



Parks & Trails
NEW YORK

Board of Directors

David F. Shaffer, *Chair*
James C. Dawson, *Vice Chair*
Robert J. Kafin, *Vice Chair*
Judith C. Mower, *Secretary*
A. Joseph Scott III, *Treasurer*

Kent L. Barwick
David Bronston
Jane Clark Chermayeff
Mary L. Cotter
Edward Doherty
Charles E. Dorkey III
David Grome
Thomas Holmes
John G. Hunter
Seymour H. Knox IV
Kevin M. Lanahan
Doug Logan
Richard P. Morse
Kristen Mucitelli-Heath
Timothy J. Nelson
Arthur V. Savage
Michael Tannen
Alan N. Vincent
Stephanie H. Wacholder

Advisory Council

Edward A. Ames
Anne Perkins Cabot
Joan K. Davidson
Henry L. Diamond
Douglas Durst
John Hanna, Jr.
Joseph J. Martens
Barnabas McHenry
Lynden B. Miller
Peter L. Rhulen
Larry Rockefeller
Anne Sidamon-Eristoff
David Sive
Diana L. Taylor

Robin Dropkin
Executive Director

9 Elk Street
Albany, NY 12207
P 518.434.1583
F 518.427.0067
www.ptny.org
ptny@ptny.org



January 9, 2011

Attn: dSGEIS Comments
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-6510

RE: Comments on revised Draft Supplemental Generic
Environmental Impact Statement (September 2011) and Proposed High-
Volume Hydraulic Fracturing Regulations

Dear Commissioner Martens:

Since 1985, Parks & Trails New York (PTNY) has been the state's leading advocate for the expansion, protection, and promotion of a network of parks, trails, bike paths, and greenways throughout the state.

We have worked with more than 300 communities and organizations to build thousands of miles of trails, helping to bring important economic, public health, tourism, and quality of life benefits to New Yorkers around the state. Many of the trails we have worked with are located in areas underlain by the Marcellus and Utica shale formations and thus subject to the impacts of drilling, including the Erie Canalway Trail extending from Buffalo to Albany; the Genesee Valley Greenway in Livingston, Wyoming, Allegany and Cattaraugus Counties; the Lakeville-Livonia Trail in Livingston County; the Montezuma Trail and the Village of Cayuga Recreational Trail in Cayuga County; the D&H Canal Trail and O&W Rail Trail in Sullivan County; and the Andes Trail in Delaware County, just to name a few.

We also represent the interests of the 57 million annual visitors to New York's crown jewels, its state parks and historic sites, including the more than 50 located above the Marcellus and Utica shale formations. Our system of state parks is the nation's oldest, dating to the creation of the Niagara Reservation in 1885. Our state parks preserve invaluable landscapes and ecosystems, strengthen New Yorkers' health and fitness and enhance their quality of life. The same holds true for the Adirondack and Catskill Parks and countless municipally and county-owned parks.

As the statewide park and trail advocacy organization, we believe there are serious flaws with the revised Draft Supplemental Generic Environmental Impact Statement (dSGEIS) (September 2011) and Proposed High-Volume Hydraulic Fracturing Regulations (HVHF) in New York State and respectfully submit the following comments and recommendations.

1. Uphold Ban on Surface Drilling on State-Owned Lands; Extend Ban to all Public Recreation Lands; and Prohibit Leasing of Public Recreation Lands for Sub-Surface Drilling

New York's system of parks, trails and forests is a priceless legacy that must be protected for current and future generations. We commend the Department of Environmental Conservation (DEC) for its recommendation that surface hydraulic fracturing be prohibited on state-owned lands, including state parks and forests and state-owned trail systems, and urge DEC to uphold this ban in the final regulations.

The dSGEIS, however, fails to analyze or take into consideration impacts to the more than 50 state properties other than state parks included in the state park system that lie above the Marcellus and Utica shale formations, including historic sites, boat launches, and marinas.

The impacts to all sites included in the state park system that lie above the Marcellus and Utica shale formations must be analyzed and taken into consideration.

The public trust doctrine protects all public parks; therefore the ban must extend to all such parks. As the dSGEIS states, "Drilling and trucking activities disturb the tranquility found on these lands and can cause significant visual impacts.... The level of truck traffic associated with horizontal drilling and high-volume hydraulic fracturing presents safety issues, and would significantly degrade the experience for users of these roads, if not altogether during the drilling and construction phases of development" (page 6-91). In addition, the dSGEIS states, "Surface disturbance associated with gas extraction could have a significant adverse impact on habitats contained on the state-owned lands, and recreational use of those lands" (pp. 6-90-91). These impacts would not be isolated to just state-owned lands, but would similarly affect local parks and trails. These local, publically owned resources should be afforded the same protections as state-owned lands.

PTNY opposes high-volume hydraulic drilling activities in public parks of any kind, including county and municipally owned parks, linear parks and trail systems, and the Catskill Park.

Even the temporary use of public recreation lands for hydraulic fracturing equates to alienation—that is, the taking of parkland for a non-park use. Too often, the alienation of parkland occurs without sufficient public input or adequate replacement parkland. In the case of oil and gas drilling by private companies, there can be little, if any, justification for the alienation of parkland. The DEC itself issued an advisory opinion in 2007 stating that requests to alienate parkland fall within the definition of action under the State Environmental Quality Review Act (SEQRA).

Therefore, any drilling permits on or beneath county and municipally owned parks and trails should be subject to review under SEQRA—regardless of the type of fracturing proposed—if a portion of the park would not be available for recreation, even if only temporarily.

The draft regulations also state that “Parts 52 and 190 of 6 NYCRR will be modified to prohibit the leasing of state-owned land for surface activities related to HVHF. The prohibition, however, will not prevent the Department from leasing state land to allow subsurface access to the state’s mineral rights from locations adjacent to state-owned land.” Public recreation lands are often protected because of the important natural resources they contain. Opening up public lands—state or local—to drilling, even laterally, could have serious adverse environmental impacts, for example, contamination of water resources from toxic chemicals used in the drilling process and the disturbance of ecosystems.

Allowing drilling in state parks in any way will encourage the routing of pipelines over state lands and promote more intensive gas drilling on adjoining private lands which may also contain important natural resources. Since most state forest and wildlife management areas were established to protect groundwater supplies and aquifers, it is a violation of both the letter and spirit of the state constitution and state law to lease gas exploitation rights underneath state forests, state parks or wildlife management areas.

PTNY urges the prohibition on drilling on public lands be extended to include drilling operations that laterally extend from private lands under the public lands.

Local communities must be able to take action to protect themselves if DEC is unwilling to include a statewide ban on drilling on all public recreation lands as well as subsurface access through adjacent lands.

PTNY recommends at a minimum a provision allowing local communities to contest any proposed individual permit for high-volume hydraulic fracturing when drilling activities would constitute alienation of public parkland.

2. Create Buffers Around Public Recreation Lands

While the dSGEIS includes buffers for water resources, no buffers are established for public recreation lands. State parks often contain threatened species and sensitive ecosystems. For example, according to the NYS Office of Parks, Recreation and Historic Preservation’s (OPRHP) information packet on the Master Plan for Allegany State Park, surveys conducted by the New York Natural Heritage program reveal that the park is home to several rare, threatened and endangered species of plants and wildlife as well as 18 significant natural communities including more than 5,300 acres of old-growth forest—3,500 acres of which is old-growth hemlock-hardwood.

Buffers are also important for preserving the scenic viewsheds that are part of the visitor experience to parks, trails, forests and wildlife areas. Access roads to parks like Allegany State Park for example, while perhaps not part of the state park, are integral to the park visitor experience.

Precedents for considering viewsheds in regulations exist in New York State. For example, the NYS Public Service Commission (PSC) required a reduction in the size of the Jordanville Wind Project in order to avoid adverse environmental impacts on the scenic quality of the Glimmerglass Historic District.

For these and the human and environmental health reasons included in recommendation 4 below, PTNY recommends including provisions for a 2000 foot buffer (measured from the end of a potential horizontal fracture) on private lands around public recreation lands to reduce the environmental impacts from offsite activities.

3. Analyze Full Impact on Tourism and Recreation Industry

The short-term jobs and revenue that are expected from gas drilling may come at the cost of the long-term jobs and revenue brought to local economies from recreation tourism. The Economic Assessment Report for the Supplemental Generic Environmental Impact Statement on New York State's Oil, Gas, and Solution Mining Regulatory Program (August 2011) simply states that the implementation of widespread gas drilling "could have a negative impact on some industries such as tourism and agriculture" (page 58) and yet fails to provide any detailed analysis of potential impacts within the affected regions, which could well be significant. The attractiveness of short-term economic gain is substantially outweighed by the potential for long-term harm to the region's land and water resources upon which its tourism industry and quality of life depend.

Recreation tourism is an \$11.3 billion industry in New York State—25% of the state's total tourism industry, according to data from the Outdoor Industry Foundation. According to a 2009 independent study commissioned by PTNY, the NYS Park System alone boosts the state's economy to the tune of nearly \$2 billion annually—a 5 to 1 return on investment. Plus, the State Park System creates 20,000 jobs—exclusive of state parks employees. This does not include the economic boon from countless locally owned and managed public parks.

Trails are also economic engines for communities, and our world-class parks and extensive network of trails are key assets in helping the state and localities attract tax-paying businesses and a high-quality workforce.

The Finger Lakes region, for example, has made tremendous strides in branding itself as a place full of unique state parks, many miles of hiking and biking trails, pristine lakes, bucolic pastoral landscapes, and quiet roads. With the potential for thousands of wells and their associated drill pads, rigs, gravel pits, compressor stations, truck traffic, etc., the cumulative impact may turn a largely rural, agricultural region into an industrial region and negatively impact the park and trail tourist experience, along with the integrity of the Finger Lakes and I Love NY brands.

Given tourism's importance to the area and the state, a more comprehensive examination of the cumulative impacts of gas drilling on tourism must be undertaken.

4. Analyze and Address Public and Environmental Health Impacts

PTNY has long seen the connection between healthy people and access to opportunities for outdoor recreation, having worked since 2004 under a grant from the NYS Department of Health (DOH) to help communities develop trails through the Healthy Trails, Healthy People (HTHP) program. Of the 38 communities in the program, 19 are in the area where Marcellus and Utica shale formations exist.

PTNY is concerned that despite direction from the U.S. Environmental Protection Agency and calls from doctors and health professionals, the state has failed to include an analysis of public health impacts or to meaningfully incorporate DOH into the fracking review. The New York State Strategic Plan for Overweight and Obesity Prevention includes strategies to increase physical activity, including “Inreas[ing] the availability and accessibility of affordable places to be physically active.” In addition to the considerable fracking-related air pollution and potential water contamination, the degradation or loss of parks and trails will limit opportunities for healthy physical activity and will increase truck traffic on roads with road-trail intersections or which are used as trail links resulting in additional threats to health and safety of visitors and residents. With more than 60% of New Yorkers classified as obese, the state should avoid any programs or policies that will result in a reduction in outdoor recreational opportunities for its residents.

Many of our state and local parks include water resources. Hydrofracking brings known—and many unknown—threats from pollution. Allegany State Park alone has had three pollution incidents resulting from hydrofracking in Pennsylvania, according to OPRHP. The amount of water required for hydrofracking also raises concerns about the surface water flow in parks that could impact both recreation and sensitive ecosystems. In addition, the dSGEIS fails to analyze impacts on drinking wells in state parks and on other public recreation lands.

The state should undertake a health impact assessment (HIA) to address the full spectrum of health impacts to affected communities and to individual residents.

5. Address Impacts on Statewide Plans

The dSGEIS fails to address threats to sites recognized as priorities for conservation in New York State’s Open Space Conservation Plan (OSCP), many of which could become state or municipally owned parks or trails and other recreation lands (like state forests). While the dSGEIS identifies the 38 priority conservation projects within the area underlain by the Marcellus and Utica shale formations in New York, it is silent on the impact to the region and the state if these projects are affected by high-volume hydraulic fracturing. The OSCP, as well as the Statewide Trails Plan and Statewide Comprehensive Outdoor Recreation Plan, were consulted only to establish the existing environmental setting for visual resources.

A thorough analysis on the impact to these statewide policies and plans should be completed.

6. Analyze Fracking Impacts Comprehensively and Cumulatively—Create Multi-Agency Commission

The gas industry would be overseen by several state agencies, including the PSC, Department of Agriculture and Markets, DOH, OPRHP and others, yet there is no single agency with a clear mandate to protect the public from the impacts of hydrofracking or that is looking at the impacts comprehensively and cumulatively.

PTNY recommends the creation of a formal, multi-agency commission or council to meet regularly that is charged with overseeing multiple agency actions and the protection of the public.

Thank you for your consideration of our recommendations. Our public parks and trails are a priceless legacy—created by civic leaders, philanthropists, public servants, volunteers and taxpayers from generations past and sustained similarly today. This valuable legacy warrants the most stringent consideration of all possible impacts and the greatest possible protection.

Sincerely,

A handwritten signature in black ink, reading "Robin Dropkin". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Robin Dropkin
Executive Director