



# The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY- NINE

## AN ACT

### ESTABLISHING THE UPPER CAPE WATER SUPPLY RESERVE

*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.

**Definitions.** As used in this act, the following terms shall have the following meanings:

“Commission”, the Upper Cape Water Supply Commission established in section 4.

“Massachusetts Military Reservation”, approximately 22,000 acres of land primarily owned by the Commonwealth in Barnstable County established pursuant to 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.

“Special Military Reservation Commission”, the commission provided with jurisdiction over the Massachusetts Military Reservation pursuant to chapter 196 of the acts of 1935 and subsequent amendments.

"Upper Cape Water Supply Reserve" or "Reserve", a parcel of land within the Massachusetts Military Reservation, of 15,000 acres, more or less, and as described in a plan prepared by the executive office of environmental affairs which shall be prepared no later than 60 days after the effective date of this act, and filed with the division of capital asset management.

SECTION 2. The Upper Cape Water Supply Reserve shall be public conservation land protected under Article XCVII of the Amendments to the Constitution of the Commonwealth, and it shall be dedicated to purposes of water supply and wildlife habitat protection; provided, that this section shall not be deemed to require legislative approval pursuant to said Article XCVII of military activities on the Reserve that are compatible with the foregoing purposes.

SECTION 3. Notwithstanding the provisions of any general or special law to the contrary, including but not limited to 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, the commissioner of the division of capital asset management is hereby authorized and directed to transfer the custody, care, and control of the Reserve, subject to any applicable lease agreements, from the Special Military Reservation Commission to the division of fisheries and wildlife of the department of fisheries, wildlife, and environmental law enforcement by January 1, 2000. Said transfer shall include all books, records, documents, agreements, contracts, leases and other materials necessary for the Commission to operate and manage said Reserve.

SECTION 4. There is hereby created within the executive office of environmental affairs an Upper Cape Water Supply Commission. The Commission shall consist of the

following three *ex officio* members: the director of the division of fisheries and wildlife of the department of fisheries, wildlife, and environmental law enforcement; the director of the division of forests and parks of the department of environmental management; and the director of the division of watershed management of the metropolitan district commission, or their respective designees.

SECTION 5. Notwithstanding the provisions of any general or special law to the contrary, but subject to any applicable lease agreements, the Commission shall manage the Reserve in accordance with the purposes and provisions of this act. The Commission's powers shall include, but not be limited to, the following:

- (1) to hire staff, including an executive director;
- (2) to promulgate regulations for management and use of the Reserve;
- (3) to issue permits for reasonable terms for uses of the Reserve compatible with the purposes of this act, including for compatible military training;
- (4) to enter into contracts;
- (5) to impose and collect such charges, fees or assessments for the use of lands, buildings and facilities as may be necessary to defray the costs of managing and operating the Reserve, subject to the approval of the secretary of administration and finance;
- (6) to acquire real or personal property or interests or rights therein if necessary for the management of the Reserve;
- (7) to accept funds or property from any source, including gifts, bequests, grants and restitution for use of the Reserve;
- (8) to expend funds from the trust fund as established in section 7;

(9) to grant permanent easements on the Reserve to local or cooperative regional water supply entities for development, operation, and use of water supply infrastructure and to other holders of rights of way such as utilities established as of the effective date of this act; provided, that the granting of such easements shall be deemed consistent with the purposes set forth in section 2 and shall not require legislative approval pursuant to Article XCVII of the Amendments to the Constitution of the Commonwealth; and

(11) to establish by-laws.

SECTION 6. For the purpose of advising the Commission on the use of the Reserve, there shall be an Advisory Council consisting of the following members: one representative of each of the towns of Falmouth, Bourne, Sandwich, and Mashpee; one representative of the military; one representative of the Cape Cod Commission; one representative of regional water supply interests; and eight additional members. All members shall be appointed by the Governor; provided, that the town representatives shall be recommended by the towns' respective Boards of Selectmen; the Cape Cod Commission representative shall be recommended by the Cape Cod Commission; the water supply representative shall be jointly recommended by the Falmouth, Bourne, Sandwich, and Mashpee Water Supply Districts; and the military representative shall be recommended by the Military Division of the Commonwealth.

SECTION 7. Monies received by the Commission pursuant to section 5 shall be deposited in a trust account established by the Commission and may be expended without further appropriation. The Commission shall develop and submit a report on all receipts

and expenditures to the secretary of environmental affairs and the house and senate committees on ways and means on or before September 15 for the prior fiscal year.

SECTION 8. 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 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 on lands and waters of the Reserve.

SECTION 9. The Commission, with the approval of the division of capital asset management, may modify existing leases or grant new leases, which shall not require additional approval under Article XCVII of the Amendments to the Constitution of the Commonwealth other than pursuant to this act, to the United States to continue to accommodate 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 U.S. Department of the Army to the U.S. Department of the Air Force; said site being a portion of land

owned by the Commonwealth of Massachusetts and leased to the United States of America, represented by the Department of the Army, as described in its lease contract #DACA 51-5-77-127 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 "Compiled 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; said site being a portion of land owned by the Commonwealth of Massachusetts 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 10. This act shall take effect on January 1, 2000.