

HUNA TOTEM CORPORATION LAND EXCHANGE ACT

MAY 3, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany S. 506]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (S. 506) to amend the Alaska Native Claims Settlement Act, to provide for a land exchange between the Secretary of Agriculture and the Huna Totem Corporation, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 506 is to amend the Alaska Native Claims Settlement Act to provide for a land exchange between the Secretary of Agriculture and the Huna Totem Corporation, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

S. 506 directs the Secretary of Agriculture to enter into an equal value land exchange with the Huna Totem Corporation and Sealaska Corporation.

The Huna Totem Corporation was formed to manage the lands and interests of Tlingit Indians from the City of Hoonah, Alaska. With a population of 860, Hoonah is located within the Tongass National Forest on Chichagof Island, 40 miles west of Juneau.

Under the terms of the Alaska Native Claims Settlement Act of 1971 (ANCSA), Huna Totem was awarded 23,040 acres of land

from the Tongass National Forest. The Regional Corporation for Southeast Alaska, Sealaska, was awarded the subsurface estate to these lands.

Village Corporations were generally required to select lands within or adjacent to the core township enclosing the Native Villages they represent. This forced Huna Totem to select 2,000 acres of land containing valuable timber situated on steep hillsides, cliffs, and a watershed immediately within view of the city. The Corporation directors and residents of Hoonah do not believe these lands are conducive to logging because of their undesirable topography, watershed characteristics, and close proximity to the City of Hoonah.

Huna Totem seeks to exchange these 2,000 acres of land for other land of equal value located in an area where logging or other development does not present a special concern. Accordingly, S. 506 provides for such a land exchange.

Under S. 506, Huna Totem Corporation may convey the 2,000-acre tract to the U.S. Forest Service, and in exchange it will receive rights to select and acquire readily accessible lands of equal value from within an area of the Tongass as described in the bill. Lands that Huna Totem may acquire may not be in a wilderness or LUD II area. Sealaska's subsurface ownership follows the surface estate to Huna Totem's lands under this exchange. S. 506 further prohibits the export of unprocessed logs from lands Huna Totem acquires through the exchange.

S. 506 is identical to a bill (S. 426) sponsored by Senator Frank Murkowski and approved by the House Committee on Resources in the 106th Congress. Similar legislation was also approved by the Committee on Resources in the 105th Congress.

COMMITTEE ACTION

S. 506 was introduced on March 9, 2001, by Senator Frank Murkowski (R-AK). On August 3, 2001, the bill passed the Senate without amendment by unanimous consent. S. 506 was received by the House of Representatives and referred to the Committee on Resources. On April 24, 2002, the Full Resources Committee met to consider the bill. No amendments were ordered and the bill was then ordered favorably reported to the House of Representatives by voice vote.

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 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 compari-

son 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 tax expenditures. According to the Congressional Budget Office, enactment of this bill could affect direct spending (including offsetting receipts), but any such amount would be less than \$500,000 over the 2002–2012 time period.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

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:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 30, 2002.

Hon. JAMES V. HANSEN,
*Chairman Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 506, the Huna Totem Corporation Land Exchange Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 506—Huna Totem Corporation Land Exchange Act

CBO estimates that enacting S. 506 would have no significant impact on the federal budget. Because the legislation could affect direct spending (including offsetting receipts), pay-as-you-go procedures would apply, but we estimate that any such impacts would be less than \$500,000 a year. S. 506 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no significant costs on state, local, or tribal governments.

S. 506 would direct the Secretary of Agriculture to convey the surface estate of certain federal lands in the Tongass National Forest to the Huna Totem Corporation, and also convey the subsurface estate of those lands to the Sealaska Corporation. The lands to be conveyed would be selected by the two corporations from federal lands depicted on a map specified in the legislation. In exchange,

the corporations would convey to the United States approximately 2,000 acres of surface and subsurface estate.

S. 506 does not specify the federal lands to be conveyed to the corporations, but it provides that the exchange be on the basis of equal value. Enacting S. 506 could affect offsetting receipts if the lands to be exchanged would generate income from activities such as timber harvesting. According to the Forest Service, the agency would generally consider the area acquired from the corporation to be unsuitable for timber harvesting because it lies within the watershed and viewshed of the village of Hoonah.

According to the agency, some of the federal lands that could be conveyed to the corporations might be harvested under current law. Another portion of the federal lands that could be conveyed to the corporations currently are not being harvested because they have been set aside as part of a conservation reserve under the Tongass National Forest management plan. If the corporations harvested those areas following the exchange, then the agency would be obligated under the forest management plan to reserve for conservation another area of federal land within the Tongass National Forest that otherwise would be harvested under current law. Hence, we expect that conveying any of these lands to the corporations would result in forgone offsetting receipts from timber harvests. Based on information from the agency, however, we estimate that any such losses would be less than \$500,000 a year over the 2002–2012 period.

On May 18, 2001, CBO transmitted a cost estimate for S. 506 as ordered reported by the Senate Committee on Energy and Natural Resources. The two versions of the legislation are identical, and our cost estimates are the same.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

ALASKA NATIVE CLAIMS SETTLEMENT ACT

* * * * *

SEC. ____ . HUNA TOTEM CORPORATION LAND EXCHANGE.

(a) *GENERAL.—In exchange for lands and interests therein described in subsection (b), the Secretary of Agriculture shall, subject to valid existing rights, convey to the Huna Totem Corporation the surface estate and to Sealaska Corporation the subsurface estate of*

the Federal lands identified by Huna Totem Corporation pursuant to subsection (c). The values of the lands and interests therein exchanged pursuant to this section shall be equal.

(b) The surface estate to be conveyed by Huna Totem Corporation and the subsurface estate to be conveyed by Sealaska Corporation to the Secretary of Agriculture are the municipal watershed lands as shown on the map dated September 1, 1997, and labeled attachment A, and are further described as follows:

**MUNICIPAL WATERSHED AND GREENBELT BUFFER
T43S, R61E, C.R.M.**

Portion of Section	Approximate Acres
16	2
21	610
22	227
23	35
26	447
27	400
33	202
34	76
Approximate total	1,999.

(c) Within ninety (90) days of the receipt by the United States of the conveyances of the surface estate and subsurface estate described in subsection (b), Huna Totem Corporation shall be entitled to identify lands readily accessible to the Village of Hoonah and, where possible, located on the road system to the Village of Hoonah, as depicted on the map dated September 1, 1997, and labeled Attachment B. Huna Totem Corporation shall notify the Secretary of Agriculture in writing which lands Huna Totem Corporation has identified.

(d) **TIMING OF CONVEYANCE AND VALUATION.**—The conveyance mandated by subsection (a) by the Secretary of Agriculture shall occur within ninety (90) days after the list of identified lands is submitted by Huna Totem Corporation pursuant to subsection (c).

(e) **TIMBER MANUFACTURING; EXPORT RESTRICTION.**—Notwithstanding any other provision of law, timber harvested from land conveyed to Huna Totem Corporation under this section shall not be exported as unprocessed logs from Alaska, nor may Huna Totem Corporation sell, trade, exchange, substitute, or otherwise convey that timber to any person for the purpose of exporting that timber from the State of Alaska.

(f) **RELATION TO OTHER REQUIREMENTS.**—The land conveyed to Huna Totem Corporation and Sealaska Corporation under this section shall be considered, for all purposes, land conveyed under the Alaska Native Claims Settlement Act.

(g) **MAPS.**—The maps referred to in this section shall be maintained on file in the Office of the Chief, United States Forest Service, and in the Office of the Secretary of the Interior, Washington, D.C. The acreage cited in this section is approximate, and if there is any discrepancy between cited acreage and the land depicted on the specified maps, the maps shall control. The maps do not constitute an attempt by the United States to convey State or private land.

DISSENTING VIEWS

Mr. Chairman, with this bill, the third time is not a charm. The same legislation that has come before the committee in the 105th and 106th Congresses and failed to pass the House is back again. Unfortunately, the bill has not changed or improved with age.

The Huna Corporation keeps knocking on Congress' door because they contend they cannot negotiate a fair land exchange with the U.S. Forest Service. The motivation for Huna is that they have already logged the vast majority of their lands and have only about 2,000 acres remaining uncut out of the original 23,000 acres that they received under the Alaska Native Claims Settlement Act. But most of the residents of the village of Hoonah do not want any more logging [See attached letter and resolution]. So the solution set forth in this bill is to dispose of unwanted corporation lands near the Native village on the federal government and then freely expand the corporation land base by obtaining old-growth forest lands out of the Tongass National Forest.

Even though this bill was first introduced in 1997, the Huna Corporation has failed to provide specific map or precise acre description of the national forest lands that the corporation desires to obtain and log. Thus, Members do not even know what or how many acres of national forest lands that we are being asked to convey out of public ownership. The bill does not require that the selected lands must be in a contiguous block, so the corporation may opt to cherry-pick various parcels of national forest lands. The corporation may even argue that it is entitled to more than 2,000 acres of Tongass lands because the bill's restrictions on unprocessed log exports from the newly acquired lands means that they need to log more trees to equalize the valuations.

Put another way, this is not a mutually negotiated exchange between land owners. I can not recall that this committee has ever before approved such a unnegotiated and ill-defined land exchange. Under the Clinton Administration, both the Secretaries of Agriculture and Interior were strongly opposed and issued veto threats on the prior bills [See attachment].

The Hoonah Indian Association, which is the local tribal entity, and the Southeast Alaska Conservation Council have opposed this legislation. While the Bush Administration may have a different perspective about the values of public lands, I once again urge Members to consider the interest of the taxpayer and vote against this bill.

In closing, let me assure my colleagues and in particular, the gentleman from Alaska, that my opposition to this bill is solely based on its lack of merit and does not reflect on our willingness to work with the gentleman on other Alaska matters or other tribal issues. Last Congress, as just one example, we resolved some complex issues in the Kake Tribal Corporation Land Exchange Act,

sending that bill with amendments back to the Senate and on to the President where it was signed into Public Law 106–283. I look forward to working with him on other such matters in the future.

GEORGE MILLER.

Enclosures.

HOONAH INDIAN ASSOCIATION,
Hoonah, AK, September 25, 2001.

GEORGE MILLER,
*Minority of the House Resources Committee,
House of Representatives.*

DEAR REPRESENTATIVE MILLER: Please find enclosed a courtesy copy of recent correspondence with Congressman Hansen of the House Resource Committee regarding House Bill S. 506.

The Hoonah Indian Association continues to be strongly opposed to the Huna Totem Corporation's proposed Land Exchange with the U.S. Forest Service. This letter expresses our feelings and rationale on this matter.

Thank you for any support you can offer in this regard.

Sincerely,

DAVID M. BELTON,
Hoonah Indian Association.

The Hoonah Indian Association is a federally recognized Tribe in accordance with and by the authority of Congress of June 18, 1934 (48 Stat. 984) and May 1, 1936 (49 Stat. 1250).

HOONAH INDIAN ASSOCIATION,
Hoonah, AK, September 25, 2001.

Congressman JAMES V. HANSEN,
Chairman of the House Resource Committee.

DEAR MR. CHAIRMAN: On behalf of the Board of Directors, the membership of the Hoonah Indian Association, and the Tribal Administrator, I am directed to voice our strong opposition to the Huna Totem Land Exchange with the U.S. Forest Service identified as House Bill S. 506.

As a Tlingit village with a proud history and heritage we feel that our long-term cultural and economic survival depends on the health and beauty of our traditional lands. When the lands around Hoonah were originally selected as part of the ANCSA settlement, the Tribe believed that it was the intent of Congress for the Huna people to possess land that was historically and culturally significant as well as potentially profitable.

The attempt to exchange lands (House Bill S. 506) solely for maximizing corporate timber profits is alarming. Historic and Traditional Tribal lands will be lost and newly selected parcels that will become available for immediate harvest will interfere with the Tongass Land Management Plan. Subsistence opportunity and management will be seriously and negatively confused and impacted.

The exchange involves less than 2,000 of the 23,000 acres originally granted. This land surrounds the original village site and community that is now Hoonah. As the land of our ancestors, this area is in many ways our very cultural and spiritual identity. It

is the contiguous land that provided protection from outside groups that at times had other than the best of intentions for our well-being. It yielded the food and forest resources that allowed our people to survive for many generations.

The very land being considered for exchange is spoken of in our oral traditions as the place where "Cheet", a warrior and hero of the Chookaneidi clan, ascended the cliffs to light four fires that warned the Huna People in Glacier Bay of the approach of Wrangell warriors from the south. This story is remembered in song and art that pay tribute to our history and heritage.

Most significantly, this is indeed sacred land as it is literally the final resting place of some of our healers and shamanic spiritual leaders that are well documented to have been buried in the caves on the hillsides and cliffs that surround Hoonah. Prior to the coming of missionaries our deceased ancestors were customarily cremated but Shamen were buried along with a variety of spiritually potent objects that were traditionally manipulated at both private healing ceremonies and public displays to heal the sick, control the weather and ward off malevolent spirits thus assuring the survival of the group.

The area continues to be regarded as very special and is well known to be more culturally significant than other areas under Huna Totem management. To exchange this land for economic opportunity by putting it in public hands would not only be shameful but a sacrilege. Unfortunately, in the not so distant past, these graves have been desecrated and looted by artifact hunters for the funerary that they contain.

For more than two decades Sealaska, Huna Totem and the U.S. Forest Service have engaged in clear-cutting many acres in the Hoonah area leaving whole watersheds stripped of their best timber, prime wildlife habitat and scenic beauty. We feel this is a shortsighted policy that will lead to a greatly diminished opportunity for economic diversification and customary and traditional use in the long term. Again, we do not feel extractive development was the only intent for the selection and use of lands by Congress or by the people for which they were intended.

Please be reminded of the voice of the federally recognized Tribal Government in accordance with and by the authority of the Acts of Congress of June 18, 1934 (48 Stat. 984) and May 1, 1936 (49 Stat. 1250); Hoonah Indian Association Resolution #98-14 adopted and certified April 22, 1998, at which a quorum was present, with a vote of 5 for, 0 against, and 0 abstentions when it was resolved that: "* * * the Board of Directors of the Hoonah Indian Association strongly opposes the proposed Huna Totem Corporation Land Exchange with the United States Forest Service." This view has not changed! (Resolution attached)

Mr. Murkowski and the Huna Totem Corporation would have you believe that an exchange would resolve a "problem" regarding the land selection of 1975. They suggest that there are "complications" which are created by the difficult terrain characterized by steep hillsides and cliffs and that the "unsuitable" terrain has kept Hoonah from achieving the goal of developing the land for profit which was "one" of the main purposes of the settlement act. Please, keep in mind that developing the land for profit was only one of

the purposes of the settlement act. Those that support the exchange seem to suggest that somehow a mistake was made in the selection of land that needs to be fixed. This is not the case. There was no mistake made when this area was selected to belong to the Huna People.

The particular land at issue was selected primarily for its historic, cultural and traditional value and it is very important to those Tribal members who continue to live in the village and others, to maintain ownership of this very special area. We certainly do not suggest that it should be condemned to the chainsaw nor do we feel that it would be appropriate to transfer it to the control of the U.S. Forest Service. We do not feel that the intentions of the Huna Totem Corporation represent the view of the majority of the Hoonah Indian Association members, also Huna Totem Shareholders. Regarding the destiny of this culturally and traditionally significant land please, do not be deceived by those who have only monetary profit as their primary objective. We feel that the wishes of the majority of the Huna People are being misrepresented in this effort.

Each day we here in the village look across our beloved Port Frederick with a certain sadness and regret. The vast tracks of clear-cut land are daily reminders of what has been sacrificed already for timber profits and we disagree that the removal of trees on tribal lands is necessarily the best or only value that the land offers. We feel that the ancestors and those involved in the original selections would not have been approved of this wholesale onslaught. We are all too aware of the tremendous amount of forest that has been and continues to be sacrificed for the meeting of corporate goals.

There is a song entitled Xuna Kahwoo (Huna People) that was written some years ago and tells the tale of the Huna People and how they crossed icy waters from Glacier Bay in canoes carved by hand. It speaks of how the glacier had come down upon them and how the sea had rise up to stop them as they sought to claim a new land. It continues * * *

"From salmon deep in salty waters * * * From deer and bear in forest glade Came food for life and clothes for body * * * The land was good and the people stayed. And at their back there stands a forest * * * At their feet the restless sea All around the mountains guard them * * * As cloudy skies watch silently."

The forest referred to in this song, as being at the backs of the Huna People, is literally the land proposed for the Huna Totem Land exchange. Obviously this is an issue that must be addressed and settled within the Tribe and amongst the shareholders. In the mean time we ask that the exchange not be allowed. We believe that it would not have been acceptable to the Ancestors nor do we believe that it has the blessing of the Elders. We continue to be in strong opposition to this effort.

Respectfully on behalf of the Board of Directors, the Tribal Administrator, Johanna Dybdahl and the membership of the Hoonah Indian Association, thank you for considering this plea.

DAVID M. BELTON,
Director of Natural and Cultural Resources.

RESOLUTION NO. 98-14

Whereas; the Hoonah Indian Association is a federally recognized tribe in accordance with and by the authority of the Acts of Congress of June 18, 1934 (48 Stat. 984) and May 1, 1936 (49 Stat. 1250); and

Whereas; the majority of Huna Totem Corporation's shareholders are enrolled members of the Hoonah Indian Association or descendants of the 1939 roll; and

Whereas; the proposed Huna Totem Corporation Land Exchange with the U.S. Forest Service has a direct affect on those shareholders who live in Hoonah and are enrolled members of the association.

NOW, THEREFORE BE IT RESOLVED that the Board of the Hoonah Indian Association strongly opposes the proposed Huna Totem Corporation Land Exchange with the U.S. Forest Service numbered in the Senate, S. 1158 and in the House, H.E. 3088 which directly affects our membership (also shareholders of HTC).

BE IT FURTHER RESOLVED that this resolution be sent to the Congressional Delegation in Washington, D.C., Honorable Frank Murkowski, Ted Stevens, and Donald Young.

CERTIFICATION

As President of the Hoonah Indian Association, I hereby certify that the above resolution was duly adopted at a regular meeting of the association on this 22nd day of April 1998, at which a quorum was present, with a vote of 5 for, 0 against, 0 abstentions.

MS. MARY RUDOLPH,
President.

Attest:

FRANK WRIGHT, Jr.,
Tribal Secretary.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, September 28, 2000.

Hon. DON YOUNG,
Chairman, Committee on Resources, U.S. Senate,
Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I want to express the Administration's strong opposition to S. 426, the Huna Totem Corporation Public Interest Land Exchange Act, as reported out of the House Resources Committee on September 26th. The bill would direct the Secretary of Agriculture to enter into a land exchange with Huna Totem Corporation, which owns the surface estate, and Sealaska Corporation, which owns the subsurface estate to certain lands near the village of Hoonah in Southeast Alaska.

The Administration communicated its strong opposition to the bill during its consideration in the Senate and during consideration of an identical bill (S. 1158) in the 105th Congress. Because the bill would set an unacceptable precedent by reopening native entitlements under the Alaska Native Claims Settlement Act (ANCSA),

the Secretary of the Interior and I would recommend that the President veto this legislation.

ANCSA granted more than 200 village corporations the right to select public lands in Alaska for a variety of uses. Each corporation was required to select the public lands within the township in which it was located. ANCSA was a final settlement and, as such, represented many trade-offs and compromises by all parties.

If S. 426 were enacted, all of Alaska's village corporations could argue that they too were entitled to exchange land selected under ANCSA for land that is more desirable. This precedent would threaten to unravel ANCSA's historic settlement through piecemeal amendments. In turn, Federal land management throughout Alaska would be severely disrupted with significant costs and consequences for all taxpayers.

Beyond the question of precedent, the land exchanges proposed by this bill would not be in the public interest. The primary reason the U.S. Forest Service pursues land exchanges is to provide more efficient land management through consolidation of existing Federal ownership and to dispose of isolated parcels that are uneconomical to manage. S. 426 directly conflicts with these goals.

This bill is based on the premise that because some of the land that Huna Totem Corporation received within its township under ANCSA is municipal watershed land not subject to development, the United States should provide the corporations with replacement land elsewhere. ANCSA, however, contemplated that villages would obtain all land within their "core" townships regardless of its development potential.

The Federal Government should not administer municipal watershed lands in Alaska, as would be required by S. 426. Rather, such lands should be managed by those communities that derive benefit from the land. Federal ownership of municipal watersheds is inconsistent with the ownership patterns envisioned by ANCSA, whereby native corporations had to select lands within their core townships.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DAN GLICKMAN,
Secretary.

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