The following information was gathered by the Task Force through a combination of research and interviews with lawyers and the county staff.

**COVENANTS**

At what level of government or law do covenants reside (e.g. local, state, federal)?

*Answer*

None, covenants are an agreement between parties. There are two major types of covenants:

1. **Contractual Covenants** - Essentially an agreement between multiple parties (e.g. developer and landowners). Contractual Covenants are the type used for older communities with covenants established prior to the MD Home Owners Act.

2. **Covenants that Originated from the MD Home Owners Act.**

Can a law be passed allowing Property / Home Owners Associations with “Contractual Covenants” to petition Calvert County Commissioners to grant replacement of such covenants with modern covenants that compile with Home Owners Association Act and also meet a set of mandatory minimum requirements?

*Answer*

This is not feasible. The Constitution (of the United States) prohibits any State action that would impair contractual obligations.

Does any level of government (e.g. County, State, Federal) or law have the authority to override covenants?

*Answer*

Generally speaking No. It is difficult to change contractual covenants because they are an agreement between parties - not a local, state, or federal law and the Constitution (of the United States) prohibits any state action that would impair contractual obligations. Covenants can even be more restrictive than even local ordinances and laws. A covenant can be declared unconstitutional. Because covenants are an agreement between parties, the means to change them varies on a case by case basis. Generally, the more parties involved the harder it is to change a covenant.

Is it possible to just abandon or dissolve covenants?

*Answer*

**Abandoning** - A covenant can be declared null and void if not enforced over time; there is precedent in doing so. There does not seem to be any pre-determined amount of time that must pass (i.e. Statute of Limitation) before a covenant can be deemed “Abandoned”. It tends to vary on a case by case basis. Abandonment can best be used for Contractual Covenants. It would be difficult to abandon an entire set of covenants.

Note - A case was discussed concerning abandonment of covenant where collection of fees was concerned. However, in that case the collection covenant was upheld because the particular covenants were established under the Maryland Homeowners Act.

**Dissolution** - It would require 100% agreement among all parties OR changing the covenants to a “dissolved” status by following “How to change the covenants” as outlined in the covenants themselves. (e.g. For many communities this would mean 50% plus one of the property owners voting in favor).
ATTACHMENT 3

FREQUENTLY ASKED QUESTIONS

Can the state pass legislation specifically for Calvert County (similar to the Special Tax District Legislation) to address covenant problems?

Answer
As discussed above, not retroactively.

It is possible to enact legislation requiring that future community covenants meet a minimum standard. The Home Owners Association Act might already address some things.

Is there a sustainable argument to superseded covenants based on a “Vitality of Community” to change covenants?

Answer
No - For reasons as discussed above

Is it feasible to pass Planning and Zoning legislation that requires new subdivision covenants / governing documents to meet mandatory minimum requirements for all Common Interest Property Communities or Home Owners Association, as defined under Maryland Home Owners Association Statutes, in Calvert County (or possibly even the state). Such mandatory minimum requirements could ensure adequate current and future funding provisions for the administration, maintenance, long term care, and management of privately owned infrastructures.

Answer
Answer - Could possibly have state legislation or local law (Planning and Zoning) if political climate was right.

How are covenants enforced?

Answer
Any one can enforce a covenant; it is not just the responsibility of the Property / Home Owners Association. This is because the covenants are an agreement among all parties. So if one owner violates a covenant, another can take him to court for enforcement.

FUNDING

Can public money be re-directed and spent for use in private communities? Can public funds or state shared revenues be used to improve community wide privately owned infrastructure?

Answer
Yes - Under certain circumstances. See Section III of the report for further details.

Is it feasible for the county to return portions of the collected Franchise Fees (Comcast) to the “private” communities who own the road rights of way?

Answer:
Such an arrangement is possible. An agreement would have to be entered into regulating use of funds. See section III of the report.
ATTACHMENT 3

FREQUENTLY ASKED QUESTIONS

Please clarify the purpose of the following programs; Rural Legacy, Land Buy Back, Program Open Space. Is it feasible to use these programs to purchase more community open space with the emphasis on vacant lots that could be used for parks, recreation, improvements in Storm Water Management, road improvements, etc?

**Answer:**

**Rural Legacy:**
- Main goal is to preserve large contiguous tracts of land.
- It is a state-approved process.
- Could not be used for purpose(s) stated in question above.

**Land Buy Back:**
- Goal - To preserve open space by purchasing it.
- Created and defined by Calvert County - it could be changed to be used for purpose(s) stated in question above, may not be politically feasible.
- Funded by recordation fees, spent from budget general funds.

**Program Open Space (POS):**
- Purpose of money is for recreation, both passive (e.g. preservation of land) and active (e.g. Playgrounds).
- Set by the state.
- Could probably be used to purchase private community lots for intended purposes. May require allowing use of facility by the public.

To help ease funding shortages in many communities and at the same time reduce buildout, what is the feasibility of extending the Transferable Development Rights (TDR) concept to communities whereby the communities could get revenue for stripping their undeveloped lots of the development rights?

**Answer:**
- The enabling law does not allow for this purpose.

The original purpose of TDRs was to preserve large tracts of land - not to manage population densities (i.e. transfer home building into dense areas). The concept of “Smart Growth” and density reduction came latter (e.g. 1997, 1998). As such, the current TDR program is not set up to manage population density so pre-platted older communities were not included in the TDR program. If “density management by TDR” were desired, a new category of TDR would be required to accomplish. However P&Z and the County may not want to shift density.

- Calvert County is comprised of about 140,000 acres, 55,000 are targeted for preservation.
- Currently the going rate for a TDR is about $2700 / acre (on time fee).
- There are practical problems with using TDRs on smaller lots:
  - The current rate of about $2700/acre translates to about $650 for a ¼ acre lot.
  - TDRs are like stocks meaning the value fluctuates with the supply and demand. Increasing available TDRs may undermine the original intent of the program by reducing TDR value.
  - It is difficult to establish the value of a TDR for a parcel that's future value is subject to capital improvements. Example: How do you establish the value for a parcel that is currently not buildable (mainly due to septic) but possibly buildable in the future if a sewer system, currently not planned, is installed?
SPECIAL TAX DISTRICTS

Are their limits to the duration of Special Tax District (STD)?

Answer:
There is nothing in the law that limits a STD to five years.

The length of a STD is mostly political. Another factor in establishing length of a STD is the practical ability to accurately project community needs and project costs over long periods of time.

GROWTH ISSUES

To help improve preservation of open space, reduce long-term build-out, and reduce the impact on ailing infrastructures, please discuss the feasibility of the county altering its current practice of reselling undeveloped properties at tax sale.

Answer
See Section IV (Finding IV.2) of the report for details.

With respect to the 2003 revision of the Comprehensive Plan. What is deadline for inputs to the county? What is being considered to assist the older private communities remaining / becoming “Quality Places to Live”? What capital projects does Planning and Zoning recommend be considered?

Answer:
P&Z timetable is as follows (as of June 2002):

- Present to August 2002 - County staff is completing a review of what has been accomplished under the present plan.
- Toward end of 2002 - Present findings to the County Commissioners and Community Organizations.
- Nov 2002 to May 2003 - Solicit and gather input from staff, commissioners, and community organizations for the future plan and future capital projects.
- May 2003 to Dec 2003 - Present, Hold Hearings, Approve plan.
- P&Z would like to see private communities form small task forces to follow and work with development of future plan.

What is being considered:

- There is probably little planned directly for the communities with private infrastructure, but there will be adjacent planned improvements in the “community neighborhood” that will benefit such communities (e.g. state and county road improvements).
ROADS

What is the feasibility of the county administering large scale “Road Taxing” or “Storm Water Management” Districts (sized greater than current). The budget for such large districts would include expenses to pay for personnel required to manage such large projects. Funding would be procured through county revenue or general obligation bonds (vs the county forwarding the project moneys as they have routinely done for past smaller projects).

Answer:
Main obstacle is staffing. Calvert County staff tends to function as a government liaison organization versus a design organization. Paying for professional services under a Road Tax District (RTD) would not alleviate the burden on the liaison government offices because the liaison government still has to interact and advise contracted help.

The county, Public Works, is hesitant to expend up front planning resources if achievement of end result cannot be guaranteed. There are two main areas of concern:
1. The ability to meet road standards (i.e. there may not be adequate rights of way in some areas or terrain may be restrictive)
2. Storm Water “Right to Discharge Permits (RDP)” and “Drainage Easements (DE)”. Under current rules, Public Works will not take a road into the county system without the RDP and DE regardless of the methodology (e.g. RTD, STD, Private Funding, etc).

Because of the two items above, there is an aversion to expend Public Works resources on planning a large scale RTD unless the community can first achieve all the pre-requisites.

Please discuss the feasibility of revising road standards to accommodate space limitations, lacking lines of sight, slopes, etc. in the older communities platted prior to the creation of current county road standards or at a minimum a means to address the discrepancy.

Answer:
See Section VI (Finding VI.2) of the report for details.

What is the actual process the communities are supposed to be following to enter a road into the county system?

Answer
If a road meets the standards then Public Works will take it and the commissioners do not get involved. Anything outside the standard requires commissioner and / or attorney involvement as Public Works will not make decisions that require exception because of increased risk (as discussed in Finding VI.2).

Special Taxing Districts are a funding mechanism for communities to update local infrastructure. Road Tax Districts are an agreement with Calvert County we will take over a road, or group of roads, as they are built to the minimum AASHTO or County standards with drainage easements, as-built plans, etc. Upon completion the county takes over the roadway provided the community could provide a good title and deed to the county.
What can be entered into future County Road Standards to help get private owned roads into the county system?

Answer
Public Works is not inclined lower road standards or reduce standards below the national standards. The recent Road Standard change reduced some horizontal curves and required sight distances.

With respect to services and maintenance that Property / Home Owners Associations currently manage for private road systems (e.g. tree trimming, road line painting, paving of roads, snow plowing, etc) please discuss the possibility of Public Works:

- Establishing Service Districts to manage.
- Managing with Special Tax District funding.

What obstacles stand in the way? How can they be resolved? Other ideas to resolve?

Answer:
The county, Public Works, has tree-trimming contracts, pavement marking contracts in which they supervise the operations. Some associations have piggybacked onto the contracts but Public Works does not do the inspection or quality control as these roads are private and not in the county system. This county piggybacks on other public entities contracts and the contractor is aware that this is a possibility with every public contract. As the property / homeowners associations are not considered publicly incorporated entities, the contractors are not obligated to provide the same pricing schedule. Placing 48,000 tons on prepared roadways is not the same as placing asphalt in a private community without technical support.

Comments concerning piggybacking

1. It is impractical for road paving, potholes repairs, etc due to the logistics involved. For example, prior to resurfacing a road requires prepared work with respect to shoulder grading, pothole repair, etc. Trying to time county work with private community work such that both parties were ready for a contractor to come and pave would be extremely difficult.

2. Other services such as tree trimming, snow plowing, salt storage, etc are worth investigating and may be workable. Public Works would need the private community to forward to Public Works the scope of their request.
   - County does 3 year tree Trimming Contract.
   - County checks the contractor work, so if the county the same for private community work, the private community could be billed for the service.
   - Private Communities could piggyback on the salt contract because the county uses contractors for snow plowing and tickets at the salt pile so the tickets could be billed to the private community.
   - Administration and Finance may be able to assist in setting up contracts.
STORM WATER MANAGEMENT

Please update the Task Force on the Storm Water Management Grant Program:

**Answer**
There is a brochure available from Public Works concerning the program.

The program offers financial assistance in the form of grants to public and private citizens and communities for the installation of storm water Best Management Practices (BMP) in existing developed areas to reduce storm water-borne pollutants. Projects not eligible for grant money are those to improve the conveyance (i.e. Drainage) of storm water from its point of contact to ultimate destination such as a river, lake, ponds or the bay.

The “Fee in Lieu Of” for charged to new construction on small lots not subject to current Storm Water Management requirements and standards was established to eliminate:

- Various and numerous smaller categories of exemptions.
- The numerous waivers that were being granted.

**Administration of Money:**
- The collected moneys are put into one fund and treated as a “Grant” program.
- The money is not reserved for the community from which it was collected.
- It is administered on a first come first serve basis.

Projects funded by the money include the following:
- In Chesapeake Ranch Estates it was used in the Horse Stable Area (put in an infiltration basin pond).
- In Chesapeake Ranch Estates along Thunderbird a collection facility behind a house was installed.

**Note**
The Task Force made recommendations concerning this program. See Recommendation #7 and Section III (Finding III.6)

SEWER & WATER

How would large-scale projects such as installation of clean water distribution or septic removal systems would be managed and funded in the communities with privately owned infrastructure.

**Answer**
One option is to use Maryland Environmental Service as discussed in Section III (Finding III.4) of the report.

Another option is for the county to manage the project similar to that recently done for septic in Dares Beach.

- The Health Department held public meetings.
- Rights of way were obtained before start of project.
- Installed a system to connect to the Prince Frederick System (involved 44 homes).
- The county hired a project manager.
- The project was funded by a combination of grants and loans through Maryland Department of the Environment.
ATTACHMENT 3

FREQUENTLY ASKED QUESTIONS

- The county made the grant applications and had to state the grant was not to be used for expansion and growth. To qualify, the area has to be a problem area (e.g. at least 50% septic failures with no other possible means to resolve/repair)
- The loan was a straight loan to property owners of about $226/qtr/15 years.

Another option may be in lieu of community-wide systems to instead use localized new technology systems. For example, use of a $900,000 package plant for multi homes.

With respect to the Calvert County Comprehensive Water & Sewerage Plan, What is the status of it update? Are older communities to be included?

Answer:
- The plan is being updated now.
- Planning and Zoning is the lead agency for the comprehensive plan because it is considered a “forward looking document” (meaning it looks at future demands).
- The Health Department provides major input to the plan. The Health Department has statistical information with respect to septic failures
- Older communities are not in the plan with respect to consideration for installation of systems.