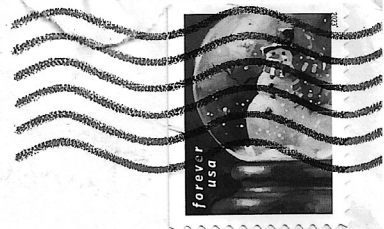


EWWA  
286 Enchanted Forest Rd, Suite 102B  
Eastsound, WA 98245

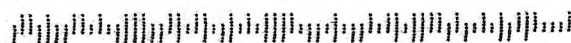
SEATTLE WA 980

2 FEB 2024 PM 6 L



Mr. Steve Smith  
P.O. Box 1573  
Eastsound, WA 98245

98245-157373





Eastsound Water Users Association  
Address: 286 Enchanted Forest Rd Suite 102B  
Eastsound, Washington 98245

February 1, 2024

Steve Smith  
P.O. Box 1573  
Eastsound, WA. 98245

Reference: Steve Smith emails to Carol Ann Anderson, Secretary/Treasurer of EWUA dated January 15, 2024 and January 18<sup>th</sup>, 2024, requesting information.

Dear Mr. Smith,

Eastsound Water Users Association has reviewed your authority to request the information provided in your emails referenced above. It has taken some time to verify that you are a Management Representative of Madrona Berry LLC, but not an owner. The Madrona Berry LLC has recently verified this relationship and your authorization. Therefore, we have reviewed your requests and provide our response under separate cover. Please see the Exhibit A attached.

If you have any questions regarding our responses please contact Teri Nigretto, President of Eastsound Water Users Association.

Thank you for your interest.

Sincerely,

Teri Nigretto  
President  
Eastsound Water Users Association  
President@eastsoundwater.org

Attachment:

Exhibit A, Response to Steve Smith emails of January 15 and 18, 2024.

## Exhibit A

### Response to Steve Smith emails of January 15 & 18, 2024 Requesting Information

EWUA (Association) is responding to Mr. Smith's request as a designated manager and authorized agent for Madrona Berry LLC. These documents will be provided in accordance with **Washington RCW 24.03A.210, *Corporate Records*, RCW 24.03A.215, *Inspection by members*, and 24.03A.220 *Scope of member's inspection right*. (See last page of this Exhibit A for the applicable subchapters.).**

Mr. Smith's request does not describe with reasonable particularity his good faith purpose for requesting these documents, or his intended use for these requested documents. However, he *states that all the documents should be provided to him under the statutes of law*. The information will be provided in accordance with RCW Chapter 24.03A, with the limitation of providing no information for public consumption or records that would result in likely harm or risk to the Association, such as employee's salary and benefits and sensitive business transactions.

#### 1. Notices

- a. *In June 2023 the EWUA Board Mr. Smith voted to reject his Member Representative status thus removing him from the board. It is the Board's prerogative per the Bylaws to accept or reject Member Representatives from being on the board. The minutes of this meeting can be found on the EWUA website under June 21, 2023 "Minutes". Mr. Smith has not been on the list of members who were authorized to receive this information. Correct documentation was received by the EWUA on January 28<sup>th</sup>, 2024, from Ms. Wendy Shinstine identifying Mr. Smith as authorized representative for the LLC. Previously no notices have been sent to him as a result. This also slowed the response to Mr. Smith's requests of January 15, and January 18, 2024.*

Our understanding is that the property in question is owned by Wendy Shinstine. The Madrona Berry, LLC is a company that manages the property for Ms. Shinstine. Ms. Shinstine, who is the sole owner and manager of The Madrona Berry, LLC on public records. Ms. Shinstine has confirmed in her email of January 28<sup>th</sup>, 2024 that he is fully authorized as the representative for the LLC in all matters of utilities, correspondence and concerns.

The notices to members advising them of meetings have always been available on the EWUA website for the general public's information. It is not a requirement that an agenda be provided. In addition, an email meeting notice has always been sent out to the membership advising them of the General Meeting dates and times. General notices to the Members can be found on the EWUA website <https://www.eastsoundwater.org/> under the title **Governance**. There is a standard

statement on the website advising all members when the General Board meetings are regularly scheduled.

- b. Previously, in other requests to EWUA, Mr. Smith was provided information *regarding several of the requested items. Also, Minutes of meeting can be found at the website location.* Zoom meeting recordings are also on this website, although are not regularly used and are available for members information only. It has been the standard position that the minutes are made available but not the Board Packet. The packet has information the Board believes should not be placed in the public domain for the *world* to see as it would compromise the association.

Special Session member meetings are on the website. These meetings have also been announced to the members on the website. There have been Executive Session and/or working meetings held by some or all members of the board to discuss important business items required to run the association. These have not been announced and are not required to be given to the members, unless it is a determined vote by the Board that alters business practice. These are available for those meetings where the vote was unanimous, those with conflicting opinions are **not available in accordance with the Bylaws and the RCW 24.03A.210**

## **2. April 6, 2023, Board meeting minutes**

- a. Mr. Smith has previously asked for these minutes when he was represented by legal counsel and filed a lawsuit against the Association. At that time, The Association doubled checked files and company drives on the Association's end and could not find any record of a Special Meeting of the members taking place or an Executive Session on April 6, 2023. Apparently, there was no general meeting or special meetings of the members that day and it was not held at the normal meeting time. However, if a meeting were held that day the minutes would not be available unless there was a unanimous agreement of the subjects being voted on.

The statute requires the Association to provide the meeting minutes to the extent there is a unanimous agreement of the issues, but any video recording of an executive meeting session (to the extent it exists) is not something that is subject to demand under RCW 24.03A.215.

## **3. Record of Financial Transactions**

- a. Mr. Smith made a very similar request in the Fall of 2023 and in conjunction with his lawsuit. The Association provided the monthly financial statement from January 2023 through August 2023 per his request. These financial documents will also be included in the Board packets discussed earlier. We will also provide similar information during the 2022 year, but it seems redundant as Mr. Smith was the *Association President during this period of time.*

- b. Mr. Smith's request does not "described with reasonable particularity" the good faith reason and proper purpose for seeking these documents, as required under RCW 24.03A.215(4)(a) and (b). The request simply states, without any further explanation, that Mr. Smith believes he is entitled to them under the statute. This is insufficient under RCW 24.03A.215, and it is unclear as to why he requires these documents. The financial documents expected to be provided to the members in accordance with the bylaws would be the Profit and Loss statement and the Budget vs Actuals Report, not to the detail that Mr. Smith is requesting. See RCW 24.03A.225 which states that the Association furnish the members "with its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for the year". The Association is not required to provide any records that would result in likely harm or risk to the Association. To provide any further detail as requested would assuredly bring harm to the Association. Mr. Smith has previously been provided with the yearly financial documents for FY2022. The documents for FY2023 are not yet finalized. Therefore, nothing further will be provided at this time. Once the FY2023 financial documents are complete they will be available upon request.

#### 4. Log of Actions

- a. The Association has provided and posted all approved meeting minutes, which shows all decisions made by the Board, and there are no other decisions made by unanimous written consent or by separate committee.

#### 5. Settlement Agreement

- a. A settlement agreement between the Association and one of its employees is not listed as documents to be provided under RCW 24.03A.215. The settlement agreement does not contain any agreement to modify the Association bylaws as Mr. Smith states. This agreement is strictly the settlement of issues identified between Mr. Burke and the Association. It contains an agreement not to discuss the content. The Association restricts sharing an employee's information with other people or agencies except in rare circumstances. Surely this is also in consideration of Washington employment privacy laws.

#### 6. Log of Vote

- a. The Board actions during the listed settlement agreement was done as part of agreeing and signing the settlement agreement. The settlement agreement was an agreement between the Association and Mr. Burke and is not a document that listed as the type of document required to be shared by RCW 24.03A.215. The Association does not maintain a log of votes other than what is included in the meeting minutes. These can be found on the Association website.

## 7. Election Information

- a. There is no requirement under RCW 24.03A.215 that requires the Association to provide information on the voting process. Especially the voting tabulations by the *third party who collected, counted, and verified the count. In addition, no video records are required to be provided under RCW 24.03A.215. We request that if Mr. Smith would like to view a list of memberships valid as of December 1, 2023, that he views this document at the Association's facility. This is due to miss use of this information in the past. It will not include the detail requested by Mr. Smith. It will include only the items required under RCW 24.03A.210. Any part of the voting process described by Mr. Smith must be construed as here-say as he was not involved in the process, and this was a secret vote via ballot.*

## 8. D&O Insurance

- a. D&O insurance is included under the Associations insurance policy and has always been active. It covered all actions during the FY 2023. There is no requirement under RCW 24.3A.215 that this document is to be made available.

## 9. 990 Form

- a. This is not a document provided and is not listed under RCW 24.3A.215. It is an IRS form and will be made available to the general public when it is officially posted by the IRS. It is not an accounting document.

## 10. Labor compensation

- a. The Association restricts sharing an employee's information with other people or agencies except in rare circumstances. Surely this is also in consideration of Washington employment privacy laws.

The financial documents expected to be provided to the members in accordance with the bylaws would be the Profit and Loss statement and the Budget vs Actuals Report, not to the **detail that Mr. Smith is requesting. See RCW 24.03A.225 which states that the Association** furnish the members "with its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for the year". The Association is not required to provide any records that would result in likely harm or risk to the Association. To provide any further detail as requested would assuredly bring harm to the Association.

This concludes the Association's response to Mr. Smith's emails dated January 15<sup>th</sup> and January 18<sup>th</sup>, 2024. Any further questions regarding this response should be directed to Teri Nigretto, President of Eastsound Water Users Association.

Attachments:

Attachment 1 - Regulations Quoted in response to Mr. Smith's emails of January 15, and January 18<sup>th</sup>, 2024.

**Attachment 1**

**Regulations Quoted in response to Mr. Smith's emails of January 15, and January 18<sup>th</sup>, 2024.**

As has been stated repeatedly during the response The organization is required to keep a current copy of records as described below:

**RCW 24.03A.210 Corporate Records.**

(1) A nonprofit corporation shall keep permanently a copy of the following records:

(a) Minutes of all meetings of its members and of its board of directors.

(b) A record of all actions taken by the members and board of directors by unanimous written consent; and

(c) A record of all actions taken on behalf of the corporation by a committee of the board.

(2) A nonprofit corporation shall keep a current copy of the following records:

(a) Its articles of incorporation or restated articles of incorporation and all amendments to them currently in effect.

(b) Its bylaws or restated bylaws and all amendments to them currently in effect.

(c) All communications in the form of a record to members generally within the past six years, including the financial statements furnished for the past six years under

RCW24.03A.225;

(d) **A list of the names and business addresses of its current directors and officers; and**

(e) **Its most recent annual report delivered to the secretary of state under**

RCW 24.03A.070.

(3) *A nonprofit corporation shall maintain appropriate accounting records.*

(4) A membership corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(5) A nonprofit corporation shall maintain its records in written form or in any other form of a record.

(6) All records required to be maintained by a nonprofit corporation may be maintained at any location within or without this state



**Regulations Quoted in response to Mr. Smith's emails of January 15, and January 18<sup>th</sup>, 2024**

A Member or Member's agent has the right to request the inspection of the following items:

**Chapter RCW 24.03A.220 Scope of member's inspection right.**

- (1) A member's agent or attorney has the same inspection and copying rights as the member represented.
- (2) The right to copy records under RCW 24.03A.215 includes, if reasonable, the right to receive copies. Copies may be provided through electronic transmission unless the member requests otherwise in the form of a record.
- (3) The nonprofit corporation may comply with a member's demand to inspect and copy the list of members under RCW 24.03A.215(2)(c) by providing the member for a reasonable charge as described in subsection (4) of this section with a list of members that was compiled no earlier than the date of the member's demand.
- (4) The nonprofit corporation shall provide a copy of its articles and bylaws at no cost to a member on request. The nonprofit corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any other documents provided to the member. The charge may not exceed the estimated cost of production, reproduction, or transmission of the records.

**Chapter RCW 24.03A.240 Use of membership list.**

- (1) Without the consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. *Without limiting the generality of the foregoing, without the consent of the board, a membership list or any part thereof may not be:*
  - (a) Used to solicit cash or other property unless the cash or other property will be used solely to solicit the votes of the members in an election to be held by the nonprofit corporation.
  - (b) Used for any commercial purpose; or
  - (c) Sold to or purchased by any person.
- (2) Instead of making a membership list available for inspection and copying under RCW 24.03A.210 through 24.03A.240, a nonprofit corporation may elect to proceed under the procedures set forth in RCW 24.03A.405