

# NOTES FOR BOARD DIRECTORS TO CONSIDER IN PROPOSED CHANGES TO THE BYLAWS OF THE NORTH CAROLINA BOTANICAL GARDEN FOUNDATION

These notes accompany the ‘track changes’ Word version of the proposed Bylaws that were distributed at the May 2023 Board of Directors meeting. Some proposed changes have also been added to reflect the input of Directors at the May board meeting and subsequent recommendations from the Governance Committee and Executive Committee.

This guide is to facilitate discussion by the Governance Committee and the Executive Committee during their September and October meetings.

Note: Bylaws will be spelled without a hyphen throughout the new version.

## ARTICLE I: NAME AND PURPOSES

**May 2021 Bylaws:** There had not been any reference in this opening section to the fact that the NCBGF is an Associated Entity of UNC-CH. in

**Proposed Change:** The proposed draft adds Section 2, which states that NCBGF is a non-profit organization, but is also recognized as an Associated Entity of UNC-CH. The Associated Entity Agreement has been included in the Board Notebook, but there is a sense that awareness of this guiding document is sometimes low. Since the Foundation’s governance is guided by the annual agreement with UNC-CH, we felt that it was beneficial to include this reference clearly in the Bylaws.

Clerical: the following subsection numbers change.

## ARTICLE II: FOUNDATION MEMBERSHIP

**May 2021 Bylaws:** Section 3 stated that the Board of Directors works with Garden staff to define classes, privileges and cost of membership, but did not specify that the Board of Directors has final approval.

**Proposed Change:** The change makes clear that the Board of Directors will approve the way membership in the Foundation is defined. Now that the Development and Membership (membership function added since these Bylaws adopted) committee will be working closely with staff to increase and improve membership, there may be critical changes recommended. Since members are joining the Foundation – rather than the Garden – this change will emphasize the Board Directors are responsible for overseeing the terms of membership in our organization.

Clerical: one word change from specify to approve; one plural changed.

## ARTICLE III: DIRECTORS

**May 2021 Bylaws:** Section 1: Composition of the Foundation Board.

- 1) Administrative changes at UNC make the old reference to a specific Vice Provost potentially inaccurate. Current Bylaws include the Vice Provost for Academic and Community Engagement as an ex officio Board director.
- 2) Currently our practice has been that the most recent President of the Board stays on as a non-voting Director. But the way the Bylaws are worded, this could allow any past President to stay on as a Director

**Proposed Changes:** The proposed changes are to 1) make the “UNC-CH senior administrator to whom the Director of the Garden reports” an ex officio director. This will anticipate future administrative changes at UNC-CH and give the person who oversees the Garden a seat on the Foundation board, and 2) clarify that only the immediate past president of the Foundation continues as a Director. Unless the past president still has time remaining in their board term(s), they will be a non-voting Director.

Clerical: See markup.

#### Section 2: Honorary Directors

**May 2021 Bylaws:** Current Bylaws provide for naming honorary or emeritus directors by the Board. The practice has been that the Governance Committee considers who should receive this distinction and forwards that recommendation on to the Board.

**Proposed Changes:** Proposed change is to add: “upon the recommendation of the Governance Committee”

Clerical: See markup.

#### Section 4: Meetings

**May 2021 Bylaws:** The current Bylaws – and the practice of the Foundation –provide for 2 board meetings a year, in the spring and in the fall. This section allows for additional special board meetings to be called.

**Proposed Changes:** As the Foundation grows and becomes more effective and impactful, best practices in nonprofit governance would indicate that more meetings of the board should be held.

The initial proposed change was made to call for quarterly Board meetings. This is the language that was distributed before the May 2023 Board meeting.

At the May meeting, some Directors expressed a preference for “a minimum of 3” meetings. Because of limited discussion, it is not clear that this was a consensus view. Note that the ‘minimum of 3’ would allow for 4 or more full board meetings. This language and practice would also technically comply with the Land Trust Alliance’s Standards and Practices.

**This issue was considered by the Governance Committee on October 5. The Committee recommends that the Bylaws be amended to provide for a minimum of 3 meetings per year. The Governance Committee recommends eliminating the requirement that meetings be held in May and November to provide more flexibility to set the board meetings at the best dates for**

directors and Garden staff. Pending approval of the Executive Committee, these changes are reflected in the October 11 draft of the proposed Bylaws.

#### Section 5: Quorum

**May 2021 Bylaws:** Existing Bylaws provide that 50% of Board constitutes a quorum, but do not specify that action may be taken by simple majority vote of those participating in the meeting.

#### **Proposed Changes:**

Sentence clarifying that action may be taken by simple majority of those participating in meeting is included. Phrase in the current Bylaws, “with the approval of the President,” should be struck. If the opportunity to participate electronically is made available to some Directors, it should be available to all.

Clerical: See markup.

#### Section 6: Function

**May 2021 Bylaws:** This section previously stated that the Board of Directors “will adhere to” the Land Trust Alliance’s Standards and Practices. The Board passed a resolution in May 2018 to join the Land Trust Alliance and follow its Standards and Practices.

**Proposed Changes:** The draft would change the language from ‘adhering to’ to ‘be guided by.’ This language is more consistent with the Land Trust Alliance’s expectation of members who are not actively seeking accreditation as a land trust.

In addition, a sentence is proposed to be added to the Function section to clarify that the Board is obligated to comply with both two agreements:

- 1) The letter agreement, which is negotiated annually with UNC-CH and known as the “Associated Entity Agreement,” and
- 2) The Board adopted “*Policies for Acquisition and Management of Botanical Preserves and Conservation Easements.*”

It is considered appropriate and necessary to include reference to these 2 documents because the Associated Entity Agreement is essentially a contract that has a major impact on the governance of the Foundation and the policy governing land conservation is one that Directors were not aware of even recently.

#### **ARTICLE IV: OFFICERS**

**May 2021 Bylaws:** The May 2021 Bylaws include descriptions of the Officers and their duties. The version currently in effect includes a position of Assistant Treasurer, which is now considered unnecessary.

**Proposed Changes:** The major proposed change is to eliminate the position of Assistant Treasurer. The duties of each officer are clarified and made more consistent with the job descriptions developed for each officer.

Please note specific changes to officer duties in the markup.

## ARTICLE V: EXECUTIVE COMMITTEE

**May 2021 Bylaws:** The May 2021 Bylaws describe most of the authority and responsibility of the Executive Committee. The limitation on authority is that the Executive Committee does not have the power to amend the Bylaws.

**Proposed Changes:** The proposed change eliminates the position of Assistant Treasurer as a member of the Executive Committee.

The limitation on the power of the Executive Committee is extended beyond changing Bylaws to “**make final decisions as to the acquisition of land holdings and conservation easements.**” This is not a new limitation, but including it will complement other sections that make clear that full board approval is needed. These final decisions are the fiduciary duty of the Board of Directors and this is consistent with being guided by the Land Trust Alliance Standards and Practices.

**Clerical:** The ‘track changes’ draft does not show some parts of the current adopted Bylaws. Once the substance of this section is approved, a careful line edit will be necessary to make sure all changes are made correctly.

## ARTICLE VI: COMMITTEES

### Section 1: Standing Committees

The ‘track changes’ version of the Bylaws does not indicate that the addition of Membership to the Development Committee name is a change.

Subsection b. Proposed language: “At least fifty-one percent of each committee shall consist of active Board directors.” A co-chair of the Conservation Committee objected to this requirement being applied to the Conservation Committee, which has a number of members from other organizations who have served on the committee for many years.

**Proposed changes to the 2023\_03\_03 draft:** Possible language would be language above, plus “.....with the exception of the Conservation Committee. All Conservation Committee members who are not Directors of the Foundation will abide by the Foundation’s Conflict of Interest policies.”

Section 2: Nominations to the Board of Directors. This section provides that the Governance Committee acts as the nominating committee for the self-perpetuating board. The proposed addition clarifies that the Governance Committee also starts the process for naming honorary directors.

## ARTICLE IX: AMENDMENTS

**Clerical:** the word ‘that’ is included between ‘provided’ and ‘notice.’

## ARTICLE X: INDEMNIFICATION

This section of the Bylaws makes clear that the Foundation will cover expenses and other costs if sued in relation to service on the Foundation board. The current language says that this indemnification will not be provided if the person covered is found to have been negligent or have engaged in misconduct. The proposed amendment would add the word gross to modify negligence or misconduct. In other words, a Director would still be covered for mistakes or behavior that is less than gross negligence or misconduct.

## ARTICLE XI: CONFLICTS OF INTEREST

Key to good governance is ensuring that there are not conflicts of interest on the part of the decisionmakers governing the organization.

**May 2021 Bylaws:** The solution provided in the current Bylaws is for all Directors to read the Conflict of Interest Policy and sign and submit a Conflict of Interest Disclosure Form to the Governance Committee at the beginning of the calendar year.

**Proposed Changes:** The problem with identifying whether Conflicts of Interest exist is that some projects or actions undertaken in the name of the Foundation are not known to Directors until it is too late to identify and avoid a conflict or perception of conflict.

The proposed solution is to add a process to increase transparency within the Board and identify potential conflicts at a meaningful time. The proposed change is to add this sentence at the end of section 2: “In the interim, if any contemplated transaction by the Foundation could result in a conflict of interest, the Executive Committee shall inquire of all Board directors about a potential conflict.”