

“Wildcat” Development
Assured Water Supply Committee Proposal
Governor's Water Policy Council

Summary of Recommendations

The Assured Water Supply Committee recommends the following statutory changes to address “wildcat” developments and their impacts to water resources:

1. Strengthen subdivision law by clarifying that any entity, individual or combination thereof with any ownership in six or more lots offered for sale or lease in one or more adjoining sections of land is evidence of “acting in concert”.
2. Clarify the definition of “contiguous” when evaluating if nearby lots constitute a subdivision by:
 - a. Using one or more adjoining Sections of Land as the defined geographic area for considering whether lots are considered contiguous.
 - b. Clarifying that lots separated by a "street" or "road" are contiguous.
 - c. Retaining county, state, federal highways and “natural or man-made barriers” that divide lots as non-contiguous.
3. Apply civil penalties to each lot instead of the unauthorized subdivision as a whole.
4. Provide counties and municipalities authority to:
 - a. Collect ownership information at the time of application for subdivision and building permits, and;
 - b. Require a subdivider to obtain a subdivision public report based on ownership findings.

History

The informal term “wildcat” is the proliferation of development by splitting new residential parcels of 6 or more lots with the intent to circumvent laws relating to the creation of a subdivision. “Wildcat” development is often mistakenly applied to legal lot-splitting, i.e. splitting a parcel up to 5 times. The purpose of the proposal is to stop those who are intentionally circumventing laws that relate to assured water supply and other improvements in subdivisions.

These developments often bypass formal planning processes, which can result in haphazard layouts and incompatible land uses and pose significant challenges for both residents and local governments especially when it comes to water infrastructure, natural resources, and supplies. These developments can result in various negative consequences, such as inadequate utilities, environmental degradation, and strained local resources.

Several factors contribute to the proliferation of “wildcat” subdivisions and illegal lot splitting including swift population growth straining housing availability, leading to informal and unauthorized development, a desire for less regulatory oversight that a homeowner’s association or municipality provides, and land speculators and small developers may wish to exploit unclear regulations to divide land into smaller parcels for resale in order to skirt subdivision laws. While many of these concerns listed have historically focused on Active Management Areas (AMA), they can arise in non-AMA communities as well.

Given the recent experience in Rio Verde Foothills and interest during the prior legislative session, there was a desire in the AWS Committee to address some of the statutory provisions around this type of development to ensure that consumers are fully informed, address bad actors who are attempting to circumvent subdivision laws, and clarify terms such as “acting in concert” and “contiguous” with respect to subdivision law while maintaining the ability to legally split lots under a certain threshold.

Background

AWS Committee Presentation

In an August 15, 2023 [presentation](#) to the Council, the Department of Real Estate (ADRE) presented and answered questions around specific policy issues it faces related to enforcement of subdivision laws. The presentation and discussion are summarized below:

1. Acting in Concert - In 1997, the Legislature added to the Department’s definitions “acting in concert” and with the addition made ‘intent’ a key aspect of what the Department or County must prove when finding a violation of evading subdivision laws. The change altered prior applications of the law for the Department; going from needing to find an objective evidentiary basis for the violation to needing to present evidence - often circumstantial - that parties intentionally collaborated to circumvent the laws. Providing a clear, objective policy on acting in concert creates a measurable standard that can be used to evaluate statutory violations and stop shell corporations and other entities or

individuals from using illegal lot splitting to avoid assured water supply requirements. See, Laws 1997, Ch. 172, § 1.

2. Contiguous - Historically, a “barrier” concept existed in statute and administrative rule to exempt lots and parcels from qualifying as subdivisions if the land in question was divided by natural land characteristics, such as rivers, mountains and canyons, or highways. In 1997, the Legislature broadened former agency rule to include streets and roads. This policy decision - to include streets and roads - significantly altered the definition of subdivisions and impacted the enforceability of subdivision laws. See, Laws 1997, Ch. 172, § 1.
3. Penalties - Current penalties for failing to comply with the subdivision laws of Arizona, to include when in an AMA proof of assured water, are de minimis compared to potential profit margins and do not serve as a deterrent. The fine, increased in 2022, allows the Department to levy a fine of \$2,000 per subdivision, rather than a fine per property within the subdivision. For some, this may represent a cost of doing business and not an actual deterrent or cause for compliance in obtaining water assurances or commitments and the subdivision public report.
4. Timing of violation - For both the county and the State, a subdivider or developer is one who “offers for sale or lease” six or more lots, parcels or fractional interests, A.R.S. § 32-2101. If in an AMA, statute establishes that a subdivider must obtain a certificate of assured water or water commitment from a designated provider “before offering” lands for sale or lease. Subdivision creation occurs at the county level and is regulated by the county board of supervisors. Building permits are regulated by a municipality or the county. Most often, both subdividing and the obtaining of building permits occur prior to the offering of land for sale or lease. There are clear opportunities on the local level to better protect investors, consumers, and developers earlier in the process of subdividing land for sale or lease.
5. Six lots - The Department explained historically the number of lots, parcels, or fractional interests has varied since 1937 as a matter of statutory policy between four to six lots. Current statute establishes that six lots in an AMA would trigger the need for assured water provisions.

At the September 27, 2023 AWS Committee meeting ADWR and ADRE provided [proposed concepts](#) to the Committee based on the challenges noted in the initial presentation. The proposed concepts included:

1. Strengthen measures to ensure that appropriate enforcement can be taken against those who are “acting in concert” to circumvent subdivision laws by adding and defining by percentage what shared ownership and shared development resources would constitute “acting in concert.”

2. Specify that “contiguous” includes lands that are within the same tax parcel; remove “streets” and “roads” from the definition.
3. Implement stricter enforcement mechanisms and penalties for developers who create unauthorized subdivisions by applying the penalty to each property instead of the unauthorized subdivision as a whole.
4. Provide counties and municipalities authority to collect ownership information and shared development cost information at the time of 1. subdivision application and 2. application for building permits. Prior to approving a building permit, officials should be further provided limited authority to require a subdivider to obtain a subdivision public report based on the ownership or shared development cost information.
5. Reduce legal lot splitting of parcels to 4 or fewer.

In discussion and comments received from the Committee ADWR and ADRE made several changes to the proposed concepts as now proposed.

AWS Committee Discussion

Committee Comments and discussion centered around a desire to better hold accountable those looking to evade statute while not impacting legal lot splitting. Additional comments and discussion included a desire to focus solely on ownership as an iterative approach to this issue and as a metric to determine “acting in concert.” Shared development resources, while applicable, are difficult to parse out based on geographic location where resources may be limited, and sharing of resources is common.

Additionally, there was not a significant push to reduce legal lot splitting from the current statutory maximum of 5 lots.

Additional Notes & Resources

Current Statutory Definition of “subdivision”

“Subdivision” or “subdivided lands”:

(a) Means improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests.

(b) Includes a stock cooperative, lands divided or proposed to be divided as part of a common promotional plan and residential condominiums as defined in title 33, chapter 9.

(c) Does not include:

(i) Leasehold offerings of one year or less.

(ii) The division or proposed division of land located in this state into lots or parcels each of which is or will be thirty-six acres or more in area including to the centerline of dedicated roads or easements, if any, contiguous to the lot or parcel.

(iii) The leasing of agricultural lands or apartments, offices, stores, hotels, motels, pads or similar space within an apartment building, industrial building, rental recreational vehicle community, rental manufactured home community, rental mobile home park or commercial building.

(iv) The subdivision into or development of parcels, plots or fractional portions within the boundaries of a cemetery that has been formed and approved pursuant to this chapter.

(v) A sale or lease of a lot, parcel or fractional interest that occurs ten or more years after the sale or lease of another lot, parcel or fractional interest if the other lot, parcel or fractional interest is not subject to this article and is treated as an independent parcel unless, on investigation by the commissioner, there is evidence of intent to subdivide.

Public Report

The [Public Report](#) in Title 32 applies to a subdivision. The Public Report is completed by developers and subdividers, consists of statutorily required documents and information produced by multiple levels of government and non-governmental organizations related to improvements to-be or completed in a subdivision, and is verified by ADRE.