

# STATE OF NEW YORK

8809

## IN SENATE

April 19, 2022

Introduced by Sen. BROOKS -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to implementing a land exchange and easements in the vicinity of Cathead Mountain

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Article 9 of the environmental conservation law is amended  
2 by adding a new title 23 to read as follows:

3 TITLE 23

4 RECREATIONAL ACCESS TO AND EMERGENCY COMMUNICATIONS  
5 EQUIPMENT ON CATHEAD MOUNTAIN

6 Section 9-2301. Legislative purpose and intent.

7 9-2303. Conveyances to the state and Hamilton county.

8 9-2305. Declaration of restrictions.

9 9-2307. New York state affirmative rights.

10 9-2309. Legislative approval of conveyance.

11 9-2311. Attorney general to approve title.

12 9-2313. Land to be conveyed by the state.

13 9-2315. Right of first refusal.

14 9-2317. Special conditions.

15 9-2319. Sunset provision.

16 § 9-2301. Legislative purpose and intent.

17 1. The legislature hereby finds that the voters have approved an  
18 amendment to section 1 of article 14 of the state constitution for the  
19 purposes of increasing the acreage of the forest preserve, reopening to  
20 the public an historically significant and popular recreational destina-  
21 tion on the summit of Cathead Mountain in the town of Benson, county of  
22 Hamilton in the southern Adirondacks, acquiring conservation easements  
23 over certain private land on the slopes of Cathead Mountain, and provid-  
24 ing for a tower for state and Hamilton county emergency communications  
25 equipment on such summit, including motorized access to and a reliable  
26 source of power for such equipment.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 2. The legislature further finds that the amendment will facilitate  
2 public access to and enjoyment of the forest preserve in the southern  
3 part of the Adirondack Park, an area that is currently underutilized for  
4 recreation by the public.

5 3. The legislature also finds that the mountainous nature of the  
6 southern Adirondacks and the remote nature of southern Adirondack Park  
7 communities poses significant challenges to ensuring reliable emergency  
8 communications systems for municipalities, the state police, and the  
9 department of environmental conservation and that Cathead Mountain,  
10 located in the town of Benson, Hamilton county, is uniquely situated to  
11 meet critical public health and safety communication needs in the south-  
12 ern area of the Adirondack Park.

13 4. The legislature therefore finds that a tower containing emergency  
14 communications equipment on Cathead Mountain is essential for the public  
15 health and safety needs in the southern area of the Adirondack Park.

16 5. The legislature further finds that legislation is necessary to  
17 successfully implement the constitutional amendment in a manner which  
18 provides significant additional acreage to the forest preserve, provides  
19 substantial public recreational benefits, meets emergency communications  
20 needs, protects natural resources and limits development on certain  
21 privately held lands.

22 6. For these reasons, it is the intent of the legislature to implement  
23 the constitutional amendment in a manner which adds five hundred eighty  
24 acres to the forest preserve, creates trail easements for public access  
25 to and recreational use of a fire tower on the summit of Cathead Moun-  
26 tain, establishes an easement for access to and the construction and  
27 maintenance of a new Hamilton county and state emergency communications  
28 tower on Lot 166, Benson Tract, and creates conservation easements  
29 restricting development, subdivision, and forest management over four  
30 hundred thirty-four acres of private land on Cathead Mountain.

31 § 9-2303. Conveyances to the state and Hamilton county.

32 1. Hatchbrook Sportsmen Club, Inc. may convey to the state fee title  
33 to Lots 122, 165, and 172, Benson Tract, town of Benson, county of  
34 Hamilton, containing approximately four hundred eighty acres of true  
35 forest land, for incorporation into the forest preserve.

36 2. Hatchbrook Sportsmen Club, Inc. may convey to the state and a  
37 designated accredited land trust easements for hiking trails across Lot  
38 166, Benson Tract for access to the fire tower located on the summit of  
39 Cathead Mountain, provided that such easement shall restrict public use  
40 during firearm hunting season for public safety reasons, and provided  
41 further that such easement shall include language pertaining to trespass  
42 or other damage to lands owned by such club.

43 3. Hatchbrook Sportsmen Club, Inc. may convey to the state and a  
44 designated accredited land trust a conservation easement restricting  
45 development, subdivision and forest management over Lot 166, Benson  
46 Tract and a right of first refusal over such lot. Such easement may  
47 reserve to such club the following rights:

48 a. the right to sustainable timber and forest product harvest;

49 b. the right to repair, maintain, improve or relocate any and all  
50 existing roads, trails and paths and to construct any new roads and  
51 trails necessary to support habitat management activities;

52 c. the right to provide the New York state police and other state  
53 agencies with exclusive use of the existing communication tower site,  
54 including accessory structures and facilities, unless and until a  
55 replacement tower is constructed and available for use;

1 d. the right to construct, establish and lease for construction one  
2 additional communication tower on Lot 166 if the state or a local  
3 government determines it necessary for communication purposes to support  
4 public safety, including an access road necessary to complete tower  
5 construction and facilitate ongoing operation, provided such tower shall  
6 be as low profile as practicable. Once construction of a replacement  
7 tower is completed and becomes operational, all infrastructure support-  
8 ing the existing fire tower for purposes of communications will be  
9 removed by the responsible state agency within one hundred eighty days,  
10 provided that the New York state police or other state agencies may  
11 continue to locate whip antennas on the fire tower to provide local  
12 coverage as necessary. The infrastructure to be removed shall include  
13 solar panels, a wind turbine and backup power generator, unless deemed  
14 appropriate to serve the replacement tower. Once a new communications  
15 tower is in operation, the fire tower shall be restored to its original  
16 form for public enjoyment of the Adirondack Park in the Cathead Mountain  
17 area pursuant to a restoration plan produced by the department that  
18 includes budgets and timelines. The department shall produce such plan  
19 within two hundred forty days of the completed construction of the new  
20 tower. The state shall have full and unrestricted administrative access  
21 to the fire tower for its restoration, maintenance and use and such  
22 restoration, maintenance and use shall be the sole responsibility of the  
23 state;

24 e. the right to transition to the next generation of public emergency  
25 communication technology with the assistance of private communication  
26 service companies in the event public safety use by the New York state  
27 police, other state agency, or a local government ceases;

28 f. the right to install, repair, maintain, improve or relocate utili-  
29 ties to service the above towers. Utilities located on Lot 166 must be  
30 located on the surface of or under the ground and shall not be located  
31 on above ground poles.

32 4. Hatchbrook Sportsmen Club, Inc. may convey to the state and Hamil-  
33 ton county a right of way over Lot 166, Benson Tract for a utility line  
34 to bring power to such tower and equipment and a road to provide motor-  
35 ized access to such tower and equipment.

36 5. Thomas Gang, Inc. may convey to the state and a designated accred-  
37 ited land trust an easement for a hiking trail across Lot 113, Benson  
38 Tract to provide public access to the fire tower located on the summit  
39 of Cathead Mountain, provided that such easement shall restrict public  
40 use during firearm hunting season for public safety, and provided  
41 further that such easement shall include language pertaining to trespass  
42 or other damage to lands owned by such club.

43 6. Thomas Gang, Inc. may convey to the state and a designated accred-  
44 ited land trust a conservation easement restricting development, subdi-  
45 vision and forest management over Lot 167, Benson Tract and a right of  
46 first refusal over such tract, and a conservation easement restricting  
47 subdivision on fifty-eight acres of Lot 113 and requiring a one  
48 hundred-foot vegetative buffer around the trail easement described in  
49 subdivision five of this section. Such easements may reserve to such  
50 club the following rights:

51 a. the right to sustainable timber and forest product harvest;

52 b. the right to maintain any existing camp structures and buildings;

53 c. the right to establish no more than one new hunting camp on Lot  
54 167, Benson Tract, in accordance with regulations promulgated by the  
55 Adirondack Park agency;

1 d. the right to occupy, use, maintain, repair, improve, demolish or  
2 replace existing camp structures and outbuildings;

3 e. the right to repair, maintain, improve or relocate any and all  
4 existing roads, trails and paths and to construct any new roads and  
5 trails necessary to support habitat management activities;

6 f. the right to install, repair, maintain, improve or relocate utili-  
7 ties to service the above camps, and/or towers;

8 g. the right to conduct habitat management activities, including but  
9 not limited to food plot planting.

10 7. Thomas Gang, Inc. may convey to the state and the county of Hamil-  
11 ton a right of way over Lots 113 and 167, Benson Tract, for a utility  
12 line to bring power to the tower and equipment described in subdivision  
13 four of this section and for a road for motor vehicle access to the  
14 tower and emergency communications equipment located on Lot 166 of such  
15 tract.

16 8. The county of Hamilton may convey to the state for incorporation  
17 into the forest preserve a total of not less than one hundred acres of  
18 land suitable for addition to the forest preserve, subject to legisla-  
19 tive approval.

20 § 9-2305. Declaration of restrictions.

21 Except to the extent expressly provided by the Hatchbrook Sportsmen  
22 Club, Inc. reserved rights under subdivision three of section 9-2303 of  
23 this title, and expressly provided by the Thomas Gang, Inc. reserved  
24 rights under subdivision six of section 9-2303 of this title, the  
25 following activities will be prohibited on conservation easements  
26 conveyed by the clubs to the state and a designated accredited land  
27 trust:

28 1. No residential, commercial agricultural or industrial activities  
29 shall be allowed.

30 2. No timber harvesting equipment shall be used within fifty feet of  
31 Beaver Pond unless necessitated by a wind storm, insect or disease,  
32 epidemic, fire, ice storm or other act of God. Any selective timber  
33 harvest within this area must maintain at least seventy-five percent of  
34 the pre-harvest basal area.

35 3. No pesticides, insecticides, rodenticides or herbicides shall be  
36 allowed except as provided for in the performance of approved forest  
37 management activities or by state governmental agencies.

38 4. No new buildings, residences or mobile homes shall be allowed.

39 5. No mining shall be conducted, and no minerals, gas or oil will be  
40 extracted except the onsite use of gravel and sand for road  
41 construction.

42 § 9-2307. New York state affirmative rights.

43 The state of New York shall have the following affirmative rights:

44 1. The right on Lot 166 to construct, use, repair, maintain, replace  
45 and improve the existing fire tower, including construction of a new  
46 communication tower, ranger cabin, utilities and a new road to the emer-  
47 gency communications tower.

48 2. The right to construct, use, repair and maintain a public trail  
49 from Grant Lake through Lot 166, Benson Tract, to the fire tower and  
50 summit of Cathead Mountain.

51 3. The right to construct, use, repair and maintain a public trail  
52 through Lots 113 and 166, Benson Tract, to the fire tower and summit of  
53 Cathead Mountain.

54 4. A right of first refusal, co-held by the state of New York and a  
55 designated accredited land trust, should the Hatchbrook Sportsmen Club,  
56 Inc. or Thomas Gang, Inc. decide to sell any or all of Lots 166 or 167,

1 Benson Tract, or any of the forty-six acres in Lot 120 of such tract  
2 which the state may convey to the Thomas Gang, Inc. pursuant to section  
3 9-2313 of this title.

4 § 9-2309. Legislative approval of conveyance.

5 The legislature shall approve the conveyance by the county of Hamilton  
6 authorized in subdivision eight of section 9-2303 of this title to  
7 ensure such land constitutes a suitable addition to the forest preserve.  
8 § 9-2311. Attorney general to approve title.

9 Title to land and easements to be conveyed to the state pursuant to  
10 section 9-2303 of this title and the deeds to the state shall be  
11 approved by the attorney general, as to form and manner of execution and  
12 recordability, before the deeds shall be accepted on behalf of the  
13 state.

14 § 9-2313. Land to be conveyed by the state.

15 Provided all parcels and property interests as provided for in  
16 sections 9-2303 of this title have been conveyed to the state, the  
17 state, through the office of general services, shall convey fee title to  
18 forty-six acres of Lot 120, Benson Tract to Thomas Gang, Inc., provided  
19 that the state shall reserve from such conveyance an easement for utili-  
20 ties and administrative motor vehicle access and a conservation easement  
21 restricting development, subdivision and forest management and a right  
22 of first refusal, and provided further that any utilities located on Lot  
23 120 must be located on the surface of or under the ground and not on  
24 above ground poles.

25 § 9-2315. Right of first refusal.

26 The state shall have a right of first refusal over Lot 166 and Lot  
27 167, Benson Tract, and over the forty-six acres in Lot 120 of such tract  
28 which the state may convey to the Thomas Gang, Inc. pursuant to section  
29 9-2313 of this title.

30 § 9-2317. Special conditions.

31 Prior to the conveyance of any lands or easements as specified herein,  
32 the New York state police shall conduct a study to ensure that the  
33 necessary emergency communications facilities may be properly sited on a  
34 modern tower on Lot 166, Benson Tract enabling safe public access to the  
35 existing fire tower on Lot 166, Benson Tract.

36 § 9-2319. Sunset provision.

37 The state conveyance authorized by section 9-2309 of this title must  
38 be concluded no later than January first, two thousand twenty-eight.

39 § 2. This act shall take effect on the same date as a concurrent  
40 resolution entitled "CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY  
41 proposing an amendment to section 1 of article 14 of the constitution in  
42 relation to the exchange of lands in the state forest preserve", takes  
43 effect.