

## **Proposal to Amend the Articles of Agreement of The Ausbon Sargent Land Preservation Trust (the “Corporation”)**

At the 2019 Annual Meeting, the Board of Trustees will ask members to approve an amendment to the Corporation’s Articles of Agreement (the “Articles”). The amendment would add a new Article VIII to the Articles limiting the personal liability of the Corporation’s trustees and officers.

The amendment to the Articles would add the following as Article VIII:

The personal liability of a Trustee or officer to the corporation or to its members for monetary damages for breach of fiduciary duty as a Trustee or officer shall be eliminated or limited to the fullest extent permitted by N.H. RSA Chapter 292:2 and any other provision of New Hampshire law now or hereafter in effect

The Articles are the Corporation’s organizing document filed with the Secretary of State of New Hampshire, giving the Corporation the status of a New Hampshire nonprofit corporation. The original Articles were filed September 25, 1987.

In 1992, Chapter 292 of the New Hampshire Revised Statutes Annotated was amended to authorize nonprofit corporations to include a limitation of liability provision in their articles of agreement. The provision added to Chapter 292:2 states:

V-a. (a) The articles of agreement may contain a provision eliminating or limiting the personal liability of a director, an officer, or both, to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, an officer, or both, except with respect to:

(1) Any breach of the director's or officer's duty of loyalty to the corporation or its shareholders.

(2) Acts or omissions which are not in good faith or which involve intentional misconduct or a knowing violation of law.

(3) Any transaction from which the director, officer, or both, derived an improper personal benefit.

(b) This paragraph shall not be construed to eliminate or limit the liability of a director, an officer, or both, for any act or omission occurring before January 1, 1992.

By including a limitation of liability provision in a nonprofit corporation’s articles of agreement, trustees (who are “directors” for purposes of this law) and officers of the corporation are assured that their good faith actions on matters in which they do not derive an improper personal benefit will not result in personal liability.

Approval of the limitation of liability is advisable for the following reasons:

- Trustees serve the Corporation purely as volunteers, without compensation. It may be more difficult for the Corporation to recruit qualified Trustees and officers so long as the Articles do not contain the protection from personal liability offered by New Hampshire law.
- The Corporation did not make a conscious decision to leave the limitation of liability out of the original Articles. The limitation of liability provision was added to New Hampshire law after the Articles were initially filed.

- The inclusion of this limitation of liability is very common for nonprofit corporations, and constitutes a “best practice.” Even for-profit corporations, which compensate their directors and officers, have commonly adopted limitation of liability provisions in their corporate charters.
- The limitation of personal liability can discourage litigation that could harm the Corporation.

Article VII of the ASLPT Bylaws requires that an amendment to the Articles of Agreement be approved by a two-thirds majority of voting members at the Annual or a Special Meeting of Members. If approved, the amendment must be filed with the Secretary of State on Form NP-3, with a copy to the New London Town Clerk.