Chapter 47 of the Acts of 2002

AN ACT RELATIVE TO THE ENVIRONMENTAL PROTECTION OF THE MASSACHUSETTS MILITARY RESERVATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. As used in this act, the following terms shall, unless the context otherwise requires, have the following meanings:-

"Commission", the environmental management commission established in section 4.

"Environmental performance standards", the environmental performance standards included in the final environmental impact report regarding the activities on the northern 15,000 acres of the Massachusetts military reservation, promulgated under sections 61 to 62H, inclusive, of chapter 30 of the General Laws and certified by the secretary of environmental affairs on July 16, 2001.

"Massachusetts military reservation" or "MMR", approximately 22,000 acres of land owned by the commonwealth in Barnstable county established under chapter 196 of the acts of 1935, chapters 320 and 344 of the acts of 1936, chapter 5 of the acts of 1941, chapter 665 of the acts of 1955 and chapter 617 of the acts of 1956, and used primarily for military purposes.

"Special military reservation commission", the commission provided with jurisdiction over the MMR under chapter 196 of the acts of 1935.

"Upper cape water supply reserve" or "reserve", a parcel of land within the MMR of 15,000 acres, more or less, owned by the commonwealth as described in a plan prepared by the executive office of environmental affairs and filed with the division of capital asset management and maintenance; but the reserve shall not include a portion of the parcel containing approximately 29 acres and associated corridors for providing services and underground utility services, to be used in connection with the construction and operation of a jail and house of correction as shown on the plan.

SECTION 2. The Upper Cape Water Supply Reserve shall be public conservation land and shall be dedicated to: (*a*) the natural resource purposes of water supply and wildlife habitat protection and the development and construction of public water supply systems, and (*b*) the use and training of the military forces of the commonwealth; provided that, such military use and training is compatible with the natural resource purposes of water supply and wildlife habitat protection.

SECTION 3. Notwithstanding any general or special law to the contrary, the commissioner of capital asset management and maintenance shall transfer the custody, care and control of the reserve, subject to any applicable lease agreements regarding the reserve, from the special military reservation commission to the division of fisheries and wildlife of the department of fisheries, wildlife and environmental law enforcement by August 1, 2002. The division of fisheries and wildlife of the department of fisheries, wildlife and environmental law enforcement may acquire care, custody and control of the reserve, subject to the requirements of this act and any applicable lease agreements regarding the reserve, for

natural resource purposes, as limited and further described in section 2. The transfer shall include all books, records, documents, agreements, contracts, leases and other materials necessary for the commission to operate and manage the reserve.

SECTION 4. There is hereby created within the executive office of environmental affairs an environmental management commission. The commission shall consist of the following 3 ex officio members: the commissioner of the department of fisheries, wildlife and environmental law enforcement; the commissioner of environmental management; and the commissioner of environmental protection. Notwithstanding any general or special law to the contrary, but subject to any applicable lease agreements regarding the reserve, the commission shall oversee and monitor the military and other activities on the reserve in accordance with the purposes and provisions of this act.

SECTION 5. The purpose of the commission shall be to ensure the permanent protection of the drinking water supply and wildlife habitat of the reserve. The commission shall ensure, by oversight, monitoring and evaluation, that all military and other activities on the reserve are consistent with this purpose. The commission shall oversee compliance with and enforcement of the environmental performance standards, coordinate the actions of the environmental agencies of the commonwealth in the enforcement of environmental laws and regulations at the reserve, as appropriate and facilitate an open and public review of all activities on the reserve.

SECTION 6. The commission shall be assisted by 2 advisory councils:

(*a*) a community advisory council, which shall be comprised of the following members: 1 representative of each of the towns of Falmouth, Bourne, Sandwich and Mashpee; 1 family member resident of the MMR; 2 representatives of the military; 1 representative of the Cape Cod commission; 1 representative of the Upper Cape Regional Water Supply Cooperative; 1 representative of the Wampanoag Tribe; and 5 other members to be appointed by the governor, but the town representatives shall be recommended by the towns' respective boards of selectmen; the family member resident of the MMR shall be selected from among a list of 5 persons provided by the commander of the Coast Guard Air Station Cape Cod; the military representatives shall be recommended by the military division of the commonwealth; the Cape Cod commission representative shall be recommended by the Cape Cod commission; the Upper Cape Regional Water Supply Cooperative representative shall be recommended by the Upper Cape Regional Water Supply Cooperative; and the Wampanoag Tribe representative shall be recommended by the tribal leadership. The community advisory council shall assist the commission by providing advice on issues related to the protection of the water supply and wildlife habitat on the reserve, and (*b*) a science advisory council, which shall be appointed by the governor and shall be comprised of 5 to 9 scientists and engineers who are recognized for their expertise in the areas of public health, water protection, wildlife habitat management or land use management. The science advisory council shall assist the commission by providing scientific and technical advice relating to the protection of the drinking water supply and wildlife habitat on the reserve.

SECTION 7. The powers of the commission shall include, but not be limited to, the following:-

(*a*) to hire staff, including an environmental officer;

(*b*) to enter into contracts;

(*c*) to acquire real or personal property or interests or rights therein if necessary for the management of the reserve;

(*d*) to accept funds or property from any source, public or private, including gifts, bequests, grants, contributions and settlements, judgments, fines or penalties in order to assist in the discharge of its duties;

(*e*) to expend funds from the trust fund established in section 14;

(*f*) to promulgate rules, regulations, guidelines and procedures as necessary for the administration of the commission and the advisory councils and as necessary for the effective performance of its responsibilities and duties under this act.

SECTION 8. The commission shall hire an environmental officer for the MMR. The environmental officer shall report to the commission. The duties and responsibilities of the environmental officer shall be to monitor the activities being conducted on, and the uses of, the reserve and the impact of such activities and uses on the water supply and wildlife habitat. The environmental officer shall also coordinate with appropriate personnel from the department of fisheries, wildlife and environmental law enforcement, the department of environmental management and the department of environmental protection to monitor and evaluate the environmental impact of activities conducted on and uses of the reserve. The personnel of the department of fisheries, wildlife and environmental law enforcement, the department of environmental management and the department of environmental protection shall support and assist the commission and cooperate with the environmental officer.

The environmental officer shall have an office located within the environmental readiness center or such other location on the MMR as may be appropriate to carry out his duties. The national guard shall provide such office space and allow the environmental officer, acting on behalf of the commission, regular and unrestricted access to all data and information from the various environmental and management programs and activities operating on the MMR. These programs and activities include, but are not limited to: the integrated training area management program; the integrated natural resources management plan; the integrated cultural resources management plan; Camp Edwards' standard operating procedures; and any other program or activity created by the army or the national guard for the purpose of managing or maintaining the northern 15,000 acres of the MMR. Access to data and information shall not include restricted or classified information, unless the environmental officer obtains the appropriate level of security clearance. The national guard shall use its best efforts to assist the environmental officer in obtaining the appropriate level of security clearance. The national guard shall also submit all draft and final impact area groundwater study reports to the commission for its information, as soon as they become available.

The commission, its staff and, as determined to be necessary by the commission, personnel of the department of fisheries, wildlife and environmental law enforcement, the department of environmental management and the department of environmental protection, shall access and inspect the reserve in order to monitor, oversee, evaluate and report to the commission on the environmental impact of military training and all other activities. As determined to be necessary by the commission, such access shall occur prior to, during and immediately following training or other activities upon notice, in accordance with Camp Edwards' standard operating procedures, regulations and security requirements.

SECTION 9. (*a*) The national guard shall provide the commission with an annual report describing in detail: (1) the nature and extent of military training and other activities; (2) all resource management activities; (3) the status of compliance with applicable federal and state environmental laws and regulations and the environmental performance standards; and (4) long-term trends in the major areas of resource management and activities. The commission shall make the report available to the public.

(*b*) The national guard shall notify the commission, in writing and within 2 business days after discovery, of any violation of an environmental performance standard. The notification shall include the nature and extent of the violation and any corrective action that has been taken or will be taken to return to compliance. With respect to a violation of federal or state law that is reported to a federal or state agency, the national guard shall provide the commission with a copy of any notice provided to the federal or state agency.

(*c*) The national guard shall notify the commission, in writing and within 2 business days after the discovery, of any damage or threat of damage to the drinking water supply or wildlife habitat, even if the damage results, or may result from, an activity that is otherwise compliant with law, regulation or environmental performance standards. Damage shall not include any insignificant damage to these resources, consistent with regulations promulgated by the executive office of environmental affairs pursuant to sections 61 to 62H, inclusive, of chapter 30 of the General Laws.

SECTION 10. (*a*) The commission shall evaluate all information and data regarding the activities and uses of the reserve and the environmental impact upon the drinking water supply and wildlife habitat of the reserve and may take action, as described in subsection (*b*) and (*c*). The commission may consult with the science advisory council, the community advisory council, or other entities in evaluating such information and in taking such action.

(*b*) If the commission determines that a user has violated or is violating an environmental performance standard, the commission shall notify the violator of the violation and may: (1) in the case of imminent and substantial damage, order that any activity creating a violation cease immediately, or require adjustments in the activity to eliminate the imminent and substantial damage or threat of damage; or (2) in all other cases, require the violator to return to compliance within a reasonable time and to notify the commission of the corrective action taken, including steps to ensure future compliance. Repeated or willful violations of an environmental performance standard may result in sanctions including cessation of activities.

(*c*) If the commission determines, based upon sound and accepted scientific analysis and evidence, that an activity that is otherwise compliant with law, regulation or environmental performance standards, is causing or threatens to cause imminent and substantial damage to the drinking water supply or wildlife habitat of the reserve, the commission may: (1) order such activity to cease immediately; or (2) require adjustments in the activity to eliminate the imminent and substantial damage or threat of damage.

(*d*) After consultation with the science advisory council and the community advisory council, the commission may adjust environmental performance standards based upon sound and accepted scientific analysis, monitoring data and other relevant information. The proponent of any adjustment shall bear the burden of justifying the proposed adjustment and demonstrating that the proposed adjustment is protective of the drinking water supply and wildlife habitat. If the commission determines that a proposed adjustment may be warranted and does not significantly reduce the standard of environmental protection, it shall publish a notice of availability of the proposed adjustment to the environmental performance standards in the *Environmental Monitor* published by the executive office of environmental affairs, furnish copies to all members of the community advisory council and the science advisory council, and accept public comment for a period of at least 30 days following the publication date. Thereafter, the proposed environmental performance standard will become effective on a date determined by the commission. The commission shall not consider adjustments to the environmental performance standards prior to submission of the first state of the reservation report to be filed under sections 61 to 62H, inclusive, of chapter 30 of the General Laws on or about January 1, 2003, unless such an adjustment is necessary to abate imminent and substantial damage or for national security reasons.

SECTION 11. (*a*) Prior to issuing an order or deciding an issue that does not involve imminent and substantial damage, the commission shall provide the military with an opportunity to be heard.

(*b*) If the commission issues an order to cease or adjust an activity to avoid imminent and substantial damage, the commission shall provide the military an opportunity to be heard on the matter within 2 business days after issuing the order.

(*c*) The military may request reconsideration of any decision or order of the commission by submitting its concerns in writing. The commission shall consider all such requests. The commission shall reconsider its decision or order, in light of all relevant information, and affirm, amend or reverse its decision or order and so indicate in writing within 30 days, unless such time is further extended by mutual agreement of the parties.

The Massachusetts national guard shall comply with all decisions and orders of the commission, provided such decisions or orders do not conflict with federal or state law.

The Massachusetts national guard and any other user of the reserve shall immediately cease or adjust any activity that, in the determination of the Massachusetts national guard, causes or threatens to cause imminent and substantial damage to the drinking water supply or the wildlife habitat.

In the case of an order by the commission to abate an activity that causes or threatens to cause imminent and substantial damage to the drinking water supply or wildlife habitat, the Massachusetts national guard shall cease the activity while any request for reconsideration is pending.

SECTION 12. The state environmental agencies on the commission retain all their respective, independent enforcement authority. In response to an enforcement action brought by one of the state environmental agencies, including the department of fisheries, wildlife and environmental law enforcement, the department of environmental management and the department of environmental protection, members of the commission shall work together to implement coordinated actions at the reserve. In order to avoid, minimize and mitigate any negative impacts, they shall, in good faith and where appropriate, seek comment and input from one another, the military and the public before issuing decisions or taking actions at the reserve.

SECTION 13. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Upper Cape Water Supply Reserve Trust Fund to be administered and expended by the commission. Expenditures may be made from the trust fund, without further appropriation, for the costs associated with activities deemed appropriate by the commission in furtherance of its powers as described in this act. The fund shall retain all interest earned on sums deposited. The fund may receive such funds as may be appropriated from time to time, as well as gifts and grants of money or other contributions from any source, either public or private, and settlements, judgments, fines or penalties not designated by law for other specific purposes, to be expended for the purposes of the fund.

SECTION 14. Nothing in this act shall in any way affect existing rights, duties and liabilities as they have been or may be determined in the future relating to any pollution or other contamination of the Upper Cape Water Supply Reserve, including but not limited to contamination of soil, groundwater, surface water, current or potential drinking water supplies or the existence of unexploded ordnance, whether arising under federal, state or local law, including any statute, regulation or judicial or administrative order or decision, or under any contract or lease. This act shall not be construed to lessen or alter in any way the obligation in any lease between the United States of America, acting through any of its agencies, and the commonwealth requiring that the United States, or any agency or subdivision

thereof, decontaminate lands where it terminates any lease in whole or in part. Nothing in this act shall be construed as an admission of liability for contamination of lands and waters of the reserve.

SECTION 15. Nothing in this act shall be construed to affect or modify any rights, duties, obligations or ongoing activities of the air force and coast guard within the reserve at the following locations:-

(*a*) the PAVE-PAWS site, so-called, consisting of approximately 87 acres as described in permit #DACA 51-4-81-475 issued by the United States Department of the Army to the United States Department of the Air Force; the site being a portion of land owned by the commonwealth and leased to the United States of America, represented by the Department of the Army, as described in its lease contract #DACA 51-4-81-475 and associated supplemental lease agreements; and

(*b*) the United States Coast Guard Transmitter site, so called, consisting of approximately 542 acres and shown as "Parcel P" on a plan of land entitled "Complied Plan Showing Leased Areas at Camp Edwards Military Reservation" scale 1"=2000', dated September 30, 1982, and prepared by the United States Army Corps of Engineers; the site being a portion of land owned by the commonwealth and leased to the United States of America, represented by the Department of Transportation, United States Coast Guard, as described in its lease document #31836.

SECTION 16. The Massachusetts army national guard shall have priority in the traditional training areas within the northern 15,000 acres of the MMR.

Approved March 5, 2002.

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