

Memorandum of Understanding

September 9, 2024

The parties agree the following procedures and policies will guide the special meeting called for the purpose of considering the retention or recall of directors of Eastsound Water Users Association (EWUA). The terms of this Memorandum of Understanding are governed by and in accordance with the laws of the State of Washington and the bylaws of EWUA. If any provision of this Agreement shall be held or made invalid by a court decision, statute or rule, or shall be otherwise rendered invalid, the remainder of this Memorandum of Understanding shall not be affected thereby.

1. The special meeting to consider the retention or recall of the directors of EWUA is scheduled for Saturday, September 28, 2024 at 5:00 PM. The meeting is to be held at the Orcas Center, located at 917 Mt Baker Road, Eastsound, WA 98245.
2. EWUA has already verbally requested that the San Juan County Sheriff have a deputy attend the meeting. The formal, written request will be made by the EWUA Secretary/Treasurer, with a copy of all communications provided to all EWUA directors, Attorney Rochelle Doyea, and Attorney Shawn Alexander.
3. The EWUA Secretary/Treasurer will contact the Orcas Center to schedule and arrange for a sound system and sound producer to be available with a copy of all communications provided to all EWUA directors, Attorney Rochelle Doyea, and Attorney Shawn Alexander.
4. Retired judge Stewart Andrew has been asked to act as Election Inspector. **All communications with this Inspector will be in writing and a copy also sent at the same time to Attorney Rochelle Doyea and Attorney Shawn Alexander.** The work of the Election Inspector is a volunteer position and there will be no compensation for that work, except as provided herein. The Election Inspector shall have the discretion to rely upon volunteer help from other inspector assistants.
5. Only the Election Inspector and his chosen assistants will have access to the keys to PO Box 24 designated on the Instruction Forms for the return of the proxy cards. **No one** other than the Election Inspector, and the assistants he chooses in accordance with the provisions of this Memorandum of Understanding, shall have access to these keys until after the Special Meeting. The keys must be returned to the EWUA Secretary following the Special Meeting.
6. The Election Inspector must check the PO Box 24 for submitted proxy cards on the day of the Special Meeting, September 28, 2024, and pick up any late submitted proxy cards.

7. The name of the proxy giver is public and will be disclosed by the Inspector to any party making the request. All other content of the proxy will be kept confidential and only be disclosed by the Inspector to the Proxy Giver and the Proxy Holder. Attorneys for the Association and the Minority Members, Rochelle Doyea and Shawn Alexander, shall also have the ability to review the proxy card submissions for accuracy. However, the attorneys may not share any of the specific identifying information contained therein with their respective clients or third-parties. The Proxy Holder and proxy instructions shall otherwise be held in confidence to the extent allowed by law by the Inspector. No other party will have access to the completed proxies except as required by law.
8. The Inspector will be permitted to take all reasonable steps necessary to ensure that proxy cards are validated and counted in the vote. The validation method is at the discretion of the Inspector. At minimum, the Inspector will verify that the account number and name on the proxy match the account number and name on the membership list provided by EWUA. A sampling of the proxies should also be validated with the County's property ownership record. The Inspector may but is not required to contact a random sample of the Proxy Givers to verify they have authorized the Proxy. The Inspector may but is not required to accept names to validate at the request of the attorneys for each party subject to recall.
9. All valid proxies that provide unambiguous instructions on the Member's intent will be accepted, subject to the validation procedures, regardless of how that proxy is delivered to the Election Inspector. All such proxies must be received and verified by the Election Inspector by or before the Special Meeting is called to order.
10. EWUA staff will provide the Inspector with an Excel spreadsheet in electronic form and a printed paper copy of the following information:
 - a. The membership name, tax parcel number (TPN), and account number for each tax parcel with a membership.
 - b. The service address of the property served
 - c. The name of the member and agent(s) who can vote for the entity.
 - d. The contact information for the member, including:
 - i. Mailing address
 - ii. Phone numbers
 - iii. Email addresses
11. EWUA staff will be made available to the Inspector by phone and email but will not participate in the verification or counting of proxy forms or votes. EWUA staff will be directed to promptly provide the Inspector with any information requested by the Inspector,

including Membership Agreements, authorized agent signatures, or other information as requested. EWUA staff will keep a log of such requests that includes the nature of the request and the date, and this log will be made available to Attorney Doyea or Attorney Alexander upon their request.

12. The EWUA President will call the Special Meeting to Order at 5:00 PM and close the Special Meeting, but the Inspector will otherwise conduct the Special Meeting.
13. Should the Inspector need to cover incidentals related to the recall process, EWUA will pay all reasonable costs incurred by the Inspector for this purpose and will make this amount immediately available to the Inspector upon his request. The Inspector must seek prior approval from EWUA before incurring such expenses.
14. Inspector duties will include the following with the assistance of volunteers of his choosing (with the limitations set forth in this Memorandum of Understanding):
 - a. Managing admittance to Special Meeting and checking photo IDs at the door. Check-in should begin at 4:30 PM.
 - b. Determining quorum in compliance with the requirements of the EWUA bylaws by ascertaining the number of memberships represented are equal to or greater than 10% of the total memberships in the Association. (The total number of memberships at the time of the August 26, 2024 Notice of Special Meeting was 1,226 members);
 - c. Determine the validity of proxies and votes at the meeting;
 - d. Providing voting instructions;
 - e. Describing what will happen after the votes are reported;
 - f. Tabulating the ballot votes and proxy votes during the Special Meeting;
 - g. Reporting vote results at the Special Meeting (if sufficient time allows, otherwise see Paragraph 15); and
 - h. Maintaining a hard and electronic copy of all proxies and tabulation of votes in his exclusive custody for at least three years following the Special Meeting.
15. If the Election Inspector is unable to complete his tabulations of votes during the Special Recall Meeting, he must provide the results to the Board of Directors via email within three business days of the Special Meeting and will announce the vote on October 2, 2024 at a special board meeting (time and place TBD). The effect of the recall vote shall not become effective until formally announced by the Election Inspector during that meeting.

16. Recall of the Board Directors requires a majority of those voting to approve the recall. Abstention votes count only for purposes of determining whether the recall petition has obtained a quorum, and not as part of the total vote count. For example, if 45 votes are cast FOR the recall, 35 are cast AGAINST the recall, and 25 abstain, the motion to recall has succeeded and the Director shall be effectively recalled from his or her seat.
17. Any board vacancy shall be filled in accordance with the Bylaws. Pursuant to RCW 24.03A.535(1) such vacancy or vacancies may be filled by appointment by a majority of the remaining directors, even if they constitute less than a quorum. Any appointment to fill such a vacancy shall be temporary and the appointed Director shall be seated only until the upcoming Annual Meeting and Election. In the event of multiple Board seat vacancies, each vacancy appointment must be made one at a time, such that the newly appointed seat has the right to vote with respect to the next seat appointment. In the unlikely event that all Board Directors are recalled during the Special Meeting (or as announced at the next Regular or Special Meeting), the Election Inspector will call an immediate member vote during the Board Meeting for the members to elect one Board Director seat to be temporarily filled until the next annual election. The remaining vacated seats shall be filled using the temporary appointment process described herein.
18. The Election Inspector shall have wide latitude to fashion provisions to facilitate a fair process to the benefit of the Members of EWUA.
19. The EWUA staff will assist in Managing Admittance to the Special Meeting as follows:
 - i. Counting the number of admitted members at the door. Members will receive priority seating and, if seating remains available, non-member observers may be admitted. Seating capacity is approximately 220. Members and one immediate family member or entity partner are to be admitted as a guest.
 - ii. Ensuring that the Election Inspector has the equipment necessary to verify the attendee is a member and to produce a printed ballot.
 - iii. At the conclusion of the meeting, cooperating with the Orcas Center staff to assure the rented hall is properly cleaned and closed.

