An Introduction to Mergers for Land Trusts

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Founded in 1982, the Land Trust Alliance is a national land conservation organization that works to save the places people love and need by strengthening land conservation across America. The Alliance represents 1,000 member land trusts supported by more than 100,000 volunteers and 5 million members nationwide. The Alliance is based in Washington, D.C. and operates several regional offices. More information about the Alliance is available at www.landtrustalliance.org.

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Acknowledgments

In laying out these guidelines, which are based on established best practices, the Land Trust Alliance hopes land trust leaders can better understand the potential benefits of mergers, as well as likely paths to success in consolidation. A big thank-you to the Cardinal Land Conservancy (Ohio), Colorado Open Lands and the Midcoast Conservancy (Maine), which so generously shared their experiences. Including real, on-the-ground stories of merger and lessons learned has been invaluable to this publication. In addition, we wish to thank Cristina Santiestevan and Scott Schaffer for providing technical content, and offering invaluable insight that helped shape this publication.

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Introduction

Mergers and other types of formal organizational partnerships have become more prevalent within the land trust community in recent years as a range of new challenges and opportunities have arisen. With the pace of development continually increasing and public funding for conservation decreasing, the need for private land conservation is more urgent, complex and expensive than ever before. In order for land trusts to meet their missions and uphold the permanence of their conservation work, they must be sustainable. To meet this challenge, land trusts must expand their capabilities and leverage their resources more effectively, and many are discovering that working with others is indispensable to their success.

Collaboration begins with groups forging partnerships, which can be complex and often require a significant commitment of resources, including time, funding and expertise. However, through these partnership structures, land trusts can improve their impact, effectiveness and sustainability. While many land trusts begin partnerships with sharing information, cooperation on land protection projects is the most common form of collaboration. This type of collaboration ranges from single project joint ventures to more complex multiparty projects to large-scale landscape initiatives involving many partners. Some land trusts enter into broader cooperative relationships on land protection efforts within overlapping service areas, while other collaborative models among land trusts involve sharing staff. In some cases, a collaborative relationship may result in a merger of the partners into a single organization.

A merger is not the right solution in every situation, but it can help land trusts achieve synergies they may not be able to attain through other forms of collaboration. By joining forces through mergers, land trusts can pool their resources and increase their capacity to protect and steward more land, consolidate administrative functions, enhance knowledge and expertise and attain greater efficiency in program delivery. Combining membership, donors and volunteers also creates a more sustainable foundation to ensure the long-term viability of the resulting organization. Moreover, land trusts that merge are able to integrate their local conservation efforts into a broader conservation vision to expand and deepen their impact.

This publication seeks to be a helpful resource to land trusts considering merging, with an overview of the process and key junctures, tips from organizations that have been there and tools to make the process easier. Chapter one lays out what a merger means and the conditions under which land trusts seek to merge. It also provides an overview of other forms of collaboration that do not rise to the level of a merger. Chapter two presents the benefits and challenges involved in a merger. Chapter three details the merger process itself and identifies what land trusts should expect and prepare for in each stage. Included here are a series of best practice tips for making the process run more smoothly. The chapter also includes an overview of the steps in a typical merger. Included throughout this publication are case studies that illustrate different types of mergers and scenarios that led to a merger. The appendices contain handy checklists to help land trusts through the merger process.

Chapter 1

Mergers and Alternative Forms of Collaboration

Mergers

A merger is a legal process through which two or more organizations combine their resources, assets and liabilities to form a single entity, known as the *surviving organization*. This surviving organization may be an entirely new entity or—more often—will retain the tax identity of one of the merging organizations and may adopt a new name and brand identity.

The reasons for pursuing a merger are varied. Here are some common scenarios that lead to mergers:

- *Opportunity for greater impact.* Land trusts may face unmet conservation needs in their service areas, may desire to expand geographically or may wish to deepen or broaden their programming. A merger can be a vehicle for accomplishing any of these goals.

- *Need for more capacity.* Small land trusts may be constrained by limited capacity. A merger can enable these organizations to deepen or to specialize staff or volunteer skills, reinvigorate the board or improve operational infrastructure. A larger entity can benefit from efficiencies and economies of scale. When considering the optimal size of an organization, it is important to consider both the number of people needed to meet its mission and goals and the carrying capacity of the region it serves (how many land trusts a community can support).

- *Leadership transition.* Mergers often happen opportunistically, and the transition of an executive director or the turnover of founding board members often becomes the

catalyst for change. Whether transitions are planned or sudden, they can present a window to consider strategic restructuring.

- *Need to enhance sustainability.* Land trusts make long-term commitments to their communities and they may face challenges fulfilling these commitments. By creating a more robust organization, a merger can reduce the risk of fluctuating operating budgets or human resources and maintain the specialized personnel needed to uphold their conservation commitments.

- *Financial crisis.* A decline in financial position—whether through a single event or the gradual waning of fiscal resources—may threaten the survival or effectiveness of the impacted organization. In such instances, a merger with another land trust enables the financially distressed land trust to protect its properties and other assets.

Case Study: Colorado Open Lands

Merged: March 1, 2016

Merging Organizations

- Colorado Open Lands
- Legacy Land Trust

Reasons for Merger

- Solve financial challenges
- Ensure perpetuity of conservation projects
- Generate greater conservation impact
- Enhance public trust in shared geography

Recommendation for Other Land Trusts: Take a systematic, phased approach to a merger.

Colorado Open Lands (COL) and Legacy Land Trust (LLT) had been discussing ways that the two organizations could partner in northern Colorado since May 2014. These conversations started as COL was finalizing a new strategic plan that identified the region as a conservation priority because of its outstanding agricultural and natural values and projected population growth. During the spring of 2015, COL and LLT's expanded conversations began revealing a natural partnership opportunity. LLT had a number of potential conservation projects in its service area, but lacked the capacity to act on them, while COL was hiring a new northern Colorado project manager who was eager to assist. Around the same time, the relatively new executive director of LLT left, and board members discovered they were facing significant financial challenges that seriously threatened the organization's sustainability.

LLT had a long history of conservation success but had fallen on hard times. Founded in 1993 and based in Fort Collins, LLT held 109 easements on nearly 43,000 acres of land and had a staff of three and a dedicated board of directors. During a downturn, the organization tapped its stewardship fund to pay operating expenses (including staff) in the form of intra-organizational "loans" and was also projecting a $68,000 loss in revenue by the end of FY 2014. With the support of a consultant funded by the Land Trust Alliance, the board began looking seriously at the future of LLT and how it could continue to operate sustainably.

The LLT board decided that its first priority was to get spending under control. It laid off the staff, keeping only a part-time administrator on contract and closing the office. It agreed not to take on any new conservation easement projects until a clear decision was made about the future. Two board members agreed to be responsible for the conservation easement monitoring program, with back-office assistance from the contract administrator and field assistance from other board members. The conservation director agreed to stay on as an adviser to the board in either a paid or unpaid capacity (she did some of both).

LLT's hope was to use 2015 to stabilize its finances and to begin the process of rebuilding the organization. In 12-18 months, the board hoped to have brought in enough funding to hire a part-time staff person and to have started the process of restoring the stewardship fund. However, before it could do any of this, it needed to navigate the transition to an organization "staffed" by the board. The board also had to bring together a constituency that would support rebuilding the stewardship fund, as well as the financial stability of the organization as a whole. Recognizing the enormity of the tasks, the Land Trust Alliance was able to secure a grant from Great Outdoors Colorado (GOCO) to provide LLT with a professional mentor to guide it through this transition. Despite everyone's best efforts, by mid-2015 the board had made limited progress toward stabilizing the organization. It became clear that full revitalization of the land trust was unlikely and that a merger was the best option to protect the conservation projects everyone had worked so hard to achieve.

It was at this time that LLT informed the Land Trust Alliance of its interest in actively pursuing a merger. At the same time, COL staff had come to realize that combining the land trusts' respective strengths would not only benefit conservation in northern Colorado in the near-term, but in the long-term as well. They also recognized that it would take significant staff time and outside expertise to explore this option. COL had completed another merger in 2013 and knew that it would be particularly time consuming to assess LLT's conservation portfolio from a legal and conservation perspective and to help LLT monitor its conserved properties before year-end. To that end, the Alliance and COL agreed that the best use of the remaining grant funds from GOCO would be to support the due diligence to allow COL to make an informed decision about a merger with LLT.

In late July 2015, COL sent LLT a memo summarizing what a potential merger could mean for both organizations. The memo included a proposed timeline and plan for

merger that both land trusts would have to evaluate. COL also requested certain basic information from LLT to begin the process. This information included:

- A current list of LLT conservation easements and fee properties
- A current list of active conservation easement projects in process
- GIS files for LLT's conserved properties (existing and active new conservation easement and fee-owned land projects)
- A summary of LLT's annual monitoring activities and any past, current or pending violations
- Confirmation that LLT was enrolled in Terrafirma (if applicable)
- LLT's current financial statements (balance sheet and statement of revenues and expenses)
- LLT's database/spreadsheet recordkeeping system(s) (including access to any online systems)
- Fundraising records for the last three years to help COL assess capacity, methodology and overlap with COL's donor base.

The boards of both organizations approved the merger evaluation plan and entered into a memorandum of understanding (MOU) "to evaluate the potential merger of LLT into COL to improve the pace, quality and permanence of land conservation in Colorado's northern Front Range area." The MOU described the steps that COL and LLT would take in the next three months to develop recommendations to their respective boards regarding the feasibility and desirability of legally merging LLT into COL in 2016. In addition, the MOU set forth certain terms and conditions governing both organizations' conduct during the MOU's term. The MOU clarified which activities each organization was independently responsible for and which activities they would collaborate on. It also gave both land trusts a straightforward way to exchange important information regarding conserved properties, stewardship funding and other topics relevant to the potential merger. Obtaining this information was critical for COL because it needed to understand the financial and staffing impacts that a merger would have on its ongoing operations.

At the end of the evaluation phase of the process, COL staff recommended pursuing the merger, having determined that it would ensure the continued protection and stewardship of nearly 43,000 acres in a COL priority area. The merger was also financially feasible (particularly the fact that it would not unduly dilute COL's existing per-easement stewardship endowment because of the money LLT would bring to COL for stewardship), it would advance a number of COL's strategic goals and it would enhance the public trust necessary for successful, long-term conservation in a rapidly

growing part of the state. Based on this assessment, the COL board unanimously approved pursuing a merger, in large part because of its excitement about what the merger would mean for land and water conservation in a critically important region. Likewise, the LLT board approved the merger out of dedication to permanent conservation in this special region.

To complete the merger, COL and LLT engaged an attorney to represent both organizations and developed a plan of merger (POM) to govern each organization's formal due diligence. The POM also included a comprehensive checklist covering the legal items required and, importantly, the logistical items that each organization was responsible for completing before merger closing. It also granted COL's and LLT's boards a final opportunity to withdraw from the merger before completion. COL and LLT finalized the merger on March 1, 2016. Reflecting on the merger, Jordan Vana, director of programs at COL, can clearly identify the benefits to conservation in the region: "The LLT-COL merger was a true win-win. We focused on the positives, used a process that gave each organization and their boards the information they needed to make the best decisions along the way and achieved our intended outcomes—ensuring the continued stewardship of LLT's conserved lands and giving interested landowners in northern Colorado a trusted partner to help them achieve their conservation goals."

ALTERNATIVE FORMS OF COLLABORATION

Partnerships between organizations come in many forms, both formal and informal. Before committing to—or ruling out—a merger, land trusts may consider whether alternate types of partnerships could address their needs, concerns and goals. There are three common types of collaboration and an infinite number of informal or ad hoc ways to collaborate. For more information on the different types of collaboration, see *Jump in, the Water's Fine! Collaboration Inspiration for All-Volunteer Land Trusts,* published by the Land Trust Alliance.

Program Collaboration

Program collaboration is any cooperative activity between two or more organizations pursuing mutual interests. It is often informal and short-term in nature. The organizations may or may not have a written agreement documenting commitments and responsibilities, depending on the

nature of the cooperative work. Collaborations can include joint activities or events, referrals between organizations, sharing of volunteer resources or joint application for a grant.

This type of partnership is relatively simple to negotiate and arrange and is typically limited in both scope and impact on the partner organizations.

Strategic Alliance

A strategic alliance is a formal agreement between two or more parties to pursue a set of specific long-range objectives while remaining independent organizations. While less integrated than a merger, a strategic alliance is a relatively deep partnership that often requires multi-year commitments and investment of resources. As the word *strategic* implies, an alliance is typically central to the partners' missions or operations. The formal nature of an alliance requires detailed planning and negotiation. Examples of strategic alliances include joint conservation initiatives, structured advocacy partnerships, administrative consolidation and shared staff positions.

Partners in strategic alliances remain autonomous in areas not affected by their agreement, and the partnership may be time-limited. This type of partnership is potentially deeper in impact than program collaboration, though still limited in scope.

Consolidation with Autonomy

Consolidation with autonomy is a particular type of deep integration between organizations. Here, one or more entities are established as a subsidiary of a parent organization. The parent entity, which may either be a larger land trust or an administrative umbrella organization, has majority representation in subsidiary entities, which otherwise remain intact. This is a way to link organizations, build collective capacity and efficiencies, coordinate resource development and share a common strategic direction.

Unlike a conventional merger, this type of consolidation allows a degree of local autonomy and can be unwound if future circumstances dictate doing so. But, it also brings a complex governance structure and additional processes, with multiple boards and interests built into the structure. In general, consolidation with autonomy requires greater attention to design and more resources devoted to ongoing maintenance, compared to a conventional merger.

Each of these partnership alternatives has relative strengths and weaknesses and may fit different circumstances. Careful analysis of the options is critical to ensuring success. Figure 1-1 illustrates a continuum of collaboration options.

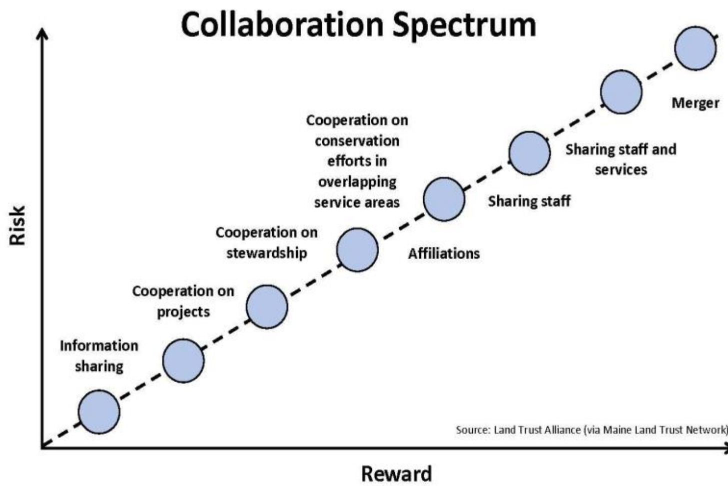

Figure 1-1: Collaboration Spectrum

Chapter 2

The Benefits and Challenges of Mergers

For some in the land trust community, the term *merger* can have negative connotations. We see examples—often from the corporate world—of aggressive, cutthroat tactics and hostile takeovers. We hear stories of layoffs, loss of benefits and the abandonment of once-core values. Land trusts may be especially concerned about the potential loss of organizational identity, community partnerships and presence, local control or influence.

It's important to remember, however, that a merger doesn't have to be a negative experience. By definition, *merger* is neither negative nor positive. It is merely the combination of two or more entities into one. And, it is only one of many legal and organizational tools available to land trusts and other nonprofits. As with any powerful tool, how people use it (or misuse it) will determine whether a merger brings about positive or negative results. In fact, a merger can be a positive experience that breathes new life into organizations, opens doors to exciting new opportunities and allows for significant new conservation.

Potential Benefits

Mergers can have one or more benefits for partner land trusts. For example, they may:

- *Forge a higher capacity organization*. A larger nonprofit can have a bigger, more specialized staff or cadre of volunteers, more efficient administrative functions, more sophisticated internal systems and greater capacity to operate programs, raise money, recruit volunteers and communicate with constituents.

- *Increase effectiveness*. Greater capacity can translate into programs that are more successful in achieving their desired outcomes, such as conservation goals, stewardship requirements and community engagement.

- *Expand influence and reach.* An organization with a larger footprint can have greater influence in public policy, build deeper relationships with community leaders, attract more donors and volunteers and effect positive change in its service area.

- *Reduce competition for resources.* If neighboring land trusts or nonprofits merge into one entity, competition for local volunteers, members, donors and other location-dependent resources may be reduced or eliminated.

- *Improve financial position*. Greater capacity, savings due to economies of scale and the increased diversity of a combined funding portfolio can contribute to a stronger ongoing financial position for a consolidated entity.

- *Enhance sustainability*. The multitude of benefits arising from a successful merger can improve an organization's ability to remain viable over the decades and meet its long-term commitments.

Potential Challenges

Mergers also pose potential risks and challenges to the partners. For example, organizations may face:

- *Loss of current stakeholders.* Some supporters may disagree with the change, lose their sense of connection or otherwise fail to adapt to changes of culture and organizational structure.

- *Redirection from past goals.* The merger process may result in some organizational goals being abandoned or altered.

- *Elimination of programs or services.* While mergers often allow for the expansion of programs or services, some may be cut to reduce costs or better align the new organization's activities with its mission and goals.

- *Loss or reduction of autonomy*. The partners entering a merger often have autonomy over their affairs, which typically is reduced as restructuring takes shape. Reduced autonomy can impact board and staff members, other volunteers and local communities.

- *Investment of time and resources with an unknown payoff*. The outcome of a merger negotiation process is not predetermined, however promising it may seem at the outset. Engaging in the process requires a commitment of resources and focus of attention that may last months and without a guarantee of success.

Mergers and the Human Factor

Mergers are particularly complex endeavors often hindered by the dynamics surrounding individual personalities and emotions and organizational cultures. In most cases, failed mergers can be traced to the lack of attention paid to the integration of organizational cultures, staff and philosophies. For example, a merger process may unduly shift the influence and control of one or more individuals, and a threat to the continuation of one's organization may be viewed as a threat to the individual. Moreover, staff anxiety will often be pronounced over job security, diminished organizational status in the community and a perceived loss of control. Board members may share similar emotions. Because of these human factors, the merger process can be frustrating and scary at times. Leaders need to recognize the emotional and psychological impacts of mergers and address them throughout the merger process. In addition, all participants should make a good faith effort and assume best intentions on the part of others.

CASE STUDY: CARDINAL LAND CONSERVANCY, INC.

Established: July 22, 2015 (first board meeting)

Merging Organizations

- The Citizen's Land Conservancy of Hamilton County (surviving organization)
- Clinton County Open Lands, Inc. (land trust)
- Southern Ohio Farmland Preservation Association, Inc. (land trust)

Strategic Partner

- Cincinnati Nature Center

Reasons for Merger

- Need to secure lands in perpetuity
- Desire for growth
- Addition of staff

Recommendation for Other Land Trusts: Mergers are not easy. Expect the unexpected and allow time to deal with challenges as they arise.

Capacity and perpetuity were the mutual needs that brought three all-volunteer land trusts together to form the Cardinal Land Conservancy (CLC) near Cincinnati, Ohio. "All three groups came to the same decision independently," explains Laura Curliss, board president for CLC. "We could not preserve land in perpetuity without professional staff and without growing bigger—bigger in budget, bigger in territory, bigger in membership and bigger in our capability to get grants."

Curliss, a founding board member for Clinton County Open Lands (CCOL), began her search in 2012 for one or more partners with which to merge when she initially reached out to a larger land trust. The CCOL board soon determined this land trust was not an ideal fit for its organization. Meanwhile, the founders of the Citizen's Land Conservancy of Hamilton County (CLCHC) had begun to consider the perpetuity of their organization beyond their own tenure. They hired a consultant to help find their organization's path to perpetuity and they eventually also came to the conclusion that merging with one or more

land trusts would be the best solution. Then, the Cincinnati Nature Center (CNC) stepped in, offering a strategic partnership that ultimately brought CCOL, CLCHC and a third land trust—Southern Ohio Farmland Preservation Association (SOFPA)—to the negotiating table.

Each of the three merging land trusts were entirely volunteer-led, held only a few easements and had serious concerns about their ability to remain solvent into the future. By joining together, the three merged their service areas and resources, allowing them to accomplish more as a single organization than they could as three separate organizations. However, they had to overcome challenges and work out agreements that they could all live with.

Challenges

The path to the merger was not always smooth. The process took longer than anticipated, required the hiring of a second consultant when the first left the project, revealed previously overlooked violations on some conserved lands and required confronting a natural resistance to change.

The land trusts set up a merger task force to identify and address these challenges and potential deal-breakers. "A potential deal-breaker would have been if any of the three land trusts said they did not want to continue as a member of Terrafirma. All three were enrolled, and we wanted to make sure coverage continued," said Curliss. "Another potential deal-breaker was membership in the Land Trust Alliance and eventually seeking accreditation. All three land trusts said that they wanted to be an Alliance member, operate according to Land Trust Standards and Practices and eventually achieve accreditation. Finally, all three land trusts expressed a desire to protect natural areas and farmland. In our part of Ohio, we have valuable soils to protect, water resources and natural areas worthy of protection. All types of land protection—both type and method (fee simple and easements) —were supported by each land trust, and that enabled us to go forward with a shared vision."

Curliss is honest about both the benefits and challenges of the merger process. "We were all so highly motivated to make this happen because we all realized we could not survive without it. The bottom line is you have to be committed to the merger process. It is not

going to be easy. No matter what merger story you have, grit, determination and a sense of humor are essential to making it."

Benefits

The newly formed land trust immediately realized several benefits:

- *Expanded geographic reach*. The new land trust now serves seven counties in southwest Ohio—the original five counties served by the merged land trusts, plus an additional two that sit between the merged organizations' geographies and had been without a land trust presence prior to the merger.

- *Secured a $100,000 grant from the Greater Cincinnati Foundation to support the hiring of professional staff and increase acres preserved.* The new land trust is also eligible for other funding opportunities that were not available to the smaller merging land trusts.

- *Retained the services of an accountant specializing in nonprofit accounting and a consultant for monitoring properties*. As a result, the land trust's accounting and monitoring reports are now more detailed, professional and meet the requirements of *Land Trust Standards and Practices*, grant-funders, donors and government reporting.

- *Board size, collective experience with land trust work and leadership capacity increased.* The combined board (with additions) has enabled the land trust to make better decisions, particularly when unusual or challenging issues have arisen.

- *Secured a generous, in-kind donation from LPK, a global brand development company, to refine the new organization's mission statement and develop new branding and communications materials.*

In addition to the fiscal benefits realized through merging, CLC is also reaping programmatic rewards due to its strategic partnership with CNC. "We want to do science-based strategic planning for nature preservation in our region," says Curliss, explaining that CNC will assist with developing science-based plans for habitat preservation and restoration through its new Center for Conservation. "The Center will provide planning and resources—such as state-of-the-art mapping and partner outreach and

coordination—to help guide Cardinal's work."

By all accounts, the merger that led to the creation of CLC was a success. The organization is fiscally stable, will soon be launching a major donor effort and hired an executive director, its first full-time staff person, on January 1, 2017.

CHAPTER 3

The Merger Process

Successful mergers typically go through seven broad stages, with increasing levels of commitment and risk on the part of the organizations involved. Organizations considering a merger may decide to take action or implement steps at different stages of the process based on their particular circumstances. The process is not always linear—with new information, organizations may have to take a step back to an earlier stage. Moreover, a merger requires a significant investment of time. Rushing the process may result in missed opportunities, errors or poor implementation. The group should establish clear goals and milestones to help stay on track and work in concert throughout the process. To best understand the most probable course for success, potential partners can educate themselves on options and potential upsides and downsides before committing to engaging in a process. Further, though one partner may be larger, treating all participants as equals throughout the process can promote a successful outcome.

TIP: Be ready to move the process along if it starts to drag out because natural board and staff turnover can delay the outcome even more.

STEP 1: PRELIMINARY CONVERSATIONS

Once a land trust's leadership has determined that a merger is a potentially viable organizational strategy, the group can vet potential partners based on a set of several criteria, for example, compatibility of mission and programs, complementary capacities, cultural compatibility or financial health. To gauge interest of a prospective partner, a land trust leader may wish to request a confidential, one-on-one discussion between executive directors or board chairs of prospective partner(s). Next, a small group of representatives from each organization may want to meet for a

more in-depth discussion. A group meeting provides the opportunity for everyone to learn more about potential partner organizations and about the organizations' representatives. Because the subject of merging may be a sensitive one, confidentiality is an important concern at all stages in the process. At this point, you may want to draft confidentiality agreements and communication plans based on determinations made in the planning stages. Be prepared to update the communication plan as the process unfolds.

Early partner discussions may address the following topics:

- The motivation of your outreach—why you believe consolidation may be a mutually beneficial strategy to explore
- Shared resources, communities, partners and members
- Shared goals for all organizations involved
- Duplicative efforts
- Current challenges and opportunities
- Strengths, assets and needs of the organizations
- Potential benefits of a merger
- Mutual interest in pursuing a dialogue
- Next steps in following up

This step is complete when your organization and one or more partner(s) agree that a merger (or other type of partnership) is worth exploring more thoroughly or you both agree collaboration on any level isn't right for your organizations.

> **TIP:** A merger may feel threatening for some stakeholders, leaving them feeling anxious. By maintaining transparency throughout the process, partners can increase their familiarity with one another and promote trust in the process and each other. In building trust, partners can address differences in culture, resistance to change and other personal and organizational dynamics that may otherwise impede the process.

CASE STUDY: MIDCOAST CONSERVANCY (MAINE)

Established: January 1, 2016

Merging Organizations

- Damariscotta Lake Watershed Association
- Hidden Valley Nature Center
- Sheepscot Valley Conservation Association (surviving legal entity, chosen because it was the only accredited organization)
- Sheepscot Wellspring Land Alliance (land trust)

Reasons for Merger

- Desire for growth
- Desire for greater community impact
- Desire for greater staff efficiency and focused job responsibilities
- Increased fiscal security
- Addition/expansion of staff and benefits

Recommendation for Other Land Trusts: Do everything possible to foster equality and open communication among and within the potential partners and any existing and potential stakeholders.

By March 2013 and only a few months into his new job, Steve Patton, then the newly appointed executive director of the Sheepscot Valley Conservation Association (SVCA) realized that there were too many small land trusts and conservation organizations serving the mid-coast region of Maine. Few had more than five staff, and most only had one to three. They competed for resources: funding, volunteers and board members. He began meeting with his peers from five neighboring organizations, first in one-on-one conversations and then collectively over lunch, exploring the possibility of a merger as a way to expand the collective work and impact of each organization. By merging with one or more partners, Patton believed that participating organizations could better serve their communities and protect and steward their lands and waters. With the creation of the Midcoast Conservancy in 2016, Patton saw that belief become reality.

The success of the merger was no accident, but was the product of a deliberately equal and open partnership between all four of the founding organizations. “We made the assumption right up front that we were all equals,” says Patton, who now serves as deputy director for the Midcoast Conservancy. “We were just going to be stronger together. We could be much more efficient, do more work, be more professional and have more of an impact on the region in which we were working. That was an easy message for us to convey to our boards, our members and the public in general.”

Of the six neighboring organizations that Patton initially approached regarding a potential merger, only two would ultimately opt to join with SVCA to form the Midcoast Conservancy: the Sheepscot Wellspring Land Alliance, a traditional, small land trust, and the Damariscotta Lake Watershed Association, which was founded as a watershed association but evolved over time into a land trust, as well. With two other groups dropping from the conversation early on, the remaining groups reached out to Hidden Valley Nature Center, a young organization that focused on sustainable forestry, outdoor adventure and learning programs. Combined, these four organizations conserved lands and reached communities across several neighboring geographies in Maine’s mid-coast region, which stretches along Maine’s coast from approximately Brunswick to Belfast.

For the merger to work, Patton and the organizations’ leaders were convinced that they needed a threshold budget of about $750,000, which exceeded their combined operating budgets, to support a staff with a diversified skillset. The four merging organizations were all of similar size—one to four staffed positions each—and shared a mutual awareness that they could better serve their communities and steward their existing land and water resources if they joined forces. This sense of equal commitment and mutual benefit helped fuel the transparency Patton believes contributed in large part to the merger’s success. The organizations fostered this transparency in several ways. They:

- Agreed early on that the new board would initially consist of only eight members from the originating organizations, two members put forth by each of the founding organizations
- Agreed board representation of founding organizations would last for only six years (two three-year terms); thereafter geography would play no formal role in the board selection process
- Directed the new board to identify any additional members it felt necessary to fill

out the complement of up to eight additional board seats provided for in the new bylaws

- Invited other stakeholders from each organization to sit in on their merger committee meetings
- Brought their most valuable donors into the conversation relatively early in the process
- Spoke often and openly about the merger to their members and their communities at large (adhering all the while to their confidentiality agreement)
- Guaranteed all existing staff a place in the new organization
- Solicited feedback from staff about what they would like their roles to be in the new organization

Their strategy was a resounding success. The board votes of the four merging organizations were nearly unanimous in favor of the merger. Three of the merging organizations also asked their membership to vote, and those votes were likewise strongly in favor of the merger. And, perhaps most telling, only one of the eight staff departed after the merger. “There were a lot of people doing things they didn’t want to do before the merger,” says Patton, when asked about the low rate of post-merger attrition. “They don’t have to do those things now. We were able to fill all the needs of the organization in a way that allows staff to focus on the things they know how to do well and enjoy doing.”

Ultimately, Patton sees no downsides to their intentional transparency. In fact, he believes things may have gone differently if the merging organizations had been less open about the process with their internal and external stakeholders. “People would not have had enough time to think about and digest it or to really understand what was going on.”

Step 2: Evaluation

TIP: At this stage in the merger discussions, it is important for all parties to commit to the process. The consolidation process can be long and complex and it will only be successful with the support and active participation of staff or volunteers and board leadership from each partner. All board members must be fully informed throughout the process and they must have frequent opportunities to ask questions and to provide feedback in order to avoid surprises in the end.

This and subsequent steps can often benefit from an experienced consultant to assist in any or all stages of the merger process, including the initial assessment of viability, facilitation of negotiations, due diligence analysis, the drafting of a memorandum of understanding or other agreements and project management throughout. Engaging a neutral party to manage ongoing dialogue and decision-making can be a critical investment in a successful process.

> **TIP:** As with legal counsel, it's wise to start researching potential candidates early in the planning process.

A joint committee of the organizations involved often leads the merger exploration process. This committee ideally includes about six members—for example, the executive directors (if staffed land trusts are involved), the board chairs and additional board members from each organization. This committee's work is typically confidential, with the exception that the boards of each organization are usually aware of the discussions (and the boards also maintain confidentiality on this topic).

The first task of this committee is to get acquainted. Before conducting any business, the committee members should get comfortable working with each other and become familiar with their counterpart's work. As working relationships begin to take root, the primary objective is to build trust and confidence. If this group establishes trust and confidence, the next negotiation phase often feels more like a shared collaborative discussion of what the resulting organization will look like and the strategic focus of the organization.

The second task of the joint committee is to identify which partnership model(s) merit specific exploration. To do this, the committee should explore the following:

- Compatibility of each organizations' current strategic goals
- Primary benefits of the partnership to each party and the compatibility of these interests
- Any major concerns the parties may have about merger or consolidation and information and strategies needed to address these concerns
- Any deal-breakers
- Shared goals under a consolidated vision

Once the committee has worked through these areas, they should look at the partnership options and narrow the list down to one or two worthy of more detailed exploration. This is also a good time to start planning communication protocols. Specific audiences, outlets and messages will be decided upon and developed at different points as the process unfolds, but the committee should lay out general principles and responsibilities to guide choices.

The evaluation phase is complete when the parties execute a memorandum of understanding (MOU) outlining what each party is responsible for and what will happen in subsequent stages of the process. The boards of all partners should authorize signature of the MOU through a resolution.

Step 3: Negotiation

At this point, the partners may begin fundraising to support the expense of consolidation. Each organization may also begin soliciting input from external stakeholders, such as major donors and government officials, while adhering to the provisions of the confidentiality agreement developed during preliminary conversations.

> TIP: Secure adequate funding. While a merger may result in long-term cost savings, the actual process may entail additional short-term expenses. The parties can consider pursuing grants or private donations to defray all or part of these transition costs.

Once the parties have agreed that a merger is their goal, it is time to negotiate the terms of the agreement that will define the consolidated organization. The joint committee is often the focal point of negotiations. The committee will hash out agreement on a variety of issues, and each delegation will serve as a liaison to its respective board. Consider bringing in an expert facilitator to guide the process, using the topics below as starting points. Another helpful strategy is for the committee to create teams to delve into each of the subject areas to develop positions and appropriate detail.

Vision and Mission

- Identify big-picture goals for the new organization.
- Review all partners' existing programs and identify priorities.
- Agree on a mission statement and guiding principles for the consolidated organization.

Leadership

- Clarify who the executive director of the consolidated organization will be or how the leader will be selected.
- Identify senior staff roles and individuals to fill them.

Board and Governance

- Determine the makeup of the new board, including the number of members and the allocation from existing partner boards.
- Identify officers and terms for the initial board of the consolidated organization.

Human Resources, Finance and Operations

- Address key staffing issues for the new organization, including the positions that will be added or eliminated, the pay scale and benefits.
- Identify where office staff will be housed and the post-merger address.
- Identify which accounting system and procedures the consolidated organization will use, as well as its fiscal year.
- Agree on operational considerations, such as data systems, policies and procedures.
- Lay out how existing programmatic responsibilities, notably land conservation and stewardship, will land in the new organizational chart.

Land Trust Accreditation

If an organization has combined with another entity within the past five years or during its accredited term, the Land Trust Accreditation Commission may require information about the combination at the time of application or via the compliance confirmation process. Applicants or accredited land trusts that have combined with another entity must contact the Commission to determine if application or compliance confirmation information is needed.

- *Has the merger occurred within five years of applying for first-time accreditation?* If so, the Commission will generally request information about the nature of the combination and the assets transferred as part of the first-time application process.
- *Has the merger combined two accredited land trusts?* If so, the Commission will generally ask for information about the nature of the combination via its compliance confirmation process to determine whether the organizations' listings on the roster of accredited land trusts should change and what the renewal schedule will be for the remaining entity.
- *Does the merger involve an accredited land trust combining with a non-accredited entity?* If an accredited land trust combines with a non-accredited entity and retains its corporate status, its license agreement will remain in effect and the Commission will examine information about the combination via its compliance confirmation process. Other conditions and outcomes pertaining to affiliate relationships and dissolutions as a result of merger will apply, and land trusts will need to contact the Commission.

Terrafirma

- *Is the surviving organization already enrolled in Terrafirma or self-insured?* If the organization is a member of Terrafirma and wishes to remain eligible for Terrafirma, it will need to make sure the merging organization has complete baselines and monitoring reports from the past year for all properties. The surviving organization should be aware that challenges that pre-date coverage and unreported challenges from the past year will likely not qualify for Terrafirma coverage. To minimize risk, consider estoppel affidavits as described on The Learning Center.
- *Is one or more potential partner organization unwilling to use Terrafirma?* Once an organization enrolls in Terrafirma, it may choose which property interest categories (conservation easements, trail easements, access easements, properties owned in fee or deed restrictions) in its portfolio to enroll. Once it has chosen to enroll a specific category, it must enroll *all* property interests in that category. The organization cannot pick and choose based on which merged organization initiated the project.
- *Is the surviving organization a new organization?* If so, it must be eligible for Terrafirma, and one or more of the merging organizations must have already enrolled in Terrafirma if it wishes to immediately enroll all properties. If none of the merging organizations is currently enrolled in Terrafirma, the new organization can enroll as a new member of Terrafirma in the open enrollment period from December to February each year. Coverage would begin March 1 when the new policy year begins.

Land Holdings and Assets

- Review existing land holdings, stewardship records and responsibilities, the pipeline for new conservation projects, and identify particular concerns to address during the

negotiation phase.

Merger Tasks

- If not already established, ensure that a confidentiality agreement is approved by all partner boards and staff members included in the negotiation process.
- Revisit the MOU that was executed during the evaluation phase (Step 2) and confirm the timeline and work plan for guiding the merger process, including key actions, milestones and decision points. Revise the MOU as needed based on agreements made during negotiation.
- Refine communications protocols established in the previous step and start crafting a more detailed communication plan, including who is authorized to speak for the new organization.

This step is complete after the parties revise the MOU to outline any agreements reached through the negotiation process and re-authorize the MOU by board resolutions, stating an agreement *in principle* to merge, subject to the due diligence phase.

Step 4: Due Diligence

Once the MOU has been signed by all potential partner organizations indicating that parties plan to move forward toward a merger, the process moves to the fourth stage: due diligence. This is a technical investigation of many details to satisfy each partner that they know all they need to understand—and are clear about risks they are taking on—to move forward.

Due diligence tasks fall into two categories: financial and legal. Financial due diligence is concerned with the financial position and health of the partners. Legal due diligence explores the legal status and risks associated with each partner. Typically, the parties engage separate experts for these tasks. Financial due diligence can be conducted by a financial consultant or CPA; legal due diligence can be conducted by an attorney or law firm. The parties can engage experts together or individually. If engaged as a group, the advisers should be contracted collectively with all parties.

TIP: Each organization should have its own legal representation to protect its interests and ensure all its concerns are addressed. Also, the negotiating organizations may want to engage an attorney together to provide advice on the negotiating process and documents produced, acting on behalf of all the organizations involved. It's never too early to start thinking about who you can hire and to solicit recommendations.

Appendix A summarizes a set of documents and data to be reviewed in the due diligence process.

The result of each investigation is a report of findings, including any major concerns. Issues identified in the due diligence investigation may have straightforward solutions, and the investigators can recommend corrective action. Issues raised must be resolved, accepted or deferred for resolution until after the merger. Deciding to defer an item must be made on a case-by-case basis weighing all the risks, rewards and the organization's tolerance for risk taking.

Step 5: Integration Planning

Integration planning is a frequently underrated and under-resourced step that can set consolidation up for success—or failure. By planning for the organization's first 12 to 24 months as a new entity—and designating an individual, committee or consultant to guide the integration process—the parties can help ensure the transition will proceed as smoothly as possible.

In the plan, the parties iron out details for how they will unify their operations at every level. This plan consists of many specifics underlying the agreements reached by the joint committee. Integration planning can take place concurrently with step 4 and is often coordinated by a subcommittee that may include staff members or senior volunteers of the partner organizations. Communication plans should also be updated as the integration plan unfolds. A planning consultant is often involved in this work.

This step is complete when the committee approves an integration plan. Integration planning tasks are summarized in Appendix B.

STEP 6: LEGAL EXECUTION

All partnership structures, except program collaboration, require formal execution of documents to finalize an agreement. Mergers, as well as consolidations with autonomy, also require filings with state and federal and sometimes local government agencies. The specific requirements will vary by state and by the nature of the merger itself. Executing a merger often includes:

- Passage of identical board resolutions by all partners
- Development of a formal plan of merger document
- Filings with the state of incorporation (varies by state)
- Notification of the IRS of any changes related to the parties' tax-exempt status

Land trusts should engage legal counsel to manage these tasks.

This step is complete when all necessary legal documents have been signed and filed. This typically requires several months, and adequate time and resources should be allocated to ensure preparation is completed before the merger date.

STEP 7: INTEGRATION

Now that organizations have joined forces, all that remains is to form a single cohesive identity out of what were two or more distinct organizations. Integration is a process that typically takes one to two years to complete. This step continues implementation of the integration plan and all related tasks.

While the organization is attending to change management—that is, adapting to new roles and building a new culture—the staff or volunteers and board must also conduct their ongoing work and continue to generate funding. Leadership may consider appointing a dedicated integration manager and utilizing a professional consultant to support plan implementation to help ensure the organization stays on track.

CONCLUSION

Regardless of the motivations and reasons for pursuing a merger, the process land trusts face is inevitably complex, time-consuming and expensive. Committing to and following a systematic

process and building mutual trust along the way is critical to success. As the three featured case studies in this publication illustrate, the end result is worth the effort—a much stronger and more sustainable organization that is better positioned to expand and deepen its conservation impact and remain viable over the decades ahead to meet its long-term commitments.

Appendix A

Due Diligence Investigation Task Summary

The following list is a sample of items that may be included in due diligence investigation for consolidating land trusts.

Financial due diligence includes (but is not limited to) investigation of the following areas:

- ☐ Assets
- ☐ Debts and other liabilities
- ☐ Operating performance history
- ☐ Cash-flow history
- ☐ Budgets
- ☐ Auditor opinions
- ☐ Accounts payable and receivable
- ☐ Financial management procedures and controls
- ☐ Restricted grant agreements

Legal due diligence includes (but is not limited to) investigation of the following areas:

- ☐ Governing documents
- ☐ Governance policies
- ☐ Board minutes
- ☐ Licensing and registration status
- ☐ Tax filings
- ☐ Liabilities and liens
- ☐ Real property status

- Conservation easements and stewardship records
- Contracts and leases
- Insurance policies
- Environmental reports
- Communication with government agencies
- Litigation (actual and potential)
- Unemployment and related claims
- Intellectual property

Appendix B

Integration Planning Task Summary

The following list is a sample of items that may be included in merger integration planning of land trusts.

Organizational culture

- Define desired cultural attributes of a consolidated organization.
- Assess and distinguish current cultures of partners.
- Map a process for change management to a new culture.

Human resources, finance and operations

- Consolidate records, systems and equipment, including finances, donor and fundraising data, mailing lists, membership directories and other human resources and administrative data, as well as filing systems, hardware, software and other applications and equipment.
- Address any potential systems compatibility issues and map the current state to the new state, with interim steps spelled out.
- Assess capacities needed to fulfill emerging strategic goals and lay out specific needs
- Propose and approve a new organizational chart.
- Identify roles to which current staff will transition in the post-merger entity.
- Write job descriptions.
- Identify new positions created by consolidation and draft job descriptions.
- Recommend and approve a new salary structure.
- Clarify continuing and terminating benefits programs and make corresponding administrative changes.

- ☐ Update personnel policies and HR procedures.
- ☐ Identify staff members who will not be retained in the post-merger entity.
- ☐ Articulate severance details and a procedure for transition.
- ☐ Confirm finance procedures for the post-merger entity.
- ☐ Review accounts payable and receivable for the transition period.
- ☐ Notify all vendors, including insurance brokers and Terrafirma (if applicable), and funders of the new name and contact information.
- ☐ Negotiate lease transitions or buyouts for any duplicative office space or equipment.

Governance

- ☐ Review, update and approve new bylaws for the post-merger organization.
- ☐ Clarify term dates for all new board positions.
- ☐ Notify the Land Trust Accreditation Commission of the merger (if applicable).

Fundraising

- ☐ Develop a fundraising plan for the merged organization, identifying any potential new funding sources.
- ☐ Begin fundraising to support the new organization.

Communications, marketing and branding

- ☐ Flesh out the brand identity for the new organization.
- ☐ Develop a new communications and marketing plan, including contacting all members and other stakeholders about the merger itself.

Land holdings and assets

- ☐ Assess current stewardship and defense funds for conservation easement properties and fee lands and develop a plan to address any insufficiencies.
- ☐ Develop a due diligence checklist to assess conservation assets.
- ☐ Identify any existing violations on conservation easement properties and develop a plan for resolution.
- ☐ Transfer assets and liabilities, including deeds for properties and other holdings.

APPENDIX C

Additional Resources

William L. Boyd, III, "Mergers, Acquisitions, and Affiliations Involving Nonprofits: Not Typical M&A Transactions," *Business Law Today*, June 2014.

Emerging Nonprofit Partnership Models: Two Alternatives to Traditional Merger. Seattle, WA: Public Interest Management Group, 2016.

William Foster, Alex Cortez, Katie Smith Milway, *Nonprofit Mergers and Acquisitions: More Than a Tool for Tough Times.* New York: The Bridgespan Group, February 2009.

"Land Trust Merger Case Studies," Pennsylvania Land Trust Association.

Nonprofit Mergers: Five Keys to Unlocking Value. New York: Deloitte, 2013.

David La Piana, *The Nonprofit Mergers Workbooks: Parts I and II*. St. Paul, MN: Fieldstone Alliance, 2008.

Alfredo Vergara-Lobo, Jan Masaoka and Sabrina L. Smith. *The M Word: A Board Member's Guide to Mergers*. Oakland, CA: CompassPoint Nonprofit Services, 2005.

What Do We Know about Nonprofit Mergers? Findings from a Literature Review, Focus Group, and Key Informant Interviews. St. Paul, MN: MAP for Nonprofits and Wilder Research, March 2011.