

**REGULATING COLONIAS:
FINDINGS FROM A CASE STUDY ON
LOT-SPLITTING IN PIMA COUNTY**

by

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I

WILDCATS, COLONIAS AND THE LAW

‘Wildcat’ is the term most commonly applied to unregulated residential development in Arizona. These developments are created without the benefit of subdivision review, resulting in substandard housing conditions for residents, economic burdens for local governments, and environmental degradation resulting from ill-conceived land-use. Other terms applied to this type of development include irregular developments (Harris 2001), remote land subdivisions (Stephenson 1983), self-help housing communities (Ward 1999), homestead subdivisions (Carew 2001, Donelson and Holguin 2001), lot-split neighborhoods (Robichaux 2001) and colonias (Ward 1999, Donelson HUD 1999). The use of various terms reflects the differing methods and objectives of the individual buyers and developers who engage in this type of development activity. What all of these forms of development have in common is the Arizona subdivision law that is exploited in the process of their creation.

An examination of that law and how it is exploited in the creation of colonias communities is used in this report as the basis for considering regulatory concerns related to the development of Colonias communities. A case study from a community-planning project conducted in the Old Nogales Highway Colonias in Pima County, is presented. This case study illustrates the process by which lot splitting has resulted in problematic land-use conditions within the Summit Neighborhood, which comprises the majority of

the HUD defined Old Nogales Highway Colonia. The literature review provided in Chapter Two examines the formulation of Colonias communities as one form of unregulated residential development. Chapter Three provides discussion on the ethical and regulatory issues related to the development of policies needed to address unregulated land subdivision and the development of colonias communities.

Colonias Defined

Colonias are generally characterized as low-income communities with inferior housing and a lack of infrastructure and services, situated within 150 miles of the U.S.-Mexico Border. The greatest Colonia concentrations in the U.S. are found in the Lower Rio Grande River Valley, Las Cruces, New Mexico and El Paso and Brownsville, Texas. Colonias began developing in their current configuration in the 1950's, although antecedents to the modern version may be older. The term Colonia is indicative of the Mexican roots of this form of development, which distinguishes them from other forms of unregulated development, both in terms of the ethnicity of community members and the social processes of community development.

The significance of ethnicity to this study is the role that it plays in socio-cultural perceptions of development and community as well as the ability of residents to negotiate the local political system of land purchase and development. The legal status of colonias residents is a separate issue that plays into the land transaction process by hindering community residents from seeking legal remedies against exploitive land developers. These two issues warrant greater consideration than is possible in this study. They will

only be considered here as they relate to the market dynamics of property subdivision, and subsequent development within colonias communities.

Federal Designation and Assistance Programs

The dire consequences resulting from colonias development in Texas, the most significant being outbreaks of cholera, have resulted in increased federal attention to the problem (Ward 1999). In recognition of the health risks associated with the poor infrastructure in these communities the federal government has authorized two agencies; the United States Department of Housing and Urban Development (HUD) and the United States Department of Agriculture (USDA) to provide funding and assistance to designated colonias communities. For funding qualification purposes HUD has defined colonias as “non-metropolitan, unincorporated neighborhoods and incorporated communities within 150 miles of the US-Mexico border that lack sewer, water or decent housing, or a combination of all three” (HUD 2003). With the passage of the Cranston-Gonzales Act of 1990, funding was made available through HUD to assist with infrastructure development in these communities throughout the four U.S.-Mexico border-states.

The USDA and HUD signed a memorandum of agreement on June 16th 2003 “establishing a cooperative effort to improve housing and economic conditions in the Southwest border region of the United States” (USDA 2003). This program is designed to bring financial and technical assistance to colonias communities and improve the effectiveness of the programs administered by both HUD and USDA through cooperative

activities. “Personnel from both departments will work together on one or more pilot projects to evaluate whether improved cooperation can materially improve conditions in the Colonias and areas heavily populated by very low-income migrant farmworkers [sic]” (ibid). Increasing federal assistance for colonias may serve to lessen the burden of existing colonias communities on local government jurisdictions. In fact, federal money available for infrastructure improvement may serve to raise the overall standard of living in poorer counties. But the legal framework that governs the underlying issue of land subdivision will remain an issue for state and county officials to address in order to prevent further development of sub-standard residential communities of all types.

Overview of Land Subdivision Issues

Addressing the problem of unregulated development requires an understanding of the ideology underlying American attitudes toward land distribution and property rights as well as the formal legal structure that regulates land subdivision. The review of literature on these topics in Chapter 3 provides explanation of these issues. The following discussion is an overview of policy surrounding the subdivision of property in Arizona. Although the control of land development is often thought of as a function of local government, a variety of state policies have direct and indirect implications for land development (Schroeder 1973:61). The state governs the sale of land in subdivisions through the State Real Estate Commissioner (ibid). In addition, state law defines subdivisions for the purpose of regulation by the Commissioner. It is this subdivision

definition that determines how counties are or are not able to regulate the splitting of land parcels.

Arizona's County Enabling Legislation

County enabling legislation (ARS § 32-2101) defines the number of property splits allowable prior to requiring subdivision review and plat approval. Prior to 1994 land could be split into four parcels prior to subdivision review by the county. This provision of law was intended to facilitate the division of family property for inheritance purposes by allowing for the avoidance of lengthy subdivision review in such transactions. Wildcat developers exploit this provision of the law in order to create illegal subdivisions.

In 1994 the legislation was amended under A.R.S. § 11-809 to allow for splitting into six prior to the imposition of subdivision regulations. Because lot splitting cannot be regulated prior to reaching the sixth parcel threshold, a group of land-owners acting together can purchase and split large parcels many times over by transferring land internally, using various methods, until they have reached the parcel size determined by local zoning ordinances. Parcel may then be sold to the general public. This form of subdivision avoids all regulations normally imposed upon subdivision development, resulting in communities lacking basic infrastructure, access to services and guarantees of water supply.

In an effort to prevent this activity, A.R.S. § 11-809 C expressly states:

It shall be unlawful for a person or group of persons acting in concert to attempt to avoid the provisions of this section

or the subdivision laws of this state by acting in concert to divide a parcel of land into six or more lots or sell or lease six or more lots by using a series of owners or conveyances. This prohibition may be enforced by any county where the division occurred or by the department of real estate pursuant to title 32, chapter 20.

In spite of this prohibition, the development of wildcat subdivisions in Pima County continues unabated due to the difficulty of prosecuting violations of the law. The problem is peculiar to Arizona counties where “re-subdivision” is not prohibited as it is in the incorporated areas of the state. This means “lots which may already be part of a platted subdivision, can be further divided until the maximum density allowed until the zoning is reached” (Behan 1999:20).

The problem is exacerbated by allowances in the law for deficiencies in meeting zoning requirements or providing legal access to the property as long as these deficiencies are noted on the deed (A.R.S. § 11-809 A). The end result is the development of communities with no infrastructure where problems of erosion, flooding and poor access create dangerous situations for community residents and financial burdens for the county that is expected to provide improvements in a post-hoc fashion.

Unregulated Development in Pima County

In the wake of massive unregulated development, Pima County began a series of Wildcat Subdivision studies in 1998, which document and analyze the aggregate problems resulting from lot splitting within county jurisdiction (Behan and Gunning, 1998, Behan 1999, 2000a, 2000b, 2001). The synthesis of the services data compiled through this study demonstrates that tax revenues collected from unregulated

development do not even cover the cost of the sheriff deputy calls to these communities (Behan 2000a, pg 1). Demands for improved services in wildcat subdivisions is creating “an infrastructure deficit on the order of \$35 to \$55 million per year”(Behan 2000b, pg 1). In an attempt to reduce this potential deficit, Pima County has proposed direct “...funding for public facilities within a land base that is bounded by the sanitary sewer system services areas, which serves as a rational delineation for a service boundary in Pima County” (Behan 2001, pg 1).

The 1999 Pima County report on the impacts of wildcat lot splitting states:

Since wildcat subdivisions are created outside the normal plat approval and recording process, government services such as school districts, water districts, and the postal service have no method of determining or tracking its service populations. Without the benefit of such records, new residential parcels are not taxed at the appropriate rate. Even when appropriate tax rates are applied, the low assessed value of properties in these areas do not cover the costs of public services. (Behan, 1999:15)

In spite of the recognition that unregulated lot splitting is the underlying source of colonias and wildcat development, there is little that can be done to deter this practice under current state law. Violation of these laws was a class five felony until 1997 when the violation was decriminalized. Currently, prosecution of violations requires that you prove that landowners are “acting in concert to divide a parcel of land into six or more lots or sell or lease six or more lots by using a series of owners or conveyances.” Even when it is possible to prove this to be the case, the fines that may be imposed per subdivision (\$1000 - \$3000) as penalties for violations are negligible when compared to the profits (\$100,000 - \$200,000) available to developers who choose to exploit the system (Behan, 1999).

History of Legislative Changes

The need to further address the issue of lot splitting has led to the creation of an “Illegal Subdivision Subcommittee” to review the situation at the request of the State Real Estate Commissioner. For use in these deliberations, the County Supervisor’s Association of Arizona (2003) provided an overview of “The History of Lot Split Legislation,” which summarizes the 1994 changes to the previous subdivision law for counties (A.R.S. § 32-2101) as follows:

1994 Legislative Session

Senate Bill 1088, Chapter 263

- Redefined subdivision in Title 32 to six lots or more.
- Gave counties ordinance authority to all staff review for access and minimal zoning requirements
- Prohibited counties from denying the split
- Prohibited counties from holding a public hearing on the split
- Deemed the split approved if the county did not act within 30 days
- Allowed buyer and seller to complete the sale but note deficiencies on the deed when the lots did not meet access and zoning requirements
- Declared unlawful ‘acting in concert’ to avoid subdivision laws,
- Gave enforcement authority for acting in concert to counties and the Arizona Department of Real Estate (ADRE) (2003:1)

This legislation was intended to reduce lot-splitting abuses through enforcement against actions in which landowners cooperate on land sales to avoid subdivision regulation. However, the case study data presented later in this report illustrates that the net effect of these changes has been an increase in lot splitting resulting from the increase in the maximum number of parcels allowed for each split event. This further illustrates

that the prohibition against “acting in concert” has not been effective due to the high cost of investigating and prosecuting the abuses and the financial incentives, provided by high profit margins, for unscrupulous developers to evade the law.

The report also provides an overview of changes made to the lot split statutes during Legislative Sessions in 1995, 1997, 2000 and 2002. In spite of increasing problems with wildcat development during this time, none of these changes addressed the number of splits allowable or gave the counties authority to deny splits. In fact the bill introduced in 1995 made counties responsible for road improvements and maintenance “...if the county requires a legal access of more than 24 feet of roadway in a lot split transaction” (Appendix A, pg 11). The 2000 and 2002 bills further specified the requirements of legal access and utility easements for county approval and issuance of a building permit (Appendix A, pg 12). Essentially the combined effect of these legislative changes is to eliminate the county’s ability to undertake land use planning by dictating the conditions under which they must approve lot splits.

Proposed Legislative Changes

The Illegal Subdivision Subcommittee was charged with review of the terms “acting in concert, barrier, contiguous, option and subdivision,” but were not asked to review issues related to the number of allowable splits or the authority of counties to review or deny splits, as those topics were not open for consideration (Sally Bender, Personal Communication November 22, 2004). The subcommittee’s recommendations regarding changes to the noted terms include:

- Redefining the term “barrier” to include any geographic feature

- Redefining the term “contiguous” as it relates to primitive roads
- Clarifying the meaning of “acting in concert” by adding language that addresses the intention of the land developer in this regard
- Redefining “sale or lease” to include the word “option” regarding sales
- Increasing Civil Penalties from \$1000 to \$5000 for each infraction

Potential Impact of Proposed Changes

The proposed changes are clearly intended to improve the ability to prosecute abuses to the law. However, the increased fines will probably have little effect as a deterrent because of the huge discrepancy between the amount of the fines and the potential profits as noted above. Since the focus of these recommendations is on prosecution, the proposed changes will not serve to prevent illegal subdivision from occurring. As a result, it is doubtful that these proposed changes would have any significant effect on wildcat development (Frank Cassidy, personal communication, October 27, 2003).

Summary and Conclusions

Arizona’s County Enabling Legislation currently allows for splitting property up to five times before requiring subdivision review. This provision of the law has been widely exploited to create unregulated residential developments lacking proper infrastructure, generally referred to as “wildcat subdivisions”. The Pima County wildcat studies clearly illustrate the economic burdens created by this type of development and

the pressing need to address the problem. However, the studies do not address the socio-economic context in which unregulated residential communities are created.

Colonias communities constitute one form of unregulated development that have evolved from informal land development practices in Mexico. The development of colonias and other forms of unregulated development is causing an increasing infrastructure debt for Arizona Counties. In spite of the recognition of this growing problem, evidenced by a recently convened subdivision rewrite committee, no substantive changes to the law have yet been proposed. The following report will contribute to the understanding of Colonias development within the context of current Arizona land regulations and examine the issues that must be considered in the implementation of regulatory remedies to curtail the development of such communities.

II

THE DEVELOPMENT AND FUNCTION OF COLONIAS COMMUNITIES

This chapter considers two topics. First, the history of Colonias is discussed to reveal the socio-political conditions under which they develop, including relevant regulatory and housing market conditions. Second, the various factors or conditions that contribute to unregulated development more generally are considered. The objective of these discussions is to identify the causes for Colonias development in Arizona and begin to consider related regulatory challenges. The ideological and regulatory impediments to implementing effective policies to prevent unregulated development will be considered in more detail in Chapter Three.

Colonias Development

Peter Ward's (1999) study *Colonias and Public Policy in Texas and Mexico: Urbanization by Stealth*, provides the most comprehensive examination of the socio-economic and regulatory conditions contributing to colonias development. Colonias communities in Mexico serve the purpose of distributing communal ejido lands into private land ownership. Ward describes this as an illegal but effective land distribution process involving the creation of squatter settlements. With the establishment of a critical population mass within such settlements provisions of services and infrastructure

may be demanded from the government (Ward 1999, pg 65-86). This form of unregulated development has been imported into the U.S. border-states with Mexican immigration and rapidly increasing development of border communities.

The Function of Colonias

Colonias communities develop under a complex set of socio-political and regulatory conditions. In her paper “When The Global Becomes Local: Colonia Development and the Social Reproduction of Labor on the Border,” Dohlinow cites the United States (U.S.) dependence on Mexican immigrant labor as the primary impetus for the rise of colonias communities in the U.S. Mexican border states. She notes

The wages this workforce are offered are not enough to pay rent in most border communities and are certainly not enough to enter the traditional home buyer’s market... Colonias provide cheap, but not state subsidized, housing for the working poor. (2001:2)

International policies such as the Border Industrialization Program (1965) and the North American Free Trade Agreement (NAFTA-1994) have contributed to this situation by creating greater workforce demands in the border regions with attendant spillover of undocumented workers into the U.S. (Dohlinow 2001:3)). The Immigration Reform Control Act (1986) provided amnesty for undocumented workers “who could prove they had been in the U.S. for eight years or more or had worked in the U.S. for 90 days or more in the last year,” thus creating a demand for more permanent forms of housing for this previously transient workforce (ibid). The effect of these policies was the

importation of Mexican forms of informal community development into the U.S. border-states in the form of Colonias.

Colonias as Communities

The creation of community requires more than the construction of a physical neighborhood. It requires the development of interdependent bonds (horizontal integration) between community members, which are formed by sharing activities and values. Colonias in Mexico show a high level of horizontal integration because community action is required for the initial land-capture and subsequent “politicking” needed to force the government’s hand in providing infrastructure (Ward 1999). The situation in the U.S. differs somewhat in that the initial interactions in the land transfer process take place between the buyer and local wildcat developer. The result is the creation of a settlement, which may or may not evolve into a community. Ward characterizes the distinctions between settlements and communities as follows.

...settlements are likely to be highly dependent upon supra-local decision making on their behalf, whereas communities have a greater capacity for self-help and mutual aid that is likely to yield positive outcomes of upgrading and improvement irrespective of the degree of external involvement. (1999:108)

From a policy development standpoint, it is important to understand how communities develop and function in order to facilitate communication and cooperation between communities and external agencies and ultimately to reduce dependency on government. Community involvement in development is also critical to establishing equity within the community.

Horizontal integration must take place before effective vertical integration can truly begin to enhance the reality of the community at large. Otherwise it may only act to advance the interests of one or two individual leaders whose interests are primarily external. (Ward 1999:107)

Because colonias communities in Arizona are based on Mexican models that require both horizontal and vertical integration for their success, they may exhibit a greater capacity for internal cohesion and community action than other forms of unregulated development (Donelson and Holguin 2001 and Ward 1999). However, language and cultural barriers may hinder community member's ability to operate effectively within the local governmental structure, thereby impeding the land development process.

Information was not available on the effect of legal residency status on the formation of community bonds in U.S. colonias. Depending on other social conditions operating within the community it could either serve to enhance integration or serve as a divisive point between legal and illegal residents of the community. Donelson and Holguin have noted that new communities composed largely of unemployed adults, larger families and single mothers do not show the same level of capacity for community development as older colonias where community leaders are "...part of stable, two-parent households with strong familial ties" (2001:2).

Arizona Colonias

Considerable work has been done to identify, define and assist colonias communities along the Texas/Mexico border. However, research on Arizona colonias

has lagged behind, perhaps in part because the conditions in these communities are often not as disastrous as the life threatening situations that have developed in Texas. The situation in Texas has gradually prompted the formal identification of colonia communities in Arizona. As a result, approximately 79 areas have been designated as colonias by local governments, 19 of which have received official designation as colonias by HUD, making them eligible for Community Development Block Grants (CDBG). “The U.S. Department of Agriculture’s Rural Development program also has designated approximately 59 areas as colonias, which are eligible for water, wastewater and housing assistance” (HUD 1999). “Pima County has 13 colonias designated by USDA Rural Development. Pima County colonias include three incorporated communities and 10 unincorporated areas” (HUD 2003:2). It should be recognized that demographics vary widely from one colonia to the next and between colonias and other forms of wildcat development. Huntoon and Becker (2001) have noted that of the 59 USDA designated Colonias in Arizona, 5 are on Native American Reservations. They also note that Pima County Colonias “...run the gamut from the incorporated City of South Tucson, unincorporated suburbs of Tucson, smaller incorporated places, to unincorporated rural communities” (2001:2-3).

The proceedings of the Lincoln Land Institute’s 2001 Conference “Irregular Settlement and Self-Help Housing in the United States: Memoria of a Research Project” includes several papers on Colonias in New Mexico and Arizona. Donelson and Holguin’s paper “Homestead Subdivisions/Colonias and Land Market Dynamics in Arizona and New Mexico” notes that a greater percentage of Colonias in Arizona (30%)

occur in incorporated areas as compared to Texas and New Mexico where 90% of Colonias are found in unincorporated areas.

In their presentation, “Colonias in Arizona: A Changing Definition with Changing Location,” Huntoon and Becker note “One of the major reasons that colonias vary between Texas and the more newly designated colonias of Arizona are the differences in powers granted counties by state enabling Legislation” (2001:1). They note that in Texas “...it was not until the mid 1990s that counties in general were able to control the way in which subdivision of property occurred and to be able to force the provision of infrastructure to meet the minimum state Health and Safety codes for solid waster removal, clean water, and other necessary infrastructure” (2001:2). Since these changes, Texas counties have been able to exert greater control over Colonias development. Unfortunately, Arizona has seen a reduction in the level of county authority to require infrastructure with the 1994 legislative changes that increased the allowable number of lot splits. The case study data and secondary research presented in this report contributes to our understanding of this noted relationship between Colonias development and land regulation as defined by county enabling legislation.

The Affordable Housing Nexus

Unfortunately, homestead style subdivisions, such as Colonias, may be the only affordable option for low-income families that are seeking entrance into an inflated housing market. Unregulated development offers the opportunity for lower income families to become property owners with a low initial cost. By gradually improving their

property using the self-help housing approach, families can improve their standard of living over time as their income allows. The new property owner may begin with a very modest trailer, eventually up-grading to a larger trailer or manufactured home. Many families undertake construction of site built homes as time and money allows. This incremental approach to housing may be the only option for those who would not qualify for traditional mortgages. Unfortunately, this also places the community members at the mercy of the local developer who also serves as landlord and mortgage company in many instances. For undocumented workers there is an added risk of deportation, which may prevent their pursuit of legal remedies should the circumstances of the land transaction require it.

Affordable Housing in Arizona

Affordable housing shortages in Arizona are well documented. The Arizona Housing Commission's year 2000 report attributes this shortage to a prodigious growth rate (30% between 1990 and 1998), a decrease in middle-income buying power, which was 21% between the mid 1980's and mid 1990's, and a 30% increase in home prices for the same period (2000:4).

The Commission's report lists the top ten barriers to affordable housing as:

- Lack of and high cost of private land
- Lack of rehabilitation and infill construction subsidies
- Lack of coordinated response to problems and effective partnerships
- Lack of and high cost of rural infrastructure
- Economic development/low wages

- Community attitudes/NIMBY/Stigma of affordable housing
- Lack of statewide housing policy and need for lead entity
- Exclusionary zoning ordinances
- Lack of local government interest in low-to moderate-income housing development
- Availability of private financing/Rural areas considered high risk (Arizona Housing Commission 2000:36)

Pima County

Raleigh's 2002 report on affordable housing in Pima County provides an overview of the problem, concluding "not enough housing exists to meet the demand for lower-income families" (2002:45). The primary reason cited is that increases in wages in the lower economic groups are not keeping pace with increases in housing costs. "Moreover, minority status is shown to add an additional hardship for many residents of this community in meeting their housing needs" (ibid). Discriminatory mortgage lending practices are a major contributor to this problem. Raleigh reports "...in 2000, Tucson-area Hispanics were 2.8 times more likely than whites to be rejected for conventional purchase loans" (2002:37). It is revealing that the disparities in mortgage approval rates actually increase with increasing income levels. "Upper income Latinos were 3.04 times more likely to be rejected than upper income whites," while "low-income Latinos were 1.56 times more likely to be rejected than low-income whites.

However, Pima County's affordable housing shortage is not limited to the availability of affordable homes for purchase, but reflects a shortage of affordable rental properties as well. Raleigh's analysis of the increase in rental costs relative to increases in income reveals an increasing gap in rental affordability between the lower and higher economic groups

Regulatory Barriers

Zoning has long been criticized as creating barriers to affordable housing as evidenced by several Presidential Commissioned studies. “Johnson’s Kaiser Commission concluded that zoning ‘tends to reduce the supply of new housing and raise prices or rents especially for those least able to pay’ (Siegan 1997: 181). While Reagan’s Commission on Housing and HUD Secretary Jack Kemp’s 1991 Commission on Regulatory Barriers to Affordable Housing both concluded that “unnecessary zoning and other local government regulation caused substantial increases in housing prices,” estimated between 25 and 50 percent (ibid).

Summary

Land subdivision regulation that simultaneously allows for unregulated lot splitting and encourages exclusionary subdivision development, coupled with shortages in affordable housing creates an environment in which lower income families are pushed to seek alternative housing options. As a result, unregulated residential development would appear to be a reflection of the socio-economic pressures affecting the lower middle to lower income segments of the population. The situation is particularly acute for the Mexican immigrant labor force due to the lower wages they receive. The development of colonias communities is a direct response to the increased need for permanent housing for this segment of the population. While colonias communities frequently exhibit greater capacity for self-directed development than other types of unregulated residential development, they still present a burden to local government

through their demands for infrastructure such as roads. The following chapter will consider the regulatory context in which colonias develop and examine the basis for various levels of government intervention.

III

THE ROLE OF REGULATION IN LAND USE AND DISTRIBUTION

If we accept the notion that "...property is a completely moldable social construct, established by society to fulfill social needs and thus changeable as social circumstances require it" (Jacobs 1998:38), then we open ourselves to the concept that regulations governing the distribution and control of land represent a negotiated social contract that structures our views of private property and social equity. Beginning with a discussion of the ethics of land use policy the following chapter will provide theoretical and historical background needed to understand the ideological framework that structures land-use regulation at various levels of government. The chapter concludes with a consideration of the potential impact of regulatory remedies on colonias communities.

The Ethics of Land-Use Policy

In discussing the ethical or moral choices implicit in land-use decisions, Beatley suggests the social implications of these decisions have not been adequately addressed within the "land use policy and planning arena" (1994:3). He further notes "...the failure to view a land-use decision as involving ethical choice is itself a de facto form of ethical judgment. Many land-use decisions, perhaps most, are of the de facto sort, because they are defined in narrow technical, economic, or legal terms (Beatley 1994:4).

Beatley's charge that many land-use decisions are de facto ethical judgments is supported by critiques of "exclusionary zoning" or sub-division requirements that create impossible hurdles for minority or low-income homebuyers. Excessive regulation may serve to fuel widespread unregulated development, in which a sub-set of the public acting in concert through common interest and/or need organizes to circumvent subdivision regulation. Ethical land-use regulation should serve to direct development in a manner that insures that the self-interested actions of one subset of society do not have negative implications for society at large. Ideally, this should apply both to the re-examination of exclusionary zoning and subdivision regulations as well as to the formulation of policies designed to curtail costly unregulated development, which burdens local government and other tax payers.

When evaluating the ethical implications of land use regulation, it should be recognized that one role of planning is to encourage equity through implementation of equalizing policies. The AICP Code of Conduct states "A planner must strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons, and must urge the alteration of policies, and decisions which oppose such needs" (Beatley 1994:8).

How this ethical standard relates to the formulation of regulations intended to limit unregulated development hinges on the issue of whether or not such developments are economically based responses to the high costs of residential property in formal subdivisions. Those who argue most emphatically that unregulated developments must be eliminated may do so on the premise that buying into these developments is a matter

of choice rather than economic necessity (Maeveen Behan, personal communication 2003). This argument suggests that the ethical implications of policies to address unregulated development are circumstantial to the socio-economic conditions under which potential landowners purchase such property. On this basis those who choose to exploit existing regulatory structures to advance their own interests to the detriment of other members of society and the environment position themselves at a disadvantage for planning protections as specified by the AICP code of ethics. Theoretically, they also place themselves outside the net of governmental protections by refusing to buy into existing neighborhood infrastructures. Although colonias communities have been shown to exhibit a high capacity for directing their own development, they continue to make demands on local government for the creation of infrastructure outside the existing regulatory framework for subdivision development.

In order to make ethical policy decisions to address this growing problem, we must have an understanding of the social context in which unregulated residential development occurs, including the socio-economic constraints under which individual land transactions are negotiated as well as the implications of the regulatory mechanisms that govern those transactions. Understanding these factors will allow us to avoid narrowly directed regulation that serves to address only a portion of the problem, resulting in potential social repercussions with unanticipated consequences.

Equitable Land Distribution

In his article *Rousseau's Revenge*, Bromley traces the development of private land ownership from 15th Century feudalism through to the modern era. He notes that in the 17th Century John Locke influenced attitudes toward property by legitimizing “possessive individualism over land” (Bromley 1998:24). Locke’s views of land ownership provided justification for European expansion and set the stage for U.S. national debates over land ownership that resulted in the protection of property rights under the U.S. Constitution as set forth in the Declaration of Independence. The role of government in land distribution was a subject of debate between Jefferson and Hamilton at the time of the drafting of these historic documents.

Jefferson encouraged land ownership by the many and feared landownership by the few. Although he never advocated a forced redistribution of private property from the wealthy to the landless, he believed that ‘legislators cannot invent too many devices for subdividing property.’ (Last 1998:48)

Jefferson viewed the broad distribution of land as critical to political equality and supported a government role in land distribution. In contrast, Hamilton believed in the preservation of “liberty” through limited government regulation of property, noting:

Differences in wealth are already great among us, nothing like equality of property exists. Inequality will exist as long as liberty exists, and it unavoidably results from that liberty itself. (quoted in Seigan 1997:15)

Hamilton’s views of property and limited regulation reflect the ideology of free-markets, and oppose the idea that government should seek to encourage the re-distribution of wealth through regulatory actions. Jefferson’s view of land distribution

supports the notion that distributive justice is critical to political equality. These distinct views of the relationship between property rights and government are at the heart of modern debates over land use and land distribution that influence the development of land regulation.

Distributive Justice

According to Schrader-Frechette, accepting Hamilton's view that inequalities are unavoidable is to accept an unjust society. She defines distributive justice as:

“the morally proper apportionment of benefits and burdens—such as wealth, opportunity, education, toxic waste dumps, dirty air, and so on—among society's members. For many ethical theorists, ‘justice’ is defined almost completely in terms of distributions, either of material goods such as wealth or of nonmaterial goods such as equal opportunity. (Schrader-Frechette 2002:24)

Following this reasoning, a just society would support equality of access to opportunities for individual property investment, particularly home ownership, and would seek to develop regulations that provide such access. The counter debate to this argument is that “The notion of equality has a long history; and many people deny that there is any sense in which equality is a principle of justice” (ibid).

The triadic relationship between the individual, their community and that third party called government seeks to find remedies for controversies that evolve in the space between these dissenting opinions. The planner must be guided by ethical policy in order to negotiate this terrain successfully. But seeking an ethical approach to land use regulation raises many complicated issues due to underlying, and strongly held,

ideologies regarding the regulation of community and lifestyle through the enforcement of land-use policies.

Federal Land Distribution Policy

In the 100 years following the signing of the U.S. Constitution in 1787, the land area of the United States increased more than 300 percent, from about 570 million acres to about 2.3 billion acres. (McDonnell and Bates 1993:6)

During this early period the nation's natural resources far exceeded population demands. In a push to exploit these vast natural resources the government provided land to individuals and companies willing to develop frontier lands. "The Homestead Act of 1862 provided that each individual could acquire up to 160 acres from the public domain in return for paying a nominal fee, residing on, and cultivating the land" (ibid). Encouraging private ownership of land was a national priority through the early 1900's until the passage of the Taylor Grazing Act of 1934, which closed the public domain.

Obviously population pressures and widespread development have changed the policy landscape dramatically in the last 70 years. And yet, there is a significant portion of the American West that is resistant to the imposition of regulations needed to address increasing environmental degradation brought about by poorly planned development and unwise land use practices.

Local and Centralized Regulation

Increased competition for land beginning in the 1960s and 1970s, created many land use problems, bringing recognition to the implications of uncontrolled development

for communities and the environment. Under development pressure procedural problems of local land use regulation, which had been heavily directed to the local level through local comprehensive plans and zoning ordinances became apparent (Beatley 1994:5).

Most land-use plans, where they existed at all, consisted of little more than a record of good intentions. The plans were only advisory; they lacked the force of law. Development interests—builders, realtors, and their political and financial allies—were heavily represented in local government and ran planning commissions and zoning boards. Many communities competed with one another for all sorts of development projects. They annexed wildly and they uncritically assumed that the short-run property tax revenues and employment produced by development would outweigh any long-run fiscal, environmental, or social costs. This assumption often turned out to be incorrect. (Popper 1981:10-11)

This period of growth and increased competition over land correlated with a push for land use reform focusing “...on the direct environmental implications of development” (Popper 1981:13). Reform efforts resulted in the passage of the 1972 Coastal Zone Management Act, and amendments to the 1967 Air Quality Act and the 1948 Water Pollution Control Act, which grant money to states based on satisfactory environmental performance (Popper 1981:16-17). The effect of such legislation is to give states greater regulatory authority that can be used to influence local land-use practices. While the land use reform movement had many successes, it failed to obtain the passage of the National Land Policy Act that was presented before Congress every year from 1968 to 1976. As a result, land regulation remains an issue for negotiation between federal, state and local jurisdictions.

Localized and centralized regulations differ in several important respects. Not only do they serve the goals of different constituencies, but also the scale of their intent, both geographically and temporarily is quite different. Policies implemented at the local level of government tend to privilege short-term needs of the constituencies in their immediate vicinity. The result is economically based policies that are driven by local popular demand. In land use issues this is reflected in the significant influence that local development interests have on regulatory structures, as evidenced by the granting of variances.

National level policies seek to address the needs of broader constituencies over a longer time frame. Policies designed to address issues such as environmental health require this level of scale to be effective. As a result they must seek to balance the needs of a wider segment of the population. National level policy is not exempt from influence by economically driven private interests. Corporate influence on policy is a major concern at the national level.

The state frequently serves as the arbiter between local and federal jurisdictions. Within the scope of authority granted the states they may dictate to local jurisdictions or grant local jurisdictions decision-making authority.

A series of local and national news articles and editorials (Davis 1998, Morlock 1998, Robichaux 2001) have brought attention to the severity of the social, health and safety problems that colonias and wildcat communities face. Changing the state law that allows such development to occur would seem the most direct way to address the problem, but is fraught with difficulties. Underlying these difficulties is an ideological

bias against land-use regulation as highlighted in a Wall Street Journal article headlined

Rural Sprawl in Arizona Creates a Rash of ‘Wildcat’ Subdivisions. The author notes:

The spread of these areas, and the government’s failure to respond, reflect an ideological debate as old as the West. At its core, the issue pits the freedom of landowners against the duties and authority of government. At stake, say wildcat advocates, is nothing less than a person’s right to buy a plot of land and settle it, a ritual once encouraged by the government, on this very ground, under the Homestead Act of 1862 (Robichaux 2001).

This bias is reflected in the state legislature’s reluctance to change the law that governs land subdivision. As noted in Chapter One, the recently convened committee on illegal subdivisions in Arizona only recommended changes designed to improve prosecution. Not only does this not improve the county’s ability to prevent unregulated development, but actually strengthens the position of lot splitters by forbidding counties from denying lot splits that meet zoning, easement and legal access requirements. This places the state in the position of dictating land use decisions on county lands.

Government Regulation and Land Markets

Land regulation has inherent implications for social equity to the extent that it encourages or constrains access to land markets by various segments of the population. Through the process of land purchase, individual property owners are selecting which community they will join. However, for many, the choice is heavily influenced by the socio-economic conditions that determine access to the different land markets as they are created or constrained by government intervention, which is required to mediate the

allocation of resources. In “The Rationale for Government Intervention,” Whitehead (1983: 109) notes:

The main problems in urban land markets arise from:

- The need to provide certain land with public goods, which cannot be effectively produced through the private market
- The existence of significant locational externalities, both good and bad, which private decision-makers would not take into account
- Imperfect information on which to base individual decisions and the general costs of using the market
- Unequal division of market power among economic agents, particularly in the case of monopolistic supply
- Differences between how individuals and the community value future and current benefits

Considering these issues in relationship to unregulated development illustrates the need for subdivision regulation to ameliorate the land development process. Public goods include infrastructure such as improved roads and street lighting, the costs of which are normally apportioned during the subdivision review process. Locational externalities might include the costs of dealing with environmental degradation resulting from unplanned residential developments. A lack of infrastructure and proper platting result in greater environmental degradation resulting from improper sewage treatment, air pollution from unpaved roads and general land degradation from uncontrolled runoff.

Imperfect information is a particular problem when dealing with unregulated development because the lack of improvements results in considerable variation from one land parcel to the next. This makes it difficult for potential buyers to compare parcels in terms of their actual market value. Additionally, the nature of these transactions does not

encourage full disclosure of development costs or the potential for environmental hazards, resulting in a buyer beware land market.

Unequal division of market power related to unregulated development may result from exclusionary zoning, which drives up prices in approved subdivisions beyond the reach of even middle class families. This creates a housing market gap that drives up the costs of undeveloped land parcels as middle class families compete for diminishing land parcels. Differences in individual and community values regarding current and future benefits are reflected in housing choices and goes to the very nature of subdivision regulation.

Subdivision Regulation, Environment and Equity

“The fundamental issue in subdivision control is the right of the community against the right of the individual” (Yearwood 1971:84). In the case of residential development, community values of what constitutes an appropriate neighborhood are advanced through the adoption of subdivision regulations. The promotion of middle and upper class values are reflected in regulations that set high standards for landscape and housing design through minimum lot size and construction criteria. This may result in exclusionary zoning that intentionally or inadvertently raises the economic bar to exclude lower income families or single homeowners from gaining access.

Environmental protections that encourage open space and habitat protection may also seem excessive for lower income families who are struggling to provide basic shelter for their families within an acceptable distance of the job market. On these grounds the environmental movement has been characterized as a land reform movement of upper-

middle class, white society, which imposes excessive regulations on land-use at the expense of lower income groups.

Unregulated development has the potential to exacerbate competing claims to moral authority over land use by pitting the issue of social justice, in terms of access to land and affordable housing, against environmental protection through the imposition of appropriate land use regulations. Beatley (1994:98) examines the relationship between “distributive obligations in land-use policy” and environmental obligations. He notes that while these obligations are often viewed as contradictory, “...when low-income or minority communities are forced to endure especially high levels of air or water pollution. Environmental control strategies can serve to promote distributive ethics” (ibid). He concludes that competing ethical concerns over the effects of land-use policy are not insurmountable.

Even acknowledging the price effects that may occur from certain environmental land-use regulations, localities may implement many other types of land-use actions that will advance the interests of the least-advantaged. Hand in hand with environmental regulations must go local land-use actions, which allow and promote multifamily and other forms of affordable housing, and which otherwise seek to promote the interest of the least-advantaged in society.
(Beatley 1994:100)

Summary and Conclusions

The development of land-use policy occurs in the context of government regulatory structures, influenced by national ideologies of land ownership and property rights that determine the limits of regulation against socially constructed individual

freedoms. Current Arizona state policy in unincorporated areas harkens to an earlier era of westward expansion in which private land ownership was promoted at the expense of the environment. Developers who exploit these loose subdivision regulations to their own advantage are clearly not motivated by a concern for private property rights and equitable distribution of property. Yet the real estate lobby that prevents Arizona's subdivision law from being changed to allow for more effective regulation may hide behind the ideology of the rights to land ownership in order to protect their own economic interests. Similarly, those who choose to join "wildcat" communities when other housing options are available to them may justify their desire to buy and develop land free from regulation on the basis of freedom of property. However, the externalities created from their supposed freedoms impinge upon the freedoms of others by created irreparable land degradation.

IV

THE CASE STUDY

A visit in April of 2003 by Carolyn Peoples, HUD Assistant Secretary for Fair housing and Equal Opportunity, brought attention to the conditions of the Old Nogales Highway Colonia, which was included on her tour of colonias in southern Arizona. Her visit prompted a University of Arizona Study designed to compile information that could be used by the community or non-profit assistance organizations in preparing funding requests for submission to government and non-profit funding agencies.

The University of Arizona study was undertaken through the graduate “Projects in Planning Course” (Planning 611) during the fall of 2003. The one semester data collection phase of the project would not allow for an in-depth study of the entire Colonia. Therefore, a representative segment was selected for our research.

The following case study reports the data collected on lot splitting within one area of the Summit Neighborhood as well as interpretation of the collected data within the context of neighborhood development. The case study concept was designed under the supervision of Adjunct Professor, Frank Cassidy. The method of data collection was designed in cooperation with my teammate Andy Krause who downloaded the data from the Pima County Recorder’s website. A lot-split matrix was created in Excel to organize the data. Further analysis of the Wooden Bucket section of the neighborhood was undertaken to illustrate the full extent of lot split activities. Demographics for the Old

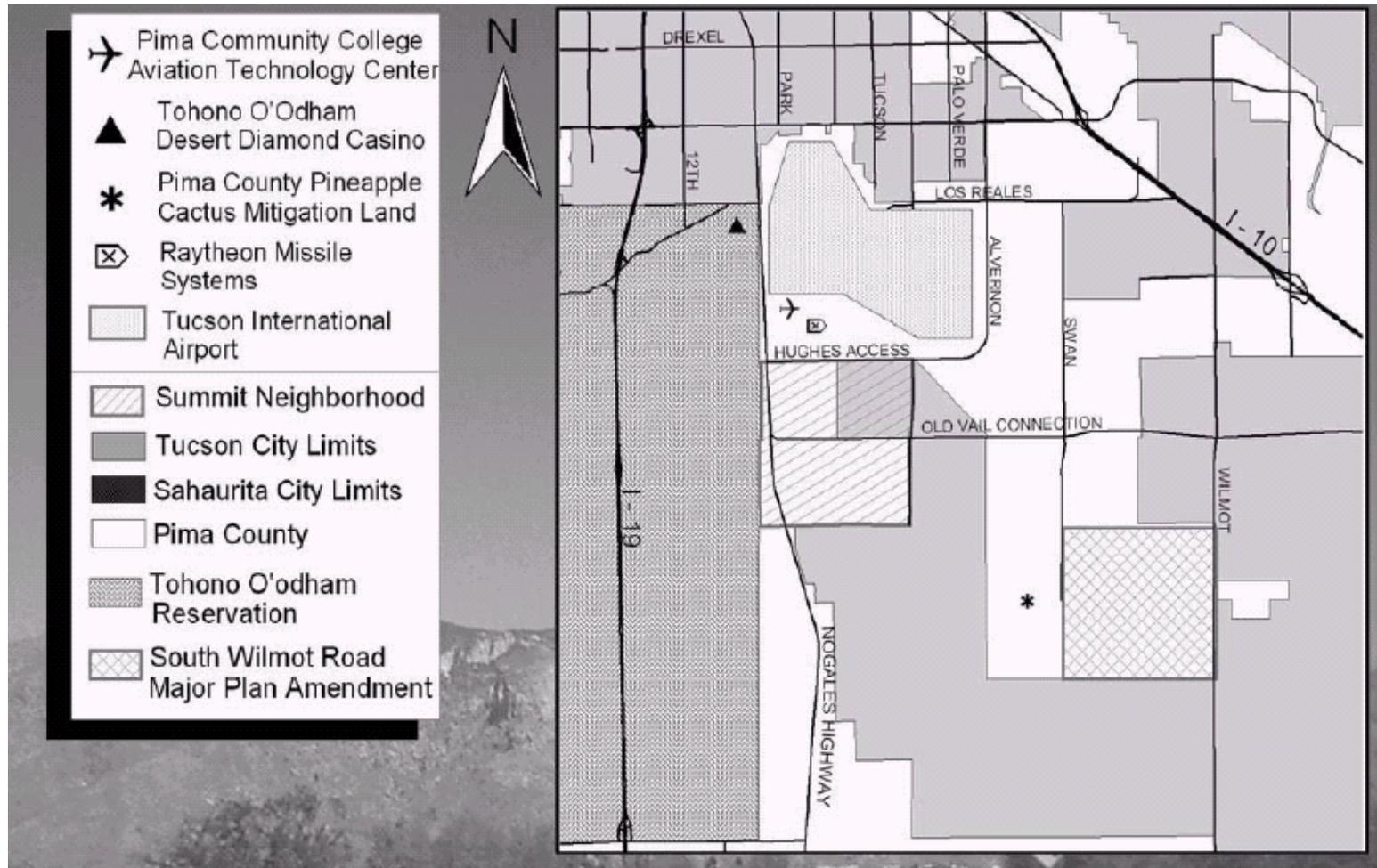
Nogales Highway Colonia as well as demographics and survey information on the Summit Neighborhood study area are provided to aid in the interpretation of the lot split data.

The Study Area

The Summit Neighborhood comprises the majority of the Old Nogales Highway Colonia as designated by Pima County and HUD and measures between 13 and 14 square miles. “This colonia is estimated as 29% of Census tract 41.02, Block Group 3” (HUD n.d.). For the purpose of the University of Arizona study a representative area of approximately 4 square miles was selected for research. The study area was designated “Summit Neighborhood,” to differentiate it from the larger Colonia and to provide a link to the Summit View Elementary School, which serves the area.

The neighborhood is located south of Tucson and 42 miles north of the U.S-Mexico border. It is situated in Sections 31 and 32, Township 15 South, Range 14 East; and Sections 5 and 6, Township 16 South, Range 14 East, Gila and Salt River Meridian, Arizona. It is approximately four square miles in size and is bounded by Hughes Access Road to the North, Country Club Road to the East and open desert to the South. The Nogales Highway (State Route 89) bisects the community near the western border of the study area. Figure 1 shows the study area within a regional context.

FIGURE 1. Summit Neighborhood in Regional Context.



Source: PCLIS data layers. Reproduced from Summit Neighborhood Plan. Map 3.1.

Population

The total population for the Summit Neighborhood as derived from the year 2000 census was 3450. This is a dramatic increase from the 922 population for the area reported in the 1990 census (Mahaney, Moyle and Holden 2004:17). These figures suggest that 26% of the residents have lived in the neighborhood for more than 10 years as compared to 24% reported from the community survey. Given recent parcel recording activity, we can assume that population in the neighborhood is increasing at an escalating rate and that this percentage will continue to drop as new residents arrive.

Ethnicity, Residency and Property

The HUD report prepared for Assistant Secretary Peoples visit in 2003, compares the demographics in three colonias in southern Arizona with overall demographics for the county and the state. This document reports Old Nogales Highway figures of 64% Hispanic Ethnicity as compared to 96% for Pete Kitchen, located further south in Santa Cruz County. However, the difference in ethnicity between these colonias is not necessarily a function of proximity to Mexico. Discussions with community based researchers suggests that the majority of the residents in the areas of the Summit Neighborhood that have developed in the last ten years are recent immigrants from Mexico as opposed to the older segments of the neighborhood where ethnicity is mixed and there is longer residency in the state.

The changing composition in the ethnicity of the neighborhood is revealed through a comparison of the 1990 and 2000 census data. During this period the

neighborhood experienced a 78% increase in the percentage of persons of Hispanic origins. This is compared with approximate increases of 20% for Pima County and 30% for Arizona as a whole (Mahaney 2004:3). We did not collect information on legal residency status through our community survey in an effort to protect the survey respondents from punitive damages. Some areas of the neighborhood were informally estimated by community researchers to be as much as 80% inhabited by undocumented workers. The relationship between property ownership and legal residency status is unknown. However, the HUD figures report a 76% rate of home ownership within the Old Nogales Highway Colonias. Without hard data on legal residency status in the neighborhood any interpretation of the correlations between shifts in ethnicity and population increases within the neighborhood as they relate to lot splitting are purely conjectural. Yet there is preponderant circumstantial evidence to suggest that the recent growth and land division activities in this neighborhood are attributable to a continued influx of Mexican immigrant labor into the U.S. Mexico Border Region (see Dolhinow 2001).

Community Development and Concerns

The community development and land use issues found within the Summit Neighborhood are fairly representative of the range of problems facing most colonia communities in the state. Our initial community tour revealed poor quality roads, mostly unpaved and heavily rutted from use when flooded, substandard housing including salvaged mobile homes, some dating from as early as the 1950s, a lack of street signage

and lighting making identification of specific properties almost impossible. Issues of concern to the community were identified through public meetings and written survey. The neighborhood was divided into six sections for research purposes.

Survey Results

Only those responses relevant to the topic of this report will be reported here. For a more complete account see the Summit Neighborhood Plan available through the U of A Planning Program. Survey responses were fairly low in spite of the employment of community researchers to assist with survey distribution and collection. A total of 1200 surveys were distributed and 154 completed surveys were collected and tallied. However, responses were fairly evenly distributed across the six sections of the neighborhood suggesting that results should be fairly representative of the neighborhood as a whole. Seventy-four people responded to the question on their length of residency in the community. Of those 24% have lived in the neighborhood more than 10 years, 43 % less than 2 years and 17% 2-4 years, for a total of 60% living in the neighborhood less than 4 years.

In an effort to identify resident's motivations for purchasing property in this community, we asked respondents to name the three things they liked best about the community. The top three responses were Peace and Quiet (77 responses), rural feel (45 responses), and nice neighbors/community (30 responses). Road conditions were the most cited problem within the community.

Although a positive community atmosphere was cited as one of the best things about the community by 20% of survey respondents, the residents of neighborhood zone

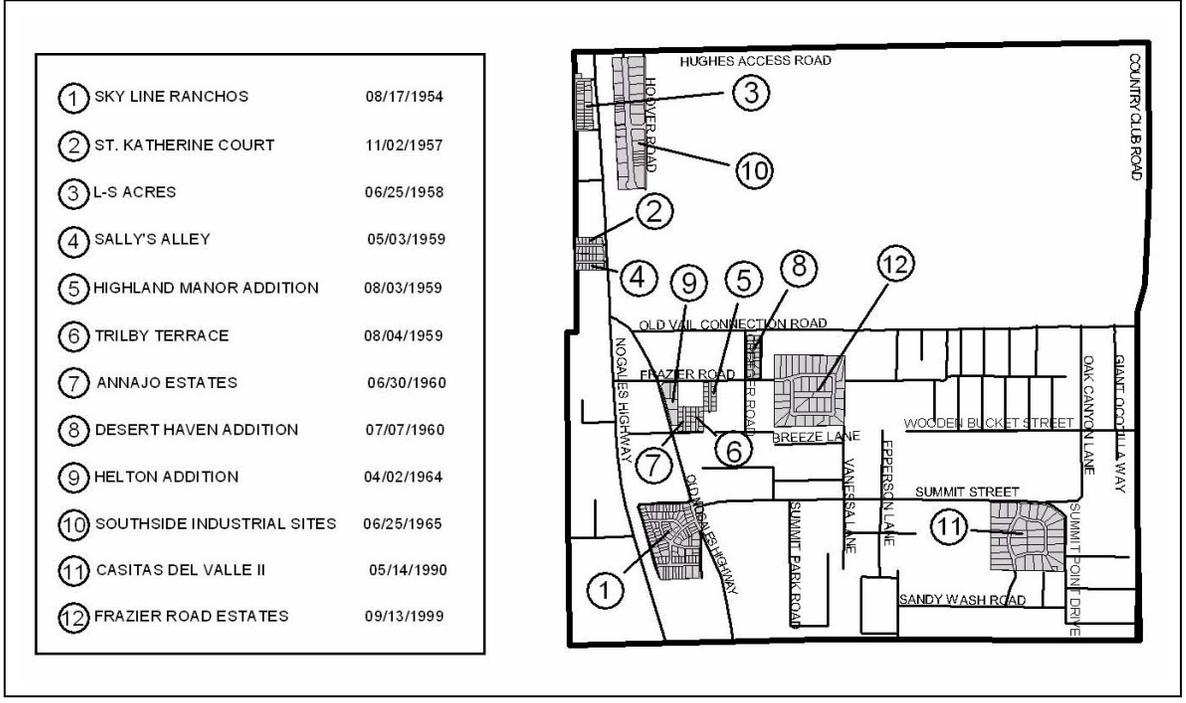
6 reported to student researchers assigned to that area that they felt alienated from the rest of the community. “Zone 6 residents live primarily, if not exclusively in the established Skyview subdivision and are some of the oldest residents in the neighborhood” (Mahaney, Moyle and Holden 2004:15). Interactions between community members at public meetings suggested potential conflicts between the residents of older segments of the neighborhood living in platted subdivision and newer residents moving into the unregulated lot-split areas. These conflicts are most likely related to property issues. It was noted in one community meeting that activities related to lot splitting in the wooden bucket area were redirecting water flow patterns, causing flooding on lots in the county approved subdivisions.

Other potential conflicts surround the relationship between local land developers and other community members. Informal discussions with community researchers revealed that one family has dominated land development activities in the neighborhood. Although this family has sought to build a following within the community through development of a church and hosting of periodic community dinners, there is a community contingent that views their activities with suspicion. The head of this household was accused by several of our research participants of manipulating land transactions to his advantage and providing faulty information on parcels with costly consequences to the ultimate landowner.

Residential Development

Residential development in the Summit Neighborhood is documented as early as 1954 when the Skyline Ranchos subdivision was approved and recorded (Figure 2). Industrial development along the Old Nogales Highway corridor, including Tucson International Airport and Raytheon Corporation increased the need for housing in the area resulting in the creation of a series of subdivisions over the next ten years.

FIGURE 2. Location and Dates for Platted Subdivisions.



Source: Summit Neighborhood Plan, 2003:Figure 4.2.

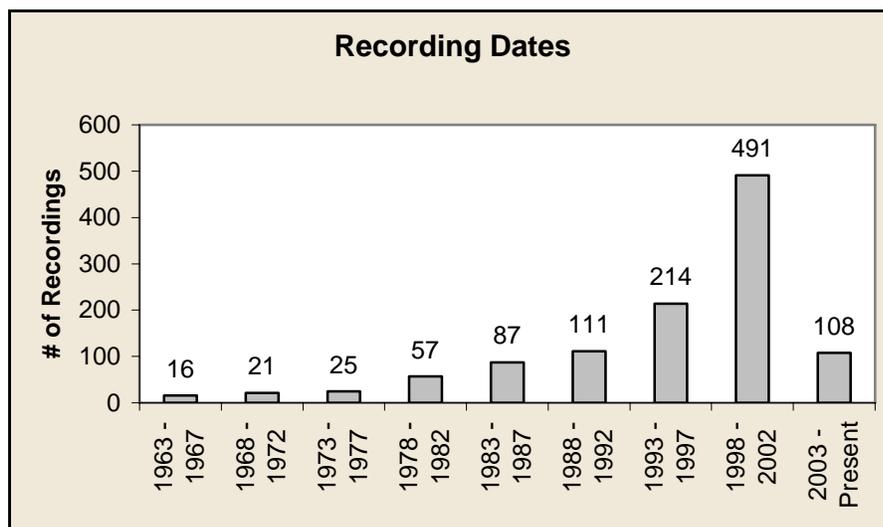
Platted Subdivisions

A total of ten county approved subdivisions were recorded in the Summit Neighborhood area between 1954 and 1964. Only two additional subdivisions, the Casitas Del Valle in 1990 and Frazier Road Estates in 1999, have been approved since that time. These twelve subdivisions represented approximately 31% of the total number of parcels in the study area when parcel data was retrieved in the fall of 2003. Map 4.3 locates the plats of these subdivisions.

The Shift to Unregulated Development

A decrease in the creation of county approved subdivisions in the area corresponds with an increase in unregulated development, which dramatically exceeds earlier rates of growth. Summit Neighborhood has experienced tremendous growth in the last ten years with 70% of the total parcels in the area having been recorded since 1994. This date is significant because of changes that were made to Arizona state lot splitting regulations in that year, as outlined in Senate Bill 1088, Chapter 263. Figure 1 shows the number of parcels recorded in the summit neighborhood in five year increments.

FIGURE 3. Total Parcels Recorded. Summit Neighborhood Plan 2004:37.

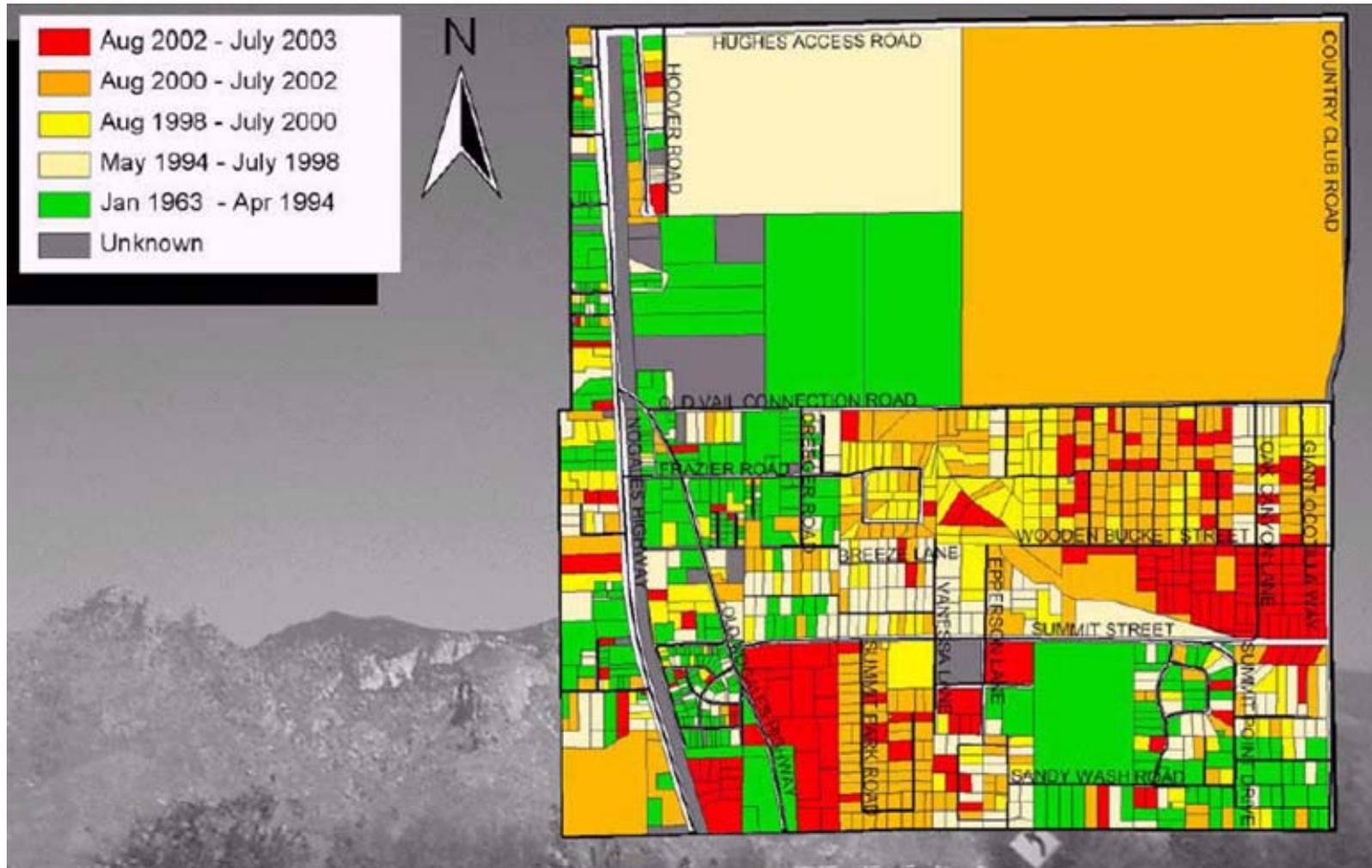


Source Pima County Recorder's Website

The number of parcels recorded during the 1993 to 1997 period is almost double that in the previous period. This number more than doubles in the next five-year period. The period 2003 to present is approximately 10 months, suggesting at least 648 parcels would be recorded for this five year period. Based on these projections, we could expect parcel recordings to continue to increase exponential until the area reaches build out.

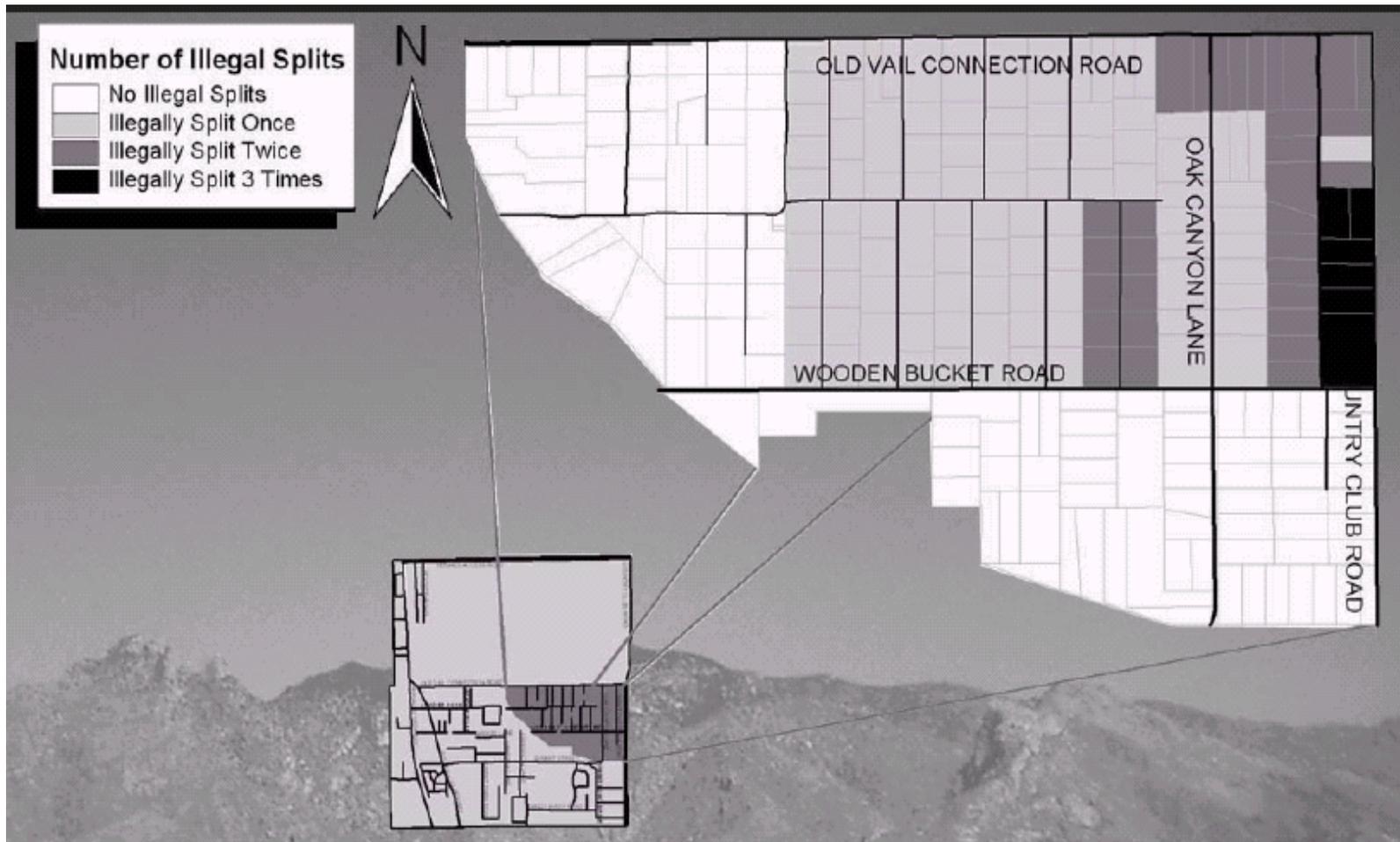
Figure 4 provides a graphic display of this data. Only those areas in green represent parcels recorded prior to the 1994 changes to the definition of subdivision. Most of those parcels are in approved subdivisions or remain undeveloped. As the map clearly illustrates, the majority of the lot splitting and individual parcel recording for this area has followed the 1994 legislative changes. Figure 5 provides a further illustration of this situation within the Wooden Bucket section of the neighborhood.

FIGURE 4. Parcel Recording Dates for the Summit Neighborhood.



Source: PCLIS Data Layers. Reproduced from Summit Neighborhood Plan, 2003: Map 4.3

FIGURE 5. Wooden Bucket Case Study Area.



Source: PCLIS Data Layers. Reproduced from Summit Neighborhood Plan, 2003:Map 4.4.

All of the individual land parcels in this area have been recorded since 2002. The number of “illegal” splits referenced on the map legend refers to the number by which the recorded number of parcels exceeds the maximum of five currently allowed by law within a single split event. The map provides evidence that previous changes to the lot-split legislation, intended to improve the ability of the county to prosecute abuses to the law, have not served to deter unregulated development in this area.

As noted earlier, much of the development activity in this area has been attributed to one family. The name of this developer appears repeatedly in different configurations in the parcel recording data for the neighborhood. In a conversation with one resident of the Wooden Bucket area, he confirmed that this developer had transferred legal title of five parcels of land to a community resident for sale to other individuals. When discussing the sale of parcels of land in the flood plain with a community researcher, a second developer was mentioned. It was noted that he was offering parcels immediately adjacent to the wash in an area known to flood for \$20,000 per acre. My informant said she had elected to buy a parcel on higher ground where the asking price was between \$30,000 and \$40,000 per acre.

Summary and Conclusions

Our data illustrates that local land developers have sought to evade subdivision review by recording parcels under various names and “acting in concert” with community members to transfer parcels to third parties for development purposes. It further illustrates that lot-splitting activity has increased dramatically following the 1994 changes

to the law and that threats of prosecution for “acting in concert” and the fines that would be imposed for these activities have not served as deterrents to unregulated development. In addition, development activities in the area are disturbing water flow patterns causing new patterns of flooding. These changes coupled with the sale of residential land parcels in flood areas presents significant threats to public health and safety.

Dramatic population increases in the area are indicated through comparison of 1990 and 2000 census data. Parcel recording data and the data from our community survey suggest that even more dramatic growth has taken place since 2000. Attendant shifts in the ethnicity of the neighborhood, and informal data estimates from community members suggest that the continued influx of immigrant laborers from Mexico is the impetus for recent increases in neighborhood growth.

V

OVERVIEW AND REPORT FINDINGS

‘Land use’ is a cool and neutral term that covers a multitude of highly charged and even dangerous matters.
(Popper 1981:8)

The subdivision of land is the primary mechanism by which land is distributed throughout society. Land subdivision policies are formulated under the influence of ideologies of land use and ownership that are rooted in national debates over property rights and the role of the government in land distribution and regulation. Land-use regulations are justified on the basis of the need to protect the public welfare through the imposition of specific land development requirements. Unregulated residential development resulting from the exploitation of inadequate subdivision controls poses potential threats to the public welfare when property owners purchase land that is not appropriate for residential development because of location, environmental conditions or lack of services. Governments are forced to step in, after the fact, to address the externalities created from unregulated haphazard and leapfrog development, which endangers the property owners, their neighbors and the environment.

The end result is an increased tax burden resulting from the imposition of government remedies required to protect public health, safety, and welfare. Externalities may include the social costs of providing assistance to property owners who are harmed by unethical developers, the high cost of providing infrastructure to poorly designed and

scattered developments as well as environmental degradation and habitat loss resulting from inappropriate and destructive use of the land. As local governments attempt to address the problem of infrastructure deficit resulting from irregular development they must simultaneously seek preventive regulatory methods that would provide front-end controls over individual land transactions or the infrastructure debt will continue to accrue.

Regulating Colonias

Colonias communities represent a unique form of unregulated residential development, which serves the needs of the Mexican immigrant labor force. While these communities provide a housing function, they do not meet minimum standards of health, safety, and environmental protection. Because of the socio-economic constraints under which these communities are established, they present regulatory concerns for all levels of government, not just local jurisdictions. The effects of Colonias development on local governments and the environment are similar to those resulting from other forms of unregulated development. Environmental problems include dust from unpaved roads, which increases the levels of particulate matter in the air, making it difficult for local jurisdictions to meet minimum national air quality standards. Infrastructure debt poses extensive problems for local jurisdictions.

Public health and safety problems resulting from improper sewage treatment, limited availability of safe drinking water, and unsafe road conditions are just a few of the problems these communities face. While other unregulated residential developments

may experience many of the same problems as Colonias communities, the members of these communities are less able to deal with the ill effects of poor development due to language and cultural barriers, immigration status and poverty. The inhabitants of these communities have fewer options available to them and are more easily victimized by the conditions of their own economic circumstances and the exploitative behavior of the land agents who sell them unregulated parcels of land.

Due to the inability of local jurisdictions to deal with the problems presented by colonias, national level aid has been directed toward their identification and assistance through the joint efforts of USDA and HUD. Through these centralized assistance programs, states and local governments can become involved in developing programs directed at meeting the needs of existing colonias communities.

Federal Level

The Environmental Protection Agency (EPA) has recognized that problems associated with unregulated development will continue to mount unless preventative measures are introduced.

EPA's Appropriations Acts for FY 01 and FY 02 stipulate that no funds provided for colonias shall be made available after June 1, 2001 unless the receiving governmental entity has established an enforceable ordinance or rule which prevents the development or construction of any additional colonia areas, or the development within an existing colonias of any new home, business, or other structure which lacks water, wastewater or other necessary structure. (EPA 2002:3)

Although, to my knowledge, HUD has not yet implemented such a measure, they may eventually be forced to do so in order to prevent misuse of Colonias funding. The HUD publication “Colonias in Arizona” notes:

As the existing federal definition of colonias stands, it has no power to exclude sprawl or more affluent border communities. Perhaps a definition that better reflects the social needs and poverty of colonias is needed. (HUD 1990:5)

They further note that the retirement community of Green Valley applied for colonias funding to “expand its own wastewater facility” (ibid). Clearly there is a need for making distinctions between the different types of unregulated residential developments for the purposes of policy development and funding allocation. The subject that has not been addressed by U.S. governmental assistance agencies is how to deal with the larger issue of border economies and their dependency on a low-wage immigrant labor force. Perhaps these assistance programs are best administered on a federal level since that is also the jurisdictional level that must deal with issues of immigration and naturalization.

State Level

State level policy is the major culprit in the perpetuation of unregulated development in Arizona. The reasons for the state legislature’s reluctance to change the definition of subdivision to allow for county review of all land splits is unclear. Perhaps they are simply succumbing to pressure from an overbearing real estate and development lobby. However, the persistence of a mythic vision of westward expansion made manifest in

the ideology of private property undoubtedly plays into the equation. The ideology of private property rights is often invoked as a defense against land regulation. The case study from the Summit Neighborhood illustrates very clearly that it is the property rights of the residents in the platted subdivisions that are being violated by the unregulated developments taking place in the area. Environmental degradation in the lot split areas has created flooding in approved subdivisions where storm water accumulation had not previously been a problem.

The evidence presented in this report illustrates that the 1994 changes to state land policy have dramatically increased the rate of unregulated development in the unincorporated areas of Arizona. This points to an immediate need to address the problem on a regulatory level to protect the property rights of those who are making the required investments to insure that development is following a sustainable course.

Because the ethics of policy development requires that we consider the needs of the least advantaged members of society, regulations that are created to curtail unregulated development must go hand in hand with regulations that seek to create affordable housing options for those who are currently forced to inhabit colonias communities by virtue of their socio-economic situation.

Local Level

The ethics of policy development should also encourage a reconsideration of zoning and subdivision regulations that drive up the cost of home prices. Because home ownership may be the only savings option for lower income segments of the population, regulatory mechanisms that eliminate affordable housing options (including self-help

housing) have the potential to perpetuate or increase economic disparity between lower and higher income groups. Addressing the needs of the most disadvantaged members of society means finding solutions to the affordable housing crises along in addition to addressing the economic concerns of local government jurisdictions.

The solution to both these problems may lie in a reconsideration of what is truly a necessity in housing development. “Building from the Best of Tucson,” recommends that land-use policies “provide landowners with greater flexibility in developing their property as long as they meet specific performance criteria (“standards”) for development” (The Sonoran Institute 2001: 62).

In an effort to curtail lot-splitting activities, Coconino County has implemented an “Administrative Subdivision Review,” which seeks to simplify the review process for proposed subdivisions of 20 or fewer parcels (Towler 2004). The process is streamlined and certain exceptions are granted, such as reduced road widths, in an effort to encourage small developers to submit to review rather than develop their properties in a completely unregulated fashion. While this review process was created to address more affluent forms of wildcat development, it does set a precedent for the creation of minimum standard subdivision policies which might be developed to meet the needs lower income populations that have specific housing needs that are not being addressed within the current housing market.

Colonias Policies

As noted earlier, Colonias communities fill an important need by serving as “sites of social reproduction for the border’s preferred labor force” (Dohlinow 2001:1). Until

the economic conditions that create this need are addressed, the demand for Colonias communities will continue and loosely enforced subdivision laws will be exploited to meet that demand. Until changes are made at the state level, local jurisdiction will have to depend on the financial assistance available from federal sources to address the infrastructure needs of Colonias communities. It is possible that HUD and USDA will choose to follow the lead of the EPA and require the imposition of regulatory measure to curtail unregulated development from occurring as a condition of providing assistance to local governments in meeting the needs of colonias communities. This would result in a loss of financial assistance for local jurisdictions and colonias communities both, unless state policy is changed to allow counties to exert more authority over lot-splitting activities. Ultimately, some level of cooperative effort between local and federal jurisdictions may be required to force the necessary changes at the state policy level.

The socio-economic constraints that contribute to the creation of Colonias communities differ from the development pressures that influence the creation of other forms of unregulated residential development in several important respects. The members of these communities may not be able to afford other forms of housing, including rental housing, due to the low wages they receive. Additionally, undocumented workers cannot qualify for federal housing assistance programs leaving them with few housing options. The AICP code of ethics dictates that planners must consider the needs of the least advantaged members of society. While some may argue against accepting responsibility for illegal residents of our country, I would argue that we must accept

responsibility for the labor force that we employ by seeking to provide safe and affordable housing for all members of our community.

The current conditions in Colonias communities do not meet the minimum standards of health and safety. As a result they pose serious threats for residents and the surrounding communities. It is critical that we address this issue by eliminating the loopholes in subdivision regulation that allow for the creation of unsafe communities including the current form of Colonias. However, we must simultaneously develop regulatory opportunities, such as minimum standard subdivisions, that will allow for the creation of a wider variety of safe affordable housing options for all members of our society.

APPENDIX A
ILLEGAL SUBDIVISION COMMITTEE FINAL
RECOMMENDATIONS

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