

EXHIBIT A-2

**Transcript of Tobias Vanderhoop Deposition Held
on July 1, 2015**

pp. 36-67

<p>1 TOBIAS VANDERHOOP</p> <p>2 chairman in 2008, other than being a member of</p> <p>3 the Tribal Council, did he hold any other roles</p> <p>4 within the tribal government?</p> <p>5 A. Oh, and at that point, he had ceased to</p> <p>6 work in the natural resources department, and had</p> <p>7 been working in the planning department of the</p> <p>8 tribe as an associate planner.</p> <p>9 Q. And do you know about how long he</p> <p>10 worked in the planning department?</p> <p>11 A. I can't recall.</p> <p>12 Q. Do you recall when he was hired or</p> <p>13 specifically tasked with the lead inspector role?</p> <p>14 A. I can't recall. I mean, I was there,</p> <p>15 but, you know, I had my own job to do, and it</p> <p>16 wasn't a supervisory role.</p> <p>17 Q. Fair enough. Okay. Looking now,</p> <p>18 please, at Exhibit 1F.</p> <p>19 (Witness complies.)</p> <p>20 Q. Are you familiar with this --</p> <p>21 A. I am.</p> <p>22 Q. -- document? And this governs tribal</p> <p>23 enrollment. Correct?</p> <p>24 A. Yes, it does.</p> <p>25 Q. Now, is this also -- it indicates at</p> <p style="text-align: right;">[Page 138]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. Does the ordinance have any</p> <p>3 requirements that are tied to any land held in</p> <p>4 trust for the tribe?</p> <p>5 A. Not to my knowledge. But what this</p> <p>6 document is for is it sets out the criteria by</p> <p>7 which we will exert an exclusive jurisdiction of</p> <p>8 the tribal government in that it is the exclusive</p> <p>9 role of a federally acknowledged tribe to</p> <p>10 determine who they -- who are their citizens. So</p> <p>11 that's what this document does.</p> <p>12 This is, you know, a perfect example of how</p> <p>13 the tribal government is exerting jurisdiction</p> <p>14 over its territory and people.</p> <p>15 Q. Is enrollment tied to -- enrolling in</p> <p>16 the tribe tied to either residence in or any</p> <p>17 other connection to tribal lands?</p> <p>18 A. Well, certainly if you were an enrolled</p> <p>19 member of the tribe, you have a constitutional</p> <p>20 right in order to access resources that are, you</p> <p>21 know, held in common by the tribal government for</p> <p>22 all of our people.</p> <p>23 The only way that you know who has the birth</p> <p>24 right to access those resources is by going</p> <p>25 through a process like this.</p> <p style="text-align: right;">[Page 140]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 the top that it's ordinance 9301 and previously</p> <p>3 was ordinance 9101.</p> <p>4 A. Yes.</p> <p>5 Q. May I ask, does 93 connote 1993 --</p> <p>6 A. Yes.</p> <p>7 Q. -- or is it unrelated?</p> <p>8 So this ordinance was originally passed in</p> <p>9 1991?</p> <p>10 A. Yes, according to the notation.</p> <p>11 Q. And to your knowledge, was this</p> <p>12 ordinance enacted through the process that you</p> <p>13 described for how ordinances are enacted by the</p> <p>14 tribe?</p> <p>15 A. To my knowledge, it was.</p> <p>16 Q. And is it currently in effect?</p> <p>17 A. It is. It's actually required to be in</p> <p>18 effect under the constitution of the tribe.</p> <p>19 Q. And this ordinance governs how</p> <p>20 individuals become an enrolled member of the</p> <p>21 tribe. Correct?</p> <p>22 A. Correct.</p> <p>23 Q. Are you familiar with the specific</p> <p>24 requirements of this document?</p> <p>25 A. Primarily, yes.</p> <p style="text-align: right;">[Page 139]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. But in order to be enrolled in the</p> <p>3 tribe, you don't have to reside on any of the</p> <p>4 lands that are held in trust for the tribe.</p> <p>5 Correct?</p> <p>6 A. Oh, you can reside anywhere. It is</p> <p>7 your direct lineal descent, as is stated here in</p> <p>8 this document, going back to an individual who</p> <p>9 was on the 1870 census of Gay Head.</p> <p>10 Q. For an individual to become enrolled</p> <p>11 who is not currently enrolled in the tribe, is</p> <p>12 there any requirement that individual --</p> <p>13 A. I'm sorry.</p> <p>14 Q. -- reside on the settlement land in</p> <p>15 Aquinnah?</p> <p>16 A. I'm not quite sure what you're trying</p> <p>17 to get at. Maybe you can rephrase your question</p> <p>18 or, you know, help me get there. I want to give</p> <p>19 you an answer. I just want to make sure that I'm</p> <p>20 answering the question that you're asking.</p> <p>21 Q. I'll ask my question again. If</p> <p>22 somebody were to try and enroll under this</p> <p>23 ordinance in the tribe today, is there any</p> <p>24 requirement that that individual reside on the</p> <p>25 settlement lands in the Town of Aquinnah?</p> <p style="text-align: right;">[Page 141]</p>

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<p>1 TOBIAS VANDERHOOP</p> <p>2 A. No. There is not.</p> <p>3 Q. Is -- and you mentioned that the number</p> <p>4 of -- that there are many individuals who are</p> <p>5 enrolled in the tribe who do not live on the</p> <p>6 island of Martha's Vineyard. Correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Do you know whether this ordinance</p> <p>9 discusses the settlement lands or the tribal</p> <p>10 lands at all?</p> <p>11 A. Off the top of my head, I can't recall</p> <p>12 that it does. But I would -- you know, if you</p> <p>13 would like an answer, I would like to have an</p> <p>14 opportunity to just take a look at it.</p> <p>15 Q. Why don't you do that.</p> <p>16 (Witness complies.)</p> <p>17 A. As a matter of fact, can we just have a</p> <p>18 break for a second? Okay?</p> <p>19 MR. CROWELL: If you want to take a</p> <p>20 break, take a break.</p> <p>21 MS. ELLSWORTH: Yeah. I don't think</p> <p>22 there's a question pending. Go ahead.</p> <p>23 THE WITNESS: All right. Thank you.</p> <p>24 (A recess was taken.)</p> <p>25</p> <p style="text-align: right;">[Page 142]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 question of citizens.</p> <p>3 Q. Understood. So my question is, does</p> <p>4 this document -- or excuse me, does this</p> <p>5 ordinance discuss any jurisdiction the tribe may</p> <p>6 have over land?</p> <p>7 A. No.</p> <p>8 Q. Let's, if we can, move on to</p> <p>9 Exhibit 1G.</p> <p>10 (Witness complies.)</p> <p>11 Q. Are you familiar with this document?</p> <p>12 A. I am.</p> <p>13 Q. This appears to be another tribal</p> <p>14 ordinance with various different amendments</p> <p>15 listed at the top. Correct?</p> <p>16 A. Correct.</p> <p>17 Q. Are you aware whether this ordinance</p> <p>18 was enacted through the process that you</p> <p>19 described by which ordinances are typically</p> <p>20 enacted?</p> <p>21 A. Well, this particular ordinance</p> <p>22 required -- actually, I do believe the other</p> <p>23 ordinance is required to be passed by the general</p> <p>24 membership. There are certain powers that have</p> <p>25 been reserved specifically to the people, and one</p> <p style="text-align: right;">[Page 144]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 BY MS. ELLSWORTH:</p> <p>3 Q. So my question -- have you had a chance</p> <p>4 to review the document?</p> <p>5 A. I did.</p> <p>6 Q. My question is: Is there anything in</p> <p>7 this ordinance that refers to the settlement</p> <p>8 lands in Aquinnah?</p> <p>9 A. No.</p> <p>10 Q. Is there anything in the ordinance that</p> <p>11 refers to the tribe's lands on Martha's Vineyard</p> <p>12 that it currently holds?</p> <p>13 A. The only reference to land really that</p> <p>14 is in here is just, you know, an acknowledgment</p> <p>15 of where we come from as Gay Head Indian people.</p> <p>16 So that's -- I hope that's helpful toward your</p> <p>17 answer.</p> <p>18 Q. Does the ordinance mention anything</p> <p>19 about the tribe's jurisdiction over any</p> <p>20 particular land?</p> <p>21 A. Over land, no. This is -- this</p> <p>22 document is with regard to our jurisdiction over</p> <p>23 our people, necessarily, how we define who</p> <p>24 belongs to us as citizens of our nation. So it's</p> <p>25 not a question of land jurisdiction. It's a</p> <p style="text-align: right;">[Page 143]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 of those is enrollment and the other would be,</p> <p>3 you know, for election purposes, who will</p> <p>4 represent them.</p> <p>5 Q. So both Exhibits 1F and 1G you believe</p> <p>6 were passed by the membership?</p> <p>7 A. Membership. Yes.</p> <p>8 Q. And is Exhibit 1G still in effect</p> <p>9 today?</p> <p>10 A. Yes.</p> <p>11 Q. Again, you indicated this, but this</p> <p>12 governs the way elections are conducted by the</p> <p>13 tribe for tribal government. Correct?</p> <p>14 A. Correct.</p> <p>15 Q. In order to participate in a tribal</p> <p>16 election, is there any requirement relating to</p> <p>17 settlement lands?</p> <p>18 A. Not to my knowledge. You know, your</p> <p>19 qualification to become an elected member of the</p> <p>20 tribe has to do with your age and your status as</p> <p>21 an enrolled member.</p> <p>22 Q. So there's no qualifications for -- in</p> <p>23 order to be elected related to the settlement</p> <p>24 lands?</p> <p>25 A. Not to my knowledge.</p> <p style="text-align: right;">[Page 145]</p>

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<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. All right. And what about for</p> <p>3 participating in an elections? Is it all tribal</p> <p>4 members are allowed to participate in elections?</p> <p>5 A. Actually, that is an area that you</p> <p>6 might actually get, you know, an answer closer to</p> <p>7 the questions that you've been asking, where, in</p> <p>8 order to participate in the election, you must</p> <p>9 return to our homeland, which is in Aquinnah.</p> <p>10 Q. So in order to participate in the</p> <p>11 elections, you have to travel to the settlement</p> <p>12 lands to the extent you don't reside there?</p> <p>13 A. Yes. You must come home to the tribal</p> <p>14 lands in order to cast your vote.</p> <p>15 Q. Is there any ownership or residence</p> <p>16 requirement in order to vote in the elections?</p> <p>17 A. Excuse me?</p> <p>18 Q. Is there any ownership or residence</p> <p>19 requirement in terms of the settlement lands</p> <p>20 that's required to vote in an election?</p> <p>21 A. Ownership? I don't understand. I</p> <p>22 don't understand the premise of your question.</p> <p>23 Q. Let me rephrase it. Is there any</p> <p>24 residence requirement in terms of the settlement</p> <p>25 lands required to participate in an election?</p> <p style="text-align: right;">[Page 146]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 you described earlier?</p> <p>3 A. This is another example of a document</p> <p>4 that has a specifically prescribed way for it to</p> <p>5 be enacted. It must be enacted under our</p> <p>6 constitution during a regularly scheduled annual</p> <p>7 meeting, which is why it was adopted in November.</p> <p>8 Q. So like the prior two, like Exhibit 1G</p> <p>9 and 1H, it's enacted by the entire tribal</p> <p>10 membership or whoever participates in an</p> <p>11 election?</p> <p>12 A. Correct.</p> <p>13 Q. And has it been amended since it was</p> <p>14 adopted in November 2000, to your knowledge?</p> <p>15 A. Not to my knowledge. No.</p> <p>16 Q. Is it still in effect today,</p> <p>17 Exhibit 1H?</p> <p>18 A. It is.</p> <p>19 Q. If you look on Page 4 of Exhibit 1H,</p> <p>20 Section 1-4-2, it talks about jurisdiction</p> <p>21 generally.</p> <p>22 A. Mm-hmm.</p> <p>23 Q. Does this -- under this section, does</p> <p>24 the judiciary have jurisdiction over non-tribal</p> <p>25 members?</p> <p style="text-align: right;">[Page 148]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 A. No. You must just -- you simply must</p> <p>3 return home in order to cast your vote.</p> <p>4 Q. Are there elected members of the Tribal</p> <p>5 Council who live outside the island of Martha's</p> <p>6 Vineyard?</p> <p>7 A. Yes, there are.</p> <p>8 Q. Approximately how many?</p> <p>9 A. There are five members of the Tribal</p> <p>10 Council currently that reside off Martha's</p> <p>11 Vineyard.</p> <p>12 Q. All right. If you can turn to</p> <p>13 Exhibit 1H, please.</p> <p>14 (Witness complies.)</p> <p>15 Q. Are you familiar with this document?</p> <p>16 A. I am.</p> <p>17 Q. This relates to the -- it's entitled</p> <p>18 Aquinnah Wampanoag Judiciary Establishment</p> <p>19 Ordinance. Correct?</p> <p>20 A. Correct.</p> <p>21 Q. It indicates it was adopted in November</p> <p>22 of 2000. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know whether it was adopted</p> <p>25 pursuant to the procedure for enacting ordinances</p> <p style="text-align: right;">[Page 147]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 A. Under this -- under this scenario --</p> <p>3 well, actually, we do not exert in our court</p> <p>4 jurisdiction over non-tribal members unless they</p> <p>5 submit themselves to that jurisdiction.</p> <p>6 Q. And that would be pursuant to</p> <p>7 Section 1-4-3, which would be jurisdiction by</p> <p>8 stipulation of the parties?</p> <p>9 A. Mm-hmm.</p> <p>10 Q. You have to answer orally.</p> <p>11 A. Yes, ma'am. Excuse me.</p> <p>12 Q. That's okay. Does the Wampanoag Court</p> <p>13 of Appeals exist?</p> <p>14 A. Actually, I do not believe that the</p> <p>15 Court of Appeals has been constituted, although</p> <p>16 it does -- fully constituted, although it does</p> <p>17 exist by virtue of the fact that there are judges</p> <p>18 that have been appointed to hear cases. And</p> <p>19 the -- Sôtyum has the authority to serve at the</p> <p>20 appellate level, should he not, you know, decide</p> <p>21 to hear a case at the lower level.</p> <p>22 Q. Let me make sure I understand. So the</p> <p>23 role of the chief, Sôtyum, is to hear courts at</p> <p>24 the lower level, and he has the authority to hear</p> <p>25 cases at the appeals level? Is that what you're</p> <p style="text-align: right;">[Page 149]</p>

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<p>1 TOBIAS VANDERHOOP</p> <p>2 saying?</p> <p>3 A. Yes. That is my understanding.</p> <p>4 Q. Are there -- other than the chief, are</p> <p>5 there other individuals who have been appointed</p> <p>6 to serve under this judiciary ordinance?</p> <p>7 A. Yes. And Judge Lisa Atkinson.</p> <p>8 Q. Atkinson?</p> <p>9 A. Yes.</p> <p>10 Q. Anybody else?</p> <p>11 A. No. She is the primary judge for court</p> <p>12 right now.</p> <p>13 Q. And she was appointed by the chief. Is</p> <p>14 that correct?</p> <p>15 A. She was appointed by the chief.</p> <p>16 Q. When was she appointed?</p> <p>17 A. In spring of 2013.</p> <p>18 Q. Is Ms. Atkinson an enrolled member of</p> <p>19 the tribe?</p> <p>20 A. No. She is not. She is -- she is a</p> <p>21 tribal woman. I believe that she has enrollment</p> <p>22 in the Cherokee Nation of Oklahoma, but she is a</p> <p>23 judge on the west coast for other tribal nations.</p> <p>24 Q. When you say "tribal woman," you mean</p> <p>25 she's been enrolled in a different tribe?</p> <p style="text-align: right;">[Page 150]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 into the administrative branch, if you will, of</p> <p>3 our tribal government, I no longer have, you</p> <p>4 know, direct knowledge of the specific operations</p> <p>5 of our sister branch, the judiciary.</p> <p>6 Q. So do you know who would have that</p> <p>7 information, other than Ms. Atkinson?</p> <p>8 A. Sôtyum Malonson.</p> <p>9 Q. Is there anybody else who works in the</p> <p>10 judiciary or has responsibility under this</p> <p>11 judiciary ordinance?</p> <p>12 A. Yes. Mr. Michael Blanton serves as the</p> <p>13 court administrator.</p> <p>14 Q. When was Mr. Blanton appointed to that</p> <p>15 position?</p> <p>16 A. I believe one year ago. I'm at a loss</p> <p>17 for the exact date, so I apologize for that.</p> <p>18 Q. Did he immediately succeed you in that</p> <p>19 role?</p> <p>20 A. He succeeded me in that role, but it</p> <p>21 was not immediate.</p> <p>22 Q. Was there anybody who held the position</p> <p>23 between yourself and Mr. Blanton?</p> <p>24 A. The chief administrator -- the chief</p> <p>25 administrator function went back to Sôtyum</p> <p style="text-align: right;">[Page 152]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 A. Yes. I just didn't want to misstate</p> <p>3 her tribal affiliation. But I do believe that</p> <p>4 she is a member of the Cherokee Nation of</p> <p>5 Oklahoma.</p> <p>6 Q. Okay. And do you know for what other</p> <p>7 tribes she serves as a judge on the west coast?</p> <p>8 A. Off the top of my head, I cannot</p> <p>9 recall. But I do believe that it is several.</p> <p>10 Q. Is Ms. Atkinson an attorney? Do you</p> <p>11 know?</p> <p>12 A. I believe she is.</p> <p>13 Q. Before Ms. Atkinson, was anybody else</p> <p>14 appointed to be a judge?</p> <p>15 A. No. She was the first.</p> <p>16 Q. She was the first. Okay. Has she</p> <p>17 heard cases under the judiciary ordinance?</p> <p>18 A. Yes, she has.</p> <p>19 Q. Do you know previously how many?</p> <p>20 A. That is a separate branch of</p> <p>21 government, so I don't have access to that</p> <p>22 information. I was there when she was first</p> <p>23 brought on, because I was working as the chief</p> <p>24 administrator of the court, as I said earlier.</p> <p>25 But as my role changed, and I moved back</p> <p style="text-align: right;">[Page 151]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 Malonson when I resigned.</p> <p>3 Q. So if nobody is serving in the</p> <p>4 administrator role, then that function is -- or</p> <p>5 the chief performs that function?</p> <p>6 A. Correct.</p> <p>7 Q. As well as the other functions that he</p> <p>8 performs?</p> <p>9 A. (Witness nodded.)</p> <p>10 Q. Is the court administrator a full-time</p> <p>11 position?</p> <p>12 A. I can't say. I don't know.</p> <p>13 Q. Was it a full-time position when you</p> <p>14 held it?</p> <p>15 A. I was chief administrator, and actually</p> <p>16 I was doing it as a volunteer.</p> <p>17 Q. Oh, I see. You were chief</p> <p>18 administrator of the tribe at the time, and then</p> <p>19 you also served as the court administrator.</p> <p>20 A. Well, I conducted that function because</p> <p>21 it needed to be done, and we did not have someone</p> <p>22 hired in that role at the time.</p> <p>23 Q. I understand. So you weren't</p> <p>24 specifically appointed as the court</p> <p>25 administrator.</p> <p style="text-align: right;">[Page 153]</p>

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<p>1 TOBIAS VANDERHOOP</p> <p>2 A. No. I was the chief administrator,</p> <p>3 which is one-third of the responsibilities of the</p> <p>4 chief of the tribe.</p> <p>5 Q. Understood. Is Mr. Blanton an enrolled</p> <p>6 member of the tribe?</p> <p>7 A. No. I believe he is an enrolled member</p> <p>8 of the Eastern Band of Cherokee Indians of North</p> <p>9 Carolina.</p> <p>10 Q. Returning back to Ms. Atkinson, where</p> <p>11 does Ms. Atkinson reside? Where does she live?</p> <p>12 A. In Washington state.</p> <p>13 Q. Does she -- has she come -- does she</p> <p>14 come to Martha's Vineyard from time to time?</p> <p>15 A. Most of the work that she does with the</p> <p>16 court is telephonic or by videoconference.</p> <p>17 Q. Okay. Has she been to the settlement</p> <p>18 lands? Do you know?</p> <p>19 A. I can't say, not knowing, because I</p> <p>20 haven't been over there conducting that work.</p> <p>21 Q. Do you know whether she's heard any</p> <p>22 cases in this function? Has she heard any cases</p> <p>23 in person?</p> <p>24 A. I can't answer because I don't know.</p> <p>25 Q. What about Mr. Blanton, does</p> <p style="text-align: right;">[Page 154]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 A. The Town of Aquinnah.</p> <p>3 Q. Is it on the settlement lands?</p> <p>4 A. It is not.</p> <p>5 Q. Where precisely is it located? Do you</p> <p>6 know?</p> <p>7 A. It is located on a piece of property</p> <p>8 that is known as the Totem Pole, which is near</p> <p>9 the center of the Town of Aquinnah.</p> <p>10 Q. And who owns that property?</p> <p>11 A. Mrs. Grace Reeves, a member of the</p> <p>12 tribe.</p> <p>13 Q. Does she also reside on that property?</p> <p>14 A. No.</p> <p>15 Q. Is that property used for any other</p> <p>16 purpose?</p> <p>17 A. There are other ancillary buildings</p> <p>18 that are an inn, actually, that function as an</p> <p>19 inn. It functions as an inn.</p> <p>20 Q. I-N-N?</p> <p>21 A. Yes.</p> <p>22 Q. Any other -- any other tribal functions</p> <p>23 take place there?</p> <p>24 A. Not particularly, no.</p> <p>25 Q. Do you know whether Ms. Atkinson has</p> <p style="text-align: right;">[Page 156]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 Mr. Blanton live on the island of Martha's</p> <p>3 Vineyard?</p> <p>4 A. No, he does not.</p> <p>5 Q. Where does he live?</p> <p>6 A. He lives on the mainland. I don't</p> <p>7 exactly know. I know he lives on the mainland</p> <p>8 and I know he commutes.</p> <p>9 Q. In the Commonwealth of Massachusetts?</p> <p>10 A. In the Commonwealth of Massachusetts.</p> <p>11 He commutes to his job in Aquinnah.</p> <p>12 Q. Do you know how often he comes to</p> <p>13 Aquinnah?</p> <p>14 A. Not knowing his schedule, I don't know</p> <p>15 if it's every day. But certainly all of the work</p> <p>16 that he needs to do, you know, in the -- in the</p> <p>17 direct capacity of the court administrator must</p> <p>18 be conducted there in Aquinnah. So he's there</p> <p>19 regularly. I will only be able to say that.</p> <p>20 Q. Is there a building or an office of</p> <p>21 some sort associated with the judiciary?</p> <p>22 A. Yes. There is a courthouse. It's a</p> <p>23 home that has been converted into what is to be</p> <p>24 used as a tribal courthouse.</p> <p>25 Q. And where is that located?</p> <p style="text-align: right;">[Page 155]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 heard any cases in the building on Totem Pole,</p> <p>3 the Totem Pole Road property?</p> <p>4 A. Well, all of the hearings are conducted</p> <p>5 there in that facility. As I said, not being in</p> <p>6 that branch of government, I can't speak to the</p> <p>7 specifics of their function, because it's not the</p> <p>8 purview of my branch of government.</p> <p>9 Q. Do you know whether any hearings have</p> <p>10 taken place in that property?</p> <p>11 A. I know that -- as I said before, all</p> <p>12 hearings that take place under the court take</p> <p>13 place at that property. That is the courthouse.</p> <p>14 It's the primary, you know, base of operations</p> <p>15 for the Aquinnah Wampanoag judiciary. I just</p> <p>16 can't answer the particulars that you're asking</p> <p>17 me to answer because I just don't have any more</p> <p>18 detail for you.</p> <p>19 Q. So you don't know if any hearing has</p> <p>20 taken place there at the judiciary building?</p> <p>21 MR. CROWELL: Objection. Misstates his</p> <p>22 testimony.</p> <p>23 MS. ELLSWORTH: You can answer.</p> <p>24 A. Well, I mean, I guess I can keep on</p> <p>25 saying the same thing over and over again. Is</p> <p style="text-align: right;">[Page 157]</p>

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<p>1 TOBIAS VANDERHOOP</p> <p>2 there something more that you're looking for?</p> <p>3 Maybe you can restate your question, and then I</p> <p>4 can give you a better answer.</p> <p>5 Q. My question is: Do you know whether</p> <p>6 any hearing has taken place at the building on</p> <p>7 Totem Pole Road?</p> <p>8 MR. CROWELL: Same objection.</p> <p>9 A. I'm just not aware, because I'm not</p> <p>10 there. So I don't want to make a speculative</p> <p>11 statement about what's going on there.</p> <p>12 Q. So you don't know?</p> <p>13 A. I'm not aware.</p> <p>14 Q. On Page 3 of Exhibit 1H, Section 1-3-1</p> <p>15 indicates that Wampanoag tribal level court is to</p> <p>16 be established, known as the Chief's Council.</p> <p>17 A. Mm-hmm.</p> <p>18 Q. Has the Chief's Council been</p> <p>19 established?</p> <p>20 A. To my knowledge, there are -- yes,</p> <p>21 there are members of the Chief's Council.</p> <p>22 Q. Do you know when -- well, strike that.</p> <p>23 Who are the members of the Chief's Council?</p> <p>24 A. I cannot give you a current listing of</p> <p>25 the Chief's Council members. Unfortunately,</p> <p style="text-align: right;">[Page 158]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. Do you know when the last time the</p> <p>3 Chief's Council was convened?</p> <p>4 A. Once again, it's a function of the</p> <p>5 other branch of government, which I do not have</p> <p>6 direct purview over, so I'm not aware.</p> <p>7 Q. Do you know whether the Chief's Council</p> <p>8 has heard any cases?</p> <p>9 A. Once again, you're asking me questions</p> <p>10 about, you know, the internal functions of a</p> <p>11 branch of government that I don't have direct</p> <p>12 responsibility over or purview, so I don't -- I'm</p> <p>13 not aware.</p> <p>14 Q. You can just say "I don't know." It's</p> <p>15 fine. I understand that you might not know the</p> <p>16 answer, but these were in your declaration.</p> <p>17 That's why I want to ask about them. Okay?</p> <p>18 A. Mm-hmm.</p> <p>19 Q. Is there a set number of members of the</p> <p>20 Chief's Council? Do you know?</p> <p>21 A. There's not a set number. No.</p> <p>22 Q. Do you know when the first Chief's</p> <p>23 Council was established -- or when the Chief's</p> <p>24 Council was first established?</p> <p>25 A. Not off the top of my head.</p> <p style="text-align: right;">[Page 160]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 there have been several deaths, and I'm not sure</p> <p>3 who -- have been the replacements that were</p> <p>4 appointed to those positions.</p> <p>5 Q. Do you know of any -- do you know --</p> <p>6 can you give me any names of the members of the</p> <p>7 Chief's Council that you're aware of? If you</p> <p>8 can't, you can't.</p> <p>9 A. I do believe that one of the current</p> <p>10 members is Elaine Gonaville -- or Elaine</p> <p>11 Jorissen, excuse me. I can write it down for</p> <p>12 you.</p> <p>13 Q. And is Ms. Jorissen an enrolled member</p> <p>14 of the tribe?</p> <p>15 A. Yes, she is.</p> <p>16 Q. Does she perform any other functions</p> <p>17 for the tribal government?</p> <p>18 A. From time to time, she performs</p> <p>19 transcription work for various meetings.</p> <p>20 Q. Is Ms. Atkinson a member of the Chief's</p> <p>21 Council?</p> <p>22 A. She is a judge. And -- yes.</p> <p>23 Q. So is she a member of the Chief's</p> <p>24 Council in that capacity?</p> <p>25 A. Yes. Yes.</p> <p style="text-align: right;">[Page 159]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. Was it established when you served in</p> <p>3 the position of administrator?</p> <p>4 A. There were -- there were elders that</p> <p>5 were serving in the -- on the Chief's Council.</p> <p>6 Yes.</p> <p>7 Q. How does one become a member of the</p> <p>8 Chief's Council?</p> <p>9 A. By appointment of Sôtyum Malonson.</p> <p>10 Q. At the time that you were serving as</p> <p>11 the chief administrator of the tribe, how many</p> <p>12 members of the Chief's Council were there, the</p> <p>13 elders?</p> <p>14 A. There were three.</p> <p>15 Q. Was Ms. Jorissen among them?</p> <p>16 A. Yes.</p> <p>17 Q. Do you remember who the other two</p> <p>18 members were?</p> <p>19 A. Mrs. Gladys Widdiss and Mrs. Edith</p> <p>20 Andrews.</p> <p>21 Q. Are both Mrs. Widdiss and Andrews</p> <p>22 members of the tribe?</p> <p>23 A. Yes.</p> <p>24 Q. Is there a difference between a</p> <p>25 peacemaker and a judge under the judiciary act?</p> <p style="text-align: right;">[Page 161]</p>

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<p>1 TOBIAS VANDERHOOP</p> <p>2 A. Yes, there is. The peacemakers are</p> <p>3 charged with bringing parties that might have a</p> <p>4 dispute together that, you know, is necessarily</p> <p>5 most appropriate for them to just work out, talk</p> <p>6 out, acknowledge the wrong that one has done</p> <p>7 between the other and sort of, you know, find a</p> <p>8 way to make amends, as opposed to, you know, the</p> <p>9 more adversarial, you know, regular court</p> <p>10 structure of, you know, everybody is going to</p> <p>11 come in and state their cases and then a judge is</p> <p>12 going to just rule.</p> <p>13 Q. Is Ms. Jorissen -- does Ms. Jorissen</p> <p>14 serve as a peacemaker or as a judge on the</p> <p>15 Chief's Council?</p> <p>16 A. She serves as an adviser to the chief.</p> <p>17 And, you know, some of the terminology in the</p> <p>18 ordinance itself may be a little bit confusing.</p> <p>19 She's not serving in the capacity as a judge.</p> <p>20 There is an advisory panel of elders that are</p> <p>21 appointed by the chief and serve in that</p> <p>22 capacity.</p> <p>23 Q. And does the advisory panel, the advice</p> <p>24 that they're providing, is it all related to the</p> <p>25 functions of the judiciary?</p> <p style="text-align: right;">[Page 162]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 to function.</p> <p>3 Q. Do you know approximately what amount</p> <p>4 of tribal funds?</p> <p>5 A. I don't have that off the top of my</p> <p>6 head. No.</p> <p>7 Q. What are those tribal funds being</p> <p>8 expended on?</p> <p>9 A. Staffing and, you know, ensuring that</p> <p>10 meetings are taking place, the individuals who</p> <p>11 serve on the various boards that make up the</p> <p>12 judiciary are stipended. When the judge is</p> <p>13 called upon to take action, the judge is paid.</p> <p>14 Q. Is the judge's, Ms. Atkinson's</p> <p>15 position, a full-time position?</p> <p>16 A. It's an as-needed position. It's a</p> <p>17 contractual arrangement.</p> <p>18 Q. Okay. If you could look, please,</p> <p>19 Mr. Vanderhoop, at Exhibit II.</p> <p>20 (Witness complies.)</p> <p>21 A. Mm-hmm.</p> <p>22 Q. Are you familiar with this ordinance?</p> <p>23 A. Yes.</p> <p>24 Q. All right. And are you aware whether</p> <p>25 this ordinance was passed through the process</p> <p style="text-align: right;">[Page 164]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 A. Yes, it is.</p> <p>3 Q. So are there other peacemakers that</p> <p>4 are -- have been appointed under the judiciary</p> <p>5 ordinance?</p> <p>6 A. The peacemakers' aspect of the judicial</p> <p>7 code has not been fully implemented, partially</p> <p>8 because of the lack of funding that the tribe has</p> <p>9 access to, so we're not able to adequately, you</p> <p>10 know, constitute it.</p> <p>11 Q. Would -- where might funding come from</p> <p>12 for the judiciary?</p> <p>13 A. Well, some funding comes from the</p> <p>14 Department of Justice, but the funding from there</p> <p>15 is limited. There are some funds that can be</p> <p>16 made available through the Bureau of Indian</p> <p>17 Affairs. But, once again, that funding is very</p> <p>18 limited. So a function such as this would</p> <p>19 necessarily have to be funded by tribal funds.</p> <p>20 Q. Are there tribal funds that are</p> <p>21 directed towards the judiciary right now that</p> <p>22 you're aware of?</p> <p>23 A. Yes. In order to maintain the basic</p> <p>24 operations of the judiciary, tribal funds are</p> <p>25 being expended in order to allow it to continue</p> <p style="text-align: right;">[Page 163]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 that we've discussed by the Tribal Council?</p> <p>3 A. Yes, it was.</p> <p>4 Q. All right. By the ordinance number, it</p> <p>5 looks to have been passed in 1997.</p> <p>6 A. Yes.</p> <p>7 Q. Now, this ordinance provides for</p> <p>8 criminal background checks for individuals who</p> <p>9 work with children. Correct?</p> <p>10 A. Correct.</p> <p>11 Q. All right. And it seeks to implement</p> <p>12 the Indian Child Protection and Family Violence</p> <p>13 Act. Is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. As well as the Crime Control Act of</p> <p>16 1990?</p> <p>17 A. Mm-hmm. Yes.</p> <p>18 Q. Now, both the Indian Children</p> <p>19 Protection and Family Violence Act and the Crime</p> <p>20 Control Act are federal laws. Correct?</p> <p>21 A. Yes, they are.</p> <p>22 Q. Are you aware, does this ordinance have</p> <p>23 any -- or ties application to any particular</p> <p>24 lands?</p> <p>25 A. Well, it is in force within any</p> <p style="text-align: right;">[Page 165]</p>

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<p>1 TOBIAS VANDERHOOP 2 territory that the tribe has jurisdiction over. 3 Q. So does it have any specific tie to any 4 particular land, settlement lands of the tribe? 5 A. Well, currently, it's all of the 6 settlement lands of the tribe or all of the 7 tribal lands that we hold in Aquinnah. Any 8 employee that may have contact with children or 9 elders, which actually, you know, in essence, 10 constitutes all of our employees, are subject to 11 this background check. 12 Q. Who performs the background check under 13 this ordinance? 14 A. It used to be conducted in conjunction 15 with local law enforcement. But we are also 16 working on the implementation of SORNA, the Sex 17 Offender Registration and Notification Act. And 18 so through that, we have a relationship with the 19 Commonwealth of Massachusetts and with the 20 Department of Justice, and we have a palm 21 scanner. So it makes the background checks much 22 easier. 23 Q. So when you say it used to be conducted 24 by local -- or in conjunction with local law 25 enforcement, was that the Town of Aquinnah?</p> <p style="text-align: right;">[Page 166]</p>	<p>1 TOBIAS VANDERHOOP 2 individuals who are responsible for children who 3 are affiliated with or members of the tribe? 4 A. Is it limited to that? No. It's not 5 limited to that. I was answering your question 6 in the way that you asked it. Maybe I 7 misunderstood your question. 8 But the bottom line is any of our employees, 9 volunteers, anyone who is elected or appointed to 10 any office within the tribal government is 11 subject to this because they may potentially come 12 into contact with a child or actually with 13 elders, and so in that way, we try to make sure 14 that we only have upstanding individuals in 15 contact with both of those very important 16 populations. 17 Q. And in so doing, you're implementing 18 the two federal laws that we talked about here, 19 the Indian Child Protection and Family Violence 20 and the Crime Control Act. Correct? 21 A. Yes, ma'am. 22 Q. Can you look, please, at Exhibit 1J. 23 (Witness complies.) 24 THE WITNESS: Just as a note, I did 25 notice that you referred to the particular</p> <p style="text-align: right;">[Page 168]</p>
<p>1 TOBIAS VANDERHOOP 2 A. Sometimes it was the Town of Aquinnah. 3 Sometimes it was the county sheriff's department. 4 Q. The county sheriff's department? 5 A. Mm-hmm. Yes. Sorry. 6 Q. One second. Sorry. If you look on -- 7 let's see, it's the third whereas clause. 8 A. Yes. 9 Q. "The investigative process is 10 applicable to all regular full-time," etc., etc.? 11 A. Yes. 12 Q. And then it indicates, "who have the 13 direct responsibility for education or care of 14 and/or control over children." Do you see that? 15 A. Yes. 16 Q. So is this tied in any way to 17 individuals who have contact with children who 18 are members of or are affiliated with the tribe? 19 A. Yes. 20 Q. In what way? 21 A. In what way? In that we do have youth 22 programs that are conducted on -- within our 23 administration -- administrative offices. 24 Q. But looking specifically at the 25 language of this ordinance, is it limited to</p> <p style="text-align: right;">[Page 167]</p>	<p>1 TOBIAS VANDERHOOP 2 federal laws that were laid out in Exhibit I, but 3 I wanted to also just be sure that, you know, 4 your statement is looked at through the context 5 of the fact that we are exercising tribal 6 jurisdiction. And, yes, we are bolstered by 7 those federal laws. But it is tribal 8 jurisdiction that we are exercising. 9 Q. Well, since we're going back to 10 Exhibit I, let me just ask you one more question 11 about it. This is tied to employees of the 12 tribe, correct? Not necessarily to the tribal 13 lands. Is that right? 14 A. Individuals who are working on our 15 lands. Yes. 16 Q. Is that what the ordinance says? Does 17 the ordinance itself tie itself to lands? 18 A. Well, the jurisdiction is over our 19 territory. Now, there are tribes that exercise 20 jurisdiction that do not hold particular lands. 21 We do. And so when our tribal government passes 22 a law, you know, the primary application is over 23 the lands which are held in trust by the United 24 States for the benefit of the Wampanoag Tribe of 25 Gay Head (Aquinnah).</p> <p style="text-align: right;">[Page 169]</p>

<p>1 TOBIAS VANDERHOOP</p> <p>2 So whenever we are exercising our</p> <p>3 jurisdiction, our sovereign rights, it's</p> <p>4 necessarily tied to our lands, because that is</p> <p>5 the territory over which we can exert sovereign</p> <p>6 authority.</p> <p>7 Q. So my question to you is whether this</p> <p>8 Exhibit II is restricted to -- in any way to</p> <p>9 employees on tribal lands.</p> <p>10 A. I didn't say it was restricted to. I</p> <p>11 just was trying to clarify that it has</p> <p>12 application over our territory --</p> <p>13 Q. I understand.</p> <p>14 A. -- and over the individuals that were</p> <p>15 working there. Yes.</p> <p>16 Q. I understand. I'm going to ask my</p> <p>17 question one more time, which is, is anything in</p> <p>18 this Exhibit II restricted to employees who are</p> <p>19 on tribal lands of any type?</p> <p>20 A. I don't understand your -- your keying</p> <p>21 on "restricted to." I'm not understanding what</p> <p>22 you're -- what you're asking.</p> <p>23 Q. So if the tribe has an employee who is</p> <p>24 engaging in some function, and that function has</p> <p>25 nothing to do or is not related to the settlement</p> <p style="text-align: right;">[Page 170]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 A. The words may not be there. However,</p> <p>3 the application is the same.</p> <p>4 Q. Let's talk about IJ. Are you familiar</p> <p>5 with this ordinance?</p> <p>6 A. I'm aware of this ordinance. Yes.</p> <p>7 Q. Are you familiar with it or just aware</p> <p>8 of it?</p> <p>9 A. Well, I've read it, but, you know, I</p> <p>10 can't recite it, you know, verbatim.</p> <p>11 Q. By the ordinance number, it appears to</p> <p>12 have been enacted in 1996. Is that correct?</p> <p>13 A. That is correct.</p> <p>14 Q. Do you know whether it was enacted</p> <p>15 pursuant to the process you described earlier by</p> <p>16 which tribal ordinances are generally enacted?</p> <p>17 A. This particular ordinance would have</p> <p>18 been enacted in that manner.</p> <p>19 Q. Do you know whether this ordinance is</p> <p>20 still in effect?</p> <p>21 A. It is in effect.</p> <p>22 Q. Is there a tribal child welfare social</p> <p>23 worker. Is there an individual who holds that</p> <p>24 position?</p> <p>25 A. Yes. We have a human services</p> <p style="text-align: right;">[Page 172]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 lands, this ordinance covers that employee.</p> <p>3 Correct?</p> <p>4 A. Actually, yes, it does. See, now I</p> <p>5 understand your question. Because we have</p> <p>6 individuals who are charged -- and,</p> <p>7 interestingly, we did skip over the tribal</p> <p>8 historic preservation ordinance, which is B. And</p> <p>9 our culture resource monitors, which are charged</p> <p>10 with exercising the tribe's rights with regard to</p> <p>11 the National Historic Preservation Act and Native</p> <p>12 American Repatriation Act, travel all over our</p> <p>13 aboriginal Wampanoag territory. And this</p> <p>14 ordinance certainly applies to them.</p> <p>15 They are required to, you know -- to subject</p> <p>16 themselves to the same background check that any</p> <p>17 other employee or official of the tribe would</p> <p>18 have to do.</p> <p>19 Q. Right. So this ordinance doesn't</p> <p>20 relate to tribal lands. It relates to tribal</p> <p>21 employees?</p> <p>22 A. It is both.</p> <p>23 Q. Is there anything in this ordinance</p> <p>24 that talks about tribal lands or the settlement</p> <p>25 lands?</p> <p style="text-align: right;">[Page 171]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 director. She -- and she acts in this capacity.</p> <p>3 Q. Who is that individual?</p> <p>4 A. Her name is Bonnie Chalifoux.</p> <p>5 Q. Is that a paid position?</p> <p>6 A. The director of human services is a</p> <p>7 paid position. Yes.</p> <p>8 Q. Has there ever been a separate -- a</p> <p>9 child welfare social worker -- is the Indian --</p> <p>10 the tribal child welfare social worker, is that a</p> <p>11 separate position from the director of human</p> <p>12 services?</p> <p>13 A. No. No, it is not.</p> <p>14 Q. How long has Ms. Chalifoux been in that</p> <p>15 position?</p> <p>16 A. She has been the director of human</p> <p>17 services since the early 2000s.</p> <p>18 Q. Is she an enrolled member of the tribe?</p> <p>19 A. She is not.</p> <p>20 Q. Section 4 of this document, which is</p> <p>21 right here on that first page, talks about</p> <p>22 penalties for failing to report. Do you see</p> <p>23 that?</p> <p>24 A. Yes.</p> <p>25 Q. And refers to a variety of Mass.</p> <p style="text-align: right;">[Page 173]</p>

[44] (Pages 170 to 173)

<p>1 TOBIAS VANDERHOOP</p> <p>2 General Laws.</p> <p>3 A. Yes.</p> <p>4 Q. It indicates that a person who</p> <p>5 willfully fails to report known or suspected</p> <p>6 child neglect or abuse is guilty of a criminal</p> <p>7 offense. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know what that criminal offense</p> <p>10 is?</p> <p>11 A. Do I know what that criminal offense</p> <p>12 is? Off the top of my head, I do not. However,</p> <p>13 I do know that, you know, if the inaction were to</p> <p>14 have subjected the child to, you know, harm,</p> <p>15 that, you know, we would certainly work with our</p> <p>16 partners, you know, the police department and any</p> <p>17 other entity that would have jurisdiction over</p> <p>18 this matter and prosecute to the fullest extent</p> <p>19 that we were able to.</p> <p>20 Q. And let me be more precise with my</p> <p>21 question. There's a public law and a Mass.</p> <p>22 General Law that are referenced in the final few</p> <p>23 lines of this. Do you see that, 101PL630, and</p> <p>24 Mass. General Law, Chapter 119, Section 51A? Do</p> <p>25 you see that?</p> <p style="text-align: right;">[Page 174]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 this ordinance have been pursued by the tribe?</p> <p>3 A. I'm not aware, but I have not been</p> <p>4 aware of all of the background details of that --</p> <p>5 that would subject me to knowledge such as that.</p> <p>6 I was tribal administrator. Not -- when I</p> <p>7 was tribal administrator, no, there were no</p> <p>8 violations of this code, but that's not to say</p> <p>9 that there have never been.</p> <p>10 Q. Okay. Fair enough. And, again, the</p> <p>11 provisions of state and federal law that are</p> <p>12 reported here, reproduced here in Section 4,</p> <p>13 those are the state and federal laws that this</p> <p>14 ordinance is carrying out. Correct?</p> <p>15 A. I would say correct.</p> <p>16 Q. So this ordinance applies state and</p> <p>17 federal -- is the tribe's mechanism of</p> <p>18 implementing state and federal law?</p> <p>19 A. Yes. Certainly acknowledging it.</p> <p>20 Remembering, as well, that on our tribal lands</p> <p>21 there are several jurisdictions that act</p> <p>22 concurrently. So, you know, yes, I mean, the</p> <p>23 acknowledgment that those laws exist are -- were</p> <p>24 logical.</p> <p>25 Q. Great. Can you look at Exhibit 1K,</p> <p style="text-align: right;">[Page 176]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 A. Yes.</p> <p>3 Q. Those are state and federal law.</p> <p>4 Correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So who would prosecute a</p> <p>7 violation of those state or federal laws?</p> <p>8 A. As I said, we would certainly work with</p> <p>9 partners. We do not have a full-fledged police</p> <p>10 department, so we would necessarily reach out to</p> <p>11 the local law enforcement agency that has an</p> <p>12 agreement, government to government, with our</p> <p>13 tribe in order to help us to -- to move through</p> <p>14 this, a process such as this.</p> <p>15 Q. Would the -- does the tribe prosecute</p> <p>16 violations of state law, Commonwealth law?</p> <p>17 A. We can certainly be a party to a case</p> <p>18 in which a -- a violation like this would be</p> <p>19 prosecuted.</p> <p>20 Q. But is the tribe able to prosecute the</p> <p>21 laws of the Commonwealth of Massachusetts?</p> <p>22 A. I don't believe that the tribe has</p> <p>23 tried to take that particular jurisdiction</p> <p>24 responsibility.</p> <p>25 Q. Do you know whether any violations of</p> <p style="text-align: right;">[Page 175]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 please.</p> <p>3 (Witness complies.)</p> <p>4 Q. Are you familiar with this agreement?</p> <p>5 A. I am.</p> <p>6 Q. This document, I should say. This the</p> <p>7 Tribal Environmental Agreement between the</p> <p>8 Wampanoag Tribe of Gay Head (Aquinnah) and the</p> <p>9 United States EPA. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. Now, this is not an ordinance of the</p> <p>12 tribe. Correct?</p> <p>13 A. No, it is not an ordinance.</p> <p>14 Q. What is the process by which the tribe</p> <p>15 enters into an agreement like this? Is there any</p> <p>16 process for approving or authorizing to enter</p> <p>17 into an agreement like this?</p> <p>18 A. Typically, depending on the subject</p> <p>19 matter, there is a department that has subject</p> <p>20 matter jurisdiction over the item. And in this</p> <p>21 case, it would be the natural resources</p> <p>22 department. The natural resources director would</p> <p>23 necessarily be working with the chairman or</p> <p>24 chairperson, you know, whatever the case may be</p> <p>25 at the time, and would enter into negotiations</p> <p style="text-align: right;">[Page 177]</p>

[45] (Pages 174 to 177)

<p>1 TOBIAS VANDERHOOP</p> <p>2 with representatives of the, in this case,</p> <p>3 federal agency, work out the details of the</p> <p>4 agreement in order to implement whatever kind of</p> <p>5 program or, you know, just improve</p> <p>6 communications, however the case may be.</p> <p>7 And the Tribal Council would then be given</p> <p>8 the opportunity to review said document and</p> <p>9 ratify it so that it could be signed by the</p> <p>10 sitting chairman.</p> <p>11 Q. So ultimately, is there a vote that</p> <p>12 needs to happen at the Tribal Council to ratify</p> <p>13 an agreement like this?</p> <p>14 A. The Tribal Council would necessarily</p> <p>15 vote. Yes.</p> <p>16 Q. And then you see on the back of this</p> <p>17 document it was signed by the then chairwoman.</p> <p>18 Does it always have to be signed by the</p> <p>19 chairperson?</p> <p>20 A. Yes.</p> <p>21 Q. To your knowledge, is that how this</p> <p>22 particular agreement was entered into?</p> <p>23 A. To my knowledge, that's how this</p> <p>24 agreement was entered into.</p> <p>25 Q. Were you involved in the tribal</p> <p style="text-align: right;">[Page 178]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. So if you look here on Page 4, what the</p> <p>3 EPA has agreed to do here is to coordinate and</p> <p>4 consult with the tribe on environmental matters?</p> <p>5 Is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. Is that the goal or objective of this</p> <p>8 agreement?</p> <p>9 A. Yes.</p> <p>10 Q. So pursuant -- under this agreement or</p> <p>11 this language, the tribe will provide feedback to</p> <p>12 the EPA?</p> <p>13 A. We do regularly. Yes.</p> <p>14 Q. Does this agreement require the EPA to</p> <p>15 adopt any of the feedback or recommendations the</p> <p>16 tribe provides?</p> <p>17 A. When the President of the United States</p> <p>18 required all of his agencies to consult with all</p> <p>19 of the federally acknowledged tribal nations</p> <p>20 across the country, those consultations were to</p> <p>21 provide feedback, you know, so that those</p> <p>22 agencies could best understand how their actions</p> <p>23 could potentially impact tribal lands.</p> <p>24 Those recommendations that come forward, you</p> <p>25 know, are not -- the agency is not required to</p> <p style="text-align: right;">[Page 180]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 government in 2004 when this agreement was</p> <p>3 entered?</p> <p>4 A. Actually, I was not only a member of</p> <p>5 the Tribal Council, but I served in the capacity</p> <p>6 of liaison to the natural resources department.</p> <p>7 Q. So you're familiar with this agreement?</p> <p>8 A. I was there.</p> <p>9 Q. If you look on Page 4 of Exhibit 1K, in</p> <p>10 the second full paragraph, beginning "this</p> <p>11 agreement."</p> <p>12 A. Mm-hmm.</p> <p>13 Q. It states, "This agreement does not</p> <p>14 change any laws or rights of the parties or</p> <p>15 create any right or benefit, substantive or</p> <p>16 procedural, enforceable at law or equity by a</p> <p>17 party against the United States, its agencies or</p> <p>18 instrumentalities, its officers or employees or</p> <p>19 any other person." Do you see that?</p> <p>20 A. Mm-hmm. Yes. Excuse me. Yes.</p> <p>21 Q. So is it your understanding, does this</p> <p>22 agreement create any enforceable rights against</p> <p>23 the EPA?</p> <p>24 A. No. That's not what the -- that was</p> <p>25 not the goal or objective of this document.</p> <p style="text-align: right;">[Page 179]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 implement them, but certainly required to collect</p> <p>3 them and to understand them and to at least</p> <p>4 endeavor to implement changes in their policies</p> <p>5 or programs that would do less harm to the</p> <p>6 tribes.</p> <p>7 Obviously, when you're hearing 560-plus</p> <p>8 voices, it's a little bit hard to not affect in</p> <p>9 some way some of them. So, no, there is no</p> <p>10 requirement in order to, you know -- that they</p> <p>11 have to implement what we tell them. But it is</p> <p>12 still a consultation that is based off of not</p> <p>13 only the executive order of the President of the</p> <p>14 United States, but, you know, their trust</p> <p>15 responsibility to the tribe as a</p> <p>16 federally-acknowledged Indian tribe.</p> <p>17 Q. All right. Let's take a look at</p> <p>18 Exhibit 1M, please.</p> <p>19 (Witness complies.)</p> <p>20 THE WITNESS: Can I have a break,</p> <p>21 please?</p> <p>22 MS. ELLSWORTH: Yes, of course. We've</p> <p>23 been going for a while.</p> <p>24 (A recess was taken.)</p> <p>25 MS. ELLSWORTH: So Mr. Rappaport is</p> <p style="text-align: right;">[Page 181]</p>

[46] (Pages 178 to 181)

<p>1 TOBIAS VANDERHOOP 2 going to ask questions for a few minutes. 3 DIRECT EXAMINATION 4 BY MR. RAPPAPORT: 5 Q. Thank you for letting me go out of 6 turn. Some travel difficulties today. 7 Who is Aquinnah Associates? 8 A. Aquinnah Associates are a contracted 9 entity that is working with the Aquinnah 10 Wampanoag Gaming Corporation. 11 Q. Do you know if they are a corporation? 12 A. I'm not sure exactly what their 13 corporate structure is. 14 Q. Okay. Where are they located? 15 A. I believe they're located out of New 16 Bedford -- maybe North Dartmouth. 17 Q. And are they associated -- other than 18 having a contractual relationship, are they 19 associated in any way with the tribe? 20 A. No. With the tribal government or 21 anything like that? 22 Q. Right. 23 A. No. 24 Q. So the name is perhaps a coincidence, 25 Aquinnah Associates?</p> <p style="text-align: right;">[Page 182]</p>	<p>1 TOBIAS VANDERHOOP 2 he lives? 3 A. San Diego. 4 Q. And do you know whether he holds any 5 licenses from the State of Massachusetts? 6 A. I couldn't tell you. 7 Q. And Clay Harden, do you know where he 8 lives? 9 A. Lima, Peru. 10 Q. Do you know whether he holds any 11 licenses from the State of Massachusetts? 12 A. No, I don't. But none of -- neither of 13 those two gentlemen are affiliated with Aquinnah 14 Associates. 15 Q. Oh. Perhaps -- I wasn't here, but I 16 reviewed the transcript. I thought Kevin 17 McDonald was the project manager. 18 A. Yes, for the Aquinnah Wampanoag Gaming 19 Corporation. Not for Aquinnah Associates. 20 Q. So he's not the general manager for 21 construction? 22 A. No. 23 Q. And Clay Harden, again, is not the 24 general manager or project manager relating to 25 construction?</p> <p style="text-align: right;">[Page 184]</p>
<p>1 TOBIAS VANDERHOOP 2 A. Yeah. Well, one thing I can say is 3 that some of the principals of the organization 4 are tribal members. But other than that, I mean, 5 they don't have any direct affiliation to the 6 tribal government. 7 Q. Okay. And do you know if they are 8 general contractors? 9 A. Yes. They actually have an agreement 10 with the general contractor, I do believe. 11 Q. They have an agreement? 12 A. An agreement. They have like -- they 13 have their entity and then they have, like, a 14 subagreement with a general contractor. 15 Q. And do you know the name of that 16 general contractor? 17 A. Yes. His name is Michael D'Amato. 18 Q. And do you know where he's located? 19 A. I don't know where his base of 20 operations is. 21 Q. And as far as you know, is he a 22 licensed -- a general contractor licensed as such 23 by the State of Massachusetts? 24 A. He's licensed. I have not -- 25 Q. And Kevin McDonald, do you know where</p> <p style="text-align: right;">[Page 183]</p>	<p>1 TOBIAS VANDERHOOP 2 A. Correct. 3 Q. Okay. And does the tribe -- and by 4 that, I'll refer to any entities -- the gaming 5 corporation or the tribe, itself -- 6 A. Well, wait a minute. Hold on. I need 7 you to be very specific. 8 Q. Okay. 9 A. Are you asking about the tribe or are 10 you asking about the Aquinnah Wampanoag Gaming 11 Corporation? 12 Q. Does the Aquinnah Gaming Corporation 13 intend to seek any permits from the Town of 14 Aquinnah in connection with any construction work 15 that's going to be done at the -- let's just call 16 it the community center building right now? 17 A. Under the structure that's outlined by 18 the Indian Gaming Regulatory Act, it's not 19 required. 20 Q. So the answer would be no, no permits 21 are going to be sought by the gaming corporation 22 from the Town of Aquinnah? 23 A. No, because it's not required. 24 Q. And are any inspections going to be 25 sought from the Town of Aquinnah?</p> <p style="text-align: right;">[Page 185]</p>

[47] (Pages 182 to 185)

<p>1 TOBIAS VANDERHOOP</p> <p>2 A. Yes. The tribal land use commission</p> <p>3 will have an inspector that meets the</p> <p>4 qualifications of a local building and safety and</p> <p>5 fire inspector.</p> <p>6 Q. But do I take your answer to be the</p> <p>7 inspections will be done by tribal inspectors and</p> <p>8 not Town inspectors?</p> <p>9 A. Yes.</p> <p>10 Q. And is there a licensed electrician who</p> <p>11 will begin doing any work on the community center</p> <p>12 building?</p> <p>13 A. Well, all of the tradesmen that would</p> <p>14 be working on that facility would have to</p> <p>15 necessarily be licensed so that, you know, the</p> <p>16 quality of their work can be, you know, verified</p> <p>17 and --</p> <p>18 Q. And that would be licensed by the</p> <p>19 Commonwealth of Massachusetts?</p> <p>20 A. Wherever their license derives from.</p> <p>21 Q. But not necessarily by the tribe, but</p> <p>22 by the State?</p> <p>23 A. Well, they would be operating under the</p> <p>24 license that they have acquired as tradesmen.</p> <p>25 Q. Okay. I don't know if you're aware,</p> <p style="text-align: right;">[Page 186]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 inspectors. I'm asking, is the gaming</p> <p>3 corporation going to allow any inspections to be</p> <p>4 done by, for example, the electrical inspector or</p> <p>5 the building inspector or the zoning officer of</p> <p>6 the Town of Aquinnah?</p> <p>7 A. No. That would be redundant.</p> <p>8 Q. Okay.</p> <p>9 MR. RAPPAPORT: Thank you for letting</p> <p>10 me go out of turn.</p> <p>11 CONTINUED DIRECT EXAMINATION</p> <p>12 BY MS. ELLSWORTH:</p> <p>13 Q. Okay. If we can look at this</p> <p>14 Exhibit 1M that we just turned to right before</p> <p>15 the break.</p> <p>16 (Witness complies.)</p> <p>17 Q. If you can just look at the agreement</p> <p>18 to let me know, are you familiar with this</p> <p>19 agreement?</p> <p>20 A. Yes.</p> <p>21 Q. And it's entitled the "Fire Cooperative</p> <p>22 Agreement Between the Wampanoag Tribe of Gay Head</p> <p>23 and the Eastern Region of the Bureau of Indian</p> <p>24 Affairs." Is that right?</p> <p>25 A. Yes.</p> <p style="text-align: right;">[Page 188]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 but there's an advertisement in today's newspaper</p> <p>3 advertising for licensed electricians for a</p> <p>4 ten-week commercial Aquinnah casino project</p> <p>5 starting July 6th.</p> <p>6 A. I wasn't aware of that.</p> <p>7 Q. Okay. Are you aware as to whether</p> <p>8 construction activity is supposed to start</p> <p>9 effective July 6th or on or about July 6th?</p> <p>10 A. I am not aware that that is the time</p> <p>11 frame. But if that's what the advertisement</p> <p>12 says, then...</p> <p>13 Q. And are you -- is the gaming</p> <p>14 corporation, which I understand has -- now has</p> <p>15 control over that community center building --</p> <p>16 A. Yes.</p> <p>17 Q. -- going to allow any representatives</p> <p>18 from the Town of Aquinnah to come in to the</p> <p>19 property and do inspections?</p> <p>20 A. Well, as I said before, the inspections</p> <p>21 that would be necessary would be taking place by</p> <p>22 an inspector that is credentialed, you know, to</p> <p>23 the level of a local building inspector, safety</p> <p>24 inspector.</p> <p>25 Q. Right. But those are tribal</p> <p style="text-align: right;">[Page 187]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. And this agreement is signed by the</p> <p>3 chairwoman of the Tribal Council as well as</p> <p>4 someone from the BIA. Do you know whether this</p> <p>5 agreement was entered into pursuant to the</p> <p>6 process that you outlined earlier as to how</p> <p>7 intergovernmental agreements are --</p> <p>8 A. This particular agreement was entered</p> <p>9 into to allow for tribal members who wanted to</p> <p>10 pursue particular firefighting credentials, and</p> <p>11 so I believe it was adopted by the Tribal</p> <p>12 Council. But it's a different type of agreement.</p> <p>13 It's not particularly, you know -- it's not like</p> <p>14 the other ones.</p> <p>15 Q. Okay. Well, that leads to some of the</p> <p>16 questions I was going to ask about it. So this</p> <p>17 agreement provides for reimbursement for some --</p> <p>18 a training undertaken by two individuals.</p> <p>19 Correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And those individuals are Vernon</p> <p>22 Welsh and Curtis Chandler?</p> <p>23 A. Yes.</p> <p>24 Q. Are those tribal members?</p> <p>25 A. They are.</p> <p style="text-align: right;">[Page 189]</p>

<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. Do they live on Martha's Vineyard?</p> <p>3 A. They do.</p> <p>4 Q. They do or they did? Sorry.</p> <p>5 A. They did, and they do.</p> <p>6 Q. Two questions in one. And it indicates</p> <p>7 that this is a reimbursement of costs. So this</p> <p>8 occurred after the training was already attended</p> <p>9 by these two individuals. Right?</p> <p>10 A. As far as I know, yes.</p> <p>11 Q. Okay. Is there anything else provided</p> <p>12 for by this agreement?</p> <p>13 A. Nope. Just particularly that we would</p> <p>14 be availing ourselves of that training that was</p> <p>15 being offered by the Bureau of Indian Affairs.</p> <p>16 And that they were willing to reimburse us, the</p> <p>17 tribe, for the expenses of sending our members to</p> <p>18 that training.</p> <p>19 Q. Let me just look at one thing here.</p> <p>20 Okay. Can you look, please, at Exhibit 1N.</p> <p>21 (Witness complies.)</p> <p>22 Q. Are you familiar with this agreement?</p> <p>23 A. Yes.</p> <p>24 Q. And this is an intergovernmental</p> <p>25 agreement between the Wampanoag Tribe of Gay Head</p> <p style="text-align: right;">[Page 190]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 A. Yes.</p> <p>3 Q. Okay. What department is referred to</p> <p>4 there? Do you know?</p> <p>5 A. Oh, the -- this was the department --</p> <p>6 I'm not sure what they were called back then, but</p> <p>7 I think it was -- it is Children and Families.</p> <p>8 Q. And that's the department of the</p> <p>9 Commonwealth of Massachusetts?</p> <p>10 A. Yes.</p> <p>11 Q. And prior to the dissolution of this</p> <p>12 agreement, do you know whether the arrangement</p> <p>13 had been at all amended or altered?</p> <p>14 A. I do not know that it was necessarily</p> <p>15 amended or altered. However, I do know that the</p> <p>16 implementation was that our tribal</p> <p>17 representatives, including child protection team</p> <p>18 and director of human services, worked very</p> <p>19 closely with the department in order to ensure</p> <p>20 that, you know, first, our children would be</p> <p>21 placed into tribal homes. And wherever that was</p> <p>22 not possible, the children would be connected to</p> <p>23 the tribal community and to the tribal culture.</p> <p>24 Q. So those are individuals working for</p> <p>25 the tribe who were working with the State</p> <p style="text-align: right;">[Page 192]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 (Aquinnah) and the Commonwealth of Massachusetts.</p> <p>3 A. Yes.</p> <p>4 Q. And it is dated in 1997. Do you know</p> <p>5 whether this agreement was entered into under the</p> <p>6 process that you described earlier for</p> <p>7 intergovernmental agreements?</p> <p>8 A. It was.</p> <p>9 Q. Is this agreement still in effect?</p> <p>10 A. I believe this agreement has been</p> <p>11 dissolved.</p> <p>12 Q. Do you know, was it dissolved by the</p> <p>13 tribe or by the Commonwealth?</p> <p>14 A. By the tribe.</p> <p>15 Q. Do you know when?</p> <p>16 A. I would be speculating. It may have</p> <p>17 been 2013.</p> <p>18 Q. If you look on Page 4 of this</p> <p>19 agreement, there's a section entitled</p> <p>20 "Jurisdiction."</p> <p>21 (Witness complies.)</p> <p>22 Q. And it indicates that "The department</p> <p>23 shall exercise exclusive jurisdiction over all of</p> <p>24 the tribe's child custody proceedings." And then</p> <p>25 goes on. Do you see that?</p> <p style="text-align: right;">[Page 191]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 Department. Correct?</p> <p>3 A. Correct.</p> <p>4 Q. And that was the State Department of</p> <p>5 Children and Family Services, you think?</p> <p>6 A. I believe so. Yes.</p> <p>7 Q. And it was that Department of Children</p> <p>8 and Family Services that was actually charged</p> <p>9 with the child custody ultimate placement?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. If you could look, please, at</p> <p>12 Exhibit 1O.</p> <p>13 (Witness complies.)</p> <p>14 Q. Are you familiar with this document?</p> <p>15 A. Yes.</p> <p>16 Q. And this is the Intergovernmental</p> <p>17 Agreement on Cooperative Land Use and Planning</p> <p>18 Between the Wampanoag Tribe of Gay Head</p> <p>19 (Aquinnah) and the Town of Aquinnah. Do you see</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know -- this agreement was</p> <p>23 entered into in 2007, it appears, if you look on</p> <p>24 the last final two pages.</p> <p>25 A. Yes.</p> <p style="text-align: right;">[Page 193]</p>

[49] (Pages 190 to 193)

<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. Okay. And to your knowledge, was this</p> <p>3 agreement entered into under the process that you</p> <p>4 described earlier for entering into these types</p> <p>5 of agreements?</p> <p>6 A. Yes. I was a member of the negotiating</p> <p>7 board that got this established.</p> <p>8 Q. And is this agreement still in effect?</p> <p>9 A. No, it is not.</p> <p>10 Q. When was it terminated?</p> <p>11 A. I believe it was terminated either in</p> <p>12 2012 or 2013. You know, I'm having a hard time</p> <p>13 placing the exact date, but it is no longer in</p> <p>14 effect.</p> <p>15 Q. By whom was it terminated?</p> <p>16 A. The tribe.</p> <p>17 Q. Has a new agreement been put into place</p> <p>18 in its stead?</p> <p>19 A. No. No, it hasn't.</p> <p>20 Q. Is there a new agreement under</p> <p>21 consideration in its stead?</p> <p>22 A. Not at this time. We haven't had any</p> <p>23 discussions.</p> <p>24 Q. Does the tribe intend to enter into a</p> <p>25 new intergovernmental agreement with the Town</p> <p style="text-align: right;">[Page 194]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 in effect in 1983, it is just simply those.</p> <p>3 Any -- any amendments moving forward would have</p> <p>4 to go through the amendment process.</p> <p>5 Q. And by -- what amendment process are</p> <p>6 you referring to?</p> <p>7 A. There is an amendment process, I</p> <p>8 believe, in our land use regulations, and I may</p> <p>9 be misremembering, unfortunately. But I do know</p> <p>10 that there is a two-meeting process by which they</p> <p>11 need to be brought forward and reviewed and then</p> <p>12 adopted.</p> <p>13 Q. So at the time that this agreement was</p> <p>14 entered into in 2007, do you know whether the</p> <p>15 tribe, in fact, did adopt and enforce</p> <p>16 substantially equivalent provisions of zoning</p> <p>17 under the terms of this agreement?</p> <p>18 A. Yeah. As they were in 1983. I believe</p> <p>19 so, yes.</p> <p>20 Q. Do you know whether the tribe has</p> <p>21 enacted or adopted any amendments to those zoning</p> <p>22 ordinances since the 2007 adoption under this</p> <p>23 agreement?</p> <p>24 A. Not to my knowledge.</p> <p>25 Q. Later down on the same page, there's an</p> <p style="text-align: right;">[Page 196]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 along these lines?</p> <p>3 A. It hasn't been discussed at the Tribal</p> <p>4 Council level.</p> <p>5 Q. If you look on Page 4 of this exhibit,</p> <p>6 it describes a process of adoption of</p> <p>7 substantially equivalent requirements. Do you</p> <p>8 see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And it indicates that the tribe</p> <p>11 will -- tribe agrees to adopt and enforce laws</p> <p>12 that are substantially equivalent to the Town's</p> <p>13 zoning bylaws in place as of the date of the 1983</p> <p>14 settlement agreement. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Would that include any amendments to</p> <p>17 those laws that were accepted by the tribe under</p> <p>18 the terms of the 1983 settlement agreement?</p> <p>19 MR. CROWELL: Object to the form of the</p> <p>20 question. Asks for a legal conclusion.</p> <p>21 MS. ELLSWORTH: You can answer.</p> <p>22 A. Okay. Well, the fact of the matter is</p> <p>23 that there is a process by which the tribe</p> <p>24 could adopt any amendments to those zoning laws.</p> <p>25 So upon initial adoption of laws similar to those</p> <p style="text-align: right;">[Page 195]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 indication there, "The tribe agrees to provide</p> <p>3 the Town with reasonable access to its property,</p> <p>4 such that the Town can monitor land use</p> <p>5 activities under the agreement." Do you see</p> <p>6 that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Okay. And to your knowledge, has the</p> <p>9 tribe provided the Town with this access under</p> <p>10 this agreement?</p> <p>11 A. When this agreement was in force, yes,</p> <p>12 we did.</p> <p>13 Q. Okay. There's also a process under</p> <p>14 this agreement on Page, approximately 8, Pages 8</p> <p>15 and 9, that discusses if there's a disagreement</p> <p>16 between the tribe's zoning board decision and the</p> <p>17 Town's zoning board decision. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Are you familiar with the resolution</p> <p>20 process laid out in this agreement?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know whether this dispute</p> <p>23 resolution process was ever needed to be</p> <p>24 utilized?</p> <p>25 A. No. It never -- we never had a</p> <p style="text-align: right;">[Page 197]</p>

[50] (Pages 194 to 197)

<p>1 TOBIAS VANDERHOOP</p> <p>2 necessary situation occur that would have us</p> <p>3 employ this particular section, because the</p> <p>4 dispute was over the construction that was going</p> <p>5 on at the community center, and that was the only</p> <p>6 building permit that was -- that needed to be</p> <p>7 under consideration. And the tribe had issued</p> <p>8 its building permit.</p> <p>9 The Town went through a process and did its</p> <p>10 review, and so there was -- there's never been</p> <p>11 another time when, while this was in force, that</p> <p>12 we necessarily needed to avail ourselves of the</p> <p>13 dispute resolution portion.</p> <p>14 Q. And this was in force between 2007 and</p> <p>15 about 2013, you think?</p> <p>16 A. I'm pretty sure. Yes.</p> <p>17 Q. Do you know, were there other permits</p> <p>18 that were issued by both the Town and the tribe</p> <p>19 zoning boards, and there was no dispute between</p> <p>20 them, or is it that there were no permits issued</p> <p>21 during that period?</p> <p>22 A. I don't think there were any permits</p> <p>23 issued.</p> <p>24 MR. CROWELL: I would like to take a</p> <p>25 break. I want to take a few minutes before</p> <p style="text-align: right;">[Page 198]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 Jurisdiction section, which indicates nothing in</p> <p>3 the agreement limits or waives the rights,</p> <p>4 regulatory jurisdiction of either party. Right?</p> <p>5 So that would be both the tribe and the Town.</p> <p>6 Correct?</p> <p>7 A. Yes.</p> <p>8 Q. And it also indicates here on Page 10</p> <p>9 that this agreement is intended to assist the</p> <p>10 parties in implementing the Joint Memorandum of</p> <p>11 Understanding, also known as the settlement</p> <p>12 agreement. Correct?</p> <p>13 A. That's what it says.</p> <p>14 Q. Let's look now at Exhibit 2, which is</p> <p>15 what I understand was intended to be Exhibit P to</p> <p>16 your declaration. So you have Exhibit 2 there</p> <p>17 separately in front of you.</p> <p>18 (Witness complies.)</p> <p>19 Q. Here we go. Sorry about that. Okay.</p> <p>20 Do you recognize this, what is Exhibit 2 here, as</p> <p>21 the operational plan?</p> <p>22 A. Yes.</p> <p>23 Q. All right. And this is between the --</p> <p>24 well, it indicates it's pursuant to the agreement</p> <p>25 between the Wampanoag Tribe of Gay Head</p> <p style="text-align: right;">[Page 200]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 Mr. Rappaport has to leave.</p> <p>3 MS. ELLSWORTH: Okay.</p> <p>4 (A recess was taken.)</p> <p>5 BY MS. ELLSWORTH:</p> <p>6 Q. So we were talking about Exhibit 1O,</p> <p>7 and I have just a few more questions about this.</p> <p>8 So if you look here on Page 9 of Exhibit 1O, it</p> <p>9 talks about sort of an appeal process in the</p> <p>10 event that this dispute resolution process is</p> <p>11 unsuccessful for two possible dueling permits.</p> <p>12 A. Yes.</p> <p>13 Q. Understanding that nobody has ever</p> <p>14 availed themselves of this process, to what court</p> <p>15 does that dispute resolution appeal, I'll call</p> <p>16 it, go?</p> <p>17 A. Are you referring to Page 9?</p> <p>18 Q. Page 9, Paragraph 8.</p> <p>19 A. Oh, it says it right there. Does it</p> <p>20 not?</p> <p>21 Q. Yes. I'm asking you.</p> <p>22 A. Under this agreement, it would have</p> <p>23 gone to the Superior Court of Dukes County.</p> <p>24 Q. And on the next page of Exhibit O,</p> <p>25 which is Page 10, Exhibit 1O, there's a</p> <p style="text-align: right;">[Page 199]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 (Aquinnah) and the Town of Aquinnah. Correct?</p> <p>3 A. Yes. And that agreement was referring</p> <p>4 to the Tribe-Town agreement that is also in</p> <p>5 force, just is not part of the -- this document,</p> <p>6 this stack of documents here.</p> <p>7 Q. Okay. Thank you. That's helpful. Is</p> <p>8 that Tribe-Town agreement what we were talking</p> <p>9 about as Exhibit 1 --</p> <p>10 A. It's the mutual aid agreement.</p> <p>11 Q. 1O. It's not an agreement that's in</p> <p>12 your declaration?</p> <p>13 A. No.</p> <p>14 Q. Okay. That's fine. And the</p> <p>15 operational plan, which is Exhibit 2, was --</p> <p>16 indicates it was amended November 3, 2011.</p> <p>17 Correct?</p> <p>18 A. Correct.</p> <p>19 Q. Do you know when it was first enacted?</p> <p>20 A. I do not recall.</p> <p>21 Q. Is the operational plan still in</p> <p>22 effect?</p> <p>23 A. Yes. Both the Tribe-Town agreement and</p> <p>24 the operational plan are still in effect. There</p> <p>25 are -- there is a new version pending, but it's</p> <p style="text-align: right;">[Page 201]</p>

[51] (Pages 198 to 201)

<p>1 TOBIAS VANDERHOOP</p> <p>2 pending Town council review and recommendation to</p> <p>3 the Board of Selectmen because the Tribal Council</p> <p>4 has already approved it.</p> <p>5 Q. That's a new intergovernmental</p> <p>6 agreement?</p> <p>7 A. And operational plan.</p> <p>8 Q. Thank you. But this -- the existing</p> <p>9 intergovernmental agreement and operational plan</p> <p>10 are currently in effect?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Now, right here on the first</p> <p>13 page, further down on the first page, there's an</p> <p>14 indication of the entity with primary</p> <p>15 responsibility in a given emergency. Do you see</p> <p>16 that?</p> <p>17 A. I'm sorry. Which section?</p> <p>18 Q. It is Section 2. B2, I think.</p> <p>19 A. Yup.</p> <p>20 Q. And --</p> <p>21 A. Yes.</p> <p>22 Q. It indicates that, you know, in the</p> <p>23 event of an emergency within the Town, including</p> <p>24 on tribal lands, and lists out the entities with</p> <p>25 primary responsibility. Do you see that?</p> <p style="text-align: right;">[Page 202]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 Town of Aquinnah, the Town of Chilmark and the</p> <p>3 Town of West Tisbury to provide members of those</p> <p>4 towns EMS training, you know, to become emergency</p> <p>5 medical technicians and ensure that, you know, we</p> <p>6 have that response service in our region.</p> <p>7 Q. So it's not a private entity. It's --</p> <p>8 a governmental entity of those three towns?</p> <p>9 A. It may be a private entity. But it's</p> <p>10 made up of representatives of those three towns.</p> <p>11 Q. On Page 13 of this Exhibit 2, there's a</p> <p>12 provision for inspection services and</p> <p>13 enforcement. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And it indicates that "the tribe shall</p> <p>16 utilize permit and inspection services as</p> <p>17 provided by the Town building inspector's office</p> <p>18 for new construction and renovation projects that</p> <p>19 would generally require a building permit under</p> <p>20 applicable law." Is that correct?</p> <p>21 A. Correct.</p> <p>22 Q. So does this -- pursuant to this</p> <p>23 agreement, does the -- does this agreement</p> <p>24 require the tribe to seek a building permit for</p> <p>25 new construction from the Town?</p> <p style="text-align: right;">[Page 204]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 A. Yes.</p> <p>3 Q. Indicates the Town of Aquinnah Police</p> <p>4 Department has primary responsibility for police</p> <p>5 duties?</p> <p>6 A. Yes. I didn't know if that was a</p> <p>7 question or not. I thought you were just</p> <p>8 enumerating.</p> <p>9 Q. I'll ask you a question. Does the</p> <p>10 agreement indicate that the Town of Aquinnah</p> <p>11 Police Department has primary responsibility for</p> <p>12 police duties in an emergency?</p> <p>13 A. Yes. Which is consistent with the</p> <p>14 mutual aid agreement between the tribe and the</p> <p>15 Town.</p> <p>16 Q. And that the Town -- does the agreement</p> <p>17 provide that the Town of Aquinnah Fire Department</p> <p>18 has primary responsibility for fire duties?</p> <p>19 A. Yes.</p> <p>20 Q. And does the agreement provide that for</p> <p>21 any medical emergencies, it is the Tri-Town</p> <p>22 Ambulance Service with primary responsibility?</p> <p>23 A. Yes.</p> <p>24 Q. What is the Tri-Town Ambulance Service?</p> <p>25 A. It is an entity that is made up of the</p> <p style="text-align: right;">[Page 203]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 A. For housing construction, I would have</p> <p>3 to say that, yes, it would. However, for</p> <p>4 activities related to the gaming project that</p> <p>5 fall under the Indian Gaming Regulatory Act, no.</p> <p>6 Q. And I'm not asking for -- I'm not</p> <p>7 asking you, sort of, for your view on that. I</p> <p>8 understand your position on it.</p> <p>9 My question relates to this agreement and</p> <p>10 whether this agreement restricts this permit</p> <p>11 requirement to housing.</p> <p>12 A. Well, I felt that that was the only way</p> <p>13 that I could actually answer you with regard to</p> <p>14 this agreement.</p> <p>15 Q. Does this agreement distinguish between</p> <p>16 permit inspection services for housing and permit</p> <p>17 inspection services for other types of buildings?</p> <p>18 MR. CROWELL: Object to the question.</p> <p>19 You can go ahead and answer.</p> <p>20 A. Okay. Not to my knowledge.</p> <p>21 Q. There's a provision in this agreement,</p> <p>22 if you go back to Page 8, it talks about Tribal</p> <p>23 Rangers.</p> <p>24 A. I'm sorry. What page?</p> <p>25 Q. Pages 8 and 9 of Exhibit 2.</p> <p style="text-align: right;">[Page 205]</p>

<p>1 TOBIAS VANDERHOOP</p> <p>2 A. Yes.</p> <p>3 Q. How many Tribal Rangers are there</p> <p>4 presently?</p> <p>5 A. Two.</p> <p>6 Q. What are their names?</p> <p>7 A. Ranger Michael Soletti, who is also a</p> <p>8 BIA police officer, and Ranger Tyler Maurice.</p> <p>9 Q. By BIA, you mean Bureau of Indian</p> <p>10 Affairs?</p> <p>11 A. Yes.</p> <p>12 Q. Are they employed -- both employed by</p> <p>13 the tribe?</p> <p>14 A. Yes.</p> <p>15 Q. Are they full-time employees?</p> <p>16 A. Yes.</p> <p>17 Q. Is it a salary position? A paid</p> <p>18 position?</p> <p>19 A. It's a paid position.</p> <p>20 Q. Have there previously been more than</p> <p>21 two rangers, or has it always been two?</p> <p>22 A. Generally, it's been two.</p> <p>23 Q. Have there been fewer than two rangers</p> <p>24 in the past?</p> <p>25 A. When there's been a vacancy in a</p> <p style="text-align: right;">[Page 206]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 delegated some form of authority by the chief of</p> <p>3 police of the Town of Aquinnah? Is that your</p> <p>4 understanding?</p> <p>5 A. They are cross-deputized officers. And</p> <p>6 dependent on the circumstances that are before</p> <p>7 them, the color of their badge changes. So, you</p> <p>8 know, in one instance, if they're dealing with</p> <p>9 tribal members on tribal lands, you know, over a</p> <p>10 tribal matter, then they are our Tribal Rangers.</p> <p>11 If they're dealing with a non-tribal member on</p> <p>12 tribal lands, they would necessarily be acting in</p> <p>13 the capacity of a special police officer.</p> <p>14 Q. And are they -- when a ranger acts as a</p> <p>15 special police officer, is that -- is the ranger</p> <p>16 always entitled to act as a special police</p> <p>17 officer, or does there have to be a specific</p> <p>18 authorization by the chief of police of the Town</p> <p>19 of Aquinnah?</p> <p>20 A. Once they're conferred with that title,</p> <p>21 as long as they're acting within the, you know,</p> <p>22 bounds of the agreements that we have in place,</p> <p>23 you know, the authority with which they can act,</p> <p>24 you know, would necessarily be able to change.</p> <p>25 It's the same -- it's very much similar to</p> <p style="text-align: right;">[Page 208]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 position.</p> <p>3 Q. When is the last time there were fewer</p> <p>4 than two rangers, that you recall?</p> <p>5 A. Over the winter.</p> <p>6 Q. For about how long?</p> <p>7 A. Several months.</p> <p>8 Q. What about prior to that?</p> <p>9 A. I don't recall.</p> <p>10 Q. When you were the tribal administrator,</p> <p>11 was -- do you recall whether there were two</p> <p>12 rangers at the time?</p> <p>13 A. Generally, there were two rangers for</p> <p>14 the entire time. Generally. You know, there may</p> <p>15 have been very small periods of time when there</p> <p>16 was only one.</p> <p>17 Q. Okay. And this agreement lays out, in</p> <p>18 various places, the duties of Tribal Rangers.</p> <p>19 But I'd like to direct your attention to the</p> <p>20 Section C, which talks about rangers and special</p> <p>21 officers.</p> <p>22 A. Yes.</p> <p>23 Q. Does this agreement indicate that the</p> <p>24 rangers, to the extent that they are acting as a</p> <p>25 special officer, are they performing -- are they</p> <p style="text-align: right;">[Page 207]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 the status of being a Bureau of Indian Affairs</p> <p>3 police officer and a ranger at the same time.</p> <p>4 You know, at some points, you may be utilizing</p> <p>5 your authority as a federal officer and to the</p> <p>6 exclusion or, you know, in place of your Tribal</p> <p>7 Ranger duties.</p> <p>8 Q. So at any given time, are the Tribal</p> <p>9 Rangers authorized to act as a special officer of</p> <p>10 the Town of Aquinnah?</p> <p>11 A. As long as they have been appointed</p> <p>12 appropriately by the Board of Selectmen through a</p> <p>13 recommendation by the chief of police.</p> <p>14 Q. Have the two current Tribal Rangers</p> <p>15 been so appointed?</p> <p>16 A. I believe that one of the rangers is a</p> <p>17 traffic officer at this time, has not gone</p> <p>18 through some requisite training that would be</p> <p>19 required in order to become a full special</p> <p>20 officer.</p> <p>21 Q. Okay. What about -- which ranger is</p> <p>22 that?</p> <p>23 A. Mr. Soletti.</p> <p>24 Q. And what about Mr. Solice, is he a</p> <p>25 special officer?</p> <p style="text-align: right;">[Page 209]</p>

<p>1 TOBIAS VANDERHOOP</p> <p>2 A. Mr. Maurice --</p> <p>3 Q. Oh, Maurice. Thank you.</p> <p>4 A. -- is new to the position.</p> <p>5 Q. So he's not yet been appointed by the</p> <p>6 chief of police as special officer.</p> <p>7 A. No.</p> <p>8 Q. Were the previous Tribal Rangers --</p> <p>9 whoever had Mr. Maurice's position before him,</p> <p>10 was he cross-deputized in this way as a special</p> <p>11 officer?</p> <p>12 A. Yes. He was a special police officer</p> <p>13 as well as a BIA police officer and a Tribal</p> <p>14 Ranger.</p> <p>15 Q. Section -- I guess it's C6 here on</p> <p>16 Page 9, indicates that "Rangers shall not carry a</p> <p>17 firearm in performance of their duties as a</p> <p>18 special officer unless directed by the chief of</p> <p>19 police." Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Do either Mr. Soletti or Mr. Maurice</p> <p>22 carry a firearm at this time?</p> <p>23 A. Only if they were to be directed to do</p> <p>24 so by Chief Belain.</p> <p>25 Q. Who is the chief of the Town of</p> <p style="text-align: right;">[Page 210]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 directed by the chief of police to be permitted</p> <p>3 to carry a firearm during that season?</p> <p>4 A. I believe he had been at some point.</p> <p>5 But that is a belief. I -- I have not seen an</p> <p>6 e-mail or a letter or, you know, any other</p> <p>7 communication that tells me that that is so.</p> <p>8 Q. If you could turn back to Pages 6 and 7</p> <p>9 of this Exhibit 2, which describes the Town of</p> <p>10 Aquinnah Police Department.</p> <p>11 A. What page?</p> <p>12 Q. Pages 6 and 7 of Exhibit 2.</p> <p>13 (Witness complies.)</p> <p>14 Q. And this indicates, Section 4A1, that</p> <p>15 "town police officers shall have powers to</p> <p>16 enforce all applicable Town and state laws while</p> <p>17 on tribal lands." Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. To your knowledge, do town police</p> <p>20 officers, in fact, enforce Town and state laws</p> <p>21 while on tribal lands?</p> <p>22 A. Well, certainly they patrol. And if</p> <p>23 there is an incident that occurs on tribal lands,</p> <p>24 since we have a mutual aid agreement with the</p> <p>25 Town of Aquinnah for them to enter our lands and</p> <p style="text-align: right;">[Page 212]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 Aquinnah police?</p> <p>3 A. Yes.</p> <p>4 Q. So at this time, to your knowledge,</p> <p>5 have they been directed to carry a firearm by the</p> <p>6 chief of police?</p> <p>7 A. I wouldn't be -- you know, that</p> <p>8 direction would not rise to the level of</p> <p>9 notifying the tribal chairman as to whether or</p> <p>10 not they're to be carrying. I mean, if there was</p> <p>11 an incident, then I would get an after report,</p> <p>12 but I wouldn't know.</p> <p>13 Q. Okay. So explain to me how this would</p> <p>14 work, then. Is it on a case-by-case basis the</p> <p>15 chief of police might direct the rangers to be</p> <p>16 permitted to carry a firearm?</p> <p>17 A. Yes. And particularly during the times</p> <p>18 when it is hunting season and there are</p> <p>19 individuals with shotguns in our woods.</p> <p>20 Q. When is the hunting season?</p> <p>21 A. In the fall.</p> <p>22 Q. This past fall, was Mr. Soletti a</p> <p>23 Tribal Ranger?</p> <p>24 A. Yes. He was.</p> <p>25 Q. Do you know whether he had been</p> <p style="text-align: right;">[Page 211]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 help us in that way, then yes, they do.</p> <p>3 Q. Do you know if they have made traffic</p> <p>4 stops on tribal land?</p> <p>5 A. They have the ability to do so. I</p> <p>6 don't know how often that happens. And once</p> <p>7 again, that wouldn't be something that would rise</p> <p>8 to the level of the tribal chairman being</p> <p>9 notified that somebody got a ticket.</p> <p>10 Q. Is your office on the tribal lands, on</p> <p>11 the settlement lands?</p> <p>12 A. It's in the administration building on</p> <p>13 the tribal lands, yes.</p> <p>14 Q. Have you seen the town police</p> <p>15 patrolling the roads around there?</p> <p>16 A. Regularly.</p> <p>17 Q. Have you seen the town police ever pull</p> <p>18 somebody over, pull another vehicle over?</p> <p>19 A. For a traffic stop, I can't say that</p> <p>20 I -- I don't know. Maybe once. Maybe once.</p> <p>21 Q. Do you know whether the town police</p> <p>22 have ever made any arrests on tribal land?</p> <p>23 A. Of non-tribal members for various</p> <p>24 incidents, I believe that has happened.</p> <p>25 Q. You indicated earlier today that you</p> <p style="text-align: right;">[Page 213]</p>

[54] (Pages 210 to 213)

<p>1 TOBIAS VANDERHOOP</p> <p>2 get reports from the chief of police from time to</p> <p>3 time.</p> <p>4 A. An after report, yes.</p> <p>5 Q. An after report. When is the last time</p> <p>6 you received an after report from the chief of</p> <p>7 police?</p> <p>8 A. Probably several weeks ago.</p> <p>9 Q. Do you remember what the nature of that</p> <p>10 report was?</p> <p>11 A. Off the top of my head, I don't. But</p> <p>12 also I don't think it's appropriate for me to</p> <p>13 divulge, you know, the contents of the report</p> <p>14 that the chief of police was giving me.</p> <p>15 Q. Well, I'm asking about the nature of</p> <p>16 the type of offense or what have you at a general</p> <p>17 level. I'm not asking for any sort of specific</p> <p>18 details.</p> <p>19 A. Okay. I believe it may have been a</p> <p>20 domestic-related situation.</p> <p>21 Q. Okay. And that was a few weeks ago,</p> <p>22 you said?</p> <p>23 A. (Witness nodded.)</p> <p>24 Q. Prior to that, do you remember when the</p> <p>25 last -- the previous after report prior to that</p> <p style="text-align: right;">[Page 214]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 to provide four-wheel drive ambulances so that</p> <p>3 they could actually not only get into our tribal</p> <p>4 lands, but get to the various places in town that</p> <p>5 are more secluded and, you know, you wouldn't be</p> <p>6 able to reach without that kind of equipment.</p> <p>7 So, yes, they do come, and we actually</p> <p>8 provide them with quite a bit of equipment and</p> <p>9 gear in order to carry out that duty.</p> <p>10 Q. So the equipment and gear that you</p> <p>11 provide, is that maintained on the tribal lands</p> <p>12 or is that -- was that given to the ambulance</p> <p>13 service for their use?</p> <p>14 A. By agreement, it is given over to the</p> <p>15 care of the Tri-Town Ambulance Service.</p> <p>16 Q. And you said it's a four-wheel drive</p> <p>17 ambulance. Is that right?</p> <p>18 A. There's a four-wheel drive ambulance.</p> <p>19 There are several LUCAS chest compression</p> <p>20 machines. You know, things like that. And</p> <p>21 actually on an annual basis, we also restock the</p> <p>22 supplies that are necessary for the ambulance to</p> <p>23 function.</p> <p>24 Q. And where does the funding come from</p> <p>25 for those supplies of that ambulance?</p> <p style="text-align: right;">[Page 216]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 that you received?</p> <p>3 A. It's probably every few weeks.</p> <p>4 Q. In terms of the services provided by</p> <p>5 the Town of Aquinnah Fire Department, does the</p> <p>6 Town fire department respond to fire emergencies</p> <p>7 on the tribal land?</p> <p>8 A. Yes. If there is a fire alarm that</p> <p>9 happens, generally the fire department does</p> <p>10 respond.</p> <p>11 Q. Is there a separate tribal fire</p> <p>12 department?</p> <p>13 A. No.</p> <p>14 Q. Or just the Town of Aquinnah?</p> <p>15 A. No. Our mutual aid agreement is for</p> <p>16 those services to be provided by the Town of</p> <p>17 Aquinnah.</p> <p>18 Q. And what about with emergency medical</p> <p>19 services, the ambulance service, is there a</p> <p>20 separate -- does the Town -- well, I guess it's a</p> <p>21 Tri-Town Ambulance Service. Do they come onto</p> <p>22 tribal lands to perform emergency medical</p> <p>23 services?</p> <p>24 A. Yes. And over the years, we have</p> <p>25 utilized our access to various resources in order</p> <p style="text-align: right;">[Page 215]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 A. Through federal grants.</p> <p>3 Q. And from what federal entity?</p> <p>4 A. One of them is a Massachusetts entity.</p> <p>5 And I'm not -- well, and as far as the equipment</p> <p>6 is concerned, it is a -- I know the name of the</p> <p>7 program is called TRANSAM, but I cannot remember</p> <p>8 what agency actually runs that particular</p> <p>9 program.</p> <p>10 Q. Is it -- do you know if it's a federal</p> <p>11 agency or a state agency?</p> <p>12 A. It's a federal agency.</p> <p>13 Q. You indicated that some of the funding</p> <p>14 came from a Massachusetts entity. Do you know</p> <p>15 what state entity that is?</p> <p>16 A. Yeah. I should. But it's getting a</p> <p>17 little bit long in the day. I'm starting to not</p> <p>18 remember things that usually would come very</p> <p>19 quickly. I think that it would be, you know --</p> <p>20 well, I can't -- I just can't recall.</p> <p>21 Q. That's fine. Is it an agency of the</p> <p>22 Commonwealth of Massachusetts?</p> <p>23 A. It is.</p> <p>24 Q. Okay. Are you aware whether the Town</p> <p>25 of Aquinnah has a harbor master?</p> <p style="text-align: right;">[Page 217]</p>

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<p>1 TOBIAS VANDERHOOP</p> <p>2 A. I am.</p> <p>3 Q. Do they have a harbor master?</p> <p>4 A. The Town of Aquinnah does.</p> <p>5 Q. Does the tribe have a harbor master?</p> <p>6 A. Actually, our -- our rangers are also,</p> <p>7 you know, cross-deputized to work with the harbor</p> <p>8 master and, in fact, work very cooperatively with</p> <p>9 the harbor master and make tribal boats and other</p> <p>10 equipment available to him in order to help him</p> <p>11 do his duty.</p> <p>12 Q. So in that role, is that a separate</p> <p>13 role from Tribal Ranger, or that's just in</p> <p>14 connection with the Tribal Ranger role?</p> <p>15 A. It's in connection with -- certainly,</p> <p>16 they're in their capacity as Tribal Rangers. But</p> <p>17 it is through the Tribe-Town agreement and the</p> <p>18 operational plan that this relationship plays</p> <p>19 out.</p> <p>20 Q. Okay. So what are the -- you indicated</p> <p>21 that they're cross-deputized by the harbor</p> <p>22 master, the rangers are.</p> <p>23 A. Yes.</p> <p>24 Q. What does that mean?</p> <p>25 A. They become deputy harbor masters, I do</p> <p style="text-align: right;">[Page 218]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 criteria of an appropriate local level building</p> <p>3 inspector.</p> <p>4 Q. Has the Town -- excuse me, the tribe,</p> <p>5 in the past, entered into an arrangement with</p> <p>6 somebody meeting those parameters?</p> <p>7 A. I believe so. But I won't be able to</p> <p>8 give you very many details on that. That's not</p> <p>9 something that I handled.</p> <p>10 Q. Do you know how long ago the tribe had</p> <p>11 someone who met those credentials?</p> <p>12 A. It was, you know, several years ago. I</p> <p>13 honestly can't say.</p> <p>14 Q. That's fine. When you say that the</p> <p>15 tribe will be entering into a relationship with</p> <p>16 someone who will meet the criteria of an</p> <p>17 appropriate local level building inspector --</p> <p>18 A. Mm-hmm.</p> <p>19 Q. -- can I just ask what you mean by</p> <p>20 that?</p> <p>21 A. I mean that the individual who enters</p> <p>22 into the contractual relationship with the tribe</p> <p>23 will have all of the appropriate credentials to</p> <p>24 conduct building inspections for the health and</p> <p>25 safety and appropriate completion of building</p> <p style="text-align: right;">[Page 220]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 believe. And I think we may only have one member</p> <p>3 of our staff that is holding that title right</p> <p>4 now. But that's the way it has been done in the</p> <p>5 past, anyway.</p> <p>6 Q. And that's either Mr. Soletti or</p> <p>7 Mr. Maurice?</p> <p>8 A. Actually, I think it may be Director</p> <p>9 Stearns.</p> <p>10 Q. I'm sorry. Remind me, who is Director</p> <p>11 Stearns?</p> <p>12 A. The director of the natural resources</p> <p>13 department.</p> <p>14 Q. I see. Is he also a Tribal Ranger?</p> <p>15 A. He was a Tribal Ranger.</p> <p>16 Q. I see. But not currently?</p> <p>17 A. No.</p> <p>18 Q. We talked a little bit about the</p> <p>19 building inspection provisions in this agreement</p> <p>20 that's Exhibit 2 that the Town provides or</p> <p>21 provided for under this agreement.</p> <p>22 Does the tribe employ a building inspector?</p> <p>23 A. Currently, no. But we -- the land use</p> <p>24 commission will be entering into a contractual</p> <p>25 relationship with someone who will meet the</p> <p style="text-align: right;">[Page 219]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 projects.</p> <p>3 Q. Will those credentials be conferred by</p> <p>4 some other entity?</p> <p>5 A. I would have to assume -- well,</p> <p>6 generally, an individual that you would enter</p> <p>7 into that kind of relationship with would</p> <p>8 probably have -- be carrying those from either</p> <p>9 the state that they reside in or the town that</p> <p>10 they reside in.</p> <p>11 I'm not fully aware of all of the facets of</p> <p>12 that type of relationship. I just know what will</p> <p>13 be required.</p> <p>14 Q. So what I'm trying to understand, and I</p> <p>15 apologize if this is not clear, is my</p> <p>16 understanding of a building inspector is it's</p> <p>17 somebody that the Town or the State will confer</p> <p>18 or indicate meets whatever credentials the Town</p> <p>19 or State might establish. Correct?</p> <p>20 A. Mm-hmm.</p> <p>21 Q. You have to answer out loud.</p> <p>22 A. Yes.</p> <p>23 Q. So is it the intention of the tribe to</p> <p>24 enter into an arrangement with somebody who has</p> <p>25 been conferred such a credential by either a</p> <p style="text-align: right;">[Page 221]</p>

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<p>1 TOBIAS VANDERHOOP</p> <p>2 State or a Town government?</p> <p>3 A. Well, more than likely, that would be</p> <p>4 the set of circumstances that would play out.</p> <p>5 Q. Has the tribe identified an individual</p> <p>6 that they might enter into -- that you might</p> <p>7 enter into this contractual arrangement with?</p> <p>8 A. I know that there are several</p> <p>9 individuals under consideration. I have not</p> <p>10 reviewed their credentials myself. And that's</p> <p>11 not -- you know, it's not my responsibility to do</p> <p>12 that. So I wouldn't be part of that -- part of</p> <p>13 that effort.</p> <p>14 Q. Whose responsibility would that be?</p> <p>15 A. It would be under the land use</p> <p>16 commission of the tribe.</p> <p>17 Q. And do you know whether the individuals</p> <p>18 who were under consideration, are they themselves</p> <p>19 building inspectors in some town or in the</p> <p>20 Commonwealth?</p> <p>21 A. I'm sorry. Repeat the question,</p> <p>22 please.</p> <p>23 Q. Do you know whether the three</p> <p>24 individuals you indicated who you think are under</p> <p>25 consideration, whether they --</p> <p style="text-align: right;">[Page 222]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 entity.</p> <p>3 Q. Does the tribe collect monies from</p> <p>4 tribal members for any purpose?</p> <p>5 A. Other than for, you know, making small</p> <p>6 purchases, no. Attending our powwow, maybe.</p> <p>7 Q. Would those be viewed as contributions?</p> <p>8 A. Well, it would be viewed as making</p> <p>9 payment for entry or making remuneration for a</p> <p>10 T-shirt or something like that. That's what I</p> <p>11 was referring to, just economic development.</p> <p>12 Q. So there's no regular form of</p> <p>13 collection of money from tribal members?</p> <p>14 A. Not in the form of taxation, no.</p> <p>15 Q. Does it take another form? That's what</p> <p>16 I'm trying to understand.</p> <p>17 A. Only the way that I just described it.</p> <p>18 Q. Okay. Thank you. Does the tribe</p> <p>19 operate a hospital on the settlement lands?</p> <p>20 A. No. We operate an Indian Health</p> <p>21 Service that provides some direct care through a</p> <p>22 clinic, as well as purchase and referred care</p> <p>23 services on behalf of our tribal members.</p> <p>24 We are actually what is referred to as a</p> <p>25 self-governance tribe. And we have the authority</p> <p style="text-align: right;">[Page 224]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 MR. CROWELL: Object to the question.</p> <p>3 Misstates the testimony.</p> <p>4 MS. ELLSWORTH: Correct. You said</p> <p>5 several individuals.</p> <p>6 Q. Do you know whether, of the individuals</p> <p>7 who are being considered for this contractual</p> <p>8 arrangement, are they, themselves, building</p> <p>9 inspectors of some town somewhere?</p> <p>10 A. I have not seen their credentials, so I</p> <p>11 can't -- I can't answer that accurately, because</p> <p>12 I have yet to know who they are.</p> <p>13 Q. Okay. So you don't know?</p> <p>14 A. I don't know who they are.</p> <p>15 Q. Okay. Does the tribe have a board of</p> <p>16 health or a health inspector?</p> <p>17 A. Currently, no.</p> <p>18 Q. Have you previously in the past?</p> <p>19 A. No.</p> <p>20 Q. Does the tribe have a tax collector or</p> <p>21 a taxation department?</p> <p>22 A. Tribal lands are not taxed.</p> <p>23 Q. So no?</p> <p>24 A. Well, without that activity taking</p> <p>25 place, there would be no reason to have that</p> <p style="text-align: right;">[Page 223]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 to receive our funding from the Indian Health</p> <p>3 Service on an annual basis in a lump sum and</p> <p>4 then, based on the needs of our members, redesign</p> <p>5 the program so that we're utilizing those funds</p> <p>6 to their best effect.</p> <p>7 Q. And is the Indian Health Service, is</p> <p>8 that a federal program?</p> <p>9 A. Yes, it is.</p> <p>10 Q. Is it Indian Health Service clinic that</p> <p>11 you referred to?</p> <p>12 A. Yes, it is.</p> <p>13 Q. That's a federal clinic?</p> <p>14 A. Well, it is a federally acknowledged</p> <p>15 clinic. It's not -- it is not part of the Public</p> <p>16 Health Service, you know, so there's not staff</p> <p>17 from the Indian Health Service that comes and</p> <p>18 populates that.</p> <p>19 Q. Who staffs that clinic?</p> <p>20 A. The tribe.</p> <p>21 Q. About how many staff members are there?</p> <p>22 A. About six.</p> <p>23 Q. Are they medically trained?</p> <p>24 A. Well, we have a registered nurse and we</p> <p>25 have a physician that comes on a regular basis.</p> <p style="text-align: right;">[Page 225]</p>

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<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. Is there more than one registered</p> <p>3 nurse?</p> <p>4 A. No. Just one.</p> <p>5 Q. And one physician as well?</p> <p>6 A. Yes.</p> <p>7 Q. And then the other six staff members?</p> <p>8 A. Are clerical staff.</p> <p>9 Q. Is there a building associated with the</p> <p>10 clinic, or does the clinic operate out of a</p> <p>11 building or structure of some sort?</p> <p>12 A. The administration building that's been</p> <p>13 there since about 1994. Actually, their portion</p> <p>14 was an addition that happened in the late '90s,</p> <p>15 early 2000s.</p> <p>16 Q. It's an addition to the administration</p> <p>17 building?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know whether the tribe obtained</p> <p>20 any building permits in connection with that</p> <p>21 addition?</p> <p>22 A. That, I don't know.</p> <p>23 Q. Where is the administration building</p> <p>24 located?</p> <p>25 A. Twenty Black Brook Road.</p> <p style="text-align: right;">[Page 226]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 therefore, as with all other children in the</p> <p>3 United States, our children are afforded the</p> <p>4 ability to go to local public schools.</p> <p>5 Q. So what is the local public school for</p> <p>6 individuals who live on the settlement lands,</p> <p>7 which school is it?</p> <p>8 A. There's a school choice. They can go</p> <p>9 to the school that is located in Chilmark or they</p> <p>10 can be bussed to West Tisbury.</p> <p>11 Q. Okay. Is that K through 12, those</p> <p>12 schools?</p> <p>13 A. The Chilmark school is K through 5, and</p> <p>14 the West Tisbury school is K through 8.</p> <p>15 Q. Okay. And after fifth grade, where do</p> <p>16 the students who attend the Chilmark school</p> <p>17 attend?</p> <p>18 A. West Tisbury.</p> <p>19 Q. And then after eighth grade, where do</p> <p>20 the students who attend the West Tisbury school</p> <p>21 attend?</p> <p>22 A. Martha's Vineyard Regional High School.</p> <p>23 Q. There's just one high school in</p> <p>24 Martha's Vineyard. Correct?</p> <p>25 A. Correct.</p> <p style="text-align: right;">[Page 228]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. Where is that in relation to the</p> <p>3 former -- the community center?</p> <p>4 A. Around the corner. I'm not trying to</p> <p>5 be flippant. It's just that there is a small</p> <p>6 access road to get into the community center</p> <p>7 space. And -- but there's -- you know, I</p> <p>8 couldn't tell you how far away it is.</p> <p>9 Q. Is one building visible from the other?</p> <p>10 A. In the wintertime, it is.</p> <p>11 Q. Without any leaves on the trees?</p> <p>12 A. That's right.</p> <p>13 Q. What else is housed in the</p> <p>14 administration building?</p> <p>15 A. The offices of human services, finance,</p> <p>16 education, natural resources, the office of the</p> <p>17 tribal chairman, as well as the chambers for the</p> <p>18 Tribal Council, all of the administrative</p> <p>19 functions of the tribe, including the tribal</p> <p>20 historic preservation office.</p> <p>21 Q. You mentioned education -- the</p> <p>22 department of education. Is there a school or</p> <p>23 education facility operated by the tribe?</p> <p>24 A. The tribe does not have the financial</p> <p>25 means to establish its own school. And so,</p> <p style="text-align: right;">[Page 227]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 MR. CROWELL: I have to take another</p> <p>3 break. It will be a quick one.</p> <p>4 MS. ELLSWORTH: That's good. I'm</p> <p>5 actually close to finished up, so it will give me</p> <p>6 a chance to organize my thoughts.</p> <p>7 (A recess was taken.)</p> <p>8 BY MS. ELLSWORTH:</p> <p>9 Q. I had just a few very short questions</p> <p>10 left, and then I'll turn it over to Ms. Rice.</p> <p>11 And it relates back to the medical clinic that</p> <p>12 you were discussing.</p> <p>13 A. Yes.</p> <p>14 Q. The registered nurse, is that a</p> <p>15 full-time position?</p> <p>16 A. No. She's a part-time contracted.</p> <p>17 Q. And how frequently does she come to the</p> <p>18 clinic? Do you know?</p> <p>19 A. A few hours each day.</p> <p>20 Q. A few hours a day?</p> <p>21 A. (Witness nodded.)</p> <p>22 Q. What about the physician? You</p> <p>23 indicated the physician comes regularly.</p> <p>24 A. You know, it's on a schedule. It's</p> <p>25 during our special general -- not special, but</p> <p style="text-align: right;">[Page 229]</p>

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<p>1 TOBIAS VANDERHOOP</p> <p>2 during our general membership meetings, which</p> <p>3 happen four times a year and once a month.</p> <p>4 Q. Okay.</p> <p>5 MS. ELLSWORTH: That is all the</p> <p>6 questions I have. Thank you very much. I really</p> <p>7 appreciate your time. I'm going to turn it over</p> <p>8 to Ms. Rice from the Commonwealth.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 DIRECT EXAMINATION</p> <p>11 BY MS. RICE:</p> <p>12 Q. Mr. Vanderhoop, how are you?</p> <p>13 A. I'm well. How are you?</p> <p>14 Q. I'm a little under the weather today.</p> <p>15 A. I hoped you were going to be able to</p> <p>16 tell me you were feeling better.</p> <p>17 Q. Just for the record, Mr. Vanderhoop, my</p> <p>18 name is Juliana Rice. I represent the</p> <p>19 Commonwealth of Massachusetts and the individual</p> <p>20 third-party defendants in this case. And I just</p> <p>21 have a few questions for you. As we've</p> <p>22 discussed, I'm not feeling well. I hope I can be</p> <p>23 understandable. If not, please ask me to</p> <p>24 clarify.</p> <p>25 A. I certainly will.</p> <p style="text-align: right;">[Page 230]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 tribally chartered corporation, where do I apply?</p> <p>3 A. You would -- you'd have to see the</p> <p>4 Tribal Council's secretary. There is a Tribal</p> <p>5 Council action that is required. And generally</p> <p>6 the corporations that are tribally chartered that</p> <p>7 we have are all subdivisions of the tribal</p> <p>8 government, not individual tribal members seeking</p> <p>9 that designation. I would have to ask legal</p> <p>10 counsel whether or not an individual could</p> <p>11 actually do that. We've never had it.</p> <p>12 Q. Okay. I asked the question badly.</p> <p>13 Other than the two corporations I mentioned, do</p> <p>14 any other tribally chartered corporations</p> <p>15 currently exist, to your knowledge?</p> <p>16 A. I believe that the Aquinnah Cultural</p> <p>17 Center, our museum entity, is a tribally</p> <p>18 chartered corporation as well. I could be wrong</p> <p>19 about that.</p> <p>20 Q. Okay. To your knowledge, do these</p> <p>21 tribally chartered corporations file regular</p> <p>22 reports with any entity?</p> <p>23 A. They have -- they do file reports to</p> <p>24 the Tribal Council, so -- of their activities.</p> <p>25 Q. Are you aware whether they file reports</p> <p style="text-align: right;">[Page 232]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. Thank you. You mentioned in your</p> <p>3 earlier testimony a couple of tribally chartered</p> <p>4 corporations, including the gaming corporation</p> <p>5 and the Aquinnah Wampanoag Enterprises, I</p> <p>6 believe. Is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. By whom are those corporations</p> <p>9 chartered?</p> <p>10 A. Under the authority of the Wampanoag</p> <p>11 Tribe of Gay Head (Aquinnah).</p> <p>12 Q. So how does it come to be that a</p> <p>13 corporation is tribally chartered?</p> <p>14 A. I actually -- you know, for once, I</p> <p>15 can't give you the legal framework for how that</p> <p>16 happens. Nor did you ask me to do that. But</p> <p>17 under the authority of the tribe, we have the</p> <p>18 understanding that, you know, our sovereign</p> <p>19 nation has the ability to create subdivisions for</p> <p>20 the purposes of, you know, taking on very</p> <p>21 specific areas of responsibility, such as the</p> <p>22 gaming corporation, such as the enterprise board.</p> <p>23 Q. Let me try to ask my question better.</p> <p>24 It's really much more of a mechanical matter. If</p> <p>25 I, as, say, a tribal member, want to start a</p> <p style="text-align: right;">[Page 231]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 with any other entity?</p> <p>3 A. No.</p> <p>4 Q. You're not aware, or they don't?</p> <p>5 A. I'm not aware that they do, and -- I'm</p> <p>6 not aware that they do.</p> <p>7 Q. Can tribally chartered corporations be</p> <p>8 dissolved?</p> <p>9 A. Certainly.</p> <p>10 Q. Would the Tribal Council be the entity</p> <p>11 to do that?</p> <p>12 A. Usually, they're -- they have a charter</p> <p>13 and bylaws which would set out the way in which</p> <p>14 they would dissolve.</p> <p>15 Q. Is there a tribal ordinance that</p> <p>16 governs creation of these entities?</p> <p>17 A. No. There is not.</p> <p>18 Q. You talked a little while ago about the</p> <p>19 Tribal Ranger system on the settlement lands. I</p> <p>20 have a few follow-up questions about that. You</p> <p>21 had mentioned several times a mutual aid</p> <p>22 agreement --</p> <p>23 A. Yes.</p> <p>24 Q. -- am I correct?</p> <p>25 Is that agreement the same thing as what has</p> <p style="text-align: right;">[Page 233]</p>

<p>1 TOBIAS VANDERHOOP</p> <p>2 been marked as Exhibit 2 to today's deposition?</p> <p>3 And by that, I mean the operational plan amended</p> <p>4 November 3, 2011, which I think you have in front</p> <p>5 of you.</p> <p>6 A. That was a companion document to the --</p> <p>7 the operational plan is a companion document to</p> <p>8 the Tribe-Town agreement.</p> <p>9 Q. Exhibit 2 is a companion document to</p> <p>10 the Tribe-Town agreement?</p> <p>11 A. Correct.</p> <p>12 Q. And the tribe -- is the Tribe-Town</p> <p>13 agreement attached to the declaration that you</p> <p>14 provided in this case?</p> <p>15 A. It is not.</p> <p>16 Q. Do you know when the Tribe-Town</p> <p>17 agreement was entered into?</p> <p>18 A. I want to say that -- I'm speculating.</p> <p>19 I believe that the first Tribe-Town agreement was</p> <p>20 entered into in the early '90s.</p> <p>21 Q. And when you refer to the mutual aid</p> <p>22 agreement, are you referring to the Tribe-Town</p> <p>23 agreement?</p> <p>24 A. Correct.</p> <p>25 Q. And the Tribe-Town agreement or some</p> <p style="text-align: right;">[Page 234]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 I'm not a Town official.</p> <p>3 Q. Okay. Would it be accurate to say that</p> <p>4 the role of the Tribal Rangers is governed both</p> <p>5 by Exhibit 2, the operational plan, and the</p> <p>6 Tribe-Town agreement we've been discussing?</p> <p>7 A. Not the entirety of their role.</p> <p>8 Q. Are there other agreements between the</p> <p>9 tribe and the Town of Aquinnah that govern the</p> <p>10 role of the Tribal Rangers?</p> <p>11 A. Well, that portion of their job that</p> <p>12 has them interacting with either the Town or the</p> <p>13 fire department or the -- you know, any of the</p> <p>14 other Town entities is what's governed by these</p> <p>15 particular documents. But their primary function</p> <p>16 is to help the tribe in its stewardship role over</p> <p>17 the tribal lands.</p> <p>18 Q. Yes. I'll get to that in one minute.</p> <p>19 But are there other documents of which you're</p> <p>20 aware, other than the operational plan and the</p> <p>21 Tribe-Town agreement that govern the role of the</p> <p>22 Tribal Rangers as they interact outside of the</p> <p>23 tribal settlement lands or the tribe, itself?</p> <p>24 A. Not that I'm aware of off the top of my</p> <p>25 head.</p> <p style="text-align: right;">[Page 236]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 version of it remains in effect today?</p> <p>3 A. Correct.</p> <p>4 Q. I thought I also heard you say Tri-Town</p> <p>5 agreement, but I may have misheard.</p> <p>6 A. No. You did not mishear. With regard</p> <p>7 to the operational plan there that you have in</p> <p>8 your hand -- I guess it's 2 today, right?</p> <p>9 Q. Exhibit 2. Correct.</p> <p>10 A. It refers to Tri-Town, you know,</p> <p>11 medical service, all right. I'm not exactly sure</p> <p>12 what the full accurate title is. But it's a</p> <p>13 consortium of the Town of Aquinnah, the Town of</p> <p>14 Chilmark and the Town of West Tisbury. And they</p> <p>15 provide EMS response services. So it's called</p> <p>16 Tri-Town. We're the Tri-Town area, Martha's</p> <p>17 Vineyard.</p> <p>18 Q. Okay. And the Tri-Town agreement you</p> <p>19 were referring to applies only to ambulance or</p> <p>20 medical services. Is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Are there any other agreements among</p> <p>23 the three towns you mentioned, that you're aware</p> <p>24 of?</p> <p>25 A. I'm -- I couldn't answer that, because</p> <p style="text-align: right;">[Page 235]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. Okay. You mentioned that the Tribal</p> <p>3 Rangers also have duties with respect to the</p> <p>4 tribe, itself, that doesn't involve interacting</p> <p>5 with other governmental entities or their</p> <p>6 citizens. Is that correct?</p> <p>7 A. This is true.</p> <p>8 Q. Are there documents or ordinances that</p> <p>9 set forth those responsibilities?</p> <p>10 A. Well, generally, those, you know,</p> <p>11 responsibilities are contained in the grant</p> <p>12 applications that we -- that we employ for, you</p> <p>13 know, obtain funding to, you know, carry out our</p> <p>14 stewardship role of our tribal lands, which is</p> <p>15 their primary responsibility.</p> <p>16 So those -- their additional roles are</p> <p>17 contained there. Their primary roles are</p> <p>18 contained in their job descriptions. So am I</p> <p>19 getting to the answer that you're -- to your</p> <p>20 question?</p> <p>21 Q. The -- is there a written contract that</p> <p>22 exists between the tribe -- written employment</p> <p>23 contract that exists between the tribe and the</p> <p>24 Tribal Rangers?</p> <p>25 A. All of our employees are at-will. So</p> <p style="text-align: right;">[Page 237]</p>

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<p>1 TOBIAS VANDERHOOP</p> <p>2 they are hired through an internal process. But</p> <p>3 they're not contractual employees.</p> <p>4 Q. You mentioned a job description. Does</p> <p>5 a job description, a written job description</p> <p>6 exist for the Tribal Rangers?</p> <p>7 A. Yes, it does.</p> <p>8 Q. And who prepares and maintains that job</p> <p>9 description?</p> <p>10 A. It is a function of the personnel</p> <p>11 department of our tribe, and there is a committee</p> <p>12 that reviews each of the job descriptions that</p> <p>13 are created for any of our necessary jobs. And</p> <p>14 ultimately Tribal Council approves the job</p> <p>15 description and approves the salary range that</p> <p>16 would go with it.</p> <p>17 Q. Does the personnel department also</p> <p>18 prepare and maintain an employee handbook?</p> <p>19 A. Yes.</p> <p>20 Q. And is that also approved by the Tribal</p> <p>21 Council?</p> <p>22 A. It is.</p> <p>23 Q. Are amendments to that employee</p> <p>24 handbook approved by the Tribal Council?</p> <p>25 A. Yes, they are.</p> <p style="text-align: right;">[Page 238]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 tribal members on tribal land?</p> <p>3 A. If they are found in violation of, you</p> <p>4 know -- of the law, I would have to say yes,</p> <p>5 because we have a mutual aid agreement that asks</p> <p>6 them to come and police our lands.</p> <p>7 Q. Okay. And are you aware whether tribal</p> <p>8 members may be criminally prosecuted by the</p> <p>9 District Attorney of Dukes County?</p> <p>10 A. I'm sorry. Repeat your question.</p> <p>11 Q. May tribal members be criminally</p> <p>12 prosecuted by the District Attorney for Dukes</p> <p>13 County?</p> <p>14 A. Yes.</p> <p>15 Q. How, if you're aware, how do the Tribal</p> <p>16 Rangers patrol the area, the tribal lands? Do</p> <p>17 they patrol in vehicles or on foot?</p> <p>18 A. Both of those.</p> <p>19 Q. Okay. You mentioned that there were</p> <p>20 two Tribal Rangers. Are you aware how their</p> <p>21 shifts work?</p> <p>22 A. I'm not aware of, you know, what their</p> <p>23 scheduling is. No.</p> <p>24 Q. Okay. Are you -- do you know whether</p> <p>25 there is coverage by one or more Tribal Rangers</p> <p style="text-align: right;">[Page 240]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 Q. In accordance with the rangers' written</p> <p>3 job description that we've just been discussing,</p> <p>4 do Tribal Rangers have the authority to detain or</p> <p>5 arrest any -- anyone?</p> <p>6 A. Honestly, I haven't read their job</p> <p>7 descriptions in, you know, forever, so I can't</p> <p>8 answer that question. You did ask if it was in</p> <p>9 their job description, right?</p> <p>10 Q. I asked -- I can't remember what I</p> <p>11 asked. Yeah. The written job description, does</p> <p>12 that give them the authority to detain or arrest</p> <p>13 anyone?</p> <p>14 A. I haven't even taken a look at the job</p> <p>15 descriptions in a very long time, so I can't</p> <p>16 answer that.</p> <p>17 Q. So your answer would be you don't --</p> <p>18 A. I'm not aware.</p> <p>19 Q. You don't know.</p> <p>20 A. I'm not aware.</p> <p>21 Q. Are you aware whether town police</p> <p>22 officers under either of the written agreements</p> <p>23 we've been discussing -- by "town police</p> <p>24 officers," I mean police officers employed by the</p> <p>25 Town of Aquinnah -- have authority to arrest</p> <p style="text-align: right;">[Page 239]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 24 hours a day?</p> <p>3 A. There is not 24-hour coverage.</p> <p>4 Q. Are the Tribal Rangers on call when</p> <p>5 they're not actually on duty?</p> <p>6 A. I do believe that they are on call,</p> <p>7 yes, because they are part of greater emergency</p> <p>8 response, you know, entities, you know, that not</p> <p>9 only deal with the Town of Aquinnah but also, you</p> <p>10 know, our region of the island and across the</p> <p>11 island.</p> <p>12 It's part of that, you know, mutual aid</p> <p>13 agreement that we do have in place that we would,</p> <p>14 you know, deploy and respond. As a matter of</p> <p>15 fact, one of the agreements that we do have --</p> <p>16 well, it's not an agreement. One of the roles</p> <p>17 that we have is to be on the oil response team</p> <p>18 for the United States Coast Guard. So, yes, they</p> <p>19 are on call regularly.</p> <p>20 Q. Okay. Not having access previously to</p> <p>21 this Tribe-Town agreement, I'm at a little bit of</p> <p>22 a disadvantage. I'm sorry if I'm asking you</p> <p>23 questions that seem silly.</p> <p>24 A. No. Not at all.</p> <p>25 Q. Who dispatches the rangers to</p> <p style="text-align: right;">[Page 241]</p>

<p>1 TOBIAS VANDERHOOP</p> <p>2 situations that require their attention?</p> <p>3 A. Well, the call goes out from the --</p> <p>4 usually if it's in the Town of Aquinnah, then</p> <p>5 they would receive a call from communications,</p> <p>6 actually.</p> <p>7 Q. The town --</p> <p>8 A. No. The county communications office.</p> <p>9 They all have call signs, and so if there is an</p> <p>10 incident that is occurring, then they would be</p> <p>11 called on their radios and any of the emergency</p> <p>12 response, you know, team members would be called</p> <p>13 in the same manner.</p> <p>14 Q. Okay. So on the island of Martha's</p> <p>15 Vineyard, there's a county-based dispatch system?</p> <p>16 A. There is.</p> <p>17 Q. And are you familiar with how it is</p> <p>18 decided or whether a ranger or a town police</p> <p>19 officer will be dispatched to any particular</p> <p>20 situation?</p> <p>21 A. Well, really it depends on, you know,</p> <p>22 who has come across the particular incident. You</p> <p>23 know, if you're on patrol or if you're nearby and</p> <p>24 somebody calls upon you to render aid, then, you</p> <p>25 know, whoever is first on the scene is, you know,</p> <p style="text-align: right;">[Page 242]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 agreement that is in place. If they need a</p> <p>3 backup, they could call the Tribal Ranger</p> <p>4 service, because, as I said, generally they're</p> <p>5 cross-deputized and, you know, would respond.</p> <p>6 But they would also -- they also have mutual</p> <p>7 aid agreements with Chilmark and West Tisbury</p> <p>8 that if the incident is large enough, then</p> <p>9 they're going to call other police services to</p> <p>10 come into town.</p> <p>11 Q. Could Tribal Rangers also be dispatched</p> <p>12 from within the tribe?</p> <p>13 A. Yes.</p> <p>14 Q. Could you or your staff dispatch a</p> <p>15 local -- a Tribal Ranger?</p> <p>16 A. Well, I certainly would communicate</p> <p>17 with the director of natural resources if I was</p> <p>18 aware that there was some sort of incident</p> <p>19 occurring.</p> <p>20 Q. So on tribal land or with respect to</p> <p>21 tribal matters, do the Tribal Rangers report to</p> <p>22 the director of natural resources?</p> <p>23 A. Yes, they do.</p> <p>24 Q. Does the tribe have its own criminal</p> <p>25 law code?</p> <p style="text-align: right;">[Page 244]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 first on the scene.</p> <p>3 Q. Can an entity other than the</p> <p>4 County-based dispatch system we just discussed</p> <p>5 dispatch Tribal Rangers?</p> <p>6 A. Well, I mean, the communications</p> <p>7 service would really be doing that for, you know,</p> <p>8 a much larger emergency response situation.</p> <p>9 Other than that, you know, the rangers are</p> <p>10 dispatched because they're on patrol and they're</p> <p>11 informed of an issue. So they're dispatched</p> <p>12 locally really.</p> <p>13 And I just want to make sure that I'm clear</p> <p>14 about that, because it's not always, you know, a</p> <p>15 call that comes in from, you know, Dukes County</p> <p>16 communications that says, oh, Tribal Ranger, go</p> <p>17 here or there. So I wanted to be clear that</p> <p>18 that's -- that is not the case.</p> <p>19 Q. So the call could come in from Dukes</p> <p>20 County?</p> <p>21 A. Yes.</p> <p>22 Q. Could it also come in from the Town of</p> <p>23 Aquinnah?</p> <p>24 A. Yes. If the town police needed</p> <p>25 assistance, that's part of that mutual aid</p> <p style="text-align: right;">[Page 243]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 A. No.</p> <p>3 Q. And does the tribe employ a criminal</p> <p>4 prosecutor?</p> <p>5 A. No. We don't -- we have not taken --</p> <p>6 or have not sought to have criminal jurisdiction,</p> <p>7 you know, in our own right.</p> <p>8 Q. You talked earlier about the tribal</p> <p>9 court system. Can a tribal -- one of the tribal</p> <p>10 judges that you described working in that system,</p> <p>11 can one of those judges sentence someone to</p> <p>12 incarceration?</p> <p>13 A. We do not have a mutual aid agreement</p> <p>14 with the county, Dukes County. Obviously, we do</p> <p>15 not have a jail facility of our own.</p> <p>16 Q. That was my next question.</p> <p>17 MS. RICE: I don't have any further</p> <p>18 questions. Thank you very much, Mr. Vanderhoop.</p> <p>19 MR. CROWELL: If I could ask a few</p> <p>20 redirect questions.</p> <p>21 CROSS-EXAMINATION</p> <p>22 14</p> <p>23 BY MR. CROWELL:</p> <p>24 Q. Chairman Vanderhoop, as you know, I'm</p> <p>25 Scott Crowell, legal counsel for the Wampanoag</p> <p style="text-align: right;">[Page 245]</p>

<p>1 TOBIAS VANDERHOOP</p> <p>2 Tribe of Gay Head (Aquinnah) and the Aquinnah</p> <p>3 Wampanoag Gay Head Corporation, and I just want</p> <p>4 to get some clarification on some of the terms</p> <p>5 that have been discussed today.</p> <p>6 You used the term "self-governance tribe."</p> <p>7 Can you tell us what that is and what you mean by</p> <p>8 that term?</p> <p>9 A. The self-governance program is</p> <p>10 available to, you know, what one might call a</p> <p>11 mature tribal government. When a tribal</p> <p>12 government is able to show that they have, you</p> <p>13 know, a firm grasp on fiscal responsibility, they</p> <p>14 are then able to apply for the special</p> <p>15 designation of self-governance, which allows for</p> <p>16 both BIA programs and IHS programs to be</p> <p>17 compacted rather than contracted, which is -- you</p> <p>18 know, an immature tribe is required to hold a</p> <p>19 contract, where, you know, sort of the</p> <p>20 manipulation of those funds is more dictated from</p> <p>21 their regional office.</p> <p>22 Under the self-governance program, the tribe</p> <p>23 can redesign and redirect their funds when</p> <p>24 they're given it all in one lump sum at the</p> <p>25 beginning of a fiscal year and create new</p> <p style="text-align: right;">[Page 246]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 the BIA -- BIA stands for Bureau of Indian</p> <p>3 Affairs?</p> <p>4 A. Yes.</p> <p>5 Q. And what type of services does that</p> <p>6 include?</p> <p>7 A. That includes all -- you know, the</p> <p>8 majority of the government functions, you know,</p> <p>9 and -- other than the health service side. So it</p> <p>10 supports all of our, you know, overall</p> <p>11 administration.</p> <p>12 We are able to provide education, education</p> <p>13 scholarships, as well as advocacy through the</p> <p>14 education department and youth programs. We</p> <p>15 provide natural resources, programs that, you</p> <p>16 know, maintain all of the tribal lands, you know,</p> <p>17 from the Face of the Cliffs all the way to the</p> <p>18 interior tribal lands that our tribal members</p> <p>19 live on.</p> <p>20 Let's see. We have trust services, which is</p> <p>21 just our relationship with the Bureau of Indian</p> <p>22 Affairs, ensuring for the protection of, you</p> <p>23 know, and maintenance of our trust lands, which</p> <p>24 is why the Interior -- Department of Interior is</p> <p>25 actually intervening on some of those tax issues</p> <p style="text-align: right;">[Page 248]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 programs that may not necessarily have existed</p> <p>3 under, you know, the average contract so that</p> <p>4 they can better serve their tribal members. And,</p> <p>5 as I said, it's a mature tribal government</p> <p>6 program.</p> <p>7 Q. And what is the status of the Aquinnah</p> <p>8 tribe?</p> <p>9 A. We have a self-governance compact in</p> <p>10 both the BIA and the IHS.</p> <p>11 Q. And in the context of your compact</p> <p>12 status with the IHS, what type of services does</p> <p>13 that include?</p> <p>14 A. It allows us to provide some direct</p> <p>15 services through our health clinic, as well as</p> <p>16 additional services through the purchase and</p> <p>17 referred care program. It's a new term, so I'm</p> <p>18 still getting used to it.</p> <p>19 But under that, we contract directly -- you</p> <p>20 know, the health service contracts directly with</p> <p>21 any number of medical care providers, and we pay</p> <p>22 for those services directly on behalf of tribal</p> <p>23 members who are enrolled in the Indian Health --</p> <p>24 in the Wampanoag health service.</p> <p>25 Q. And in terms of the compact status with</p> <p style="text-align: right;">[Page 247]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 that I was referring to earlier in the day.</p> <p>3 Let's see. I think I have covered the</p> <p>4 major programs. Of course, we have finance and,</p> <p>5 you know, just the other ancillary governmental</p> <p>6 functions that are necessary to run a sovereign</p> <p>7 nation.</p> <p>8 Q. Do you, in your opinion, believe that</p> <p>9 the funds that are available through your</p> <p>10 self-governance status are adequate to fully fund</p> <p>11 your programs?</p> <p>12 A. No. They are completely inadequate,</p> <p>13 which is exactly why we are required to seek</p> <p>14 other, you know, economic development options.</p> <p>15 You know, there was a line of questioning</p> <p>16 earlier about, you know, where our children go to</p> <p>17 school. Well, we could potentially provide</p> <p>18 school services if we had the wherewithal to fund</p> <p>19 a schooling program and actually staff it. We</p> <p>20 could actually establish a Head Start program</p> <p>21 that would get our children better prepared to go</p> <p>22 into the schools, whether it be our own school or</p> <p>23 public schools, if we had the funding to do so.</p> <p>24 Those funds are not always available through</p> <p>25 the Federal Government. And so we're left to our</p> <p style="text-align: right;">[Page 249]</p>

<p>1 TOBIAS VANDERHOOP</p> <p>2 own devices to figure out how we can provide</p> <p>3 those much-needed services to our tribal members.</p> <p>4 Q. You were asked whether there was a</p> <p>5 hospital on the tribal lands. Is it by choice</p> <p>6 that you don't have a hospital?</p> <p>7 A. No. Because, you know -- and, of</p> <p>8 course, there is the issue of, you know, space.</p> <p>9 But certainly we would want to increase the</p> <p>10 staffing and ability of our tribal clinic</p> <p>11 facility and have, you know, more access to a</p> <p>12 doctor or at least, you know, full-time nurse</p> <p>13 practitioner. But we're not able to do that</p> <p>14 because the funding is not there.</p> <p>15 Q. You indicated that there's only two</p> <p>16 Tribal Rangers?</p> <p>17 A. Yes. That's correct.</p> <p>18 Q. Is that by choice that there are only</p> <p>19 two?</p> <p>20 A. No. It's -- once again, it's a matter</p> <p>21 of economics. We do not have the funding or the</p> <p>22 wherewithal to, you know, hire more rangers. And</p> <p>23 then, of course, there's the additional burden of</p> <p>24 being able to send them away and to get the</p> <p>25 additional appropriate training that they need in</p> <p style="text-align: right;">[Page 250]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 it financially, we absolutely would.</p> <p>3 Q. And you indicated -- you were asked</p> <p>4 whether there was a tribal jail. And is it by</p> <p>5 choice that you don't have a tribal jail?</p> <p>6 A. Once again, it is by choice. And, you</p> <p>7 know, even if the fact were that we had the</p> <p>8 financial resources, the tribal government may</p> <p>9 decide that they don't want to establish another</p> <p>10 facility for incarceration. But if we had the</p> <p>11 funding to do so, at least it would be a real</p> <p>12 question that we could put before our people.</p> <p>13 Q. You were given a couple of exhibits</p> <p>14 today where it was read as regarding the tribe</p> <p>15 applying its jurisdiction consistent with</p> <p>16 applicable law. What does the term "applicable</p> <p>17 law" mean to you?</p> <p>18 A. "Applicable law" --</p> <p>19 MS. ELLSWORTH: Objection. Go ahead.</p> <p>20 A. "Applicable law" is, you know, whatever</p> <p>21 jurisdiction may exist over, you know, in this</p> <p>22 case, our tribal lands. So, you know, I</p> <p>23 understand -- fully understand that there are</p> <p>24 several layers of jurisdiction that exist all at</p> <p>25 the same time on our tribal lands; federal, some</p> <p style="text-align: right;">[Page 252]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 order to be full-fledged Bureau of Indian Affairs</p> <p>3 officers with federal powers.</p> <p>4 Q. You were asked a series of questions</p> <p>5 regarding the tribal judiciary. Are you familiar</p> <p>6 with the Violence Against Women Act?</p> <p>7 A. Yes, I am.</p> <p>8 Q. And can you describe what that Act is</p> <p>9 about?</p> <p>10 A. VOWA, as it's referred to, it gives --</p> <p>11 acknowledges a tribe's authority to provide</p> <p>12 additional protections for, you know, women who</p> <p>13 are experiencing domestic violence. And it</p> <p>14 actually goes on to expand the -- a tribe's</p> <p>15 jurisdiction to defend against non-tribal members</p> <p>16 committing these sorts of violations on tribal</p> <p>17 lands.</p> <p>18 Q. Is it by choice that you don't have</p> <p>19 that jurisdiction?</p> <p>20 A. Yes, it is by choice at this time.</p> <p>21 Once again, it goes back to the economics of it,</p> <p>22 that we do not have the wherewithal to hire the</p> <p>23 appropriate staff in order to expand our</p> <p>24 government and take on that -- that area of</p> <p>25 responsibility. If we had the wherewithal to do</p> <p style="text-align: right;">[Page 251]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 for the Commonwealth, some for the Town of</p> <p>3 Aquinnah, and tribal. And in certain instances,</p> <p>4 tribal jurisdiction has primacy.</p> <p>5 Q. When you -- earlier today you were --</p> <p>6 in the context of the Environmental Protection</p> <p>7 Agency, you used the term "treatment as State</p> <p>8 status." Can you tell us what you mean by that?</p> <p>9 A. Treatment in a similar manner as a</p> <p>10 State has, you know, two prongs. One is through</p> <p>11 a grant that you may acquire. The second is</p> <p>12 programmatic.</p> <p>13 We have, in all of the Environmental</p> <p>14 Protection Agency programs that we administer,</p> <p>15 treatment as State for the purposes of our</p> <p>16 grants. And it means that we assume the</p> <p>17 responsibilities as they are frameworked by the</p> <p>18 EPA to, you know, apply them on our tribal lands,</p> <p>19 which is our particular jurisdiction.</p> <p>20 And in some cases, there are elements, such</p> <p>21 as our -- our Clean Air Act program, where the --</p> <p>22 the particulates that are, you know, sort of</p> <p>23 offensive or potentially offensive are coming in</p> <p>24 from, you know, hundreds of miles away, New York,</p> <p>25 even. But, you know, we are taking on the</p> <p style="text-align: right;">[Page 253]</p>

<p>1 TOBIAS VANDERHOOP</p> <p>2 Environmental Protection Agency's</p> <p>3 responsibilities in collecting that data and</p> <p>4 providing it to -- back to the EPA. And it is</p> <p>5 available nationally.</p> <p>6 Q. You earlier discussed treatment as</p> <p>7 State status regarding the ability to apply for</p> <p>8 grants with the EPA. You discussed now the Clean</p> <p>9 Air Act.</p> <p>10 Are there other areas where the tribe has</p> <p>11 treatment as State status?</p> <p>12 A. Well, as I said, there are at least</p> <p>13 five, if not six, Environmental Protection Agency</p> <p>14 programs where treatment as State -- treatment in</p> <p>15 a similar manner as State is available. We have</p> <p>16 all of them. I wish I could enumerate them now.</p> <p>17 There's water, air. As a matter of fact, wait a</p> <p>18 minute. Hold on a second. I think I might</p> <p>19 have -- there are actually also other areas that</p> <p>20 are not necessarily where we have treatment in a</p> <p>21 similar manner as State, but we do take on, you</p> <p>22 know, the responsibilities, you know, of our</p> <p>23 trustee, the United States Federal Government,</p> <p>24 and implement plans where plans are not in place.</p> <p>25 Solid waste management. And unfortunately, the</p> <p style="text-align: right;">[Page 254]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 There are responsibilities to the tribal</p> <p>3 historic preservation officer in which she is</p> <p>4 able to enforce through consultation the stoppage</p> <p>5 of activities that would necessarily affect</p> <p>6 burials and other items -- other cultural</p> <p>7 resources that may have not been -- that the</p> <p>8 contractors may not have been aware were there.</p> <p>9 But it's our ability to enforce the</p> <p>10 protection of cultural resources affiliated to</p> <p>11 our tribe, not only on our tribal lands, but, you</p> <p>12 know, certainly well into our ancestral</p> <p>13 territory.</p> <p>14 Q. I'd like to refer you to Exhibit L --</p> <p>15 IL, excuse me.</p> <p>16 A. Yes.</p> <p>17 Q. Can you explain into the record what</p> <p>18 that document is?</p> <p>19 A. Okay. This is the agreement between</p> <p>20 the National Park Service, United States</p> <p>21 Department of Interior, and Wampanoag Tribe Gay</p> <p>22 Head (Aquinnah) for the assumption by the tribe</p> <p>23 of certain responsibilities pursuant to the</p> <p>24 National Historic Preservation Act.</p> <p>25 This was actually established at the very</p> <p style="text-align: right;">[Page 256]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 memorandum that I thought I had which enumerated</p> <p>3 our treatment as State programs is not here.</p> <p>4 Q. I'd like to refer you to Exhibit 1B.</p> <p>5 A. Okay. Yes.</p> <p>6 Q. Can you identify for the record what</p> <p>7 that document is?</p> <p>8 A. It's the Wampanoag Tribe of Gay Head</p> <p>9 (Aquinnah) Tribal Historic Preservation Office</p> <p>10 Ordinance.</p> <p>11 Q. Earlier today in this -- in response to</p> <p>12 Ms. Ellsworth's comment -- questions, you laid</p> <p>13 out a process by which the tribal government</p> <p>14 adopts ordinances. Was this ordinance adopted</p> <p>15 consistent with that process?</p> <p>16 A. Yes, it was.</p> <p>17 Q. And can you tell us what that ordinance</p> <p>18 is about?</p> <p>19 A. The Tribal Historic Preservation</p> <p>20 Ordinance is the exercise of the tribe's ability</p> <p>21 to protect cultural resources and tribal culture</p> <p>22 and intellectual property on tribal lands and</p> <p>23 elsewhere through the National Historic</p> <p>24 Preservation Act as well as Native American</p> <p>25 Graves Repatriation Act.</p> <p style="text-align: right;">[Page 255]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 beginning of our endeavor to establish the tribal</p> <p>3 historic preservation office in order for us to</p> <p>4 be able to begin our active protection of the</p> <p>5 cultural resources, not only in Aquinnah, but</p> <p>6 across the island and throughout the Commonwealth</p> <p>7 of Massachusetts.</p> <p>8 Q. Earlier today in response to a question</p> <p>9 from Ms. Ellsworth, you explained how</p> <p>10 intergovernmental agreements are approved under</p> <p>11 the tribal governmental process.</p> <p>12 Was this agreement, Exhibit 1L, approved</p> <p>13 consistent with that process?</p> <p>14 A. Yes, it was.</p> <p>15 MR. CROWELL: Thank you. I have no</p> <p>16 more questions.</p> <p>17 MS. RICE: I have a couple of</p> <p>18 follow-ups.</p> <p>19</p> <p>20 REDIRECT EXAMINATION</p> <p>21 BY MS. RICE:</p> <p>22 Q. In response to Mr. Crowell's questions,</p> <p>23 you testified, Mr. Vanderhoop, that -- or,</p> <p>24 Chairman Vanderhoop, I'm sorry -- that the tribe</p> <p>25 would choose to fund additional programs, such as</p> <p style="text-align: right;">[Page 257]</p>

[65] (Pages 254 to 257)

<p>1 TOBIAS VANDERHOOP</p> <p>2 hiring additional Tribal Rangers, if funds were</p> <p>3 available for that. Is that correct?</p> <p>4 A. That is correct.</p> <p>5 Q. But you testified that those choices</p> <p>6 can't be made because of insufficient funding.</p> <p>7 Is that correct?</p> <p>8 A. That is correct.</p> <p>9 Q. As a sovereign government, does the</p> <p>10 tribe have taxing authority over its citizens?</p> <p>11 A. The tribe could tax. All federally</p> <p>12 acknowledged tribes could tax. But we're living</p> <p>13 on our ancestral homelands, and we choose not to</p> <p>14 set up a system of taxation.</p> <p>15 Q. Are you aware of any other tribes that</p> <p>16 do tax their citizens?</p> <p>17 A. Yes. There are various taxes that are</p> <p>18 set up at -- I believe Navajo Nation has the most</p> <p>19 comprehensive tax code in the nation.</p> <p>20 MS. RICE: I have nothing further.</p> <p>21 Thank you.</p> <p>22 MS. ELLSWORTH: Nothing further for me.</p> <p>23 MR. CROWELL: Just one last follow-up.</p> <p>24 RECROSS-EXAMINATION</p> <p>25</p> <p style="text-align: right;">[Page 258]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 TOBIAS VANDERHOOP</p> <p>8</p> <p>9</p> <p>10 Subscribed and sworn to before me</p> <p>11 this _____ day of _____, 2015.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">[Page 260]</p>
<p>1 TOBIAS VANDERHOOP</p> <p>2 BY MR. CROWELL:</p> <p>3 Q. Do you have any authority, as far as</p> <p>4 you know, to tax property?</p> <p>5 A. Excuse me?</p> <p>6 Q. Tribal trust land, do you have an</p> <p>7 opinion as to whether the tribe could impose a</p> <p>8 tax on trust land?</p> <p>9 MS. ELLSWORTH: Objection.</p> <p>10 A. I have never contemplated it. But</p> <p>11 under the authorities of the tribal nation, there</p> <p>12 is, in my mind, an opportunity for a certain tax</p> <p>13 structure to be established, just the same way</p> <p>14 that any other tribal nation could do that.</p> <p>15 Q. In the context of a property tax?</p> <p>16 MR. CROWELL: Objection.</p> <p>17 A. I said a structure of taxation. I did</p> <p>18 not -- I did not say property tax.</p> <p>19 Q. Are you familiar with any tribe</p> <p>20 anywhere that imposes a property tax?</p> <p>21 A. No.</p> <p>22 MR. CROWELL: No more questions.</p> <p>23 MS. ELLSWORTH: That does it.</p> <p>24 (Deposition concluded at 3:55 p.m.)</p> <p>25</p> <p style="text-align: right;">[Page 259]</p>	<p>1 TOBIAS VANDERHOOP</p> <p>2 C E R T I F I C A T E</p> <p>3 COMMONWEALTH OF MASSACHUSETTS</p> <p>4 SUFFOLK, SS.</p> <p>5 I, Janet M. Sambataro, a Registered Merit</p> <p>6 Reporter and a Notary Public within and for the</p> <p>7 Commonwealth of Massachusetts do hereby certify:</p> <p>8 THAT TOBIAS VANDERHOOP, the witness whose</p> <p>9 testimony is hereinbefore set forth, was duly</p> <p>10 sworn by me and that such testimony is a true and</p> <p>11 accurate record of my stenotype notes taken in</p> <p>12 the foregoing matter, to the best of my</p> <p>13 knowledge, skill and ability.</p> <p>14 I further certify that I am not related</p> <p>15 to any parties to this action by blood or</p> <p>16 marriage; and that I am in no way interested in</p> <p>17 the outcome of this matter.</p> <p>18 IN WITNESS WHEREOF, I have hereunto set</p> <p>19 my hand this 6th day of July, 2015.</p> <p>20</p> <p>21</p> <p>22 JANET M. SAMBATARO</p> <p>23 Notary Public</p> <p>24 My Commission Expires:</p> <p>25 July 16, 2021</p> <p style="text-align: right;">[Page 261]</p>

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1	TOBIAS VANDERHOOP	
2	WITNESS ERRATA SHEET	
3	Case Name: COMMONWEALTH OF MASSACHUSETTS	
4	v. THE WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH), et al.	
5	Deposition Date: July 1, 2015	
6	Deponent: TOBIAS VANDERHOOP	
7	PAGE LINE CORRECTION	
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19	TOBIAS VANDERHOOP	
20	SUBSCRIBED AND SWORN BEFORE ME	
21	THIS _____ DAY of _____, 2015.	
22		
23	_____	
24	(Notary Public)	
25	MY COMMISSION EXPIRES: _____	
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