



June 2, 2010

VIA Electronic Mail Attachment

Mr. Phil Youngberg, Environmental Manager
C/o Mr. John Dugan
General Services Administration (GSA)
10 Causeway Street, Room 925
Boston, MA 02222
(email: john.dugan@gsa.gov // facsimile: 616 565 5720)

Re: Scoping Comments regarding the EIS of a proposed Sale of Plum Island, NY.

Dear Mssrs. Youngberg and Dugan:

On behalf of the Connecticut Fund for the Environment, Inc., and our program Save the Sound (hereafter referred to as 'CFE/Save the Sound'), please enter these scoping comments on the record of the above captioned Environmental Impact Statement ('EIS') regarding the proposed sale of the federally owned 840 acre Plum Island, off of Orient Point, New York. This scoping letter is intended to augment the oral comments I presented solely on behalf of CFE/Save the Sound at the May 19 scoping meeting hosted by the GSA in Old Saybrook, Connecticut. In the event that there are any discrepancies between my May 19 oral comments and this document, this document shall supersede the oral comments.

CFE/Save the Sound sees merit in the argument presented by community leadership that the region and federal budget would be better served by continuing the USDA research facility at Plum Island with associated continued federal ownership and implicit protection of the undeveloped balance of the island. However, we recognize that such a decision is likely a matter of Congressional policy, and as such, is probably beyond the limits of the GSA's legal authority pursuant to this EIS process.

Before proceeding with the formal comments, CFE/Save the Sound is a not for profit organization dedicated to the restoration and protection of the natural resources of the Long Island Sound watershed. One of the strengths of CFE/Save the Sound is our ability to use legal and scientific expertise together with a combined membership and citizen network of over 10,000 citizens to achieve real environmental protection results.

Summary of Scoping Request:

CFE/Save the Sound respectfully requests that the GSA **identify, consider and ultimately select a preferred EIS alternative for an adaptive re-use sale of Plum Island that allows for the re-development and re-use of the developed portion of the island while assuring the permanent conservation protection and appropriate public use for the undeveloped portion of the island.** This alternative would treat two physical portions of the island separately, each being subject to different sale limitations. The already developed portion of the island would be sold to the highest bidder, subject to a complete due diligence review of existing contamination and site conditions in the already developed areas containing the 50,000 square foot research facility and associated infrastructure. In contrast, the vast undeveloped portions of the island would be ideally transferred to the United States Fish and Wildlife Service (USFWS) for conservation and appropriate public use and visitation, also subject to a site contamination evaluation. At a minimum, these undeveloped portions of the island would be sold pursuant to strict permanent conservation restrictions and some rights of public access.

Second, and as importantly, CFE/Save the Sound joins a number of other groups in **requesting that the GSA take at least an entire year and complete a full ecological survey of the large and important habitats on the island.** It is our understanding that biological and ecological surveys have been limited to date to quarterly bird surveys completed over the past three years. Given the fact that there is a strong governmental interest in conserving this island, expressed by the island's selection as a Long Island Sound Stewardship site, it is essential that a full ecological survey be completed and considered prior to the issuance of the DEIS.

Given the strong stated governmental interest in conserving the undeveloped portions of the island as a LIS Stewardship site, **we urge the GSA to invite as cooperating agencies in this EIS process the Environmental Protection Agency (both Region I and II), the USFWS and the New York Department of Environmental Protection and the Connecticut Department of Environmental Protection.** Top leadership of these state and federal environmental regulatory agencies formally endorsed the LIS Stewardship system designation of Plum Island. USFWS scientists played a major role in the stewardship site designation of Plum Island.

Finally, we already know that federally endangered and threatened species utilize the island, and there is a strong probability that more federally listed species will be identified pursuant to a full ecological survey. **Therefore, we also ask the GSA to confer with the Secretary of Interior and select an alternative that meets both the spirit and letter of the federal Endangered Species Act, including your obligation to conserve endangered and threatened species.**

Plum Island's Designation as a LIS Stewardship Site Demonstrates a Strong Governmental Interest in the Conservation of its Undeveloped Natural Resources

The highest levels of federal and state governmental leaders established a strong governmental and public interest in the conservation of the undeveloped natural resources of Plum Island by formally adopting Plum Island as a Long Island Sound Stewardship site in 2006.

This designation was undertaken by the governing Policy Committee of the Long Island Sound Study (LISS). Long Island Sound was one of our nation's first listed water bodies within the National Estuary Program established under §320 of the Clean Water Act, 33 U.S.C. §1330. The LISS Management Conference and governing Policy Committee were established to form a cooperating federal-state partnership to establish policies and programs to restore the Sound, pursuant to the National Estuary Program and its designation as an NEP program and pursuant to §119 of the Clean Water Act, 33 U.S.C.A. 1269. The Policy Committee of the LISS is comprised of the Administrators of the two EPA Regions within Long Island Sound waters (Regions I and II) and the Commissioners of the Department of Conservation of New York and the Department of Environmental Protection in Connecticut.

The Policy Committee of the LISS ('Policy Committee') directed the LISS to identify a coordinated strategy for developing a Long Island Sound Stewardship System through its 2003 LIS Agreement. (See electronic copy attached, hard copy submitted as part of May 19 oral presentation.) This was undertaken pursuant to the LISS Comprehensive Conservation and Management Plan for Long Island Sound, adopted by the Policy Committee in 1994 ('CCMP'). Following that directive, representatives of the LIS EPA office, the USFWS, the Connecticut Department of Environmental Protection and five NGOs, including Save the Sound, invested three years in a process of evaluating Stewardship sites along the New York and Connecticut coasts of the Long Island Sound. This process involved reaching out to the general public for suggestions of Stewardship sites, a thorough scientific review of the ecological and recreational resources and a series of public meetings to obtain public feedback on initial recommendations. The final work product recommends 33 Inaugural Stewardship sites. (See Long Island Sound Stewardship Initiative, 2006 Stewardship Atlas, electronic copy attached, hard copy submitted as part of May 10 oral presentation.) These Stewardship sites were officially adopted by the LISS through a Resolution of the Long Island Sound Study Policy Committee Concerning Long Island Sound Stewardship dated September 28, 2006. (See electronic copy attached, hard copy submitted as part of May 19 oral presentation.) The Stewardship Initiative Atlas identifies Plum and Gull Islands complex as collectively being:

- Exemplary colonial water bird habitat, including sites that are of national – if not international significance;
- Small rocky islets dominated by grassy and herbaceous vegetation;
- Colonized by over 6,000 pairs of common tern and approximately 1,200 pairs of roseate tern, making this the second largest breeding population of this endangered species in North America; and
- Identified by the USFWS as a Significant Coastal Habitat.

Note that the Stewardship site map identifies the entire Plum Island as containing these important ecological components. (See attached Stewardship Initiative 2006 Atlas at p. 38.)

**Limited Bird Surveys Document Federally Endangered and Listed Species on Plum:
Need for Comprehensive Biological and Ecological Survey over at least One Year**

Ornithologists from Audubon New York document that Plum Island contains important and rare bird life, further supporting this Stewardship designation. The island is designated by Audubon New York as critical bird habitat through its Important Bird Area designation. Bird surveys conducted over the past three years during the breeding, winter, and migration seasons document over 100 bird species on Plum Island and adjacent coastal waters. Piping Plovers, a federally threatened species, utilize the shoreline habitat for breeding and foraging. Several dozen Roseate Terns, a federally endangered species, and several hundred Common Terns, a NYS threatened species, also use the island. Much more detail on known and potential bird life and the importance of Plum Island's ecological values are being submitted by Audubon and perhaps the Nature Conservancy.

The recent bird surveys provide a brief glimpse at the ecological value of Plum Island to bird species, and it is likely that far more species depend on it than we are aware. Moreover, CFE/Save the Sound is not aware of any comprehensive ecological survey completed for the various shrub, grassland, wetlands and forest habitats on the island. A thorough and comprehensive biological and ecological inventory of the many island habitats during at least one full year is needed to adequately document significant species and natural biological communities and resources to guide the sale and future uses.

Highlights of the GSA's Statutory Obligations pursuant to the Facts and Circumstances of this EIS

The following are intended to highlight GSA's statutory obligations under the facts and circumstances of the proposed Plum Island sale, and are not intended to be exhaustive or complete. CFE/Save the Sound reserves the right to raise other legal issues as this EIS process unfolds.

Section 540

Section 540 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, apparently mandates the public sale of Plum Island. This sale, however, shall be "...**subject to such terms and conditions as necessary to protect government interest and meet program requirements...**" (Emphasis added.) As already documented, the designation of Plum Island as a Long Island Sound Stewardship Site by the Policy Committee of the LISS establishes a strong governmental interest in the conservation and protection of this site. This process and selection was established pursuant to the Long Island Sound Study program, under the authority of the federal Clean Water Act. Given this governmental interest in conserving the undeveloped portions of the island, it is imperative that the GSA consider an adaptive re-use alternative that results in the permanent conservation and protection of this undeveloped portion of the island.

NEPA

As you know, the Plum Island EIS must be prepared pursuant to all National Environmental Policy Act (NEPA) requirements. Your obligations in scoping the impacts of the proposed sale include examining the associated direct, indirect and cumulative impacts. 40 C.F.R. §1508.25 (2010). Indirect effects are those "...caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other

natural systems, including ecosystems.” 40 C.F.R. §1508.8 (2010). As noted in your “May 2010 Sale of Plum Island, New York” document posted to the GSA web site, Plum Island incorporates extensive infrastructure that could support intense land use development, including, but not limited to, four miles of existing paved highway, strength in its utility connections and capacity including undersea cables for power and communications, an on-site power plant and oil storage on site with a 2,500 foot oil pipeline from the island harbor coupled with the 9.5 acre Orient Point harbor facility. Based on this existing strong foundation of infrastructure, the GSA must identify the reasonably foreseeable outcome of a high level of development impact on the undeveloped habitat and biological systems of the island associated with a single, unregulated sale of the island. This would include, but not be limited to extensive foreseeable development to the various grass, shrub and forest habitats on the island and the impacts that such intense development and human use would have on the associated dune, beach and coastal environments. The cumulative effects of this induced development on the entire Plum – Gull Island Stewardship complex and surrounding ecosystem must also be examined.

Moreover, given Plum Island’s designation as a Long Island Sound Stewardship site by the Region I and II Administrators of the EPA as well as the New York and Connecticut state environmental agencies, these four agencies should be enlisted as cooperating agencies pursuant to the requirements of 40 C.F.R. §1501.6 (2010). The GSA should also enlist the USFWS as a cooperating agency in guiding and assisting with the needed biological survey of the island and the associated ecological role that the island plays in its interaction with the Gull Islands, based on the USFWS’ strong role in developing the LIS Stewardship Atlas. Four USFWS scientists invested hundreds of hours in the development of the LIS Stewardship Initiative 2006 Atlas. (*See* attached Stewardship Atlas at p. 2.)

Finally, time limits for this environmental review must be established, taking into consideration a variety of factors including the potential for environmental harm, the degree to which the action is controversial and the degree to which relevant information is known and not known. 40 C.F.R. §1501.8 (2010). In this instance, it is clear that the undeveloped portions of Plum Island are identified as a highly valuable and unique natural resource to this site, both regionally to Long Island Sound and nationally, if not internationally; this identification is being endorsed by high level governmental agencies, as well as many qualified NGO participants. The proposed action, the public sale of a relatively undeveloped island supported by robust development infrastructure, has the potential of creating serious indirect and cumulative environmental harm. Given the number of groups orally commenting at your scoping meetings, the number of comment letters this organization is aware of that will be submitted on this matter, ranging from EPA Administrators and affected Governor offices to qualified and knowledgeable environmental NGOs, it is safe to say this action is controversial. In addition, while the limited bird surveys of the island indicate the presence of important and rare species, to our knowledge there has not been a complete biological survey of the rich habitats on the island. All of these factors argue for the GSA to complete full biological and ecological surveys of the island for at least a year prior to preparing a thorough and well documented DEIS. CFE/Save the Sound asks that the GSA adjust your proposed time line accordingly.

The Endangered Species Act

As stated earlier, limited bird surveys of Plum Island have identified at least two federally listed species pursuant to the Endangered Species Act: Several dozen of the federally endangered Roseate Tern as well as the threatened piping plover have been identified on the island. A thorough ecological survey is required to fully document the existence of additional federally listed species of plants and animals on the island.

Given that federally endangered and threatened species have been observed on the island, the Endangered Species Act (‘ESA’) places additional responsibilities on the GSA as it prepares its EIS. This letter identifies a few of these obligations. First, the GSA, as a federal department, “shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes [of the GSA].” ESA §2 (c)(1), 16 U.S.C.A. §(1531)(c)(1) (2010). This conservation obligation extends to habitat maintenance. ESA §3(3), 16 U.S.C.A. §1532(3) (2010). Once a complete ecological survey is completed of the island and all federally and threatened species are identified, the GSA must determine whether Plum Island constitutes

critical habitat for any of these species, in accordance with the provisions of ESA §4(b), 16 U.S.C.A. §1533(b) (2010), or whether any proposed open public sale and indirect foreseeable development impacts are likely to constitute a prohibited “taking” or negatively impact a recovery plan for any of the identified endangered or threatened species pursuant to the ESA. It is important to note that “harm” and “takings” of species is prohibited under the ESA without an incidental takings permit, and these terms include not only impairing breeding behaviors but feeding or sheltering behaviors as well. See ESA §§9 and 10, 16 U.S.C.A. §§ 1538 and 1539 (2010), and ESA Regulations at 50 C.F.R. §17.3 (2010).

Beyond the summary of scoping requests and associated recommendations in this letter, we ask that the GSA continue to communicate openly and transparently with CFE/Save the Sound and all stakeholders on its timeline, decisions and process associated with the development of this EIS. I request that notices of this proceeding be forwarded to both me and Attorney Leah Schmalz at the following address and emails:

Attorney Curt Johnson (cjohnson@cfenv.org)
Attorney Leah Schmalz (lschmalz@savethesound.org)
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Again, CFE/Save the Sound has not prepared an exhaustive list of issues associated with this EIS, but instead chose to highlight our largest concerns. Therefore, we reserve the right to raise additional legal issues as the process unfolds. We look forward to continuing to work with the GSA, and thank you and your agency for the opportunity to comment.

Yours truly,



Curtis P. Johnson
Senior Attorney and Director of Programs
Connecticut Fund for the Environment and its program, Save the Sound

c.c. Mr. Matthew Fritz, office of Governor Jodi Rell
Mr. Curt Spalding, Region I Administrator, EPA
Ms. Judith Enck, Region II Administrator, EPA
Mr. Mark Tedesco, EPA LISS Office
Congresswoman Rosa DeLauro
Congressman Joe Courtney
Congressman Jim Himes
Senator Chris Dodd
Senator Joe Lieberman