

THE SEA RANCH ASSOCIATION BOARD OF DIRECTORS

SPECIAL OPEN SESSION MEETING

Saturday, January 23, 2021
Immediately following adjournment of BOD/FC Budget Workshop
which is currently scheduled from 9:00 a.m. – 1:00 p.m.

(Start time of Open Session is approximate.)

**TELECONFERENCE (ZOOM) MEETING
DUE TO SONOMA COUNTY SHELTER IN PLACE ORDER**

**NOTE: The Zoom meeting information below is the same
as the information for the preceding BOD/FC Budget Workshop.
Members attending that workshop may simply remain signed in
to participate in the Open Session Meeting.**

Join the meeting:

<https://tsra.zoom.us/j/8760609260?pwd=RjBrYXZFUHRDdnVXaFlvWEhHZ083Zz09>

Meeting ID: 876 060 9260

Passcode: 477117

Join by phone:

877 853 5257 US Toll-free

888 475 4499 US Toll-free

Meeting ID: 876 060 9260

Passcode: 477117

Find your local number: <https://tsra.zoom.us/u/adjVRTLGP7>

TSRA's virtual meetings are digitally recorded.

**Audio and/or video recordings of this meeting may be made available online.
Attendance at this meeting constitutes consent that this meeting is being recorded.
Please be aware that people not present at the meeting may hear your comments.**

AGENDA

- (1) CALL TO ORDER -- SPECIAL OPEN SESSION
- (2) ADOPTION OF THE AGENDA
- (3) **CONSIDERATION OF POTENTIAL CHANGES TO ELECTION RULES AND PROCEDURES**
 - Staff Report dated January 23, 2021, re: Agenda Items 3 and 4 [Pg. 3a1 – 3a2]
 - 2020 Changes to Civil Code §§5100-5145 & §5200 (SB 323) [Pg. 3a3 – 3a10]
 - Proposed Amendment to Sea Ranch Rule 1.2 Guidelines for Election of Directors to be retitled “The Sea Ranch Association Election and Voting Rules” (Redline and Clean Copy) [Pg. 3a11 – 3a20]
 - Proposed Amendment to Sea Ranch Rule 2.4 Policy for Use of Sea Ranch Mailing List (redline version) [Pg. 3a21 – 3a22]
 - Proposed Amendment to Sea Ranch Rule 2.4 (clean copy) [Pg. 3a23 – 3a24]
- (4) **CONSIDERATION/APPROVAL OF TSRA MEMBERSHIP LIST “OPT-OUT” POLICY AND FORM**
 - Draft Opt-Out Policy & Form [Pg. 4a1]
- (5) ADJOURNMENT

MEMORANDUM

To: Board of Directors
From: Jennifer Merchant, Community Manager
Date: January 23, 2021
Subject: Amendment of The Sea Ranch Association Rules pertaining to elections and Opt-Out Form policy

ACTION REQUESTED

1. Approve for publication to the Members for 28-day comment as required by DSA the amendment of TSR Rule 1.2 (Procedural Guidelines for Election of Directors) and TSR Rule 2.4 (Policy for Use of Sea Ranch Mailing List); and
2. Consistent with the proposed revised Rule 2.4, update the Membership Mailing List Opt-Out Policy and Form to comply with the Davis- Stirling Act as revised in the 2020 edition.

BACKGROUND

The California Legislature in 2019 approved SB 323 which made significant revisions to the Davis-Stirling Act, which governs Homeowners Associations that operate in the state. Governor Gavin Newsom later signed the legislation into law, which took effect January 1, 2020.

Upon review by the Community Manager in consultation with Association Counsel, it has been determined that changes to two sections in the Rules, as well as a related Policy, are required.

1. Election Rules Amendments- To achieve consistency with the Davis Stirling Act, the attached amendment replaces nearly all of The Sea Ranch Rule 1.2 by addressing nine areas, including general voting rules, types of votes governed by the rules, campaigning, inspector of election, procedures, tabulation of votes and results announcement, retention of materials, defined terms and amendment of election rules. A redline and clean copy of the proposal is attached to this memo for reference and review by members.

The proposed Rule changes are planned to come before the Board of Directors for consideration and action at the regularly scheduled February 23, 2021 meeting. The amendment is expected to be coupled with rescission of Resolutions 254 and 478, which the amended Rules will replace.

2. Membership List Access and Opt-Out Policy and Form: It is also recommended that Rule 2.4 be amended to be consistent with the Davis Stirling Act. The attached Opt-Out Form Policy complies with the 2020 Davis-Stirling Act

amendments by providing Members with the opportunity to inform the Association if they choose to opt-out of having their name, property address and email address shared with other members by notifying the Association in writing. It is important to point out, however, that the opt out does not eliminate communications in total, as it allows the Association to provide the communication on behalf of the Association itself or as a result of a member request in lieu of the member sending it directly. Coupled with the proposed amendment is rescission of Resolution 261, which the amended Rule will replace.

A document outlining the Davis-Stirling Act amendments, effective 2020, is also attached to this memo for reference.

FISCAL IMPACT

It is not yet known what, if any, additional costs the Association will incur in order to comply with the prescribed rule changes, though because many are already accomplished in practice, it is expected to be minimal.

2020 Changes to Civil Code §§5100-5145 & §5200 (SB 323)

5100 Subjects for Member Elections.

**Secret Ballots
required for these
subjects**

5100(a)(1) Notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area pursuant to Section 4600 (*Grant of Exclusive Use of Common Area*) shall be held by secret ballot in accordance with the procedures set forth in this article.

**Term Cycles &
Maximums**

5100(a)(2) An association shall hold an election for a seat on the board of directors in accordance with the procedures set forth in this article at the expiration of the corresponding director's term and at least once every four years.

5100(b) This article also governs an election on any topic that is expressly identified in the operating rules as being governed by this article.

5100(c) The provisions of this article apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents.

5100(d) The procedures set forth in this article shall apply to votes cast directly by the membership, but do not apply to votes cast by delegates or other elected representatives.

**Civil Code
overrides Corp
Code**

5100(e) In the event of a conflict between this article and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of this article shall prevail.

5100(f) Directors shall not be required to be elected pursuant to this article if the governing documents provide that one member from each separate interest is a director.

**Acclamation for
large HOAs**

5100(g) Notwithstanding the secret balloting requirement in subdivision (a), when, as of the close of nominations for directors on the board, the number of director nominees is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of the elections, the director nominees shall be considered elected by acclamation if all of the following are true:

5100(g)(1) The association includes 6,000 or more units.

**30 DAY
NOMINATIONS
NOTICE**

**Candidate
qualifications &
options**

5100(g)(2) The association provided individual notice of the election and the procedure for nominating candidates at least 30 days before the close of nominations.

5100(g)(3) The association permits all candidates to run if nominated, except as follows:

5100(g)(3)(A) An association shall disqualify a person from nomination as a candidate if the person is not a member of the association at the time of the nomination. This subdivision does not restrict a developer from making a nomination of a nonmember candidate consistent with the voting power of the developer, as set forth in the regulations of the Department of Real Estate and the association's governing documents.

5100(g)(3)(B) Through its bylaws or election operating rules adopted pursuant to subdivision (a) of Section 5105 only, an association may disqualify a person from nomination as a candidate based on any of the following:

5100(g)(3)(B)(i) An association may disqualify a nominee if that person discloses, or if the association is aware or becomes aware of, a past criminal conviction that would either prevent the association from purchasing the fidelity bond coverage required by Section 5806 should the person be elected or terminate the association's existing fidelity bond coverage as to that person should the person be elected.

5100(g)(3)(B)(ii) Failure to be current in the payment of regular and special assessments, which are consumer debts subject to validation. If an association requires a nominee to be current in the payment of regular and special assessments, it shall also require a director to be current in the payment of regular and special assessments. An association may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. An association shall not disqualify a nominee for failure to be current in payment of regular and special assessments if any of the following circumstances are true:

5100(g)(3)(B)(ii)(I) The nominee has paid the regular assessment or special assessment under protest pursuant to Section 5658.

5100(g)(3)(B)(ii)(II) The nominee has entered into a payment plan pursuant to Section 5665.

5100(g)(3)(B)(ii)(III) The nominee has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10.

5100(g)(3)(B)(iii) If the person, if elected, would be serving on the board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the person and the other person is either properly nominated for the current election or an incumbent director.

5100(g)(3)(B)(iv) If that person has been a member of the association for less than one year.

**Voting Policy
required &
content**

5105 Election Rules.

5105(a) An association shall adopt **operating** rules in accordance with the procedures prescribed by Article 5 (commencing with Section 4340) of Chapter 3 (*Operating Rules*), that do all of the following:

**-equal access to
HOA media**

5105(a)(1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or internet websites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. The association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the association, is responsible for that content.

**- equal access to
HOA meeting
space**

5105(a)(2) Ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.

**- candidate
qualifications**

5105(a)(3) Specify the qualifications for candidates for the board and any other elected position, **subject to subdivision (b)**, and procedures for the nomination of candidates, consistent with the governing documents. A nomination or election procedure shall not be deemed reasonable if it disallows any member from nominating ~~himself or herself~~ **themselves** for election to the board.

**- voting power,
proxies, etc**

5105(a)(4) Specify ~~the qualifications for voting~~, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents.

**- Inspector(s) of
Election**

5105(a)(5) Specify a method of selecting one or three independent third parties as inspector or inspectors of elections utilizing one of the following methods:

-Selection

5105(a)(5)(A) Appointment of the inspector or inspectors by the board.

5105(a)(5)(B) Election of the inspector or inspectors by the members of the association.

5105(a)(5)(C) Any other method for selecting the inspector or inspectors.

**- Inspector
Assistant(s)**

5105(a)(6) Allow the inspector or inspectors to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties.

**-retention of
Election Materials**

5105(a)(7) Require retention of, as association election materials, both a candidate registration list and a voter list. The voter list shall include name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used. The association shall permit members to verify the accuracy of their individual information on both lists at least 30 days before the ballots are distributed. The association or member shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two business days.

**VOTER LIST
VERIFICATION 30
DAYS BEFORE
BALLOTS SENT**

**Candidate must
be Member**

5105(b) An association shall disqualify a person from a nomination as a candidate for not being a member of the association at the time of the nomination.

If Developer

5105(b)(1) This subdivision does not restrict a developer from making a nomination of a nonmember candidate consistent with the voting power of the developer as set forth in the regulations of the Department of Real Estate and the association's governing documents.

Entity designated voter rep	5105(b)(2) If title to a separate interest parcel is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to be a member for purposes of this article.
Bylaws/Rules MAY disqualify candidate:	5105(c) Through its bylaws or election operating rules adopted pursuant to subdivision (a) of Section 5105 only, an association may disqualify a person from nomination as a candidate pursuant to any of the following:
- if delinquent	5105(c)(1) Subject to paragraph (2) of subdivision (d), an association may require a nominee for a board seat, and a director during their board tenure, to be current in the payment of regular and special assessments, which are consumer debts subject to validation. If an association requires a nominee to be current in the payment of regular and special assessments, it shall also require a director to be current in the payment of regular and special assessments.
- if co-owner already on Board	5105(c)(2) An association may disqualify a person from nomination as a candidate if the person, if elected, would be serving on the board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the person and the other person is either properly nominated for the current election or an incumbent director.
-if member less than 1 year	5105(c)(3) An association may disqualify a nominee if that person has been a member of the association for less than one year.
- if criminal conviction & bond problem	5105(c)(4) An association may disqualify a nominee if that person discloses, or if the association is aware or becomes aware of, a past criminal conviction that would, if the person was elected, either prevent the association from purchasing the fidelity bond coverage required by Section 5806 or terminate the association's existing fidelity bond coverage.
May not disqualify - for unpaid fines -if assessment paid under protest -if in payment plan - if no IDR yet	5105(d) An association may disqualify a person from nomination for nonpayment of regular and special assessments, but may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. The person shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true: 5105(d)(1) The person has paid the regular or special assessment under protest pursuant to Section 5658. 5105(d)(2) The person has entered into a payment plan pursuant to Section 5665.
Rules can provide for nominations from floor	5105(e) An association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10.
Rules SHALL address:	5100(f) Notwithstanding any other law, the rules adopted pursuant to this section may provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner. Those rules may permit write-in candidates for ballots.
Must issue ballot to Members	5105(g) Notwithstanding any other law, the rules adopted pursuant to this section shall do all of the following: 5105(g)(1) Prohibit the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed.

&
Power of Atty rep

**DELIVERY OF
BALLOTS & RULES
30 DAYS BEFORE
ELECTION**

Rules may be
posted on
website or
delivered

Voting rules
cannot be
amended within
90 days prior to
election

1 or 3 Inspectors
of Election

Independent 3rd
Party

Can no longer be
employed by
HOA (not
manager)

Inspector Duties

5105(g)(2) Prohibit the denial of a ballot to a person with general power of attorney for a member.

5105(g)(3) Require the ballot of a person with general power of attorney for a member to be counted if returned in a timely manner.

5105(g)(4) Require the inspector or inspectors of elections to deliver, or cause to be delivered, at least 30 days before an election, to each member both of the following documents:

5105(g)(4)(A) The ballot or ballots.

5105(g)(4)(B) A copy of the election operating rules. Delivery of the election operating rules may be accomplished by either of the following methods:

5105(g)(4)(B)(i) Posting the election operating rules to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here:"

5105(g)(4)(B)(ii) Individual delivery.

5105(h) Election operating rules adopted pursuant to this section shall not be amended less than 90 days prior to an election.

~~5105(b) Notwithstanding any other provision of law, the rules adopted pursuant to this section may provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner. Those rules may permit write in candidates for ballots.~~

5110 Inspector(s) of Election.

5110(a) The association shall select an independent third party or parties as an inspector of elections. The number of inspectors of elections shall be one or three.

5110(b) For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member, but may not be a director or a candidate for director or be related to a director or to a candidate for director. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services ~~unless expressly authorized by rules of the association adopted pursuant to paragraph (5) of subdivision (a) of Section 5105 (Election Rules)~~ **other than serving as an inspector of elections.**

5110(c) The inspector or inspectors of elections shall do all of the following:

5110(c)(1) Determine the number of memberships entitled to vote and the voting power of each.

5110(c)(2) Determine the authenticity, validity, and effect of proxies, if any.

5110(c)(3) Receive ballots.

5110(c)(4) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

5110(c)(5) Count and tabulate all votes.

5110(c)(6) Determine when the polls shall close, consistent with the governing documents.

5110(c)(7) Determine the tabulated results of the election.

5110(c)(8) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this article, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this article.

5110(d) An inspector of elections shall perform all duties impartially, in good faith, to the best of the inspector of election's ability, ~~and~~ as expeditiously as is practical, **and in a manner that protects the interest of all members of the association.** If there are three inspectors of elections, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of elections is prima facie evidence of the facts stated in the report.

**NOMINATIONS
PROCEDURE &
DEADLINE MUST BE
PROVIDED 30
DAYS IN
ADVANCE**

5115 Voting Procedure.

5115(a) An association shall provide general notice of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

**INFO TO BE
PROVIDED 30
DAYS BEFORE
BALLOTS SENT:
DISTRIBUTED:
- RETURN INFO
-TALLY MEETING
INFO
-LIST OF
CANDIDATES**

5115(b) An association shall provide general notice of all of the following at least 30 days before the ballots are distributed:

5115(b)(1) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections.

5115(b)(2) The date, time, and location of the meeting at which ballots will be counted.

5115(b)(3) The list of all candidates' names that will appear on the ballot.

5115(b)(4) Individual notice of the above paragraphs shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

**BALLOTS MAILED
30 DAYS BEFORE
VOTING DEADLINE**

5115(c) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following:

Inner envelope

5115(c)(1) The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter shall sign the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the voter to vote.

Outer return envelope

5115(c)(2) The second envelope is addressed to the inspector or inspectors of elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of elections. The member may request a receipt for delivery.

**Quorum if
required by Gov
Docs**

5115(bd) A quorum shall be required only if so stated in the governing documents or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum.

**Cumulative
Voting if in Gov
Docs**

5115(ee) An association shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents.

**Gov Doc
Amendments to
include text**

5115(df) Except for the meeting to count the votes required in subdivision (a) of Section 5120 (*Counting Ballots*), an election may be conducted entirely by mail unless otherwise specified in the governing documents.

5115(eg) In an election to approve an amendment of the governing documents, the text of the proposed amendment shall be delivered to the members with the ballot.

**Ballots tallied by
Inspector(s) at
duly noticed
open meeting**

5120 Counting Ballots.

5120(a) All votes shall be counted and tabulated by the inspector or inspectors of elections, or the designee of the inspector of elections, in public at a properly noticed open meeting of the board or members. Any candidate or other member of the association may witness the counting and tabulation of the votes. No person, including a member of the association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. The inspector of elections, or the designee of the inspector of elections, may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspector of elections, it shall be irrevocable.

**REPORTING OF
TABULATED
RESULTS WITHIN 15
DAYS**

5120(b) The tabulated results of the election shall be promptly reported to the board and shall be recorded in the minutes of the next meeting of the board and shall be available for review by members of the association. Within 15 days of the election, the board shall give general notice pursuant to Section 4045 (*General Notice*) of the tabulated results of the election.

**Inspector controls
ballot material,
voter & candidate
list for 1 year, then
to HOA custody**

5125 Ballot Custody and Inspection. The sealed ballots, **signed voter envelopes, voter list, proxies, and candidate registration list shall** at all times ~~shall~~ be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Section 5145 (*Judicial Enforcement*) for challenging the election has expired, at which time custody shall be transferred to the association. If there is a recount or other challenge to the election process, the inspector or inspectors of elections shall, upon written request, make the ballots available for inspection and review by an association member or the member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

5145 Judicial Enforcement.

5145(a) A member of an association may bring a civil action for declaratory or equitable relief for a violation of this article by the association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date **that the inspector or inspectors of elections notifies the board and membership of the election results or** the cause of action accrues, **whichever is**

**Court can
overturn election
results for statute
and/or rule non-
compliance**

**Reasonable
attorney fees to
prevailing
Member
(not to prevailing
HOA)**

**Action in Superior
Court or Small
Claims**

later. If a member establishes, by a preponderance of the evidence, ~~Upon a finding~~ that the election procedures of this article, or the adoption of and adherence to rules provided by Article 5 (commencing with Section 4340) of Chapter 3 (*Operating Rules*), were not followed, a court ~~may~~ **shall** void any results of the election **unless the association establishes, by a preponderance of the evidence, that the association's noncompliance with this article or the election operating rules did not affect the results of the election. The findings of the court shall be stated in writing as part of the record.**

5145(b) A member who prevails in a civil action to enforce the member's rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member of the association equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation. **If a member prevails in a civil action brought in small claims court, the member shall be awarded court costs and reasonable attorney's fees incurred for consulting an attorney in connection with this civil action.**

5145(c) A cause of action under Sections 5100 to 5130 (*Member Election*), inclusive, with respect to access to association resources by a candidate or member advocating a point of view, the receipt of a ballot by a member, or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after tabulation ~~may be brought in small claims court~~ **subdivision (a) may be brought in either the superior court or, if the amount of the demand does not exceed the jurisdiction-jurisdictional amount of that the small claims court, in small claims court.**

Article 5. Record Inspection

5200 Definitions. For the purposes of this article, the following definitions shall apply:

5200(a) "association records" means all of the following:

**Email address
now part of
Membership list;
opt out option**

...
5200(a)(9) Membership lists, including name, property address, mailing address, **and email address**, but not including information for members who have opted out pursuant to Section 5220 (*Membership List Opt Out*).

...
5200(a)(14) "Association election materials" as defined in subdivision (c).

5200(b) "Enhanced association records" means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association.

**Election Materials
defined & to be
retained**

5200(c) "Association election materials" means returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the candidate registration list. Signed voter envelopes may be inspected but may not be copied.

Rule 1.2 Guidelines for Election of Directors Election and Voting Rules

Resolution 254

**Upon final adoption of Rule 1.2 amendment,
Resolution 254 will be proposed for rescission.**

The Election Committee and Community Manager shall administer election campaigns and elections pursuant to Association procedures to insure that:

1.2.01 To the extent that candidates and Members are provided access to Association media, newsletters, or the Association Internet Web site for communication to Members during a campaign, equal access shall be provided to all candidates and Members. The Association may not edit or redact the content of a candidate's or a Member's communications, but may limit their length.

1.2.02 During the campaign period, candidates and Members are provided equal access to meeting space for purposes reasonably related to the election, at no cost, to the extent that such space is available.

1.2.03 In accordance with Association *Bylaws* section 3.02, any Member in good standing is eligible to stand for election to the Board of Directors and that any such Member in good standing may nominate himself or herself to stand for election.

1.2.04 All Members upon satisfactory proof of Membership shall be qualified to vote and to exercise their voting right in person or by proxy in accordance with Association *Bylaws* section 2.03.

And that:

1.2.05 On the date of the Association annual meeting, as specified in the *Bylaws*, the election polls shall be open from 10:00 a.m. to 12:00 noon.

**1.2. 05 retained and moved
from this location to
Section 5.7 below.**

1.2.06 For each election cycle the Board of Directors shall appoint an inspector of elections who shall be instructed to carry out the election in accordance with the requirements of the Davis-Stirling Common Interest Development Act.

**Replacement rule text
begins on next page.**

**[Proposed] THE SEA RANCH ASSOCIATION
ELECTION AND VOTING RULES**

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(Draft 1.21.2021 v1)
**THE SEA RANCH ASSOCIATION
ELECTION AND VOTING RULES**

The Sea Ranch Association is a California Community Association and is governed by the Davis-Stirling Common Interest Development Act, as well as the Corporations Code, and the Association's Governing Documents, which include the Declaration of Restrictions, Covenants, and Conditions ("the Declaration"), the Bylaws, Articles of Incorporation, and the rules.

California law mandates certain procedures that must be followed in an association election and other member votes that may be required. These statutory provisions supersede any conflicting provisions of the Governing Documents and must be followed during the election and voting process. The purpose of these Election and Voting Rules ("Election Rules") is therefore to set forth the rules that must be followed to comply with applicable authorities and ensure a fair election and voting process.

1. MEMBER VOTING GENERALLY

1.1 **One Ballot per Lot.** On each matter submitted to a vote of the Members, each Member shall be entitled to cast one ballot for each Lot owned by such Member. The term Member is the same as the term Owner. When more than one (1) person owns an interest in a single Lot, any ballot cast by a single Member shall be deemed the authorized ballot for that Lot. If more than one ballot is received for a Lot, the first ballot received shall be counted and no subsequently received ballot shall be recognized. If a Member owns more than one Lot in the Association, the Member should submit a separate ballot for each such property owned.

1.2 **Who Votes.**

- Individual Owners (Members)
- Trustee Owners: Only one of the Trustees of a Trust that owns a Lot may vote.
- Corporate Owners: Entities (such as corporations or partnerships) must appoint and identify in writing an authorized individual to cast a vote.
- Proxy-Holders: Proxy voting is not permitted except for quorum purposes See Bylaws, Article IV, Section 4(c)).
- Power of Attorney ("POA"): After confirmation of the POA authority and ballot, the appointed POA may vote on behalf of the Member. The POA authority stops upon death of the Member.
- Deceased Owner(s): Counsel may be consulted to address circumstances related to Estates, Executors, etc.

1.3 **Cumulative Voting.** The Association's Governing Documents permit cumulative voting. (See Declaration, Section 5.03).

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1.4 **Voter List**. The Association shall generate and update a Voter List separate from the general Membership list. The Voter List shall be updated prior to each election and include the following information:

- Member's name.
- Voting power, such as Powers of Attorney or Entity/Owner Representatives (if any).
- Physical address of the voter's separate interest and/or the unit, block, and lot number.
- The mailing address for the ballot if different from the physical address of the separate interest or if only the unit, block, and lot number is used.

1.5 **Ballots and Meetings**. When a question is put to a vote of the Members, if required by law, direct ballots by mail shall be used. The four subjects that require double envelope (i.e., "secret") 30-day mail in balloting are: Election/Recall of Directors, Assessment decisions legally requiring a member vote, Governing Document amendments, and grants of exclusive use of Common Area (see Civil Code §5100(a)(1)). The ballots should be accompanied by information about the matter, as well as notice of a meeting at which time ballots will be counted. The voting period may be extended by subsequent notice if necessary to ensure member participation. As to voting subjects not covered by law (or these Election Rules), the Board may use these or other reasonable procedures that best fit the circumstances of that particular vote, or that may otherwise be required by the Governing Documents.

1.6 **Quorums**. The Governing Documents, the Davis-Stirling Act, or other provisions of law may specify a quorum for Member approvals.

2. COMMON TYPES OF VOTES GOVERNED BY THESE RULES

2.1 **Election of Directors**. The Association shall hold an election for a seat on the Board of Directors at the end of the corresponding Director's term. The quorum for the election of Directors pursuant to the By-Laws, Article II, Section 2.06, is one-third of the voting power of the members. Thereafter, the candidates receiving the largest number of votes will be elected. See also Section 5.1 below regarding uncontested elections and acclamation.

2.1.1 **Nominations**. At least 30 days before the close of nominations, the Association shall provide General Notice of the upcoming Election and the procedure for nominating candidates. A Member may self-nominate. Nominations will close as announced by the Board. Shortly after the close of nominations, ballots with all qualified candidates' names included will be prepared and delivered to Members. There shall be no write-in candidates.

2.1.2 **Candidate Qualifications**. A Member may be a candidate for the Board as long as:

- The Candidate is a natural person and a Member of the Association for at least one year.

- In the case of ownership by a Trust, the Candidate is the single Trustee identified on title, or in the case of multiple Trustees named on title, only one of the named Trustees.
- If title is held by an entity that is not a natural person, Civil Code Section 5105(b)(2) provides that the governing authority of that legal entity shall have the power to appoint a natural person to be a member for purposes of this article. If title is held by an entity with a single owner, such as a single member Limited Liability Company, that single owner may be a candidate for the Board. For other entities that may wish to appoint a representative to serve on the Board, counsel should be consulted.
- The Candidate is not a co-owner of a Lot with a concurrently serving director or with another candidate.
- The Candidate does not have a criminal conviction that prevents the Association from obtaining a fidelity bond and cannot be delinquent in assessment payments unless the member has either paid under protest or agreed to a payment plan.

2.2 **Recall of Directors**. The recall of one or more Directors is addressed in the Corporations Code §7222, the Bylaws, and/or Civil Code §§5100-5130.

2.3 **Assessment Decisions**. The approval of a majority of a quorum of Members is required for the Board to raise regular Assessments or impose a Special Assessment above certain prescribed amounts, as set forth in Civil Code §5605, which provides that the approval of a majority of a quorum of the voting power of the Association must approve (i) a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year, and/or (ii) impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year. For purposes of this section, a quorum is specifically defined as more than fifty percent (50%+) of the Voting Power of the Association.

2.4 **Governing Document Amendments**. Should the Association desire to amend its Articles of Incorporation, Bylaws and/or the Declaration of Covenants and Restrictions ("Declaration"), the text of the proposed amendment(s) shall be delivered to the Members with the ballot. Quorum participation and/or the number of votes necessary to pass will be indicated on the ballot and/or in the ballot material.

2.5 **Grant of Common Area Exclusive Use**. The Sea Ranch subdivision maps and Governing Documents identify areas of ownership and control. If approval of Members is required for the Association to grant exclusive use of an area that would otherwise be Common Area, then the voting process in these rules shall be used.

2.6 **Other Issues**. At the discretion of the Board, any issue presented to the Members for a vote may be conducted using the secret double-envelope process described in these Rules. For all matters requiring a vote, the quorum and voting requirements are set out in the Governing Documents and/or in Davis-Stirling Act, and those requirements will be included in the voting materials sent to members.

3. CAMPAIGNING

3.1 **Association Media.** In the context of an election or other vote, if Association media or Common Area access is provided to candidates or Members advocating a point of view, all are to be treated equally with respect to such opportunities to communicate with Members. This would apply to campaign related information that is delivered through Association channels, such as via the website, the Bulletin, or emails or mailers. Where equal access is required, the Association shall not edit or redact content from these communications but may include a statement specifying that the candidate or Member, and not the Association, is responsible for that content. The Association is not required to offer communication opportunities to candidates or Members advocating a point of view; however, if such a benefit is offered to one candidate or Member, the same opportunity must then be offered to all. If the Association does permit Association Media to be used to distribute candidate statements or information, or other advocacy material related to a vote or election, reasonable restrictions on the size, weight and format established by the Association must be followed. For example, a standardized form with a one- or two-page limit may be required for information about a candidate running for a position on the Board of Directors. Paid advertising in The Sea Ranch Association Bulletin by candidates or others supporting a candidate or advocating a position shall not be permitted.

3.2. **Campaign Signage.** Signage, flyers, and other campaign related material shall not be posted in or on Association owned or controlled common area or common facilities or property unless expressly authorized by the Association. Campaign signs are permitted on private property (lots owned by a member) within The Sea Ranch with the owner's express permission. Any election related signage must also comply with any and all ordinances or regulations adopted by local authorities with jurisdiction.

3.3 **Membership List.** Members are entitled to request the official Membership List for communications reasonably related to the requestor's interests as a member, including elections or votes of the membership. The Membership List may not be used for purposes excluded by Corp. Code Section 8338. A member may opt-out of sharing that member's information by notifying the Association, and the Association will notify members of that right. Additionally, while the Association does or may maintain other member contact lists for a variety of purposes, those lists are not available to the members and shall not be shared or harvested and used for campaign purposes.

3.4 **Common Areas.** In accordance with Civil Code §4515, as it may be amended from time to time, members and residents may peacefully assemble and freely communicate with one another and with others with respect to common interest development living or for social, political, or educational purposes, including an election or vote governed by these Election Rules. This right includes the right to use the common area, including the clubhouse, for such assembly when the facilities are not otherwise in use. The Association shall not require payment of a fee or a deposit, or require that liability insurance be provided by the member, as a condition of such use.

4. INSPECTOR OF ELECTION

4.1 To oversee and monitor the logistics of balloting and other voting matters, the Board is required to appoint one or three individuals to serve as Inspectors of Election. The role of an Inspector of Election is to process and count ballots, monitor the tabulation to assure confidentiality for voters, and to resolve any uncertainties during the process. Because the most common practice at The Sea Ranch Association is to use a single outside Inspector of Elections, the singular is used herein.

4.2 The Inspector of Elections must be an independent third party. Those not qualifying as independent include a member of the Board or a candidate, or an immediate family member or co-owner of a Board member or candidate. Also not qualifying are any persons employed or retained by the Association for any work except for the specific task of serving as an Inspector of Elections. The Inspector may appoint and supervise additional persons to assist with the count and tabulation of ballots, including members of the Elections Committee, provided they too are Independent Third Parties.

4.3 The Inspector of Elections shall perform their duties impartially, in good faith, to the best of their ability, as expeditiously as is practical, and in a manner that protects the interest of all Members of the Association. If there are three Inspectors of Election, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the Inspector of Elections (such as the tabulation of ballots) is prima facie evidence of the facts stated in the report.

4.4 The Inspector of Election is responsible for assuring that the sealed ballots are received and processed properly. Once a ballot is received, it is irrevocable. The Inspector of Elections, or the individual or individuals designated by the Inspector, shall verify the Member information on the outer envelope prior to or at the meeting at which ballots are tabulated. The validated sealed envelopes shall not be opened until the meeting at which the tabulation is to occur. After publication of the tabulated results of the election, the Inspector shall direct and control the storage of the Election Materials for a period of 12 months. Thereafter, custody shifts to the Association.

4.5 The Inspector of Elections shall do all of the following:

- Determine the number of memberships entitled to vote and the voting power of each.
- Determine the authenticity, validity, and effect of proxies, if any.
- Receive ballots.
- Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote, consistent with the Rules and applicable law, including the discretion to determine that a challenge is not within the Inspector's duties, and therefore will not be heard.
- Determine when the polls shall close, consistent with the governing documents.
- Take such other actions that are consistent with law and these Rules to ensure fairness in the election process.

5. VOTING PROCEDURES

5.1 **Timing.** The Association, assisted by the Elections Committee, shall establish a timeline for the election of Directors or other vote of the members.

5.2 **Appointment of Inspector(s) of Election.** At least 60 days prior to an Election, the Board should appoint the Inspector of Elections.

5.3 **Nominations.** At least 30 days before any deadline for submitting a nomination, the Association shall provide General Notice of the procedure and deadline for submitting a nomination.

5.4 **Verification of Voter Information.** At least 30 days before the ballots are distributed, the Association shall permit Members to verify the accuracy of their individual information on a Voter List. The Association or Member shall report any errors or omissions on the List to the Inspector of Elections and/or designated individual assistant, typically staff, who shall make corrections to the Voter List. If there are any Powers of Attorney or Entity/Owner Representatives who will be casting ballots, these must be identified on the Voter List and appropriate documentation provided to the Association in this time frame.

5.5 **Voter List Solicitations.** Annually, the Association must solicit Member contact information to keep the Membership List updated. In addition to the Membership List the Association must maintain a Voter List and verify the accuracy of the Voter List at least 30 days prior to the distribution of ballots. While there may be overlap between the Membership List and the Voter List, they are two distinctly different lists, and an accurate Voter List shall be maintained for each election or vote.

5.6 **Balloting Information.** At least 30 days before ballots are distributed, the Association shall provide General Notice of the following:

- The date and time by which ballots are to be returned (by mail or hand delivery) to the Inspector of Elections and/or designated individual or firm (e.g., independent accountancy firm);
- The address where ballots are to be returned; and
- The list of all candidate names that will appear on the ballot.

Individual Notice shall be used for any Member who has requested Individual Notice. The Inspector of Elections shall coordinate with the Elections Committee regarding these details.

5.7 **Mail-in Ballots.** Not less than 30 days ahead of the Election, the Association shall deliver to every member (by first class mail or hand delivery) secret ballot voting material, including ballots, voting instructions, explanatory material, and candidates statements. Prior to opening the received ballots, the Board may reasonably extend the voting period to achieve greater Member participation in reaching quorum requirements (if applicable) or to amend the Declaration or take other actions which may require approval of a significant percentage of Members. Only the Official Ballot form generated by the Association will be counted. The Association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including all of the following:

- The Association shall provide Members with ballot(s) and two pre-printed envelopes along with instructions. The instructions shall specify how ballots are to be returned. Typically, ballots will

be returned by first class mail. However, ballots may also be hand-delivered to a secure ballot box.

- The ballot itself is not signed by the voter and the voter may not be identified by name, address, or unit and lot number on the ballot itself.
- After marking the ballot, it is to be inserted into the smaller of the two preprinted envelopes and the envelope is sealed. This envelope is inserted into a second envelope that is also then sealed. In the upper left-hand corner of the second, outer envelope, the voter prints and signs his or her name, and verifies the accuracy or otherwise indicates the address and the unit and Lot number that entitles the Member to vote. Note that an outer envelope received without a Member signature will not be counted (unless a signature is added prior to the tally of the ballots).
- The second outer envelope is addressed to the Association to a location to be designated by the Inspector of Elections. The envelope may be mailed and/or delivered by hand to a location specified by the Inspector of Elections. The Member may request a receipt of delivery.
- Once a ballot is received, it is irrevocable. If a ballot is properly cast and received within the balloting period, and a sale occurs, the new Member does not cast a second ballot. If no ballot has been cast / received for that property prior to the final voting deadline, the new Member may cast the ballot.
- On the date designated by the Association for counting ballots, as specified in the *Bylaws*, the Inspector of Election shall be at the designated location from 10:00 am to noon to receive ballots and resolve any ballot related questions.

5.8 **Uncontested Election / Acclamation**. If, at the close of nominations, the number of qualified nominees is equal to or less than the number of Directors to be elected, pursuant to the Association ByLaws, the Association should consult with counsel as to the ability to declare the nominated candidates elected without the need for mail in voting.

6. **BALLOT TABULATIONS & ANNOUNCEMENT OF RESULTS**

6.1 The Inspector of Elections, or those individuals designated by the Inspector of Elections to assist, may verify the Member information on the outer envelope prior to or at the meeting at which the ballots are counted. No one is permitted to open the inner envelope containing the ballot prior to the meeting at which the ballots are to be counted and tabulated.

6.2 The Inspector of Elections shall supervise the counting and tabulating of the ballots at a properly noticed open meeting of the Board or Members. Any candidate or other Member of the Association may witness, but not participate in or interrupt, the counting and tabulation of the ballots.

6.3 The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes of the next meeting of the Board. Members have a right to review the results. Within 15 days of the election tally, the Board shall publish by General Notice the tabulated results of the election in a communication directed to all Members.

7. **RETENTION OF ELECTION MATERIALS**

7.1 For a period of 12 months following publication of the tallied results of the election, the Inspector of Elections is responsible for custody of the Election Materials, and shall determine where the Election Materials shall be stored. After 12 months, the custody of the Election Materials shifts to the Association.

7.2 Upon written request, the Association will coordinate with the Inspector of Elections

and/or designated staff to make the ballots available for inspection and review by Members or their authorized representatives. Any such review shall be conducted in a manner that preserves the confidentiality of the members' vote.

8. DEFINED TERMS

8.1 **"Election"** means the date on which the ballots are scheduled to be opened and counted.

8.2 **"Election Materials"** means and includes returned ballots, signed voter envelopes, the Voter List of names, physical addresses and/or unit and lot number, and voters to whom ballots were to be sent, Inspector(s) of Election Worksheets, and the list of candidates.

8.3 **"General Notice"** means delivery of documents and/or information to a Member by Individual Notice, inclusion in a billing statement, newsletter, or regular electronic communication, or posting the printed document in a prominent place at the Property designated for such notices.

8.4 **"Individual Notice"** means and includes any of the following: first class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier; or electronic mail (if the Member has consented to electronic delivery).

8.5 **"Voter List"** means the list of membership information generated by the Association, and verified by the Members prior to each election, which includes the following information: Member's name and voting power, physical address of the voter's separate interest and/or unit and lot number, the mailing address for the ballot if different from the physical address, and identification of Powers of Attorney or Entity/Owner Representatives (if any).

8.6 **"Member List"** or **"Membership List"** includes a member's name, property address, mailing address and email address, but not including information for members who have opted out pursuant to Civil Code §5220.

9. AMENDMENT OF VOTING RULES

These Rules shall not be amended less than 90 days prior to the scheduled meeting at which the ballot tally is to be conducted.

END

Rule 2.4 Policy for Use of Sea Ranch Membership List (a.k.a. Mailing List)

The Board of Directors adopted the following policy regarding the appropriate reasons, conditions, and methods for providing access to The Sea Ranch mailing list to Members who demonstrate a purpose reasonably related to their interests as a Member.

Access to the mailing list shall be provided from time to time in accordance with the Davis Stirling Act and procedures established by The Sea Ranch.

Members are entitled to opt out of having their contact information shared with other members by notifying the Association in writing. This opt out shall remain in effect until changed by the member. Members who opt out may still receive information from another member, but such information will be communicated by the Association via a reasonable alternate process that accomplishes the purpose for the communication in a timely manner.

Policy Guidelines:

2.4.01 Any Member of The Sea Ranch Association may use one of two methods to access The Sea Ranch Association's membership list: either Sea Ranch Association-generated mailing labels or an electronic file of mailing information provided only to a third-party entity (such as a printer or mailing house), which entity agrees to independently conduct the mailing and then immediately destroy the electronic file of names and addresses.

2.4.02 According to The Sea Ranch internal procedure, the Member initiates a request for mailing list information by submitting a request to the Community Manager for approval. The request must specify the purpose of the mailing, and that purpose must be reasonably related to that person's interest as a Member. The request and a copy of the material to be mailed must be received in sufficient time for the Community Manager to evaluate and approve the request; the timeframes will be specified in The Sea Ranch Association internal procedure.

2.4.03 The Community Manager will verify that the content of the mailing is reasonably related to the Member's interest as a Member. The mailing may in no way be connected with sales or private enterprise.

2.4.04 A fee will be charged for the mailing labels and/or electronic file. This fee will be set by the Community Manager, to cover the administrative costs associated with the request. The fee will be stated clearly in the internal procedure and on the application form and must be collected from the Member prior to the release of the mailing information.

Deleted: The Sea Ranch Association's mailing list is to be kept strictly confidential. Nevertheless, to assist a Member in contacting other Members via the mail, for a purpose reasonably related to the Member's interest as a Member, a

Deleted: Association staff and approved by the Community Manager to ensure relevancy

Deleted: it will be the Association who delivers the communication

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Deleted: following the policy guidelines below:

Deleted: 2.4.05 Should the Member elect to use paper mailing labels, they are not to be removed from The Sea Ranch Association offices under any circumstances. Labels must be affixed in The Sea Ranch Association office area designated for this purpose by the Community Manager.

2.4.06 Should the Member elect to use an electronic mailing list, to be applied only by an outside printer or mailing house, the Member must submit the name of that entity on the application form, for preapproval by the Community Manager. The Sea Ranch Association will obtain from that entity the agreement to destroy the mailing list file immediately following the completion of the mailing; such agreement is required prior to release of the electronic information. In this agreement, The Sea Ranch will retain the right to periodically audit the third-party entity to ensure that the mailing list has been destroyed.

2.4.07 The Sea Ranch Association is not responsible for any costs of a Member mailing. Members provide stamps, prepaid envelopes, or postcards for their mailing.

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2.4.06 Should the Member elect to use an electronic mailing list, to be applied only by an outside printer or mailing house, the Member must submit the name of that entity on the application form, for preapproval by the Community Manager. The Sea Ranch Association will obtain from that entity the agreement to destroy the mailing list file immediately following the completion of the mailing; such agreement is required prior to release of the electronic information. In this agreement, The Sea Ranch will retain the right to periodically audit the third-party entity to ensure that the mailing list has been destroyed.

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OPT-OUT FORM

The Sea Ranch Association is required by law (Civil Code §5200(a)(9)) to maintain a Membership List including the name, property address, mailing address, and as of January 1, 2020, the member's email address. All members have a right to receive a copy of the Membership List and to contact other members about issues relating to the Association, such as an election of directors.

Members are entitled to opt-out of having their contact information shared with other members by notifying the association in writing. This opt-out shall remain in effect until changed by the member. Members who opt-out may still receive information from another member, but it will be the Association who delivers the communication via an alternate process that reasonably and timely accomplishes the purpose for the communication.

If you do not want your contract information shared with other members, please complete the opt-out form below and return it at your earliest convenience, by any of these methods:

- Submit an electronic form available at www.tsra.org
- Email this form to: lynn.b@tsra.org
- Mail this form to: TSRA c/o Lynn Bailey, PO Box 16, The Sea Ranch, CA 95497

For any questions, please contact Lynn Bailey at TSRA at lynn.b@tsra.org

OPT-OUT REQUEST FORM

I, _____ (please print name) choose to opt-out of having my contact information shared with other members. If a member requests my contact information, I agree that the Association may deliver information from a member to me via an alternative method. I confirm that my contact information is as follows:

Mailing Address: _____

TSRA Property Address: _____

Phone Number: _____

Email: _____

I ___ do ___do not(*choose one*) consent to receive electronic communications from the Association at the listed email address(es).

Signature _____ Date _____