STATE OF NEW YORK

9768

IN ASSEMBLY

April 7, 2022

Introduced by M. of A. WOERNER -- read once and referred 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:

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

TITLE 23

RECREATIONAL ACCESS TO AND EMERGENCY COMMUNICATIONS EQUIPMENT ON CATHEAD MOUNTAIN

Section 9-2301. Legislative purpose and intent.
9-2303. Conveyances to the state and Hamilton county.
9-2305. Declaration of restrictions.
9-2307. New York state affirmative rights.
9-2309. Legislative approval of conveyance.
9-2311. Attorney general to approve title.
9-2313. Land to be conveyed by the state.
9-2315. Right of first refusal.
9-2317. Special conditions.
9-2319. Sunset provision.

§ 9-2301. Legislative purpose and intent.

1. The legislature hereby finds that the voters have approved an amendment to section 1 of article 14 of the state constitution for the purposes of increasing the acreage of the forest preserve, reopening to the public an historically significant and popular recreational destination on the summit of Cathead Mountain in the town of Benson, county of Hamilton in the southern Adirondacks, acquiring conservation easements over certain private land on the slopes of Cathead Mountain, and providing for a tower for state and Hamilton county emergency communications equipment on such summit, including motorized access to and a reliable source of power for such equipment.

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

LBD15225-01-2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

f. the right to install, repair, maintain, improve or relocate utilities to service the above towers. Utilities located on Lot 166 must be located on the surface of or under the ground and shall not be located on above ground poles.

4. Hatchbrook Sportsmen Club, Inc. may convey to the state and Hamilton county a right of way over Lot 166, Benson Tract for a utility line to bring power to such tower and equipment and a road to provide motorized access to such tower and equipment.

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

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

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

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

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

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

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

f. the right to install, repair, maintain, improve or relocate utilities to service the above camps, and/or towers;

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

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

8. The county of Hamilton may convey to the state for incorporation into the forest preserve a total of not less than one hundred acres of land suitable for addition to the forest preserve, subject to legislative approval.

§ 9-2305. Declaration of restrictions.

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

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

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

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

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

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

§ 9-2307. New York state affirmative rights.

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

1. The right on Lot 166 to construct, use, repair, maintain, replace and improve the existing fire tower, including construction of a new communication tower, ranger cabin, utilities and a new road to the emergency communications tower.

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

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

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

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

§ 9-2309. Legislative approval of conveyance.

The legislature shall approve the conveyance by the county of Hamilton authorized in subdivision eight of section 9-2303 of this title to ensure such land constitutes a suitable addition to the forest preserve.

§ 9-2311. Attorney general to approve title.

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

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

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

§ 9-2315. Right of first refusal.

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

§ 9-2317. Special conditions.

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

§ 9-2319. Sunset provision.

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

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