



DEPARTMENT OF THE ARMY

Massachusetts Army National Guard
Army National Guard Training Site
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December 09, 2021

SUBJECT: HB 4022, An Act to protect Cape Cod's environment and water supply

The Massachusetts National Guard respectfully objects to HB 4022. Joint Base Cape Cod, formerly Massachusetts Military Reservation, has operated as a major military training site for Massachusetts and the Northeastern United States for 85 years, providing operational space and training facilities to the Massachusetts Army and Air National Guard, as well as a strategic operational location for the Active Duty United States Air Force and the United States Coast Guard.

The historic use of high explosive munitions, which are no longer used, and other past practices, which no longer take place, over decades of military training resulted in soil and groundwater contamination that required significant remediation. The base was designated a "Superfund" site by the federal government and significant federal and state funds have and continue to be invested in remediation and restoration with notable successes. Joint Base Cape Cod, guided by Chapter 47 is a national success story for identifying and comprehensively responding to environmental contamination while providing for compatible military training within a sensitive environmental zone consistent with the conservation, training, and public safety missions of the US Department of Defense.

Chapter 47 of the Acts of 2002 is an important waypoint in the history of Joint Base Cape Cod. The legislation clearly established a dual usage for the northern 15,000 acres of the property also known as the Upper Cape Water Supply Reserve

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(Reserve): one, the protection of the water supply and wildlife habitat and construction of water supply systems and; two, "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 habit protection."

Chapter 47 Acts of 2002, sect. 2. Moreover, Chapter 47 created a framework for environmental management to govern the use and environmental protection of the property: the Division of Fisheries and Wildlife; the Environmental Management Commission (EMC), the Science Advisory Council (SAC), and the Community Advisory Council (CAC).

The development of Chapter 47 of the Acts of 2002 established the EMC and the Environmental Performance Standards (EPS) and was implemented with broad stakeholder engagement in formal committees and numerous public meetings to ensure the most constructive and protective structure of the Reserve. The proposed legislation (HB4022) included no such stakeholder engagement or transparent coordination to provide for the success of all primary tenets of Chapter 47 forgoing any open engagement of state wildlife and groundwater agencies.

There is no demonstrable need for the proposed change to Section 5 (HB4022) of Chapter 47. Outlined parties in paragraph two are already included in the EMC process, to include the Cape Cod Commission and Upper Cape Regional Water Supply Cooperative. Public participation through open meeting laws already exists with multiple EMC, SAC, and CAC meetings each year. Detailed environmental review processes, including the Massachusetts Environmental Protection Act (MEPA) (301

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CMR 11.00), are followed in full and a reduced MEPA threshold already exists for more detailed scrutiny of projects within the Reserve. Projects such as the proposed Multipurpose Machine Gun Range received full review through MEPA and National Environmental Policy Act (NEPA), including broad stakeholder notification at multiple steps of the process and supplemental review and permitting, ultimately receiving a MEPA Certificate from the Secretary of Energy and Environmental Affairs, a Conservation and Management Permit under the Massachusetts Endangered Species Act, and supportive stakeholder letters from the Cape Cod Commission, Environmental Management Commission, and others.

Protection of wildlife habitat requires extensive monitoring and active management of pine barrens and other natural communities in coordination with state and federal agencies and overseen by professional conservation biologists. The proposed legislation includes poorly defined and inflammatory language targeted at forestry and other management actions. It is in direct conflict with comprehensive regional conservation plans for rare species and ecosystem conservation that holistically manage for habitat improvement, increased climate resilience, and overall ecosystem health.

The very purpose of the EMC is to ensure the permanent protection of the drinking water supply and wildlife habitat of the Upper Cape Water Supply Reserve and to that end exercises oversight and control to ensure that all military operations and activities in the Reserve are consistent with the purpose of the statute. The EMC oversees compliance with and enforcement of the environmental performance

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standards, coordinates the actions of the environmental agencies of the commonwealth in the enforcement of environmental law and regulations at the Reserve, and facilitates an open and public review of all activities in the Reserve.

In keeping with the spirit and the letter of Chapter 47, the Massachusetts National Guard has established and maintains an extensive environmental protection office. This office implements robust programs for environmental compliance, proactive conservation, and groundwater remediation. Moreover, all the activities of the Massachusetts National Guard in the Upper Cape Water Supply Reserve have been and remain subject to the review and approval of the EMC. The Massachusetts Army National Guard and Joint Base Cape Cod have embraced and fully participate in the EMC process as it ensures a long-term sustainable training site for generations of soldiers, is consistent with the combined mission of soldier training with landscape conservation, and makes the installation and Massachusetts National Guard a more effective and resilient force.

HB 4022 offers to amend Chapter 47 to address any proposal that impacts in any manner ten (10) or more acres of land and conditions the EMC's statutory authority upon the approval of the CAC, the SAC, the Upper Cape Regional Water Supply Cooperative, and the Cape Cod Commission after each has made a finding of its own on the relative worth of a proposed project.

The proposed amendment diminishes the statutory authority of the EMC by requiring other entities – all of which have ample opportunity to comment on proposed

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actions under the present terms of Chapter 47 – to individually evaluate and approve projects. This framework is cumbersome, redundant and therefore unnecessary.

Moreover, the application of a blanket standard to implement a Full Environmental Impact Report (EIR) under MEPA is capricious and counter-productive to the interests of the Commonwealth and Upper Cape Water Supply Reserve. A reduced MEPA threshold already exists within the Reserve as described above and full coordination with the MEPA office of the Executive Office of Energy and Environmental Affairs already exists with detailed review implemented by regulatory specialists. 310 CMR 11.03.

In sum, Chapter 47 of the Acts of 2002 provides a mechanism of oversight that has successfully guided the use and management of Joint Base Cape Cod for nearly two (2) decades; provides access for public commentary; and ensures application of environmental laws and practices in the Upper Cape Water Supply Reserve that are consistent with prevailing law, rules, and regulations that govern environmental management of construction projects for state and private entities within the Commonwealth.

HB 4022 will diminish statutory authority of the Environmental Management Commission, unnecessarily expand the mechanism for environmental review of military projects, and ultimately will severely degrade Chapter 47 and the Upper Cape Water Supply Reserve through unnecessarily burdensome environmental review that will stall wildlife habitat conservation and groundwater remediation efforts. The blanket application of a full EIR standard for all projects greater than 10 acres will not serve to

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increase protection, but will impair and paralyze the award winning conservation and remediation programs that exist and operate successful partnerships with other state agencies to ensure the greatest possible success and quality of the Upper Cape Water Supply Reserve.

Point of Contact is the undersigned at Matthew.n.porter.mil@army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Porter', with a stylized flourish at the end.

Matthew N. Porter
Camp Edwards, Base Operation Manager