

To the office of U.S. Representative Emily Randall

Re: HR 2388 (119th Congress), Lower Elwha Klallam Tribe Project Lands Restoration Act • Latest action (2026-10-14): Presented to President.

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Stage update: this measure has since reached a final stage (enrolled or enacted). This proposal was written while it was pending.

Lower Elwha Trust Lands Restoration and Accountability Act

The measure, as described from the official record: Restore about 1,083 acres of specified project lands in Washington to trust status for the Lower Elwha Klallam Tribe as part of its reservation, while barring gaming on those lands.

THE PROPOSAL

Congress has the power to do this job. Article I, Section 8, Clause 3 gives Congress power over trade and relations with Indian Tribes. Article IV, Section 3, Clause 2 gives Congress power over federal property. Together they allow Congress to place specified land into trust for a Tribe. The Fifth Amendment Takings Clause limits that power: private property cannot be taken without just compensation. The Tenth Amendment leaves state police powers in place outside trust land. The strongest objection is that trust status takes land from local control and may harm existing rights. The answer is to keep the transfer narrow to the specified acres, keep the gaming ban, protect valid existing rights with court review, cap spending, and end the authority after a sunset unless Congress renews it.

This proposal would place the specified project lands, described in the source as about 1,082.63 acres in Washington, into federal trust for the benefit of the Lower Elwha Klallam Tribe. The trust lands would become part of the reservation. This VFA draft would add that the controlling map and legal descriptions would be published by the Secretary, with minor survey corrections made public.

The proposal would keep the gaming ban stated in the source. No gaming facility or gaming activity would be allowed on the lands taken into trust under this act. That rule would run with the land. This VFA addition would not change other tribal gaming rights outside these parcels, a point a reader should verify in full law.

The proposal would protect valid existing rights as a new VFA safeguard. It would not take private property without just compensation as required by the Takings Clause. It would not impair valid water rights, rights-of-way, or access rights. Any person who claims harm to such a right would have a new proposed right to judicial review with notice and a hearing. Federal management would coordinate with Washington State on roads, emergency response, and

natural resources; county coordination is a new VFA addition.

The proposal would control cost and require review. Federal implementation spending would be capped and paid from existing Interior funds. The Bureau of Indian Affairs would report each year on acres in trust, costs, and coordination. The authority would expire after seven years unless Congress reauthorizes it, so lawmakers can assess results before any expansion.

OPERATIVE PROVISIONS (VFA PROPOSAL)

Effective Date	Effective 180 days after enactment to allow survey, title work, and recording.
Enforcement Mechanism	Secretary of the Interior would publish legal descriptions and the gaming prohibition; violations of the gaming ban would be enforced under federal law, and state or private parties could seek judicial review for impairment of valid existing rights. These enforcement details are new VFA additions.
Funding Amount	Capped at \$2 million in federal implementation funds over five years.
Funding Source	Department of the Interior existing appropriations for Indian land management, with no new tax or mandatory spending.
Oversight Body	Department of the Interior, Bureau of Indian Affairs, with annual public report to Congress and consultation with the Tribe and the State of Washington.
Sunset Years	7 years

CONSTITUTIONAL BASIS

- Article I, Section 8, Clause 3
- Article IV, Section 3, Clause 2
- Fifth Amendment Takings Clause
- Tenth Amendment

Concerns with the measure as written:

- No major enumerated-powers concern is apparent from the excerpt, since trust acquisitions rest on the Indian Commerce Clause and the Property Clause.
- Any taking or impairment of valid existing private, state, or local rights would raise Fifth Amendment Takings Clause just compensation issues.
- Federal-tribal-state jurisdiction must respect the Tenth Amendment and state police powers outside trust land.

WHY BOTH SIDES CAN BACK IT (VFA'S ASSESSMENT)

VFA assesses this draft honors Democratic and progressive priorities by restoring about 1,082.63 acres of specified Washington lands to trust status for the Lower Elwha Klallam Tribe and supporting tribal self-determination. VFA assesses it honors Republican and conservative priorities by keeping the gaming ban on these lands, capping federal implementation spending with no new tax, adding a sunset review, and protecting valid existing rights through judicial review.

Strongest objection, and the answer: The strongest objection is that trust status takes land from local control and may harm existing rights. The answer is to keep the transfer narrow to the specified acres, keep the gaming ban, protect valid existing rights with court review, cap spending, and end the authority after a sunset unless Congress renews it.

CHECK BEFORE RELYING ON THIS

Basis: The supplied official summary states the bill would take about 1,082.63 acres of specified lands in Washington into trust for the Lower Elwha Klallam Tribe as part of its reservation and would prohibit gaming there. The supplied record states introduction on 2025-03-26 and latest action as Message on Senate action sent to the House.

The full bill text, legal descriptions, map references, eligibility of parcels, valid existing rights, water rights, environmental review, cost effects, management terms, and appeal rights were not supplied. References to Clallam County coordination, maps and surveys, correction of boundary errors, and enforcement under Indian gaming law are new VFA additions not stated in the source. A reader should verify parcel descriptions, rights savings clauses, and current status at the official congress.gov page before relying on this draft.

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