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Michael P. Smith
President

January 11, 2012

Mr. Eugene Leff
Deputy Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-6510

Re: dSGEIS Comments – High Volume Hydraulic Fracturing

Dear Commissioner Leff:

In response to the notice of proposed rulemaking published in the September 28, 2011 State Register, the New York Bankers Association is submitting these comments on the potential impact of high volume hydraulic fracturing on the financing of real property subject to an oil or gas lease. Our Association's comments should not be considered as a position on whether high volume hydraulic fracturing should be authorized in the State. Our concern is limited to the effect of leasing mineral interests on the title, marketability and financing of the real property on which leases are granted. Our Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. Our members collectively employ approximately 250,000 New Yorkers and have assets in excess of \$9 trillion.

Since the beginning of the financial crisis in 2008, almost all private markets for the sale of mortgage backed securities have dried up. Fannie Mae and Freddie Mac provide virtually the only secondary market for the purchase and sale of mortgages issued by private lenders such a commercial banks and thrift institutions. In addition, the federal mortgage agencies, such as the Veterans Administration and Federal Housing Administration, provide federal guarantees for a much larger percentage of private mortgage loans than they did prior to 2008. While many banks and thrifts continue to make mortgages to hold in their portfolio, it is estimated that up to 90% of the current residential mortgage market relies on federal government support for its liquidity. It is therefore critically important that, whatever regulations are ultimately adopted by DEC do not interfere with the ability of homeowners to finance mortgage transactions and of banks and savings institutions to issue such mortgages.

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Fannie Mae, Freddie Mac and the federal home finance agencies provide guidance to mortgage issuers, sellers and servicers on the types of loans that they will purchase or guarantee. Any loan that fails to satisfy the guidance issued by these entities is subject either to not be purchased or guaranteed by the entities or to be "put back" if at some point the collateral backing the mortgage is found not to have satisfied the requirements of the entities. The entities do not object in principle to the granting of mineral rights on property securing loans that they purchase, but have adopted several protective standards to ensure that property values are not adversely affected by decisions to grant such interests. In a letter to Congressman Maurice Hinchey dated October 26, 2011 (attached), Alfred M. Pollard, General Counsel of the Federal Housing Finance Agency, the regulator of Fannie Mae and Freddie Mac, stated:

The Enterprises [Fannie Mae and Freddie Mac] do consider as an acceptable practice, the granting of oil, gas, or mineral leases if such is customary in the area and the exercise of the lease will not have a material effect on the value of the property, prevent use of the property as a residence or expose the residents to serious health or safety hazards. The servicer must evaluate the borrower's request with these requirements in mind.

Fannie Mae, Freddie Mac and the federal mortgage guarantee agencies have adopted two servicing standards in particular that are not currently incorporated in DEC proposed regulations. First, they require setbacks from any residential structures on property that will be subject to oil, gas, or mineral leases of what they regard as an appropriate minimum distance. The Freddie Mac Seller/Servicer Manual Section 39.4(i) provides that "there is no right of surface or subsurface entry within 200 feet of the residential structure, or there is a comprehensive endorsement to the title insurance policy that affirmatively insures the lender against damage or loss due to the exercise of [oil, gas, or mineral] rights." Fannie Mae is in accord.

Even more restrictive, a mortgage insured by the FHA states that "[n]o existing dwelling may be located closer than 300 feet from an active or planned drilling site," with the site defined as the boundary of the site, rather than the actual well site. The VA generally accepts FHA standards.

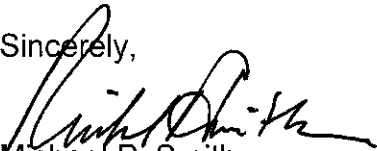
Our Association believes it is critically important for the free transferability and financing of real property in New York that the DEC's final regulations incorporate a requirement that setbacks must be in compliance with secondary market and government guarantee agency requirements, or, as stated in the Freddie Mac Seller/Servicing Manual, provide a comprehensive endorsement in a title insurance policy that affirmatively protects a lender against any damage or loss due to the granting of oil, gas and mineral rights.

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With regard to title insurance, as well, our Association is concerned that currently issued title insurance policies in New York do not protect lenders against common activities undertaken pursuant to an oil, gas or mineral rights lease. Establishing appropriate setbacks would have the effect of protecting lenders from exclusionary clauses in standard New York title insurance policies. For these reasons, we urge that the DEC adopt the same setback requirements as in use by Fannie Mae, Freddie Mac, the FHA, VA, federal agricultural financing agencies, such as the Farmers Home Administration, and New York's own SONYMA.

Our Association strongly believes that residential financing needs to be allowed to continue whether high volume hydraulic fracturing is authorized in New York or not. We therefore urge that the DEC amend its regulations to provide the minimum setback that would be acceptable to the secondary market and federal and State mortgage loan guarantee agencies. We would be available to provide any additional information the Department would request.

Sincerely,



Michael P. Smith