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DEFENSE
INTERIOR, ENVIRONMENT, AND RELATED AGENCIES
JOINT ECONOMIC COMMITTEE

October 20, 2011

Mr. Joe Martens
Commissioner
Department of Environmental Conservation
State of New York
625 Broadway
Albany, NY 12233

Dear Commissioner Martens:

I am writing to bring your attention to an article in *The New York Times*[1], as well as information that has been compiled by the Tompkins County Council of Governments' Task Force on Gas Drilling[2], which raises a series of questions regarding gas leases, home mortgages and secondary lending institution requirements from Fannie Mae and Freddie Mac. Given the rapid growth of shale gas development and the still fragile housing industry, it is important that the Department of Environmental Conservation (DEC) address these issues in order to protect homeowners and local banks.

As you know, a significant amount of land in New York has been leased for shale gas drilling. For example, in Tompkins County, New York, a portion of which I represent, nearly 40 percent of the land has been leased for gas drilling. Given the large amount of land already under lease in our state, I believe it is critically important for the DEC to assess the serious questions that have recently been raised about the relationship between gas leases and standards set by secondary lending institutions such as Fannie Mae and Freddie Mac, or Government Sponsored Enterprises (GSEs). For example, according to a report by the Congressional Research Service[3], both GSEs require prior approval from a lending institution before a landowner can sign a lease to allow gas drilling on their property. However, drilling companies told *The New York Times* that they tell homeowners to seek bank approval before drilling activities begins, but after already signing a lease. In addition, Fannie Mae and Freddie Mac have above and below ground setback rules in their manuals, yet it is not clear if drilling companies are complying with these rules.[4]

There also appear to be concerns about New York's title insurance and appraisal rules. According to the Tompkins County Council of Governments' Task Force on Gas Drilling, because of New York's standard title insurance policy rules "(i)f standard title insurance is relied upon to secure traditional mortgage financing for a property with a gas lease, the coverage is ineffective to protect against these and other activities authorized and commonly undertaken pursuant to a gas

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[1] Urbina, Ian. (2011, October 20). Rush to Drill for Natural Gas Creates Conflicts With Mortgages. *The New York Times*, pp. A1, A15

[2] http://www.tompkins-co.org/tccog/Gas_Drilling/Index_GasDrilling.html

[3] https://www.documentcloud.org/documents/250730-mortgages-and-gas-leases-doc-reader.html#document/p57/a33452 pp. 1-3

[4] http://www.tompkins-co.org/tccog/Gas_Drilling/Focus_Groups/Assessment%20Documents/whitepaperongasandoilleases.pdf p. 2

lease."[5] Moreover, the council found that there is not a cost effective or reliable way to determine if a residential property has a gas lease to allow an appraiser to establish an appraised value based on comparable sales of similar properties. Since the impact on value and marketability cannot be determined, the appraisal would not meet traditional secondary market requirements or commonly accepted lender requirements.[6] This would negatively affect both resale and refinancing.

Few people seem to be aware of the GSE's requirements or state rules regarding title insurance and appraisals. According to *The New York Times*, very few landowners sought permission from lending institutions before signing a gas lease. Local banks have questions about how to deal with such leases or how the accompanying drilling infrastructure will comply with mortgage rules.

Unfortunately, there is no mention of secondary lending institution requirements in the draft Supplemental Generic Environmental Impact Statement (dSGEIS) prepared by the DEC to oversee new shale drilling in the state. While the document does detail how properties may lose value because they are in close proximity to drilling sites,[7] the document does not address concerns about title insurance or appraisal requirements.

I have asked the Federal Housing Finance Agency, which oversees Fannie Mae and Freddie Mac, to look into these issues. In the meantime, however, I believe the DEC must also address the issues raised by *The New York Times* and align its requirements with secondary lending institutions' rules covering oil and gas activity on mortgaged property. These include pre-approval from banks before signing gas leases, minimum setback requirements from residential structures, prohibition on certain drilling and process equipment, title insurance requirements, property assessments, and more.

As I mentioned, shale gas development is proceeding at a rapid pace and given the already weak housing industry I believe it is important to understand the issues raised by *The New York Times* and others in order to protect homeowners and local banks. The DEC has an important role in that process and I appreciate your assistance with these questions.

Sincerely,

Maurice D. Hinchey

Maurice D. Hinchey

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[5] Tompkins County Council Of Governments (TCCOG) - Task Force on Gas Drilling Assessment and Land Valuation Subcommittee. (October, 2011) Gas and Oil Leases as they relate to Residential Lending. p. 1. http://www.tompkins-co.org/tccog/Gas_Drilling/Focus_Groups/Assessment%20Documents/whitepaperongasandoilleases.pdf

[6] Ibid.

[7] New York State Department of Environmental Conservation (September, 2011) Revised Draft Supplemental Generic Environmental Impact Statement On The Oil, Gas and Solution Mining. Pp 6-250 to 6-254.