

BEFORE THE HEARING EXAMINER  
IN AND FOR THE COUNTY OF SNOHOMISH

In re Husaynia Islamic Society of  
Seattle,

No. 20-114230 CUP

Husaynia Islamic Society of Seattle,

Order Denying Reconsideration of  
Decision

Applicant.

**SUMMARY**

Petitioners<sup>1</sup> seek reconsideration of the Hearing Examiner's decision of March 16, 2023, approving a conditional use permit with conditions.<sup>2</sup> Petitioners complain that Hearing Examiner erred regarding the size of the congregation, parking, sound, and drainage. Petitioners failed to satisfy the legal requirements for reconsideration as explained below and the petition is denied.

**RECONSIDERATION STANDARDS**

The purpose of reconsideration is **not** to re-argue the case or present arguments already made. "A reconsideration motion should not merely present arguments previously raised . . ." *United States v. Westlands Water District*, 134 F. Supp. 2d 1111, 1130 (E.D. Cal. 2001) (citation omitted). Petitioners only restate arguments previously made in their public comments.

County code limits the grounds for reconsideration. Two of those grounds are cited by Petitioners: (1) error of law and (2) findings, conclusions, or conditions are not supported by the record. SCC 30.72.065 (2)(c), (d) (2013). Petitioners did not identify any errors of law, though they repeatedly invoked the phrase. An error of law is an "error in applying the law to the facts as pleaded and established." *In re Jones' Estate*, 116 Wash. 424, 426, 199 P. 734,

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<sup>1</sup> Petitioners are parties of record Amy Amend, Mark Amend, Carter Burns, Mary Lou Burns, Shari Crichton, Kim Cutili, Steve Drew, Vanner Elander, Greg Gilbertson, Sean Herbert, Deanna Herbert, Robert Johnson, Laura Keegan, Ruth Laberge, Dale Muzzuco, and Deborah Wetzel.

<sup>2</sup> Ex. T.1. Petitioners attached a transcript of proceedings that they prepared. *Id.*, attachments A and B. An informal transcript prepared by the parties is not the official record or transcript or report of proceedings and the Hearing Examiner did not rely on it. Petitioners' informal transcript is included in the record because it is an exhibit to the petition for reconsideration. Its inclusion in the record should not be misunderstood as review, approval, adoption, or settling of the informal transcript.

734 (1921), citing *Morgan v. Williams*, 77 Wash. 343, 137 Pac. 476 (1914).<sup>3</sup> Petitioners only offered conclusory statements that the decision erred as a matter of law, repeated arguments already made in public comments, and did not identify any specific mistakes in the application of the law to the facts. Petitioners disagree with findings, but do not identify any findings unsupported by the record.

## CONGREGATION SIZE

Petitioners' complaint regarding the congregation size is an example of such disagreement.<sup>4</sup>

The Examiner committed an error of law in assigning a random number of congregants of less than two-thirds of the actual building occupancy based upon square footage. The maximum number of congregants should have been set at 80 in the Conditions.

Petitioners' characterization of the finding of number of congregants as "random" is inaccurate. The Hearing Examiner's finding that typical congregation attendance is approximately 40 people, ranging up to 80 on holidays, is not random, but supported by the record. Petitioners did not identify a misinterpretation or misapplication of any specific law.

## PARKING AND TRAFFIC

Petitioners appear to contend that the mosque will create an inadequate road condition (IRC).<sup>5</sup> Petitioners misunderstand the character of an IRC. As defined by county code, an IRC is not traffic congestion. "Inadequate road condition" refers to the characteristics of a road location that "jeopardizes the safety of road users . . . as determined by the county engineer." SCC 30.911.020 (2003).<sup>6</sup> The county engineer has not determined that an IRC exists or is likely to exist that will be affected by three or more directional trips.<sup>7</sup> Petitioners presented no evidence of a physical characteristic of any road that would jeopardize the

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<sup>3</sup> Examples of errors of law include constitutionality, jurisdiction, and interpretation and application of case law and legislation. See *Comptroller of Maryland v. FC-GEN Operations Investments LLC*, 482 Md. 343, 360, 287 A.3d 271, 281 (2022), as corrected.

<sup>4</sup> Ex. T.1, 5:3-5.

<sup>5</sup> Ex. T.1, pp. 7, 8, and 10.

<sup>6</sup> The County Engineer uses a two-step process to determine whether a location on a road is an IRC. First, an IRC review board performs a technical evaluation consistent with Federal Highway Administration guidance documents. Second, the County Engineer reviews the board's recommendation. DPW Rule 4223.040 (2016). FHA guidance documents create a relative hazard index for a location based on the number of accidents per year, the accident rate at the location, the severity of the accidents, the volume/capacity ratio of the road, sight distances at the location, traffic conflicts, erratic maneuvers, driver expectancies, and information system deficiencies. 42 PUBLIC ROADS: A JOURNAL OF HIGHWAY RESEARCH AND DEVELOPMENT 115 (December 1978). Traffic congestion is not a criterion. The Hearing Examiner takes official notice of publicly available and published records such as the rules of the department of Public Works, federal agency publications, and case law. H. Ex. R. of Proc. 5.6(i) (2021).

<sup>7</sup> Ex. C.6, p.2.

1 safety of a user of the road, except the conclusory allegation that increased traffic equal  
2 diminishes safety.

3 Petitioners appear to believe that 280 parking stalls should be required because the  
4 applicant's traffic engineer opined that calculating parking demand based on the size of the  
5 building resulted in an unreasonable number (280) and therefore used a different method to  
6 determine parking demand.<sup>8</sup>

7       The parking demand based on the size of the building was determined to not  
8 be a reasonable basis for the parking demand since the average peak-period  
9 parking demand would result in a demand of 280 parking spaces. This  
10 parking demand would represent more than 3 vehicles per attendee, which  
11 does not represent a reasonable estimate of the parking demand.

12 Witnesses testified the average attendance at the mosque will be approximately 40  
13 persons, increasing to 80 on holidays. Husaynia proposed parking stalls that PDS and the  
14 Hearing Examiner find sufficient for holiday attendance. Petitioners made no attempt to  
15 explain why 3 vehicles per attendee would be reasonable, or that 280 parking stalls would  
16 be appropriate. Petitioners appear to argue that the traffic consultant's **rejection** of 280  
17 parking stalls as appropriate somehow means that 280 parking stalls are needed. Requiring  
18 280 parking stalls for typical attendance of 40 and holiday attendance of 80 would be  
19 unreasonable. Mere disagreement with a finding or conclusion is insufficient grounds for  
20 reconsideration.

21 Petitioners object to trip generation credit for the existing facility, apparently arguing that the  
22 previous use of the facility for horse boarding was never a permitted use.<sup>9</sup> The prior use of  
23 the property has been characterized as a horse arena. This characterization determined the  
24 credits for existing average daily trip generation. Petitioners contend that the use was not  
25 permitted, that no credit for existing trips should be given, and that therefore the conditional  
26 use permit must be denied.<sup>10</sup> The latter point is incorrect. Even if the amount of the credit is

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<sup>8</sup> "The Examiner did not set an attendee limit, so the parking demand of 280 vehicles must be utilized and the Examiner committed an error of law by not doing so." Ex. T.1, 11:6-7/ Ex. C.1., PDF p. 10 (traffic impact analysis).

<sup>9</sup> E.g., ex. T.1, 8:3-4.

<sup>10</sup> Additionally, Petitioners appears to contend that a previous unpermitted use somehow disqualifies the current owner from seeking a conditional use permit for a religious worship facility. A religious worship facility is a use explicitly allowed by county code, albeit with conditions. Petitioners' objection therefore lacks merit. Petitioners also criticize Husaynia's intended renovation of the facility, expressing skepticism regarding the reasonableness and feasibility of the renovation, and questioning the safety of the structure. Converting the structure into the planned facility will require building permits based on compliance with current building codes, including life/safety codes. After renovation, the facility cannot be used as a religious worship facility unless and until the county inspects the facility for compliance with life/safety codes, e.g., fire code, and issues a certificate of occupancy. The certificate of occupancy will limit the number of people who can be in the facility based on the fire code. Petitioners' concerns are therefore not a basis for rejecting the conditional use permit.

1 wrong, it is not a basis for denying the conditional use permit, but would be a basis for  
2 changing the condition regarding the amount of the road impact mitigation fee.<sup>11</sup>

3 Petitioners complain that the decision did not provide sufficiently objective standards for  
4 enforcement regarding parking<sup>12</sup> and that the decision allowed parking on State St.<sup>13</sup> Both  
5 contentions are wrong. Condition 11 explicitly addresses parking on State St.:

6       If on-site parking is inadequate and overflows to State St. more than three  
7       times in any six-month period, Husaynia shall design, obtain relevant permits  
8       for, and construct additional parking on the site to eliminate the overflow  
9       parking on State St.

10 Petitioners also incorrectly stated the “Conditions failed to provide objective criteria that . . .  
11 parking will comply with applicable zoning, critical area, etc. requirements.”<sup>14</sup> Condition 11  
12 explicitly requires Husaynia to obtain relevant permits, which permits cannot be issued  
13 unless Husaynia complies with applicable regulations in effect at the time of an application  
14 for the permit, e.g., critical areas.

## 15 **SOUND**

16 Petitioners disagree with adequacy of the sound evaluation provided by Husaynia and  
17 disagrees with the Hearing Examiner’s findings and conclusions that standard construction  
18 techniques will likely be adequate to prevent interior sound from exceeding code-defined  
19 sound limits at the property’s boundaries.<sup>15</sup> These arguments were made before, as  
20 demonstrated by Petitioners’ reliance on its expert’s report. The Hearing Examiner’s  
21 findings of fact are clearly supported by the record. Petitioners disagree, but disagreement  
22 is not a legal basis for reconsideration.

## 23 **BUILDING STANDARDS**

24 Petitioners appear to believe that the conditional use permit must be denied if a new facility  
25 must be built instead of remodeling or renovating the existing structure.<sup>16</sup> That is not so,  
26 however. A conditional use permit allows the property to be put to a particular **use**; it is not  
27 a building permit or certificate of occupancy. The building, however, may affect the  
28 conditions imposed on the use. For example, building size and external appearance relate

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<sup>11</sup> 78.40 claimed existing trips x \$142.00 (TSA C mitigation rate/ADT) = \$11,076.

<sup>12</sup> “The Conditions failed to provide objective criteria that additional off-street parking . . .” Ex. T.1, p. 12.

<sup>13</sup> “The Examiner has now placed a condition that the Applicant can use the new 8- foot-wide paved shoulder for overflow parking.” *Id.*, p. 13.

<sup>14</sup> *Id.*, p.12.

<sup>15</sup> *Id.*, pp. 6-7.

<sup>16</sup> “This proposal is a major change to the property, and the Examiner committed an error of law in basing his findings on a project that clearly lacks the required information for an approval to be issued as will be addressed below.” Ex. T.1, 2:10-12.

1 to the facility's compatibility with the site and surrounding property. SCC 30.42C.100(4)  
2 (2013). As represented, the building size and exterior will not materially change from its  
3 current appearance, which is compatible with the site and surrounding properties.

4 Petitioners also claim the existing structure was not permitted,<sup>17</sup> yet the record indicates the  
5 structure was permitted and the permit finally inspected.<sup>18</sup> Irrespective of whether the  
6 existing structure received a building permit, a remodeled or new structure must comply  
7 with the current building and fire code. A remodeled or new structure must receive a  
8 certificate of occupancy that will not be issued unless and until the structure complies with  
9 county codes, including the fire code and structural requirements imposed by the building  
10 code. Petitioners imply the decision granting the conditional use permit excepts Husaynia  
11 from compliance with the fire code and other building requirements.<sup>19</sup> The decision only  
12 permits a use, it does not except Husaynia from compliance with the fire and building  
13 codes.

## 14 DRAINAGE

15 Petitioners contend, "The Examiner failed to consider the public submission addressing the  
16 inadequacy of the proposed drainage and grading."<sup>20</sup> Petitioners do not explain further. The  
17 Hearing Examiner considered public comments regarding drainage,<sup>21</sup> as well as evidence  
18 from subject matter experts at the county<sup>22</sup> and those engaged by the applicant.<sup>23</sup> The  
19 Hearing Examiner found Husaynia's proposed method of compliance with the drainage  
20 manual to be feasible. PDS evaluates the adequacy of final engineered construction plans  
21 when deciding whether to issue a land disturbing activity permit.

22 Petitioners do not allege any findings or conclusions related to drainage and critical areas  
23 are not supported by the record. Petitioners may disagree with the findings and conclusions,  
24 but the findings and conclusions are supported by credible evidence.

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<sup>17</sup> Ex. T.1, 2:17, citing ex. Q.18, p. 4, att. H.

<sup>18</sup> Ex. Q.18, attachments H, I, J, K., L, and M.

<sup>19</sup> "Nothing in the Applicant's submissions has addressed these crucial issues [of earthquake stabilization, fire suppression, emergency and safety exits] and there is no mention in the Decision addressing these safety issues. One cannot simply say, wait until there is a fire where over 200 adults and innocent children perish. Where is the concern for human life?" Ex. T.1, 3:7-13.

<sup>20</sup> Ex. T.1, 12 (footnote omitted).

<sup>21</sup> *E.g.*, exhibits H.140 and H.151

<sup>22</sup> Exhibits C.7 and C.8 and testimony of Erin Harker. The Hearing Examiner finds this evidence credible.

<sup>23</sup> Exhibits C.2, C.3, and C.4.

## CONCLUSION

Petitioners failed to satisfy the requirements for reconsideration established in SCC 30.72.065 (2013). They disagree with the outcome, but disagreement is not sufficient legal basis for reconsideration.

It is therefore ORDERED that the petition for reconsideration be and hereby is denied.<sup>24</sup>

DATED this 17<sup>th</sup> day of April, 2023.

*Peter B. Camp*

Peter B. Camp

Snohomish County Hearing Examiner

## RECONSIDERATION AND APPEAL

### 1. RECONSIDERATION

Further motions for reconsideration will not be considered because county code allows only one motion for reconsideration. SCC 30.72.065(5) (2013).

### 2. APPEAL

An appeal to the County Council may be filed by any aggrieved party of record **on or before May 1, 2023**. 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.

### Filing

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

<sup>24</sup> SCC 30.72.065(4)(a) (2013).

1 fee shall be refunded in any case where an appeal is summarily dismissed in whole without  
2 hearing under SCC 30.72.075.

- 3 1. Scan the original manually signed (handwritten) copy of the appeal document;
- 4 2. Send your appeal as an email attachment to [epermittech@snoco.org](mailto:epermittech@snoco.org). Please include  
5 your phone number where you can be reliably reached.
- 6 3. Staff will call you to collect your credit card information and process your payment.
- 7 4. Mail the original to Snohomish County PDS, 3000 Rockefeller M/S 604, Everett, WA  
8 98201.

### 9 Contents

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

18 The grounds for filing an appeal shall be limited to the following:

- 19 (a) The decision exceeded the Hearing Examiner's jurisdiction;
- 20 (b) The Hearing Examiner failed to follow the applicable procedure in reaching his  
21 decision;
- 22 (c) The Hearing Examiner committed an error of law; or
- 23 (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported  
24 by substantial evidence in the record. SCC 30.72.080

25 Appeals will be processed and considered by the County Council pursuant to the provisions  
26 of chapter 30.72 SCC. Please include the County file number in any correspondence  
27 regarding the case.

### 28 Staff Distribution:

29 Department of Planning and Development Services: Haleh Ghazanfarpour

30 The following statement is provided pursuant to RCW 36.70B.130: "Affected property  
31 owners may request a change in valuation for property tax purposes notwithstanding any  
32 program of revaluation." A copy of this Decision is being provided to the Snohomish County  
33 Assessor as required by RCW 36.70B.130.

Organization POR/AGENCY REGISTER	Name 20-114230-CUP HUSAYNIA ISLAMIC SOICIETY OF SEATTLE	Address HEARING: OCTOBER 13, 2022 AT 1:00 PM	City	State	Zip	Email	
APPLICANT/OWNER							
HUSAYNIA ISLAMIC SOCIETY OF SEATTLE	ZAHRA ABDI MASOOD ZAIDI	15231 STATE STREET	SNOHOMISH	WA	98296	zehranabidi@hotmail.com masood_z@hotmail.com	
CONTACT PERSON							
AMKONA CONSULTING, LLC KIMLEY-HORN	ONUM ESONU EDWARD KOLTONOWSKI	2519 150TH PLACE SW	LYNNWOOD	WA	98087	amkona1@comcast.net edward.koltonowski@kimley-horn.com	
AGENCIES							
	LORI BURKE KEN CROSSMAN ERIN HARKER DAVID IRWIN					lori.burke@snoco.org Ken.Crossman@co.snohomish.wa.us Erin.harker@snoco.org david.irwin@snoco.org	
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	cward@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	AMY KUNTZ	3020 RUCKER AVE SUITE #104	EVERETT	WA	98201	EnvHlthQuestions@snohd.org	
SNOQUALMIE INDIAN TRIBE	ANN HARRIE - ATTORNEY MICHAEL DOBESH	PO BOX 969	SNOQUALMIE	WA	98065	ann.harrie@snoqualmietribe.us michael.dobesh@snoco.org	
PARTIES OF RECORD							
	AMANDA PARRIS AZAD CATHLEEN GUSTAFSON KATRINA STEWART JIM TURNER DARLENE MILLER-TURNER DAVE CHEN ANDERS LABERGE CHRIS LABERGE CHRIS & RUTH LABERGE CARTER & MARY LOU BURNS LAUREL ELANDER VANER E. ELANDER CARTER BURNS TYLER AND BENJAMIN OOSTRA STEVE DREW WILLEIKSEN JANA KHAN RIAZ SYED MASROOR SYED WAQAR KAZIN ALI MUHAMMAD	9627 152ND ST SE 9627 152ND ST SE	SNOHOMISH SNOHOMISH	WA WA	98296 98296	aazad@cair.com cathgust@hotmail.com tstewart@nsuch.com jaturn@comcast.net rental5710@yahoo.com	US MAIL
							requested removal 3/27/23
						chrislaberge@outlook.com Ruthmarie310@outlook.com mlb_1943@yahoo.com lollybupp@hotmail.com van@elandervil.us cbandml@yahoo.com tyoostra@gmail.com sdrew@precisetoolco.com Jana.jessen@Providence.org	
Added 10/5/2022		9305 156TH STREET SE 16011 95TH AVE SE 9716 152ND ST SE 9631 152nd st se	SNOHOMISH SNOHOMISH SNOHOMISH SNOHOMISH	WA WA WA WA	98296 98296 98296		US MAIL US MAIL US MAIL US MAIL
		4767 ARBORS CIR 23226 24TH AVE SE 18765 76th Ave W 25301 19th PL SE	MUKILTEO BOTHELL LYNNWOOD EVERETT	WA WA WA WA	98275 98021 98037 98208		
COUNCIL ON AMERICAN ISLAMIC RELATIONS IN WASHINGTON STATE	AHMED BAYA AARBI SAHARYAR AFZALI, ANEELAH AISHA AKBAR BATOOL AMEND AMY AMEND MARK ANDERSON JESSAMINE AUJ MASROOR & SHUMALA, AKBAR & ALI EZZA ARAMBURU RICHARD BAILY DEBRA	17550 NE 67th Ct #207	REDMOND	WA	98052	adgaya@gmail.com aarbi2@yahoo.com info@mapsredmond.org aishas.786@gmail.com bhakbar@costco.com amy.amend@gmail.com mark.amend@gmail.com jessaminea@gmail.com Syed.Hussain@microsoft.com rick@aramburulaw.com	
		9131 152ND ST SE	SNOHOMISH	WA	98296		US MAIL



THE EPISCOPAL DIOCESE OF OLYMPIA	BAILY SHAWN	15220 91ST AVE SE	SNOHOMISH	WA	98296	shawnbaily@aol.com					
	BALDEH MUSA					baldehmose@gmail.com					
	BASIOR DAVID RABBI					rabbidavid@kadima.org					
	BAUMUELLER HAROLD					harley.house@frontier.com					
FAITH ACTION NETWORK	BEECHER JOSEFINA REV.	9732 156th ST SE	SNOHOMISH	WA	98296	revjosefina@hotmail.com					
	BENJAMIN OOSTRA					benjamin.oostra@gmail.com					
	Elise DeGooyer					degooyer@fanwa.org					
	BILLA IRENE					ibilla@yahoo.com					
	BOLGER LARA PASTOR					pastor@redmondumc.org					
	BRADLEY (us), BRAD F					brad.f.bradley@boeing.com					
	BUPP SHERRY					sherry_bupp@outlook.com					
	BUTLER CAROL					caroldance@frontier.com					
	CAGUIAT CARLOS REV.					carlos.caguiat58@gmail.com					
	CAGUIAT JULIANNA rev.					caguiatjulianna10@gmail.com					
	CASEY ANN					ann.casey@gmail.com					
	CHARVET JAMES					jscharvet@comcast.net					
FAITH ACTION NETWORK	CLIFFORD MICHAEL REV.	4320 SW HILL ST	SEATTLE	WA	98116		undeliverable				
	CAROL COHOE					carol@aramburulaw.com					
	COLES MARGIE					margie@pgsolutions.net					
	CONKLIN CARI					cari.conklin@outlook.com					
	CONLEY-HOLCOM ANDREW PASTOR					pastorandrew@admiralchurch.org					
	CRICHTON SHARI					14529 BROADWAY AVE	SNOHOMISH	WA	98296	shari.crichton@gmail.com	
	CRISPIN BETH										requested removal 1/31/23
	CUTULI KIM									kcutuli@comcast.net	
	D ERICKA									ezy.e5420@yahoo.com	
	DALY BRANNON									Brannon.Daly@cochraninc.com	
	DAVIS JONIS									jonisdavis@gmail.com	
	DERR TERI									teriderrsings@gmail.com	
NORTHLAKE LUTHERAN CHRUCH	DREW STEVE	9921 151ST PL SE	SNOHOMISH	WA	98296	sdrew@precisetoolco.com					
	DUBEY ICHA							undeliverable			
	DURRENTT ERIN							requested removal from list 11/14/22			
	EBNER PATTY REV.					patty@fccbellevue.org					
	EENWYK JOHN REV. DR.					jrv@uw.edu					
	ENGLE KYLEY & CARRIE					kandcengle@gmail.com					
	ENGLE KYLEY & CARRIE					teor72@gmail.com					
	FICKLIN BETSY					bticklin@frontier.com					
	FINE DAVID RABBI					david.jb.fine@gmail.com					
	FONG TINA					tinalfong@gmail.com					
	FOSTER KIMBERLY					kim8911@hotmail.com					
	FRODSHAM TOM					tomfrodsam@yahoo.com					
SNOQUALMIE UNITED METHODIST	GARDNER ROBERT & THEA	15603 BROADWAY AVE	SNOHOMISH	WA	98296	trgardner.2@gmail.com					
	GAYA AHMED							requested removal 2/23/23			
	GILBERT DE VARGUS SALLY JO					sallyjogilbert@gmail.com					
	GILBERTSON ELENA					ggandeg@outlook.com					
	GILBERTSON GREG					ggilbertson@cochraninc.com					
	HACKING TROY					troy.hacking@gmail.com					
	HARGER DEL & CAROL					carolharger2005@yahoo.com					
	CARRIE BLAND							requested removal 3/27/23			
	HASSAN SYED							undeliverable			
	HELMON ANJA							undeliverable			
	HERBERT DEANNA					9663 152ND STREET SE		SNOHOMISH	WA	98296	d13carter@gmail.com
	HERBERT SEAN										sean.smhbuxton@gmail.com
HOWELL ANTHONY & TRACEY	9323 152NE ST SE	SNOHOMISH	WA	98296	duramax9323@gmail.com						

WINDERMERE KIRKLAND NE	HUSAIN KHAN MEHDI	19821 23RD DRIVE SE	BOTHELL	WA	98012	mehdihusain@yahoo.com	
	HUSSAIN SYED					syedc@yahoo.com	
	IQBAL AWAIS					Awais.Iqbal@microsoft.com	
	JAFFE RHONDA	9605-156TH ST SE	SNOHOMISH	WA	98296	michaelnrhonda@msn.com	
	JAFREY OWAIS					jafreyomi@gmail.com	
	JARVIE SAMANTHA	11411 NE 124TH ST SUITE 110	KIRKLAND	WA	98034	samjarvie@windermere.com	
	JOHNSON BOB	15405 STATE STREET	SNOHOMISH	WA	98296	bobjohnsonwoodworking@gmail.com	
	JOHNSON DAVID AND TERI	15203 STATE ST	SNOHOMISH	WA	98296	daveterijo@comcast.net	
	JUDD JOHN					john.judd@comcast.net	
	JUMAAN AISHA					aishaoj@gmail.com	
EDMONDS UNITARIAN UNIVERSALIST CONGREGATION	KARIM MUBARRA					mubarra@outlook.com	
	KAZMI MUTAHIR	3519 164TH St SE	BOTHELL	WA	98012	kazmi.mutahir@gmail.com	
	KEEGAN LAURA					joeandlaurakeega@earthlink.net	
	KHAKI NEELAM					neelam@apichaya.org	
	KHALID ADNAN					mr.adnankhalid@gmail.com	
	KHAN JUWARIYA					juwariyakhana@hotmail.com	
	KING ROBERT					robert@nwqrd.com	
	KINGMAN CELIA REV.						requested removal from list 9/2/22
	KLUTH PAM					kluthgl1969@gmail.com	
	KURTZ JANELLE REV.					pastorsnohomishumc@gmail.com	
SNOHOMISH UNITED METHODIST CHURCH	LABERGE RUTHMARIE					Ruthmarie310@outlook.com	
	LARKIN SHERRI	9804 WAVERLY DR	SNOHOMISH	WA	98296	gslarkin@gmail.com	
	LAYTNER ANSON					laytner@msn.com	
	LEVINE RAE					rlevine@igc.org	
	LEWIS CHARLIE					charlie@snopres.org	
	LITORJA FRAN FEILDEN AND MARVE	9511 148TH ST SE	SNOHOMISH	WA	98296	franniex9@aol.com	
	LUBRESKY ANDY	15211 91ST AVE SE	SNOHOMISH	WA	98296	lubreskyandy@yahoo.com	
	LXXX FARAH					kiz_14_5@yahoo.com	
	LYER KANTHI					seattleindians@gmail.com	
	MOHMOOD HAMID						requested removal 3/28/23
DAI BAI ZAN CHO BO ZEN JI	MAHMUD RUSDIANTO					rusdiantomahmud@yahoo.com	
	MAKARY MAX					maxmakary@gmail.com	
	MARINELLO GENJO REV. , ABBOTT					zenquake@gmail.com	
	MARSHALL LAUREN						requested removal 10/31/22
	MCMANUS KELLY	15207 STATE STREET	SNOHOMISH	WA	98296	kam907@gmail.com	
	MOHAMMAD AHMAR					ahmarm@hotmail.com	
	MOODY MECHELE					brianb800@yahoo.com	
	MUZZUCO DALE					dale@muzzuco.com	
	MUZZUCO TERESA					teresa@muzzuco.com	
	NELSON TERESA					bellever@aol.com	
SEATTLE FIRST BAPTIST CHURCH	NORDHOLM GAYLE					gayle@otnpro.com	
	DEBBIE OGLESBY					debbieoglesby@hotmail.com	
	OLSON PATTI					patti.olsen062@gmail.com	
	OWENS SARAH					sarahmattowens@gmail.com	
	PERRIGO RAVEN					kalypsoe@hotmail.com	
	PETRIE BRAD					petrie.bc@comcast.net	
	PHILLIPS TIM	1111 HARVARD AVENUE	SEATTLE	WA	98122	tim@seattlefirstbaptist.org	
	PORCELLO KALYN					porcello1964@gmail.com	
	PRICE GLORIA	16116 MARKET ST	SNOHOMISH	WA	98296	ecirpjpg@yahoo.com	
	PURCER STEVEN						requested removal 3/28/23
CHURCH COUNCIL OF GREATER SEATTLE	RAMOS MICHAEL					mramos@thechurchcouncil.org	
ST JOHNS EPISCOPAL CHURCH	ROBERTS JAN					janniesept27@gmail.com	
	ROSARIO-CRUZ ELIACIN REV.					office@stjohnsnohomish.org	

SAINT MARK'S EPISCOPAL CATHEDRAL	ROSEBERRY VALERIE					val.roseberry@gmail.com	
	ROSS NANCY REV CANON/ERIK ROSS	1245 10TH AVE E	SEATTLE	WA	98102		requested removal 2/23/23
	RYGH MARDELLE	9219 152ND ST SE	SNOHOMISH	WA	98296		US MAIL
FOUNDER & CEO MUSLIM COMMUNITY RESOURCE CENTER (MCRC)	SALMAN MUSA					musa.salman2005@icloud.com	
	SAMAD RIZWAN					riz@newwavetravel.com	
	SANWIK PATRICIA	1306 ALKE VIEW AVE	SNOHOMISH	WA	98290	steffpatsanvik@comcast.net	
	SHAHARYAR KIRAN					kiran.shaharyar@gmail.com	
	SHERIFF NICKHATH					amnickhath@yahoo.com	
MADISON PARTNERS REAL ESTATE	SHIELDS ANN MARIE	15730 STATE STREET	SNOHOMISH	WA	98296	annmariegreys@gmail.com	
	SIAL AISHA	864 VILLAGE WAY, APT. 214	MONROE	WA	98272	aishasial65@gmail.com	
	SIDDIQUI JEFF					jeffsiddiqui@msn.com	
	SIDDIQUI IMRAN					imraan.siddiqi@gmail.com	
	SMITH BRANDON					brandonjsmith122@gmail.com	
ST JOHNS EPISCOPAL CHURCH	SPARKS SUSAN	15206 HIGH BRIDGE ROAD	MONROE	WA	98272		requested removal 2/23/23
	SYED RIZWAN	16519 27TH DR SE	BOTHELL	WA	98012	syedrizzwanm@yahoo.com	
	SNYDER JAMES					snyderjms@comcast.net	
	TABER-HAMILTON NIGEL					rectorhome@whidbey.com	
	TACH WILLIAM					wlthach@comcast.net	
INDIA ASSOCIATON OF WESTERN WASHINGTON	UNTENER JENNIE					jennieuntener@hotmail.com	
	UPPALA LALITA					lujab@hotmail.com	
	UYYEK CHRISTINE					cuyyek@gmail.com	
	VANCE LAURIN VANCE PR					prlgvance@gmail.com	
	WALKER MAGGIE	15708 STATE STREET	SNOHOMISH	WA	98296	maggiewalker32@gmail.com	
NORTHWEST WASHINGTON SYNOD, ELCA	WALTON-HOUSE NANCY					N_WaltonHouse@msn.com	
	WARSAME UBAH						requested removal 2/23/23
	WEE SHELLEY BRYAN, BISHOP	5519 Phinney Ave N	Seattle	WA	98103	bishop@lutheransnw.org	
	WEISMAN JOSH, RABBI					joshweisman@gmail.com	
	WENTZEL ROGER	15727 91ST AVENUE S.E.	SNOHOMISH	WA	98296	roger_wentzel@yahoo.com	
SNOHOMISH TRIBUNE	WHITNEY MICHAEL					michael@snoho.com	
	WILLEIKSEN DAVE					dwilleiksen@hotmail.com	
	WILSON DRAKE					drakewilson2020@u.northwestern.edu	
	WETZEL DEBBIE					debbieleewetzel@gmail.com	
	WYATT JENNIFER					jenniferwyatt23@gmail.com	
BETHANY UNITED CHURCH OF CHRIST	REV ANGELA YING					angelaying@bethanyseattle.org	
	ZAFAR SOHAIL					sohail30@gmail.com	
	ZAINVI ARBIA					arbia.zainvi@gmail.com	