



# WHAT YOU NEED TO KNOW BEFORE YOU BUY YOUR “RANCHETTE” — LOT-SPLITS VERSUS SUBDIVISIONS IN RURAL ARIZONA

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Arizona’s total land mass is comprised of 72.9 million acres. Of this acreage, 42% is federal land, 28% is Tribal or Reservation land, 13% is State Trust Land, and 18% is private land<sup>1</sup>. Private land in this percentage includes all local government lands like rights of way and special district-owned land, in addition to land owned by private entities. The conversion of large tracts of private lands, like ranches and farms, to smaller residential lots is the focus of this publication. While many may be familiar with the concept of subdivision, few people other than planners or real estate interests understand the difference between subdividing property and the process of lot-splitting, whereby a parcel of land is split off and sold in the absence of a subdivision plan. Lot-splitting is a very common land use practice in Arizona’s rural areas, especially outside the incorporated limits of cities and towns.

## Lot Splits

In Arizona’s counties, Arizona Revised Statutes (ARS §32-2101)<sup>2</sup> allow large properties like ranches or farms to be surveyed into many parcels no smaller than 36 acres and sold with only minimal state public report requirements, namely disclosure of legal access, floodplains, etc. Furthermore, the statutes permit any individual buying one or more of those parcels to further split that acreage up to five additional times and sell each one without going through any formal subdivision review process. Subsequent owners of parcels can also continue to split their property up to five times, as long as the resulting new parcels meet the minimum zoning requirements of the county. This process of lot-splitting results in what are commonly called “wildcat subdivisions,” although the term “subdivision” is a misnomer since no formal subdivision plans are required, reviewed or recorded. The informal term “wildcat” is also confusingly applied to illegal lot-splitting, i.e. splitting more

than five times, or acting in concert with other individuals to profit from multiple lot splits.

Local zoning plays an important role in the number of lot splits that may actually happen on any given property. Zoning in Arizona’s counties stipulates a minimum lot size needed in order to obtain a building permit for a home or other structures. Minimum lot sizes in rural areas vary county by county but generally range from one acre to ten acres. Logic dictates that the greater the minimum lot size, the fewer times a property can be split, and the fewer homes will occupy the landscape.

Counties in Arizona, under Arizona Revised Statutes<sup>3</sup>, if they choose, can adopt a minor land division ordinance to review lot-splits of five or fewer parcels. These review criteria are considerably less onerous than the review processes for formal subdivisions and not all counties have adopted this kind of ordinance. However, if a county adopts such an ordinance, it is limited to a review of the following:

1. The lots, parcels or fractional interests each meet the minimum applicable county zoning requirements of the applicable zoning designation.
2. The applicant provides a standard preliminary title report or other acceptable document that demonstrates legal access to the lots, parcels or fractional interests.
3. The applicant provides a statement from a licensed surveyor or engineer, or other evidence acceptable to the county, stating whether each lot, parcel or fractional interest has physical access that is traversable by a two-wheel drive passenger motor vehicle.
4. The applicant reserves the necessary and appropriate utility easements to serve each lot, parcel or fractional interest created by the land division.

## Subdivisions

By contrast, formal subdivisions are a regulated process of surveying, engineering and designing a residential community containing six or more lots, and for the eventual sale of those lots. A subdivision plat, reviewed and approved by a county's Board of Supervisors or Planning Commission, becomes the legal document governing the engineered development of that residential community, including the legal boundaries of each lot, floodplains, placement of roads, easements and utilities. In addition, the plat also may stipulate conditions of construction and uses within that community. Subdivisions often have stringent rules that supersede a county's own zoning regulations and these deed restrictions are governed by homeowners associations.

Innovative subdivision developments incorporate rainwater harvesting and water conservation requirements, building envelopes, community open space, parks, and other amenities either voluntarily or due to requirements or incentives from the municipality or county in which the project lies and was approved. Issues such as setbacks from washes, flood control and drainage, street maintenance, utility corridors, water adequacy and wastewater treatment are all addressed between a developer and the county before one lot is ever sold. See Figure 1 for an example of a subdivision plat. In addition, the seller of a new platted lot within a recorded subdivision is obligated to provide the first buyer with a state-approved public report which

Figure 1. Subdivision Plat

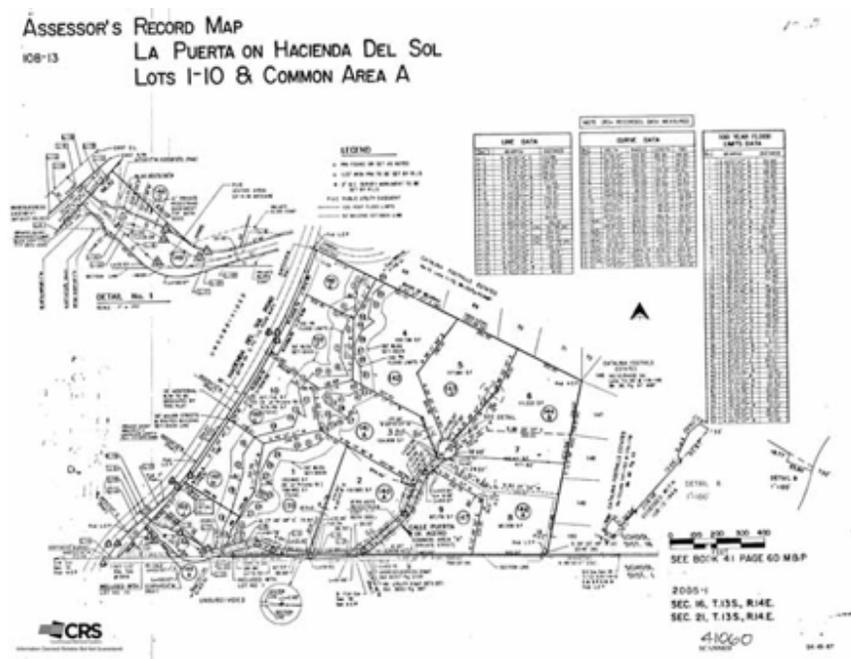
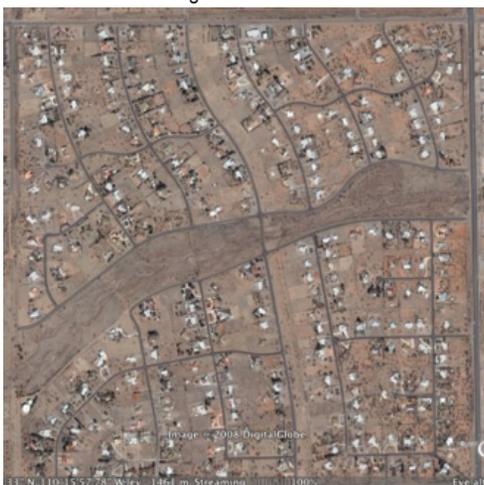


Figure 2.

Legal Subdivision



Lot Split Community



outlines important information about the subdivision as a whole – such as proximity to medical services, the location of nearby schools, liens and taxes on the property, and any other restricted uses within the subdivision.

From a bird's eye view, it is easy to discern between a lot-split community and one that has been through a regulated subdivision process (Figure 2).

## So What's the Big Deal?

It is not difficult to understand why lot-splitting is a more popular way for a land owner to sell a portion of his or her property, rather than go through a formal subdivision platting process. In the case of a rancher or farmer, surveying their property into a multitude of 36-acre (or larger) parcels is the most expedient process for them to cash in on their most valuable commodity – land. This process involves little to no engineering and only requires the services of a surveyor and a realtor. Owners of smaller acreages may see the need to split off and sell a piece of their acreage in order to make their mortgage payment. Families of large and small properties alike will often carve out a separate parcel so that their relatives can build a home and live nearby. Because of the expediency and relatively low costs to a land owner in lot-splitting a property, raw land is more affordable.

Subdivisions can be costly and time-consuming for developers. Before a developer can sell one lot in a subdivision, they will likely have expended many thousands of dollars on engineers, county platting fees and improvements like grading, road construction, and utilities. These costs are often passed on to the buyers of lots in the subdivision. The advantage to a developer, of course, is that they have the ability to sell many lots to recoup their costs and make a profit on the development.

New rural residents may know ahead of time the issues they will face living in remote, rural settings. However, Christensen et al. in a 2006 article about Arizona lot splitting, published in *Perspectives in Public Affairs*<sup>4</sup> cited a particular issue related to lot-splitting referred to as 'information asymmetry.' This refers to the amount of information that a seller has about a piece of property compared to the potential buyer of that same property. Arizona Revised Statutes (ARS §33-422)<sup>5</sup> now require disclosure between sellers and buyers about certain aspects of a property –such as whether or not a property is in a floodplain, status of legal access, proximity to a military airport, among others. All in all, there are currently twenty property disclosure questions that sellers are required to provide buyers upon sale of property. A buyer may rescind the sale within five days of receiving the affidavit of disclosure.

Although the intent of this statute is to protect buyers and provide some balance to the information asymmetry issue, the reality is that many Arizona counties do not have the capacity to enforce this requirement. The statute requires the affidavit to be recorded with the deed, but there is no legal link between this requirement and the ordinance that counties are permitted to adopt to review lot splits.

Moreover, though the affidavit of disclosure is required to be signed before a notary, there is no set process for verifying the information provided by the seller.

As a result, unsuspecting buyers of rural property that has been lot split may find themselves confronting a host of issues. For example, they may find it to be much more costly than they expected to drill a well due to the depth of the water table; or may even find the need to haul water to their home from another location. When they apply for a septic permit to handle their home's wastewater, their percolation tests may not pass muster with a county's health department, due to poorly draining soils or bedrock. They are then forced to consider more costly wastewater treatment systems. They may be surprised to find out the cost of running a power line to their property, if it is located some distance from the nearest existing utilities. Access to their property is likely a private, unimproved dirt road without regular maintenance. New rural property owners often assume that their county will automatically maintain their road, but if it is private, then that becomes the property owner's responsibility. These are but a few of the impacts that new property owners may face in lot split areas.

The term 'subdivision' may conjure up images typical of suburbia like uniform-looking homes, paved streets, and manicured lawns, but in Arizona the term more aptly characterizes a regulatory process to ensure responsible development. Lot splits are a loosely regulated alternative to subdivision, but both processes result in new homes on Arizona's rural landscapes – areas that were once farmland, ranchland, wildlife habitat or all three. In his book *New Geographies of the American West*<sup>6</sup> William Travis describes the effects of landscape fragmentation, the introduction of exotic species of plants and animals and the exacerbation of wildland fire hazards as the result of exurban, residential development in the rural West.

Before purchasing that slice of paradise, it is important to be informed of all the issues that may arise. Arizona Cooperative Extension has a host of resources that may prove useful to small acreage land owners as they grapple with issues like wells, wildlife, home-siting, easements and open range cattle. These resources, as well as others, can be found on Arizona Cooperative Extension's website *Arizona's Changing Rural Landscapes under Small Acreage Landowner Resources*: <http://ag.arizona.edu/rurallandscape>. New residents choosing to live in these rural landscapes have an opportunity to be good stewards of their land while having the least amount of impact on the landscape as a whole.

## References

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