

September 20, 1996

OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON  
700 Central Building  
810 Third Avenue  
Seattle, Washington 98104  
Telephone (206) 296-4660  
Facsimile (206) 296-1654

**REPORT AND DECISION ON APPLICATIONS FOR  
REASONABLE USE EXCEPTION AND VARIANCE  
FROM SENSITIVE AREAS CODE**

SUBJECT: Department of Development and Environmental Services File Nos. **L95RU005,**  
**L96RU007 & L96VA009**

**BRIAN & GERI VALENTINE**  
Reasonable Use Exception Application  
and  
Sensitive Areas Variance Application

Location: Lot No. 1, Lake of the Woods, Division II, on the north side of NE 137th  
Street, at approx-imately 224th Avenue NE (if extended)

Applicants: Brian & Geri Valentine  
25709 SE 32nd Place  
Issaquah, WA 98027

SUMMARY OF RECOMMENDATIONS:

Division's Preliminary:	Deny	
Division's Final:	Deny	
Examiner:		Deny reasonable use exception; grant sensitive areas variance, in part, and deny in part

PRELIMINARY MATTERS:

Applications submitted:  
Building permit: May 3, 1995  
Reasonable use exception: November 3, 1995  
Reasonable use exception: April 5, 1996  
Sensitive areas variance: April 5, 1996  
Department Preliminary Report issued: March 11, 1996 and  
April 25, 1996

PUBLIC HEARING:

After reviewing the Reports of the Department and examining available information on file with the applications, the Examiner conducted a public hearing on the applications as follows:

The hearing on Item No. L95RU005 was opened by the Examiner at 1:00 p.m., March 27, 1996, in Room No. 2, Department of Development and Environmental Services, Eastpointe Plaza Building, 3600 - 136th Place S.E., Suite A, Bellevue, Washington, and adjourned at 4:30 p.m. The hearing on Item No. L95RU005 was resumed and the hearing on Item Nos. L96RU007 and L96VA009 was opened at 9:18 a.m., May 9, 1996. The hearing was closed at 5:25 p.m. on May 9, 1996. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

A decision on these applications was issued on May 17, 1996. A request for reconsideration was made

by the applicants on June 3, 1996.

On July 30, 1996, Deputy Hearing Examiner R.S. Titus recused himself and withdrew from the proceeding. The parties stipulated that another Examiner could issue a decision based on a review of the existing record, independent of the previous decision rendered by the Deputy Examiner.

ISSUES ADDRESSED:

Sensitive area protection - wetlands  
Sensitive area protection - reasonable use exception  
Variances - sensitive areas code  
Vesting

EXAMINER'S DECISION:

I. Procedural Issues.

- A. Decision Made on Review of the Record. Pursuant to stipulation by the parties, these applications are being decided by the undersigned Hearing Examiner following a review of the record established before Deputy Hearing Examiner R.S. Titus. The undersigned Examiner was not provided with a copy of the decision previously issued by Deputy Hearing Examiner R.S. Titus, and has not considered that decision.
- B. Waiver of Time Limits. The applicant has waived the time limits of County ordinances governing this appeal.
- C. Admissibility of May 20, 1996 Letter to the Examiner. The Examiner has considered the offer of proof by the applicant of the letter dated May 20, 1996, from Brian Valentine to Deputy Examiner Titus, and has considered the objections thereto by King County Department of Development and Environmental Services ("DDES"). For the most part, the information stated in the letter is already in the record. Such is not the case with respect to the assertions of specific amounts of financial costs or impacts to the applicant.

Ordinarily, testimony concerning financial costs or impacts should be subject to cross-examination. However, the specific amounts of costs or financial impacts asserted by the applicant have little or no materiality to this proceeding. The facts that denial of the applications would result in financial impact to the property owner (whether the applicant, his predecessor or successor in interest), and that the costs and impacts are significant, are incontestable. To the extent the specific amounts of cost or financial impact asserted in the letter are not supported by other evidence, the Examiner can disregard the specific amounts stated.

On balance, I believe the public interest and the interests of the parties are best served by admitting the letter into evidence (subject to the limitations stated above). By doing so, the merits of these applications (including the impacts of denials thereof) can be fully considered without reopening the hearing to add to the record evidence of marginal materiality. The Examiner will disregard the specific amounts of costs or impacts stated, but will consider the content of the letter as evidence that significant financial impact results to the property owner if the pending applications are denied. The May 20, 1996 letter will be admitted as Exhibit No. 44.

- D. Status of Application L95RU005. This application was submitted by the applicant, at the suggestion of DDES, to seek a reasonable use exception from provisions of the Sensitive Areas Code contained in Title 21A KCC. It was subsequently decided, upon motion of the applicant, that a request for reasonable use exception should be reviewed pursuant to Title 21 KCC. New applications for a reasonable use exception and for a Sensitive Areas variance were then submitted by the applicant (DDES Files L96RU007 and L96VA009, respectively). At the conclusion of the hearing, the applicant declared application L95RU005 moot, and stated that no decision thereon is required. The Examiner agrees with the applicant, and File No. L95RU005 will be closed without further action.

II. Is the Pending Application for Building Permit Subject to the Sensitive Areas Code (Ordinance 9614) Which Became Effective on November 27, 1990?

A. Exception from Sensitive Areas Special Study Requirement (KCC 21.54.040).

The plat of Lake of the Woods Division II was recorded on July 25, 1989. Wetlands on the site had been identified and discussed during the plat review process, giving consideration to the proposed development of each lot as a residential building site. The existence of wetlands adjacent to and near the subject lot, including Welcome Lake (Big Bear Creek Wetland No. 27) was known at the time of plat review. Environmental impact mitigation for the plat included a requirement that the applicant prepare a wetland study addressing wetlands in the vicinity of Tract "JJ" inter alia. (Tract "JJ" is designated Tract "A" of the recorded plat, and is adjacent to Lot 1 of Division II, as recorded.) Conditions of final plat approval addressed the wetlands within the plat in a manner which (arguably) should have protected the wetland on this lot.

Condition "8.e" of the preliminary approval required that all wetlands be shown on the final plat as a Native Growth Protection Easement (NGPE) area. Condition "8.f" also required the final plat to show the location of all wetlands on the site, subject to review and approval by the King County Wetland Specialist. Condition "8.g" required the 25-year floodplain for all wetlands to be shown on the final plans. The record in this case provides no indication as to why the wetland which exists on Lot 1 of Division II was not shown on the final plat.

If the applicant here had appealed the request by DDES to undertake another wetland study to support the application for a building permit, the provisions of KCC 21.54.040.C would have been applicable in deciding whether a new special study could be required. However, the criteria for determining whether there was an applicable exception to the special study requirement are not the criteria for determining the applicability of the substantive provisions of the Sensitive Areas Code (SAO).

B. Vesting of Subdivisions Pursuant to RCW 58.17.170.

The general rule in the State of Washington for the vesting of the right to build is that an application for a building permit shall be reviewed and acted upon in accordance with the laws and regulations in effect and applicable to the property at the time the complete building permit application is submitted. However, RCW 58.17.170 provides for an earlier vesting date to protect against changes in zoning when the application is to build upon a lot in an approved subdivision.

"...Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat and the statutes, ordinances, and regulations in effect at the time of (final plat approval) for a period of five years after final plat approval..." RCW 58.17.170 (underlining added).

Although the current zone classification of the subject property is RA 2.5, which requires a minimum lot area of 2.5 acres per residential dwelling unit, the zone classification which governed the review and approval of the plat of Lake of the Woods Division II, was "G (General)". That classification authorized residential development of lots having an average area of 35,000 square feet, and a minimum size of 28,000 square feet.

However, the application for the building permit which is the subject of this proceeding was filed on May 3, 1995, five years and nine months after the plat of Lake of the Woods Division II was recorded. Consequently, 58.17.170 does not govern consideration of this application.

C. Vesting Option Provided by Ordinance 11765.

On June 28, 1993, King County adopted a new zoning code, "Title 21A". The new code was implemented in stages, with its applicability to most properties deferred until completion of conversion to the new zone classifications. On February 2, 1995, Title

21A was fully implemented by adoption of the zone conversions. The zone classification of the subject property became RA 2.5, requiring a minimum lot size of 2.5 acres for residential development. As a result, an application for a permit to build a residence upon Lot 1 of Division II, the total area of which is 1.73 acres, would no longer be approvable unless an exception to the general rule for vesting applies.

On April 24, 1995, the King County Council adopted an emergency ordinance, the purpose of which was to alleviate the hardship to many property owners affected by the zoning code conversion which implemented Title 21A. These owners were no longer able to build the homes for which their property had been subdivided or short subdivided pursuant to the standards of the old zoning code (Title 21). Ordinance 11765, Statement of Facts.

Section "1.D" of Ordinance 11765 grants relief by allowing development of a subdivision lot pursuant to the standards which were in effect on February 1, 1995 (the date immediately preceding the date of conversion from the old to the new zoning), for a period of six years from the date of recording a final plat for which application had been made under the prior zoning code. The relief granted by Ordinance 11765 is stated with reasonable clarity. There is no statement, clause, phrase, word or inference in the ordinance that indicates review of the building permit application is to be based on laws and regulations in effect at the time of final plat approval. The review is explicitly required to be pursuant to the standards which were in effect on February 1, 1995.

D. Noble Manor v. Pierce Co., 81 Wn App 141 (1996).

This is a case decided by Division 2 of the Court of Appeals. The court held that the applications for the building permits sought in that case must be considered pursuant to the land use regulations which were in effect at the time application was made for the short subdivision which created the lots for which the permits were sought.

The facts of that case were unique. Another distinguishing consideration is that no state law addresses the issue of vesting the right to build on a lot created by short plat. Furthermore, the court acknowledged that a city or county may adopt a vesting scheme best suited to the locality, which Pierce County had no done.

In the instant case, there is a state law which specifically addresses the question of vesting the right to build on a lot created by subdivision (RCW 58.17.170, discussed above). King County has also established by ordinance its own rule to be applied when the vesting right under state law has expired (King County Ordinance No. 11765). If one applied the holding of Noble Manor vs. Pierce County in the manner urged by the applicant, it would be necessary to ascertain and apply the land use regulations in effect at the time of plat application to every permit to build upon a subdivided lot in the State of Washington. This would be a dramatic change in law and practice, contrary to RCW 58.17.170, and should not be adopted as the law in this jurisdiction unless directed by a controlling authority.

E. Conclusion.

The applications for a reasonable use exception and variance pending before the Hearing Examiner in this case will be reviewed and acted upon in accordance with the Sensitive Areas Code contained within Title 21, Chapter 54, KCC, as it was in effect on February 1, 1995.

The sections of the Sensitive Areas Code having particular relevance, as in effect on February 1, 1995, were:

- KCC 21.54.260, Wetlands-Provisions
- KCC 21.54.270, Wetlands-Standards
- KCC 21.54.280, Alterations to Wetlands and Buffers
- KCC 21.54.290, Mitigation
- KCC 21.54.020, Applicability
- KCC 21.54.060, Reasonable Use Exception
- KCC 21.54.010, Purpose

- KCC 21.54.360, Liberal Construction
- KCC 21.58.010, Authority to Grant Variance, and
- KCC 21.58.020, Required Showings for a Variance

### III. Application of the Facts to the Law

#### A. Reasonable Use Exception.

The criteria to be considered in the review of an application for a reasonable use exception are:

- 1) Whether the code would deny all reasonable use of the property;
- 2) Whether there is no other reasonable use with less impact on the sensitive area;
- 3) Whether the development poses an unreasonable threat to the public health, safety or welfare; and
- 4) Whether alterations to the sensitive areas would be the minimum necessary to allow for reasonable use of the property.

The facts of this case (see findings below) demonstrate that the Sensitive Areas Code does not preclude all reasonable use of the subject property. Therefore, the application for reasonable use exception is denied.

- B. Variance. The preponderance of the evidence indicates that residential development of the subject property requires placement of a septic drainfield within the 50-foot buffer area required for a Class 2 wetland. Although it may be possible to accommodate the drainfield through buffer averaging, if recommended by DDES pursuant to KCC 21.54.270.3, a variance, subject to conditions, is justified in this case.

Enhancement of the buffer area situated between the drainfield and wetland will be more consistent with the purposes and goals of the Sensitive Areas Code, by providing greater protection of valuable wetland functions, than adding buffer area elsewhere on the site. Consequently, a variance from the Class 2 wetland buffer standard of the Sensitive Areas Code, to authorize construction of the drainfield within an area not closer than 25 feet to the wetland edge, will be permitted, subject to enhancement of the wetland buffer area adjacent to the drainfield in accordance with a mitigation plan submitted by the applicant and approved by DDES. (The grant of this variance will not preclude the applicant from pursuing the alternative of buffer averaging should the applicant prefer to do so.)

No other variance from the Sensitive Areas Code is justified by the evidence.

FINDINGS, CONCLUSIONS AND DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

#### FINDINGS:

1. Application No. L95RU005 for a reasonable use exception to Chapter 21A.24 KCC is moot, and has been superseded by applications L96RU007 and L96VA009.
2. The final plat of Lake of the Woods, Division II, was recorded on July 25, 1989. The subject applications are for a reasonable use exception and a variance from the King County Sensitive Areas Code, Chapter 21.54. They relate to an application filed on May 3, 1995 for a permit to build a residence on Lot 1, Division II, Lake of the Woods (hereinafter called "Lot 1").
3. The area of Lot 1 is 75,563 square feet, approximately 1.73 acres. Construction of a single-family residence on the subject property was a permitted use at the time the plat was recorded. However, on February 2, 1995, the zone classification of the subject property was changed from "G (General)" to "RA 2.5", which requires a minimum 2.5 acres of lot area for construction of a single-family residence. The "G" classification required a 35,000-square-foot average minimum area for residential development, and permitted individual lots as small as 28,000 square feet.

4. On April 24, 1995, King County enacted Ordinance 11765, which provides:

"Except for the requirements of K.C.C. 21A.43 (relating to impact fees), any lot created by subdivision or short subdivision for which a complete subdivision or short subdivision application was submitted prior to February 2, 1995, may be developed pursuant to the standards of Resolution 25789, as amended (former KCC Title 21), including any applicable p-suffix conditions in adopted community plans and area zoning in effect on February 1, 1995, for a period of six years from the date of recording of the applicable final plat or short plat."

5. The range of lot sizes in the plat of Lake of the Woods, Division II, as granted preliminary approval in June, 1988, was from approximately 34,000 square feet to three acres. Development of the plat was constrained by wetlands, streams, and soil limitations for septic drainfields. Sizes of individual lots varied greatly, primarily to provide suitable areas for septic drainfields and building envelopes. Lot 1, as finally designed and recorded, was enlarged from the size proposed in the preliminary plat for the apparent purpose of accommodating a septic drainfield adjacent to the west property line.
6. Lot 1 contains a Class 2 wetland which generally encompasses the northern third of the property. The on-site wetland extends to the adjacent wetland designated "Big Bear Creek Wetland No. 27", commonly known as Welcome Lake or Lake of the Woods. The Sensitive Areas Code in effect on February 1, 1995, requires a 50-foot buffer to the south of the on-site wetland.
7. The northerly 100 feet of Lot 1 is also subject to a Native Growth Protection Easement on the 50 feet adjacent to the lake, and a 50-foot building setback line adjacent to the south of that NGPE. Those restrictions are contained within the plat of Lake of the Woods Division II.
8. The subject application for reasonable use exception seeks to except the proposed building and grading from the requirements of the Sensitive Areas Code. The exception is sought to enable the applicant to remove vegetation and to place fill within the wetland area lying southerly of the existing building setback line, and to eliminate the 50-foot wetland buffer for the on-site wetland. Approximately one-half of the on-site wetland area (11,565 square feet) is proposed to be filled, and 15,000 square feet of buffer would be eliminated to provide additional "backyard" area on the lot.
9. The variance is requested for essentially the same purposes. However, a variance application is a vehicle for more limited relief from the Sensitive Areas Code. A request for variance is the appropriate process to pursue when the Sensitive Areas Code does not preclude all reasonable use of the property.
10. The wetland on the subject property is accurately depicted in the pending applications. It is adjacent to Bear Creek Wetland No. 27, a 17-acre lake, and serves several valuable wetland functions. These functions include stormwater control, water quality improvement, and provision of habitat. The water quality of the adjacent lake is a matter of substantial community concern.
11. Of the total area of Lot 1, approximately 38,776 square feet is subject to the constraint and encumbrance of the on-site wetland and the 50-foot buffer required by the Sensitive Areas Code. The unencumbered area of the lot is 36,787 square feet. (Setbacks of 15 feet from the wetland buffer, 10 feet from the side lot lines, and 20 feet from the front lot line are required by the governing zoning code, but are not considered "encumbrances".)

The 36,787 square feet of unencumbered lot area exceeds the minimum lot size of the zone in which the lot was created. It is larger than, or roughly equivalent to, the total area of several other lots within Lake of the Woods, including other lots adjacent to Welcome Lake.

12. The house and appurtenances sought to be built were designed for the applicants prior to their finding and acquiring Lot 1. The house and garage "footprint" is 6,813 square feet, with 8,050 square feet of living area. Decks and patios add another 1,302 square feet, and driveways and parking areas 7,585 square feet. 15,700 square feet of impervious surface and approximately 30,000 square feet of graded back yard area are proposed.

The unconstrained area of the lot does not allow for construction of the particular house, drives,

parking and yard area desired by the applicant. However, other designs and layouts for houses and yards consistent with the area are possible. Reasonable use can be made of the property for residential purposes, consistent with the Sensitive Areas Code, by designing and developing the lot in a manner which better respects the land and applicable policies and regulations than the applicant's pre-conceived plan. Such alternatives could be compatible with other residential development in the area.

13. The preponderance of the evidence indicates that the area proposed for a septic drainfield is the only suitable area on the subject property for that purpose. Portions of the proposed drainfield occupy an area which comes as close as approximately 25 feet to the wetland edge. A variance from the Sensitive Areas Code or buffer averaging is necessary to enable the construction of a drainfield to allow residential development upon the subject property.
14. Because of the hydrological connection of the on-site wetland to Lake Welcome, protection of the wetland from drainfield leachate is essential. The mitigation plan required as a condition of a variance from the Sensitive Areas Code can recommend buffer enhancements and other measures to assure protection of the wetland from drainfield leachate.
15. All additional facts set forth in the foregoing Decision and in the conclusions that follow are incorporated herein by this reference.

#### CONCLUSIONS:

1. The underlying application for a building permit for construction of a single-family residence on Lot 1 is authorized by Ordinance 11765. If not for that ordinance, this building permit application could not be approved due to the absence of sufficient area within Lot 1 to meet the requirements of the current zone classification. Therefore, in accordance with the provisions of Ordinance 11765, this application is subject to the King County Zoning Code, Title 21, as it was in effect on February 1, 1995. Title 21 then included Chapter 21.54, the King County Sensitive Areas Code.
2. The request for a reasonable use exception from the Sensitive Areas Code should be denied for the reason that application of the code to Lot 1 does not deny all reasonable use of the subject property.
3. Soil conditions on the subject property limit the available area for a septic drainfield to an area approximately 25 feet southwesterly of the on-site wetland. This is a special circumstance applicable to the subject property which justifies a variance from the 50-foot setback requirement of the Sensitive Areas Code for a Class 2 wetland. Construction of the drainfield can be accomplished maintaining a minimum wetland buffer of 25 feet adjacent to the drainfield.

If the remaining buffer area between the drainfield and wetland is enhanced to assure that there will be no leachate moving from the drainfield to the wetland, the granting of a variance will not be materially detrimental to the public welfare, injurious to property or improvements in the vicinity, or contrary to goals and purposes of the Sensitive Areas Code.

A variance to allow construction of the drainfield within the 50-foot buffer area, but not closer than 25 feet to the on-site wetland, is the minimum variance necessary to accommodate reasonable residential use of the subject property. Any additional variance from the King County Sensitive Areas Code would be greater than the minimum variance necessary.

#### DECISION:

File No. L95RU005 shall be CLOSED without further action.

The application for reasonable use exception from the King County Sensitive Areas Code, designated File No. L96RU007, is DENIED.

Application L96VA009, for a variance from the King County Sensitive Areas Code, is GRANTED to permit construction of a septic drainfield for a single-family residence within the 50-foot buffer required for the Class 2 on-site wetland, subject to the following conditions:

1. A minimum buffer of 25 feet from the wetland shall be retained.
2. The buffer area between the drainfield and the Class 2 wetland shall be enhanced and additional precautionary measures shall be taken, as recommended by the applicant's wetland consultant and septic system consultant and approved by DDES, to maximize the protection of the on-site wetland from drainfield leachate.

The balance of the application for a variance from the King County Sensitive Areas Code is DENIED.

ORDERED this 20th day of September, 1996.

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James N. O'Connor  
King County Hearing Examiner

TRANSMITTED this 20th day of September, 1996, to the following parties and interested persons:

Steve Burnstead	Jerry Cudney
Pat DeAngelis	John Furnstrom
Joel Haggard	Jeff Harrison
Johan & Didi Jansen	Garet P. Munger
Leo Suver	Brian & Geri Valentine

Mason Bowles, DDES/Land Use Services Division  
Mark Carey, DDES/Land Use Services Division  
Jon Hansen, DDES/Land Use Services Division  
Cassandra Newell, Prosecuting Attorney's Office  
Michaelene Manion, DDES/Land Use Services Division  
Lisa Pringle, DDES/Land Use Services Division  
Sherie Sabour, DDES/Land Use Services Division  
Karen Scharer, DDES/Land Use Services Division

NOTICE OF RIGHT TO APPEAL

The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one days of issuance of the decision.

MINUTES OF THE MARCH 27, 1996 AND MAY 9, 1996 PUBLIC HEARINGS ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILES L95RU005, L96RU007 AND L96VA009 - BRIAN & GERI VALENTINE:

R. S. Titus was the Hearing Examiner for this matter. Participating in the March 12, 1996 pre-hearing conference were Karen Scharer, Brian Valentine, Steve Burnstead, Leo Suver, Jeff Harrison, and Jerry Cudney. Participating in the March 27, 1996 hearing were Mason Bowles, Sherie Sabour, and Joel Haggard. Participating in the May 9, 1996 hearing were Karen Scharer, Jon Hansen, Cassandra Newell, Brian Valentine, Geri Valentine, Joel Haggard, Steve Burnstead, Garet Munger, and Patricia DeAngelis.

On March 27, 1996, the following exhibits were offered and entered into the record:

Exhibit No. 1	Department of Development and Environmental Services Preliminary Report to the King County Hearing Examiner, dated March 11, 1996
Exhibit No. 2	Application for reasonable use exception <u>L95RU005</u> , received November 3, 1995:
D-1	Application
D-2	Legal description
D-3	Justification
D-4	Sensitive area review record
D-5	Not entered
D-6	Project plans ( <b>identified by DDES as same plans in Exhibit 26/D-15; 1 copy only in this Exhibit - no copy entered in Exhibit 26/D-15</b> )
D-7	Not entered
D-8	Assessor map ( <b>identified by DDES as same assessor map in Exhibit Nos. 25/D-8 and 26/D-8; 1 copy only - no copy entered in Exhibit 25/D-8 or Exhibit 26/D-8</b> )
D-9	King County Certificate of Water Availability
D-10	King County Department of Public Health site application, dated March 10, 1995, received March 31, 1995 ( <b>copies also entered as Exhibit No. 10, and Exhibit Nos. 25/D-10 &amp; 26/D-10, and as attachment to Exhibit No. 19</b> )



	D-11	Not entered
	D-12	Wetland survey map
	D-13	Black-and-white photocopies of Lake of the Woods Div. II, backyard photos, Lot 1 ( <b>ORIGINAL color photos entered as Exhibit 26/D-13</b> )
	D-14	Black-and-white photocopies of aerial photos, Lake of the Woods Div. II ( <b>ORIGINAL color photos entered as Exhibit 26/D-14</b> )
	D-14	Aerial photos
	D-15	Wetland evaluation
	D-16	Mitigation plan
	D-17	Property development plan checklist, Lake of the Woods Div. II, Lot 1, received November 3, 1995
	D-18	News article
	D-19	Reasonable use exception application, stamped received by DDES on November 3, 1995
	D-20	Certification and Transfer of Applicants Status, stamped received on November 3, 1995
Exhibit No. 3		Affidavit of posting, received February 16, 1996, showing date of posting as February 14, 1996
Exhibit No. 4		500-foot radius notice, mailed February 5, 1996
Exhibit No. 5		Hearing Examiner's Pre-Hearing Order, dated March 14, 1996, re: DDES File No. L95RU005
Exhibit No. 6		March 18, 1996 Land Use Services Division response to pre-hearing order, with attachments
Exhibit No. 7		Letter, dated March 21, 1996, from Joel Haggard, to R.S. Titus
Exhibit No. 8		Fax, dated January 8, 1996, from Karen Scharer to Steve Burnstead with attached memo from Mason Bowles dated January 4, 1996
Exhibit No. 9		Memo to Hearing Examiner requesting March 12, 1996 date for public hearing of Valentine reasonable use exception application L95RU005
Exhibit No. 10		Seattle-King County Department of Public Health application for on-site sewage disposal system, dated March 10, 1995, received March 31, 1995 ( <b>copies also entered as Exhibit Nos. 2/D-10, 25/D-10, and 26/D-10, and as attachment to Exhibit No. 19</b> )
Exhibit No. 11		Letter, dated March 6, 1996, from D.R. Strong Consulting Engineers Inc., to Leo Suver, Burnstead Construction ( <b>copy also entered as Exhibit No. 19</b> )
Exhibit No. 12		Letter, dated March 25, 1996, to Hearing Examiner, from Joel Haggard
Exhibit No. 13		Lake of the Woods Wetland Delineation, dated July 1986, by Shapiro and Associates, Inc.
Exhibit No. 14		Examiner's Report and Recommendation dated May 4, 1988, on Lake of the Woods Divisions 2, 3, 4, 5 and 6 - File No. 88-227
Exhibit No. 15		Plat map, Lake of the Woods Division II
Exhibit No. 16		Computer printout from Dept. of Assessments
Exhibit No. 17		Summary of real property history as of March 20, 1996 for Lots 2-11, Lake of the Woods Division II
Exhibit No. 18		M. S. Webb Wetlands Survey, dated July 8, 1995, of Lot 1, Lake of the Woods, Div. II
Exhibit No. 19		Letter, dated March 6, 1996, from D.R. Strong Consulting Engineers Inc., to Leo Suver, Burnstead Construction ( <b>copy previously entered as Exhibit No. 11</b> ), with attachment ( <b>copies also entered as Exhibit Nos. 2/D-10, 10, 25/D-10, and 26/D-10</b> )
Exhibit No. 20		Memo, dated April 24, 1995, from Greg Kipp to DDES re: New Transition Rule to Title 21A
Exhibit No. 21		Walker & Associates aerial photo of site, dated September 22, 1995
Exhibit No. 22		Site plan proposal for Valentine residence
Exhibit No. 23		Soil conservation service map

On May 9, 1996, the following exhibits were offered and entered into the record:

Exhibit No. 24		Department of Development and Environmental Services SECOND Preliminary Report to the King County Hearing Examiner, dated May 9, 1996
Exhibit No. 25		Application for Variance L96VA009, dated April 3, 1996:
	D-1	Application, received April 5, 1996
	D-2	Legal description
	D-3	Justification
	D-4	Sensitive area review record
	D-5	Not entered
	D-6	Project plans ( <b>identified by DDES as same plans in Exhibit 26/D-6; 1 copy only - in Exhibit 26/D-6</b> )
	D-7	Not entered
	D-8	Assessors map ( <b>identified by DDES as same assessor map in Exhibit 2/D-8; 1 copy only, no copy entered in Exhibit 25/D-8 or Exhibit 26/D-8</b> )
	D-9	King County Certificate of Water Availability

	D-10	King County Department of Public Health site application, dated March 10, 1995, received March 31, 1995 ( <b>copies also entered as Exhibit No. 10, and Exhibit Nos. 2/D-10 &amp; 26/D-10, and as attachment to Exhibit No. 19</b> )
Exhibit No. 26		Application for Reasonable Use Exception L96RU007, dated April 3, 1996:
	D-1	Application, received April 5, 1996
	D-2	Legal description
	D-3	Justification
	D-4	Sensitive area review record
	D-5	Not entered
	D-6	Project plans ( <b>identified by DDES as same plans in Exhibit 25/D-6; 1 copy only in this exhibit - no copy entered in Exhibit 25/D-6</b> )
	D-7	Not entered
	D-8	Assessors map ( <b>identified by DDES as same assessor map in Exhibit 2/D-8; 1 copy only, no copy entered in Exhibit 25/D-8 or Exhibit 26/D-8</b> )
	D-9	King County Certificate of Water Availability
	D-10	King County Department of Public Health site application, dated March 10, 1995, received March 31, 1995 ( <b>copies also entered as Exhibit No. 10, and Exhibit Nos. 2/D-10 &amp; 25/D-10, and as attachment to Exhibit No. 19</b> )
	D-11	Not entered
	D-12	D.R. Strong, Consulting Engineers Inc., on-site sewage disposal map, letters, Shapiro & Associates Wetland Delineation
	D-13	ORIGINAL photos, Lake of the Woods Div. II, backyard photos, Lot 1 ( <b>black and white copies of photos entered as Exhibit No. 2/D-13</b> )
	D-14	ORIGINAL aerial photos, Lake of the Woods Div. II ( <b>black and white copies of photos entered as Exhibit No. 2/D-14</b> )
	D-15	Project plans ( <b>identified by DDES as same plans in Exhibit 2/D-6; 1 copy only in Exhibit No. 2/D-6; no copy entered in Exhibit 26/D-15</b> )
Exhibit No. 27		DDES hearing notice, dated April 19, 1996, re: L96VA009 & L96RU007 - Valentine
Exhibit No. 28		Affidavit of Posting of Public Hearing Notice (Exhibit No. 27)
Exhibit No. 29		Building permit records, Lake of the Woods Div. II, Lots Nos. 2, 3, 4, 5, 6, 7, 8, 10, 29, 30, & 31, and Lake of the Woods South, Lots Nos. 1, 2, 3, 9, & 10
Exhibit No. 30		Lake of the Woods Draft Environmental Impact Statement, dated November, 1984
Exhibit No. 31		Lake of the Woods Final Environmental Impact Statement, dated February, 1985
Exhibit No. 32		Lake of the Woods Div. II, Mitigated Determination of Non-Significance, dated April 5, 1988
Exhibit No. 33		Shapiro & Associates, Inc. Addendum, dated March 25, 1988, re: Lake of the Woods Wetland Delineation (July 1986)
Exhibit No. 34		Shapiro & Associates, Inc. letter, dated April 18, 1988, to John McCarthy, General Western Corporation
Exhibit No. 35		Preliminary plat map, Lake of the Woods Div. 2, 3, 4, 5, & 6, dated September 23, 1987
Exhibit No. 36		Letter, dated May 1, 1996, from Johan and Didi Jansen, to Mark Carey
Exhibit No. 37		REVISION to Wetland & Buffer Functions Semi-Quantitative Performance Assessment re: L95RU005; original assessment done April 11, 1996 by Mason Bowles; revision done May 7, 1996 by Jon Hansen
Exhibit No. 38		Copy of Ordinance No. 11765, passed April 24, 1995, re: Title 21A, amending Ordinance 10870/Section 4, and KCC 21A.01.040
Exhibit No. 39		Lake of the Woods property frontage information sheet, prepared and entered May 9, 1996, by Karen Scharer
Exhibit No. 40		Lake of the Woods lot size comparison information sheet, prepared and entered May 9, 1996, by Steve Burnstead
Exhibit No. 41		Letter, dated May 9, 1996, from Garett P. Munger to Steve Burnstead, re: wetland functional value evaluation
Exhibit No. 42		Letter, dated May 9, 1996, from Garett P. Munger to Steve Burnstead, re: fill recommendations
Exhibit No. 43		Letter (rebuttal testimony), entered May 9, 1996 by Karen Scharer, written by Patricia DeAngelis, Lake of the Woods Homeowners Association

The following exhibit was entered into the record pursuant to review by Examiner O'Connor:

Exhibit No. 44	Letter dated May 20, 1996 to Examiner from Brian Valentine
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