STATE OF NEW YORK

S. 3722 A. 5515

2019-2020 Regular Sessions

SENATE - ASSEMBLY

February 13, 2019

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Judiciary

AN ACT directing the state attorney general to intervene on behalf of the plaintiffs in Connecticut Fund for the Environment, Inc., et al. v United States General Services et al. seeking to invalidate the decision of the federal government to sell Plum Island and to take all additional legal action necessary for the conservation of Plum Island

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative Findings. Plum Island, a small island off the coast of Long Island, New York, is owned by the federal government. First operated as a coastal artillery post, Plum Island has been a federal research facility for animal diseases from 1954 to the present. Because of the federal research facility operations, access to Plum Island has been extremely limited, with human activity on the 840-acre island largely restricted to approximately 170 acres.

The remaining 670 acres is a unique and extraordinary nature preserve that is home to several federal endangered species, has a critical ecological link to Long Island Sound and the marine species that inhabit it, and serves as habitat for over 200 species of birds. Plum Island's undisturbed habitat includes 196 acres of upland forest, 96 acres of freshwater wetlands, and 101 acres of a beach/dune system.

In January 2009, the United States Department of Homeland Security (DHS) decided to relocate its animal disease research facility, known as the Plum Island Animal Disease Center ("PIADC") to Manhattan, Kansas. DHS also began preparations to sell Plum Island. The federal government prepared an Environmental Impact Statement ("EIS") for the sale of the PIADC and Plum Island, and issued its final decision to move forward

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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with the sale of the island to the highest bidder in a Record of Decision ("ROD").

The EIS process was fundamentally flawed. The federal government misconstrued its statutory directive, interpreting their authority to only permit a public auction of the entirety of Plum Island to the highest bidder. This interpretation excluded a conservation sale from their alternatives analysis.

The federal government violated the National Environmental Policy Act (NEPA) by failing to consider important government interests and programs in arriving at its decision, including the protection of federally-listed and state-listed endangered and threatened species, compliance with New York and Connecticut coastal consistency determinations, and the adverse economic impacts of a potential sale of Plum Island.

The federal government violated NEPA by failing to adequately consider alternatives to a public auction to the highest bidder, such as a bifurcated sale of discrete parcels or a single unitary sale with conservation easements attached to the property or conservation of those parts not supporting the PIADC operations, even though consideration of such alternatives were repeatedly requested.

The federal government violated NEPA by failing to consult with and rely upon the expertise of the appropriate federal agencies with respect to endangered species, coastal zone and environmental cleanup.

The federal government violated NEPA and the Coastal Zone Management Act (CZMA) by failing to engage in consistency determinations with the appropriate state agencies.

Finally, the federal government violated NEPA by basing their decision on inadequate ecological data and failed to detail how they would clean up contamination associated with the PIADC.

The federal government issued this EIS notwithstanding the fact that they were made aware of each of these violations through repeated comments from state agencies, other federal agencies and non-profit organizations.

The federal government's ill-considered decision to sell Plum Island, and the fundamentally flawed EIS supporting that decision, threaten the continued existence of the endangered species that inhabit Plum Island, the ecology of Long Island Sound, and violate numerous Federal laws.

The Connecticut Fund for the Environment, Inc. (d/b/a Save the Sound) and other plaintiffs, including several from New York State, have brought an action seeking declaratory and injunctive relief in the United States District Court in the Eastern District. The action seeks a declaration that the federal government's decision to sell the entirety of Plum Island at public auction, as well as the EIS and ROD supporting that decision is in violation of law and seeks to enjoin the federal government from selling Plum Island.

The legislature finds that the sale of Plum Island for development violates several long stated important policies of the State of New York relating to historic preservation, the environment, water quality, coastal protection, municipal home rule and local land use controls, climate change, sea level rise, and ecology and habitat. The Governor and the State Department of Environmental Conservation have previously expressed the need to preserve the island for public benefit.

It is the purpose of this act to direct the state attorney general to intervene in the legal action initiated by the Connecticut Fund for the Environment, Inc., on behalf of the plaintiffs, and to take all other necessary legal action to protect the aforementioned legitimate interests of the state of New York.

§ 2. The state attorney general is hereby directed to intervene in the legal action entitled **Connecticut Fund for the Environment, Inc., et al. v United States General Services et al.,** on behalf of the plaintiffs. Said action seeks to invalidate the decision of the federal government to sell the entirety of Plum Island at public auction, as well as the EIS and ROD supporting that decision and seeks to enjoin the federal government from selling Plum Island. The state attorney general is also authorized to take any and all additional legal action necessary consistent with the findings of this act enumerated in section one of this act, to preclude the sale of Plum Island for development purposes and to seek its conservation.

§ 3. This act shall take effect immediately.