

# Merger

## An Introduction for Conservation Organizations



*A land trust may merge with another land trust or other conservation organization in order to more effectively advance the goals of each organization.*

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## Introduction

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### Summary

Two land trusts joined forces to advance their collective goals of protecting open space in Montgomery County, Pennsylvania. In 2012, after years of cooperation and successful project collaborations including easement co-holding and advocacy efforts, Montgomery County Lands Trust became an affiliate of the Natural Lands Trust.

### Simple in Concept, Complex in Execution

An organization may seek to merge some or all of its administrative functions and programmatic services with another organization for the purpose of more effectively advancing its mission, delivering improved or expanded program services, or making its operations more sustainable. An organization may explore merger as a potential way to improve upon its already well performing operation or to build upon a long-standing and productive working relationship with another organization. (See the [ConservationTools.org](http://ConservationTools.org) guide [Collaborative Opportunities for Land Trusts](#).) Or an organization may pursue merger in reaction to an organizational crisis or other unwelcome circumstance that creates a pressing need to find a new working structure.

Across the nation, land trusts partner with other non-profits to advance conservation efforts. This partnering increasingly leads to mergers. In 2012, Pennsylvania witnessed two announcements of county-scale land trusts merging with regional land trusts

in Pennsylvania. In 2011, two Pennsylvania land trusts announced mergers with nonprofits having complementary (but non-land trust) goals.

Mergers are complicated business transactions, probably the most sophisticated transactions a nonprofit will experience.<sup>1</sup> As such, this guide provides an introduction to the subject but does not provide a substitute for retaining experienced counsel to guide an organization through the process.

## Merger Scenarios

Scenarios that may lead to two or more land trusts merging include:

- A land trust in crisis or transition, concerned about its viability in the short or long-term, may look to join with one or more land trusts that have similar missions and that are working in the same or nearby territory.
- A small land trust may seek to bring to its work the capacity, staff and expertise of a larger land trust.
- A large land trust considering expanding its geographic scope or improving its service delivery to an area may see advantage in coupling with a smaller land trust already established in the area of interest.
- Two struggling land trusts may explore combining their respective assets and energies to create a single, more viable organization.
- Two or more healthy land trusts, long engaged in fruitful collaborations, may look to further boost their effectiveness and efficiency.

Interest in a merger may also arise when a land trust and a nonprofit engaged in non-land trust activities see the potential for synergy. Possible merger partners for land trusts include:

- Watershed associations and wildlife restoration groups;
- Trail and other outdoor recreation organizations; and

- Tree-planting groups.

## Potential Benefits

Land trusts that have completed a merger often boost their effectiveness. Benefits may include:

- Enhanced program and service delivery – a greater capacity to protect resources and manage conserved lands;
- Greater efficiency in the delivery of programs and services – more bang for the buck;
- Consolidation of administrative costs – one set of insurance, bookkeeping, audit and other expenses instead of two;
- Creating synergies – getting new ideas and energy from the pooling of expertise and resources under one roof;
- Eliminating unproductive struggle for resources – no longer competing for the same pool of volunteers, board members, staff, etc.; and
- New funding – both enhanced funding from past funders and the opportunity to tap into new funding sources.

## Potential Downsides

Mergers may have downsides, which may be inevitable or may be the consequence of an ill-advised or inadequately managed restructuring. They could include one or more of the following:

- Loss of donors who no longer feel connected to the merged organization or dislike the change for whatever reason;
- Loss of programs or services that do not match with the priorities of the merged organization; and
- Departure of valued staff or volunteers due to irreconcilable differences in organizational cultures or other change-induced causes.

## The Challenges

Determining whether the benefits provided by a merger outweigh the possible downsides is a key challenge in exploring a potential merger. This exploration can be hindered by barriers rooted in individual personalities and human nature:

- Individuals may strongly identify with an organization. A threat to the continuation of the organization may be viewed as a threat to the individual.
- A merger may change the power and control wielded by one or more individuals who may allow the desire for power and control to unduly shape their response to the potential restructuring.
- Staff concerns regarding the potential loss of jobs, employee benefits, organizational culture and prestige, whether or not stated openly, may be substantial and strongly felt; likewise for board members.
- Even if its mission is to be carried out by the new merged entity, the potential re-organization or loss of an institution (or just its name) may be seen as an abandonment of the mission. (This, of course, may be accurate if the merger is likely to result in the de-emphasis or loss of elements of an organization's mission.)
- One of an organization's programs may no longer be viable – merger or no. Merger discussions may focus attention on this previously unrecognized reality. Thus, even though the program's demise is inevitable, the move to merge may take the blame.
- Particularly in the outset of a merger exploration, the unknowns are many and both board members and staff may fill these knowledge gaps with their awareness of rocky mergers reported elsewhere.
- Disclosing sensitive and perhaps embarrassing issues, which is imperative for organizations to

determine whether a merger is appropriate, may be difficult.

## What You'll Need

To productively explore the potential for a merger, you will need:

- *Commitment.* You will want to have the support of and participation in the exploratory process by the leaders (staff and board members) of the organizations involved.
- *Time.* Exploratory discussions, due diligence and negotiations will require staff and volunteer time.
- *Patience.* It takes time to explore the issues and establish the solid relationships that will help the process come to a productive conclusion (whether or not merger is the ultimate product). Organizations can underestimate the time required to complete all the necessary tasks.
- *Communication.* Good communication is essential for building trust and avoiding misunderstanding.

If early discussions suggest that a good match appears possible, at some point the following will be needed in addition to the above:

- *Money.* The parties should be prepared to spend money on legal and consulting fees for due diligence and ultimately for bringing the merger to fruition.
- *Legal counsel.* The parties will want to make sure that they maximize their ability to identify and resolve potential issues as well as protect the future merged organization from "skeletons in the closet".
- *Facilitator.* The parties may want to pay a consultant to facilitate the exploratory process as well as guide the merger process.

## What Drives a Land Trust to Explore Merger?

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### A Drive to Do Better

A nonprofit organization may view a merger as a strategic way to advance its mission and goals and more effectively operate. The organization may be performing well but its leaders strive to take it to a new, higher-functioning level. One study found that a majority of nonprofits merged to increase their overall impact and capacity.<sup>2</sup>

### A Reaction to a Problem

In many cases, nonprofit organizations may view merger as a product of crisis or path of last resort. The driving force may come from within an organization, from without or result from a combination of internal and external factors. Examples of external forces largely outside of the organization's control include:

- Major funders re-prioritize their interests and reduce support;
- Land trusts are competing in an overcrowded service area;
- Economic downturn depresses philanthropy; and
- Government support is withdrawn or reduced due to policy changes or politics.

Internal forces that may come into play include:

- Disjuncture between board member capacities and organizational demands;
- Departure of long-time "irreplaceable" staff;
- Loss of energetic board members;
- Inability of nonprofit to respond to changing needs of the community;
- Rising costs for basic operation (personnel, rent, etc.) outstrip available resources; and
- Staff and volunteers who are stretched to the breaking point.

Marc Smiley, an organizational development specialist, reports that often it is a catalytic event – an event that threatens the stability of the organization – that forces a land trust to actively inventory its current resources and reassess future goals.<sup>3</sup> Typical catalysts are the loss of an executive director or a major funding source.

### Initiative Must Come from Within

An exploration of a potential merger that is pushed by a funder or advisor to an organization most likely will be less productive than one initiated by an organization's key staff or board members. According to David La Piana, author of numerous books on nonprofit mergers, "Most nonprofit leaders will balk at a third party's suggestion of a merger; it is an idea that must "dawn from within."<sup>4</sup> Nonprofit leaders need to feel vested in the process and *want* the process to succeed. The United Way's Collaboration Learning Project in Wisconsin found that the majority of nonprofit staff and board members surveyed emphasized the importance of internal decision-making as a critical factor in the success of a restructuring process.<sup>5</sup>

### Preliminary Work

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Only fools rush in. Good advice for any relationship, especially one that could significantly alter the structure of an organization, be it a successful organization or one in crisis. A merger should not be taken lightly. It brings fundamental changes that have far-reaching effects, and it requires research, careful consideration and due diligence.

When an organization's leadership considers a merger, it is important for them to review all options thoroughly, including the "do nothing" option, and to compare how each option will likely impact the organization's work and overall sustainability.

As discussed in the guide [Collaborative Opportunities for Land Trusts](#), communication and sharing ideas are the best strategies for beginning a long-term collaborative effort. The better organizations understand each other's work and trust one another, the more likely it

will be that they will come to the best decision – whether that is to merge or not.

### **Baby Steps – Collaborate on Small Projects**

Developing strong working relationships is obviously important for land trusts considering merger and can take time. Organizations find that collaborating together on small projects is a great way to “test the waters” and learn more about one another.

Often times, the desire for two or more organizations to merge in one fashion or another comes from an already strong working relationship. Through collaboration, organizations gain mutual trust, knowledge of each other’s missions and goals, and lose the competition mentality that often afflicts similar organizations working in a given region. The more that organizations can combine efforts, the more “naturally” a future collaboration or merger can develop.

For more on collaboration, see the guide [Collaborative Opportunities for Land Trusts](#).

### **Testing the Waters**

Talking through the possibilities of a merger internally and with potential merger partners is an important step that allows organizations to ease into the process slowly, learn about one another and establish trust amongst important stakeholders within the organizations.

When an organization begins the internal discussions of a potential merger, the partner organization may or may not have already been identified. There may be several potential organizations that might be a good fit, or there may only be one. The initial discussions between the organizations may consist of a delegation of leaders for each organization or may just be an informal discussion among executive directors.

Conversations may start out slowly as organizations on both sides may be reluctant to divulge internal or sensitive information with a new group, even if it is a group with which a relationship has already been established. It is perfectly reasonable to move slowly because both parties need to feel comfortable with one another and with the process. These initial discussions

should be informal and intended to simply explore the potential interest in moving forward.

During these initial discussions, organizations can learn more about one another’s missions, land holdings and land protection strategies, programs and services offered, organizational structure and culture, etc.

### **Internal Discussions and Actions**

Understanding how a merger will impact your own organization is critical. Land trust leadership should consider these preliminary actions before further exploring merger with another organization.

1. Review the land trust’s own strategic plan carefully to understand the organization’s goals and expectations for the coming years;
2. Discuss possible scenarios with board and staff;
3. Identify with board and staff overall goals and benefits; discuss carefully what the organization’s leadership hopes to gain;
4. “Air out” concerns among staff and board members and carefully talk through issues;
5. Identify or earmark sufficient financial assets that will cover the costs of merger if the organizations decide to proceed; and
6. Identify members of staff and board for appointment to a joint negotiating or merger committee.

### **The Cost of Merger**

The merger process can be intense and laborious. It can challenge a large organization and, as described in the Raritan Headwaters Association case study ([see Land Trust Merger Case Studies](#)), it can leave a small organization with little time for everyday activities, including fundraising.

In addition to the legal and consultant costs related to due diligence and negotiating and executing the merger agreement, organizations will need to dedicate significant staff hours to the process. And after com-

pleting the merger, organizations will have the costs of blending the merged organizations' operations.

Organizations can offset all or much of this cost through successful fundraising. Potential funding sources include:

- Foundations or major donors who already support the organization and want to help take it to the next level;
- Foundations who make capacity-building grants or have a particular interest in supporting nonprofit mergers, even if they do not generally provide financial support to the organization or to conservation; and
- In-kind contributions from professionals who can help with due diligence and other merger-related matters.

Although a merger may, in the long run, result in cost savings, it also may not. According to David La Piana:

Despite conventional wisdom, mergers themselves do not generate revenue or reduce expenses. In the short term, they actually require new money for onetime transactional and integration costs. Even in the long term, the act of merging itself did not lead to substantial cost savings for the vast majority of the mergers my firm has facilitated. Merged nonprofits can roll together annual audits, combine insurance programs, and consolidate staffs and boards. But they are also bigger and more complex and require more and better management—a cost that often exceeds the savings from combined operations.<sup>6</sup>

## Moving Forward with a Merger

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### Facilitating the Merger

Many organizations decide to hire a consultant to serve as facilitator through the negotiations process. A skilled facilitator can help the two parties stay focused on what is good for the collective work of the

merged organizations and help mediate any issues that arise.

A facilitator may be brought in early in the process to assist the organizations in establishing their merger team and moving initial discussions along between the two parties. Or a facilitator may be brought in after a memorandum of understanding has been completed to help negotiate the specific terms of the merger agreement.

If a facilitator is to be hired, it is important that she serve each organization impartially and fairly – both in reality and in the perception of each organization. To this end, the two organizations should collectively issue a request for proposals and be in full agreement on the selection and the hiring terms.

### Joint Merger or Negotiation Committee

In most cases, the merging organizations appoint representatives to a working group, often called a joint merger or negotiating committee, which serves to broker an agreement between the merging parties. In addition to board and executive staff designees, it may be helpful to include others to ensure all departments of the organization feel vested and represented in the process.

Leadership or a facilitator should establish benchmarks and game rules for the committee to conduct its work and report back to the organizations' executive committees or full boards. The expectations and responsibilities of committee members should be clearly defined. Committee members should:

- 1) fully understand their role and responsibilities and know that ultimately it will be up to the organizations' boards to finalize any agreement;
- 2) feel free to speak on behalf of their nonprofit;
- 3) support a responsible exploration of potential merger (even if they may not yet be personally convinced that it is the right action to take);
- 4) negotiate in good faith on behalf of their nonprofit; and
- 5) collectively have the knowledge necessary for developing an agreement.

## Memorandum of Understanding or Intent to Merge Resolution

Once the organizations determine there is substantial potential for a successful merger, they should develop a memorandum of understanding (MOU). The MOU serves to outline “the objectives and key terms that have been discussed, as well as to memorialize mutual promises of confidentiality, agreement on payment of fees and costs of the merger process, and other key terms that may emerge in the preliminary discussions.”<sup>7</sup> Alternatively, these terms may be set down in the form of a letter of intent or an intent to merge resolution.

David La Piana explains that when organizations pass an intent to merge resolution, they reaffirm and strengthen their commitment to the process. “An intent-to-merge resolution is not a legal document – it is a document of good will between the organizations.”<sup>8</sup> The resolution, or MOU, signifies that both parties are not only willing to talk but also are serious about moving forward.

According to Jerald Jacobs, attorney and author of “All About Mergers of Nonprofit Organizations”, the agreement between the two (or more) organizations should affirm no commitments are being made by signing this document and “no risk or liability arises if the discussions are suspended or terminated”. He also suggests that costs incurred through this process be divided equally or according to a formula agreed upon by all parties.<sup>9</sup>

According to CompassPoint.org, the resolution or MOU should affirm the following:

- the intent of both parties to pursue a merger or restructuring relationship;
- the agreement to not consider other mergers/restructuring relationships with other organizations during this exploration process [until specific date];
- the intent of both parties to invest their resources and pursue additional funding for the purpose of merging or restructuring;
- the ability to inform organization stakeholders of the process; and

- the authorization of specific individuals to represent each organization during the exploratory process.<sup>10</sup>

## Outreach to Key Stakeholders

Once an MOU or resolution is passed by both parties, the two organizations should identify key stakeholders that should be informed of the exploratory process and potential merger. Staff or board members should make direct and personal connection with these stakeholders so that they can address any questions or concerns upfront and, ideally, obtain their support of the process.

## Negotiations

Once the organizations have agreed to pursue a merger and completed an MOU or passed a resolution, negotiations must begin on the specific terms or conditions of the merger agreement. Again, a skilled facilitator can be very useful in this process.

CompassPoint.org’s publication, “[The M Word: A Board Member’s Guide to Mergers](#)”, states that the key points to resolve in merger negotiations are:

**Timeline:** Which matters have to be decided before the merger decision? When does what happen? For instance, if the merged organization will adopt a new name, does it need to be agreed upon prior to the legal enactment of the merger?

**Mission and vision:** Which mission and vision will the merged organization follow? Will new mission and vision statements be created? Who will participate in their creation and their adoption?

**Board of Directors:** Who will be the board chair? Who will be on the board? Will new bylaws need to be created or will the merged nonprofit adopt the bylaws of one of the existing organizations?

**Executive leadership:** Who will be the lead staff person? Will the other ED remain with the merged organization and if so, in what capacity and for how long?

**Budget:** Which programs will the merged organization maintain? Which personnel are necessary to conduct those programs and ensure the smooth op-

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eration of the nonprofit? What revenue can the merged organization expect to retain and attract?

**Organization name:** Which name will the merged organization use? Will a new name be selected?

**Corporate structure:** Will the two (or more) corporations merge? Will one dissolve and transfer its assets to the other? If so, which will dissolve?

**Programs:** Are there any agreements about program maintenance or closure that need to be decided prior to the merger?

**Location:** Where will headquarters be housed? Will more than one location remain open under the merged organization?

In addition, due diligence requires that the committees also examine key elements of the current organizations' past and current situations to gain a fuller understanding of what the merged organization will "inherit":

**Debt:** Will the merger require the absorption and management of a significant level of debt?

**Pending or anticipated legal matters:** Does either organization have a pending or anticipated lawsuit?

**Labor unions:** Does one of the pre-merger organizations hold a union contract? If so, how will the contract be interpreted for the new organization?

**Membership:** If one of the original organizations is a membership organization, is a membership vote required to enact the merger? How will the merged organization keep or change membership benefits?

**Bequests and endowments:** What is necessary to ensure that the merged organization is eligible to receive bequests that were made to one or both of the original nonprofits? Is there an endowment restricted by donors that must be accommodated to honor those restrictions?

**Grants and contracts:** Are there funds received or committed from foundations, or contracts with government or other entities, that will need to be transferred to the newly merged organization?

*The above excerpt is reprinted with permission from *The M Word: A Board Member's Guide to Merger*, © 2005 CompassPoint Nonprofit Services.<sup>11</sup>*

In addition, land trusts have issues specific to their missions that they will want to consider:

**Stewardship funding:** Has each organization set aside or provided for stewardship funding adequate to cover likely future stewardship needs, whether for conservation landholdings or easements?

**Landholdings:** Will the merged organization respect the existing plans and expectations of the pre-merger organizations in managing the landholdings to come under its charge?

**Donor expectations:** Is one organization or the other honoring in its management of a land holding what it believes to be a land donor's wishes – wishes that were not expressly written but, if violated, would potentially cause of ill will?

**Conservation easements:** Is either organization managing an easement violation or amendment request? If the matter will not be resolved prior to merger, how will the new organization proceed?

**Avoiding merger of interests:** If one organization holds a conservation easement on the land owned by the other, how will the parties address the non-merger of these distinct property interests? Will the land or easement be conveyed to a third party?

**Conservation Priorities:** How will the merger impact the priorities of the new organization in terms of identifying future lands for protection?

## Due Diligence

### Gaining Knowledge to Make Informed Decisions

Due diligence in the merger process is the systematic review of the legal and financial conditions of one's



potential merger partner(s). The legal component of the due diligence process should be completed by attorneys and the financial portion conducted by qualified accountants.<sup>12</sup>

A land trust board cannot responsibly make a merger decision without first gaining the knowledge that comes from exercising due diligence on its merger partner(s). Therefore, once the parties have clearly determined an interest in moving forward and establishing a formal merger agreement, each organization should undertake the due diligence process.

Due diligence is not inexpensive, which is why, before hiring legal and financial consultants, the land trusts' leaderships should have a strong interest in completing the merger. Placing due diligence later in the process enables the parties to avoid considerable expense if their pre-due diligence discussions lead them to conclude that merger is not desirable. Conversely, placing due diligence earlier in the process can help the parties avoid failing the expectations of stakeholders and wasting staff and volunteer energy in unnecessary discussions and negotiations in the event that the due diligence uncovers a deal killer.

In its publication, "[The M Word: A Board Member's Guide to Mergers](#)", CompassPoint Nonprofit Services identifies the corporate, financial, fundraising and personnel documents that the organizations should exchange during due diligence:

Corporate documents

- Incorporation papers
- Federal and state tax exemption letters
- Bylaws
- Rosters of board members
- Most recent Forms 990 and state filing forms

Financial

- Most recent audited statements
- Most recent internal financial statements and budget
- Lists of significant assets (e.g. property, major equipment and major intangible assets such as copyrights)
- Lists of insurance coverage

- Statement regarding any current or anticipated debt
- Statement regarding pending, anticipated or threatened lawsuits

Fundraising

- Lists of foundation and corporate funders with amounts, restrictions and expiration dates
- Lists of government grants and contracts with amounts, restrictions and expiration dates
- Description of individual donor gifts with names omitted

Personnel

- Lists of employees, titles and pay rates
- Personnel policies
- Union contracts, if relevant
- Schedule of employee benefits, costs and utilization rates (p. 16)

*The above lists are reprinted with permission from [The M Word: A Board Member's Guide to Mergers](#), © 2005 CompassPoint Nonprofit Services.<sup>13</sup>*

**Confidentiality**

Sharing this information requires a great deal of discretion – some organizations may decide to sign a confidentiality agreement to ensure that the information shared is kept between the involved parties.

**Perfection Not Required**

Even if due diligence finds that a merger partner is less than or far from perfect, the land trust board may still decide to proceed. The key matter is that the board conducts sufficient inquiry and gains sufficient knowledge to make informed decisions.

**Completing the Merger**

**Legal Counsel Needed**

This section only touches on the legal complexities involved with merger. Each organization should be represented by its own legal counsel to ensure that the merger process is brought to a successful conclusion and that legal requirements are fully satisfied.

### **Merger Agreement**

Once the parties have negotiated key terms and have completed the due diligence process, they can move forward with preparing the merger agreement to finalize the process and legally unite the organizations. The merger agreement will document the understandings arrived at, the arrangements made and the commitments agreed to during the negotiations and the due diligence process. The parties will also agree to execute any actions required by state law to complete the merger.

The organizations' boards of directors must approve the merger agreement in order for the merger to be finalized. Depending on the form of corporation and other matters, the approval of organizational members or third parties may be necessary to complete the merger.<sup>14</sup>

### **Form of Merger**

A merger may take the form of the organizations legally merging themselves into a new single entity. More likely however, legal counsel will recommend that one organization, typically the smaller, less complex of the two parties, transfer all of its assets to the other organization and then dissolve. Under dissolution, the dissolving organization must conduct an inventory of assets and liabilities, dispose of its assets, and satisfy its debts and liabilities. The dissolution is voted on by the organization's board of directors, and if the organization has members, a member vote is also required.<sup>15</sup> In addition, the organization must satisfy any state requirements (e.g., in Pennsylvania the organization must comply with the [Nonprofit Corporation Law of the Commonwealth of Pennsylvania](#) and complete the necessary dissolution forms.) For more information on dissolution, see [Winding Down: A Risk Management Checklist](#) by the Nonprofit Risk Management Center.

While the latter described process may not be a merger in a *technical* sense, it is typically labeled and viewed as a merger for most other purposes including communicating with stakeholders and the public.

### **Bringing the Merger into Effect**

In Pennsylvania under [15 Pa.C.S.](#), once the merger has been approved, "Articles/Certificate of Merger" ([Form DSCB: 15-1926](#)) must be completed and submitted to the Department of State, Corporate Bureau, in order to bring the merger into effect.

## **A Smooth Merger Process – A Recap of Key Principles**

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### **Mission is Priority**

In real estate, the chief concern is location, location, location. For nonprofit organizations, the number one priority when contemplating merger should be mission, mission, mission. Organizations must consider their overall mission and strategic purpose in aligning themselves with potential partners.

### **Strong Leadership**

Strong leadership will make the merger process – with its many challenges and long-term impacts – flow more smoothly and with better outcomes. Depending on the complexity of the organizations, the board should make the merger process its highest priority, providing guidance to staff and empowering executive staff when needed to move the process forward. The board should stay involved throughout the entire transition and help to determine reasonable benchmarks, encourage regular progress reports and implement evaluation tools to ensure the process is continuing in the best interest of the organization.

### **Engage All Levels of Staff and Board**

Often times when a merger fails, it comes down to not fully engaging key members of staff and board into the process and allowing them to feel vested in the process. If just the board president and executive director are moving the process forward, other levels of staff may feel threatened or out of the loop. For a functional merger, staff members should embrace and feel connected to the process.

### **Good Communication**

You cannot have good collaboration without good communication. This means communication with an-

yone that will be impacted by the merger, including staff of each organization, members and constituents, funders, etc. Don't assume that even those on staff understand how the merger will impact them and their work; make a point of keeping them in the loop and being available to answer questions.

### Strong Representation

It's important for each organization to feel vested in the restructuring and therefore have representation in the decision-making process; the size and assets of each organization as well as the ultimate role that each organization will serve after the merger may determine how the representation is decided.

### Discuss with Funders

No doubt funders will be interested in learning about your organization's plans to merge or restructure because of how it will impact your funded work. It is a good idea to have a conversation with major funders before the process moves too far along so that a) they hear it from you as opposed to the media or another organization; b) you can explain in your own words the reasoning for the venture; and c) you can answer any questions that they may have directly.

### Invest the Necessary Time and Resources

Many organizations underestimate the amount of work, time and resources that are required. Organizations should earmark a healthy budget and timeline for getting the merger completed. Talk with organizations that have gone through the process to better understand the road ahead.

### Cultural Leadership

An organization's culture is the collective behaviors and values of its staff and board. This culture can impact how the organization delivers services, makes decisions, treats staff, and interacts with other groups or stakeholders. In mergers, culture clash can be a real stumbling block and is often something that receives little consideration until too far into the process. Organizational leaders can work with staff and board to reconcile the differences in culture, and facilitate the establishment of a new desirable culture that fits the new organization.

## The Merger is Only the Beginning

After the merger is completed from a legal standpoint, the *new* organization has much work to do in integrating the goals and operations of the old organizations. Work items to consider include:

- **Communications plan:** Whether it is one organization being dissolved into another or a whole new organization established, the organization should consider a strategic communications plan. The *new* organization may need to take a fresh look at its messaging and branding, logo and letterhead, brochures and outreach materials, website, social networking tools, etc.
- **Data management:** Unifying databases can prove challenging when organizations have different software systems for tracking donors, landowners, easements and other matters and different protocols for entering and maintaining data.
- **Administrative records:** The organizations will have had different filing and reporting systems for easements, contracts, financials, etc.
- **Insurance coverage:** If a new organization is formed, insurance policies (liability, directors and officers) will need to be acquired. If an organization assumes control of programs and assets of another organization through asset transfer, the organization will need to review its insurance policies to ensure they are sufficient. Insurance benefits will also need to be extended to any new employees, eligible for benefits, as a result of the merger.
- **Strategic planning:** A strategic planning process might be desirable depending on whether the organization's leadership needs guidance in implementing newly shared programs and services.

## Alternatives to Full Mergers

Sometimes, organizations identify a close formal relationship with sharing of resources and operational capacity as beneficial but see that something short of a full merger of the organizations is optimal or necessary. For them, options that involve a close formal relationship but that constitute something less than a full merger are available.

Establishing these relationships may involve much of the same work that is required of full mergers as described in this guide. (These relationships may lead to full mergers over the course of time.)

The most typical of these relationships, described below, are the parent-subsidiary relationship and the supporting organization-supported organization relationship.

### Parent-Subsidiary Relationship

A parent-subsidiary structure enables one organization to exist and operate effectively by taking advantage of another, better established, organization's administrative and technical resources. For example, a struggling community-based land trust may become a subsidiary of a larger regional land trust. The arrangement could allow the small land trust to maintain its identity with the community even while its parent land trust provides some or most of the administrative support it needs to function. The parent land trust may view the small land trust as providing the volunteers or local staff needed to do the work that it would like to see happen in the community, such as identifying land conservation projects, meeting with landowners or leading fundraising efforts. This arrangement can be particularly beneficial when landowners do not feel comfortable donating an easement to a larger regional organization that is not connected closely to the community.

A defining feature of a parent-subsidiary relationship is that the parent controls the composition of the subsidiary's board. The parent may elect all or a subset of its board to the subsidiary board. It may also elect employees of the parent organization or other persons to the board and give them in turn the power to elect

other members to the board. In practice, the parent's control of the subsidiary's board can range from highly visible to nearly invisible.

An existing organization that is to become the subsidiary may maintain its own 501(c)(3) structure or rely solely on that of the parent organization. Some subsidiaries may engage in strategic planning independent of the parent; others may plan in close coordination. Parent organizations often prefer input since a subsidiary's decisions can impact the parent organization, even if each maintains its own 501(c)(3) status.

Sometimes contractual obligations or other financial or legal barriers make a full merger infeasible, even though it is desired by the organizations. According to La Piana Associates, many organizations utilize a parent-subsidiary relationship temporarily until a full merger can take place.<sup>16</sup>

See the case studies below for examples of existing organizations establishing parent-subsidiary relationships.

### Supporting Organizations

As described in 509(a)(3) of the Internal Revenue Code, supporting organizations are organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purpose of one or more organizations. Supporting organizations, often called 509(a)(3) groups, do not need to meet IRS' [public support test](#) (as described in [sections 509\(a\)\(1\) and 170\(b\)\(1\)\(A\)\(vi\) of the Internal Revenue Code](#)) but enjoy all the advantages of being a public charity.

A supporting organization must have one of three relationships with the supported organization(s), all of which are intended to ensure that the supporting organization is responsive to the needs or demands of the supported organization(s) and intimately involved in their operations and that the supported organization is motivated to be attentive to the operations of the supporting organization.

- Type I resembles a parent-subsidiary relationship in which supporting organizations are operated, supervised, or controlled by the

supported organization. The “subsidiary” must have a majority of its governing board appointed by the “parent” organization.

- Type II resembles a brother-sister relationship in which supporting organizations are supervised or controlled in connection with the supported organization.
- Type III has the most relaxed standard for scrutiny in which supporting organizations are operated in connection with the supported organization. Type III relationships have a two-pronged requirement: (a) The Responsiveness Test: the supported organization “must have a significant voice in the policies of the supporting organization”; and (b) The Integral Part Test: The supporting organization has a significant role in the operation of the supported organization.<sup>17 18</sup>

For more information, see IRS’ IRC 509(a)(3) Supporting Organizations Guide Sheet for [Types I and II](#) and for [Type III](#).

See the case studies below for examples of existing organizations establishing supporting-supported organization relationships.

### Accreditation Considerations

The Land Trust Accreditation Commission requires organizations with related entities (including corporations, supporting organizations, partnerships, LLCs, LLPs, or other affiliated entities) to submit information about each organization, the level of information varying upon the relationship and role of each entity. The Commission requests three levels of disclosure: basic, intermediate and complete; and provides further guidance on how the required level of information is determined in the [Multiple Corporations and Accreditation fact sheet](#). In addition, the Commission has established a policy entitled [Application Requirements for Land Trusts with Multiple Corporate Structures](#), which provides further instructions. Failure to disclose adequate information on these relationships can delay or complicate the accreditation application process. Visit the Commission’s

website ([www.landtrustaccreditation.org](http://www.landtrustaccreditation.org)) to obtain the most up-to-date direction on its requirements.

## Related Resources at ConservationTools.org

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## Submit Comments and Suggestions

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*The Pennsylvania Land Trust Association would like to know your thoughts about this guide: Do any subjects need clarification or expansion? Other concerns? Please contact Andy Loza at 717-230-8560 or [aloza@conserveland.org](mailto:aloza@conserveland.org) with your thoughts. Thank you.*

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<sup>1</sup> Jacob, Jerald A (2008). *Association Law & Policy*. "All About Mergers of Nonprofit Organizations". July 2008. Retrieved from <http://www.nonprofitlawblog.com/home/2008/10/mergers-and-due.html>

<sup>2</sup> Dewey and Kaye. [Nonprofit mergers: An Assessment of Nonprofits' Experiences with the Merger Process](http://forbesfunds.org/files/report2-deweykaye.pdf). *Forbesfunds.org*, <http://forbesfunds.org/files/report2-deweykaye.pdf> (accessed June 1, 2012).

<sup>3</sup> Anderson, Jennifer. "Managing Mergers: How to Combine Forces to Boost Finances and Capacity," *Saving Land*, Winter 2011, 14-17.

<sup>4</sup> La Piana, David. (1998) [Beyond Collaboration: Strategic Restructuring of NonProfit Organizations](http://www.lapiana.org/downloads/BeyondCollaboration.pdf). Washington, DC: The James Irvine Foundation, National Center for Nonprofit Boards. Retrieved from <http://www.lapiana.org/downloads/BeyondCollaboration.pdf>.

<sup>5</sup> United Way of Greater Milwaukee et al (2004). [Nonprofit Collaboration & Mergers: Finding the Right Fit. A Resource Guide for Nonprofits](http://www.nonprofitcollaboration.org). (Milwaukee: 2004), p. 7.

<sup>6</sup> La Piana, David (Spring 2010). *Merging Wisely*. *Stanford Social Innovation Review*. Retrieved from [http://www.ssireview.org/articles/entry/merging\\_wisely](http://www.ssireview.org/articles/entry/merging_wisely).

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<sup>8</sup> Vergara-Lobo, Alfredo, Jan Masaoka and Sabrina L. Smith (2005). [The M Word: A Board Member's Guide to Mergers](http://www.compasspoint.org/sites/default/files/docs/research/445_mwordfinal2005.pdf). San Francisco, CA: Compass Point Nonprofit Services (CompassPoint Nonprofit Services, 731 Market St., Suite 200, San Francisco, CA 94103; 415.541.9000; info@compasspoint.org; [www.compasspoint.org](http://www.compasspoint.org)). Retrieved from [http://www.compasspoint.org/sites/default/files/docs/research/445\\_mwordfinal2005.pdf](http://www.compasspoint.org/sites/default/files/docs/research/445_mwordfinal2005.pdf)

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<sup>10</sup> Vergara-Lobo, Alfredo, Jan Masaoka and Sabrina L. Smith (2005). [The M Word: A Board Member's Guide to Mergers](http://www.compasspoint.org/sites/default/files/docs/research/445_mwordfinal2005.pdf). San Francisco, CA: Compass Point Nonprofit Services (CompassPoint Nonprofit Services, 731 Market St., Suite 200, San Francisco, CA 94103; 415.541.9000; info@compasspoint.org; [www.compasspoint.org](http://www.compasspoint.org)). Retrieved from [http://www.compasspoint.org/sites/default/files/docs/research/445\\_mwordfinal2005.pdf](http://www.compasspoint.org/sites/default/files/docs/research/445_mwordfinal2005.pdf)

<sup>11</sup> Vergara-Lobo, Alfredo, Jan Masaoka and Sabrina L. Smith (2005). [The M Word: A Board Member's Guide to Mergers](http://www.compasspoint.org/sites/default/files/docs/research/445_mwordfinal2005.pdf). San Francisco, CA: Compass Point Nonprofit Services (CompassPoint Nonprofit Services, 731 Market St., Suite 200, San Francisco, CA 94103; 415.541.9000; info@compasspoint.org; [www.compasspoint.org](http://www.compasspoint.org)). Retrieved from [http://www.compasspoint.org/sites/default/files/docs/research/445\\_mwordfinal2005.pdf](http://www.compasspoint.org/sites/default/files/docs/research/445_mwordfinal2005.pdf)

<sup>13</sup> Vergara-Lobo, Alfredo, Jan Masaoka and Sabrina L. Smith. "[The M Word: A Board Member's Guide to Mergers](http://www.compasspoint.org/sites/default/files/docs/research/445_mwordfinal2005.pdf)". Compass Point Nonprofit Services, 2005.

<sup>15</sup> Nonprofit Risk Management Center (2009). "[Winding Down: A Risk Management Checklist](http://www.nonprofitrisk.org/library/factsheets/Checklist_for_Winding_Down.pdf)". Retrieved from [http://www.nonprofitrisk.org/library/factsheets/Checklist\\_for\\_Winding\\_Down.pdf](http://www.nonprofitrisk.org/library/factsheets/Checklist_for_Winding_Down.pdf)

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<sup>16</sup> La Piana Consultants, Inc. "[Types of Strategic Restructuring](http://www.lapiana.org/Strategic-Restructuring/FAQs/Types-of-Strategic-Restructuring)". Retrieved from <http://www.lapiana.org/Strategic-Restructuring/FAQs/Types-of-Strategic-Restructuring>.

<sup>17</sup> Internal Revenue Service. *Section 509(a)(3) Supporting Organizations*, 2012. Retrieved from <http://www.irs.gov/charities/article/0,,id=137609,00.html>.

<sup>18</sup> Internal Revenue Service. Chapter 76. Exempt Organizations Examination Guidelines. Retrieved from [http://www.irs.gov/irm/part4/irm\\_04-076-003.html - d0e1149](http://www.irs.gov/irm/part4/irm_04-076-003.html-d0e1149).