

COUNTY COUNCIL OF CECIL COUNTY, MARYLAND  
LEGISLATIVE SESSION DAY – 13-10

RESOLUTION NO. 45-2013

**Title of Resolution:** Agreement--Nutrient Credits—Conowingo Mobile Home Properties

**Synopsis:** A Resolution approving a Nutrient Credit Transfer Agreement between Cecil County, Maryland, a body corporate and politic, and Conowingo Mobile Home Properties, LLC, a Maryland limited liability company, in accordance with the Maryland Department of the Environment Water Management Administration's *Maryland Policy for Nutrient Cap Management and Trading in Maryland's Chesapeake Bay Watershed*, pursuant to which, and subject to approval of the Maryland Department of the Environment, Conowingo Mobile Home Properties, LLC will permanently relinquish 105 lbs/yr of TN, from which Cecil County, Maryland will accept 100 lbs/yr of TN, with 5 lbs/yr of TN retired, and Cecil County, Maryland will relinquish 50 lbs/yr of TP from the North East River Advanced Waste Water Treatment Plant, from which Conowingo Mobile Home Properties, LLC will accept 47 lbs/yr of TP to be applied solely toward compliance with the phosphorous load limit applicable to the Conowingo Waste Water Treatment Plant, with 3 lbs/yr of TP retired.

**Introduced by:** Council President on behalf of the County Executive

**Introduced and ordered posted on:** May 21, 2013

**Scheduled for consideration on :** June 4, 2013

Notice and title of Resolution having been posted by May 24, 2013 at the County Administration Building, 200 Chesapeake Blvd., Elkton and consideration by the Council having been scheduled on June 4, 2013.

By: James Massey  
Council Manager

1           **WHEREAS**, the Maryland Department of the Environment (“MDE”) Water Management  
2 Administration's *Maryland Policy for Nutrient Cap Management and Trading in Maryland's Chesapeake*  
3 *Bay Watershed* (the “Policy”), establishes an approach for trading between point sources and trading  
4 involving the removal of onsite sewage disposal systems; and

5           **WHEREAS**, Conowingo Mobile Home Properties, LLC (“Conowingo”) will replace an OSDS serving  
6 a 129-unit mobile home community located within the jurisdictional limits of Cecil County, Maryland  
7 with a new wastewater treatment plant with a design treatment capacity of 15,000 gallons per day (the  
8 “Conowingo WWTP”); and,

9           **WHEREAS**, pursuant to the Policy and as demonstrated by MDE calculations shown on the MDE  
10 worksheet attached as Exhibit A to the Nutrient Credit Transfer Agreement (the “Agreement”), in  
11 recognition of Conowingo’s contributions to water quality that will be achieved by the retirement of the  
12 OSDS, Conowingo to will generate Total Nitrogen (“TN”) credits in the amount of 504 pounds per year  
13 (“lbs/yr”) due to the retirement of the OSDS being used in accordance with Maryland law relating to  
14 MEDAAF, namely, Sections 5-301 through 5-349 of the Economic Development Article of the Annotated  
15 Code of Maryland, inclusive, for the purposes set forth in the application described in the Agreement; and

16           **WHEREAS**, pursuant to the Policy, Conowingo will not generate any Total Phosphorus (“TP”) credits  
17 due to the retirement of the OSDS; and

18           **WHEREAS**, the Conowingo WWTP is subject to a state-issued National Pollutant Discharge  
19 Elimination System (“NPDES”) discharge permit, which establishes annual nutrient load limits applicable to  
20 the Conowingo WWTP’s discharge as follows: 399 lbs/yr of TN and 47 lbs/yr of TP (as the same may be  
21 modified or amended, the “Conowingo to WWTP Permit”); and

22           **WHEREAS**, based on the design capacity and treatment efficiency of the Conowingo WWTP and the  
23 above nitrogen limit based on the amount of nitrogen credits generated by the retirement of the OSDS,  
24 Conowingo expects the Conowingo WWTP to generate nitrogen credits in the amount of 105 lbs/yr; and

25           **WHEREAS**, based on the design capacity and treatment efficiency of the Conowingo WWTP and,  
26 consistent with the Policy, a requirement to fully offset the anticipated phosphorus discharge of 45 lbs/yr,  
27 Conowingo requires phosphorus credits in the amount of 45 lbs/yr; and

28           **WHEREAS**, Cecil County, Maryland, a body corporate and politic (the "County") owns and operates  
29 an existing wastewater treatment plant known as the Northeast River Advanced Wastewater Treatment  
30 Plant (the "NERA WWTP"), located at 123 Carpenter's Point Road, Perryville, Maryland; and

31           **WHEREAS**, the NERA WWTP is subject to a state-issued NPDES discharge permit, which  
32 establishes an annual nitrogen limit of 24,364 lbs/yr and an annual phosphorus limit of 1,827lbs/yr  
33 (the "NERA WWTP Permit"); and

34           **WHEREAS**, based on the design capacity and treatment efficiency of the NERA WWTP, the County  
35 expects the NERA WWTP to generate phosphorus credits in the amount of at least 50 lbs/yr; and

36           **WHEREAS**, Conowingo has offered to permanently reduce 105 lbs/yr of TN from its available  
37 credits to provide TN credit for this Agreement, and in exchange, the County has offered to permanently  
38 reduce 50 lbs/yr of TP from NERA WWTP to provide TP credit for this Agreement; and

39           **WHEREAS**, in order to effectuate the transfer of nitrogen and phosphorus credits as desired by  
40 Conowingo and the County, MDE will modify the NERA WWTP discharge permit (MD0052007)  
41 concurrently with the issuance of the Conowingo WWTP discharge permit (MD0071374), to include the  
42 above information about nutrient trading; and

43           **WHEREAS**, the County will update the Master Water and Sewerage Plan dated August, 2004 (the  
44 "Master Plan") in order to affirm the consistency of the transfer contemplated by this Agreement with  
45 the County's infrastructure planning; and

46           **WHEREAS**, Conowingo and the County are desirous of taking all reasonable steps necessary, as  
47 described in the Agreement, to effectuate the terms thereof.

48           **NOW THEREFORE, BE IT HEREBY RESOLVED** that the County Council of Cecil County, Maryland  
49 hereby approves the terms as set forth in the abovementioned Nutrient Credit Agreement;

50           **AND BE IT FURTHER RESOLVED** that the County Executive be, and she is hereby authorized, to  
51 execute the abovementioned Nutrient Credit Agreement and to bind the County thereto.

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53 INTRODUCED:           May 21, 2013          

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55 ADOPTED:           June 4, 2013          

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Agreement--Nutrient Credit—Conowingo Mobile Home Properties

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\_\_\_\_\_  
President of the Council

ATTEST:

  
\_\_\_\_\_  
Council Manager

By the Executive:

  
\_\_\_\_\_  
County Executive

6/15/13  
\_\_\_\_\_  
Date

**NUTRIENT CREDIT TRANSFER AGREEMENT**

THIS NUTRIENT CREDIT TRANSFER AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), by and between CECIL COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (the "County"), and CONOWINGO MOBILE HOME PROPERTIES, LLC, a Maryland limited liability company ("Conowingo").

**BACKGROUND**

WHEREAS, the Maryland Department of the Environment ("MDE") Water Management Administration's *Maryland Policy for Nutrient Cap Management and Trading in Maryland's Chesapeake Bay Watershed* (the "Policy"), establishes an approach for trading between point sources and trading involving the removal of onsite sewage disposal systems ("OSDS"); and

WHEREAS, Conowingo will replace an OSDS serving a 129-unit mobile home community located within the jurisdictional limits of the County with a new wastewater treatment plant with a design treatment capacity of 15,000 gallons per day (the "Conowingo WWTP"); and

WHEREAS, pursuant to the Policy and as demonstrated by the calculations shown on the MDE worksheet attached hereto as Exhibit A, in recognition of Conowingo's contributions to water quality that will be achieved by the retirement of the OSDS, Conowingo will generate Total Nitrogen as N (TN) credits in the amount 504 pounds per year ("lbs/yr") due to the retirement of the OSDS; and

WHEREAS, pursuant to the Policy, Conowingo will not generate any Total Phosphorus as P (TP) credits due to the retirement of the OSDS; and

WHEREAS, the Conowingo WWTP is subject to a state-issued National Pollutant Discharge Elimination System (NPDES) discharge permit, which establishes annual nutrient load limits applicable to the Conowingo WWTP's discharge as follows: 399 lbs/yr of TN and 47 lbs/yr TP (as the same may be modified or amended, the "Conowingo WWTP Permit"); and

WHEREAS, based on the design capacity and treatment efficiency of the Conowingo WWTP and the above nitrogen limit based on the amount of nitrogen credits generated by the retirement of the OSDS, Conowingo expects the Conowingo WWTP to generate nitrogen credits in the amount of 105 lbs/yr; and

WHEREAS, based on the design capacity and treatment efficiency of the Conowingo WWTP, and, consistent with the Policy, a requirement to fully offset the anticipated phosphorus discharge of 45 lbs/yr, Conowingo requires a phosphorus credits in the amount of 45 lbs/yr; and

WHEREAS, the County owns and operates an existing wastewater treatment plant known as the Northeast River Advanced Wastewater Treatment Plant (the "NERA WWTP"), located at 123 Carpenter's Point Road, Perryville, Maryland; and

WHEREAS, the NERA WWTP is subject to a state-issued NPDES discharge permit, which establishes an annual nitrogen limit of 24,364 lbs/yr and an annual phosphorus limit of 1,827 lbs/yr (the "NERA WWTP Permit"); and

WHEREAS, based on the design capacity and treatment efficiency of the NERA WWTP, the County expects the NERA WWTP to generate phosphorus credits in the amount of at least 50 lbs/yr; and

WHEREAS, Conowingo has offered to permanently reduce 105 lbs/yr of TN from its available credits to provide TN credit for this Agreement, and in exchange, the County has offered to permanently reduce 50 lbs/yr of TP from NERA WWTP to provide TP credit for this Agreement; and

WHEREAS, in order to effectuate the transfer of nitrogen and phosphorus credits as desired by Conowingo and the County, MDE will modify the NERA WWTP discharge permit (MD0052007) concurrently with the issuance of the Conowingo WWTP discharge permit (MD0071374), to include the above information about nutrient trading.

WHEREAS, the County must also update the Master Water and Sewerage Plan dated August, 2004 (the "Master Plan") in order to affirm the consistency of the transfer contemplated by this Agreement with the County's infrastructure planning; and

WHEREAS, Conowingo and the County are desirous of taking all reasonable steps necessary, as described herein, to effectuate the terms hereof.

NOW, THEREFORE, in consideration of the representations, warranties, and covenants set forth in this Nutrient Credit Transfer Agreement, Conowingo and the County mutually agree as follows:

AGREEMENT

**SECTION 1. NUTRIENT CREDIT TRANSFERS**

(a) All of the prefatory paragraphs are included herein as a substantive part of this Agreement.

(b) Beginning on the Effective Date and subject to approval of the MDE, Conowingo hereby permanently relinquishes 105 lbs/yr of TN, from which the County accepts 100 lbs/yr of TN with 5 lbs/yr of TN retired as per the Policy.

(c) Beginning on the Effective Date and subject to approval of the MDE, the County permanently relinquishes 50 lbs/yr of TP from the NERA WWTP, from which Conowingo accepts 47 lbs/yr of TP to be applied solely toward compliance with the phosphorus load limit applicable to the Conowingo WWTP with 3 lbs/yr of TP retired as per the policy. In the event that Conowingo were to decommission the Conowingo WWTP in the future, the phosphorous credit may be reverted to the County after the approval from MDE and upon completion of the public participation process.

(d) In consideration of the unique circumstances described above, in addition to the mutual covenants and conditions set forth herein, there shall be no monetary charge between Conowingo and the County for the transfers of the nitrogen and phosphorus credits described in this Agreement.

(e) Within sixty (60) days of the Effective Date of this Agreement, in accordance with the Policy and as required by COMAR 26.08.04.10, each party shall notify MDE as follows:

(1) County shall submit application to modify the NERA WWTP discharge permit to expressly approve and authorize the nutrient credit transfers contemplated by this Agreement.

(2) Conowingo shall submit additional documents, if applicable, in supporting of the application for the Conowingo WWTP NPDES permit to expressly approve and authorize the nutrient credit transfers contemplated by this Agreement.

(3) Other than as specifically stated herein, each of Conowingo and the County shall be solely responsible for any governmental permits and approvals necessary for the accomplishment or completion of its responsibilities under this Agreement.

(f) Conowingo and the County shall each use reasonable efforts to help obtain approval by MDE of the transfers contemplated by this Agreement. In the event that MDE does not approve such transfer, neither party shall be required to appeal MDE's non-approval and instead shall retain sole discretion as to whether to pursue further review by means of an administrative or judicial proceeding.

(g) Simultaneously with the application to MDE described above, the County shall initiate the process to amend the Master Plan to reflect conformance of the transfers contemplated by this Agreement as well as updating the type of wastewater treatment process to be applied to Conowingo. The draft amendment of the Master Plan shall be submitted to MDE as part of the documentation in the application specified in Section 1.e(2) of the Agreement as mentioned above.

## **SECTION 2. DEFAULTS AND REMEDIES**

(a) Event of Default. In the event that Conowingo fails to comply with the terms of this Credit Transfer Agreement, the County may, at its option, declare this Credit Transfer Agreement null and void, exercise all rights the County may have at law or in equity, and seek a determination of default or redress from the Circuit Court of Cecil County, Maryland. In the event of a default by the County, Conowingo shall have the right of any available remedy in law or equity.

(b) Remedies Cumulative. No remedy reserved to any party under this Agreement is intended to be exclusive of any other available remedy or remedies but each remedy shall be cumulative and shall be given under this Agreement, at law, in equity, or by statute. Delay or omission to exercise any right or power accruing upon any failure by either party to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the other party shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, by injunction or other appropriate legal or equitable remedy, strict compliance by the other party with all of the covenants and conditions of this Agreement.

## **SECTION 3. AUTHORITY TO SIGN**

Each party to this Agreement certifies that this Agreement has been duly authorized and approved by all required organizational action of that party. The person executing this Agreement on behalf of the each party certifies that he or she has the legal and organizational authority to do so.

## **SECTION 4. MISCELLANEOUS**

(a) Notices. Any notice or other communication pursuant to this Agreement shall be in writing and shall be deemed to have been duly given or made to the party entitled to notice when personally delivered on the third business day after being mailed by United States Registered or Certified Mail, postage prepaid, to the following addresses:

If to County:                      Alfred C. Wein, Jr.  
   County Administrator  
   200 Chesapeake Blvd., Suite 2100  
   Elkton, MD 21921



With a copy to: Jason L. Allison  
County Attorney  
157 East Main St.  
Elkton, MD 21921

With a copy to: W. Scott Flanigan  
Director, Cecil County Department of Public Works  
200 Chesapeake Blvd., Suite 2400  
Elkton, MD 21921

Conowingo: Conowingo Mobile Home Properties, LLC  
Attn: Bernard Brown, III  
124 Mt. Zoar Road  
Conowingo, MD 21918

With a copy to: Brown, Brown & Young  
Attn: Albert J. Young  
200 South Main Street  
Bel Air, MD 21014  
Facsimile: 410-893-0402

Or to such other address as each party may hereafter specify in writing to the other party.

(b) Entire Agreement: Amendments: Beneficiaries. Except as expressly set forth herein, this Agreement constitutes the entire agreement between the parties and contains all of their representations, warranties, covenants, or obligations. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties relating to any transaction contemplated by this Agreement. The rights and obligations of the parties under the Agreement shall inure solely to the benefit of and be binding upon their respective successors and permitted assigns.

(c) Severability. In the event any provision of this Agreement or application of any provision is held invalid for any reason or reasons, such invalidity shall not affect the other provision or the applications hereto which can be given effect without the invalid provisions or application. To this end, all the provisions of this Agreement are deemed to be severable, each from the other.

(d) Enumeration and Headings. The enumerations and headings contained in this Agreement are for convenience of reference only and do not form any part of this Agreement.

(e) Counterparts. This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, each of which when so executed and delivered will

be deemed an original document, but all of its counterparts together will constitute one and the same instrument.

(f) Choice of Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Maryland. The parties agree that any cause arising hereunder shall be subject to the jurisdiction of the Circuit Court for Cecil County, Maryland.

(g) Change in Law. In the event of any material change, prior to MDE's modification of the respective NDPES permits of the parties, in applicable laws or regulations that informed either Conowingo's or the County's desire to enter into this Agreement, then Conowingo and the County shall work together to amend this Agreement to conform to such change, while maintaining as closely as practical the provisions and intent of this Agreement.

(h) Assignment. Neither Conowingo nor the County shall transfer or assign this Agreement, or any of its respective rights or obligations herein, without the prior written consent of the other.

(i) Mutual Cooperation. Conowingo and the County shall continue to cooperate with each other as reasonably necessary to accomplish the transfers contemplated by this Agreement in accordance with applicable laws and regulations, including the NPDES permits.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ATTEST:

By: Bernard Brown III

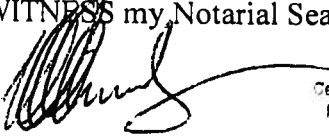
Bernard Brown, III  
Conowingo Mobile Home Properties, LLC

Date: April 4, 2013

STATE OF MARYLAND, COUNTY OF CECIL, to wit:

I HEREBY CERTIFY, that on this 4<sup>th</sup> day of April, 2013, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Bernard Brown, III, known to me or satisfactorily proven to be the individual whose name is subscribed to the foregoing instrument, who acknowledged himself to be the member of CONOWINGO MOBILE HOME PROPERTIES, LLC, a Maryland corporation (the "Corporation"), and that he, as such member, being authorized to do so, executed the foregoing Nutrient Credit Transfer Agreement on behalf of the Corporation by signing the name of the corporation by himself as such \_\_\_\_\_.

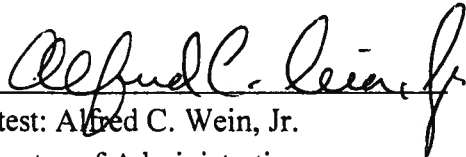
AS WITNESS my Notarial Seal.

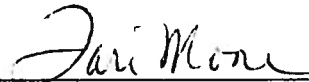


Embossed Hereon is My  
Cecil County, Maryland Notary Public Seal  
My Commission Expires April 28, 2014  
JAMES J. MACKEPFRANG

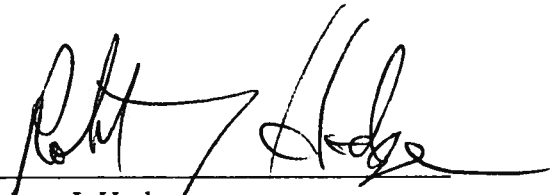
NOTARY PUBLIC

FOR CECIL COUNTY, MARYLAND:

  
Attest: Alfred C. Wein, Jr.  
Director of Administration

  
Tari Moore  
County Executive

  
Attest: James Massey  
Council Manager

  
Robert J. Hodge  
President, County Council

**Proposed Nutrient Load Allocations for the proposed Conowingo Mobile Home Court (MHC) WWTP:**

Entity	Total Nitrogen (TN) Credits (lbs/yr)		Total Phosphorus (TP) Credits (lbs/yr)	
	Acquire	Provide	Acquire	Provide
Conowingo MHC	504 <sup>(1)</sup>	105 <sup>(3)</sup>	46 <sup>(2)</sup>	0
Cecil County	100 <sup>(3)</sup>	0	0	48 <sup>(3)</sup>

<sup>1</sup>The permittee shall totally eliminate and connect 129 OSDSSs at the Conowingo MHC to the proposed WWTP. As per the Departmental guidelines "Maryland's Policy for Nutrient Cap Management and Trading in Maryland's Chesapeake Bay Watershed" (the Policy), decommissioning total 129 units of OSDSSs entirely at the MHC would generate TN credit of 504 pounds/year for the WWTP, summarized as follows:

Location of Septic System	TN Credits, lbs/yr/household N credit	No of Septic Systems	Nitrogen Credits (lbs/yr)
Within 1,000 ft from Stream	5.8	23	(5.8*23) = 133.4
All other	3.5	106	(3.5*106) = 371
<b>Total</b>		<b>129</b>	<b>504.4</b>

<sup>2</sup>The permittee will acquire waste load of 46 pounds/year for TP from the Cecil County Department of Public Works (CCDPW) to offset TP annual load required for the WWTP. The number is based on Biological Nutrient Removal level of treatment with phosphorus removal capability of 1 mg/L (1 mg/L \* 8.34 \* 0.015 MGD \* 365 days/year = 46 pounds/year). In exchange, the CCPDW have agreed to get a credit of 100 pounds/year annual load for TN from the Conowingo MHC WWTP.

<sup>3</sup>Based on the Policy, the Department will retire 5% of the nutrient waste loads, stated above in 2, for transfer detailed as follows:

For TN:

- TN Load Reduction from the WWTP (100 lbs/yr + 5 lbs/yr) = 105 lbs/yr
  - TN transferred to Cecil County Dept. Public Works (CCDPW) in exchange for TP credit = 100 lbs/yr
  - Department Retirement Ratio (5%) = 5 lbs/yr
- Potential TN WLA credits to be available to the WWTP (504 lbs/yr - 105 lbs/yr) = 399 lbs/yr

For TP:

- Potential TP credit to be acquired through Agreement with CCDPW (48 lbs/yr - 2 lbs/yr) = 46 lbs/yr
  - Potential Reduction of TP WLA at Northeast WWTP for trade = 48 lbs/yr
  - Department Retirement Ratio (5%) - 2 lbs/yr

**Proposed Nutrient Load Allocations for the proposed Conowingo Mobile Home Court (MHC) WWTP:**

Entity	Total Nitrogen (TN) Credits (lbs/yr)		Total Phosphorus (TP) Credits (lbs/yr)	
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For TN:

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- Potential TN WLA credits to be available to the WWTP (504 lbs/yr - 105 lbs/yr) = 399 lbs/yr

For TP:

- Potential TP credit to be acquired through Agreement with CCDPW (48 lbs/yr - 2 lbs/yr) = 46 lbs/yr
  - Potential Reduction of TP WLA at Northeast WWTP for trade = 48 lbs/yr
  - Department Retirement Ratio (5%) = 2 lbs/yr