

**GET Committee**

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**From:** Porter, Jeff <JRPorter@mintz.com>  
**Sent:** Friday, May 03, 2019 6:56 AM  
**To:** GET Committee  
**Cc:** Michael Sharlet  
**Subject:** GET-26 Hawaii Wildlife, et al. v. County of Maui  
**Attachments:** MauiTestimony.pdf

Dear Chair Molina,

Please find attached testimony on behalf of my Massachusetts resort and condominium clients that have been battered by a "citizens suit" over the treated effluent from their state permitted tertiary wastewater treatment facility. My clients are grateful for what the County of Maui has done, and hopefully will continue to do, to end the hardship they are suffering.

Very truly yours,

Jeff

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May 3, 2019

***Via Email***

Kelly King, Council Chair  
County of Maui  
Kalana O Maui Building, 8th floor  
200 S. High St.  
Wailuku, Hawai'i 96793  
[kelly.king@mauicounty.us](mailto:kelly.king@mauicounty.us)

Dear Chair King, Vice Chair Rawlins-Fernandez, and County Council Members,

My clients own and operate the Wychmere Beach Club, a small resort and residential condominium complex in Harwich Port, Massachusetts. They implore the County of Maui to continue its appeal of the Ninth Circuit's decision in *County of Maui v. Hawai'i Wildlife Fund* so that the United States Supreme Court can consider the viability of the "hydrologic connection" theory that is also the sole basis for a citizen suit by the Conservation Law Foundation pending against my clients in Federal Court in Massachusetts. If my clients are denied the Supreme Court's review of this theory, they and countless septic system owners in the Commonwealth of Massachusetts will be forced to continue to defend expensive and protracted federal litigation.

Contrary to what we have read in recent media reports, your case is not about "gutting the Clean Water Act." It is about rejecting a flawed interpretation of the Act which frustrates the Clean Water Act's stated purpose of leaving land use regulation to the states.

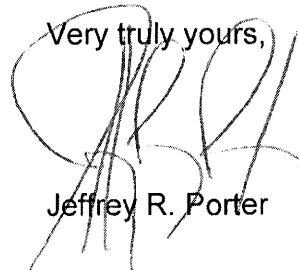
All of the Wychmere Beach Club's sanitary sewage is treated in a tertiary treatment facility permitted by the Massachusetts Department of Environmental Protection (DEP) under the Massachusetts Clean Waters Act and its implementing regulations. Effluent from the treatment facility is treated to meet Massachusetts DEP's standards before it is conveyed to one of twenty-two concrete leaching pits surrounded by crushed stone in the ground. Both the Federal Environmental Protection Agency (EPA) and the Massachusetts DEP have concluded that the Wychmere Beach Club's waste water treatment facility is not a point source subject to EPA jurisdiction under the Federal Clean Water Act. The Conservation Law Foundation disagrees with EPA's and Massachusetts DEP's conclusion, alleging that the discharge of treated effluent to leaching pits surrounded by crushed stone is a discharge of a "pollutant or combination of pollutants" violating the Clean Water Act by failing to have a National Pollutant Discharge Elimination System (NPDES) permit because there is a "direct

hydrogeological groundwater connection" between groundwater under the Wychmere Beach Club and Wychmere Harbor, a Water of the United States. Of course EPA would not issue a NPDES permit to my clients based on its interpretation of the Clean Water Act.

My clients have been looking forward to the opportunity to submit an *amicus* brief to the Court in the *Maui* litigation. They have already incurred significant expense as a result of the Conservation Law Foundation's allegations. Without the Supreme Court's review, my clients will continue to endure the backbreaking expense of the litigation pending against them, and every owner of every septic system on Cape Cod will live under the threat of such litigation. So will every owner of every resort and other business in Maui that uses a septic system or treatment facility to dispose of its wastewater.

We respectfully request that this communication be entered as testimony in the Council's consideration of matters related to *Hawaii Wildlife et al. v. County of Maui*, U.S. Supreme Court Docket No. 18-260. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



Jeffrey R. Porter

cc: Keani Rawlins, Vice Chair, [Keani.Rawlins@mauicounty.us](mailto:Keani.Rawlins@mauicounty.us)  
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