

Proposed Policy Concerning Stream Access Issues
Draft 2/13/2006

In 1999 TU's Board of Trustees approved a policy to govern the involvement of TU staff, councils and chapters in disputes related to public access to rivers, streams, and lakes for recreational purposes. The Board of Trustees hereby revokes the 1999 policy and adopts the policy set forth below.

The purposes of this policy are as follows:

1. To provide an efficient process for the review of public access issues that chapters and councils wish to undertake or confront.
2. To develop categories of access issues that require review and approval of the Executive Committee and categories that do not, and to communicate those distinctions to TU chapters and councils.
3. To provide a better means for the Board and staff to communicate with chapters, councils, and volunteer leaders regarding TU's policies and practices with respect to issues relating to the public's right to access rivers, lakes, and streams.
4. To provide a focal point for the collection of information related to all TU participation in access issues and to develop tools and expertise for chapters and councils addressing access issues or advocating for voluntary access programs.

To achieve the purposes set forth above, the Board, in consultation with the members of the National Leadership Council (NLC), hereby creates a joint working group of the Board and the NLC to be known as the Stream Access Working Group (hereinafter "Working Group"). The membership of the Working Group shall consist of the Chairman of the NLC or his designee, two members of the NLC, and two at large Trustees. All members of the Working Group, except the Chairman of NLC, shall be appointed by mutual agreement of the Chairman of the NLC and the Chairman of the Board of Trustees. TU's general counsel and/or legal advisor shall participate in the Working Group proceedings, but neither shall have a vote. Members of the Working Group shall serve terms not to exceed two years, and may each serve up to three consecutive terms. The Chairman of the NLC and the Chairman of the Board of Trustees, upon appointing the initial membership of the Working Group, shall set the terms of the initial members so that terms are staggered.

The Working Group shall serve as the central contact point for all TU chapters and councils confronted with or actually engaged in issues related to the public's right to access rivers, lakes, and streams for purposes of fishing. Any chapter or council faced with such an issue, or desiring to become involved in such an issue, shall contact and consult with the Working Group. This consultation shall occur with respect to any access issue, including advocating for or negotiating voluntary access agreements with landowners.

This broad level of consultation will enable the Working Group to collect information about TU's participation in access issues; to give the chapter or council the benefit of any information, forms, or other tools the Working Group has available to it; and to advise the chapter or council whether its proposed involvement in an access issue requires formal review and approval by the Working Group and the Executive Committee. Although the Board directs the Working Group, with the approval of the Executive Committee, to develop the precise categories of access issues for which TU's participation will require formal approval, the Board finds that TU's participation in disputes with individual landowners over the precise scope of their property rights, and TU's participation in administrative or legislative changes in the law that would affect the precise scope of riparian property rights with respect to public access for recreation, always shall require formal approval by the Working Group and the Executive Committee.

The Working Group shall have the following responsibilities:

1. To collect information about all of TU's participation in issues related to public access to rivers, lakes, and streams.
2. To develop and circulate within TU, with the specific approval of the Executive Committee, categories of access participation by TU's councils and chapters that will and will not require the approval of the Working Group and the Executive Committee.
3. In the case of access involvement where Working Group and Executive Committee approval is required, to evaluate proposed TU chapter or council involvement in stream or lake access issues and make recommendations to the Executive Committee as to whether it is appropriate for the chapter or council to participate in the particular access issue. The Working Group shall respond to the chapter or council requesting participation in an access issue as soon as practicable, but in most cases no more than 30 days after receipt of the prescribed information unless further time is requested by the Working Group.
4. To develop and provide to chapters and councils a description of the materials that must be furnished by the chapter or council in cases requiring formal Working Group and Executive Committee approval.
5. To serve as a contact point for TU members, chapters, and councils with questions regarding TU's access policies and TU's participation in issues relating to public access to streams and lakes.
6. To develop, if financial resources are available to do so, TU programs for working with state and federal agencies to create programs for the voluntary purchase from private landowners of public access rights to rivers, streams,

and lakes, and programs for the restoration of rivers, streams, and lakes on private property with a public access component.

7. To collect, and if appropriate help develop, tools for the use of TU chapters and councils to promote programs for expanding voluntary access to private lands for fishing, and to improve access to federal and state lands for fishing.
8. To report periodically to the Board of Trustees on the access issues presented to it, and how participation in access issues is affecting the accomplishment of TU's mission and the implementation of its strategic plan.

Whether or not formal approval is required, each council or chapter shall keep the Working Group informed of important developments in its access activities. If formal approval is required, the chapter and council shall present the issues to the Working Group in the prescribed format for approval prior to initiating any activity with respect to the access issue in question.

The Working Group shall evaluate all proposals requiring formal approval and make a recommendation to the Executive Committee about whether the proposed TU participation in the access issue should be authorized. Regardless whether the Working Group recommends participation, the Working Group shall forward its recommendation to the Executive Committee with respect to all proposals. The Executive Committee may identify certain categories of access participation by TU entities that require only the approval of the Working Group, and not the approval of the Executive Committee.

The decisions by Working Group and the Executive Committee shall be based upon consideration of the totality of the following factors, with no one factor being determinative:

1. Whether the access issue furthers the Vision and Mission Statements and the Strategic Plan of TU.
2. TU's role in the issue, particularly in light of involvement by other parties, and the extent to which TU's participation will contribute to a successful outcome.
3. A good faith estimate of the costs that will be incurred in participating in the access issue and the resources available to meet such costs.
4. The effect of TU's participation, or lack of participation, in the access issue on other issues important to TU and its chapters and councils.
5. Whether the participation in the access issue is supported by any other chapters or councils that may be affected by the resolution of the issue.
6. The impact that the access issue will have on the recruitment of TU members and its fundraising.
7. The extent to which the issue involves disputes of detailed facts requiring resolution by a court, agency, and/or legislative committee.

8. The impact upon any other current or proposed conservation program.

The Working Group shall submit its recommendation to the Executive Committee in writing, and the chapter or council and any dissenting members of the Working Group shall have the right to submit comments on the recommendation. After consideration of the recommendation and any comments submitted by the chapter, council, or dissenting Working Group members, the Executive Committee shall vote whether to approve, reject, or modify the recommendation. The Executive Committee shall provide in writing the reasons for its decision.

If a member of the Working Group or of the Executive Committee has a potential or actual conflict of interest with respect to any particular access issue under review, that member shall disclose the conflict to the Working Group, the Executive Committee, and the chapter or council seeking to participate in that access issue. If the Working Group (with respect to one of its members) or the Executive Committee (with respect to one of its members) concludes that the member has a conflict of interest in the outcome of the access issue, that member shall not participate in the consideration of the chapter or council's request.

This policy does not apply to chapter or council involvement in disputes or controversies concerning the scope of environmental protection statutes and laws, including the Clean Water Act, the public trust doctrine, and a variety of state statutes, even if such a controversy implicates the scope of the concept of navigability or similar concepts, so long as the dispute or controversy explicitly relates only to environmental protection and not to public access. If the public's right to access is in any way a part of such a dispute or controversy, or if the law regarding public access rights is likely to be affected by the outcome of the dispute or controversy, the chapter or council shall consult with the Working Group, and the Working Group shall decide whether this policy applies. This policy also does not prohibit efforts by TU chapters or councils to enforce any written conservation or access easements that they might hold. Any litigation to which this policy does not apply, however, is still subject to the review process set out in TU's litigation policy.

Neither this policy, nor approval of any chapter or council participation in any stream access issue, should be interpreted as including any commitment of TU funds or staff time towards any specific access issue.