

HOH INDIAN TRIBE SAFE HOMELANDS ACT

OCTOBER 21, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1061]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1061) to transfer certain land to the United States to be held in trust for the Hoh Indian Tribe, to place land into trust for the Hoh Indian Tribe, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Hoh Indian Tribe Safe Homelands Act”.

SEC. 2. FINDINGS.

(a) FINDINGS.—Congress finds the following:

(1) The Hoh Indian Reservation, located along the Hoh River and the Pacific Ocean in a remote section of Jefferson County, Washington, is the homeland of the Hoh Indian Tribe, a federally recognized Indian tribe.

(2) Established by Executive Order in 1893, the Reservation is approximately one square mile, but its habitable acreage has been reduced over time due to storm surges, repeated flooding and erosion, and lack of river dredging.

(3) Due to its location along the river and ocean and frequent torrential rains, 90 percent of the Reservation is located within a flood zone and, in fact, has flooded repeatedly over the last five years. In addition, 100 percent of the Reservation is within a tsunami zone, leaving most of the Reservation unfit for safe occupation.

(4) The Tribe has repeatedly suffered from serious flood and wind damage to homes, tribal buildings, and utility infrastructure that have caused significant damage and resulted in critical safety and environmental hazards.

(5) Federal agencies such as the Bureau of Indian Affairs, the Department of Housing and Urban Development, and the Federal Emergency Management Agency have limited authority to assist the Tribe with housing and other improvements and services due to the dangerous and unsustainable location of the Reservation.

(6) The Tribe has purchased from private owners near the Reservation approximately 260 acres of land in order to move key infrastructure out of the flood zone.

(7) In addition, the State of Washington's Department of Natural Resources has transferred ownership of 160 acres of land to the Tribe.

(8) An approximately 37 acre parcel of logged land, administered by the National Park Service, lies between the current Reservation land and those lands acquired by the Tribe, and the only road accessing the Reservation crosses this parcel.

(9) Together, the lands described in paragraphs 6, 7, and 8 would constitute a contiguous parcel for the Reservation and would create a safe area for members of the Tribe to live and rebuild their community.

SEC. 3. DEFINITIONS.

For the purposes of this Act—

- (1) the term “Federal land” mean the Federal lands described in section 4(c)(2);
- (2) the term “Reservation” means the reservation of the Hoh Indian Tribe;
- (3) the term “Secretary” means the Secretary of the Interior; and
- (4) the term “Tribe” means the Hoh Indian Tribe, a federally recognized Indian tribe.

SEC. 4. TRANSFER OF LANDS TO BE HELD IN TRUST AS PART OF THE TRIBE'S RESERVATION; PLACEMENT OF OTHER LAND INTO TRUST.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (c)(2), are declared to be held in trust by the United States for the benefit of the Tribe without any further action by the Secretary. Such land shall be excluded from the boundaries of the Olympic National Park. Upon conveyance to the Secretary by the Tribe, and subject to the completion of an assessment of the nature and extent of any potential liability resulting from hazardous substances or other environmental problems associated with such property and the remediation of any such potential liabilities, the Secretary shall take into trust for the benefit of the Tribe certain non-Federal land owned by the Tribe described in subsection (c)(1), without any further action by the Secretary.

(b) RESERVATION.—Land taken into trust for the Tribe pursuant to subsection (a) shall be part of the Reservation.

(c) DESCRIPTION OF LANDS.—The land to be transferred and held in trust under subsection (a) is the land generally depicted on the map titled “Hoh Indian Tribe Safe Homelands Act Land Acquisition Map”, dated July, 21, 2008, and further described as—

- (1) the non-Federal land owned by the Hoh Tribe described in section 2(a)(6) and (7); and
- (2) the Federal land administered by the National Park Service, located in Section 20, Township 26N, Range 13W, W.M. South of the Hoh River.

(d) AVAILABILITY OF MAP.—Not later than 120 days after the survey required by section 5(a)(6) has been reviewed and concurred in by the National Park Service, the Secretary shall make the map available to the appropriate congressional committees. The map also shall be available for public inspection in the appropriate offices of the Secretary.

(e) CONGRESSIONAL INTENT.—It is the intent of Congress that—

- (1) the condition of the Federal land at the time of the transfer under this section should be preserved and protected;
- (2) that the natural environment existing on the Federal land at the time of the transfer under this section should not be altered, except as described in this Act; and
- (3) the Tribe and the National Park Service shall work cooperatively on issues of mutual concern related to this Act.

SEC. 5. PRESERVATION OF EXISTING CONDITION OF FEDERAL LAND; TERMS OF CONSERVATION AND USE IN CONNECTION WITH LAND TRANSFER.

(a) RESTRICTIONS ON USE.—The use of the Federal land transferred pursuant to section 4 shall be subject to the following conditions:

(1) No commercial, residential, industrial, or other buildings or structures shall be placed on the Federal land being transferred and placed into trust.

(2) The condition of the Federal land at the time of the transfer under this section shall be preserved and protected and no actions that would adversely affect the natural environment on the Federal land shall be taken, except as described in this Act.

(3) In order to maintain its use as a natural wildlife corridor and to provide for protection of existing resources, no logging or hunting shall be allowed on the land.

(4) Routine maintenance may be conducted on the two-lane county road that traverses the Federal land as of the date of the enactment of this Act. The road may not be widened or otherwise expanded. No other roads or access routes shall be allowed on the Federal land, except as provided by this paragraph and subsection (b)(2). In the event the use of the road or portions of the road is compromised by floods or other natural or unexpected occurrences, a similar, two-lane road or portion of the road may be reconstructed to assure access to the area.

(5) The Tribe may authorize tribal members to engage in ceremonial and other treaty uses of the Federal lands and existing tribal treaty rights shall not be diminished by this Act.

(6) The Tribe shall survey the boundaries of the Federal land and submit the survey to the National Park Service for its review and concurrence.

(b) COOPERATIVE EFFORTS.—The Secretary and the Tribe—

(1) shall enter into cooperative agreements—

(A) for mutual emergency fire aid, upon completion of the Tribe's proposed emergency fire response building; and

(B) to provide opportunities for the public to learn more about the culture and traditions of the Tribe;

(2) may develop and establish a multipurpose, nonmotorized trail from Highway 101 to the Pacific Ocean; and

(3) shall work cooperatively on any other issues of mutual concern related to the transfer of land authorized by this Act.

SEC. 6. HOH INDIAN RESERVATION.

All lands taken into trust by the United States under this Act shall be a part of the Hoh Indian Reservation.

SEC. 7. GAMING PROHIBITION.

No land taken into trust for the benefit of the Hoh Indian Tribe under this Act shall be considered Indian lands for the purpose of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

PURPOSE OF THE LEGISLATION

The purpose of H.R. 1061 is to transfer certain land to the United States to be held in trust for the Hoh Indian Tribe, to place land into trust for the Hoh Indian Tribe, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Hoh Indian Reservation, located next to the Hoh River and the Pacific Ocean in a remote section of Jefferson County, Washington, is the homeland of the Hoh Indian Tribe (the Tribe), a federally recognized Indian Tribe. The Hoh Indian Reservation was established by Executive Order in 1893. The Reservation occupies approximately one square mile of land, but the inhabitable acreage has decreased over time due to erosion, storm surge, and repeated flooding. The entire Reservation is within a tsunami zone and 90 percent of the reservation is within a flood zone making the Reservation unfit for safe occupation.

The current Hoh Indian Reservation is unsafe for habitation due to its location in both a tsunami and flood zone. Frequent flooding in the past five years has necessitated Bureau of Indian Affairs funding for reconstruction projects for tribal infrastructure damaged during floods and severe weather. The Tribe has purchased

from private owners approximately 260 acres of land near the reservation to move key infrastructure and residents out of the flood and tsunami zone. In addition, the State of Washington's Department of Natural Resources has transferred ownership of 160 acres of land to the Tribe that is adjacent to the 260 acres of private land acquired by the Tribe. These newly acquired lands are only accessible from the Tribe's current Reservation via a road that crosses a 37-acre parcel of Olympic National Park. Placing this parcel of National Park land into trust for the tribe would create a contiguous tract of land for the Hoh tribe to safely inhabit. It would allow for unencumbered transportation to the new tribal reservation and allow for continued preservation and conservation of federal land.

COMMITTEE ACTION

H.R. 1061 was introduced on February 13, 2009 by Rep. Norm Dicks (D-WA). The bill was referred to the Committee on Natural Resources. On June 3, 2009, the Committee on Natural Resources held a hearing on H.R. 1061. The Committee received testimony from Mr. George Skibine, Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs, U.S. Department of the Interior and Mr. Ernie Penn, Tribal Council Member, Hoh Indian Tribe.

On July 9, 2009, the Committee met to consider the bill. Chairman Rahall (D-WV) offered an amendment in the nature of a substitute to clarify the ability and restrictions on the Tribe to repair and maintain the access road located within the 37 acres of National Park System land. The amendment also required an environmental assessment to be completed before the state and private land acquired by the Tribe are taken into trust by the federal government. The amendment was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this Act may be cited as the "Hoh Indian Tribe Safe Homelands Act".

Section 2. Findings

Section 2 describes the Hoh Indian Reservation in Jefferson County, Washington, and the hazardous environmental conditions that explain the need for this land transfer.

Section 3. Definitions

Section 3 defines key terms included in the bill.

Section 4. Transfer of lands to be held in trust as part of the Tribe's Reservation; placement of other land into trust

Section 4 declares the federal lands from Olympic National Park described in subsection (c)(2) to be held in trust by the United States for the benefit of the Tribe. This section also provides that the Secretary of the Interior shall take the non-federal lands described in subsection (c)(1) into trust to be held by the United States for the benefit of the Tribe, subject to the completion of an

assessment of the potential liability from environmental problems associated with the property and the remediation of any liabilities. The section further provides that the transferred lands shall be part of the Reservation, and be described by a map titled "Hoh Indian Tribe Safe Homelands Act Land Acquisition Map". This section also instructs the Tribe and National Park Service to work cooperatively on issues of mutual concern regarding this Act.

The Committee considers that conveying land out of the National Park System should be contemplated only under the most extraordinary of circumstances. H.R. 1061 addresses an immediate threat to the safety and health of the 230 members of the Hoh Indian Tribe by conveying a small parcel on the edge of Olympic National Park. This legislation makes clear that the condition of the land at the time of transfer is to be preserved and protected, as is its use as a natural wildlife corridor. No commercial, residential, industrial or other buildings may be placed on the land. Routine maintenance may be performed on the existing road through the parcel, but that road may not be widened or otherwise expanded, and no other roads or access routes are permitted. No hunting or logging is permitted, nor is any action that would adversely affect the natural environment other than those expressly permitted by the legislation. In sum, the conveyance will not harm the integrity of the park, does not threaten park resources, and does not require a future investment of NPS maintenance or operations funds. As such, the bill should not be considered a precedent for justifying requests to accommodate special interests at the expense of national park resources and congressionally designated management units such as wilderness.

Section 5. Preservation of existing condition of Federal land; terms of conservation and use in connection with land transfer

Section 5 provides restrictions on use of the federal lands transferred in this bill. It provides the land be subject to the following conditions: that no commercial, residential, industrial, or other structures be placed on the federal land being transferred; that to protect the natural condition of the land, no hunting or logging shall be allowed; and that routine maintenance on the two-lane road may be conducted, but the road may not be widened or otherwise expanded and no other roads may be developed.

This section further provides that the Tribe may authorize tribal members to engage in ceremonial and other treaty uses on the federal lands and no existing tribal treaty rights shall be diminished by this Act. Furthermore, this section directs the Secretary of the Interior and the Tribe to enter into mutual aid agreements for emergency fire aid, dissemination of tribal culture and traditions, to develop a multipurpose, non motorized trail, and for other purposes related to the Act.

Section 6. Hoh Indian Reservation

Section 6 states that all lands taken into trust by the United States under this Act shall be part of the Hoh Indian reservation.

Section 7. Gaming prohibition

Section 7 prohibits the use of any lands taken into trust under this Act to be considered as Indian lands for the purpose of the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.).

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. *Cost of Legislation.* Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. *Congressional Budget Act.* As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to transfer certain land to the United States to be held in trust for the Hoh Indian Tribe.

4. *Congressional Budget Office Cost Estimate.* Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

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CBO estimates that implementing H.R. 1061 would cost less than \$500,000 over the 2010–2014 period, subject to the availability of appropriated funds. Enacting H.R. 1061 would not affect direct spending or revenues.

H.R. 1061 would transfer 37 acres of land from the National Park Service (NPS) to the Bureau of Indian Affairs (BIA) to be held in trust for the Hoh Indian Tribe in Washington. Upon conveyance to the tribe, BIA also would take into trust an additional 460 acres of nonfederal land acquired by the tribe, provided that certain conditions specified in the bill are met. The bill also would extend the boundaries of the tribe's reservation to include conveyed and NPS lands. Based on information from BIA and NPS, we estimate that transferring the lands into trust would not result in large costs over the next five years.

The tribe could seek funding from BIA and the Department of Housing and Urban Development for certain services on the new reservation land; those resources are subject to the availability of appropriated funds, and H.R.1061 would not specifically authorize funding for those activities. In addition, according to the Department of the Interior, the NPS lands currently generate no receipts from mineral leasing or other activities and are not expected to do so during the next 10 years. Therefore, CBO estimates that conveying the land would not affect offsetting receipts (a credit against direct spending).

H.R. 1061 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The tribe would benefit from the transfer of land.

The CBO staff contact for this estimate is Leigh Angres. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 1061 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

This bill is not intended to preempt any State, local, or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

ADDITIONAL VIEWS

The Committee is to be commended for favorably considering H.R. 1061. In moving this legislation, the Committee sets a valuable precedent by transferring without consideration 37 acres of lands within Olympic National Park to a non-federal owner—in this case the Hoh Tribe—to meet a legitimate need. The National Park Service has expressed support for transferring lands from Olympic National Park to the tribe without requiring a land exchange or other compensation. We are not aware of any opposition expressed by environmental groups to this national park land transfer.

The Hoh Tribe has demonstrated a compelling need to add lands to its existing Reservation to provide a safe area in which to construct housing and other facilities for its members. At present, the Tribe's Reservation, which was created by Executive Order in 1893, lies within one of the rainiest areas of the country located on the Olympic Peninsula of Washington. Classified as a tsunami zone and prone to major flooding, the Reservation receives 140 inches of rain per year. The transfer of land authorized by H.R. 1061 enables the Tribe to expand the eastern side of its Reservation a little further upland and a safe distance from major flooding. The lands so transferred are currently part of Olympic National Park, one of the most beautiful and pristine parks in the United States.

One might wonder why Congress would give away national park lands. We sometimes hear a refrain from environmental special interest groups, and occasionally from Members of Congress, that the government should never just give away public lands, let alone national parklands.

Perhaps it is fair to turn this question around: why did Congress designate a national park where it would hem in lands reserved to an Indian tribe? Shouldn't Congress pass more land transfers when the right for a community to have safe, accessible lands for homes and economic development is at stake?

The tribe's reservation was established prior to the park. Many other communities, mostly in the West, were also settled prior to later federal wilderness and park designations. Such communities often prize their national parks but they also prize their prior right to build safe, affordable towns and cities with the same opportunity and good quality of life that is generally taken for granted in urban areas and in the East. H.R. 1061 sensibly incorporates this view.

It is important to note the Committee adopted an amendment that, among other changes, clarifies that if the existing road in the Hoh Reservation is washed out, a new one can be re-built. The bill also includes a provision allowing the Tribe and the Park Service to construct a multi-purpose, non-motorized trail linking Highway 101 to the Pacific Ocean. These measures are very important, and Congress would be wise to consider other pending bills to ensure

safe and convenient access in communities where roads are washed out by floods, especially in National Parks.

DOC HASTINGS.

