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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

MARCH 10, 2010.—Ordered to be printed

Mr. DORGAN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 443]

The Committee on Indian Affairs, to which was referred the bill (S. 443) 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, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 443 is to transfer and place into trust for the Hoh Indian Tribe (Tribe) a 37-acre parcel of land held by the National Park Service and 434 acres of fee land purchased from private owners near the Tribe's current reservation. Once placed in trust, the lands would be included as part of the Tribe's reservation. Gaming would be prohibited on the lands transferred into trust by this Act.

BACKGROUND

The Hoh Indian Tribe is a federally recognized Indian tribe, whose reservation was established by executive order, in 1873. The Hoh Indian reservation is approximately 1 square mile, located along the Hoh River and the Pacific Ocean in Jefferson County, Washington. Due to its location along a river and the Pacific Ocean, coupled with the torrential rains experienced in the region, the Hoh Reservation has seen its territory eroded by flooding and storm surges. Approximately 90% of the Hoh Reservation is within a flood zone and 100% is within a tsunami zone, making the reservation unsafe for occupation or development. Flood danger has

increased in recent years due to erosion from flooding and the Hoh River's path migrating closer to the village.

In an effort to expand the reservation to include land safe for permanent occupancy, the Hoh Tribe acquired approximately 434 acres of fee land. 160 acres of this land was acquired from the Washington State Department of Natural Resources and the rest from private owners. The land is currently separated from the Hoh Reservation by a 37-acre parcel of land that is part of Olympia National Park. If enacted, S. 443 would transfer these 37 acres from the National Park Service into trust for the Tribe, thereby connecting the reservation to the newly purchased land. This will allow the Hoh Tribe to move their tribal infrastructure to higher ground.

Passage of S. 443 would provide the Hoh Indian Tribe with sufficient land to move its village and residents to a safe location, free from the constant danger of flooding. The Hoh Tribe also suffers economically, with no commercial operations on tribal lands and an unemployment rate of 73%. Obtaining land outside of the flood plain will not only allow Hoh residents to relocate to safer homes, but will give the tribe a better opportunity to develop economically.

SECTION-BY-SECTION ANALYSIS

Section 1

The short title of the Act is the "Hoh Indian Tribe Safe Homelands Act."

Section 2. Definitions

This section defines the term "Federal Land" as the 37-acre parcel of land administered by the National Park Service, which is depicted on the map dated May 14, 2009. The term "Map" is defined as the map dated May 14, 2009, and entitled "Hoh Indian Tribe Safe Homelands Act Land Acquisition Map." The term "Non-Federal" Land means the approximately 434 acres of land owned by the Tribe and depicted on the map dated May 14, 2009. The term "Secretary" means the Secretary of the Interior; and the term "Tribe" means the Hoh Indian Tribe.

Section 3. Land taken into trust for benefit of Tribe

Section 3(a) provides that the federal lands described in this Act will be held in trust by the United States for the benefit of the Tribe upon passage of this bill, without any further action required by the Secretary, and that such land will then be excluded from the boundaries of Olympic National Park.

Section 3(a) also requires the Tribe to conduct a survey of the boundaries of the federal land and submit that survey to the Director of the National Park Service for review and concurrence, after which the Director has 90 days to review and concur with the survey. No later than 120 days after notice of concurrence is provided to the Tribe, the Secretary shall submit a copy of the survey to the appropriate committees of Congress and make the survey available for public inspection.

Section 3(b) provides that the Secretary shall take the non-federal lands into trust for the Tribe after the Secretary conducts an assessment of the environmental risks associated with the parcel,

the Tribe conveys all right, title and interest in the non-federal land to the Secretary; and the tribe submits a request to the Secretary to take the non-federal land into trust. The Tribe also agrees to carry out any activities necessary to remediate any liability or potential liability discovered as part of the environmental assessment conducted by the Secretary.

Section 3(c) states that the intent of Congress is to preserve and protect the condition of the federal land as it exists on the date of enactment of this Act and that the natural environment existing on such date should not be altered unless allowed under this Act and that the National Park Service should work cooperatively with the Tribe regarding issues of mutual concern to this Act.

Section 3(d) requires the Secretary to make the Map available for public inspection as soon as practicable after the date of enactment of this Act.

Section 4. Use of Federal land by Tribe; Cooperative efforts

Section 4(a) describes the use of the federal lands by the Tribe and requires that the Tribe preserve and protect the natural condition and environment of the land as the land exists at time of enactment of this Act. This section prohibits the Tribe from carrying out any activity that would adversely affect the natural environment of the federal land, unless provided for in the Act. Section 4(a) also restricts the construction of any commercial, residential, industrial, or other building or structure on the federal land. This section also prohibits logging or hunting on this land in an effort to maintain the character of the land as a natural wildlife corridor.

Subsection 4(a) also provides for the routine maintenance of the two-lane country road that crosses the federal parcel, but the road may not be widened or otherwise expanded. The road may be reconstructed in the event of a flood or other natural or unexpected occurrence to ensure access to relevant areas. This section prohibits other roads or access routes on the federal land.

Section 4(a) provides that nothing in the Act shall affect any treaty rights held by the Tribe on date of enactment and authorizes any member of the Tribe to use the federal land for ceremonial purposes or for any other activities approved by a treaty between the Tribe and the United States.

Section 4(b) provides that the Secretary and the Tribe shall work cooperatively on any issues of mutual concern related to the land taken into trust for the Tribe in accordance with the Act. This section also requires the Tribe and the Secretary to enter into cooperative agreements for joint provision of emergency fire aid, upon completion of the Tribe's proposed emergency fire response building, and to provide educational opportunities for the public to learn about the culture and traditions of the Tribe. Under this section, the Secretary and the Tribe may develop a multipurpose, non-motorized trail from Highway 101 to the Pacific Ocean.

Section 5. Treatment of trust land as part of reservation

This section provides that all land taken into trust for the Tribe under this Act will be considered part of the Tribe's reservation.

Section 6. Gaming prohibition

This section prohibits the Tribe from conducting gaming activities as a matter of claimed inherent authority or under any Federal law on the lands taken into trust pursuant to this Act.

LEGISLATIVE HISTORY—COMMITTEE RECOMMENDATION

On February 13, 2009, Senator Patty Murray, for herself and Senator Maria Cantwell, introduced S. 443. It was referred to the Committee on Indian Affairs. Congressman Norm Dicks introduced a companion bill in the House of Representatives, H.R. 1061. On April 2, 2009, the Committee on Indian Affairs held a legislative hearing on S. 443 and other measures.

On August 6, 2009, the Committee on Indian Affairs convened a business meeting to consider S. 443 and other measures. Senator Cantwell offered an amendment in the nature of a substitute. The amendment in the nature of a substitute amends the original bill by ensuring that the Secretary of the Interior will conduct an assessment of the environmental risks associated with the non-federal land, strengthening the requirements of the cooperative agreements between the National Park Service and the Hoh Tribe for the non-federal land, and setting a deadline for the National Park Service to provide notice of concurrence with the land survey. The substitute amendment also prohibits gaming on the land.

The amendment in the nature of a substitute was approved by the Committee by voice vote. The Committee orders the bill as amended be reported to the full Senate with the recommendation that the bill, as amended, do pass.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated August 14, 2009, was prepared for S. 443:

S. 443—Hoh Indian Tribe Safe Homelands Act

CBO estimates that implementing S. 443 would cost less than \$500,000 over the 2010–2014 period, subject to the availability of appropriated funds. Enacting S. 443 would not affect direct spending or revenues.

S. 443 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. BIA also would take into trust an additional 434 acres of nonfederal land owned by the tribe, provided that the tribe conveys the land to BIA and that certain other conditions specified in the bill are met. The bill 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 some of the new reservation land; those resources are subject to the availability of appropriated funds, and S. 443 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 ex-

pected 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).

S. 443 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The tribe would benefit from the transfer of land.

On July 24, 2009, CBO transmitted a cost estimate for H.R. 1061, the Hoh Indian Tribe Safe Homelands Act, as ordered reported by the House Committee on Natural Resources on July 9, 2009. The House and Senate versions of the legislation are similar, and our cost estimates are identical.

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

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impacts of S. 443 should be de minimis.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 443.

CHANGES IN EXISTING LAW

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

