

# **Gas Leasing, Mortgage and Insurance Issues**

Rachel Treichler  
February 26, 2013  
York, New York

# Leasing, Mortgage and Insurance Issues

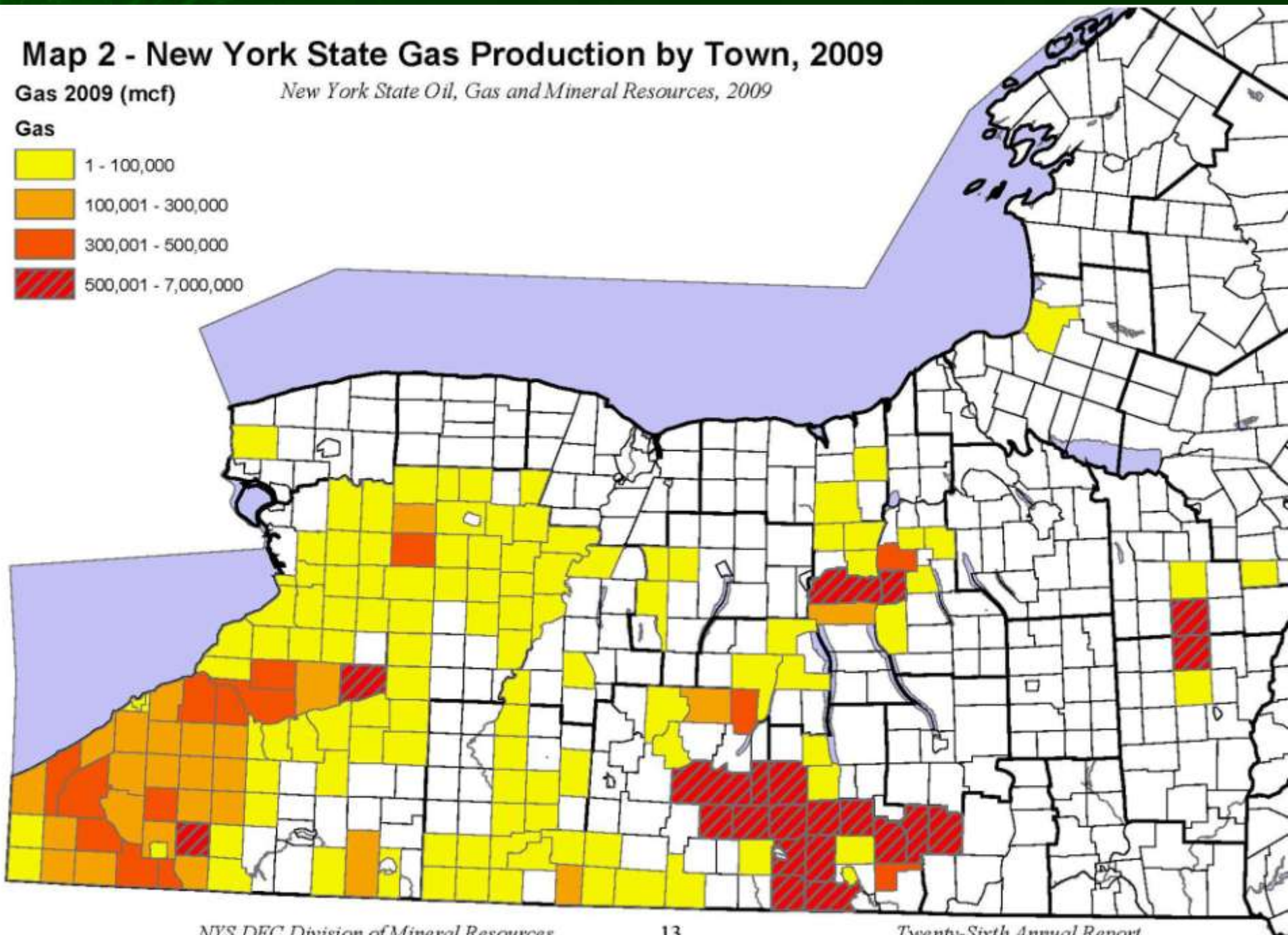
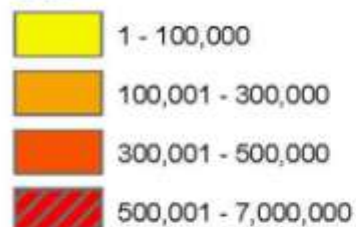
- Who Owns the Oil & Gas Rights under My Land?
- Will Signing a Lease Violate My Mortgage?
- Will My Insurance Policy Cover Fracking Damage?

## Map 2 - New York State Gas Production by Town, 2009

Gas 2009 (mcf)

*New York State Oil, Gas and Mineral Resources, 2009*

Gas





# DEC Environmental Navigator

## Mineral Resources

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Active Layer:

Regulated Wells

[Refresh Map](#)

### Map Layers

- ☒ Mines
- ☒ Regulated Wells
- ☒ DEC Regional Offices
- ☒ Interstate Highways
- ☒ State and US Highways
- ☐ Railways
- ☒ Rivers and Lakes
- ☒ Towns
- ☒ Counties

### Map Legend

#### Mines

- Consolidated Mine
- Unconsolidated Mine
- Underground Mine

#### Regulated Wells

- Gas Well
- Oil Well
- Other Well

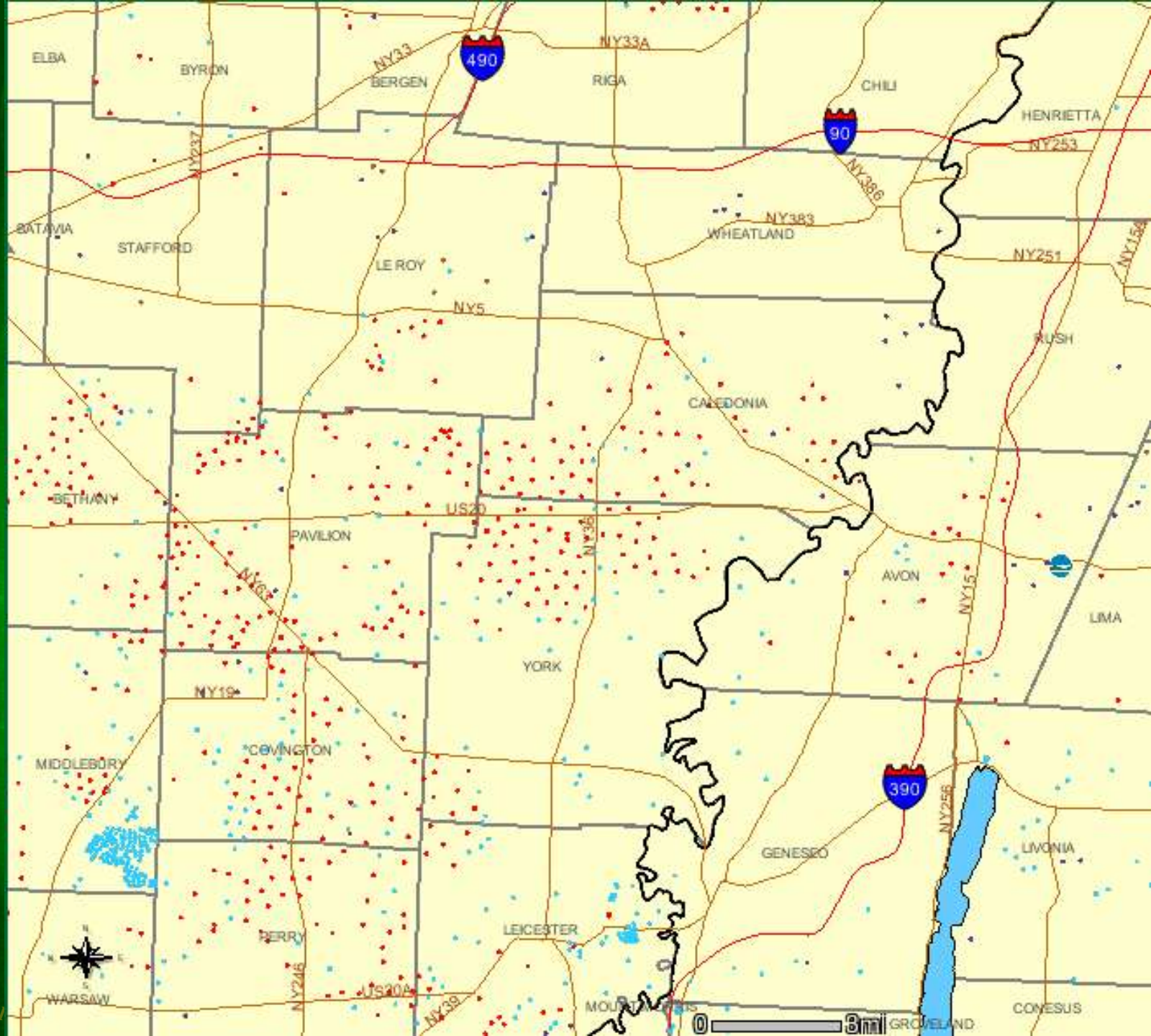
#### DEC Regional Offices

- Interstate Highways
- State and US Highways

- US
- State
- Parkway
- Other

- Rivers and Lakes



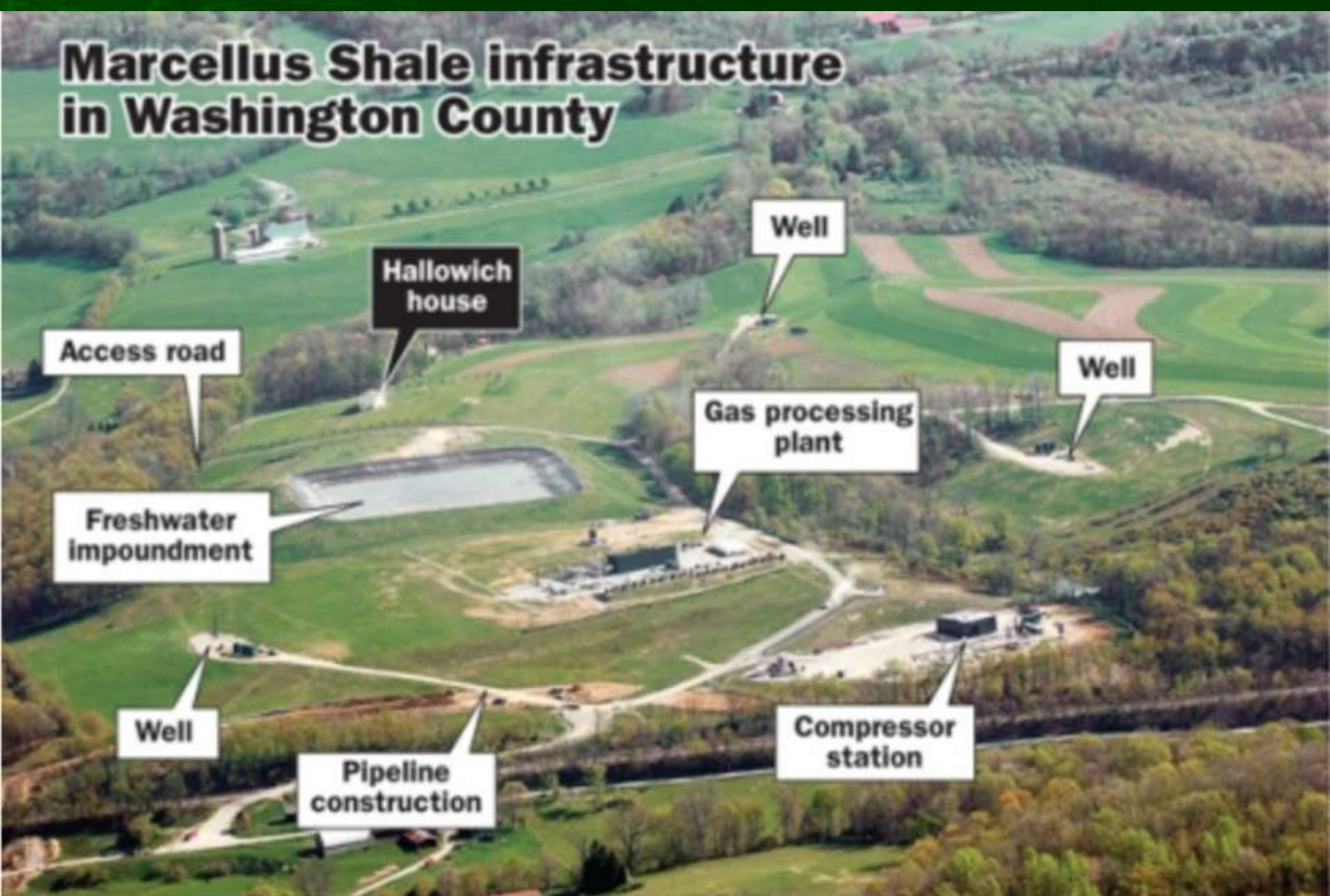






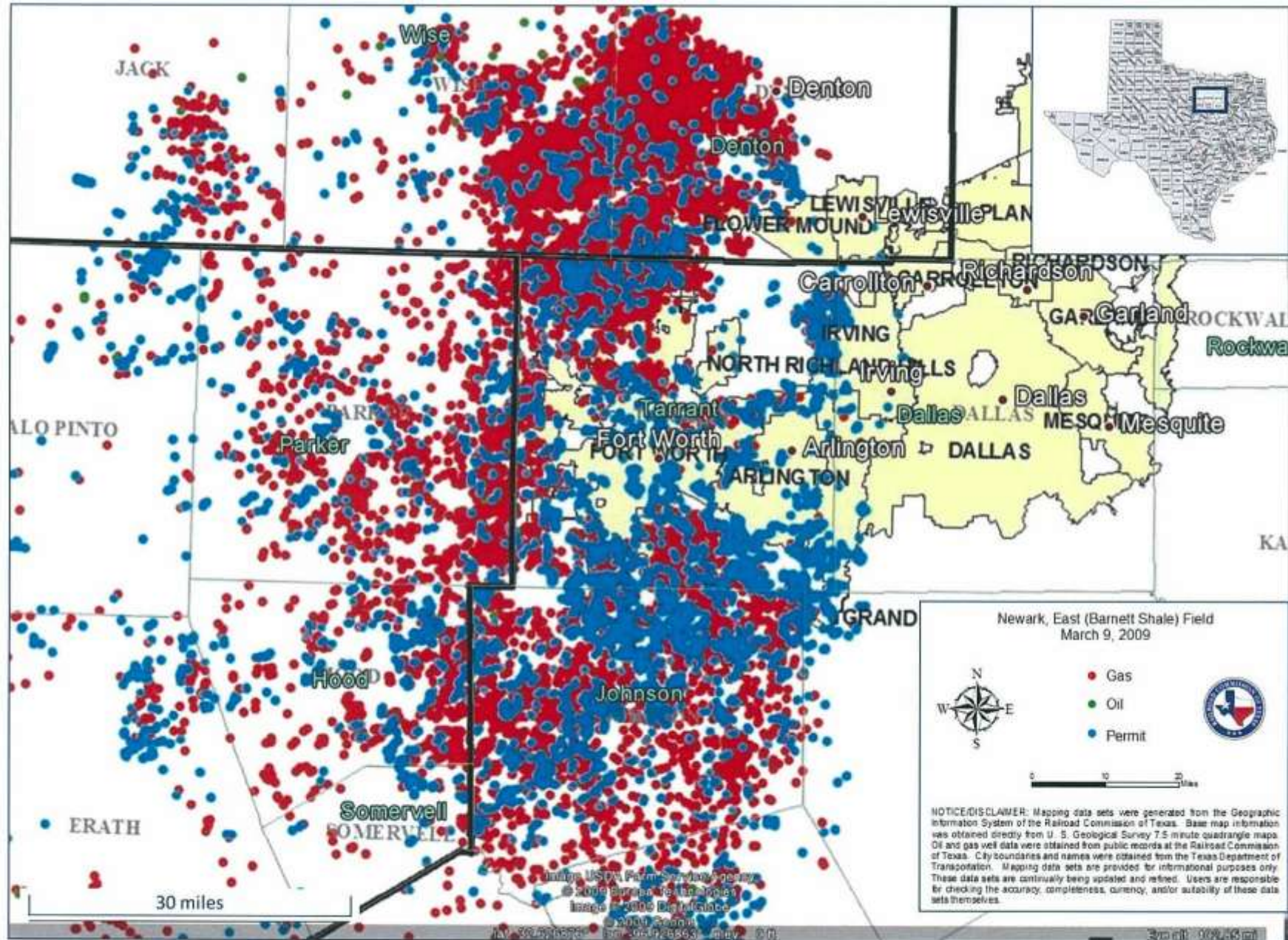


# Marcellus Shale infrastructure in Washington County



Western PA communities changed by natural gas drilling offer local lessons, by Laura Legere, *Scranton Times-Tribune*, June 23, 2010, <http://thetimes-tribune.com/news/western-pa-communities-changed-by-natural-gas-drilling-offer-local-lessons-1.860440#ixzz1mRtx9C00>

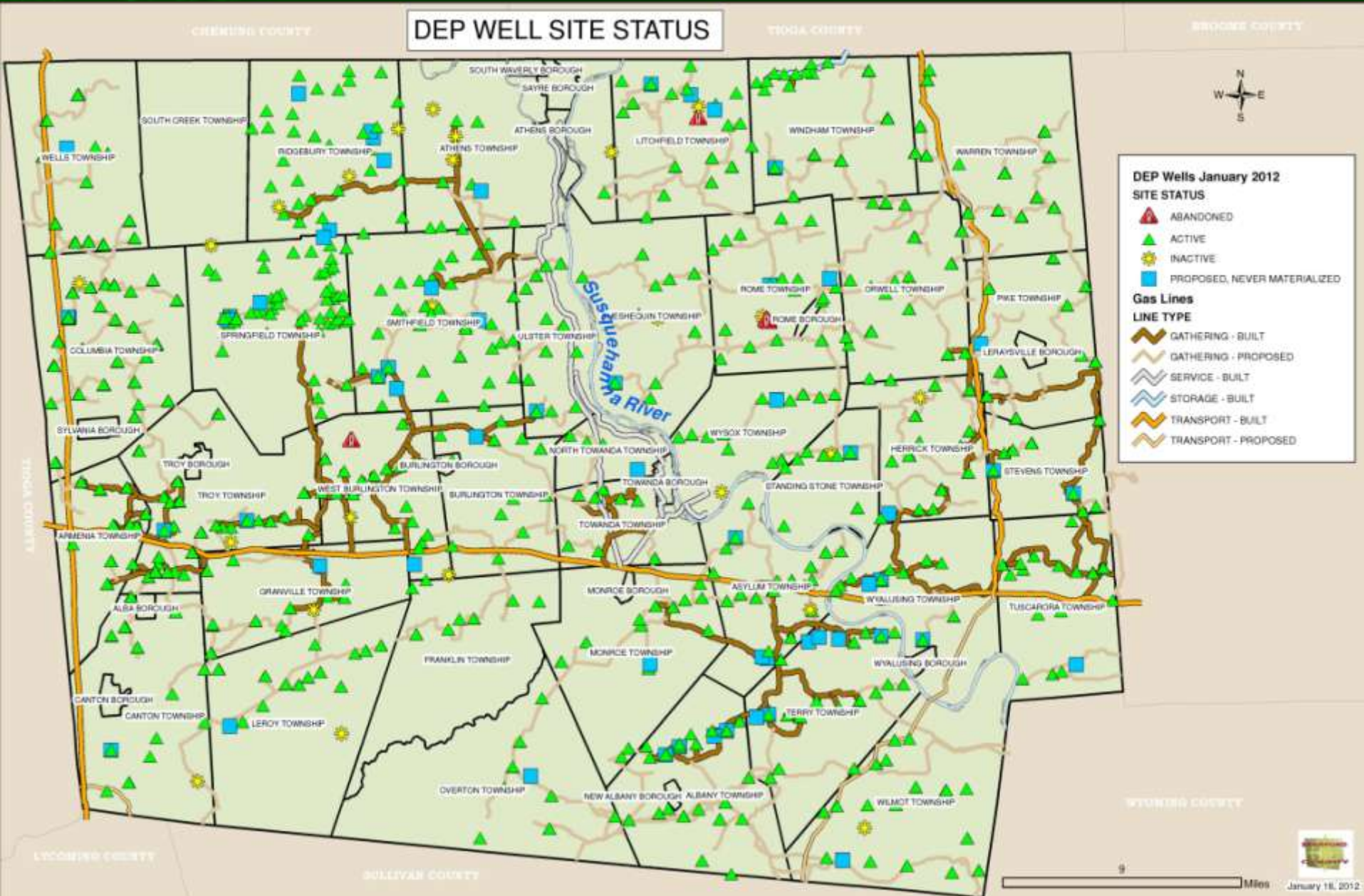


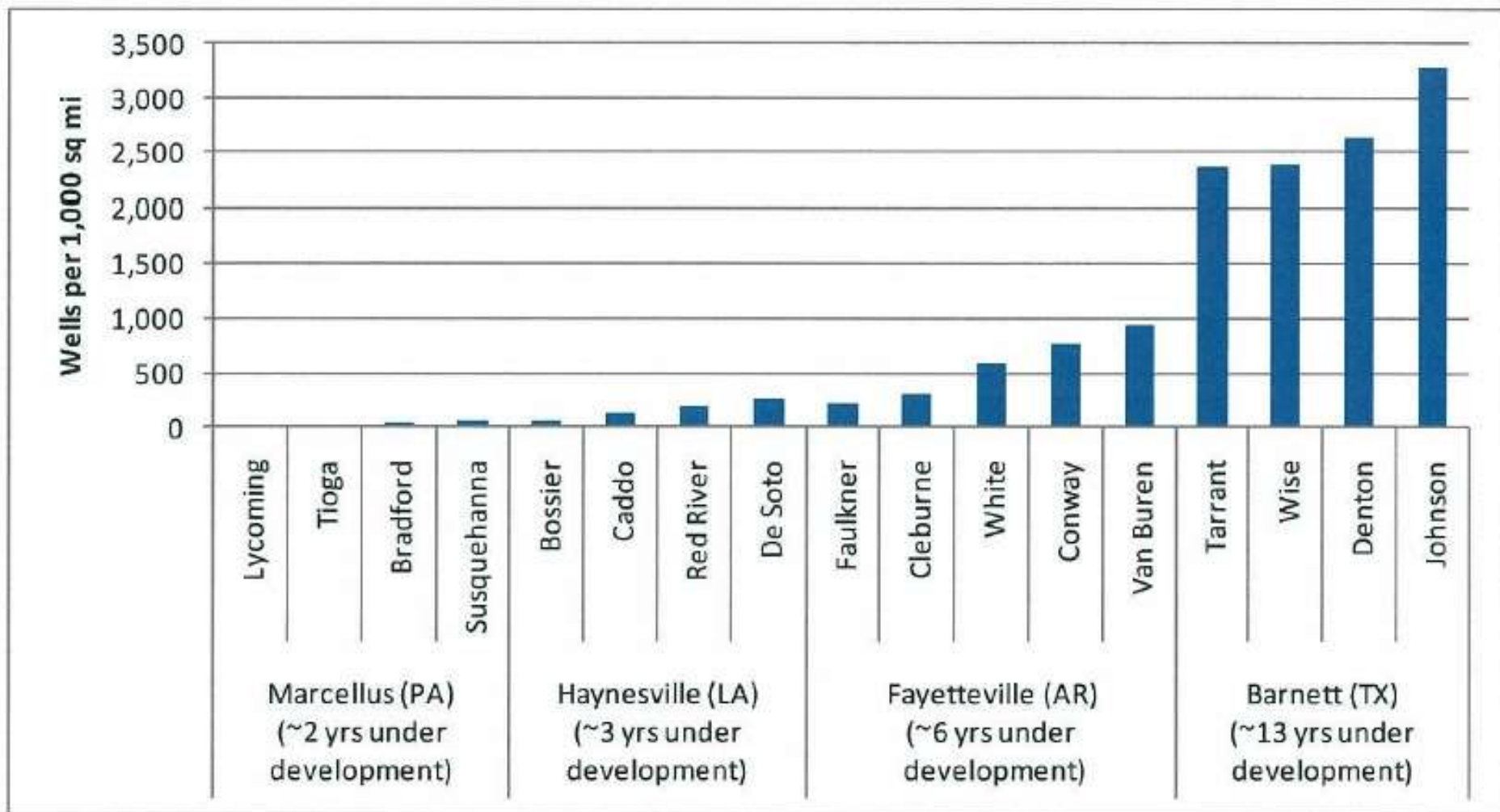


**Figure B-11: Well density in the Barnett formation showing development since ~2000<sup>44</sup>**

<sup>44</sup> Based on Railroad Commission of Texas image showing density as of 3/9/09 (<http://www.rrc.state.tx.us/forms/maps/specialmaps/images/OGM0023.jpg>, accessed 11/2/09).





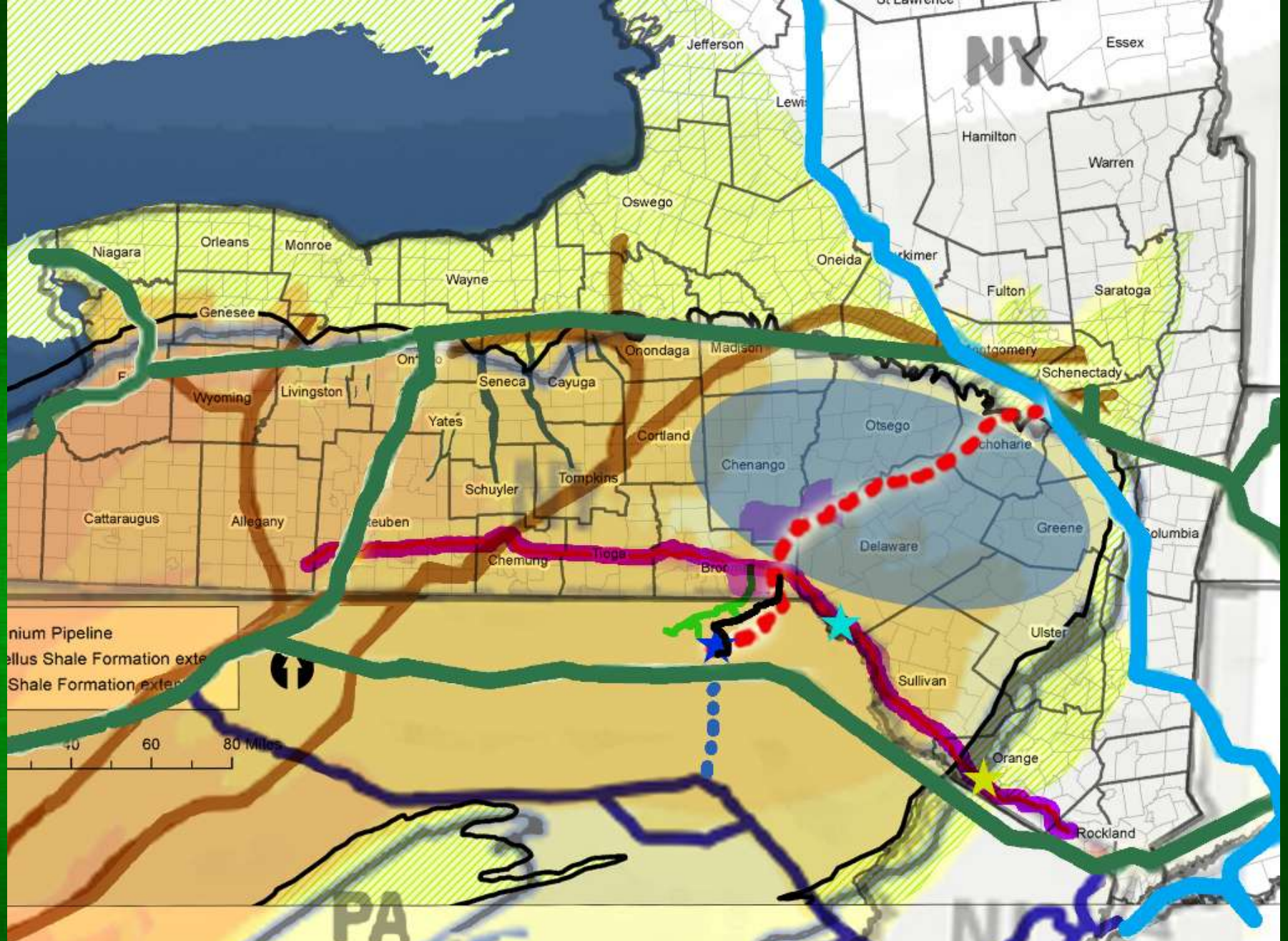


**Figure B-4: Well Density in Core/Tier I Counties of Major Shale Gas Plays (2009)<sup>36</sup>**

"Impact Assessment of Natural Gas Production in the New York City Water Supply Watershed," Final Impact Assessment Report, NYC Department of Environmental Protection, Dec. 22, 2009, Appendix B. Rates and Densities of Gas Well Development, [http://www.nyc.gov/html/dep/pdf/natural\\_gas\\_drilling/12\\_23\\_2009\\_final\\_assessment\\_report.pdf](http://www.nyc.gov/html/dep/pdf/natural_gas_drilling/12_23_2009_final_assessment_report.pdf)

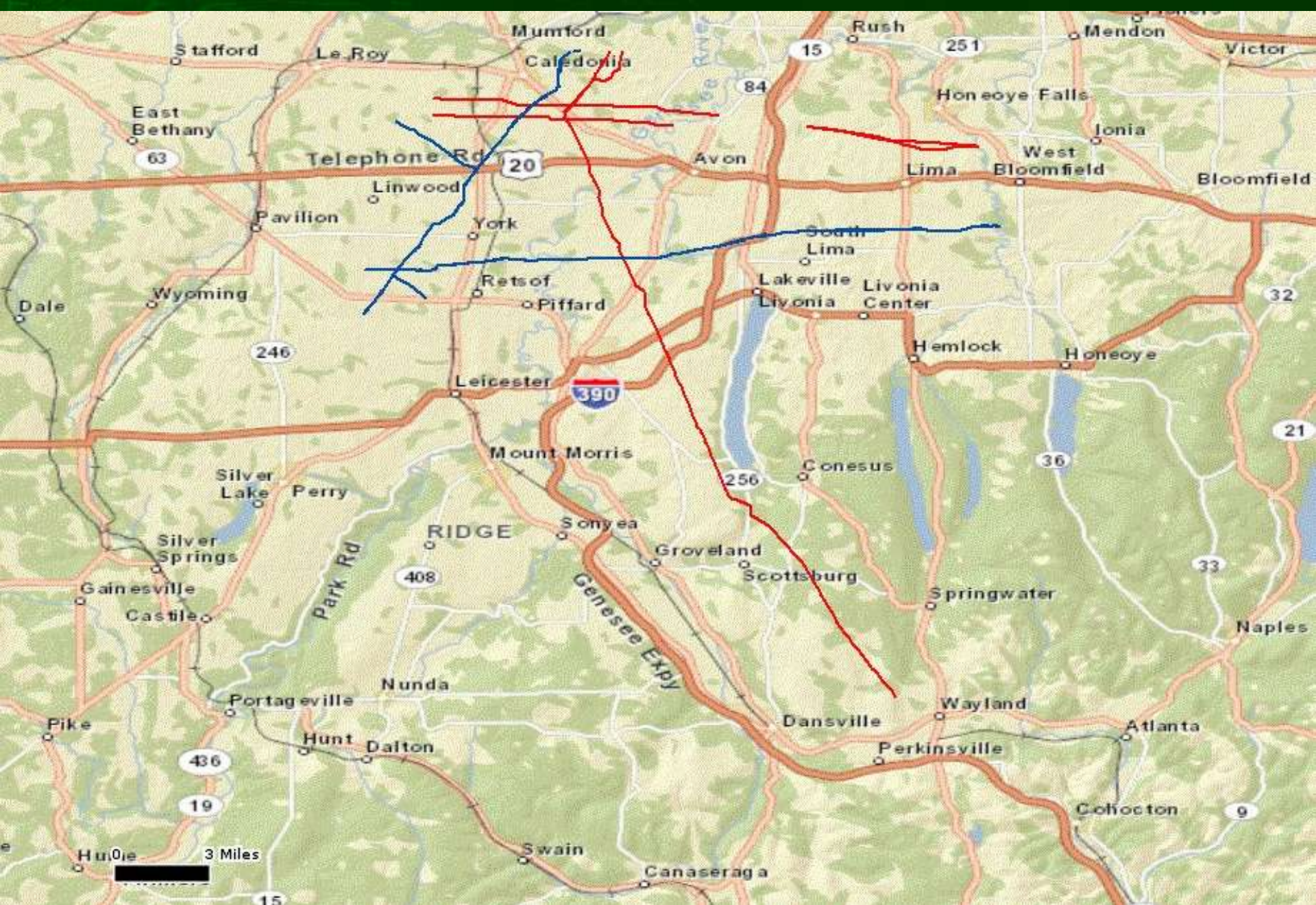






<http://williamahuston.blogspot.com/p/various-pipeline-maps.html>. Tennessee (Green), Iroquois (Cyan), Transco (Purple), Dominion (brown), Constitution (Red-dotted/Proposed), Marc-1, Emkey, Williams Central Station, Springville Compressor, Bluestone, Laser, NS line, Red=storage, Catskill Park (pink), NYC watershed (violet)





<https://www.npms.phmsa.dot.gov/PublicViewer/composite.jsf>. Blue=gas , red=liquid

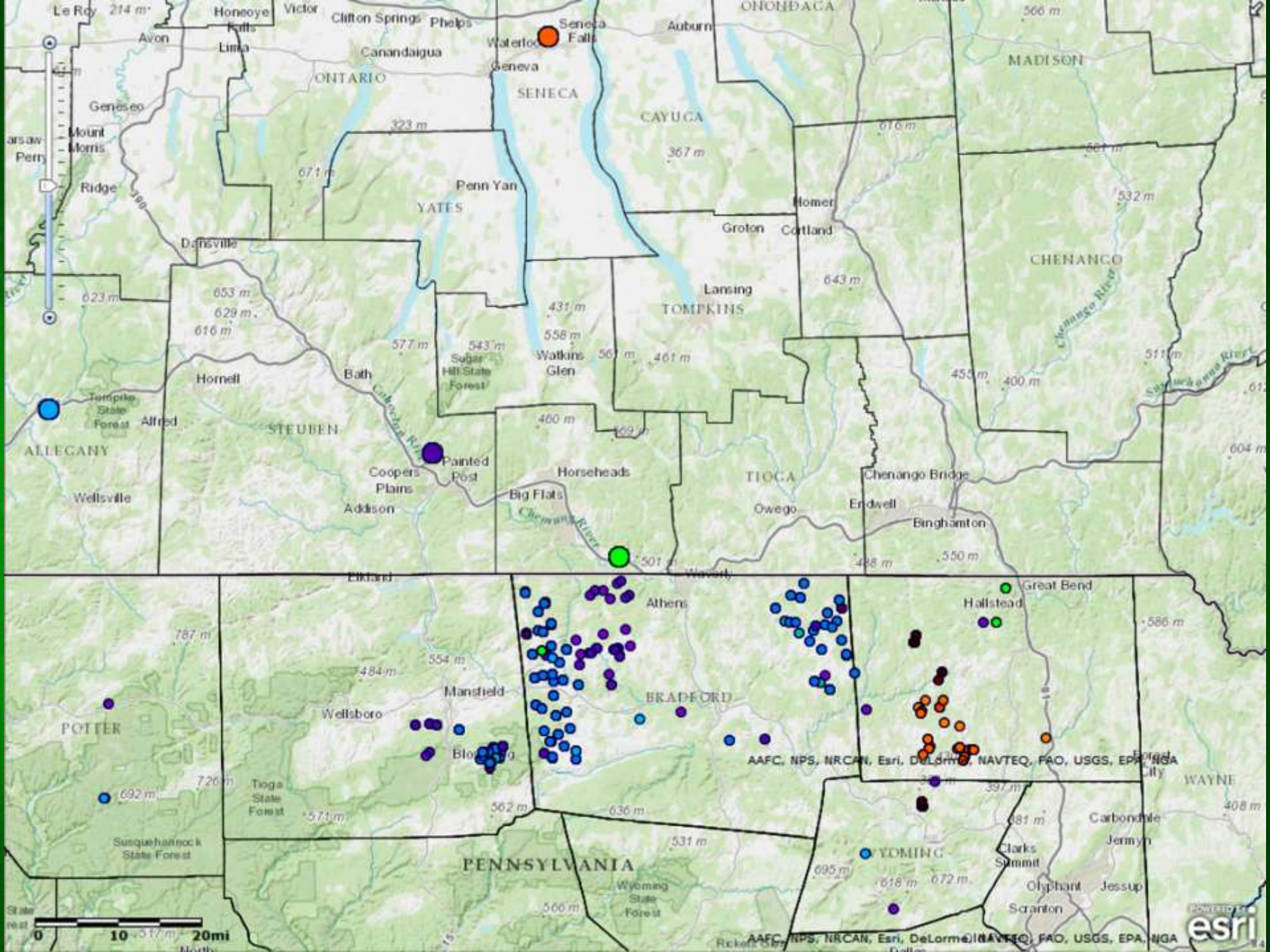




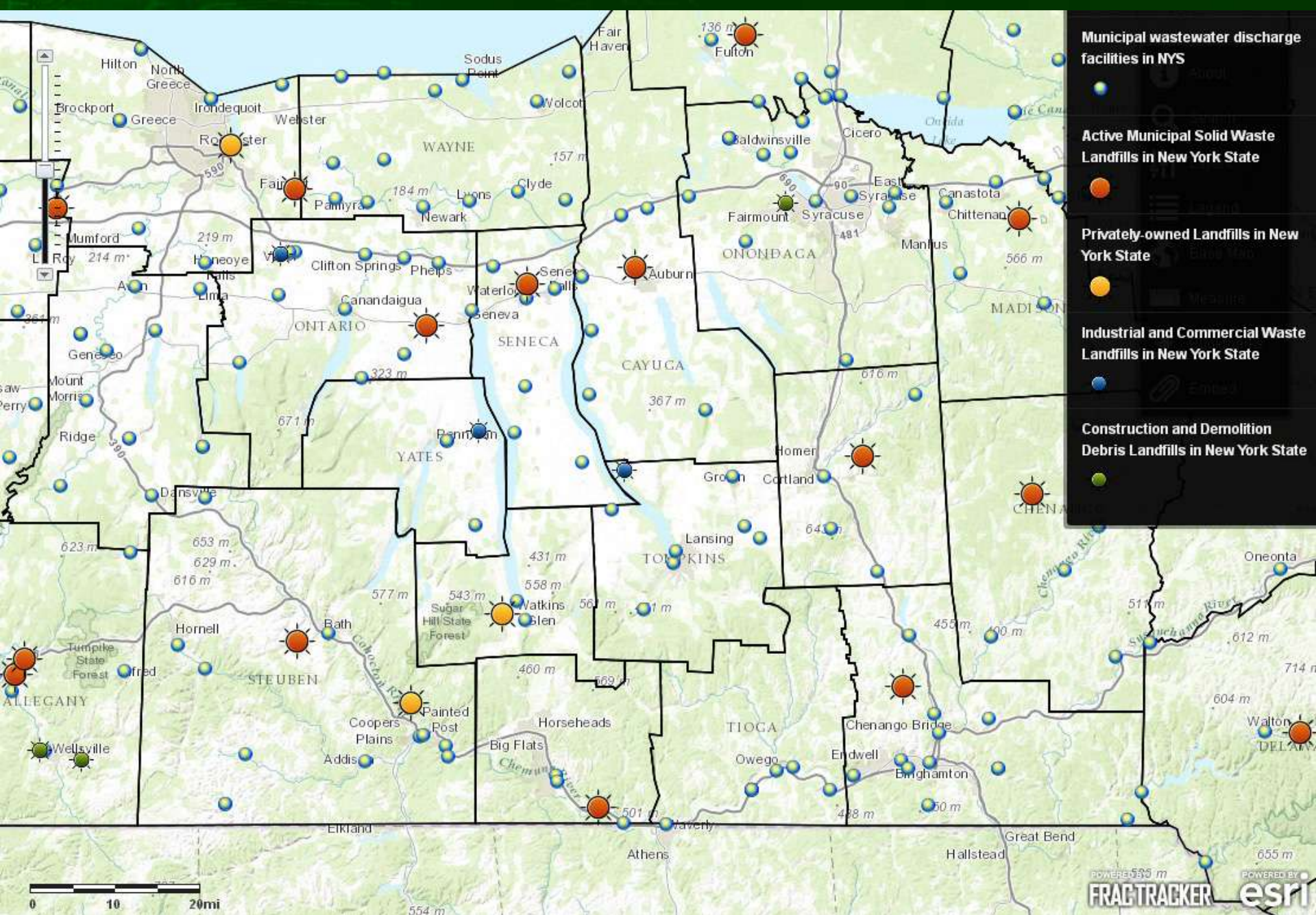
25 feet

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Pictometry Bird's Eye © 2010 Pictometry International  
Pictometry Bird's Eye © 2010 MDA Geospatial



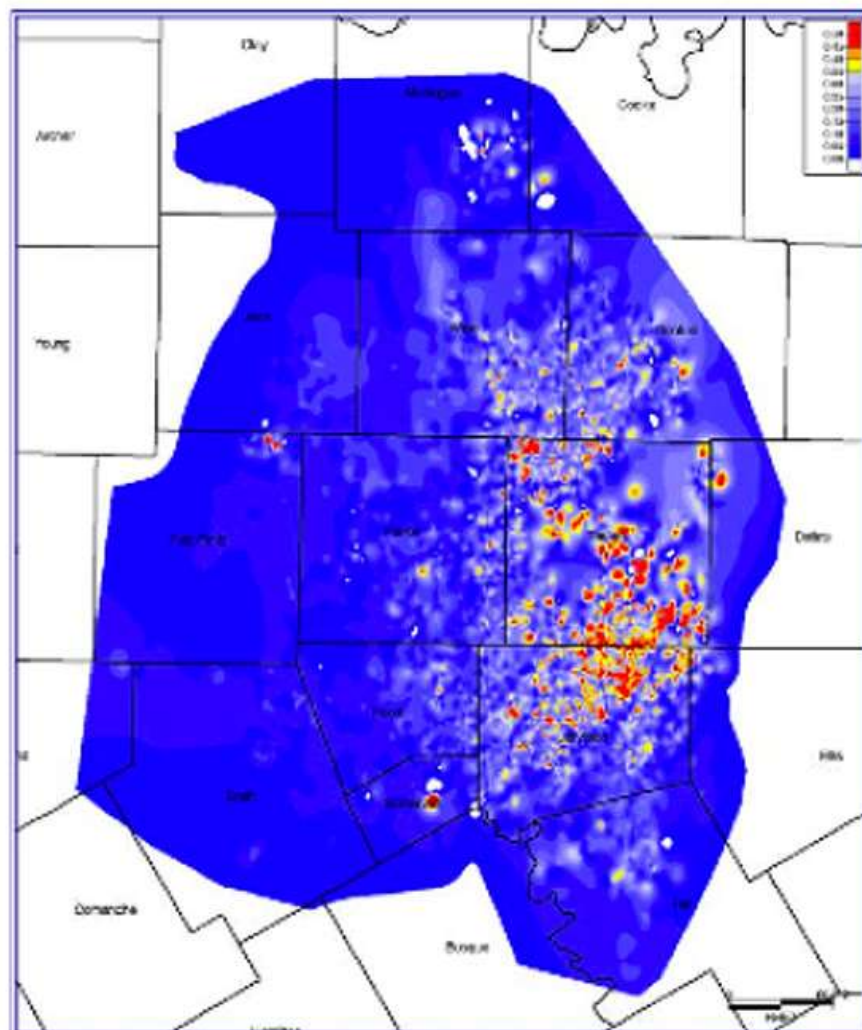








# The Barnett Shale Play has contracted to small core areas



First 6-month cumulative production for Barnett Shale horizontal wells. Data source: HPDI

- Less than 10% of the play has the potential to be commercial.
- Even within the core areas, well performance is uneven and considerable commercial risk exists.

From Deborah Rogers' Presentation on  
the Economics of Shale Gas Production,  
March 29, 2012, Bath, NY  
<http://energypolicyforum.com/?p=336>

CLERMONT COUNTY

## BRADFORD COUNTY GAS PRODUCTION MAP

TIOGA COUNTY

SENeca COUNTY



## Jan-July 2011 Producing Wells

Gas Quantity (Mcf)

- 778 - 82735
- 93943 - 166341
- 176061 - 242637
- 255267 - 317637
- 328347 - 387757
- 411813 - 515033
- 523906 - 636882
- 653765 - 814317
- 890001 - 966005
- 1049461 - 1527197
- + Not Reporting



October 18, 2011

Production Numbers from July - December 2011 will be released by DEP in February 2012. The new production map will be updated with the April map update.



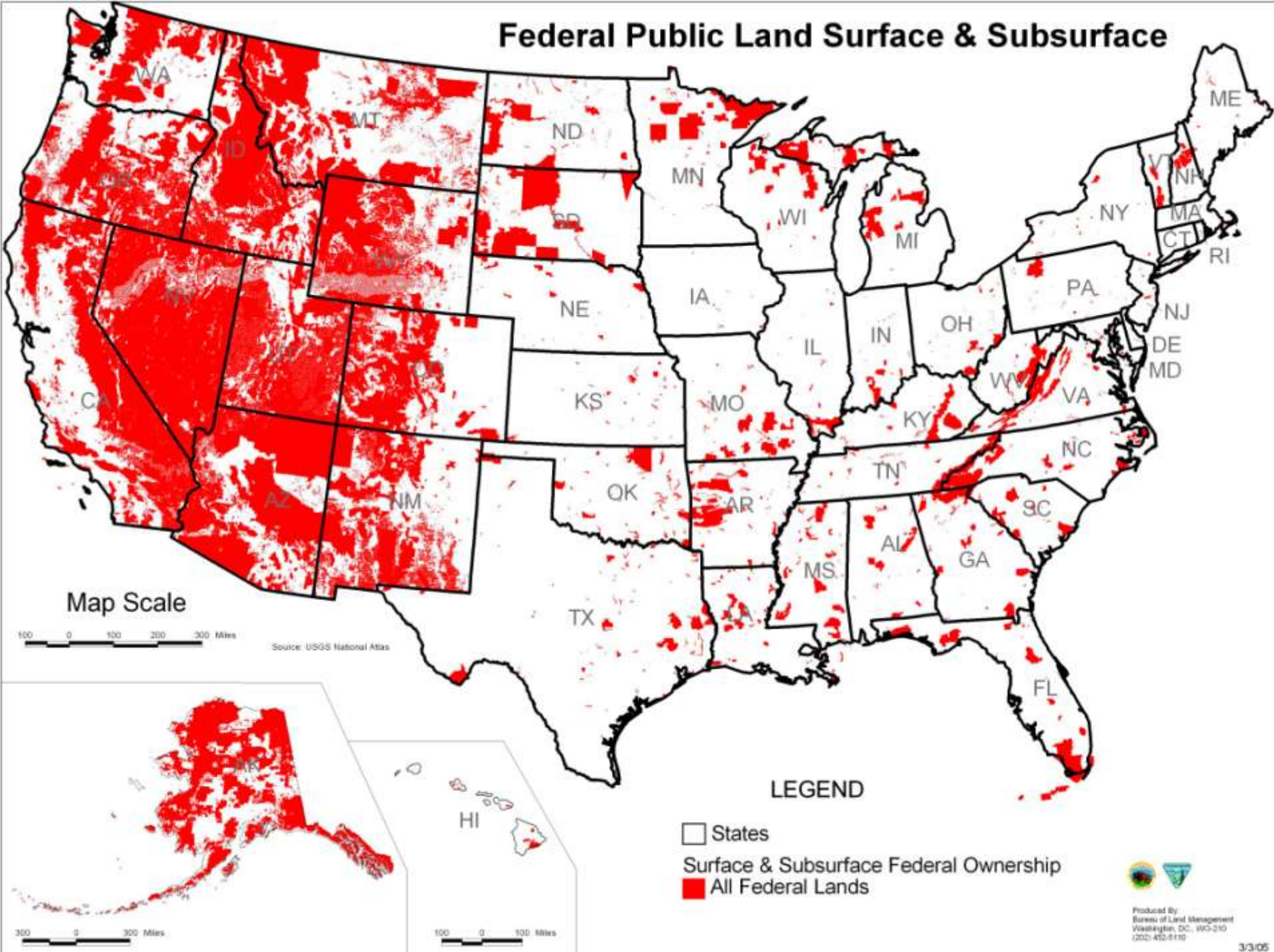
**Who Owns the Oil  
and Gas Rights  
under My Land?**

# Title Issues

- Who owns the oil and gas rights belonging to a particular parcel of property?
  - Public records in New York are inadequate for verifying minerals rights ownership
  - Broadly-worded lease provisions lead to ambiguities regarding lease terminations



# Federal Public Land Surface & Subsurface

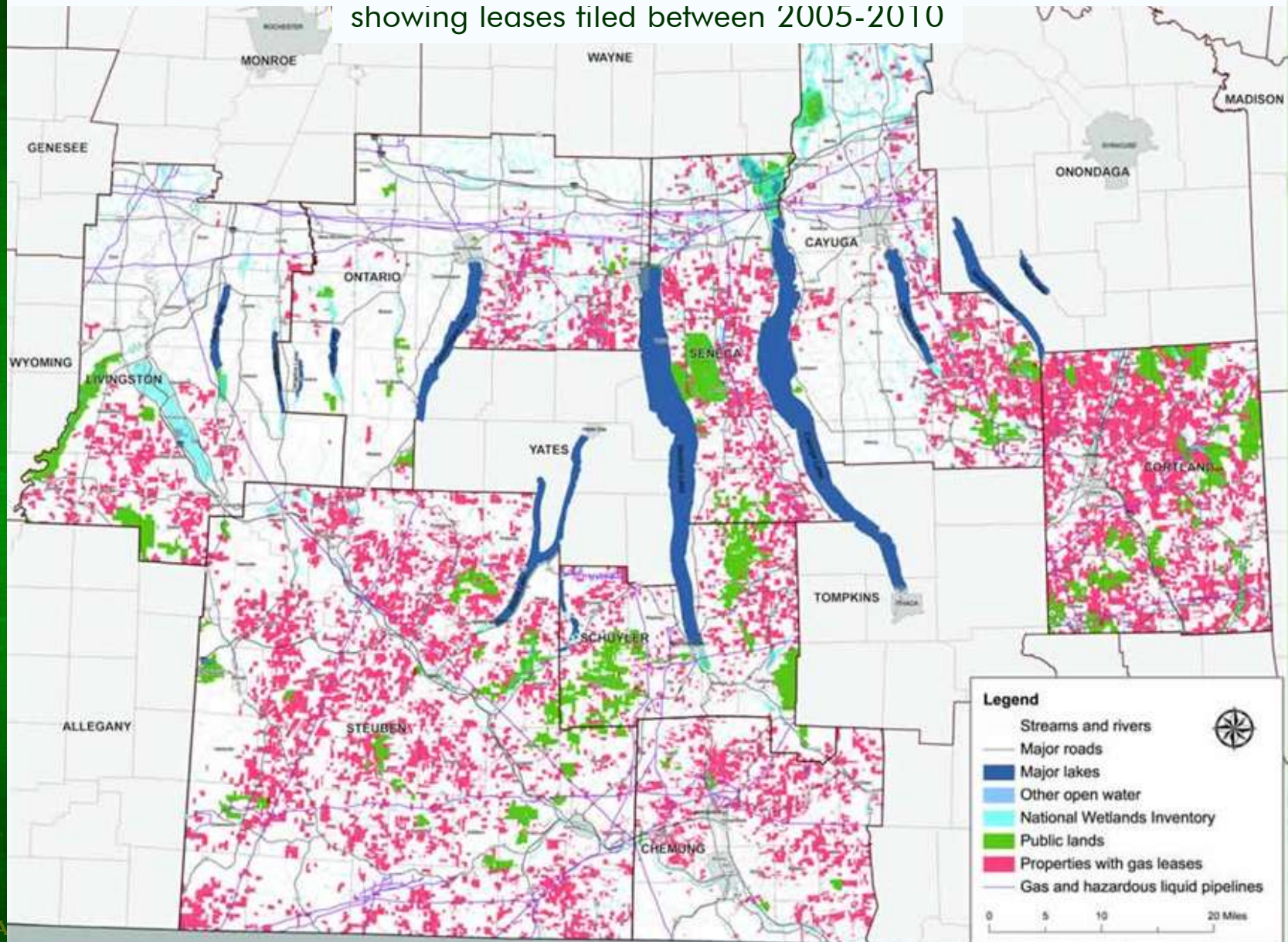




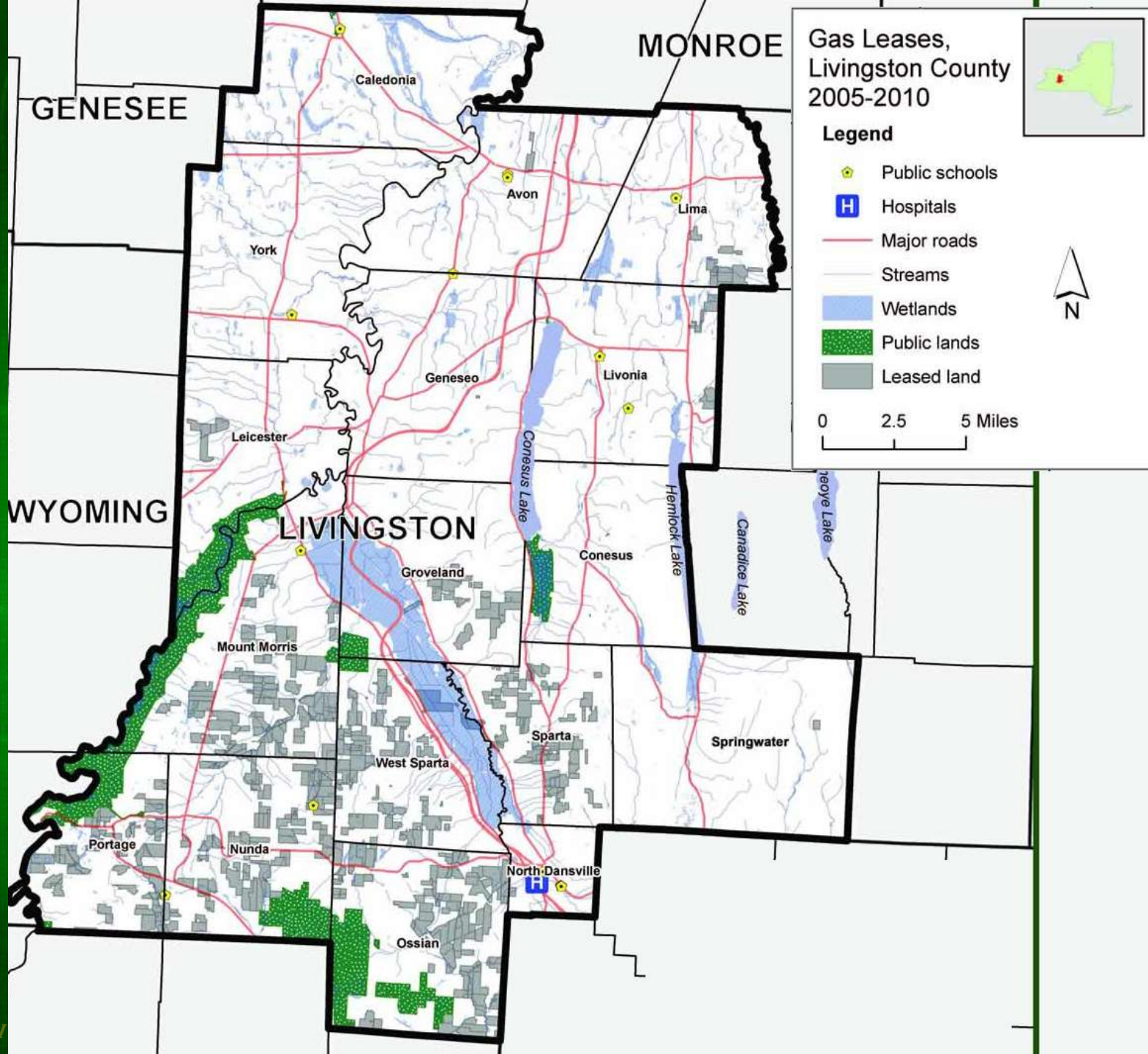
LAKE ONTARIO

OSWEGO

[http://www.citizenscampaign.org/special\\_features/fracking/lease-mapping-report.asp](http://www.citizenscampaign.org/special_features/fracking/lease-mapping-report.asp)  
showing leases filed between 2005-2010









# Oil and Gas Lease Overview

- Standard Leasing Clause
- Standard Property Description
- Standard Pooling Clause
- Standard Lease Term Clause
- Held by Production
- Force Majeure






# Standard Leasing Clause

- Covers a wide range of hydrocarbons and non-hydrocarbons
- Gives the right to use to use oil, gas, and non-domestic water sources, free of cost
- Covers all formations below the surface
- Includes all methodologies for extracting the hydrocarbons
- Gives rights to develop, produce, measure, and market production, makes seismic tests drill, maintain, operate, cease to operate, plug, abandon, and remove wells; to use or install roads, electric power and telephone facilities, and to construct pipelines with appurtenant facilities, including compression and collection facilities
- Covers storage regardless of the source of the hydrocarbons stored

Analysis of the Standard Chesapeake Lease, Rachel Treichler, Jan. 2012,  
[http://friendsofbarrington.com/fracking/Docs/RTChesLeaseComments\\_Final012112.pdf](http://friendsofbarrington.com/fracking/Docs/RTChesLeaseComments_Final012112.pdf)



# STRATIGRAPHIC SECTION SOUTHWESTERN NEW YORK

PERIOD	GROUP	UNIT	LITHOLOGY	EXPLANATION
PENN.	POTTSVILLE	OLEAN		QUARTZ PEBBLE CONGLOMERATE AND SANDSTONE
MISS.	POCONO	KNAPP		QUARTZ PEBBLE CONGLOMERATE, SANDSTONE, AND MINOR SHALE
DEVONIAN	UPPER	CONEWANGO		SHALE AND SILTSTONE
		CONNEAUT	CHADACKIN	SHALE AND SILTSTONE
		UNDIFFERENTIATED <sup>1</sup>		SHALE AND SILTSTONE
		CANADAWAY	PERRYBURG <sup>1</sup>	MINOR SANDSTONE
		JAVA		SHALE AND SILTSTONE
		NUNDA		ARGILLACEOUS LIMESTONE
	MIDDLE	RHINESTREET		SHALE AND SILTSTONE
		SONYEA	MIDDLESEX	SHALE WITH MINOR SILTSTONE AND LIMESTONE
		GENESEE		LIMESTONE WITH MINOR SILTSTONE AND SANDSTONE
		TULLY		SHALE WITH MINOR SANDSTONE AND CONGLOMERATE
		HAMILTON	MOSCOW LUDLOWVILLE SKANEATELES MARCELLUS	LIMESTONE
		CNOHAGA		SANDSTONE
	LOWER	TRISTATES	ORISKANY	LIMESTONE AND DOLOSTONE
		HELDERBURG	MANLIUS RONCOUT	DOLOSTONE
SILURIAN	UPPER	AKRON <sup>3</sup>		SHALE, SILTSTONE, ANHYDRITE AND HALITE
		SALINA	CAMILLUS SYRACUSE	LIMESTONE AND DOLOSTONE
		LOCKPORT	LOCKPORT	SHALE AND SANDSTONE
	LOWER	CLINTON	ROCHESTER IRONDELOUIT SCIO	LIMESTONE AND DOLOSTONE
			REYNOLDS THOROLO	SANDSTONE AND SHALE QUARTZ SANDSTONE
		MEDINA	GRIMSBY WHIRLPOOL	SHALE AND SILTSTONE WITH MINOR SANDSTONE
ORDOVICIAN	UPPER	QUEENSTON		LIMESTONE AND MINOR DOLOSTONE
		OSWEGO		LIMESTONE
		LORRAINE UTICA		
CAMBRIAN	MIDDLE	TRENTON- BLACK RIVER	TRENTON BLACK RIVER	
	LOWER	BEEKMANTOWN	TRIBES HILL CHUCTANUNDA	
CAMBRIAN	UPPER	LITTLE FALLS		QUARTZ SANDSTONE AND DOLOSTONE
		GALWAY (THERESA)		SANDSTONE AND SANDY DOLOSTONE; CONGLOMERATE BASE
PRECAMBRIAN		GNEISS, MARBLE, QUARTZITE, etc...		METAMORPHIC AND IGNEOUS ROCKS

## Notes:

- 1 - Includes Glade, Bradford 1st, Chipmunk, Bradford 2nd, Harrisburg Run, Scio, Penny & Richburg
- 2 - Includes Bradford 3rd, Humphrey, Clarksville, Waugh & Porter, & Fulmer Valley
- 3 - Includes Bass Island

Source: New York State Department of Environmental Conservation, Division of Mineral Resources; Modified after Van Tyne & Copley, 1983

• OIL  
○ GAS

# Standard Property Description

- Described acreage
- Also covers and includes, in addition to described acreage, all land, if any, contiguous or adjacent to or adjoining the described acreage:
  - (a) owned or claimed by Lessor, by limitation, prescription, possession, reversion or unrecorded instrument, or
  - (b) as to which Lessor has a preference right of acquisition



# Standard Pooling Clause

- Grants the right to pool, unitize, or combine all or parts of the Leasehold with other lands, whether contiguous or not contiguous, leased or unleased, whether owned by Lessee or by others, at a time before or after drilling to create drilling or production units either by contract right or pursuant to governmental authorization
- Lessor agrees to accept and receive out of the production . . . of such unit, such proportional share of the Royalty from each unit well as the number of Leasehold acres included in the unit bears to the total number of acres in the unit

# Standard Lease Term Clause

- This Lease shall remain in force for a primary term of \_\_\_\_ years from \_\_\_\_ to \_\_\_\_ and shall continue beyond the primary term as to the entirety of the Leasehold if any of the following is satisfied:
  - (i) operations are conducted on the Leasehold or lands pooled/unitized therewith in search of oil, gas, or their constituents, or
  - (ii) a well deemed by the Lessee to be capable of production is located on the Leasehold or lands pooled/unitized therewith, or
  - (iii) oil or gas, or their constituents, are produced from the Leasehold or lands pooled/unitized therewith, or
  - (iv) the Leasehold or lands pooled/unitized therewith is used for the underground storage of gas, or for the protection of stored gas, or
  - (v) prescribed payments are made

Analysis of the Standard Chesapeake Lease, Rachel Treichler, Jan. 2012,  
[http://friendsofbarrington.com/fracking/Docs/RTChesLeaseComments\\_Final012112.pdf](http://friendsofbarrington.com/fracking/Docs/RTChesLeaseComments_Final012112.pdf)



# Held by Production

- A lease extends as long as there is “production” on the leasehold or on land pooled with the leasehold
- What constitutes production is defined in the lease
- Many leases define production very broadly
- Unless there is a clause restricting pooling, all leaseholds participating in a drilling unit will be held by production

# Force Majeure Clause

- When drilling, reworking, production or other operations hereunder, or Lessee's fulfillment of its obligations hereunder are prevented or delayed by such laws, rules, regulations or orders, or by inability to obtain necessary permits, equipment, services, material, water, electricity, fuel, access or easements, or by fire, flood, adverse weather conditions, war, sabotage, rebellion, insurrection, riot, strike or labor disputes, or by inability to obtain a satisfactory market for production or failure of purchasers or carriers to take or transport such production, or by any other cause not reasonably within Lessee's control, this Lease shall not terminate because of such prevention or delay, and, at Lessee's option, the period of such prevention or delay shall be added to the term hereof
- Lessee shall not be liable for breach of any provisions or implied covenants of this Lease when drilling, production or other operations are so prevented or delayed



# Recent Force Majeure Claims

- Chesapeake has sent letters to landowners claiming that a force majeure event has occurred that extends the term of their gas lease. The letters incorrectly claim that there is a current ban on the issuance of Marcellus Shale drilling permits in New York
- In fact there is no ban. If anyone wishes at this time to obtain a horizontal drilling permit in the Marcellus shale formation in New York, that person may perform a site-specific Environmental Impact Assessment under the NYS Environmental Quality Review Act (SEQRA)

Wiser v Enervest Operating, L.L.C., Civil Action File No. 3:10-cv-794, at 4 (NDNY, March 22, 2011).

# Recent Force Majeure Claims

- Furthermore, the Chesapeake leases do not identify the Marcellus Shale, nor is the lease limited to the Marcellus Shale
- There are many formations subject to the lease into which Chesapeake could obtain a permit to drill pursuant to the DEC's 1992 Generic Environmental Impact Statement without the necessity of obtaining an individual EIS review



# Compulsory Integration and Eminent Domain

# Compulsory Integration

- Under New York's compulsory integration laws, if a well permit applicant controls 60% of the spacing unit through ownership or leases, may compel participation of remaining 40%



# Compulsory Integration

- New York's Compulsory Integration Law adopted in 1963 and amended in 2005
- The law provides three options
  - Participation as a royalty owner
  - Participation as an integrated owner, 100% of costs paid upfront
  - Participation as an integrated owner, 300% of costs paid from well production

# Advantages of Integration over Leasing

- Integrated owners get 100% of their share of production
- Integration is done by geological layer and surface activities are not authorized
- Payments to landowners are under the supervision of DEC
- Integrated owners retain the right to market their share of production, which gives them negotiating ability
- Integrated owners can cover risks by purchasing liability insurance



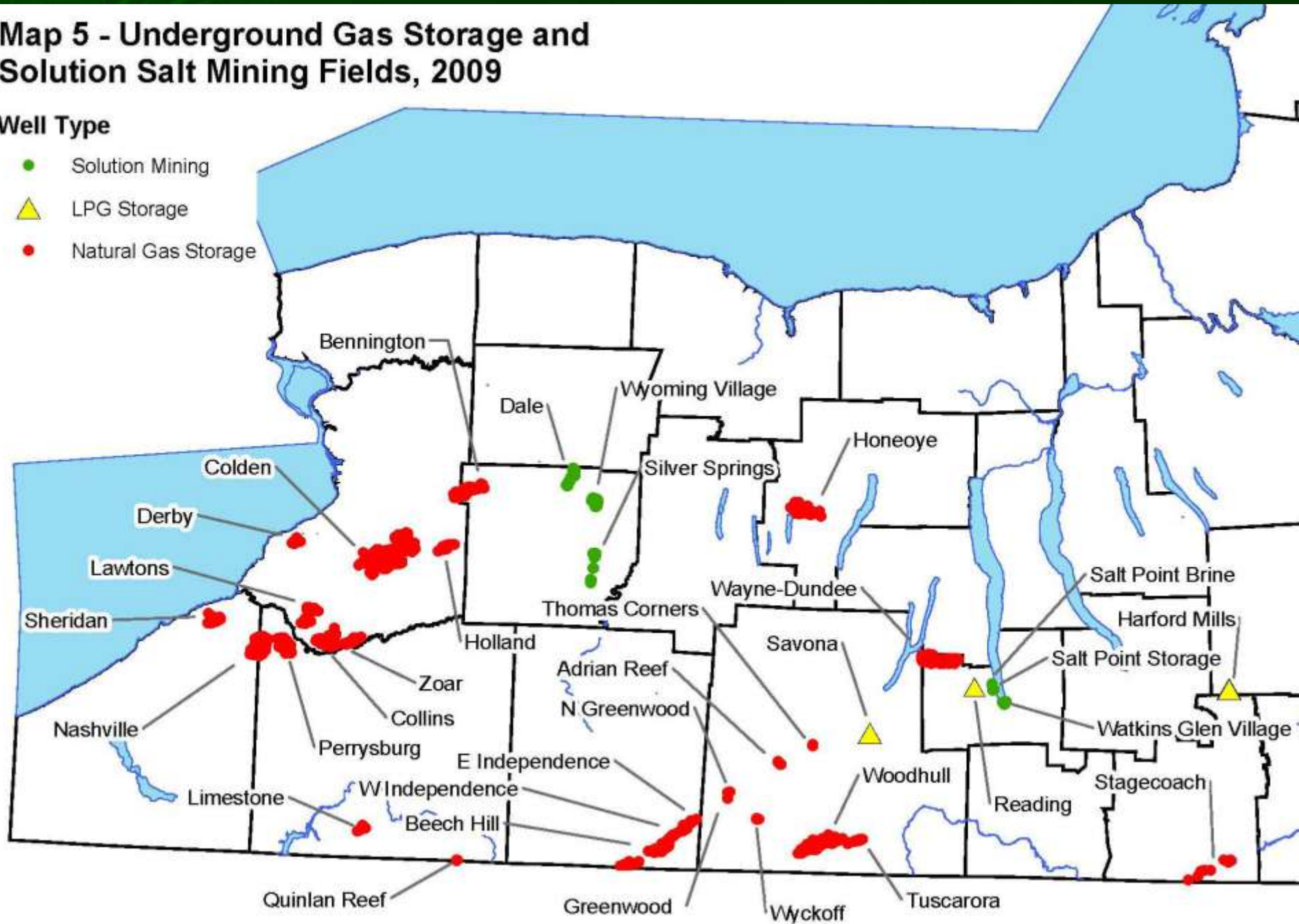
# Eminent Domain

- Eminent domain is provided under both federal and New York law for pipelines and underground gas storage facilities
- Pipelines may have associated facilities such as taps, valves, metering stations, pig launchers, pig receivers, or compressor stations
- A natural gas storage field may include storage field pipelines and associated gas wells

# Map 5 - Underground Gas Storage and Solution Salt Mining Fields, 2009

## Well Type

- Solution Mining
- ▲ LPG Storage
- Natural Gas Storage





# Recording Requirements

# NY Recording Requirements

- The NY Real Property Law requires that mineral leases be recorded
- In lieu of recording a lease, recording a memorandum of lease is allowed



# Recording Evidence of Termination

- Section 15-304 of the New York General Obligation Law provides that when an oil and gas lease “becomes forfeited, terminates or expires by its own terms,” a lessee shall provide a document in recordable form to the landowner canceling the lease as of record
- If a lessee fails to do this, Section 15-304 provides that the landowner may compel them to so, and provides a procedure for doing so

# Cortland Clerk Fights Abusive Gas Lease Recording Practices

- Cortland County Clerk Elizabeth Larkin sees companies try to record improper documents all the time, including adding five year extensions to leases that explicitly rule them out
- Larkin makes a special effort to turn away papers that appear to be improper, so that she won't validate them in any way that could give them authority in court
- As leases expire, drillers bring in documents they know she will turn away, Larkin says. Drillers then file affidavits asserting that she refused their documents improperly. She in turn files another affidavit explaining why she refused

"Cortland clerk fights abusive gas leasing practices," Emma Jacobs, Oct. 17, 2011  
<http://innovationtrail.org/post/cortland-clerk-fights-abusive-gas-leasing-practices>



# Gas Lease Bills in NYS Assembly

- **Requires lease filing within 30 days.** Requires that any conveyance of an oil, gas, or mineral land lease shall be recorded within thirty days from execution of the lease
- **Requires filing lease in entirety.** Excludes oil, gas, and mineral leases from leases that may be recorded by memorandum of lease
- **Requires explanation of risks.** Requires that a statement explaining the possible risks to property value and the ability to obtain a mortgage appear in all oil and gas leases
- **Requires signatures of both parties on renewal.** Requires that any modification, extension or renewal of an oil, gas, or mineral lease be acknowledged by both parties to the lease in order to be recorded
- **Requires notice when leases assigned.** Requires written notice to the landowner of any assignment of a lease with the names and addresses of the assignees

Bills introduced in the 2013-2014 NYS Assembly by Assemblywoman Barbara Lipton

# Title Insurance Issues

- Do standard title policies in New York cover mineral rights?
- To what extent?
- In 2009, 38 homeowners in Denton County, Texas filed a lawsuit against their title insurance companies, claiming damages for mineral rights they didn't have
  - When the homeowners purchased their property, the title insurance policy made no mention of whether they owned the rights to the Barnett Shale natural gas underground. The homeowners saw others in the area getting bonus money from gas companies and they wanted in on it, only to find that they didn't own the mineral rights

"Title insurance issue at forefront in minerals lawsuit," Katherine Brock, *Dallas Business Journal*, July 19, 2009, <http://www.bizjournals.com/dallas/stories/2009/07/20/story3.html?page=all>



# Comments from NY Title Agent

- To remove the lease as an exception to the title, title companies normally require the lease term to be expired and an affidavit (from the fee owner) that no activity is occurring and that they have not been receiving any payments under the terms of the lease
- If the lease has not expired, or the mineral rights were a fee conveyance, it may pose a problem for subsequent purchasers and financing
- When that occurs, we usually include affirmative language that the surface rights and any improvements will not be affected, which usually satisfies the purchasers and the secondary market

Private communication from Stephen Hampsey, Keuka Abstract, Penn Yan, NY, May 9, 2012.

**Will Signing a  
Lease Violate  
My Mortgage?**



# Mortgage Issues

- Can I get a mortgage if I have a lease?
- Will signing a lease violate my mortgage?
  - Compliance with standard mortgage terms
    - Approval needed to transfer rights to the property
    - Commercial activities prohibited on the property
    - Toxic substances prohibited on the property
- Is a gas lease/mortgage crisis brewing?
  - Understanding secondary market requirements
    - Minimum setbacks greater than NY requirements

# Chesapeake Loans Secured by Mineral Rights Mortgages

- Chesapeake mortgaged the mineral rights to about 1,000 properties in Bradford County, PA in order to access a \$5 billion line of credit
- Landowners who had leased the mineral rights learned of these mortgages when they attempted to use their land as collateral for financing of their own. Then the title search revealed Chesapeake's mineral rights mortgage
- Because the mineral rights are distinct, the company's use of the lease to secure its financing should not adversely affect a landowner's attempt to secure financing, but some banks have rejected loan applications from landowners because of the company's mineral rights mortgage

"New surprise in gas boom: Notify owners of mortgage," *Scranton Times-Tribune*, Aug. 3, 2011, <http://thetimes-tribune.com/opinion/new-surprise-in-gas-boom-notify-owners-of-mortgage-1.1183443>



# Standard Mortgage Terms Prohibit Gas Drilling Activities

- Residential mortgages typically prohibit borrowers from committing waste, damage or destruction or causing substantial change to the mortgaged property or allowing a third party to do so
- Standard residential mortgages also prohibit borrowers from causing or permitting the presence, use, disposal, storage, or release of any “hazardous substances” on, under or about the mortgaged property

“Homeowners and Gas Drilling Leases: Boon or Bust?” Elisabeth N. Radow, *New York State Bar Association Journal*, November/December 2011, Vol. 83, No. 9, pp. 10-21.

# Standard Mortgage Terms Require Notice of Leasing

- Mortgages obligate borrowers to give lenders written notice of any release, or threat of release, of any hazardous substances and any condition involving a hazardous substance which adversely affects the value of the mortgaged property

Homeowners and Gas Drilling Leases: Boon or Bust? Elisabeth N. Radow, *New York State Bar Association Journal*, November/December 2011, Vol. 83, No. 9, pp. 10-21.



# Lenders' Exposure to Oil and Gas Development

- Many gas leases constitute “technical defaults” on the landowner’s mortgage, and new rules about leasing are likely to offer additional hurdles to getting a home loan or refinancing a mortgage

“Rush to Drill for Natural Gas Creates Conflicts With Mortgages,” Ian Urbina, *New York Times*, Oct. 19, 2011, <http://www.nytimes.com/2011/10/20/us/rush-to-drill-for-gas-creates-mortgage-conflicts.html?>

# Lenders' Exposure to Oil and Gas Development

- What happens to a bank that has lent money on a property that becomes contaminated from gas drilling?
- For this reason, some banks are reluctant to grant mortgages on properties leased for gas drilling
- At least eight local or national banks will not typically issue mortgages on leased properties

*"Rush to Drill for Natural Gas Creates Conflicts With Mortgages," Ian Urbina, New York Times, Oct. 19, 2011, <http://www.nytimes.com/2011/10/20/us/rush-to-drill-for-gas-creates-mortgage-conflicts.html?>*



# Lenders' Exposure to Oil and Gas Development

- A credit union in upstate New York will make home loans only to people who expressly agree not to sign a gas lease as long as they hold the mortgage

"Rush to Drill for Natural Gas Creates Conflicts With Mortgages," Ian Urbina, *New York Times*, Oct. 19, 2011, <http://www.nytimes.com/2011/10/20/us/rush-to-drill-for-gas-creates-mortgage-conflicts.html?>



“Rush to Drill for Natural Gas Creates Conflicts With Mortgages,” Ian Urbina, *New York Times*, Oct. 19, 2011, <http://www.nytimes.com/2011/10/20/us/rush-to-drill-for-gas-creates-mortgage-conflicts.html?>



# Secondary Mortgage Market

- Banks resell more than 90 percent of new residential mortgages to institutions like the Fannie Mae, Freddie Mac and Ginnie Mae
- Mortgages held by secondary lenders on properties that have oil or gas leases on them may not meet secondary mortgage market requirements

“Rush to Drill for Natural Gas Creates Conflicts With Mortgages,” Ian Urbina, *New York Times*, Oct. 19, 2011, <http://www.nytimes.com/2011/10/20/us/rush-to-drill-for-gas-creates-mortgage-conflicts.html?>

# Mortgage Market Requirements

- Freddie Mac guidelines do not allow rights of surface or subsurface entry is allowed within 200 feet of a residence, and a title policy endorsement is required to protect the lender
- Fannie Mae won't purchase or securitize any mortgage if the property has a "title impediment." Among the allowable exceptions are existing oil, water or mineral rights that are "customarily waived by other lenders" and "do not materially alter the contour of the property or impair its value or usefulness for its intended purposes"

"How Oil And Gas Rights Affect Mortgages," Marcie Geffner, Bankrate.com, <http://www.bankrate.com/finance/mortgages/how-oil-gas-rights-affect-mortgages.aspx>



# New York Set-Back Requirements

- The issue of Fannie Mae and Freddie Mac setback requirements has garnered attention among lawmakers and lenders in New York, because the DEC's setback requirements are less than in Western states

"Rush to Drill for Natural Gas Creates Conflicts With Mortgages," Ian Urbina, *New York Times*, Oct. 19, 2011, <http://www.nytimes.com/2011/10/20/us/rush-to-drill-for-gas-creates-mortgage-conflicts.html?>

# Setback Requirements in Texas

Fort Worth	600 feet
Arlington	600 feet
Burleson	500 feet
Denton	500 feet
Flower Mound	1,000 feet for any residence with no mineral interest, and 500 feet for residence that share a mineral interest.
Grand Prairie	500 feet
Mansfield	600 feet
North Richland Hills	600 feet
Southlake	600 feet
Benbrook	600 feet
Weatherford	1,000 feet
Colleyville	1,000 feet
Bedford	no less than 500 feet
Keller	no less than 500 feet



# Current New York Setbacks

- Well location setbacks provided as permit conditions pursuant to 1992 Generic EIS:
  - 100 feet from residential structure
  - 150 feet from other structures

1992 GEIS Chapter 17 B. 1. b., pp. 17-3 et seq.

# Proposed New York Setbacks

- No changes for structural setbacks
- Structural setbacks for hydraulically-fractured wells will be covered by 1992 GEIS:
  - 100 feet from residential structures
  - 150 feet from other structures

Proposed Express Terms 6 NYCRR Parts 550 through 556 and 560,  
<http://www.dec.ny.gov/regulations/77401.html>



# Conflict on Setbacks May Cause Problems for Lenders

- The conflict between New York's minimal setback requirements and long standing residential mortgage lending requirements and secondary market standards may cause problems for lenders if drilling increases in NY
- The relatively small scale of drilling activity in NYS to date has allowed NYS banks and lending institutions to work around the problem by keeping mortgage loans in their internal portfolios, but it is doubtful that they will be able to continue this practice if gas drilling takes place in New York on a larger scale

Comments to the NYS DEC on RDSGEIS, Carol I. Chock, Chair, Tompkins County Council of Governments, Task Force on Gas Drilling Assessment and Land Valuation Subcommittee, Nov. 29, 2011, [http://www.tompkins-co.org/tccog/Gas\\_Drilling/Focus\\_Groups/LandValues\\_Assessment.html](http://www.tompkins-co.org/tccog/Gas_Drilling/Focus_Groups/LandValues_Assessment.html)

**Will My Insurance  
Policy Cover  
Fracking Damage?**



# Nationwide Won't Cover Fracking Damage

- In 2012 Nationwide Mutual Insurance became the first major insurance company to publicly say it won't cover damages from fracking. The company's personal and commercial policies "were not designed to cover" risk from the hydraulic fracturing, a spokeswoman said following disclosure of an internal memo detailing underwriting guidelines
- The memo says, "After months of research and discussion, we have determined that the exposures presented by hydraulic fracturing are too great to ignore. Risks involved with hydraulic fracturing are now prohibited for General Liability, Commercial Auto, Motor Truck Cargo, Auto Physical Damage and Public Auto (insurance) coverage"

Nationwide Insurance: Fracking Damage Won't Be Covered, by Mary Esch, July 12, 2012, [http://www.huffingtonpost.com/2012/07/13/nationwide-insurance-fracking\\_n\\_1669775.html](http://www.huffingtonpost.com/2012/07/13/nationwide-insurance-fracking_n_1669775.html)

# Fracking Damage Not Covered by Standard Policy

- If the ground shifts at a fracking site and breaks the foundation of a nearby home, or if the chemicals taint a drinking-water well, standard homeowner and commercial-property policies won't cover the cost, said Robert Hartwig, president of the Insurance Information Institute.
- Standard property-insurance policies cover a specific set of calamities, such as fire, lightning, thunderstorms, ice and hail. "There's really no distinction here between fracking or any other, say, mining, operation here," Hartwig said. "This sort of thing is not covered by the policy and it never was."
- "You as a homeowner have legal recourse to sue whoever is the polluter. You always did," Hartwig said.

Possible Damage From Fracking Not Covered By Standard Homeowner's Policy, Matthew Sturdevant, *The Hartford Courant*, July 13, 2012, [http://articles.courant.com/2012-07-13/business/hc-fracking-insurance-coverage-20120713\\_1\\_hydraulic-fracking-property-casualty-insurers-liberty-mutual](http://articles.courant.com/2012-07-13/business/hc-fracking-insurance-coverage-20120713_1_hydraulic-fracking-property-casualty-insurers-liberty-mutual)



# Limited Insurance Options for Fracking Operations

- Only a few large insurance companies will write primary environmental impairment liability coverage for well owners or contractors with significant fracking operations
- Underwriters are concerned about companies with operations in the Marcellus shale, where well sites often are near populated areas; and in Louisiana, with its history of oil- and gas-related environmental litigation, he said
- Many drilling companies are relying instead on the limited pollution coverage offered under on general liability policies

Insurance coverage options for fracking risks are limited, Business Insurance, Feb. 24, 2013, <http://www.businessinsurance.com/article/20130224/NEWS07/302249991?>

# Important Legal Disclaimer

- Nothing in these reference materials constitutes legal advice or an offer of legal advice.
- All techniques and ideas discussed in these materials are general in nature and are incomplete descriptions of the law and should not be relied upon.
- To obtain legal advice, consult an attorney.



Questions?

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