

STRATEGY OUTLINE

Planning Commission Hearing on Smith River Estates

The following strategy is intended to preserve quality of life for Smith River residents. The specific objectives of this strategy are to:

- A. Protect the water quality of Smith River by eliminating the proposed discharge of up to 600,000 gallons per day of treated wastewater into the River;
- B. Preserve the safety, water quality, and peaceful ambience of Smith River by eliminating the proposed marina expansion from Smith River; and
- C. Preserve the natural character of Smith River by retaining sufficient buffer of existing vegetation so Smith River Estates development will not be visible.

Does this accurately reflect the goal and objectives we discussed yesterday?

Assuming it does then following is an outline of the steps I propose taking to help the Alliance achieve this goal.

The Planning Commission is tentatively scheduled to hear the Smith River Estates on Monday, May 20th. In the very short period of time remaining, we must construct technical and legal arguments as to why the Planning Commission is obligated to constrain the Smith River Estates in a manner consistent with the three objectives presented above and the overall goal of the Alliance. Following are the steps involved in constructing these arguments.

1. I will contact Smith County Department of Planning (SCDP) staff to learn if the Smith River Estates is still on the Planning Commission agenda for June 20th.
2. I will review the files of SCDP for documents submitted since I last reviewed these files in April. I will obtain copies of any new documents present in these files which are pertinent to Alliance objectives.
3. I will discuss the case with SCDP staff to learn the status of issues relevant to your concerns.
4. I will talk with Planning Commission staff to learn the hearing format. Specifically, to verify that:
 - a. Our attorney will be allowed to present our case;
 - b. Our expert witnesses will have a reasonable amount of time to testify;
 - c. Citizen witnesses will be allowed to testify, though this may work better if our attorney is allowed to call citizens who have something unique to say, thus avoiding repetitive

testimony. At the close of our case we can ask all those present who support our position to raise their hands or clap.;

- d. Our attorney will be allowed to cross-exam applicant witnesses; and
- e. Written briefs will be allowed or must our attorney be prepared to present a closing argument orally.

WASTEWATER TREATMENT PLANT DISCHARGE

- 5. I will follow up on my May 10th letter to the Smith County Attorney requesting access to the SCDP wastewater treatment plant file. If access is granted then I will obtain all documents relevant to Alliance concerns.
- 6. I will submit a request for access to the State environment agency (SEA) wastewater treatment plant design files.
- 7. I will request a meeting with SEA Surface Discharge Permits Division staff to discuss the following questions regarding the 600,000 gallon per day (gpd) discharge:
 - a. The discharge permit, issued February 1, 2004, contains effluent limits for nitrogen and phosphorus. I did not see anything in the file showing how the N and P limits were established.

Is there another file containing documentation as to how the N and P limits were arrived at?

If not, how were these limits determined?

- b. The file contained extensive analyses which led to the ammonia limits. It appears that all of the analyses are based upon the assumption that the background concentration of ammonia in Smith River is 0.075 mg/l as N. It also appears that the 0.075 mg/l value was based upon the 1993 SEA study of Smith River.

Is this correct?

- c. The file contained data from the 1993 Smith River study, but I did not see a stand-alone report.

If such a report exists how might I obtain a copy?

- d. Footnote 3, on pages 6 and 8 of the Discharge Permit, states that nutrient limits may be reconsidered when the nutrient load allocation for the wastewater treatment plant is issued.

Has either the nutrient allocation been issued?

If not, when do you anticipate this will occur?

- e. What is the lowest N and P effluent concentration attainable while still discharging into Smith River?
- f. What is the lowest N and P concentration attainable with land treatment?
- g. What waters in the general vicinity would be potentially acceptable as an alternate discharge point?

Based upon the answers to these questions and other information we will attempt to construct an argument that the discharge permit standards are not sufficient to meet the water quality criteria essential to preserving Smith River quality of life, particularly when other nutrient sources are factored in.

- 8. I will assist our attorney in researching ways the Planning Commission can eliminate the Smith River wastewater discharge without violating the legal precedents regarding SEA primacy-preemption. Since this authority will likely derive from the conditions set forth in the prior agreement, I will:
 - a. Obtain a copy of the 1988 Smith River study, which I recently learned SCDP now has;
 - b. I will review the 1988 study for water quality parameters most likely to be affected by existing development, proposed development, and the increased wastewater discharge;
 - c. I will compare 1988 data with that presently available to see if we can construct a solid argument that:
 - i. River quality has been degraded since 1988;
 - ii. This degradation is due to existing development; and\
 - iii. River quality can only be preserved then restored by eliminating all wastewater discharges.
 - d. If presently available data is insufficient to build a solid case then I will propose gathering additional data in hopes of accumulating sufficient information prior to the June 20th hearing.
- 9. I will assist our attorney in lining up a suitable expert witness to testify on this issue before the Planning Commission.

MARINA EXPANSION

10. I will follow-up on my April 13th request for access to the SEA Tidal Wetland Permits Division file for the proposed marina. I will review the file and talk with the project reviewer to learn the likelihood that SEA would approve the proposed marina. If approval seems possible then I will obtain any documents relevant to constructing arguments as to why the Planning Commission should deny approval for the marina expansion.
11. I will seek to construct arguments as to why the marina expansion should not occur in Smith River
12. I will assist our attorney in researching ways the Planning Commission can eliminate the marina expansion without violating the legal precedents regarding SEA primacy-preemption.
13. I will also assist our attorney in lining up an expert witness to testify on this issue before the Planning Commission.

VISUAL BUFFER

14. I will determine precisely what type of buffer the applicant intends to leave along Smith River by:
 - a. Seeking an opportunity to discuss this issue with the applicant's experts; and
 - b. Talking with SCDP staff.
15. I will then share proposed buffer characteristics with an expert in this field and request their opinion as to whether the buffer would fully screen proposed development from the view of those boating on Smith River as well as shoreline property owners.
16. If the expert finds the proposed buffer inadequate then I will request a recommendation as to the optimum buffer - the buffer which comes closest to achieving 100% screening. If you find the optimum buffer acceptable then we will proceed to the next step. Other wise we will seek to eliminate the development visible through the optimum buffer.
17. We will also look into the light pollution effect of the proposed development and whether the optimum buffer would negate this impact as well.
18. I will assist the expert in preparation exhibits to illustrate the screening effectiveness of the proposed and optimum buffers. For example, the exhibits may consist of photos of the existing shoreline retouched to show how the visibility of proposed buildings behind the proposed buffer and how our optimum buffer would mitigate visual impacts.

19. I will assist our attorney in researching Planning Commission legal authority for requiring use of the optimum buffer to preserve the natural appearance of Smith River.