

The Commonwealth of Massachusetts

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 727-3600



MARGO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

October 8, 1999

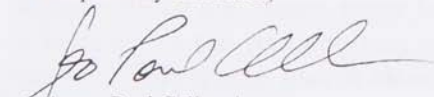
To the Honorable Senate and House of Representatives:

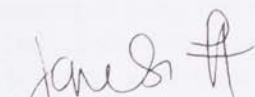
We are filing today for your consideration the attached legislation entitled "An Act Establishing the Upper Cape Water Supply Reserve." This bill designates the northern 15,000 acres of the Massachusetts Military Reservation (MMR) as conservation land protected under Article XCVII of the Amendments to the Constitution of the Commonwealth, ensuring that this unique environmental resource will forever be dedicated to purposes of water supply and wildlife habitat protection. The bill allows the National Guard to continue military activities that are compatible with the land's environmental purposes, ensuring that the National Guard will be able to continue necessary military training on the Reserve.

This bill establishes a three-member Commission, made up of state environmental officials from the Division of Fisheries and Wildlife, the Division of Forests and Parks, and the Division of Watershed Management, that will manage the Reserve, subject to any lease agreements governing the property. The Commission will be charged with ensuring that any activity on the Reserve is compatible with the Reserve's primary purposes of water supply and wildlife habitat protection, and is empowered to promulgate regulations and issue permits to that end. The bill does not in any way affect responsibilities for cleaning up existing pollution on the Reserve.

This legislation is crucial to the well-being of the people of Cape Cod who depend on the aquifer that lies beneath the Reserve, and it represents a giant step toward our goal of protecting an additional 200,000 acres of open space by the year 2010. We urge your prompt and favorable consideration of this important legislation.

Respectfully submitted,


Margo Paul Cellucci
Governor


Jane Swift
Lieutenant Governor

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:

1 SECTION 1. Definitions. As used in this act, the following
2 terms shall have the following meanings:

3 "Commission", the Upper Cape Water Supply Commission
4 established in section 4.

5 "Massachusetts Military Reservation", approximately 22,000
6 acres of land primarily owned by the Commonwealth in
7 Barnstable County established pursuant to chapter 196 of the acts
8 of 1935, chapters 320 and 344 of the acts of 1936, chapter 5 of the
9 acts of 1941, chapter 665 of the acts of 1955, and chapter 617 of
10 the acts of 1956.

11 "Special Military Reservation Commission", the commission
12 provided with jurisdiction over the Massachusetts Military
13 Reservation pursuant to chapter 196 of the acts of 1935 and subse-
14 quent amendments.

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

1 SECTION 2. The Upper Cape Water Supply Reserve shall be
2 public conservation land protected under Article XCVII of the
3 Amendments to the Constitution of the Commonwealth, and it
4 shall be dedicated to purposes of water supply and wildlife habitat
5 protection; provided, that this section shall not be deemed to
6 require legislative approval pursuant to said Article XCVII of mil-

7 itary activities on the Reserve that are compatible with the fore-
8 going purposes.

1 SECTION 3. Notwithstanding the provisions of any general or
2 special law to the contrary, including but not limited to
3 chapter 196 of the acts of 1935, chapters 320 and 344 of the acts
4 of 1936, chapter 5 of the acts of 1941, chapter 665 of the acts of
5 1955, and chapter 617 of the acts of 1956, the commissioner of
6 the division of capital asset management is hereby authorized and
7 directed to transfer the custody, care, and control of the Reserve,
8 subject to any applicable lease agreements, from the Special
9 Military Reservation Commission to the division of fisheries and
10 wildlife of the department of fisheries, wildlife, and environ-
11 mental law enforcement by January 1, 2000. Said transfer shall
12 include all books, records, documents, agreements, contracts,
13 leases and other materials necessary for the Commission to
14 operate and manage said Reserve.

1 SECTION 4. There is hereby created within the executive
2 office of environmental affairs an Upper Cape Water Supply
3 Commission. The Commission shall consist of the following three
4 *ex officio* members: the director of the division of fisheries and
5 wildlife of the department of fisheries, wildlife, and environ-
6 mental law enforcement; the director of the division of forests and
7 parks of the department of environmental management; and the
8 director of the division of watershed management of the metropol-
9 itan district commission, or their respective designees.

1 SECTION 5. Notwithstanding the provisions of any general or
2 special law to the contrary, but subject to any applicable lease
3 agreements, the Commission shall manage the Reserve in accor-
4 dance with the purposes and provisions of this act. The
5 Commission's powers shall include, but not be limited to, the fol-
6 lowing:

- 7 (1) to hire staff, including an executive director;
- 8 (2) to promulgate regulations for management and use of the
9 Reserve;
- 10 (3) to issue permits for reasonable terms for uses of the Reserve
11 compatible with the purposes of this act, including for compatible
12 military training;

13 (4) to enter into contracts;

14 (5) to impose and collect such charges, fees or assessments for
15 the use of lands, buildings and facilities as may be necessary to
16 defray the costs of managing and operating the Reserve, subject to
17 the approval of the secretary of administration and finance;

18 (6) to acquire real or personal property or interests or rights
19 therein if necessary for the management of the Reserve;

20 (7) to accept funds or property from any source, including gifts,
21 bequests, grants and restitution for use of the Reserve;

22 (8) to expend funds from the trust fund as established in
23 section 7;

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

32 (10) to establish by-laws.

1 SECTION 6. For the purpose of advising the Commission on
2 the use of the Reserve, there shall be an Advisory Council con-
3 sisting of the following members: one representative of each of
4 the towns of Falmouth, Bourne, Sandwich, and Mashpee; one rep-
5 resentative of the military; one representative of the Cape Cod
6 Commission; one representative of regional water supply inter-
7 ests; and eight additional members. All members shall be
8 appointed by the Governor; provided, that the town representa-
9 tives shall be recommended by the towns' respective Boards of
10 Selectmen; the Cape Cod Commission representative shall be rec-
11 ommended by the Cape Cod Commission; the water supply repre-
12 sentative shall be jointly recommended by the Falmouth, Bourne,
13 Sandwich, and Mashpee Water Supply Districts; and the military
14 representative shall be recommended by the Military Division of
15 the Commonwealth.

1 SECTION 7. Monies received by the Commission pursuant to
2 section 5 shall be deposited in a trust account established by the
3 Commission and may be expended without further appropriation.

4 The Commission shall develop and submit a report on all receipts
5 and expenditures to the secretary of environmental affairs and the
6 house and senate committees on ways and means on or before
7 September 15 for the prior fiscal year.

1 SECTION 8. Nothing in this act shall in any way affect existing
2 rights, duties and liabilities as they have been or may be deter-
3 mined in the future relating to any pollution or other contamina-
4 tion of the Upper Cape Water Supply Reserve, including but not
5 limited to contamination of soil, groundwater, surface water, cur-
6 rent or potential drinking water supplies or the existence of unex-
7 ploded ordnance, whether arising under federal, state or local
8 statute, regulation or judicial or administrative order or decision,
9 or under any contract or lease. This act shall not be construed to
10 lessen or alter in any way the obligation in any lease between the
11 United States of America, acting through any of its agencies, and
12 the Commonwealth requiring that the United States, or any
13 agency or subdivision thereof, decontaminate lands where it ter-
14 minates any lease in whole or in part. Nothing in this act shall be
15 construed as an admission of liability for contamination on lands
16 and waters of the Reserve.

1 SECTION 9. The Commission, with the approval of the divi-
2 sion of capital asset management, may modify existing leases or
3 grant new leases, which shall not require additional approval
4 under Article XCVII of the Amendments to the Constitution of
5 the Commonwealth other than pursuant to this act, to the United
6 States to continue to accommodate ongoing, activities of the Air
7 Force and Coast Guard within the Reserve at the following loca-
8 tions:

9 (a) the PAVE-PAWS site, so called, consisting of approxi-
10 mately 87 acres as described in permit #DACA 51-4-81-475
11 issued by the U.S. Department of the Army to the U.S.
12 Department of the Air Force; said site being a portion of land
13 owned by the Commonwealth of Massachusetts and leased to the
14 United States of America, represented by the Department of the
15 Army, as described in its lease contract #DACA 51-5-77-127 and
16 associated supplemental lease agreements; and

17 (b) the United States Coast Guard Transmitter site, so called,
18 consisting of approximately 542 acres and shown as "Parcel P" on
19 a plan of land entitled "Compiled Plan Showing Leased Areas at
20 Camp Edwards Military Reservation", scale 1" = 2000', dated
21 September 30, 1982, and prepared by the United States Army
22 Corps of Engineers; said site being a portion of land owned by the
23 Commonwealth of Massachusetts and leased to the United States
24 of America, represented by the Department of Transportation,
25 United States Coast Guard, as described in its lease document
26 #31836.

1 SECTION 10. This act shall take effect on January 1, 2000.



