

DRAFT LETTER RESIDENTIAL MORTGAGE LENDING AND THE SGEIS

Dear.....

I strongly urge NYS DEC to amend gas/oil drilling regulations to preserve the ability of New York State residents and taxpayers to buy and sell homes in the State and secure residential mortgages. Traditional residential mortgage lending in New York State is in jeopardy if the State's current regulations are not changed to account for the long standing secondary market requirements of Fannie Mae, Freddie Mac, FHA, VA and SONYMA as they relate to setback distances. If traditional residential mortgages are not readily available, the market for buying and selling residential homes will be severely negatively impacted as a result.

The specific issues are highlighted below:

- Surface or subsurface rights within 200 feet of a residential structure would not be acceptable for conventional financing to satisfy Fannie Mae and Freddie Mac requirements as published in their manuals. (Freddie Mac manual Section 39.4, various subsections, similar under Fannie Mae requirements, and adopted by SONYMA in its manual).

Freddie Mac Seller/Service Manual Section 39.4(i)

(i) Oil, gas, water and mineral rights

Exceptions for outstanding oil, gas, water or mineral rights are acceptable if commonly granted by private institutional Mortgage investors in the area where the Mortgaged Premises are located, and:

- The exercise of such rights will not result in damage to the Mortgaged Premises or impairment of the use or marketability of the Mortgaged Premises for residential purposes and 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 such rights

- Surface or subsurface rights within 300 feet of a residential structure OR within 300 feet of property boundary lines would not be acceptable for FHA (Department of HUD) financing. (HUD Minimum Property Standards, Section 4150.2; VA commonly accepts the FHA requirements).

HUD Valuation Analysis for Single Family One- to Four- Unit Dwellings
(4150.2) Chapter 2, Site Analysis

Section 2-2 SPECIAL NEIGHBORHOOD HAZARDS AND NUISANCES
D. OPERATING AND ABANDONED OIL OR GAS WELLS

Operating and abandoned oil and gas wells pose potential hazards to housing, including potential fire, explosion, spray and other pollution.

1. Existing Construction

No existing dwelling may be located closer than 300 feet from an active or planned drilling site. Note that this applies to the site boundary, not to the actual well site.

An additional consideration is title insurance. Title insurance has become a requirement for the vast majority of residential mortgages. If a gas lease exists on a residential property, the title policy is ineffective to protect the lender against common activities undertaken pursuant to a gas lease.

The commonly accepted mortgage document utilized in New York State is the standard Fannie Mae/Freddie Mac form last revised in 2001. Section 18 and Section 21 of that mortgage form specifically prohibit activities that gas leases commonly allow and create a conflict with long standing secondary market practices and requirements.

Communication with the secondary market agencies noted and their regulator, the Federal Housing Finance Agency (FHFA), has resulted in a restatement of the requirements highlighted above and reaffirmation of the responsibility of the lenders to enforce these requirements and the setback distances noted.

In the dSGEIS released in September 2011, Section 8.4 details setbacks from residential properties in several other states where gas/oil drilling has occurred in the past. Many of the states highlighted in this section of your report require setbacks that conform to or satisfy traditional secondary market residential lending requirements.

I strongly urge New York State to take similar decisive action to preserve the rights of the State's residents and taxpayers to own and finance a home.

The specific requests to address these issues are as follows:

- Revise the DEC Regulations under Environmental Conservation Law Title 23, DEC Regulation Part 553.2 to establish a minimum setback distance of not less than 300 feet, measured on the surface but extending subsurface to preserve the fee simple ownership of all subsurface rights, for all drilling and all ancillary activities, from the boundary lines of all parcels containing a residential structure, a school or any public building.

- Revise the dSGEIS by completing Section 7.1.12.1 with the specific setback requirements as follows: A minimum setback distance is established of not less than 300 feet, measured on the surface but extending subsurface to preserve the fee simple ownership of all subsurface rights, for all drilling and all ancillary activities, from the boundary lines of all parcels containing a residential structure, a school or any public building.

Taking these actions will preserve the ability of New York State consumers and taxpayers to buy and sell homes and secure traditional residential mortgage financing that satisfies the requirements of current programs from Fannie Mae, Freddie Mac, FHA, VA and SONYMA, and would take steps to avoid the exclusions from coverage provided under standard New York State residential title insurance policies.

Thank you for your anticipated support and timely resolution to this serious situation.

Sincerely,
Name and title

Send copies to Governor Cuomo, Superintendent of Banks Benjamin Lawsky, and YOUR State Senate and Assembly representatives as well as the Governor's staff listed below:

CC: Hon. Andrew M. Cuomo, Governor, State Capital, Albany, NY 12224

**CC: Superintendent Benjamin Lawsky, New York State Department of Financial Services, One State Street, New York, NY 10004,
Benjamin.Lawsky@dfs.ny.gov**

Governor Cuomo's Economic Development Staff:

**CC: James (Jim) Malatras, Deputy Secretary for Policy and Programs, Office of the Governor, State Capital, Albany, NY 12224,
Jim.Malatras@exec.ny.gov, 518-408-2576**

**CC: Tony Giardina, Assistant Secretary for Economic Development, Office of the Governor, State Capital, Albany, NY 12224,
Tony.giardina@exec.ny.gov**