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MEMORANDUM

TO: Chapter Officials and Administration  
All Navajo Nation Chapters

COPY

THROUGH:

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FROM:

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DATE: January 14, 2010

SUBJECT: Delegation of Chapter Authority to Chapter Committees

The question has arisen at several chapters whether the chapter membership, chapter officials and/or the chapter administration can delegate their legal duties and/or authorities to the established chapter committees. Pursuant to the Local Governance Act (LGA), 26 N.N.C. §§ 1, et seq., and other applicable Navajo Nation law and policies, the authorities and duties of the chapter membership, chapter officials and the chapter administration CANNOT be delegated to chapter committees. Chapter committees are advisory committees only and may not exercise any final executive, administrative, or other approval authority. Chapter committees are not like the standing committees of the Navajo Nation Council, which have powers delegated to them by Navajo Nation statute.

After governance certification, the chapter membership can delegate the resolution authority to the chapter administration through the ordinance process. See 26 N.N.C. § 103 (F). Additionally, it may be possible to delegate some powers to chapter committees through the adoption of an alternative form of governance by chapter ordinance. However,

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any such model of local governance requires approval by the Transportation and Community Development Committee. See id. at § 103 (E) (6).

### Chapter Powers

The LGA provides that, upon governance certification pursuant to 26 N.N.C. § 102, a chapter may take on various authorities that are otherwise reserved to the central Navajo Nation government. These powers range from executing contracts, to acquiring chapter property, to adopting local laws. See generally 26 N.N.C. § 103. The exercise of these authorities is overseen and approved by the voting members of the chapter either: (1) through the chapter resolution process at a duly called chapter meeting, or (2) through the chapter ordinance process (i.e., by vote at a regular or special election). See id. Members of both LGA-certified chapters and non-LGA-certified chapters also exercise various other authorities through the chapter resolution process. These include, for example, approving the chapter budget, 26 N.N.C. § 2003 (C) (3), and approving economic land withdrawals made by the Economic Development Committee. 2 N.N.C. § 724 (C).

The chapter members cannot delegate their oversight and approval authority to any other body, including a chapter committee, through the chapter resolution process. By ordinance, the chapter membership of an LGA-certified chapter may vote to delegate to the chapter administration its authority to approve leases, contracts, the appropriation of chapter funds, and the acquisition or sale of chapter property. Id. at § 103 (F). By ordinance, the chapter membership of an LGA-certified chapter may also vote to delegate its authorities to a council or other newly formed governing body, through adoption by ordinance of an alternative form of government approved by the Transportation and Community Development Committee (TCDC). Id. at § 103 (E) 67.

Under the LGA, any delegation by the chapter membership of its approval and oversight authority to any other body, whether it is to the chapter administration or to a new form of government, can only be done by chapter ordinance. In order to pass an ordinance, there must be a notice and comment



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period, reading of the proposed ordinance at two consecutive chapter meetings, posting of the ordinance in various places at the chapter fourteen (14) days before the election, and approval by a majority of the votes cast by registered voting members of the chapter at the election. 26 N.N.C. § 2001 (B), (D), and (E). Thus, even though a chapter committee's Plan of Operation may be approved by chapter resolution, any such chapter resolution or Plan of Operation which purports to delegate to the committee any oversight or approval authority held by the chapter membership is legally ineffective.

Moreover, although the LGA provides that the chapter members may delegate powers to the chapter administration or to a new form of government,<sup>1</sup> nowhere in the LGA does it state that the chapter membership may delegate its powers to a chapter committee. See generally 26 N.N.C. § 1 - 2005. The creation of a chapter committee, and the appointment of its members, is with the approval of the chapter membership. *Id.* at § 1001 (B) (1) (d). Creation of the committee does not confer on the committee the powers of the chapter membership. On the contrary, chapter committees only function in an advisory capacity and can only make recommendations for chapter policies, plans, etc., to be adopted by the chapter through resolution or ordinance.<sup>2</sup>

#### Powers of Chapter Officials

Similarly, chapter officials may not delegate their duties or authorities to chapter committees or non-officials. The powers and duties of chapter officials are enumerated under 26 N.N.C. § 1001. That statute provides that the duties of the president may be assumed by the vice president in the

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<sup>1</sup> It may be possible for certain committees to be created under an alternative form of governance model with certain powers. However, no such model has been approved by TCDC.

<sup>2</sup> For example, the Community Land Use Planning Committee (CLUPC) is appointed by the chapter membership, completes a resource inventory and community assessment, and then formulates a proposed community land use plan. That plan is then put out for a notice and comment period, and finally voted on by the chapter and adopted by chapter resolution. See 26 N.N.C. § 2004.

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president's absence, or delegated to the vice president as needed. 26 N.N.C. § 1001 (B) (1) (t) and (B) (2) (a). Co-signing authority on chapter checks may be assumed by the president or vice president in the secretary-treasurer's absence. Id. at § 1001 (B) (3) (l). However, nowhere in the LGA is it permitted for the chapter officials to delegate their duties or responsibilities to chapter committees or others. On the contrary, only chapter officials "shall perform the duties enumerated [in Section 1001]." 26 N.N.C. § 1001 (G).

#### Powers of Chapter Manager or CSC

Finally, the Chapter Manager or Community Services Coordinator (CSC) cannot delegate chapter administrative duties and responsibilities to chapter committees. In the transition to LGA certification, chapters have a "Community Services Coordinator" (CSC) who is charged with the duties of the "Chapter Manager" as described under the LGA. See Local Governance Support Center Plan of Operation IV (B) (6) (j). The Chapter Manager or the CSC is the custodian of the chapter funds. 26 N.N.C. § 1004 (C). As custodian of chapter funds, the Manager or CSC is a general "fiduciary" and is expected to manage chapter funds under the highest standard of care. Indeed, failure to properly manage and safeguard chapter funds and financial documents, and to comply with the chapter's Five Management System (FMS) or other applicable laws, policies and procedures, in the administration of the chapter's affairs, is cause for removal of the Manager or CSC and assessment of applicable penalties against him or her pursuant to Navajo Nation law. Id.

Moreover, just as chapter officials are forbidden from involvement in the administrative functions of the chapter administration, 26 N.N.C. § 1001(A), "members of the chapter, individually, are prohibited from direct involvement in the management and operations of the government or administration." 26 N.N.C. § 1004 (D). It would be utterly inconsistent with the LGA if chapter committees were allowed to interfere with the chapter administration. Instead, Chapter committees can help provide guidance to chapter officials and community members on policy issues, and can help develop chapter policies, provided



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they are consistent with applicable Navajo Nation law and policies and with the Chapter's FMS. For example, a veteran's committee can make recommendations to the officials and the chapter membership for policies for distribution of chapter veteran's funds, to be adopted by the chapter membership. However, the veteran's committee is not permitted to actually distribute the funds. That is an administrative function of the chapter administration which must remain under the oversight of the Chapter Manager or CSC.

If you have any questions about this matter, please call the Department of Justice, Economic & Community Development Unit, at 928-871-6933.

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xc: Local Governance Support Centers