).

facilities exists, provision probably must be made for those facilities in the local jurisdiction's plan.

Land Development Regulations

Municipal and county zoning regulations¹¹⁹ may affect onshore facilities in three distinct ways. First, by defining permitted or prohibited uses in the jurisdiction's zoning districts, local governments can either encourage or discourage onshore facilities. For example, a local government might prohibit refineries in all zoning districts.¹²⁰ Conversely, pipelines or storage tanks could be permitted in certain districts.

A second way that zoning ordinances may encourage or discourage onshore facilities is through their definitions of the uses permitted on certain parcels of land. Generally, the jurisdiction is divided into zoning districts with uses assigned to each district. In order to discourage the building of refineries, a local government could permit refineries in industrial districts without assigning any land to these districts. On the other hand, to encourage development a local government might zone land suited for onshore facilities in a particularly appropriate district.

Third, zoning regulations might be used to regulate onshore facilities rather than to permit or prohibit their initial location. Traditionally these zoning regulations prescribe the height, size, and setback requirements for individual zoning districts.¹²¹ An alternative method, the adoption of performance standards for either a particular district or industry, specifies minimum standards regarding air pollution, water pollution, noise, noxious odors, hazardous materials, glare, safety, and aesthetics.¹²² A proposed onshore facility meeting the industry or district performance standards would then be permitted.¹²³ Such performance standards do not have to be tied to a zoning ordinance but may be used separately or in conjunction with the other review processes outlined here. Regulation of onshore facilities might also be accomplished through the adoption of a Planned Industrial District.¹²⁴

Local governments could also use subdivision regulations to control the location and development of onshore facilities.¹²⁵ The threshold requirement for

119. FLA. STAT. §163.205 (1977) enables municipalities and counties to adopt zoning ordinances.

120. See, e.g., KEY COLONY BEACH, FLA., ORDINANCES 66 (amended 1976); CENTER FOR GOVERNMENTAL RESPONSIBILITY, *supra* note 11, at 375.

121. See, e.g., INDIAN RIVER COUNTY, FLA., ORDINANCES 71-3 (1971); BELLEAIR BEACH, FLA., ORDINANCES 108 (1975).

122. See, e.g., ST. AUGUSTINE, FLA., CODE ch. 14, art. III, §§14, 34-38 (air pollution); JACKSONVILLE, FLA., CODE §554.201 (water pollution); PENSACOLA, FLA., CODE ch. 56,118 (noise pollution and aesthetics).

123. This approach is permitted by FLA. STAT. §163.205(1)(h) (1977).

124. Planned Industrial Districts (PID) are a relatively recent innovation in large-scale construction and are similar to Planned Unit Developments (PUD). Controlled developments eliminate strip zoning and provide flexibility for developers within the unit through de-emphasis on uniform lot-by-lot zoning. The flexibility of PID's seems particularly matched to regulated growth around environmentally sensitive areas.

125. FLA. STAT. §§163.260-295 (1977) enables counties and municipalities to adopt subdivision regulations.

application of these regulations is either the division of land into individual lots or a development proposal surpassing standards for size, height, activity, or impact.¹²⁶ Subdivision regulations may emphasize on-site development requirements, in which case the regulations would address issues such as minimum lot sizes and maximum lot coverage, setbacks, open space dedications, sewage trunk lines, land drainage, and utility lines.¹²⁷ In addressing the externalities of the proposed development, subdivision regulations may also specify that "[t]he developer must prepare a plan showing the impact of his project on activities, such as schools, traffic, taxes, growth, vegetation, ecology, land use relationships, historical sites, water, sewage and flood areas."¹²⁸ A local government could combine these two approaches to regulate the impact of certain onshore facilities including refineries, storage areas and supply bases.

Local governments may develop platting requirements for industrial lands, thus enabling local regulatory input early in the development process.¹²⁹ Platting regulations may control both the land use and the externalities of a proposed development. Broward County, for example, provides that the County Commission adopt an order either approving the plat, denying the plat, or conditionally approving the plat.¹³⁰ In addition, the Broward County ordinance specifies that all improvements to the land must be either installed and completed or financially guaranteed.¹³¹ Other conditions which may be imposed in platting requirements include dedication of land¹³² or payment of impact fees.¹³³

As a final measure, local governments may adopt building regulations specifically applicable to the types of development activity expected to accompany offshore energy development.¹³⁴ For example, Monroe and Dade Counties require that oil and petroleum storage tanks be underground,¹³⁵ and Fernandina Beach mandates that underground storage tanks be secured to prevent floating.¹³⁶

Developments of Regional Impact

Under the Development of Regional Impact (DRI) process,¹³⁷ petroleum

126. CENTER FOR GOVERNMENTAL RESPONSIBILITY, *supra* note 11, at 472.

127. *Id.* at 473.

128. *Id.*

129. FLA. STAT. §§177.011-151 (1977) establishes minimum platting requirements, and FLA. STAT. §177.011 (1977) allows additional regulations by local government.

130. BROWARD COUNTY, FLA., ORDINANCE §302 (1977).

131. *Id.*

132. FLA. STAT. §177.081 (1977).

133. Impact fees are initial fees paid by developers before construction begins and are used to cover necessary capital improvements such as water and utility hookups.

134. See text accompanying notes 87-111 *supra*. Counties and municipalities may adopt and enforce plumbing, building, electrical, gas, fire, safety and sanitary codes, FLA. STAT. §163.295 (1977).

135. MONROE COUNTY, FLA., COMPREHENSIVE ZONING ORDINANCE art. III, §41.3 (1976); DADE COUNTY, FLA., CODE §§33-262 (1975).

136. FERNANDINA BEACH, FLA., CODE ch. 9, art. II (1957).

137. FLA. STAT. §380.06 (1977). A development of regional impact (DRI) is a development

storage facilities are presumed to be DRI's either if the facility is located within 1,000 feet of any navigable water and has a storage capacity of over 50,000 barrels or if the storage facility has a capacity of over 200,000 barrels regardless of the location.¹³⁸ Any industrial, manufacturing, or processing plant under common ownership occupying a site greater than one square mile (640 acres) is also presumed to be a development of regional impact.¹³⁹ While refineries generally require 1,200-1,400 acres,¹⁴⁰ other onshore energy-related facilities may not exceed the threshold size.¹⁴¹ The First District Court of Appeal has held, however, that these threshold figures are only presumptions and that the Division of State Planning must ultimately decide whether the magnitude, character, or location of the proposed development requires that it be classified a DRI.¹⁴²

Once a project has been declared a DRI, the local government with jurisdiction over the project has 90 days to adopt zoning or subdivision regulations if none already exist.¹⁴³ After promulgation of these regulations, the developer must submit an application to the government with jurisdiction and forward copies to the regional planning agency and the Division of State Planning.¹⁴⁴ The regional planning agency determines the sufficiency of information in the application¹⁴⁵ and may demand additional information from the developer.¹⁴⁶ The regional planning agency must prepare a report and recommendations on the proposed development's regional impact.¹⁴⁷ The local government must hold a public hearing¹⁴⁸ before either approving the development, approving the development subject to conditions, or denying the development.¹⁴⁹ This

which would have a substantial effect upon the health, safety, or welfare of citizens of more than one county because of its character, magnitude, or location.

138. 8 FLA. ADMIN. CODE 22F-2.08.

139. 8 FLA. ADMIN. CODE 22F-2.05.

140. A. PEARMAN & J. STAFFORD, *supra* note 7, at 68.

141. For example, a crude treatment sweetening plant with a capacity of 100 to 200 acres. Such a facility is designed to remove undesirable contaminants before mass refining can take place. *Id.* at 66.

142. *General Dev. Corp. v. Division of State Planning*, 353 So. 2d 1199, 1208 (Fla. 1st D.C.A. 1977). The First District Court of Appeal upheld a letter of determination made by the Division of State Planning which established that a landowner's segmented development of 15,500 acres in separate but neighboring tracts would be a development of regional impact subject to regulation.

143. FLA. STAT. §380.06(5)(c) (1977).

144. FLA. STAT. §380.06(6) (1977). *See also* 8 FLA. ADMIN. CODE 22F-1.20(3).

145. 8 FLA. ADMIN. CODE 22F-1.20(5).

146. 8 FLA. ADMIN. CODE 22F-1.20(5)(b).

147. FLA. STAT. §380.06(8) (1977).

148. FLA. STAT. §308.06(7) (1977).

149. 8 FLA. ADMIN. CODE 22F-1.23(1), (3)(b), (d). The application for development will be denied or approved subject to conditions, restrictions, or limitations, depending on the local government determination of whether: (a) the development unreasonably interferes with the achievement of the objectives of an adopted state land development plan applicable to the area, (b) the development is consistent with the local land development regulations, and (c) the development is consistent with the report and recommendations of the regional planning agency. *See* 8 FLA. ADMIN. CODE 22F-1.23(2).

development order may be appealed to the Florida Land and Water Adjudicatory Commission.¹⁵⁰

Although the DRI process is not applicable to all development activities, when applicable, it insures the availability of sufficient information to permit a local government to intelligently decide whether to approve or deny a development and, through the development order issued on approval, allows a local government to place conditions on the proposed development.¹⁵¹

Economic Encouragements and Prohibitions

A local government in Florida cannot provide ad valorem tax¹⁵² incentive to encourage onshore development activity on privately owned land because of three constitutional provisions. First, all ad valorem taxation must be at a uniform rate within each taxing unit;¹⁵³ therefore, a local government would be prohibited from offering a lower millage rate to the developer of an onshore facility. Second, all property must be assessed at a just valuation for ad valorem taxation;¹⁵⁴ consequently, the property appraiser must consider the present cash value along with the highest and best use of the property.¹⁵⁵ Because the Florida supreme court has interpreted these provisions to require that all property be assessed at 100 percent of full fair market value,¹⁵⁶ local governments may not offer a lower property valuation to the developer of an onshore facility. Third, the only constitutionally authorized ad valorem taxation exemptions for privately owned property are for property used predominantly for educational, literary, scientific, religious, or charitable purposes.¹⁵⁷ Onshore facilities would not fit within any of these exempted categories.

The Florida Constitution exempts from ad valorem taxation property owned by a municipality and used exclusively for municipal or public purposes.¹⁵⁸ A local government or port district might therefore consider leasing government-owned lands for the development of onshore facilities. Leasehold interests in government-owned property, however, are subject to ad valorem taxation¹⁵⁹ unless "the lessee serves or performs a governmental, municipal, or public purpose or function";¹⁶⁰ that is, a function or purpose "which could properly be performed or served by an appropriate governmental unit, or which is demonstrated to perform a function or serve a purpose which would other-

150. FLA. STAT. §380.07(2) (Supp. 1978).

151. The involvement of the state and regional planning agencies should insure that regional and statewide concerns are properly included in the local government's evaluation of the proposal.

152. FLA. CONST. art. VII, §§1, 9. See also FLORIDA SENATE FINANCE, TAX AND CLAIMS COMMITTEE, THE FLORIDA LEGISLATOR'S TAX HANDBOOK (1977).

153. FLA. CONST. art. VII, §2.

154. FLA. CONST. art. VII, §4.

155. FLA. STAT. §193.011(1)-(2) (1977).

156. *Spooner v. Askew*, 345 So. 2d 1055, 1057 (Fla. 1976).

157. FLA. CONST. art. VII, §3.

158. *Id.*

159. FLA. STAT. §196.001(2) (1977).

160. FLA. STAT. §196.199(2)(a) (1977).

wise be a valid subject for the allocation of public funds."¹⁶¹ The nature of the use is thus the key issue. Private profit may occur as long as the predominant use of the property is public.¹⁶² Because the federal Coastal Zone Management Act mandates consideration of the national interest in siting energy facilities,¹⁶³ it may be contended that onshore development activities are uses entailing a public purpose and therefore entitled to an ad valorem tax exemption.

Local governments might consider structuring the Public Utility Service Tax Rate to provide further tax incentives. Certain onshore facilities require large amounts of water and electricity.¹⁶⁴ By adjusting the tax rate on these

161. FLA. STAT. §196.012(5) (1977).

162. No property has enjoyed tax-exempt status unless it has been shown to serve a public purpose. In *Dade County v. Pan American Airways, Inc.*, 275 So. 2d 505 (Fla. 1973), the Florida supreme court determined that private leaseholds in municipally-owned property were exempt if used predominantly for a public purpose. The court stated that if the property was owned by a municipality, it was insignificant that the property was leased to a private party for the performance of a public purpose. As long as the municipality owned the property, it did not matter who used it. *Id.* at 513. The profit of the airline was incidental to the public purpose of operation of an airport. *Id.* at 509.

The "public purpose" test of chapter 196 was evaluated in *Walden v. Hertz*, 299 So. 2d 121 (2d D.C.A. 1974), *aff'd*, 320 So. 2d 385 (Fla. 1975). The Florida supreme court upheld the decision of the Second District Court of Appeal which found the Hertz car rental facility at Tampa International Airport to be tax-exempt because it served as a public purpose. All leaseholds are to be treated the same under the ambit of chapter 196, whether or not financed by revenue bonds. 299 So. 2d at 123. Applying the public purpose test of chapter 196, the district court ruled that operation of the airport depended upon a conveniently located car rental facility. *Id.* at 125.

In *Williams v. Jones*, 326 So. 2d 425 (Fla. 1975), the Florida supreme court addressed the public purpose exemption for leaseholds as defined by FLA. STAT. §196.012(5) (1977). At issue were the private leaseholds on Santa Rosa Island owned by the Santa Rosa Island Authority. The court found that the leaseholds were purely proprietary, held for profit and were not governmental functions. 326 So. 2d at 433. While denying tax exemptions for the leaseholds, the court reaffirmed the notion that the use of leased property determined its taxability. *Id.* at 432. Thus, the tax exemption would be available for any of the functions which cities are authorized to perform in chapter 196. *Id.* at 433. The authorization would render almost any governmental function valid for the appropriation of public funds as long as the function is not purely proprietary. *See also* *Volusia County v. Daytona Beach Racing & Recreation Facilities Dist.*, 341 So. 2d 498 (Fla. 1976).

163. 16 U.S.C. §1455(c)(8) (1976). Refineries producing such products as fuel oil and gasoline have high water and electric consumption rates which will vary considerably, depending on plant design, cost of water, and other factors. For example, in a 200,000 barrel-per-day capacity refinery, a water-cooled system will use about 30 million gallons of water per day, whereas an air-cooled system will use about 8 million gallons per day. Electric power requirements for a refinery of 2,000,000 barrels-per-day capacity are expected to equal 1,260,000 kilowatt hours (KWH) per day or 420 million KWH per year. For further discussion, *see* IV COUNCIL ON ENVIRONMENTAL QUALITY, OCS OIL AND GAS — ENVIRONMENTAL ASSESSMENT §9 (1974).

164. Facility	Water Requirements	Energy Requirements
Oil Storage Terminal	—	8 million KWH electricity/ 1 million barrels/day
Pipe Coating Yard	15,000 gallons/day (GD)	1 million KWH, 12-13 MCF gas/year
Gas Processing	0-750,000 GD	5.4 million KWH/year

items, a local government may either encourage or discourage development.¹⁶⁵

While local governments are constitutionally prohibited from using their taxing power or credit to aid any corporation, association, partnership, or person,¹⁶⁶ revenue bonds may be issued by counties, municipalities, and special districts to finance or refinance the cost of capital projects for ports¹⁶⁷ and for industrial and manufacturing plants.¹⁶⁸ These revenue bonds must be payable solely from revenue derived from the sale, operation, or leasing of the projects.¹⁶⁹ If any portions of such projects are operated or occupied by a private corporation, association, partnership, or person, the property interest created by the sale or lease is subject to ad valorem taxation,¹⁷⁰ unless exempted under the public purpose standard described above.¹⁷¹

Local governments may insure that suitable land is made available for the construction of onshore facilities by acquiring property through purchase or through exercise of their eminent domain power.¹⁷² For example, the Manatee Industrial Development Authority is authorized to purchase property to promote industry.¹⁷³ Lee County, on the other hand, has authorized the use of the taxing and bonding power to drain lands to increase their usability.¹⁷⁴ By acquiring and preparing suitable lands, a local government may encourage the location of onshore facilities.

In addition to financing the construction of facilities through the issuance of revenue bonds, local governments may be able to spend public funds directly for the construction of certain facilities. Nassau County, for example, has granted power to its Port Authority to acquire, construct, and equip with public funds an "oil refinery and related facilities to be leased to a private corporation."¹⁷⁵

Refineries	5-15 million gallons/ day (MGD)	1.26 million KWH/year
Petrochemical Industry	24 MGD	6000 million KWH/year
Platform Industry	100,000-1,240,000 GD	—

AMERICAN SOCIETY OF PLANNING OFFICIALS, ANTICIPATING AND PLANNING FOR THE ONSHORE IMPACTS OF OCS OIL AND GAS DEVELOPMENT, OFFSHORE ACTIVITIES AND ONSHORE FACILITIES (1978).

165. For example, Fort Lauderdale taxed at a rate of 10% for the first \$100 of the utility bill and only 3% for the amount of the bill over \$100. FORT LAUDERDALE, FLA., ORDINANCES C-72-80 (1972), as amended by, FORT LAUDERDALE, FLA., ORDINANCES C-77-139 (1977).

166. FLA. CONST. art. VII, §10.

167. FLA. CONST. art. VII, §10(c)(1).

168. FLA. CONST. art. VII, §10(c)(2).

169. FLA. CONST. art. VII, §10(c).

170. *Id.*

171. See note 162 *supra* and accompanying text.

172. Cities and counties are authorized to acquire property by eminent domain. FLA. STAT. ch. 127 (1977).

173. MANATEE COUNTY, FLA., CODE §16 (1974).

174. LEE COUNTY, FLA., CODE ch. 12 (1973).

175. NASSAU COUNTY, FLA., CODE ch. 19, art. III (1970) (cited in CENTER FOR GOVERNMENTAL RESPONSIBILITY, *supra* note 11, at 300).

Local Pollution Regulations

Each county and municipality may establish and administer an air and water pollution program.¹⁷⁶ Any local program must contain requirements equal to or more stringent than the state requirements.¹⁷⁷ Although the State Department of Environmental Regulation has exclusive permit authority, it may delegate this authority to local government.¹⁷⁸ Local governments can also regulate or prohibit noise and odor pollution.¹⁷⁹ Because many of the onshore development activities present potential pollution problems, a strict local program of pollution control could regulate or discourage certain onshore activities by making the cost of such activities prohibitive. For example, Monroe County's requirement that oil and petroleum product storage tanks be located underground¹⁸⁰ creates a prohibitive cost due to coral rocks and high water table.

Harbor and Port Controls

Harbors and ports may be administered by various governmental units, including independent port authorities, port districts established by special act of the legislature, or port authorities established and operated by local authorities.¹⁸¹ Certain administrative units, such as the Santa Rosa Island Authority, have jurisdiction over ports within their boundaries.¹⁸² The type of governmental unit and the specifics of its enabling legislation dictate the types of controls that may be exercised.¹⁸³

176. FLA. STAT. §403.182 (1977).

177. FLA. STAT. §403.182(1)(b) (1977).

178. FLA. STAT. §403.182(2) (1977).

179. See, e.g., MIAMI, FLA., CODE ch. 36 (1975), which generally regulates unnecessary, excessive, or unusual noises, including those from advertising (§§36-6, 36-9) and industry or commercial enterprises (§§36-4, 36-12, 36-13); NORTH MIAMI BEACH, FLA., CODE ch. 11, art. II, §§11-13, creates a department of smoke inspection and abatement to establish and enforce standards for noxious gases, heating, power, and fuel burning equipment and to approve plans for control of smoke.

180. CENTER FOR GOVERNMENTAL RESPONSIBILITY, *supra* note 11, at 376.

181. See text accompanying notes 26-28 *supra*.

182. CENTER FOR GOVERNMENTAL RESPONSIBILITY, *supra* note 11, at 492.

183. Local legislative bodies such as county commissions and municipal councils and commissions also have jurisdiction over water use. The St. Johns County Commission has such jurisdiction because of its function as head of a local port district. 1937 Fla. Laws, ch. 18879. In Key West, the city commission has final power over the local port authority, which has extensive powers in regard to water-related uses. KEY WEST, FLA., CODE ch. 33 (1975). In Miami, the Department of Public Service is in charge of construction and repair of docks, harbors, and waterway channels. MIAMI, FLA., CODE ch. 2 (1975). In Lake Park, a Marine Department was established to regulate the construction of waterway structures. LAKE PARK, FLA., ORDINANCES §11-1 (1975).

Certain local officials may play an important role in administration of water-related uses. The Dade County Manager issues the tariffs of the Port of Miami. PORT OF MIAMI TERMINAL, FLA., TARIFF No. 10 (1970). In Pensacola, the City Manager has authority to regulate boats, docks, and waterways. PENSACOLA, FLA., CODE §73-1 (1975). Zoning and building officials often have important roles in regulating dock construction and in administering dock regulations.

A final source of local authority resides in advisory boards. For example, the Ft. Lauderdale Marine Advisory Board makes recommendations concerning waterways, docks, marinas, and

Activities at the port may be controlled by port regulations or tariffs which may grant the port manager extensive discretionary powers in day to day administration, including the right to accept or reject cargo such as flammable or dangerous materials.¹⁸⁴ Thus, offshore oil and gas may be prohibited from entering the port. Port tariffs may require application of Coast Guard rules to the handling and storage of flammable materials and to the discharge of petroleum products within port waters.¹⁸⁵ Diking sufficient to hold the entire capacity of the tank may be required around petroleum storage tanks.¹⁸⁶ Port districts may also impose permit safety requirements. For example, Port Everglades requires a cutting and welding permit from the Port Authority before using torches within the Port's jurisdiction. Liability insurance is a prerequisite to obtaining a permit.¹⁸⁷

Strict fire regulations also may be imposed within the port's jurisdiction. Port Everglades maintains its own fire department trained in combatting petroleum fires, supported by mutual aid contracts with the surrounding municipalities.¹⁸⁸ Additionally, all tug boats operating out of Port Everglades must have foam and dispersal capacity on board.

The impact of potential oil spills can be softened by proper planning. Along with the safety measures mentioned above, ports may assess to those responsible for the spill the cost of cleanup plus a penalty.¹⁸⁹ Port Everglades has established a spillage committee, and each member contributes to a spillage fund.¹⁹⁰

If the port authority or port district is autonomous, local land use controls may not apply. Therefore, despite municipal or county opposition, a port may choose to develop onshore facilities. The development of onshore facilities within port districts or authorities may also be aided by the bonding powers of the port, the exemption from local taxation of port facilities, and any taking power conferred on the port by general or special tax.¹⁹¹

Historic Preservation Districts

Historic preservation districts may be created by the Department of State,¹⁹² or they may be established by local governments¹⁹³ to help protect historic areas from the effects of onshore development activity.¹⁹⁴ For example, a water-

relations with the Coast Guard. FT. LAUDERDALE, FLA., CODE §2-106 (1975). Although these boards have no regulatory function, they perform an important function in advising local government about water use problems.

184. CENTER FOR GOVERNMENTAL RESPONSIBILITY, *supra* note 11, at 494.

185. *Id.* at 495.

186. PORT EVERGLADES, FLA., RATES, RULES, & REGULATIONS §3 (1975).

187. Interview with Mr. Manges, Fire Chief of Port Everglades (June 15, 1978).

188. *Id.*

189. PORT CANAVERAL, FLA., TARIFF no. 3, item 240 (1968).

190. Interview with Martin A. Mets, Assistant to the Director of Operations, Port Everglades (June 15, 1978).

191. FLA. STAT. §§315.01-.16 (1977).

192. FLA. STAT. §266 (1977).

193. *See, e.g.*, PENSACOLA, FLA., CHARTER §247.

194. For example, the PENSACOLA, FLA., CHARTER §§247, 252, establishes a Historic Restora-

front historic preservation district may prevent a pipeline landfall or the development of an onshore support and service base in that area. The district may also be able to acquire property, thus giving the local government further protection.

Areas of Critical State Concern

Florida law provides that up to five percent of the land in the state may be designated as areas of critical state concern.¹⁹⁵ Areas of critical state concern are those areas which have environmental, historical, natural, or archeological resources of regional or statewide importance.¹⁹⁶ Local governments, individually or through their regional planning councils, can recommend study areas appropriate for such designation.¹⁹⁷ Once an area is designated, detailed development regulations must be promulgated within one year.¹⁹⁸ Because the development regulations will be protective, development of onshore facilities will be difficult. The Florida supreme court is currently examining the constitutionality of this statute.¹⁹⁹

Interlocal Agreements

A decision by one local government to encourage or discourage construction of onshore facilities will affect and may conflict with decisions of neighboring jurisdictions. For example, a port district may issue revenue bonds to construct a petroleum storage terminal within the port district even though the munici-

tion and Preservation Commission with powers to preserve and restore the city's old areas. Section 252 sets up an Architectural Review Board with two-year appointees from certified architects, county residents, and the city planner. Decisions are to be based upon integration and character of the neighborhood, consideration of property owners, and other districts.

The Architectural Review Board works through the zoning regulations, which empower it particularly to approve or disapprove construction within the Historic Preservation district and North Hill Preservation District. In PENSACOLA, FLA., ORDINANCES no. 31-65 (1965), *as amended* by ORDINANCE no. 2-71 (1971), the Architectural Review Board apparently has veto power over the proposed change on the legally defined historic district. The appointed board has broad powers to reject or approve plans submitted on grounds of aesthetics, prohibitions against extending various uses, and preserving the historic attributes of the area through the type of structures allowed.

The Pensacola scheme has met with social and economic success by attracting customers and shops to the city. The area preserved is approximately 113 acres, and emphasis is placed on public use and access, recreation and restoration, and residence and tourism. A North Hill Preservation District has been set up in a separate residential section of Pensacola with similar but somewhat less stringent units on allowable non-conforming uses. *See* ROBERT BATEMENT AND ASSOCIATES, MASTER PLAN: PENSACOLA HISTORIC DISTRICT, 1971.

195. FLA. STAT. §380.05(2)(a) (1977).

196. FLA. STAT. §380.05(17) (1977).

197. FLA. STAT. §380.05(3) (1977).

198. FLA. STAT. §380.05(12) (1977).

199. *Cross Keys Waterways v. Askew*, 351 So. 2d 1062 (Fla. 1st D.C.A. 1977). In *Cross Keys Waterways* the court upheld a challenge to the designation of virtually all of the Florida Keys as an area of critical state concern. The court held that FLA. STAT. §380.05(2)(a)-(b) (1977), which attempted to provide standards for the Administrative Commission in designating areas as being of critical state concern, were inadequate to support this delegation of legislative power and therefore violated article II, section 3 of the Florida Constitution.

pality or county encompassing or adjoining the port adamantly opposes any onshore development activity. The Local Government Comprehensive Planning Act²⁰⁰ process is designed to identify policy conflicts between different governmental units.²⁰¹

Local governmental units may jointly exercise power by entering into a contract called an interlocal agreement²⁰² or by forming a council of local public officials.²⁰³ Through either process, local governments affected by offshore development may attempt to control the onshore impacts on an area-wide basis.

Regional planning councils, important in coordinating state and local efforts, are authorized to act in an advisory capacity to the constituent local governments in regional, metropolitan, county and municipal planning matters involving land use, water resources, highways, recreational areas, sewage and garbage disposal, and other matters concerning the acquisition, planning, construction, development, financing, control, use, improvement, or disposition of land, buildings, structures, facilities, goods or services in the public interest.²⁰⁴ Although the councils are empowered only to advise, they may provide an effective communication link between state government and local authorities.

Water

Because onshore development activities require significant amounts of water for operation, they will be affected by water availability.²⁰⁵ The Department of Environmental Regulation (DER) is now responsible for the state water use plan which prescribes the control of the state's waters and the preservation and enhancement of the water quality. The DER vests power in the governing boards of the water management districts, which were created under the Florida Water Resource Act of 1972,²⁰⁶ including administration, the deter-

200. FLA. STAT. §163.3177(4) (1977).

201. See text accompanying notes 112-118 *supra*. Under FLA. STAT. §163.3167(4), (5) (1977), local government units must develop a local comprehensive plan or lose control of their future planning and development powers. The coordination of the local comprehensive plan with the state plan or comprehensive plans of adjacent communities, counties, and regions is a major objective and required element of the overall comprehensive planning process. FLA. STAT. §163.3177(4) (1977). Each local body must therefore include a "policy statement indicating the relationship of the proposed development of the area to the comprehensive plans of adjacent municipalities, the county, adjacent counties, or region and to the state comprehensive plan." This element is needed for final plan approval by the Division of State Planning.

202. FLA. STAT. §163.01(5) (1977).

203. FLA. STAT. §163.02(1) (1977).

204. FLA. STAT. §160.02(10) (1977). See also FLA. STAT. §§160.01(1), .02(4) (1977). A Regional Planning Council consists of two representatives from each participating local government appointed by the legislative body of that government. RPC's are authorized to employ necessary personnel, consultants, and technical and professional assistants to perform their official duties.

205. See text accompanying notes 99 & 105 *supra*.

206. FLA. STAT. ch. 373 (1977).

mination, establishment, and control of the level of much of the state's waters, and the regulation of discharges into and withdrawals from these waters.²⁰⁷ The DER delegation of substantial portions of environmental decision-making to the district level has provided greater local control. Counties and municipalities, however, have no direct control over water use permits.²⁰⁸

SHIPPING AND DEEPWATER PORTS

Because of the continued United States dependence on foreign sources of oil, the shipment of oil through the Florida Straits and the possibility of a deepwater port adjacent to Florida present a growing threat to local communities. The gravest environmental danger is oil spills.

Oil released in the water in any large quantity can create serious problems for both the physical and social environment. Physical damages may include the destruction of reefs, mangrove and marsh areas, as well as their tenant fish and wildlife.²⁰⁹ Beaches could also be damaged. Furthermore, a large-scale oil spill could seriously affect the tourist and fishing industries.²¹⁰ As the use of supertankers and frequency of voyages increase, the risk of spills and the potential size of the spills also increase. Unfortunately, the area of Florida most exposed to these risks is also the area which possesses the most valuable physical environment.²¹¹

A deepwater port will occasion many of the same onshore development activities associated with offshore oil and gas discoveries, with their attendant environmental, social, and economic impacts.²¹² The impact of these activities will be heightened because of the greater volume of oil involved.

Although an oil spill or secondary development may have profound effects onshore on a local government, there are few methods for exerting local control over these activities. All of the primary activities occur offshore, and regulation of these has, for the most part, been preempted by federal and state law.²¹³ A description of these activities and available local controls will illustrate the potential problems.

Deepwater Ports

Deepwater ports require water approximately 100 feet deep.²¹⁴ The 100-foot contour off the Florida coast is only close to shore in the area from Palm Beach to Key West²¹⁵ and in the Pensacola-Panama City area.²¹⁶ This does not preclude development in other places, however; proposals have been made to con-

207. FLA. STAT. §373.103(4) (1977).

208. FLA. STAT. §373.217 (1977).

209. See note 50 *supra*.

210. *Id.*

211. See text accompanying note 215 *infra*.

212. See text accompanying notes 88-208 *supra*.

213. See text accompanying notes 229-243 *infra*.

214. A. PEARMAN & J. STAFFORD, *supra* note 7, at 217.

215. *Id.* This occurs in several places within the state's three-mile jurisdiction.

216. *Id.* at 218. The contour occurs 13 to 24 miles offshore in this area.

struct a deepwater port 30 miles off the gulf coast of Manatee County in 100 feet of water and another 12 miles off the Atlantic coast of Fort Pierce.²¹⁷

Four basic types of deepwater port facilities are possible. The first, single-buoy mooring, or monobuoy, consists of a buoy anchored by chains to submerged piles.²¹⁸ This system allows the ship to drift and thereby align itself with the wind, waves, and current. A freely rotating floating hose carries oil from the middle of the ship to the buoy. The oil next passes by submarine hoses to a submerged pipeline and to shore.²¹⁹

A second type of facility, conventional buoy mooring, locks the tanker in a fixed heading by mooring it to several buoys.²²⁰ Oil is pumped from the tanker directly to submarine lines and then to shore. These lines remain submerged when not in use and are marked by hose marker buoys, permitting their recovery when needed.²²¹

The third alternative, single pile mooring, is similar to the monobuoy in that the tanker is free to drift. This system, however, replaces the monobuoy and submarine hoses with a tower attached to the sea bottom.²²² A floating boom is used instead of floating hoses to unload the tanker.²²³

A fourth possibility is construction of an artificial island with a sea island berth. The island could also contain a tank farm²²⁴ and act as a transshipment point. Because this is the most expensive alternative, its construction off the Florida coast is least likely.²²⁵

The specific onshore impacts of deepwater ports will include support facilities, pipelines, storage facilities, refineries, and petrochemical industries. As with offshore oil and gas development, the types and magnitude of onshore impacts depend on the amount of oil to reach shore. The potentially greater amount of oil to reach shore because of the deepwater port should therefore produce more extensive effects. For example, in a study of onshore impacts of offshore oil and gas development for Manatee County, a total of 77 lease tracts were aggregated, projecting a peak daily production of 136,000 barrels of oil per day.²²⁶ In contrast, the predicted volume at the proposed Seadock deepwater port off the Texas coast approaches four million barrels per day.²²⁷ Therefore,

217. *Id.* at 219-220.

218. *Id.* at 195.

219. *Id.*

220. *Id.*

221. *Id.* at 196.

222. *Id.*

223. *Id.*

224. SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, 93d Cong., 2d Sess., DEEPWATER PORT POLICY ISSUES 58 (Comm. Print 1974) (drawing of facility type).

225. This article's description of the types of unloading facilities has assumed that oil would be piped onshore for storage. It is possible, on the other hand, that storage facilities could be located offshore. In this case, oil would eventually reach shore by pipelines, barges, or smaller ships.

226. A. PEARMAN & J. STAFFORD, *supra* note 7, at 83-84.

227. UNITED STATES DEP'T OF COMMERCE, DEEPWATER PORTS PROJECT OFFICE, ANALYSIS OF THE RISK OF DAMAGE TO THE STATES OF FLORIDA AND TEXAS FROM SEADOCK, INC. PROPOSED PORT, 12 (March 25, 1976) [hereinafter cited as SEADOCK ANALYSIS].

even though the types of onshore facilities would be similar, the onshore effects of a deepwater port can be much more severe.

Because the types of onshore facilities associated with deepwater ports and offshore oil and gas development are so similar, the methods of local control discussed in the offshore oil and development section apply equally here.²²⁸ Therefore, the following discussion will address only the possible methods of local control of offshore facilities connected with deepwater ports.

The construction of deepwater ports off the United States coast and beyond the territorial sea²²⁹ will be governed by the Deepwater Ports Act of 1974.²³⁰ The territorial sea of the United States encompasses the area within three miles of the coastline. Although the state may have a certain amount of input through either adjacent coastal state status²³¹ or through the consistency provision of the Coastal Zone Management Act,²³² a local government has no direct input under the Deepwater Ports Act and is limited to commenting on the Environmental Impact Statement. The area within the three mile limit, on the other hand, is subject to state ownership under the Submerged Lands Act of 1953²³³ and is subject to a combination of state and federal controls.²³⁴

If a deepwater port were constructed within the three mile limit, the state would require registration of the terminal facility under the Pollutant Spill Prevention and Control Act.²³⁵ The Act imposes strict liability for any damage incurred by the state or private persons resulting from an oil spill in Florida's territorial waters with a limit of \$14 million or \$100 per gross registered ton of the vessel.²³⁶ The liability would be unlimited if the discharge resulted from gross negligence or willful misconduct.²³⁷ This provision corresponds to the limits of liability in the Federal Water Quality Improvement Act of 1970.²³⁸ This liability applies to both the terminal and any ship destined for or leaving the terminal. The United States Supreme Court has held that the Federal Water Quality Improvement Act of 1970,²³⁹ as amended by the Federal Water Pollution Control Act Amendments of 1972,²⁴⁰ which requires reimbursement of actual cleanup costs incurred by the federal government, does not preempt the field and that the Florida Act is in harmony with the federal acts.²⁴¹ The

228. See text accompanying notes 112-208 *supra*.

229. As defined in the Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, Geneva.

230. 33 U.S.C. §§1501-1524 (1976).

231. See 33 U.S.C. §§1502(1), 1508 (1976) for definition and explanation of "adjacent coastal state".

232. See notes 39-40 *supra*.

233. 43 U.S.C. §§1301-1315 (1976).

234. See text accompanying notes 235-241 *infra*.

235. FLA. STAT. §376.06(1) (1977).

236. See FLA. STAT. §376.12(2) (1977) for statutory deliniation of damage liability.

237. *Id.*

238. 33 U.S.C. §1161(f)(1) (1970).

239. 33 U.S.C. §1161 (1970).

240. 33 U.S.C. §§1251-1376 (1976).

241. *Askew v. American Waterways Operators*, 411 U.S. 325 (1973). In *Askew* a unanimous Supreme Court ruled that state regulation of oil pollution is not unconstitutional absent a clear conflict of state and federal laws. The Water Quality Improvement Act specifically allows

Florida Act allows counties and municipalities to exercise their police powers as long as their exercise does not directly conflict with the Florida Act or the rules, regulations or orders of the Department of Natural Resources under the authority of chapter 376.²⁴² The counties and municipalities, however, cannot adopt programs of licensing and fees similar to those adopted by the state Act.²⁴³ The key to exercising any power is the local government's jurisdiction over its offshore area. As mentioned in the offshore oil and gas development section,²⁴⁴ when a county or municipality has jurisdiction over the site of the port, it may adopt air and water pollution control standards stricter than the state standards. These stricter standards would be enforced by the state when permitting the deepwater port.²⁴⁵

An additional method of local control may be available to counties. When county jurisdiction extends to the state boundary offshore, the DRI process may apply to a deepwater port located within the county limits. The proposed construction of any water port is presumed to be a DRI²⁴⁶ It is unclear whether the DRI process could be applied to offshore areas, but if it is applicable, deepwater ports off the southeast Atlantic coast could fall within local jurisdiction.

Shipping

The primary motivation for the construction of deepwater ports is to use supertankers which, because of economies of scale, transport oil at a much lower per barrel cost than conventional tankers. Supertankers, or very large crude carriers (VLCC's), can carry between 100,000 and 500,000 deadweight tons of crude oil.²⁴⁷ Currently, conventional tankers used to ship oil to the United States range from 30,000 to 35,000 deadweight tons.²⁴⁸ Obviously the potential danger from an oil spill involving VLCC's is much greater.

Deepwater ports may pose a threat to the Florida environment even when they are situated elsewhere. Two deepwater ports have been proposed in the Gulf of Mexico: Louisiana Offshore Oil Project, Inc. (LOOP) off the Louisiana coast and Seadock, Inc. off the Texas coast. LOOP projects 675 tanker visits per year, with 55 to 200 of these loaded passages through the Florida Straits. A majority of the ballast-laden tankers will probably exit by way of the Florida Straits, adding further congestion to this narrow passage.²⁴⁹ The coastal area

for state regulation for oil liability. The federal act deals with the federal cost of cleaning up the oil spill, not damages such as ruined beaches, destruction of fish, and economic damage to fishermen.

242. FLA. STAT. §376.19 (1977).

243. *Id.*

244. See text accompanying notes 176-178 *supra*.

245. FLA. STAT. §403.182(6) (1977).

246. 8 FLA. ADMIN. CODE 22F-2.19.

247. A. PEARMAN & J. STAFFORD, *supra* note 7, at 194. The approximate barrel capacity of a ship can be calculated by multiplying the tanker's deadweight tonnage by 7.3. *Id.* at 193.

248. *Id.* at 194.

249. SEADOCK ANALYSIS, *supra* note 227, at C-1. LOOP projects 675 tanker visits per year, with 55 to 200 of these as loaded passages through the Florida Straits. U.S. DEP'T OF COMMERCE, DEEPWATER PORTS PROJECT OFFICE, ANALYSIS OF THE RISK OF DAMAGE TO THE STATES OF FLORIDA AND LOUISIANA FROM THE LOOP, INC. PROPOSED DEEPWATER PORT (March 25, 1978) [hereinafter cited as LOOP ANALYSIS].

threatened by these trips has been defined as the area from Fort Pierce to the Dry Tortugas on the Atlantic and the Dry Tortugas to Everglades City on the Gulf.²⁵⁰ Using assumed tanker routes, a spill is possible anywhere along the coast from the Dry Tortugas to Miami.²⁵¹ The environmental and economic effects of a spill in this area could be devastating because of the presence of many small islands, beaches, bays, coral reefs, seagrass beds, estuaries, coastal marshes, fishing areas and tourist facilities.

The danger posed by the tanker size and the number of passages through the Florida Straits is compounded by the tankers' 20-year life cycles.²⁵² Because most of the present generation of supertankers were launched between 1966 and 1975, the dangers of structural failure will increase dramatically in the 1980's.²⁵³

The three main areas in which local governments may regulate supertankers include safety requirements which control or prohibit passage of supertankers within a local jurisdiction, safety requirements in construction, equipment and design of supertankers, and liability for oil spills. Opportunities for local control of these areas, however, are minimal.

Neither Florida nor its local governments would have jurisdiction over a supertanker outside the state's territorial waters. Local influence over a tanker within state boundaries would still be limited by the extent of local jurisdiction. Municipal control would be impossible unless a city's jurisdiction extended beyond the mean high tide line. Counties with jurisdiction extending to the state boundary may assert a jurisdictional basis for regulation.

Assuming a supertanker entered a local jurisdiction, another serious barrier to local control would be federal and state preemption. The United States Supreme Court has held that the Ports and Waterways Safety Act of 1972²⁵⁴ authorizes the federal government "to establish vessel size and speed limitation"²⁵⁵ and "by permitting the state to impose higher equipment or safety standards 'for structures only,' impliedly forbids higher state standards for vessels."²⁵⁶ This holding invalidated a Washington state law excluding from Puget Sound any tanker in excess of 125,000 deadweight tons. The Court supported this holding by citing a House Report that discussed amending the bill to make "clear that State regulation of vessels is not contemplated."²⁵⁷ In the same case, the Court invalidated a Washington state law prescribing certain design standard safety features, holding that Title II of the Ports and Waterways Safety Act of 1972 "intended uniform national standards for design and construction of tankers that would foreclose the imposition of different or more stringent state requirements."²⁵⁸ Thus, little potential remains for local or state control over these first two areas of regulation.

250. LOOP ANALYSIS, *supra* note 249, at 9, 24-27.

251. *Id.*

252. See generally Carter, *Amoco Cody Incident Points Up the Elusive Goal of Tanker Safety*, 200 SCIENCE 514 (1978).

253. *Id.*

254. 33 U.S.C. §1221 (1976).

255. 33 U.S.C. §1331(3)(iii) (1976).

256. *Ray v. Atlantic Richfield Co. & Seatrains Lines, Inc.*, 435 U.S. 151, 174 (1978).

257. *Id.* at 174.

258. *Id.* at 163.

An opportunity for local input may exist in the area of oil spill liability. Unlike the categories of regulation discussed above, which were designed to prevent oil spills, liability provisions involve after-the-fact assessment of costs. The Federal Water Quality Improvement Act of 1970²⁵⁹ prohibits the discharge "of oil into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone."²⁶⁰ This Act establishes liability for the federal government's costs in cleaning up the pollution. The Act further holds the owner or operator of a vessel liable "under any provision of law for damages to any publicly-owned or privately-owned property resulting from the discharge . . . or . . . removal of any such oil."²⁶¹ The Act specifically saves from preemption any requirement or liability for discharge of oil into state waters imposed by any state or its political subdivisions,²⁶² allowing co-existence of any "state or local law not in conflict with this section."²⁶³

The Florida Pollutant Spill Prevention and Control Act²⁶⁴ both allows state recovery of its costs in cleaning up oil spills and provides a remedy for public and private property owners.²⁶⁵ The Florida Act allows any county or municipality to adopt similar liability provisions as long as they neither directly conflict with state law nor use a program of licensing or fees similar to that in the state Act.²⁶⁶

The Florida Act imposes strict liability for only those damages incurred "as a result of an oil spill in the State's territorial waters from any waterfront facility . . . from any ship destined for or leaving such facility."²⁶⁷ Thus, the Florida Act does not cover supertankers passing through the state waters and not using any terminal facility. Therefore, it seems that a local government may enact a law allowing it to recover its costs in cleaning up an oil spill and providing for a strict liability remedy for public and private property owners against the party responsible for the spill.

Local governments are limited to recovering costs in two ways. First, the Federal Water Quality Improvement Act permits a state to impose liability for the discharge of oil into any waters within such state.²⁶⁸ Whether this means the actual discharge must occur in the state's waters or that the discharge must merely reach state waters is not clear. Proper construction of this phrase is important because estimated shipping routes would bring crude carriers within 25 miles of the Florida coast.²⁶⁹ In these cases oil would not be dis-

259. 33 U.S.C. §1161 (1970).

260. 33 U.S.C. §1161(o)(1) (1970).

261. *Id.*

262. 33 U.S.C. §1161(o)(2) (1970).

263. 33 U.S.C. §1161(o)(3) (1970).

264. FLA. STAT. §376.011 (1977).

265. The Supreme Court has held that these provisions of the Florida act do not conflict with the federal act; therefore, there is no preemption. *Askew v. American Waterways Operators*, 411 U.S. 325 (1973).

266. FLA. STAT. §376.19 (1977).

267. *Askew v. American Waterways Operators*, 411 U.S. 325, 327 (1973).

268. 33 U.S.C. §1161(o)(2) (1970).

269. Letter from Attorney General Shevin to Secretary of Transportation Coleman, Item 9, (Dec. 9, 1976) (stipulation of settlement and voluntary dismissal).

charged directly into state waters but would likely drift into the state's jurisdiction. Assuming the Act requires that the discharge occur in state waters for state jurisdiction to apply, the discharge presumably would have to occur within the jurisdiction of the unit of local government seeking to impose liability.

A second limitation involves the Federal Limited Liability Act.²⁷⁰ This Act covers damages caused by oil spills involving vessels, even when the injury is to the shore.²⁷¹ The Act limits vessel owners' liability to the "value of such vessels and freight pending."²⁷² Although the Supreme Court has specifically withheld judgment as to whether state liability could extend beyond the Federal Water Quality Improvement Act,²⁷³ the Court said in *Askew v. American Waterways Operators* that state liability for vessels is preempted by the Federal Limited Liability Act.²⁷⁴ It follows that any local act will likewise be restricted.

OFFSHORE POWER PLANTS

The three major types of offshore electrical generating facilities are floating conventional power plants, floating nuclear power plants, and ocean thermal energy conversion (OTEC). These facilities may be constructed anywhere along the Florida coast and present major environmental concerns such as thermal pollution, the transport and utilization of the fuel source, waste disposal, air and water pollution, and the effects of undersea transmission lines. Additional concerns are the land use requirements of the related onshore facilities, the aesthetic effects of an offshore power plant, and possible alteration of the shoreline by altered current patterns. Finally, the possible public reaction to an offshore nuclear power plant must be considered.

Floating Power Plants

As with oil and gas development, the basic activities associated with offshore power generating systems are offshore structures, undersea transmission cables, and onshore support and service facilities.

A floating power plant would generally be located atop a barge-like platform which would float inside a protective breakwater designed to withstand hurricane force winds, storm surges, and collisions with ships.²⁷⁵ The entire structural system would occupy approximately 100 acres of sea bottom.²⁷⁶ Be-

270. 46 U.S.C. §§181-189 (1970).

271. *Richardson v. Harmon*, 222 U.S. 96, 106 (1911).

272. 46 U.S.C. §189 (1970).

273. *Askew v. American Waterways Operators*, 411 U.S. 325, 332 (1973). 33 U.S.C. §1161(f)(1) (1970). The amount cannot exceed \$100.00 per gross ton of such vessel, or \$14,000,000, whichever is less.

274. *Askew v. American Waterways Operators*, 411 U.S. at 331.

275. Two of the more common breakwater designs include perforated concrete caissons and rubble mounds supported by concrete supports.

276. To maintain the cost of construction of the breakwater at a reasonable level, the maximum sea depth should be 70 feet. 1 OFFICE OF NUCLEAR REACTOR REGULATION OF THE UNITED STATES NUCLEAR REGULATORY COMMISSION, FINAL ENVIRONMENTAL STATEMENT: MANUFACTURE OF FLOATING NUCLEAR POWER PLANTS, OFFSHORE POWER SYSTEMS, pt. II at 3-1, (1976) [hereinafter cited as OFFSHORE POWER SYSTEMS].

cause the effect of the breakwater on current patterns should not be important beyond about one mile from shore, a plant located more than two miles offshore should result in no observable effect on the shoreline.²⁷⁷ Additionally, experts foresee no detectable shoreline changes directly attributable to a breakwater located several breakwater widths from the shoreline, although effects of accretion may be greater if the structure is located opposite an estuary mouth.²⁷⁸

A major environmental concern with any floating power plant is thermal pollution. Offshore power plants use sea water for cooling in a once-through system that causes a high discharge of heat into the ocean. Because the Federal Water Pollution Control Act²⁷⁹ terms heat a pollutant, regulation of this heat discharge may be available.

Electrical transmission lines from the floating power plant to shore can be above or beneath the sea floor. The cables will probably be buried undersea, for this method provides safety, reliability, and aesthetic advantages.²⁸⁰ Substantial damage to the sea floor, however, would result from the cable laying operation.²⁸¹

During construction, a shore support facility would be necessary as a depot for construction materials and supplies and as a personnel transportation base. The facility would include offices, storage areas, parking lots, and a loading dock. A casting yard for the production of caissons, piles, and other cement shapes also may be required.²⁸² For operation of the plant, three main facilities would be required. A shore support facility would be required for transporting operation and maintenance personnel and materials to the offshore power plant. This support facility, probably in the same location as the construction support facility, would require about four acres of land.²⁸³ Transmission facilities would carry electricity from the landfall of the transmission lines to the switchyard. The transmission lines could be underground or overhead.²⁸⁴ If underground lines were used, the lines could be enclosed in a pipe with pressurized oil as an insulator.²⁸⁵ This method requires two pumping stations to circulate oil through the system. These stations, one located near the landfall and the other at the switchyard, would occupy about 7,500 square feet and require about an acre of land.²⁸⁶ A 100 foot right of way for burying the lines

277. *Id.* at 6-79.

278. *Id.* at 6-80.

279. 33 U.S.C. §1362(6) (Supp. V 1975).

280. OFFSHORE POWER SYSTEMS, *supra* note 276, at 3-27.

281. Undersea cable should be buried at least 10 feet deep and would probably be continuous cable laid in narrow trenches. OFFSHORE POWER SYSTEMS, *supra* note 276, at 5-8, 3-27. Corridor width will vary, whether above surface or underground, according to the number of cables and the separation distance required. For example, a 2-unit nuclear plant would require 15 cables with a corridor of between 600 to 1200 feet. *Id.* at 3-27. The width of alteration in a seagrass area or marshland area may exceed the construction area width by a factor of five or six. *Id.* at 9-1.

282. OFFSHORE POWER SYSTEMS, *supra* note 276, at 3-24.

283. More land may be required for coal storage. *Id.* at 3-24 and 6-1.

284. *Id.* at 3-27.

285. *Id.*

286. *Id.*

requires about 12 acres per mile.²⁸⁷ Alternatively, overhead transmission lines need a 350 foot right of way or 42 acres per mile.²⁸⁸ The switchyard should require approximately ten acres of land.²⁸⁹

A conventional power plant would be fueled by coal or oil. If coal is used, barges would most likely deliver the coal to the plant. A storage arrangement would be necessary at the power generating facility, such as a secure anchorage within the breakwater for barges. Additionally, the onshore support facility may need more land to insure an adequate coal supply. The resultant ash would also have to be shipped ashore for disposal. Oil would probably be delivered to the plant by tanker, requiring an unloading facility and storage area inside the breakwater. Alternatively, oil could be piped to the power plant from an onshore storage facility. This option would require land for oil storage, a pump station, and for laying submerged cable from the storage area to the offshore site.

A nuclear power plant requires the delivery of 30 metric tons of fresh nuclear fuel annually. In addition, 30 metric tons of spent nuclear fuel and several hundred 55 gallon sealed steel drums of solid radioactive wastes must be removed from the power plant yearly.²⁹⁰ Experts anticipate that a barge would move these wastes to a shore facility or transfer point, where they would then be sent by truck or rail to a fuel processing plant or waste disposal facility.²⁹¹

Ocean Thermal Energy Conversion (OTEC)

Ocean thermal energy conversion is accomplished by pumping "[w]arm seawater from the ocean's surface and the cold deep water below . . . through a heat exchanger that employs a working fluid, such as ammonia, propane, or freon, in a classical closed style. The warm water vaporizes the working fluid which turns a turbine."²⁹² The processing system will be contained on a platform, and the generated electricity may either be transmitted to shore or used to manufacture an intermediate high energy product such as hydrogen, methanol or ammonia at the OTEC site.²⁹³ Transmission of the electricity to shore would require undersea transmission cables running from the platform to an onshore switchyard and substation.²⁹⁴ A dock and warehouse base to service the plant would be necessary.

Potential environmental effects of an OTEC facility include pressure, temperature, and salinity changes in the surrounding waters as a result of mixing water from two ocean levels, metallic and fluid leaks into the ocean, and possible lowering of air temperature with attendant increases in fogging and changes in wind patterns. The actual effects of an ATEC facility can only be estimated because the technology is new. The easily predicted environmental effects ac-

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.* at 6-84.

291. *Id.*

292. H. KNIGHT, J. NYHART & R. STEIN, OCEAN THERMAL ENERGY CONVERSION VII (1977).

293. *Id.* at 3.

294. *Id.* at 183.

companying the dredging for laying the transmission cables and the onshore support facilities include water pollution, air, noise and aesthetic pollution, and land use concerns.

Legal Controls

Many of the activities accompanying an offshore power system are governed by Florida's Electrical Power Plant Siting Act,²⁹⁵ which to a large extent preempts local control. The Act provides for a one-step site certification process which replaces most of the permits normally required and also delineates the responsibilities of the state agencies and local government involved. Because "site" has been defined to include offshore sites within the state's jurisdiction,²⁹⁶ the Act covers any electric power plant²⁹⁷ constructed within three miles of the mean low water mark in the Atlantic Ocean or within three marine leagues in the Gulf of Mexico. Conversely, any power plant constructed beyond the state's jurisdiction would not be affected.

The Act's rationale is that the decision to certify a site should only be made after balancing the need for electricity against adverse environmental impacts caused by the new power plant.²⁹⁸ The Department of Environmental Regulation, designated the lead state agency by the Act, has the responsibility of evaluating environmental impacts.²⁹⁹ The Public Service Commission determines the need for the power supplied by the new power plant.³⁰⁰

Procedurally, the Electrical Power Plant Siting Act provides for: the appointment of a hearing officer;³⁰¹ a determination by DER of the completeness of the application;³⁰² a land use hearing in the county of the proposed site, solely to determine whether the proposed site is consistent with existing land use plans and zoning ordinances;³⁰³ a certification hearing;³⁰⁴ the submission of a recommended order by the hearing officer to the Board of the DER,³⁰⁵ and the issuance of a written order by the Board either approving the application, approving the application with modifications or conditions, or denying the application.³⁰⁶

Local participation is invited at two main stages of the procedure, the land use hearing and the certification hearing. The land use hearing considers only

295. FLA. STAT. §§403.501-.517 (1977).

296. FLA. STAT. §403.503(5) (1977).

297. The Act defines "electric power plant" broadly to include "any steam or solar electrical generating facility using any process or fuel, including nuclear materials, and shall include associated facilities and those directly associated transmission lines required to connect the electrical power plant to an existing transmission network." FLA. STAT. §403.503(7) (1977).

298. See Johnson, *A Model Approach to Decision Making: The Power Plant Siting Act*, 52 FLA. B.J. 334, 338 (1978).

299. FLA. STAT. §§403.504, .507(2)(h) (1977).

300. FLA. STAT. §403.507(1)(b) (1977).

301. FLA. STAT. §403.5065(1) (1977).

302. FLA. STAT. §403.5065(2) (1977).

303. FLA. STAT. §403.508(1)-(2) (1977).

304. FLA. STAT. §403.508(3) (1977).

305. *Id.*

306. FLA. STAT. §403.509(1) (1977).

the consistency and compliance of the proposed site with the local land use plans and zoning ordinances. If the Board finds that the site conforms, the Act prohibits any changes in the land use plan or zoning by the local government.³⁰⁷ If the Board holds that the site does not conform, the applicant must request of the local government a change in the zoning or land use plan.³⁰⁸ Although local governments may deny the application, their decision is not final. The Act permits the applicant to appeal a denial to the Board, which may grant a variance from the local land use plan or zoning ordinance.³⁰⁹ If the Board refuses to grant a variance, no further action is taken on the application until the proposed site conforms with the local land use or zoning requirements.³¹⁰

By filing notice of intent to be a party at least fifteen days before the land use hearing, any county or municipality where the proposed plant site is located may become a party to the certification proceedings.³¹¹ This allows the local government to participate in a review of the application on its merits.

The Electrical Power Plant Siting Act preempts state and local laws that conflict with the Act.³¹² However, the Act specifically allows local governments to charge fees and to require construction in compliance with local building codes, standards, and regulations.³¹³ These provisions offer a significant opportunity for local governments to control certain aspects of the operation and construction of power plants.

Although the Electrical Power Plant Siting Act preempts local control to a certain degree, certain activities are not addressed by the Act and are therefore open to local control. First, the provisions of the Act do not apply to an offshore power plant located beyond the state's jurisdiction. Even though the actual facility would not come under local control, attendant offshore and onshore activities would be governed by the law of the jurisdiction where the activity is located. For example, transmission lines from power plants located beyond the state's jurisdiction would be susceptible to the same types of controls as oil and gas pipelines.³¹⁴ Specifically, state and possibly county dredge and fill and pollution control permits would be required for submerged pipelines.

Second, certain activities are not preempted by the Electrical Power Plant Siting Act even when the power plant is located within the state's jurisdiction. Included within this category are the onshore support and service facilities and the onshore activities associated with the various fuel alternatives. Local governments can encourage or discourage the location of onshore support and service facilities by providing or not providing suitable land for such activities in their comprehensive plans.³¹⁵ Other land development regulations available to local

307. See FLA. STAT. §403.508(2) (1977), which states that the zoning may not be changed "unless certification is subsequently denied."

308. *Id.*

309. *Id.*

310. *Id.*

311. FLA. STAT. §403.508(4)(b)1 (1977).

312. FLA. STAT. §403.510(1) (1977).

313. FLA. STAT. §403.511(4) (1977). The Act does not make any requirements of local governments.

314. See text accompanying notes 58-86 *supra*.

315. See text accompanying notes 112-118 *supra*.

governments are zoning, subdivision regulations, platting regulations, and building and construction codes.

The Electrical Power Plant Siting Act requires that the site be in conformance with local zoning ordinances. Theoretically, counties, whose jurisdiction extends to the state boundary offshore, and any municipality with extended jurisdiction could enact zoning ordinances governing offshore power plants. This method of control may be somewhat illusory, though, because the Electrical Power Plant Siting Act allows the Governor and Cabinet to grant a variance to local zoning ordinances.³¹⁶ But because this preemptive power does not extend to the onshore support and service facilities, these facilities are subject to local zoning controls. Additionally, because building and construction codes are specifically not preempted by the Electrical Power Plant Siting Act,³¹⁷ these codes would also apply to any power plant or transmission lines constructed within a local jurisdiction.

Because the onshore support base would require a loading dock for equipment barges and ships,³¹⁸ another important method of local control may be the regulation of ports. Of particular concern would be the shipment of fuel and return of fuel by-products. Specifically, if the power plant is fueled by coal, large amounts of coal would be barged out to the power plant, and return shipment of ash would be received. If the power plant is nuclear, radioactive fuel must be shipped to the plant, and used fuel and radioactive wastes would be unloaded at the facility. Local governments, either under their police power or through port authorities, may desire either to enforce special controls or to prohibit these shipments altogether.

CONCLUSION

The goal of the Florida Coastal Management Program is to protect, maintain, and develop through coordinated management the coastal resources of the state.³¹⁹ Coordination responsibility has been given to the Department of Environmental Regulation, which must prepare a program based on existing statutes and rules.³²⁰ The legislature intended neither to amend existing statutes nor to provide any additional regulatory authority to any governmental agency.³²¹

316. FLA. STAT. §403.508(2) (1977).

317. See also FLA. STAT. §403.511(4) (1977).

318. See text accompanying note 223 *supra*.

319. FLA. STAT. §380.21(b) (Supp. 1978).

320. *Id.* §380.22. The DER is requested to submit an application to NOAA as a basis to continue to receive administrative funds under the CZMA of 1972.

321. The 1978 Act will have the DER exercising its authority in relation to: (1) permits for air discharges, water discharges, and dredge and fill activities; (2) permits for water treatment plans and projects; (3) electrical power plant site certifications; and (4) development of the state water plan.

The Department of Natural Resources will continue to exercise its broad authority relating to planning, management, regulatory and development activities to assist in coastal zone control. Specific DNR activities will include: (1) the establishment and issuance of variances to the coastal construction setback line; (2) the management of the aquatic preserve system; (3) the management of the wilderness system; (4) the lease and sale of state lands; (5) the

DER will be forced to rely on the voluntary cooperation of other state agencies, such as the Division of State Planning and the Department of Natural Resources, which have authority in areas relating to coastal zone management. This will prevent the formation of a unified Coastal Zone Management Plan administered by a single agency or council of representative agency members. Absent a unified plan or strong centralized state control, local governments are left to manage the coastal resources of their area and cope with the onshore impacts of offshore energy activity.

The Florida Act encourages the participation of local governments by providing a framework within which local plans can complement and provide greater specificity to the state coastal management policies. The legislature thus recognized the many existing state laws which provide local governments an opportunity to prepare individually for onshore impacts. However, because local participation in the coastal management program is voluntary,³²² the burden is on counties and municipalities to utilize the state program. Local governments should become aware of the potential impacts of offshore energy activity and the existing authority available to prepare for and manage the impacts. The result should be coordination of federal, state and local powers.

development of a state land plan; (6) the development and acquisition of park and recreation areas; (7) beach renourishment projects; and (8) the management of mineral and living marine resources.

The Division of State Planning in the Department of Administration will continue to act as the lead state planning agency. It should cooperate in developing a unified coastal zone management policy by utilizing its planning and management authorities relating to: (1) the development of the regional impact process; (2) the A-95 review process; (3) the 10-year site plan requirements; (4) the review of the state budget; (5) the state comprehensive plan; and (6) its authority under §308 CZMA Amendments of 1976 to administer the Coastal Energy Impact Program.

322. FLA. STAT. §380.22(2)(c) (Supp. 1978).