

Issues for Consideration and Collaborative Decision making by the Board of Directors of the North Carolina Botanical Garden Foundation – 2023

The Governance Committee has recognized that there is a need for an update of the Bylaws of the Foundation. A current draft of proposed Bylaws changes is provided for directors to review before and discuss at the May 2023 meeting of the full Board of Directors.

It is important to remember that some details of how the Foundation works are contained in the Policies and Procedures or in the individual committee charters. Other principles of purpose and governance are included in the Articles of Incorporation and in the Associated Entities Agreement with the University of North Carolina-CH.

A major topic of the November 2023 board meeting will be the adoption of changes to the Bylaws. We want all directors to be informed and have time for full consideration of any changes. Bylaws are critical to the process by which we govern ourselves as a nonprofit entity. Our goal is to give directors a chance for a full, careful and civil discussion that will result in improved Bylaws.

The following are issues concerning the governance of the NC Botanical Garden Foundation that directors will be asked to vote on in November.

- 1) **How often should we meet as a Board.** For many years, the Board has met only twice a year, in May and November. The Governance Committee's research indicates to us that quarterly board meetings allow for the most meaningful engagement and best decision-making. NC law governing nonprofits and post-pandemic practice make it possible and often advisable to have meetings online. One proposal discussed was that the Foundation have two in person board meetings per year and two virtual meetings. While committee chairs could meet more often if needed, it may be better practice to have committees meet quarterly as well. There was no consensus among Executive Committee members. Therefore, this draft of the Bylaws provides for "at least three" Board meetings per year. Keep in mind that the Bylaws are general in nature and we do not need to specify format of meetings, which will be detailed in the Policies and Procedures. We seek the ideas and advice of the full Board with respect to how often the Board meets and how the directors can best engage and contribute in future Board meetings.
- 2) **Our role as a Land Trust.** Land trusts are nonprofit organizations that play a critical role in conservation throughout America. When the Foundation was set up in 1966, its role of serving as a land trust was of paramount importance in the founding documents. The Garden itself owns land as preserves and for other purposes. The Foundation also holds lands and, in some cases, conservation easements. The Foundation cannot delegate

our fiduciary responsibility as directors of a land trust to staff that do not report to us. We can and do rely on the Garden's staff to do most of the nuts and bolts land trust work such as identification, negotiation, land management and easement monitoring. Until recently, many members of the Board were not aware that the Foundation is a land trust. Therefore, the Governance Committee plans an educational session, with the assistance of the Conservation Committee, in the fall that will cover this vital topic. With respect to the Bylaws, the issue of the Foundation's land trust responsibilities concerns how those Conservation Committee members who are not Foundation directors participate. This draft provides that non-director members of the Conservation Committee will continue to have a vote in committee, but that they will be required to sign a Conflict of Interest Disclosure Form each year and abide by the Conflict of Interest policy of the Foundation.

- 3) **Establishing endowments with respect to Foundation land trust commitments.** In accepting conservation easements or a commitment to own and manage a nature preserve, the Foundation is agreeing to enforce the requirements in perpetuity. It has become accepted practice by many land trusts that an endowment be created to ensure that the resources are available to fulfill responsibilities. Currently, the *Policies for Acquisition and Management of Botanical Preserves and Conservation Easements* provide that "Adequate resources for stewarding and managing the site should be identified prior to acquisition," but it is not clear whether this is sufficient to ensure that the financial implications of accepting either easements or land to be owned by the Foundation have been analyzed and funding is secure.

- 4) **Financial Transactions and Budget Approval** Currently, the business staff of the Garden handles all bookkeeping and reporting for the Foundation. The Board approves an overall budget annually that shows total revenue and expenses. In the past year, the board approved a budget for both the Foundation's expenses (which are small) and the endowment and expendable funds (which are in the millions). An independent auditor presents the audit and is available for questions at the fall board meeting. We are extremely grateful to the Finance and Audit committees for their hard work. In amending Bylaws, the Governance Committee would like to know from the current directors what form and level of information you would like to see in order to fulfill your fiduciary duty.