

#### **Office of Hearings Administration**

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# **DECISION** of the

# SNOHOMISH COUNTY HEARING EXAMINER

### I. SUMMARY

DATE OF DECISION:	March 16, 2023
PROJECT NAME:	Husaynia Islamic Society of Seattle
APPLICANT:	Husaynia Islamic Society of Seattle 15231 State St. Snohomish, Washington 98296-7020
LOCATION:	15231 State St. Snohomish, Washington 98296-7020
OWNER:	Husaynia Islamic Society of Seattle 15231 State St. Snohomish, Washington 98296-7020
FILE NO.:	20-114230 CUP
REQUEST:	Conditional use permit to construct and operate a religious worship facility
DECISION SUMMARY:	Conditional use permit to construct and operate a religious worship facility is approved with conditions

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III. SITE SUMMARY							
LOCATION:	15231 State St. Snohomish, Washington 98296-7020						
TAX PARCEL NO .:	004038-000-003-00						
ACREAGE:	5.47 acres						
COMPREHENSIVE PLAN DESIGNATION	Rural Residential (1 dwelling unit/5 acres basic)						
ZONING:	R-5						
UTILITIES:							
Water:	Cross Valley Water District						
Sewer:	Not in a sewer district						
Electricity:	Snohomish County PUD No. 1						
SCHOOL DISTRICT:	Snohomish School District No. 201						
FIRE DISTRICT:	Snohomish County Fire District No. 4						
PDS STAFF RECOMMENDATION:	Approve the proposed religious worship facility <sup>1</sup> with conditions						
Based on a preponderance of the evidence in the record, the Hearing Examiner finds the following facts and makes the following conclusions of law.							

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<sup>&</sup>lt;sup>1</sup> County code defines any religious worship facility as a "church," whether it is a church, synagogue, mosque, temple, or reading room. SCC 30.91C.085 (2015). The word "church" is usually associated with and specific to the Christian religion. <u>https://www.merriam-webster.com/dictionary/church</u>, last viewed March 15, 2023. Instead of the word "church," the Hearing Examiner will use the term "religious worship facility" because it is accurate and neutral.

# 1 IV. FINDINGS OF FACT

# 2 **A. Regulatory Review and Vesting**

Applicant Husaynia Islamic Society of Seattle applied to Snohomish County Planning and
Development Services department (PDS) on September 23, 2020, for a conditional use permit to
reconstruct an existing horse arena and operate it as a religious worship facility. PDS determined
the application to be complete for vesting as of the date of submittal. Husaynia submitted additional
information on October 21, 2021, December 27, 2021, April 14, 2022, and August 2, 2022.

# 8 **B.** Open Record Hearing

9 An open record hearing was held on October 13, 2023. By order dated November 10, 2022, the

10 Hearing Examiner reopened the record for the limited purpose of receiving additional information

- 11 regarding complaints about previous special events and sound mitigation.<sup>2</sup> A further hearing on
- 12 sound mitigation occurred on February 23, 2023.<sup>3</sup>

### 13 C. The Record

14 The Hearing Examiner considered exhibits A.1 through L.2, O.1 through Q.3, Q.5, Q.6, Q.7 (partial 15 consideration), Q.9, Q.10, Q.12, Q.13, Q.16 through R.3. The Hearing Examiner did not consider: 16 exhibits M.1 through M.6 which were submitted after the record closed on October 28, 2022; 17 exhibit S.1 which was submitted after the close of the February 23, 2023 reopened hearing; and 18 exhibits L.3, L.4, Q.4, Q.7 (partial), Q.8, Q.11, Q.14, and Q.15 for the reasons explained in the 19 November 10, 2022 order reopening record for a limited purpose.<sup>4</sup> The Hearing Examiner also 20 considered the testimony of the witnesses at the open record hearings. Recordings of the hearings 21 are available through the Office of Hearings Administration.

#### 22 D. Public Notice

PDS notified the public of the open record hearing, threshold determination, and concurrency and
 traffic impact fee notifications.<sup>5</sup>

<sup>2</sup> Ex. N.1.

<sup>3</sup> Ex. N.3.

<sup>4</sup> Ex. N.1.

<sup>5</sup> Exhibits F.1 through F.3.

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# 1 E. Background Information

## 2 <u>1. Proposal</u>

3 Husaynia proposes to redevelop an existing horse arena and operate a religious worship facility. 4 Husaynia will provide parking for 60 vehicles. Religious services are currently held once a week. During Ramadan and Muharram, some services occur two to three times in a week. These 5 6 services normally start at 8 p.m. and end by 10:30 p.m. Two Eids and Aashura are daytime services and occur either on weekdays or weekends, depending on the lunar calendar and 7 8 moonrise. Friday prayer occurs at 1 p.m. each Friday. The call to prayer will not be broadcast outside the facility. The congregation currently numbers approximately 40 people and attendance 9 10 reached 80 participants on special days.<sup>6</sup>

#### 11 2. Site Description and Surrounding Uses

The site is zoned R-5 and consists of a single parcel of approximately 5.47 acres. The site is
developed with a single-family residence and horse arena. Surrounding properties are zoned R-5
and developed with single-family residences.

#### 15 3. Site Visit

The Hearing Examiner visited the site<sup>7</sup> unaccompanied and viewed the area on Wednesday,
 March 15, 2023.<sup>8</sup>

#### 18 **<u>4. Concerns</u>**

Many community concerns were raised in written comments and by testimony in the open record
hearing. The primary concerns are sound levels, traffic, and impact on the character of the
community.

#### 22 Sound

A primary concern of the neighborhood is sound. Neighbors testified that the community is a quiet,
rural setting and noted that events at the facility have been sufficiently loud to disturb their peace
and drive them indoors.

Generally, property owners may do as they please on their own property, provided the activity is
consistent any applicable law. The relevant law here is the county noise control ordinance, chap.
10.01 SCC. Code establishes quantitative standards for sound. In this rural residential area,

<sup>6</sup> Ex. A.2.

<sup>7</sup> The Hearing Examiner did not enter any private property and remained on the public right of way the entire time.

<sup>8</sup> H. Ex. Rule of Proc. 1.9 (2021).

Husaynia Islamic Society of Seattle 20-114230 CUP Decision Approving Conditional Use Permit with Conditions Page 6 of 27 1 Husaynia may not generate sound that is louder than 49 dB(A) at the receiving property during

daytime<sup>9</sup> and 39 dB(A) at night.<sup>10</sup> The daytime limit is like that of a quiet street, and the nighttime
 limit is like that of a quiet home.<sup>11</sup>

Sound from inside the mosque will not likely exceed these limits. Sound from outside the mosque
will also likely not exceed these limits because no amplification of sound will be allowed. Husaynia
has conducted services at Northlake Lutheran Church in Kenmore, Washington, for several years
without complaint from residences adjacent to Northlake Lutheran. Further, this decision does not
modify the requirements of chap. 10.01 SCC, nor does it authorize Husaynia to violate chap.
10.01. This decision only finds that as conditioned, Husaynia is not likely to violate the noise
control ordinance.

#### 11 <u>Traffic</u>

12 Traffic is another major concern of the community. The county is required by state law to establish 13 standards to determine whether the transportation infrastructure is adequate to handle the 14 proposed additional traffic load, i.e., whether transportation infrastructure capacity is concurrent 15 with the projected use.<sup>12</sup> Snohomish County ordinances establish the methodology for determining 16 whether the roads have the concurrent capacity to handle the projected traffic and determining 17 whether and the amount of any fees that must be paid to mitigate the increase in traffic.<sup>13</sup> As 18 discussed more fully below, the proposed development will pay substantial traffic mitigation fees and the road system has adequate capacity to handle the increased traffic without decreasing the 19 20 level of service beyond what is legally permissible.<sup>14</sup> This proposal meets the legal criteria 21 established in county code; there is no legal basis for denying the proposal.

With respect to concerns about parking, Husaynia will provide 60 parking spaces, which is likely to
 be adequate for a mosque of approximately 40 people. If parking becomes a problem and
 overflows on to State St., Husaynia must provide additional on-site parking.<sup>15</sup>

#### 25 Neighborhood

26 Some neighbors complained that the proposed mosque is inappropriate for the neighborhood. The 27 existing development is a 21,000 sq. ft. horse arena. Husaynia will not expand the footprint or

<sup>9</sup> SCC 10.01.030(1) (1998). <sup>10</sup> *Id.* at (3)(b).

<sup>11</sup> Ex. P.16, p. 11.

<sup>12</sup> E.g., RCW 36.70A.020 (2002).

<sup>13</sup> Chapter 30.66B SCC.

<sup>14</sup> See discussion of concurrency below at page 12.

<sup>15</sup> Condition 11 on page 18.

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20-114230 CUP Decision Approving Conditional Use Permit with Conditions Page 7 of 27 change the exterior.<sup>16</sup> The mosque will therefore have no different visual impact on the
 neighborhood that the long-existing horse arena that neighbors found acceptable.

Parking and vehicle traffic on the fire lane will have a visual impact on the residences on the north,
east, and south sides of the property. Neighbors pointed out that the 20-foot perimeter landscaping
will not be fully grown for several years and may not provide sufficient visual screening even then.
Approval will therefore be conditioned on the installation and maintenance of a six-foot tall solid
wood fence to provide an appropriate visual screen.<sup>17</sup>

#### 8 <u>Wildlife</u>

Many neighbors expressed concerns about wildlife. No critical species<sup>10</sup> habitat exists on the site.
Absent the existence of priority species' habitat, there is no legal basis for rejecting or remanding
the application. Any temporary disturbance of non-critical species by construction is not a legal
basis for rejection or remand. If temporary disturbance by construction of non-listed species were a
legal basis for rejection or remand, virtually every project would need to be rejected or remanded
because construction activities often temporarily disturb the mouse nests, coyote dens, etc.

#### 15 Septic and Water

Neighbors expressed concern about adequacy of the septic system and impact on area wells.
Health department regulations protect wellheads and public welfare by requiring approval of the
design, location, and installation of on-site sewer systems. Husaynia will obtain domestic water
from Cross Valley Water District, not from its own well.

#### 20 Property Values

Some expressed concerns about the impact of the facility on area property values. It is unlikely that
the facility would negatively affect property values. Generalized concerns over impact of a
development on area property values do not constitute substantial evidence sufficient to deny the
application. See Omnipoint Corp. v. Zoning Hearing Bd. of Pine Grove Twp., 181 F.3d 403, 409
(3d Cir. 1999), citing Cellular Tel. Co. v. Town of Oyster Bay, 166 F.3d 490, 496 (2d Cir. 1999).

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<sup>&</sup>lt;sup>16</sup> Any change to the exterior must use residential treatments. Condition 12 on page 18.

<sup>&</sup>lt;sup>17</sup> See condition 5 on page 18.

# F. Conditional Use Permit (Chapter 30.42C SCC)

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3 An application for a conditional use permit must meet the following criteria: <sup>18</sup>

- a. The proposal must be consistent with the county's comprehensive plan;
- b. The proposal must comply with the applicable requirements of title 30 SCC;
- c. The proposal will not be materially detrimental to the uses or property in the immediate vicinity; and
- d. The proposal is compatible with, and incorporates specific features, conditions, or revisions that ensures it responds to, the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

#### 11 1. Consistency with Comprehensive Plan (SCC 30.42C.100(1)(a))

12 The comprehensive plan objective for rural areas includes community facilities such as religious 13 worship facilities.<sup>19</sup> The land use objective specifically excepts religious worship facilities from 14 building size or areas of impervious surface otherwise demanded by comprehensive plan land's use objectives for rural residential areas. LU 6.E.3 ("Churches shall not be subject to restrictions on 15 building size or areas of impervious surfaces provided by LU Objective 6.E and its associated 16 17 policies.") In other words, expressly mentioning religious worship facilities in the land use objective 18 and excepting them from restrictions of businesses demonstrates that the comprehensive plan 19 deems religious worship facilities to be community facilities that are necessary services. The argument that a religious worship facility degrades rural character is contradicted by the text of the 20 21 comprehensive plan exempting such facilities from building size limits and by the fact that 22 attending religious services is considered by many to be a traditional rural activity that contributes to the overall quality of life.<sup>20</sup> The proposal is consistent with the comprehensive plan. 23

<sup>18</sup> SCC 30.42C.100(1) (2012).

<sup>20</sup> Comprehensive Plan Land Use Element, Rural Lands. <u>https://snohomish.county.codes/CompPlan/GPP-LU-RL</u>, last viewed March 15, 2023.

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<sup>&</sup>lt;sup>19</sup> The objective's mention of serving the "immediate rural population" makes sense as a limitation for local services such as gas stations, cleaners, and other businesses with a clearly local clientele. It does not make sense as a limitation on religious worship facilities because such application would require inquiry into the residence and religious preferences and practices of the proposed facility's membership, potentially infringing on constitutional rights to privacy and free exercise of religion.

1	2. Compliance with Title 30 SCC (SCC 30.42C.100(1)(b))					
2	a. General Zoning Standards (Chapters 30.22 through 30.26 SCC)					
3	i. Conditional Use Allowed in Zone (Chap. 30.22 SCC)					
4 5	The proposed project is a religious worship facility, which is a permitted use with conditions in the R-5 zone.					
6	ii. Height, Setback, Bulk, and Lot Dimensions (Chap. 30.23 SCC)					
7	The proposal complies with height, setback, and bulk requirements.					
8	iii. Parking (SCC 30.26.030(1))					
9 10 11 12 13	County code requires PDS to determine an appropriate number of parking stalls. <sup>21</sup> The parking study <sup>22</sup> assumed 80 attendees. The proposed 60 parking spaces will provide a very high ratio of space per attendee. This is likely to be an adequate amount of parking. If, however, it is not and frequent overflow parking occurs on State St., approval will be conditioned on Husaynia providing more parking on its site. <sup>23</sup>					
14	iv. Landscaping (Chap. 30.25 SCC)					
15 16 17 18	Husaynia will provide 20-foot-wide type A landscaping buffer along the perimeter of the site and will landscape ten percent of the 17,232 sq. ft. parking area. Husaynia must install a fence, plant a living fence, or plant sight-obscuring landscaping surrounding outside storage areas and waste, dumpster, and recycling areas. Approval will be so conditioned.					
19	b. Environmental Review (SEPA) (Chapter 30.61 SCC)					
20 21	PDS issued a threshold determination of non-significance August 31, 2022, which was not appealed. <sup>24</sup>					
	24					
	<sup>21</sup> SCC 30.26.035 (2017).					
	<sup>22</sup> Ex. C.1. <sup>23</sup> Condition 11 on page 18.					
	$^{24}$ Ex. E.1.					
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#### c. Critical Areas Regulations (Chapters 30.62A, 30.62B, and 30.62C SCC)

A category III wetland with a habitat score of 5 points lies on the west side of the site at the toe of
the slope. The standard buffer width for such a wetland and this use is 150 feet. The buffer of the
closest off-site wetland does not extend on to the site.

Fire lane construction and widening and paving of the access point on State Street will affect 8,854
sq. ft. of the wetland buffer. This impact will be mitigated by enhancing 26,610 sq. ft. of buffer<sup>25</sup>
with native vegetation. The existing buffer area has low habitat and moderate hydrologic functions.
The proposal will not result in a net loss of ecological functions but will improve the ecological
function of the wetland's buffer compared to its current condition.

#### d. Drainage and Grading (Chapters 30.63A, 30.63B, and 30.63C SCC)

Subsurface exploration by the geotechnical engineer revealed a restrictive soil layer of relatively low permeability at approximately six to seven feet below ground surface. Except for approximately 4,200 sq. ft. of new asphalt to widen the fire lane, the remaining gravel surfaces of approximately 14,000 sq. ft. will be converted to a ring on grid structure (such as GrassPave) that will support pedestrian and vehicle traffic while protecting grass roots. Basic water quality treatment will be provided by filter strips and at least 18 inches of suitable soil under the ring on grid structure.

Grading quantities are expected to be approximately 976 cubic yards of cut and 975 cubic yards of fill.

	Description	How Fulfilled?
1	Stormwater Site Plan	The targeted drainage report and preliminary civil drawings satisfy this requirement. <sup>26</sup>
2	Stormwater Pollution Prevention Plan (SWPPP)	Husaynia submitted a SWPPP that is adequate for preliminary approval.

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<sup>&</sup>lt;sup>25</sup> The ratio of enhancement to impact will be 3:1, as required by SCC 30.62A.320(3)(d).

<sup>&</sup>lt;sup>26</sup> Exhibits B.6 and C.2.

3	Water pollution source control for new development or redevelopment	Husaynia demonstrated that compliance with this requirement is feasible.				
4	Preservation of natural drainage systems	Natural drainage systems will be preserved to the extent feasible. Stormwater will be discharged at the natural location with an approved dispersion				
		device. No impact to downstream drainage is expected based upon analysis of downstream conditions.				
5	On-site stormwater management	On-site stormwater management will be adequate as described in the stormwater site plan and drainage narrative.				
6	Runoff treatment	Basic water quality treatment will be provided by filter strips and at least 18 inches of appropriate soil underneath the ring on grid structure.				
7	Flow control requirements for new development or redevelopment	Flow control is not required.				
8	Detention or treatment in wetlands or wetland buffers	No detention or treatment of stormwater will occur in the wetland or its buffer.				
9	Inspection, operation, and maintenance requirements	Husaynia provided sufficient operation and maintenance information.				

#### e. School and Parks Impact Mitigation Fees (Chaps. 30.66A, 30.66B, and 30.66C SCC)

The project is not defined as development under SCC 30.91D.200 (2005) and is therefore not subject to parks and recreation impact mitigation fees otherwise required by chapter 30.66A SCC. School impact mitigation fees will not be assessed because the project is not a development as defined by SCC 30.91D.220 (2005).

#### f. Transportation (Title 13 SCC, EDDS §3-02, and SCC 30.66B.420)

i. Area Transportation

#### a. Concurrency Determination (SCC 30.66B.120)

County ordinances prescribe the measures and tests with which a development must comply to determine whether the transportation infrastructure is adequate for the traffic expected to be 11 generated by the proposal. This project meets those measures and tests. Public Works deemed 12 the proposed development concurrent as of July 14, 2022. The project must be approved if it does

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1 not affect a county arterial unit in arrears or cause a county arterial to go into arrears, i.e., fall

2 below the minimum level of service established by ordinance.<sup>27</sup> Transportation Service Area (TSA)

3 C had no arterial units in arrears or at ultimate capacity as of the date of submittal. The

development will not likely generate more than 50 peak-hour trips.<sup>28</sup> 4

#### b. Inadeguate Road Conditions (IRC) (SCC30.66B.210)

6 Irrespective of the existing level of service, a development which adds at least three evening peak 7 hour trips to a place in the road system that has an Inadequate Road Condition (IRC) must 8 eliminate the IRC to be approved. The development will not affect any IRCs in the transportation 9 service area with three or more evening peak hour trips, nor will it create an IRC. Therefore, it is 10 expected that mitigation will not be required with respect to IRC and no restrictions to issuance of 11 building permits, certificates of occupancy, or final inspection will be imposed under SCC 12 30.66B.210.

13

c. Impact Fees

i. County

15 The proposed development must mitigate its impact upon the future capacity of the county's road system by paying a road system impact fee.<sup>29</sup> The road system impact fee will be the product of 16 17 the average daily trips (ADT) created by the development multiplied by the amount per trip for the transportation service area identified in SCC 30.66B.330. Based on the average daily trips 18 projected for the project, Husaynia must pay \$18,116.40 for impacts to the county road system.

1	Square feet of facility	29,638
2	ADT per 1,000 sq. ft.	6.95
3	New ADT (line 1 x line 2)	205.98
4	ADT Credit for Existing Trips	78.40
5	Net New ADT (line 3 – line 4)	127.58
6	TSA C mitigation fee per ADT	\$142.00
7	Total Road System Impact Fee (line 5 x line 6)	\$18,116.40
8	Number of new square feet to be constructed	29,638
9	Impact Fee per square foot (line 7 ÷ line 8)	\$0.61

<sup>27</sup> SCC 30.66B.120(1) (2003).

<sup>28</sup> (29.638 sq. ft. x 0.33 AM peak-hour trips/1,000 sq. ft.) – 3.36 existing trips = 6.42 net new morning peak-hour trips. (29,638 sq. ft. x 0.49 PM peak-hour trips/1,000 sq. ft.) - 14.56 existing trips = -0.04. In other words, there will be no new evening peak-hour trips or additional evening peak-hour trips after subtracting existing peak-hour trips.

<sup>29</sup> SCC 30.66B.310 (2003).

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1	ii. Other Jurisdictions			
2	a. State Highway Impacts (SCC 30.66B.710)			
3 4	When a development's road system includes a state highway, mitigation requirements will be established using the county's SEPA authority consistent with the terms of the interlocal agreement			
5	between the county and the WSDOT. This is consistent with the county's SEPA policy <sup>30</sup> through			
6 7	which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the county's SEPA authority.			
8	No state highway mitigation payment will be required because no projects on Exhibit C of the			
9 10	interlocal agreement between WSDOT and the county will be affected by three or more directional trips from the development.			
11	b. Cities (SCC 30.66B.710)			
12	The county has a reciprocal traffic mitigation interlocal agreement with the city of Monroe. The			
13	proposed project will not sufficiently affect the road network of the city of Monroe as defined by the			
14	interlocal agreement to require a mitigation payment to the city.			
15	ii. Project Site			
16	<u>a. Access</u>			
17 18	The site accesses the public road network on State St. Sight distance at the access point is adequate. <sup>31</sup>			
19	b. Right of Way			
20 21 22	The site fronts State St., a non-arterial usually requiring 30 feet of right of way on each side of the center line. Thirty feet exists on the development's side of the center line. No additional right of way is required.			
23	<u>c. Internal Road System</u>			
24 25	No new public roads will be created within the development. A fire lane will provide internal vehicular circulation.			
	<sup>30</sup> SCC 30.61.230(9) (2012).			
	<sup>31</sup> Engineering Design and Development Standards (EDDS) §3-08.			
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#### d. Frontage Improvements (SCC 30.66B.410)

2 Full rural frontage improvements are usually required where the project abuts a public road.<sup>32</sup> 3 Approval will be conditioned on installation of asphalt concrete pavement 11 feet wide from the 4 center line with an eight-foot-wide paved shoulder. This work will not be credited against the road 5 impact mitigation fee because State St. is not in the impact fee's cost basis.

6 ADA ramps at the intersections of all the roads of the development must comply with minimum 7 ADA standard requirements for grades and landings as detailed in the current EDDS §4-05 D and 8 WSDOT Standard Plans F-40 series. A detail of each ADA ramp will be required in the

9 construction plans.

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10 A horizontal clear/control zone is required along the parcel's frontage.<sup>33</sup> Existing or proposed fixed

11 object obstructions must be removed or relocated from this buffer for motorist safety, including

utility poles. The clear zone must be established as part of the frontage improvements which must 12 be implemented before issuance of any occupancy certificate. The clear zone will be addressed 13

14 during construction plan review.

e. Bicycle

16 The site does not border a bicycle route shown on the county-wide bicycle facility system map. A 17 bicycle path therefore will not be required.

#### f. Signing and Striping

19 Approval will be conditioned on payment by Husaynia to the county for signing and striping 20 installed or applied by county forces.

#### 21 3. Not Materially Detrimental to Nearby Uses or Property

22 The facility is not physically detrimental to uses or property in the immediate vicinity, nor is the 23 proposed use materially detrimental. The facility will be visually screened by landscaping buffers 24 and a perimeter fence. The architectural elements of the exterior will be the same; no change is 25 proposed to the exterior. If any change to the exterior is made in the future, the materials used must be visually similar to typical residential materials.<sup>34</sup> The horse arena has existed for some 26 27 time; its exterior is consistent with area development and not detrimental to nearby uses or 28 property. External speakers and amplification will not be allowed, nor will exterior light fixtures 29 without full cut-off features that prevent glare and light pollution.

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<sup>&</sup>lt;sup>32</sup> Snohomish County Department of Public Works Rule 4222.020(1).

<sup>33</sup> EDDS §§4-15, 8-03; WSDOT Utility Manual.

<sup>&</sup>lt;sup>34</sup> Condition 12 on page 18

The proposed use as a religious worship facility is also not detrimental to nearby residences or property. The primary concerns of the community are sound and traffic. As discussed above at page 6 et seq., concerns about sound are adequately mitigated and nothing in this decision allows Husaynia to violate county code's quantitative standards for sound levels. With respect to traffic, the proposal complies with all requirements of chap. 30.66B SCC, which establishes traffic standards. Husaynia must add more on-site parking if parking frequently overflows onto State St.<sup>35</sup>

7 As conditioned, the religious worship facility will not be detrimental to nearby uses or property.

#### 8 4. Compatibility with Site and Surrounding Property

Husaynia will use an existing horse arena and will not expand the footprint, change the building 9 10 façade, or raise the roof. A 20-foot-wide type A landscaped area will encircle the perimeter. A solid 11 wood perimeter fence will be required to screen adjacent residences from vehicle headlights.<sup>36</sup> The 12 wetland will be protected by a recorded critical area site plan and buffers. Asphalt will be minimized 13 to the fire lane. Exterior lights will be focused downward and have full cut-off features to prevent 14 light pollution. Exterior amplification of sound, whether by electrical or mechanical means, will be 15 prohibited. No exterior speakers will be allowed. If the 60 on-site parking spaces prove inadequate, 16 Husaynia must develop additional on-site parking to prevent overflow parking on State St. The on-17 site wetland's ecological functions will be improved by the required buffer enhancement.

As conditioned, the proposed religious worship facility is and will be compatible with the site andsurrounding property.

# 20 V. CONCLUSIONS

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 1. The Hearing Examiner has authority to approve conditional use permits. SCC 30.42C.020

 22
 (2003); SCC 30.42C.100 (2012); SCC 30.70.025 (2021); SCC 30.72.025 (2012).

The proposal is consistent with the county's comprehensive plan, complies or can comply
 with the applicable requirements of title 30 SCC, will not be materially detrimental to the uses or
 property in the immediate vicinity, and is compatible with, and incorporates specific features,
 conditions, or revisions that ensures it responds to, the existing or intended character, appearance,
 quality of development, and physical characteristics of the site and surrounding property.<sup>37</sup>

28 2. The Hearing Examiner concludes that Husaynia met its burden of showing the criteria
29 established by county code have been met. The proposal is consistent with the comprehensive

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<sup>&</sup>lt;sup>35</sup> Condition 11 on page 18

<sup>&</sup>lt;sup>36</sup> Condition 5 on page 18

<sup>&</sup>lt;sup>37</sup> SCC 30.42C.100(1) (2012).

- plan, county codes, the type and character of land use permitted on the project site, and applicable
   design and development standards, subject to the conditions described below.
- 3 3. The Hearing Examiner concludes that adequate public services exist to serve the proposed
  4 project.
- 5 4. The proposed project will make adequate provisions for public health, safety, and general
  6 welfare with conditions as described below.
- 7 5. Any finding of fact in this decision which should be deemed a conclusion of law is hereby8 adopted as a conclusion of law.
- 9 6. Any conclusion of law in this decision which should be deemed a finding of fact is hereby10 adopted as a finding of fact.

# 11 VI. DECISION

Based on the foregoing findings of fact and conclusions of law, the Hearing Examiner hereby
 approves the conditional use permit, subject to the following conditions:

# 14 VII. CONDITIONS

### 15 **A. Operating Conditions**

- The site may be used as a religious worship facility. SCC 30.42C.110 governs changes to conditional use permits.
- The site plan received by PDS on September 22, 2022<sup>38</sup> shall be the approved site plan. Any discrepancies between the approved site plan and title 30 SCC shall be resolved in favor of title 30 SCC. Minor and major revisions to the site plan shall be subject to SCC 30.70.210 or 30.70.220.
- 3. The landscaping plan received by PDS on June 29, 2022,<sup>39</sup> shall be the approved preliminary
   landscaping plan. Any discrepancies between the approved site plan and title 30 SCC shall be
   resolved in favor of title 30 SCC.
- All approved landscaping shall be maintained after installation. Dead or significantly damaged
   plants and other landscaping material shall be replaced within three months of the death or

<sup>38</sup> Exhibit B.1

<sup>39</sup> Exhibit B.3.

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- damage. PDS may authorize delay in replacement up to 180 days when plant death or damage
   occurs outside the normal planting season.
- 3 5. Husaynia shall maintain in good condition and repair the solid wood fence required in condition
  4 19.b. The fence shall be stained or painted a neutral earth tone to blend with the landscaping.
- 6. Husaynia shall comply with maximum permissible sound level limits at its property boundaries,
  as required by county code now or in the future. At the time of this decision, county code
  establishes quantitative sound levels at SCC 10.01.030.
- 8
   7. The use of external speakers, an external public address system whether temporary or
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- Buildings shall be equipped with NFPA 13 automatic sprinkler systems and NFPA 72 fire alarm systems, which shall be maintained in good working order.
- All exterior lighting installed initially or in the future shall prevent glare and light pollution on adjacent properties by being shielded, directed downward, and have full-cutoff features.
   Exterior lighting shall be arranged or shielded to eliminate or minimize light spillover to adjacent properties.
- 10. In the event of future renovations or remodeling requiring a building permit that changes the
  roof assembly, roof batt insulation, or changes the building's layout to eliminate one or more
  rooms that buffer the central worship space from the exterior wall, Husaynia shall submit a new
  site sound study that evaluates the impacts of the proposed changes, and the subsequent
  permit shall be conditioned on implementation of the mitigation measures recommended by
  such study.
- 11. If on-site parking is inadequate and overflows to State St. more than three times in any six month period, Husaynia shall design, obtain relevant permits for, and construct additional
   parking on the site to eliminate the overflow parking on State St.
- 12. If any changes to exterior faces of the building or roof are made in the future, any exterior
   siding materials and roofing used shall be visually similar to residential siding and roofing
   materials typically used in rural areas in the county.
- 13. Nothing in this approval excuses Husaynia, lessee, agent, successor, or assigns from
   compliance with any other federal, state, or local statutes, ordinances, or regulations applicable
   to this project.

# 1 B. Development Conditions

#### 2 1. Prior to Commencement of Any Work

- 14. No on-site construction activity other than surveying and marking is authorized unless and until
   the required plan approvals have been obtained.
- 5 15. A landscape maintenance security may be required in accordance with SCC 30.84.150 if
   6 Husaynia requests a planting delay and PDS concurs with the suitability of the delay.
- 16. Husaynia must temporarily mark the boundary of all Critical Area Protection Areas (CAPAs)
   required by chapter 30.62A SCC and the limits of the proposed site disturbance outside of the
   CAPA, using methods and materials acceptable to the county.
- 10 17. A right-of-way use permit is required for work within the county road right-of-way.
- 18. Husaynia shall obtain the permits required for the facility, including a land disturbing activity
   permit required by chapters 30.63A and 30.63B SCC.
- 13 19. The application for a land disturbing activity permit shall include:

a. A proposed final landscaping plan generally consistent with the approved preliminary landscaping plan. The final landscaping plan shall include specifications for design and locations for CAPA signs and split rail fencing. If the outside storage areas and waste, dumpster, or recycling areas are not screened with a fence as provided in condition 30.e, the plan shall screen such areas by five feet of sight-obscuring landscaping or a living fence at least three feet high that will grow to at least six feet high within three years, using acceptable plant species and planting requirements from PDS' list of acceptable species and requirements. SCC30.25.024 (2003).

- b. A solid wood fence at least six feet tall on the southern, eastern, and northern perimeters of
   the property. The western terminus of the northern and southern fences shall be at the
   corners of the CAPA. The fence shall be stained or painted a neutral earth tone to blend
   with the landscaping.
  - c. A final mitigation plan based on the approved mitigation plan contained in the Critical Areas Report written by Wetlands Northwest, LLC, dated April 12, 2021.<sup>40</sup> The mitigation plan shall be included as a plan sheet(s) in the land disturbing activity plan set.

d. The landscape plan review fee. SCC 30.86.145(1).

<sup>40</sup> Ex. C.4.

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1	e. A full drainage plan pursuant to chapters 30.63A and 30.63B SCC.						
2	f. A full stormwater site plan, including required frontage improvements.						
3	g. Detailed fire lane pavement striping plan.						
4	2. Prior to Final Approval of Land Disturbing Activity Permit						
5	20. Husaynia shall have obtained approval of its on-site sewer system design and water source	I					
6	from the Health Department and provide a copy of the design and its approval to PDS.						
7	21. Husaynia shall have recorded the following with the County Auditor and provide PDS with a						
8	copy of the recorded document and Auditor's file number:						
9 10	a. A Critical Areas Site Plan (SCC 30.62.160) that designates critical areas and their buffers as Critical Area Protection Areas (CAPAs). A copy of the recorded plan and the Auditor's						
11	recording file shall be provided to PDS. The plan must identify areas which are currently						
12 13	being used for other purposes (e.g., mowed fields). The plan must contain the following restrictive language:						
14	Except as provided herein All CRITICAL AREA PROTECTION AREAS shall be						
15 16	left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall						
17	occur except: non-ground disturbing interior or exterior building improvements;						
18	routine landscape, maintenance of established, ornamental landscaping; non-						
19	ground disturbing normal maintenance or repair; felling or topping of hazardous						
20	based on review by a qualified arborist; removal of noxious weeds conducted in						
21 22	accordance with chapter 16-750 WAC; maintenance or replacement that does						
22 23	not expand the affected area of septic tanks and drain fields, wells, or individual utility service connections; data collection by non-mechanical means; and non-						
24	mechanical survey and monument placement.						
25	b. An executed land use permit binder.						
26	22. Husaynia shall have paid:						
27	a. A landscape site inspection fee consistent with SCC 30.86.145(3).						
28	b. The amount required by the county for installation of signs and striping. SCC 13.10.180.						
29	23. All CAPA boundaries shall have been permanently marked on the site prior to final inspection						
30	by the county, with both CAPA signs and adjacent markers which can be magnetically located						
31	(e.g., rebar, pipe, or 20 penny nails). Husaynia may use other permanent methods and						
32	materials if they are approved by the county before installation. Where a CAPA boundary						
	Husaynia Islamic Society of Seattle						
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crosses another boundary (e.g., lot, tract, plat, or road), a rebar marker with surveyors' cap and
 license number must be placed at the line crossing.

24. CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the
CAPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1
sign shall be placed in any lot that borders the CAPA, unless otherwise approved by the county
biologist. The design and proposed locations for the CAPA signs shall be submitted to PDS for
review and approval prior to installation.

- 8 25. The final mitigation plan required by condition 19.c shall have been implemented to the satisfaction of the county.
- 26. Mitigation maintenance and warranty security shall have been provided in accordance with the
   mitigation and warranty security requirements of chapter 30.84 SCC to ensure that the
   mitigation meets the performance requirement targets contained in the approved mitigation
   plan.
- 14 27. Split-rail fencing shall have been satisfactorily installed around the boundary of CAPA.
- 15 28. Husaynia shall have provided PDS with a final certificate of water availability that verifies all
  16 hydrants have been installed, are charged and operational, and the minimum required fire flow
  17 can be met.
- 18 29. The perimeter fence required by condition 19.b shall have been installed and painted or19 stained.

#### 20 3. Building Permits<sup>41</sup>

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- 21 30. The architectural plans submitted for building permit review shall:
  - a. Comply with all applicable building and fire code requirements.
  - b. Comply with conditions 8 (automatic fire sprinklers and alarms) and 9 (exterior lighting).

<sup>&</sup>lt;sup>41</sup> The departmental report refers to "tenant improvement" permits rather than "building permits." However, county code defines any permit issued under authority of the International Building Code as a building permit. SCC 30.91P.150 (2007). A "project permit" is a minor administrative approval by PDS that "pertain[s] to the maintenance of existing structures and facilities where land use is not affected; for example, such minor approval as, but not limited to: reroofing approvals, tenant improvements and similar approvals." SCC 30.91P.350(2)(b) (2003) (punctuation as in original). Thus, the permits needed to convert the horse arena into a religious worship facility are defined by county code as building permits. The precise term is immaterial, however, because the conditions apply however PDS names the permits necessary to construct the facility.

1 2	C.	Implement all recommendations of SSA Acoustics site noise evaluation dated December 11, 2022, <sup>42</sup> including roof assembly and minimum batt insulation of R-38 r-factor.				
3 4	d.	Locate the fire department connection (FDC) within 50 feet of the hydrant located on the northeast side of the building and on the same side of the fire lane as the fire hydrant.				
5	e.	If not visually screened by vegetation as required by condition 19.a, a six-foot high sight				
6 7		obscuring fence with gaps no greater than ¼ inch that visually screen outside storage and waste, dumpster, or recycling areas. SCC 30.25.024 (2003).				
8 9	f.	If any changes to exterior faces of the building or roof are proposed, exterior siding materials and roofing shall be visually similar to residential treatment.				
10 11 12	traff	or to building permit issuance, Husaynia shall pay an impact fee to Snohomish County for fic impacts on the county's road system in transportation service area C in the amount of ,116.40. (Transaction code 5209.)				
13	4. Prio	r to Earlier of Final Building Permit Approval or Certificate of Occupancy				
14 15	32. Prior to installation of any signs requiring a permit under chap. 30.27 SCC, Husaynia shall obtain one or more sign permits.					
16 17 18	33. All required landscaping, including perimeter, parking, and site, shall be installed, and a qualified landscape designer shall certify to PDS that the installation complies with county code and the approved plans.					
19	34. All f	ire hydrants shall have been equipped with the following:				
20	a.	A 4-inch Storz steamer port.				
21 22 23	b.	The top of the hydrant shall be painted pursuant to the level of service provided. The tops of the hydrants shall be painted blue because the level of service provided is greater than 1,500 gpm.				
24 25		aynia shall have installed blue street reflectors hydrant side of the center line to assist roaching emergency vehicles apparatus to locate the hydrant.				
26 27		aynia shall have installed all fire lane pavement striping per the approved land disturbing vity plans. The fire lane shall be labeled "No Parking Fire Lane" every 50 feet.				
	<sup>42</sup> Ex. P.	16.				

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- 37. Husaynia shall have constructed rural frontage improvements along the parcel's frontage on
   State Street to the satisfaction of the county.
- 3 38. Husaynia shall have constructed or installed a paved approach to State Street to the
  satisfaction of the county.
- 39. Husaynia shall have established a perimeter landscape easement, recorded it with the County
  Auditor, and provided a copy of the recorded easement with Auditor's file number to PDS. The
  easement language shall address maintenance required by SCC 30.25.045.
- 40. The on-site sewer system shall have been installed and received final approval from the Health
  Department. Husaynia shall have provided a copy of the final approval to PDS.
- 41. If PDS approves delayed construction of public or private improvements pursuant to SCC
   30.84.105, construction of the improvements shall occur within two years of the county's receipt
   and approval of a performance security satisfactory to the county as allowed by SCC
   30.84.105(2).

# 14 *C. Termination and Expiration*

- 15 42. This conditional use permit shall expire:
- a. Five years from the date of this approval if the proposed use has not commenced (SCC 30.70.140); or
- b. Husaynia discontinues using the facility to conduct regular religious services for more than
   one year.
- 20 43. This conditional use permit shall terminate if:

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- 21 a. Conditions of this permit are violated and not promptly corrected;
- 22 b. Conditions of this permit are repeatedly violated, even if promptly corrected;
  - c. Any license or permit required by state or other law or regulation for operation of the facility expires or is terminated; or
  - d. Applicable federal, state, or local laws or regulations are violated and not promptly corrected, including, but not limited to, chap. 10.01 SCC (noise control).
  - e. Applicable federal, state, or local laws or regulations are repeatedly violated, even if promptly corrected, including, but not limited to, chap. 10.01 SCC (noise control);

f. Husaynia leases, assigns, or conveys the property to any person or entity other than Husaynia. For example, if Husaynia leases to another entity that will also use it as a religious facility, this conditional use permit terminates, and the new entity must apply for a new conditional use permit.

Decision issued this 16<sup>th</sup> day of March, 2023.

Peter B Camp Hearing Examiner

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# **1 VIII. EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

The decision of the Hearing Examiner is final. Any party of record petition the Hearing Examiner to
reconsider the decision and any party of record may appeal the decision to the County Council.
However, reconsideration by the Hearing Examiner may also be sought by a party of record. The
following paragraphs summarize the reconsideration and appeal processes. For more information
about reconsideration and appeal procedures, please see chapter 30.72 SCC and the respective
Hearing Examiner and Council Rules of Procedure.

### 8 **Reconsideration**

9 Any party of record may request reconsideration by the Hearing Examiner from the date of this

10 decision. A petition for reconsideration must be filed in writing with the Office of Hearings

11 Administration, 2<sup>nd</sup> Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett,

12 Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) by

13 hand delivery, US mail, or email<sup>43</sup> on or before March 27, 2023.<sup>44</sup> There is no fee for filing a petition

14 for reconsideration. The petitioner for reconsideration shall mail or otherwise provide a copy of the

15 petition for reconsideration to all parties of record on the date of filing. SCC 30.72.065.

16 A petition for reconsideration does not have to be in a special form but must contain the name,

17 | mailing address and daytime telephone number of the petitioner, the signature of the petitioner or

18 of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or

conditions for which reconsideration is requested; state the relief requested; and, where applicable,
 identify the specific nature of any newly discovered evidence and/or changes proposed by the

21 applicant.

22 The grounds for seeking reconsideration are limited to the following:

- 23 (a) The Hearing Examiner exceeded his jurisdiction;
- 24 (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- 25 (c) The Hearing Examiner committed an error of law;
- 26 (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the
   27 record;

<sup>44</sup> The tenth day is not a business day. The deadline therefore extends to the next business day.

#### Husaynia Islamic Society of Seattle

20-114230 CUP

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<sup>43</sup> Hearing.Examiner@snoco.org

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- (e) New evidence is discovered which could not reasonably have been produced at the hearing and which is material to the decision; or
- 3 (f) The applicant proposed changes to the application in response to deficiencies identified in
   4 the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the county file number in any correspondence regarding this case.

# 8 Appeal

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An appeal to the County Council may be filed by any aggrieved party of record <u>on or before March</u>
<u>30, 2023</u>. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may
be filed until the reconsideration petition has been decided by the hearing examiner. An aggrieved
party need not file a petition for reconsideration but may file an appeal directly to the County
Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal
to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the
Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East
Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S No. 604, 3000
Rockefeller Avenue, Everett, WA 98201), and shall be accompanied by a filing fee in the amount of
five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged
to a department of the County. The filing fee shall be refunded in any case where an appeal is
summarily dismissed in whole without hearing under SCC 30.72.075.

- 1. Scan the original manually signed (handwritten) copy of the appeal document;
- 2. Send your appeal as an email attachment to epermittech@snoco.org. Please include your phone number where you can be reliably reached.
- 3. Staff will call you to collect your credit card information and process your payment.
- 4. Mail the original to Snohomish County PDS, 3000 Rockefeller M/S 604, Everett, WA 98201.

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

- 34 The grounds for filing an appeal shall be limited to the following:
- 35 (a) The decision exceeded the Hearing Examiner's jurisdiction;
- 36 (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
   Husaynia Islamic Society of Seattle 20-114230 CUP

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- 1 (c) The Hearing Examiner committed an error of law; or
- 2 (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by
   3 substantial evidence in the record. SCC 30.72.080
- Appeals will be processed and considered by the County Council pursuant to the provisions of
  chapter 30.72 SCC. Please include the county file number in any correspondence regarding the
  case.
- 7 <u>Staff Distribution</u>:
- 8 Department of Planning and Development Services: Haleh Ghazanfarpour
- 9 The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may
- 10 request a change in valuation for property tax purposes notwithstanding any program of
- 11 revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as
- 12 required by RCW 36.70B.130.

Organization POR/AGENCY REGISTER	Name 20-114230-CUP HUSAYNIA ISLAMIC SOICIETY OF SEATTLE	Address HEARING: OCTOBER 13, 202	City 2 AT 1:00 PM	State	e Zip	Email	
APPLICANT/OWNER HUSAYNIA ISLAMIC SOCIETY OF SEATTLE	ZAHRA ABDI	15231 STATE STREET	SNOHOMISH	WA	98296	zehranabidi@hotmail.com	
CONTACT PERSON	MASOOD ZAIDI					masood_z@hotmail.com	
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SNO CO PLAN & DEV/LAND USE	HALEH GHAZANFARPOUR	3000 ROCKEFELLER AVE #604	EVERETT	WA	98201	Haleh.Ghazanfarpour@snoco.org	
CROSS VALLEY WATER DISTRICT	MICHAEL JOHNSON	8802 189TH ST SE	SNOHOMISH	WA	98296	cvwd@crossvalleywater.net	
SNO CO DEPT OF PUBLIC WORKS	DOUG MCCORMICK	3000 ROCKEFELLER AVE #607	EVERETT	WA	98201	dmccormick@co.snohomish.wa.us	
SNOHOMISH HEALTH DISTRICT SNOQUALMIE INDIAN TRIBE	AMY KUNTZ ANN HARRIE - ATTORNEY	3020 RUCKER AVE SUITE #104 PO BOX 969	EVERETT SNOQUALMIE	WA WA	98201 98065	EnvHlthQuestions@snohd.org ann.harrie@snoqualmietribe.us	
SNOQUALMIE INDIAN I RIBE	MICHAEL DOBESH	PO BOX 969	SNUQUALIMIE	WA	98065	michael.dobesh@snoco.org	
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Added 10/5/2022	STEVE DREW	9631 152nd st se	SNOHOMISH	WA		sdrew@precisetoolco.com	
	WILLEIKSEN JANA KHAN RIAZ	4767 ARBORS CIR	MUKILTEO	WA	982	Jana.jessen@Providence.org 75	US MAIL
	SYED MASROOR	23226 24TH AVE SE	BOTHELL	WA	98021	.5	US MAIL
	SYED WAQAR	18765 76th Ave W	LYNNWOOD	WA	98037		US MAIL
	KAZIN ALI MUHAMMAD	25301 19th PL SE	EVERETT	WA	98208		US MAIL
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