JEFFERSON COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. ____

AN ORDINANCE AMENDING THE JEFFERSON COUNTY
DEVELOPMENT CODE BY ADDING THERETO PROVISIONS
REGULATING DEVELOPMENT ON OR NEAR HAZARDOUS LIQUIDS PIPELINES IN JEFFERSON COUNTY,
FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Jefferson County, Florida, are trustees of the public health and welfare and natural environment;

WHEREAS, the construction and operation of hazardous liquids pipelines in Jefferson County will create new safety, health, and environmental hazards;

WHEREAS, the Chairman and Chief Executive Officer of Colonial Pipeline Company, expressed great concern to the Congress of the United States in sworn testimony on May 18, 1993, about the lack of local government regulations protecting its pipelines from damage by others, and proposed several such regulations;

WHEREAS, the Transportation Research Board, National Research Council, in its 1988 report, *Pipelines and Public Safety*, described the dangers of explosions and other accidents by hazardous liquids pipelines and recommended several land-use and other regulations by state and local governments to protect public safety;

WHEREAS, in pleadings in the Civil Action No. D-73539, Superior Court of Fulton County, Georgia, *Jakobsen v. Colonial Pipeline Company*, including an affidavit by Richard F. Calupca, Colonial Pipeline has asserted the necessity of removing vegetation which may inhibit aerial surveillance of pipeline easements;

WHEREAS, the "Issues and Options White Paper" submitted to Jefferson County on November 2, 1992, by Heniger and Ray Inc. discussed the need for setback requirements to improve pipeline safety;

WHEREAS, several state and local governments have adopted similar regulations to protect the public and natural environment;
WHEREAS, the Colonial Pipeline Company on July 2, 1993 submitted an application to include additional lands to the Transportation/Utility Overlay District for the purpose of building a hazardous liquids pipeline through approximately 22 miles of Jefferson County; and

WHEREAS, the appropriate time to adopt these regulations is concurrent with the application submitted by Colonial Pipeline Company now under consideration;

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, FLORIDA, IN PUBLIC MEETINGS:

Section 1. The Jefferson County Development Code, Article Two, is amended to add section 2.06, to read as follows:

2.06.00 DEVELOPMENT ON OR NEAR HAZARDOUS LIQUID PIPELINES

2.06.01 Purpose.

The purpose of this section is to protect the public safety and the natural environment by regulating land use and construction activities to prevent outside damage to hazardous liquids pipelines.

2.06.02 Penalty for Failure to Use One-Call System

Any excavator who will be working on or near a hazardous liquid pipeline easement must use available one-call systems before commencing any work. Any excavator who fails to do this and who subsequently damages a pipeline shall be assessed a civil penalty of $1,000 per barrel of hazardous liquids spilled or leaked as a result of that damage.

2.06.03 Financial Responsibility

The following measures shall be taken to assure that anyone excavating on or near hazardous liquids pipelines possess the financial resources to compensate others for the costs of repairing damage caused by leaks or spills they cause:

A. Contractors working in or near such pipelines shall demonstrate to the Development Administrator an appropriate degree of financial responsibility, including maintenance of insurance that does not exclude coverage for pollution or environmental damage;

B. If the contractors cannot demonstrate financial stability and adequate insurance, the property owner or other person hiring the contractor shall provide adequate insurance to cover damage resulting from the contractors negligence; and
C. Pipeline operators may seek injunctive relief in Circuit Court to prevent excavation if a contractor, landowner, or other person cannot provide evidence of adequate insurance.

2.06.04 Unnecessary Encroachments on Pipeline Easements

To restrict unnecessary or unsafe construction in hazardous liquids pipeline easements, pipeline operators shall review proposed site plans, variances, or building permits for any construction on these easements and recommend modification or denial where unnecessary or unsafe encroachments would occur. This review must occur before any plan, permit, or variance can be granted. These encroachments include, but are not limited to, storm sewers, sanitary sewers, water and electrical lines, and streets and sidewalks.

2.06.05 Co-location of Linear Facilities

Because the greater number of linear facilities in a corridor increases the chance that a hazardous liquids pipeline will be damaged by construction or maintenance, the location of other linear facilities on or near such a pipeline is deemed undesirable and unsafe. Such co-location is discouraged, notwithstanding the provision of Ordinance 93-02 enacted by the Jefferson County Commission on April 6, 1993.

2.06.06 Vegetation

Notwithstanding the provisions of Section 2.05 of this Development Code, in order to provide a clear and unobstructed view for aerial surveillance of easements, hazardous liquids pipeline operators shall have the authority to control encroachment of vegetation on or near their easements in this manner:

A. Pipeline operators shall have the authority to cut or otherwise remove trees or shrubbery growing within their easement;

B. Pipeline operators shall have the authority to sidecut or cut or otherwise remove tree limbs or shrubbery which hangs over their easements; and

C. Pipeline operators shall have the authority to cut or otherwise remove roots of trees or shrubbery which encroach on the easement and could damage the protective coating of a pipeline.
2.06.06 Minimum Required Setback

Any structure designed for human use or occupancy shall be designed to accommodate a setback of at least 150 feet from an existing or proposed hazardous liquid pipeline. Such structures shall include, but not be limited to, businesses, offices, residences, and institutions. Decks, overhands, porches, or any similar attached structure shall be considered part of the building.

2.06.07 New Pipelines

No hazardous liquids pipeline may be constructed within 150 feet of any structure designed for human use or occupancy.

Section 2. Severability. It is the declared intent of the Board of County Commissioners that, if any section, subsection, sentence, clause, phrase, or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

Section 3. Effective Date. A certified copy of this ordinance shall be filed with the Florida Department of State by the Clerk of the Board of County Commissioners, and shall take effect upon receipt of official acknowledgement from that office that the same has been filed.

DULY ADOPTED in regular session this _______ day of __________, 1993.
Planning & Regulating
Linear Transmission Corridor's

ISSUES & OPTIONS

WHITE PAPER

Prepared for the Jefferson County
Board of County Commissioners

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11/02/92
LINEAR TRANSMISSION CORRIDORS AND FACILITIES

IN

JEFFERSON COUNTY

INTRODUCTION:

Jefferson County is considering the implementation through their Land Development Regulations of a category of land use called "Linear Transmission Corridors." The Planning Commission has prepared draft amendments to the Jefferson County Land Development Code that would implement and regulate the location and standards for linear transmission corridors in Jefferson County. The initiation of the concept has engendered some concern by local citizens and the Jefferson County Board of County Commissioners as to the approach.

Essentially, the purpose of the proposed amendments to the land development code provide for the inclusion of linear transmission facilities within the Public/Service Utility use type, and then provides that use type as an allowable use within each of the land use districts, subject to the standards designated. The principal standard is that the uses described within the linear transmission corridor facilities are required to co-locate within existing linear facilities in all land use districts other than agricultural districts and industrial districts.

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land development code; 4) environmental standards; 5) performance standards; 6) jurisdictional issues and standards; 7) adjacent land use compatibility.

These are enumerated in no particular order of importance or sequence of land development code application.

**Locational Criteria:**

To a large degree the locational criteria for linear transmission corridors, which will require the co-location of several different types of linear facilities, are dependent on, or will be dependent on, which types of facilities (i.e., gas, oil, electric, coal slurry etc.) are to be allowed or required within a multi-use transmission corridor. The purpose of locational criteria would be to address 1) land use compatibility, 2) safety, 3) environmental issues, 4) aesthetics, 5) co-location of several facilities. Underground facilities such as petroleum pipelines and natural gas pipelines have less aesthetic impact than above ground facilities such as high-voltage electric lines. On the other hand, underground petroleum and natural gas pipelines could have more potential adverse impact on subsurface environments and therefore more long range potential adverse impacts. The location of multi-use linear transmission corridors, therefore, would have to take into consideration potential adverse environmental impacts, as well as compatibility issues when selecting the appropriate locations.
Locational criteria could add considerably to the distance required to move a product along a linear corridor from point A to point B. For instances, if co-location is a requirement for linear transmission facility and existing corridors would be out-of-the-way for a specific new facility to transmit a product from point A to point B the requirement to co-locate increases distance necessary to install the facility. Using the above example, assume that a safe and environmentally appropriate 12 mile corridor can be found to connect point A to point B. However, because of the co-location requirement the facility must use an existing corridor which adds an additional two miles to the route. Is that extra two miles a cost of doing business in a jurisdiction? Is there a limit to how far a facility can be required to go out-of-its-way? When local government linear transmission locational criteria requires corridor siting that adds miles to the potentially least expensive, yet in full compliance with Federal and State safety and environmental requirements, who pays the added cost?

**Types Of Uses:**

The regulation of land by land use district requires that the specific uses to be allowed within a regulatory district or subject to regulatory standards be listed. In attempting to provide this list of uses two sub-issues arise: One is the selection of the type of uses (i.e. petroleum pipelines, natural gas pipelines, high-voltage electrical lines, communication facilities, coal slurry pipelines, etc.) to be required to co-locate within a multi-use linear
transmission corridor district. The other is the degree or size standards that would be the threshold requiring the location of these various facilities within a linear transmission corridor district (i.e. a pipeline volume/size criteria or a high-voltage electric line voltage criteria).

In addition to the above mentioned facilities, wastewater collection facilities and potable water (raw water and treated water) distribution/collection facilities could be considered as potentially locating in a linear transmission corridor. These types of facilities are generally owned and operated by a local government, as opposed to the previous facilities which are either owned by a private corporation or a publicly regulated utility service.

**Location of Linear Transmission Corridors Standards in the Jefferson County Land Development Code:**

Under the proposal submitted by the Jefferson County Planning and Zoning Commission, linear transmission corridors, which include petroleum and natural gas pipelines, are to be placed under the Public Service Utility section of the Code. This category presently contains the provisions for other non-public service or non-public owned facilities such as broadcast stations and their transmission towers, LP gas storage and distribution facilities for up to one thousand gallons, and airport and airfields without distinguishing
between public and private facilities. Further consideration should focus on the need for a separate category, including only linear facilities.

Another concern is the statutorial restrictions created by definition. Chapter 163 F.S. Part II provides the authority for local governments to guide and control future development. Chapter 163 defines development as it is defined in Chapter 380.04 F.S. The Chapter 380 definition of development excludes "Work by any utility and other persons engaged in the distribution or transmission of gas or water, for the purpose of inspecting, reexamining, renewing, or constructing on established right-of-way any sewers, mains, pipes, cables, utility tunnels, powerlines, towers, poles, tracks, or the like."

On the surface this provision appears to exclude utility development from concurrency and consistency requirements of a local comprehensive plan. However, there is no apparent statute or regulation prohibiting a local government from going beyond the Chapter 163 limitations and thereby requiring consistency for other activities not covered by the state.

**Environmental Standards:**

It is obvious that the environmental concerns and issues amongst the various recommended activities that would be regulated within a linear facility are different. As
indicated above, the environmental issues associated with power lines are different than the environmental concerns and issues associated with natural gas or petroleum pipelines. The environmental concerns, real or imagined, pertaining to high-voltage electrical lines are electromagnetic fields and environmental destruction of the surface lands in order to clear the corridors. Whereas the environmental issues with underground facilities, such as petroleum pipelines and natural gas pipelines, are potential leakage (no matter how small the potential) and pollution of the Floridian aquifer and surficial ground water resources, as well as the environmental surface damage required in order to construct the facility.

The standards that would be required of linear facility development in order to protect compatibility and environmental concerns would be drastically different for electric facilities and petroleum/natural gas facilities. These issues also bring up the question as to the acceptability or advisability of joint use of a linear transmission corridor in certain environmental areas. For instance, it would appear to be more acceptable to allow high-voltage electric transmission facilities to go through a high recharge area for the aquifer and, most likely, less acceptable to allow a petroleum pipeline to go through the same location.
Performance Standards:

There are several issues that would have to be addressed in terms of preparing adequate and appropriate performance standards. If location of the facilities is not to be a condition of a specific corridor(s) land use map change, then locational performance criteria will need to be developed. These locational criteria should take into account the environmental and compatibility issues to the greatest extent practical given any developer proposed routes. The following performance standards are some of the criteria that should be considered in promulgating performance standards: 1) buffering from adjacent incompatible uses; 2) protection of wetlands; 3) protection of aquifer and groundwater; 4) protection from health hazards to adjacent land uses; 5) protection of critical or protected habitat or species 6) different criteria directed at specific linear activity.

With any linear corridor necessary standards for protection of habitat and wetlands fall into two categories: 1) temporary disturbance during construction and 2) permanent effect due to continued maintenance and clearing.

During the temporary stage of corridor construction the following environmental disturbances take place:

1. Major landscape destruction
2. Fragmentation of habitat.
3. Altered surface hydrology (in a wetland).
These patterns of environmental fragmentation can continue depending on defoliation policies of the corridor user and whether the corridor is through a herbaceous wetland or a forested wetland. Habitat of animal species can be permanently changed because of the creation of new edges or boundaries.

**Jurisdiction Issues and Standards:**

**Pipelines**

According to *Pipelines and Public Safety*, a publication by the Transportation Research Board, Federal safety regulations for pipelines cover three broad areas: (a) design, construction, operation, and maintenance of pipelines; (b) testing and inspection of lines, and (c) operator reporting requirements. The safety regulations do not involve the Department of Transportation in matters of siting.

The Federal Energy Regulatory Commission (FERC) has siting responsibility, as well as economic regulations for interstate natural gas pipelines. When a proposed natural gas line has been approved by FERC, the interstate natural gas pipeline is exempt from further state routing restrictions. Interstate liquid petroleum pipelines and both natural gas and liquid petroleum intrastate pipelines are not subject to these Federal requirements. However, they are subject to the routing and environmental assessments of the state they traverse.
In Florida, gas and petroleum pipeline companies have been granted the power of eminent domain to condemn private property for the purpose of construction of linear facilities subject to reasonable regulation by local governments. There are, according to Florida Power vs. Gulf Ridge Council, 385 S0 2d 1155 (DCA-2d, 1980) five factors which a condemning authority must take into consideration: 1) availability of an alternative route; 2) costs; 3) environmental factors; 4) long range area planning; and 5) safety considerations.

However, recent Florida legislation has reserved natural gas locational and siting decisions for the state thereby excluding full local government siting control of natural gas facilities. The act does provide as one of seven criteria that the Natural Gas Transmission Pipeline Sitting Board (Governor & Cabinet) shall consider consistency with applicable local government comprehensive plans and land development regulations. Local sitting control for petroleum pipelines apparently remains with local government.

Electric

In Florida, electric power lines are governed by the "Florida Electrical Power Plant Siting Act", which like the natural gas siting act above, preempts local government permitting authority but provides as one of the criteria considerations, consistency with applicable local comprehensive plans and land development regulation. Electric public utilities have eminent domain authority also subject to the reasonable regulation of local governments.
Local Government Standing

Recent court decisions have confirmed, at least in the specific cases, that local governments do have land use regulatory standing on linear utility facilities. In Colonial Pipeline vs. Leon County, the court found, in summary, that Federal pipeline law does not necessarily preempt state or local land use regulations. In Florida Power vs. Gulf Ridge Council, the court confirmed that one of the criteria to be weighed in the exercise of eminent domain authority was "long range area planning".

Compatibility:

Similar to the environmental issues noted above, compatibility issues are different for each of the activities that have been proposed to be co-located in a linear transmission facility. Compatibility issues might include noise, appearance (aesthetics), traffic and scale. Linear facilities probably do not have any long range traffic impacts although traffic, especially construction equipment could be a problem during facility construction. Adverse noise impacts will most likely range from non-existent for underground utilities, except in the vicinity of a pumping station to a minor irritant near high voltage powerlines.

Appearance including aesthetics and scale of structures especially with high voltage powerlines could be more of an issue. A drastic example of scale or height compatibility
differences would be a high-voltage electric transmission line crossing the flight approach to an airport versus an underground petroleum line that crosses the flight approach to an airport. To a lesser extent the aesthetic compatibility differences between a residential development and either a petroleum pipeline line or high-voltage line are also apparent. An underground facility is less obtrusive and aesthetically more pleasing than a high-voltage electric line and therefore more likely to create less aesthetic compatibility concerns.

Greenways/Parkland:

Linear utility corridors can serve a dual purpose; that of a developed and usable greenway or linear park facility. Linear park facilities, or greenways, can range from natural passive use areas to very active jogging, bike, or horse riding trails. In some instance, at appropriate locations, they could serve as small recreation areas that might include clay court tennis facilities even soft ball and soccer/football fields where sufficient right-of-way exists or the linear facility is adjacent to existing public land.

In most cases, linear transmission corridors are not held in fee simple ownership by the using utility. Generally speaking, utility transmission corridors are held by an easement agreement that does not provide for secondary public-type uses. Agricultural activity often continues on the utility easements in essentially the same manner it did prior to the
location of the linear utility. Additionally, abutting land owners are reluctant to allow public use of utility easements for fear of vandalism and liability problems.

While conversion of existing linear facility easements to secondary public use would require a re-negotiation of the easement, new linear utility facilities could provide that potential within the new easement agreement. Furthermore, in those instances where the utility owns the utility right-of-way provisions for joint use could be implemented.

**Corridor Width:**

In a multi-use linear utility corridor required separation of different types of pipelines might increase the width of the corridor. For example, should there be an appropriate separation required for safety purposes between a petroleum pipeline and a natural gas pipeline, that separation distance could result in the need for wider corridor widths.

The American Petroleum Institute conducted an analysis of damage radius of sample liquid pipeline accidents. The analysis showed that 2/3 of the deaths and damage and 3/4 of the injuries caused by the pipeline failure occurred within 150 feet of the point of accidental discharge. These results might suggest that a minimum separation between a pipeline facility and a habitable structure should be 150 feet or, a 300 foot corridor! Increasing distance between pipeline and habitable structures might reduce the risk of
injury or death in case of an accident. The approach to creating this separation can be addressed in two ways: 1) Regulatory setback requirements for structures from pipeline facilities and 2) a 300' corridor width (or some other similarly wide corridor requirement).

No literature has been found explaining the cost benefit of either approach, but it is clear in a developing, higher density/intensity area, there is a cost associated with both approaches, either in loss of developable land in the case of option 1 or cost to a utility in easement acquisition in the case of option 2.

Finally

There is a larger question that also needs to be addressed in these considerations, and that is, how many petroleum and natural gas pipelines facilities are needed or required in Jefferson County? How does the need for pipelines compare with the need for high-voltage electric transmission lines, as well as other large capacity linear transmission facilities? The number of expected linear facilities could help determine which policy approach would best provide protection for Jefferson County citizens, the environment and land use compatibility, while still providing flexibility in location that might be necessary to achieve the least negative impact.

The purpose of this section was to outline some of the issues that need to be addressed
in the process of considering regulatory policy as it would relate to linear transmission facilities. The above list is not all inclusive, there may be other issues that need to be considered. This is a jumping-off point for further discussion of the problem from which the County Commission will ultimately determine which issues are addressed and in what manner.

**OPTIONS:**

This section explores in a very general way the options, available to Jefferson County for regulating linear utility facilities. Regulations of linear facilities can be designed in numerous ways but can not enforce standards in areas where State or Federal regulations preempt local control. There are three (3) broad categories of local land use regulatory options available and evident. These are:

1. Amend the Comprehensive Plan and Land Use Plan Map to specifically and geographically locate appropriate corridors for linear utility facilities (Amend Plan Policy & Map) and then amend the Land Development Code performance standards.

2. Amend the Comprehensive Plan text policy to provide appropriate performance policy and locational guidelines and then amend the Land Development Code to provide specific performance standards
and locational criteria (Amend Plan Policy).

3. Do nothing with the Comprehensive Plan and amend the Land Development Code (LDC) based only on the existing preliminary guidance of the plan (amend LDC).

Within the existing Comprehensive Plan the following references, which specifically address utility easements, linear facilities, and handling of hazardous waste, are made:

1. Within the Future Land Use Element:

   **Policy 5-9:** The County shall include one or more land development regulations on easements for utilities, including, but not limited to, power lines, natural gas pipelines, gasoline pipelines, ensuring appropriate marking and maintenance, and requiring sufficient setbacks from the easement for new structures.

2. Within the Conservation Element:

   **Policy 6-2:** In order to protect natural resources and public sewer systems, the County shall prohibit the unsafe disposal of hazardous wastes by enacting and enforcing an ordinance by the statutory deadline for adoption of the land development regulations. The ordinance shall prohibit disposal into canals, ditches, wetlands, stormwater facilities, unlined landfills and other unsafe areas, as well as require that any land use proposing to store,
generate, or handle hazardous waste: develop an emergency response plan addressing accidents; ensure that DER standards for transfer and storage of hazardous waste are implemented; and, ensure that the site will not degrade quality of ground or surface water or other natural resources.

There are numerous other policies that might affect any development including linear facilities. These are too numerous to mention in this paper. As an example in the Coastal Management Element:

**Policy 3-1:** Continue to cooperate with all appropriate agencies to protect areas that have been set aside as conservation and recreation areas on the **Future land Use Map.**

**Option 1 - Amend Plan Policy and Map.**

The least flexible option is to amend both the policy guidelines of the Comprehensive Plan and to designate specific mapped corridors for linear facilities. The Land Development Code would be amended to provide performance standards to guide the development of the corridor. This option would require the provision of a new land use category (Linear Transmission Corridors) and discussion on land use types and size thresholds to be included in the category. Once mapped, a Comprehensive Plan amendment would
be required to change the land use plan map. No facility that fell within the land use type and size threshold could locate anywhere else in the County without a Comprehensive Plan Amendment.

The following advantages and disadvantages, in this section and the following sections, are provided for discussion purposes, others may be determined as the County provides citizen participation opportunities.

**Advantages**

1. Defined location, therefore more predictability
2. Limited opportunity to change or add locations (statutory limit on plan amendments)

**Disadvantages**

1. Lacks flexibility requires lengthy process to amend the plan.
2. Coordination of location with adjacent counties and states for facilities crossing multiple counties.
3. Preemption by State, to some degree, on siting of power lines and natural gas lines.
4. Constrains county as well as developer in changing location criteria.
5. Requires county to determine appropriate location versus studies performed by proposed developer.

**Option 2 - Amend Plan Policy**

By amending only comprehensive plan policy and not actually mapping linear facilities locational policy guidance can be provided to set the parameters by which the development of linear facilities can be authorized by the County. In turn these policies would be translated into LDC standards and locational criteria. Example of location criteria (in general) are:

- Use existing corridors (ie: railroad, highways, existing utility corridors)
- Define existing corridor thresholds (ie: Arterial roads, collector roads, major interstate railroads, size of existing utility corridor)
- Prohibition of location (ie: wetlands, residential land uses, proximity to certain other land uses)
- Compatibility criteria
- Location of corridors in adjacent County or State
Examples of other LDC performance standards (in general) are:

- Buffering where necessary
- Landscaping
- Secondary use of linear transmission facility corridor (i.e. linear park)
- Geotechnical analysis where necessary
- Emergency management and evacuation plans
- Proof of financial ability to carry-out emergency management
- Posting of surety bond

Many of the LDC performance standards in this option may also be applied to Option 1.

**Advantages**

1. Provides more locational flexibility while still defining criteria for siting; predictability.
2. Limited opportunity to change criteria due to statutory limit or plan amendments.
3. Provides opportunity, to coordinate with other Counties and States as one of the performance standards.
4. Burden of locational analysis is on the applicant.
Disadvantages

1. Lacks flexibility in changing standards, requires lengthy process to amend the plan.
2. Preemption, to some degree, on siting of power lines and natural gas lines.
3. Not as much predictability as a defined location.

Option 3 - Amend LDC

Amending the Jefferson County Land Development Code requires a finding that the existing objectives and policies of the Comprehensive Plan are satisfactory to guide location decisions. This option is essentially the option chosen initially by the Jefferson County Planning Commission. Performance Standards could be promulgated similar to those in the above options. However, locational criteria would likely be the same as those provided for the other uses specified in the Comprehensive Plan policy on utilities.

Advantages

1. Does not require a plan amendment to implement; therefore faster to establish the requirements.
2. Establishes regulations to address issues of importance.
3. Additional criteria can be easily added when identified as necessary; quickly responsive to changing needs of County.
4. Places greater reliance on State and Federal requirements and procedures.
5. Ability to place burden of studies supporting locational decision on the applicant during review process.
6. Provides opportunity to coordinate with adjoining Counties and State.

**Disadvantages**

1. Lack predictability because specific location unknown until a development order is requested.
2. Ability to eliminate or modify requirements without a plan amendment.
3. Absent a solid and defensible finding that the present plan adequately addresses linear transmission facilities, may not withstand a legal challenge.

**Preemption**

Jefferson County has two approaches in dealing with Federal and State preemption laws: 1) design regulatory standards to exclude those areas of preemption 2) ignore preemption statutes and draft standards on any issue desired by Jefferson County Commission.

Option #2 above is worthy of discussion because in simple language, preemption is final, and there is little if anything that local government can do to overcome it. However,
preemption statutes change from time-to-time and judicial opinions interpreting preemption statutes will also be made from time-to-time. Additionally, statutory preemptions often times are unclear depending on the specific facts of a proposed facility. A simple option would be to provide a mechanism within local regulations to obligate an applicant to present to the county staff a thorough review of the applicable statutory preemptions and any applicable judicial decisions and opinions. A determination could then be made on preemption by the County decision makers.

**Selecting an Option**

Each option - 1, 2 or 3 - is procedural; however, implementing any option will be done through the drafting of either policies or regulations, or both. Through these policies and regulations the County Commission can minimize the disadvantages and increase the advantages of the selected approach. The choice of an approach should follow a determination that the possible disadvantages of the preferred option either are not particularly crucial, or they can be mitigated by appropriate policies and procedural standards. Further, the selected option should include consideration of ways to address the possible advantages of the options not selected.