

REFERENCE TITLE: property; subdivision; size; requirements

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2396

Introduced by
Representative Thorpe

AN ACT

AMENDING SECTIONS 9-462.01, 9-463.02, 11-811, 11-831 AND 32-2101, ARIZONA
REVISED STATUTES; RELATING TO REAL PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-462.01, Arizona Revised Statutes, is amended
3 to read:

4 9-462.01. Zoning regulations; public hearing; definitions

5 A. Pursuant to this article, the legislative body of any
6 municipality by ordinance ~~may~~, in order to conserve and promote the public
7 health, safety and general welfare, MAY:

8 1. Regulate the use of buildings, structures and land as between
9 agriculture, residence, industry, business and other purposes.

10 2. Regulate signs and billboards.

11 3. Regulate the location, height, bulk, number of stories and size
12 of buildings and structures, the size and use of lots, yards, courts and
13 other open spaces, the percentage of a lot that may be occupied by a
14 building or structure, access to incident solar energy and the intensity
15 of land use, ~~—~~ EXCEPT THAT PRIVATE PROPERTY IN A RURAL MUNICIPALITY IN
16 THIS STATE MAY CONTAIN UP TO ONE SINGLE-FAMILY RESIDENCE PER ACRE THAT IS
17 OCCUPIED BY A FULL-TIME OR PART-TIME RESIDENT OR VACATION RENTAL OCCUPANT
18 AND MAY CONTAIN ANY OF THE FOLLOWING THAT COMPLIES WITH ALL APPLICABLE
19 STATE AND LOCAL CONSTRUCTION, HEALTH AND SAFETY LAWS AND THAT IS OCCUPIED
20 BY A FULL-TIME OR PART-TIME RESIDENT OR VACATION RENTAL OCCUPANT:

21 (a) A YURT.

22 (b) A HOGAN.

23 (c) A RECREATIONAL VEHICLE.

24 (d) A PREFABRICATED HOME.

25 (e) A SINGLE-FAMILY RESIDENCE.

26 4. Establish requirements for off-street parking and loading.

27 5. Establish and maintain building setback lines.

28 6. Create civic districts around civic centers, public parks,
29 public buildings or public grounds and establish regulations therefor.

30 7. Require as a condition of rezoning public dedication of
31 rights-of-way as streets, alleys, public ways, drainage and public
32 utilities as are reasonably required by or related to the effect of the
33 rezoning.

34 8. Establish floodplain zoning districts and regulations to protect
35 life and property from the hazards of periodic inundation. Regulations
36 may include variable lot sizes, special grading or drainage requirements,
37 or other requirements deemed necessary for the public health, safety or
38 general welfare.

39 9. Establish special zoning districts or regulations for certain
40 lands characterized by adverse topography, adverse soils, subsidence of
41 the earth, high water table, lack of water or other natural or man-made
42 hazards to life or property. Regulations may include variable lot sizes,
43 special grading or drainage requirements, or other requirements deemed
44 necessary for the public health, safety or general welfare.

45 10. Establish districts of historical significance provided that:

(a) The ordinances may require that special permission be obtained for any development within the district if the legislative body has adopted a plan for the preservation of districts of historical significance that meets the requirements of subdivision (b) of this paragraph, and the criteria contained in the ordinance are consistent with the objectives set forth in the plan.

(b) A plan for the preservation of districts of historical significance shall identify districts of special historical significance, state the objectives to be sought concerning the development or preservation of sites, area and structures within the district, and formulate a program for public action, including the provision of public facilities and the regulation of private development and demolition necessary to realize these objectives.

(c) The ordinance establishing districts of historical significance shall set forth standards necessary to preserve the historical character of the area so designated.

(d) The ordinances may designate or authorize any committee, commission, department or person to designate structures or sites of special historical significance in accordance with criteria contained in the ordinance, and no designation shall be made except after a public hearing on notice of the owners of record of the property designated of special historical significance. The ordinances may require that special permission be obtained for any development respecting the structures or sites.

11. Establish age-specific community zoning districts in which residency is restricted to a head of a household or spouse who must be of a specific age or older and in which minors are prohibited from living in the home. Age-specific community zoning districts shall not be overlaid over property without the permission of all owners of property included as part of the district unless all of the property in the district has been developed, advertised and sold or rented under specific age restrictions. The establishment of age-specific community zoning districts is subject to all of the public notice requirements and other procedures prescribed by this article.

12. Establish procedures, methods and standards for the transfer of development rights within its jurisdiction. Any proposed transfer of development rights from the sending property or to the receiving property shall be subject to the notice and hearing requirements of section 9-462.04 and shall be subject to the approval and consent of the property owners of both the sending and receiving property. Before any transfer of development rights, a municipality shall adopt an ordinance providing for:

(a) The issuance and recordation of the instruments necessary to sever development rights from the sending property and to affix development rights to the receiving property. These instruments shall be executed by the affected property owners and lienholders.

1 (b) The preservation of the character of the sending property and
2 assurance that the prohibitions against the use and development of the
3 sending property shall bind the landowner and every successor in interest
4 to the landowner.

5 (c) The severance of transferable development rights from the
6 sending property and the delayed transfer of development rights to a
7 receiving property.

8 (d) The purchase, sale, exchange or other conveyance of
9 transferable development rights prior to the rights being affixed to a
10 receiving property.

11 (e) A system for monitoring the severance, ownership, assignment
12 and transfer of transferable development rights.

13 (f) The right of a municipality to purchase development rights and
14 to hold them for resale.

15 (g) The right of a municipality at its discretion to enter into an
16 intergovernmental agreement with another municipality or a county for the
17 transfer of development rights between jurisdictions. The transfer shall
18 comply with this paragraph, except that if the sending property is located
19 in an unincorporated area of a county, the approval of the development
20 rights to be sent to a municipality shall comply with section 11-817.

21 B. For the purposes of subsection A of this section, the
22 legislative body may divide a municipality, or portion of a municipality,
23 into zones of the number, shape and area it deems best suited to carry out
24 the purpose of this article and articles 6, 6.2 and 6.3 of this chapter.

25 C. All zoning regulations shall be uniform for each class or kind
26 of building or use of land throughout each zone, but the regulations in
27 one type of zone may differ from those in other types of zones as follows:

28 1. Within individual zones, there may be uses permitted on a
29 conditional basis under which additional requirements must be met,
30 including requiring site plan review and approval by the planning agency.
31 The conditional uses are generally characterized by any of the following:

32 (a) Infrequency of use.

33 (b) High degree of traffic generation.

34 (c) Requirement of large land area.

35 2. Within residential zones, the regulations may permit
36 modifications to minimum yard lot area and height requirements.

37 D. To carry out the purposes of this article and articles 6 and 6.2
38 of this chapter, the legislative body may adopt overlay zoning districts
39 and regulations applicable to particular buildings, structures and land
40 within individual zones. For the purposes of this subsection, "overlay
41 zoning district" means a special zoning district that includes regulations
42 that modify regulations in another zoning district with which the overlay
43 zoning district is combined. Overlay zoning districts and regulations
44 shall be adopted pursuant to section 9-462.04.

1 E. The legislative body may approve a change of zone conditioned on
2 a schedule for development of the specific use or uses for which rezoning
3 is requested. If at the expiration of this period the property has not
4 been improved for the use for which it was conditionally approved, the
5 legislative body, after notification by certified mail to the owner and
6 applicant who requested the rezoning, shall schedule a public hearing to
7 take administrative action to extend, remove or determine compliance with
8 the schedule for development or take legislative action to cause the
9 property to revert to its former zoning classification.

10 F. All zoning and rezoning ordinances or regulations adopted under
11 this article shall be consistent with and conform to the adopted general
12 plan of the municipality, if any, as adopted under article 6 of this
13 chapter. In the case of uncertainty in construing or applying the
14 conformity of any part of a proposed rezoning ordinance to the adopted
15 general plan of the municipality, the ordinance shall be construed in a
16 manner that will further the implementation of, and not be contrary to,
17 the goals, policies and applicable elements of the general plan. A
18 rezoning ordinance conforms with the land use element of the general plan
19 if it proposes land uses, densities or intensities within the range of
20 identified uses, densities and intensities of the land use element of the
21 general plan.

22 G. A regulation or ordinance under this section may not prevent or
23 restrict agricultural composting on farmland that is five or more
24 contiguous acres and that meets the requirements of this subsection. An
25 agricultural composting operation shall notify in writing the legislative
26 body of the municipality and the nearest fire department of the location
27 of the composting operation. If the nearest fire department is located in
28 a different municipality from the agricultural composting operation, the
29 agricultural composting operation shall also notify in writing the fire
30 department of the municipality in which the operation is located.
31 Agricultural composting is subject to sections 3-112 and 49-141.
32 Agricultural composting may not be conducted within one thousand three
33 hundred twenty feet of an existing residential use, unless the operations
34 are conducted on farmland or land leased in association with farmland.
35 Any disposal of manure shall comply with section 49-247. For the purposes
36 of this subsection:

37 1. "Agricultural composting" means the controlled biological
38 decomposition of organic solid waste under in-vessel anaerobic or aerobic
39 conditions where all or part of the materials are generated on the
40 farmland or will be used on the farmland associated with the agricultural
41 composting operation.

42 2. "Farmland" has the same meaning prescribed in section 3-111 and
43 is subject to regulation under section 49-247.

H. A municipality may not adopt a land use regulation or impose any condition for issuance of a building or use permit or other approval that violates section 9-461.16.

I. In accordance with article II, sections 1 and 2, Constitution of Arizona, the legislative body of a municipality shall consider the individual property rights and personal liberties of the residents of the municipality before adopting any zoning ordinance.

J. For the purposes of this section:

1. "Development rights" means the maximum development that would be allowed on the sending property under any general or specific plan and local zoning ordinance of a municipality in effect on the date the municipality adopts an ordinance pursuant to subsection A, paragraph 12 of this section respecting the permissible use, area, bulk or height of improvements made to the lot or parcel. Development rights may be calculated and allocated in accordance with factors including dwelling units, area, floor area, floor area ratio, height limitations, traffic generation or any other criteria that will quantify a value for the development rights in a manner that will carry out the objectives of this section.

2. "Receiving property" means a lot or parcel within which development rights are increased pursuant to a transfer of development rights. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property without substantial adverse environmental, economic or social impact to the receiving property or to neighboring property.

3. "Sending property" means a lot or parcel with special characteristics, including farmland, woodland, desert land, mountain land, floodplain, natural habitats, recreation or parkland, including golf course area, or land that has unique aesthetic, architectural or historic value that a municipality desires to protect from future development.

4. "Transfer of development rights" means the process by which development rights from a sending property are affixed to one or more receiving properties.

Sec. 2. Section 9-463.02, Arizona Revised Statutes, is amended to read:

9-463.02. Subdivision defined; applicability

A. "Subdivision" means improved or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, into four or more lots, tracts or parcels of land, or, if a new street is involved, any such property ~~which~~ **THAT** is divided into two or more lots, tracts or parcels of land, or, ~~any~~ any such property, the boundaries of which have been fixed by a recorded plat, ~~which~~ **THAT** is divided into more than two parts. ~~"Subdivision" also~~ includes any condominium, cooperative, community apartment, townhouse or similar project containing four or more

1 parcels, in which an undivided interest in the land is coupled with the
2 right of exclusive occupancy of any unit located ~~thereon~~ ON THE LAND, but
3 plats of such projects need not show the buildings or the manner in which
4 the buildings or airspace above the property shown on the plat are to be
5 divided.

6 B. The legislative body of a municipality shall not refuse approval
7 of a final plat of a project included in subsection A OF THIS SECTION
8 under provisions of an adopted subdivision regulation because of THE
9 location of buildings on the property shown on the plat not in violation
10 of such subdivision regulations or on account of the manner in which
11 airspace is to be divided in conveying the condominium. Fees and lot
12 design requirements shall be computed and imposed with respect to such
13 plats on the basis of parcels or lots on the surface of the land shown
14 ~~thereon~~ ON THE PLATS as included in the project. This subsection does not
15 limit the power of ~~such~~ THE legislative body to regulate the location of
16 buildings in such a project by or pursuant to a zoning ordinance.

17 C. ~~"Subdivision"~~ does not include the following:

18 1. The sale or exchange of parcels of land to or between adjoining
19 property owners if ~~such~~ THE sale or exchange does not create additional
20 lots.

21 2. The partitioning of land in accordance with other statutes
22 regulating the partitioning of land held in common ownership.

23 3. The leasing of apartments, offices, stores or similar space
24 within a building or trailer park. ~~, nor to~~

25 4. Mineral, oil or gas leases.

26 5. THE DIVISION OR PROPOSED DIVISION OF LAND LOCATED IN THIS STATE
27 INTO LOTS OR PARCELS EACH OF WHICH IS OR WILL BE FIVE ACRES OR LESS IF THE
28 SIZE OF THE LOTS OR PARCELS AFTER THE DIVISION OR PROPOSED DIVISION IS AT
29 LEAST AS LARGE AS THE AVERAGE LOT OR PARCEL SIZE WITHIN FIVE MILES OF THE
30 DIVIDED LOTS OR PARCELS.

31 Sec. 3. Section 11-811, Arizona Revised Statutes, is amended to
32 read:

33 11-811. Zoning ordinance; zoning districts; definitions

34 A. Pursuant to this article, the board of supervisors may adopt a
35 zoning ordinance in order to conserve and promote the public health,
36 safety, convenience and general welfare. The zoning ordinance and all
37 rezonings and zoning regulations amendments adopted under this article
38 shall be consistent with and conform to the adopted comprehensive plan.
39 In addition to the other matters that are required or authorized under
40 this section and article 1 of this chapter, the zoning ordinance:

41 1. Shall show the zoning districts designated as appropriate for
42 various classes of residential, business and industrial uses and shall
43 provide for the establishment of setback lines and other plans providing
44 for adequate light, air and parking facilities and for expediting traffic
45 within the districts.

2. May establish the percentage of a lot or parcel that may be covered by buildings and the size of yards, courts and other open spaces, ~~EXCEPT THAT PRIVATE PROPERTY IN A RURAL COUNTY IN THIS STATE MAY CONTAIN UP TO ONE SINGLE-FAMILY RESIDENCE PER ACRE THAT IS OCCUPIED BY A FULL-TIME OR PART-TIME RESIDENT OR VACATION RENTAL OCCUPANT AND MAY CONTAIN ANY OF THE FOLLOWING THAT COMPLIES WITH ALL APPLICABLE STATE AND LOCAL CONSTRUCTION, HEALTH AND SAFETY LAWS AND THAT IS OCCUPIED BY A FULL-TIME OR PART-TIME RESIDENT OR VACATION RENTAL OCCUPANT:~~

- (a) A YURT.
- (b) A HOGAN.
- (c) A RECREATIONAL VEHICLE.
- (d) A PREFABRICATED HOME.
- (e) A SINGLE-FAMILY RESIDENCE.

3. Shall consider access to incident solar energy.

4. May provide for retirement community zoning districts.

5. May provide for the regulation and use of business licenses, ~~adult-oriented~~ ADULT-ORIENTED business manager permits and adult service provider permits in conjunction with the establishment or operation of ~~adult-oriented~~ ADULT-ORIENTED businesses and facilities, including adult arcades, adult bookstores or video stores, cabarets, adult live entertainment establishments, adult motion picture theaters, adult theaters, massage establishments and nude model studios. With respect to cabarets, the ordinance shall not conflict with specific statutory or valid regulatory requirements applicable to persons WHO ARE licensed to dispense alcoholic beverages, but the ordinance may include regulation of the age and conduct of erotic entertainers in a manner at least as restrictive as rules adopted under title 4. Notwithstanding section 11-812, a county, in regulating or licensing businesses and facilities pursuant to this paragraph, may impose reasonable operating requirements that affect the existing uses of businesses and facilities.

6. Shall designate and zone appropriate areas of reasonable size in which there may be established with reasonable permanency canneries, fertilizer plants, refineries, commercial feedlots, ~~meat-packing~~ MEATPACKING plants, tallow works and other like businesses. A dairy operation, including areas designated for the raising of replacement heifers or bulls owned by the same dairy operation, is not subject to this paragraph, and is a general agricultural purpose under subsection D, paragraph 2 of this section and section 11-812, subsection A, paragraph 2. A replacement heifer or bull raising operation of a dairy that is not on contiguous property of the dairy is subject to this paragraph unless the operation begins within one-quarter mile of the dairy.

B. To carry out the purposes of this article, the board may adopt overlay zoning districts and regulations applicable to particular buildings, structures and land within individual zones. For the purposes of this subsection, "overlay zoning district" means a special zoning

district that includes regulations that modify regulations in another zoning district with which the overlay zoning district is combined. Overlay zoning districts and regulations shall be adopted pursuant to section 11-813. The provisions of overlay zoning shall apply retroactively to authorize overlay zoning districts and regulations adopted before April 20, 1993.

C. In accordance with article II, sections 1 and 2, Constitution of Arizona, the board shall consider the individual property rights and personal liberties of the residents of the county before adopting any zoning ordinance.

D. This section does not authorize:

1. The imposition of dedications, exactions, fees or other requirements that are not otherwise authorized by law.

2. The regulation or restriction of the use or occupation of land or improvements for railroad, mining, metallurgical, grazing or general agricultural purposes, if the tract concerned is five or more contiguous commercial acres. For the purposes of this paragraph, general agricultural purposes do not include the cultivation of cannabis as defined in section 13-3401 or marijuana as defined in section 13-3401 or 36-2801.

E. For the purposes of this section:

1. "Adult arcade" means any place to which the public is permitted or invited and in which coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image producing devices are maintained to show images involving specific sexual activities or specific anatomical areas to persons in booths or viewing rooms.

2. "Adult bookstore or video store" means a commercial establishment that offers for sale or rent any of the following as one of its principal business purposes:

(a) Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, videocassettes or reproductions or slides or other visual representations that depict or describe specific sexual activities or specific anatomical areas.

(b) Instruments, devices or paraphernalia that are designed for use in connection with specific sexual activities.

3. "Adult live entertainment establishment" means an establishment that features either:

(a) Persons who appear in a state of nudity.

(b) Live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities.

4. "Adult motion picture theater" means a commercial establishment in which for any form of consideration films, motion pictures, videocassettes, slides or other similar photographic reproductions that

1 are characterized by the depiction or description of specific sexual
2 activities or specific anatomical areas are predominantly shown.

3 5. "~~Adult-oriented~~ ADULT-ORIENTED business" means adult arcades,
4 adult bookstores or video stores, cabarets, adult live entertainment
5 establishments, adult motion picture theaters, adult theaters, massage
6 establishments that offer adult service or nude model studios.

7 6. "~~Adult-oriented~~ ADULT-ORIENTED business manager" means a person
8 on the premises of an ~~adult-oriented~~ ADULT-ORIENTED business who is
9 authorized to exercise overall operational control of the business.

10 7. "Adult service" means dancing, serving food or beverages,
11 modeling, posing, wrestling, singing, reading, talking, listening or other
12 performances or activities conducted for any consideration in an ~~adult~~
13 ~~oriented~~ ADULT-ORIENTED business by a person who is nude or seminude
14 during all or part of the time that the person is providing the service.

15 8. "Adult service provider" or "erotic entertainer" means any
16 natural person who provides an adult service.

17 9. "Adult theater" means a theater, concert hall, auditorium or
18 similar commercial establishment that predominantly features persons who
19 appear in a state of nudity or who engage in live performances that are
20 characterized by the exposure of specific anatomical areas or specific
21 sexual activities.

22 10. "Cabaret" means an ~~adult-oriented~~ ADULT-ORIENTED business THAT
23 IS licensed to provide alcoholic beverages pursuant to title 4, chapter 2,
24 article 1.

25 11. "Discernibly turgid state" means the state of being visibly
26 swollen, bloated, inflated or distended.

27 12. "Massage establishment" means an establishment in which a
28 person, firm, association or corporation engages in or permits massage
29 activities, including any method of pressure on, friction against,
30 stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating
31 of external soft parts of the body with the hands or with the aid of any
32 mechanical apparatus or electrical apparatus or appliance. This paragraph
33 does not apply to:

34 (a) Persons who are licensed pursuant to title 32, chapter 7, 8,
35 13, 14 or 17.

36 (b) Registered nurses, licensed practical nurses or technicians who
37 are acting under the supervision of a physician who is licensed pursuant
38 to title 32, chapter 13 or 17.

39 (c) Registered nurse practitioners who are licensed pursuant to
40 title 32, chapter 15.

41 (d) Persons who are employed or acting as trainers for a bona fide
42 amateur, semiprofessional or professional athlete or athletic team.

43 (e) Persons who are licensed pursuant to title 32, chapter 3 or 5
44 if the activity is limited to the head, face or neck.

1 13. "Nude model studio" means a place in which a person who appears
2 in a state of nudity or who displays specific anatomical areas is
3 observed, sketched, drawn, painted, sculptured, photographed or otherwise
4 depicted by other persons who pay money or other consideration. Nude
5 model studio does not include a proprietary school that is licensed by
6 this state, a college, community college or university that is supported
7 entirely or in part by taxation, a private college or university that
8 maintains and operates educational programs in which credits are
9 transferable to a college, community college or university that is
10 supported entirely or in part by taxation or a structure to which the
11 following apply:

12 (a) A sign is not visible from the exterior of the structure and no
13 other advertising appears indicating that a nude person is available for
14 viewing.

15 (b) A student must enroll at least three days in advance of a class
16 in order to participate.

17 (c) No more than one nude or seminude model is on the premises at
18 any time.

19 14. "Nude", "nudity" or "state of nudity" means any of the
20 following:

21 (a) The appearance of a human anus, genitals or a female breast
22 below a point immediately above the top of the areola.

23 (b) A state of dress that fails to opaquely cover a human anus,
24 genitals or a female breast below a point immediately above the top of the
25 areola.

26 15. "Principal business purposes" means that a commercial
27 establishment derives fifty percent or more of its gross income from the
28 sale or rental of items listed in paragraph 2 of this subsection.

29 16. "Seminude" means a state of dress in which clothing covers no
30 more than the genitals, pubic region and female breast below a point
31 immediately above the top of the areola, as well as portions of the body
32 that are covered by supporting straps or devices.

33 17. "Specific anatomical areas" means any of the following:

34 (a) A human anus, genitals, the pubic region or a female breast
35 below a point immediately above the top of the areola that is less than
36 completely and opaquely covered.

37 (b) Male genitals in a discernibly turgid state even if completely
38 and opaquely covered.

39 18. "Specific sexual activities" means any of the following:

40 (a) Human genitals in a state of sexual stimulation or arousal.

41 (b) Sex acts, normal or perverted, actual or simulated, including
42 acts of human masturbation, sexual intercourse, oral copulation or sodomy.

43 (c) Fondling or other erotic touching of the human genitals, pubic
44 region, buttocks, anus or female breast.

1 (d) Excretory functions as part of or in connection with any of the
2 activities under subdivision (a), (b) or (c) of this paragraph.

3 Sec. 4. Section 11-831, Arizona Revised Statutes, is amended to
4 read:

5 11-831. Review of land divisions; definitions

6 A. The board of supervisors of each county may adopt ordinances and
7 regulations pursuant to this section for staff review and approval of land
8 divisions of five or fewer lots, parcels or fractional interests, any of
9 which is ten acres or smaller in size, EXCEPT THAT THE BOARD OF
10 SUPERVISORS SHALL ALLOW THE DIVISION OR PROPOSED DIVISION OF LAND LOCATED
11 IN THIS STATE INTO LOTS OR PARCELS EACH OF WHICH IS OR WILL BE FIVE ACRES
12 OR LESS IF THE SIZE OF THE LOTS OR PARCELS AFTER THE DIVISION OR PROPOSED
13 DIVISION IS AT LEAST AS LARGE AS THE AVERAGE LOT OR PARCEL SIZE WITHIN
14 FIVE MILES OF THE DIVIDED LOTS OR PARCELS. The county may not deny
15 approval of any land division that meets the requirements of this section.
16 If A review of the request is not completed within thirty days after
17 receiving the request, the land division is considered to be approved. At
18 its option, the board of supervisors may submit a ballot question to the
19 voters of the county to allow the voters to determine the application of
20 subsections B and C OF THIS SECTION to qualifying land divisions in that
21 county.

22 B. An application to split a parcel of land shall be approved if:

23 1. The lots, parcels or fractional interests each meet the minimum
24 applicable county zoning requirements of the applicable zoning
25 designation.

26 2. The applicant provides a standard preliminary title report or
27 other acceptable document that demonstrates legal access to the lots,
28 parcels or fractional interests.

29 3. The applicant provides a statement from a licensed surveyor or
30 engineer, or other evidence acceptable to the county, stating whether each
31 lot, parcel or fractional interest has physical access that is traversable
32 by a two-wheel drive passenger motor vehicle.

33 4. The applicant reserves the necessary and appropriate utility
34 easements to serve each lot, parcel or fractional interest created by the
35 land division.

36 C. An application to split a parcel of land that does not comply
37 with one or more of the items listed in subsection B OF THIS SECTION shall
38 still be approved if the applicant provides an acknowledgment that is
39 signed by the applicant and that confirms that ~~no~~ A building or use permit
40 will NOT be issued by the county until the lot, parcel or fractional
41 interest has met the requirements of subsection B OF THIS SECTION. The
42 county may grant a variance from one or more of the items listed in
43 subsection B OF THIS SECTION.

1 D. Any approval of a land division under this section may:

2 1. Include the minimum statutory requirements for legal and

3 physical on-site access that must be met as a condition to the issuance of

4 a building or use permit for the lots, parcels or fractional interests.

5 2. Identify topographic, hydrologic or other site constraints,

6 requirements or limitations that must be addressed as conditions to the

7 eventual issuance of a building or use permit. These constraints,

8 requirements or limitations may be as noted by the applicant or through

9 county staff review, but there shall be no requirement for independent

10 studies.

11 E. If the requirements of subsections A through D ~~OF THIS SECTION~~

12 do not apply, a county may adopt ordinances and regulations pursuant to

13 this chapter for staff review of land divisions of five or fewer lots,

14 parcels or fractional interests but only to determine compliance with

15 minimum applicable county zoning requirements and legal access and may

16 grant waivers from the county zoning and legal access requirements. The

17 county may not deny approval of any land division that meets the

18 requirements of this section or ~~where~~ ~~IF~~ the deficiencies are noticed in

19 the deed. A county may not require a public hearing on a request to

20 divide five or fewer lots, parcels or fractional interests. If ~~A~~ review

21 of the request is not completed within thirty days ~~from~~ ~~AFTER~~ receipt of

22 the request, the land division shall be deemed approved. If ~~no~~ legal

23 access is ~~NOT~~ available, the legal access does not allow access by

24 emergency vehicles or the county zoning requirements are not met, the

25 access or zoning deficiencies shall be noticed in the deed. If a county

26 by ordinance requires a legal access of more than twenty-four feet roadway

27 width, the county is responsible for the improvement and maintenance of

28 the improvement. If the legal access does not allow access to the lots,

29 parcels or fractional interests by emergency vehicles, neither the county

30 nor its agents or employees are liable for damages resulting from the

31 failure of emergency vehicles to reach the lot, parcel or fractional

32 interest.

33 F. It is unlawful for a person or group of persons acting in

34 concert to attempt to avoid this section or the subdivision laws of this

35 state by acting in concert to divide a parcel of land into six or more

36 lots or sell or lease six or more lots by using a series of owners or

37 conveyances. Either the county where the division occurred or the state

38 real estate department pursuant to title 32, chapter 20, but not both, may

39 enforce this prohibition. A familial relationship alone is not sufficient

40 to constitute unlawful acting in concert.

41 G. For any subdivision that consists of ten or fewer lots, tracts

42 or parcels, each of which is of a size as prescribed by the board of

43 supervisors, the board of supervisors of each county may waive the

44 requirement to prepare, submit and receive approval of a preliminary plat

45 as a condition precedent to submitting a final plat and may waive or

1 reduce infrastructure standards or requirements except for improved
2 dust-controlled access and minimum drainage improvements.

3 H. For the purposes of this section:

4 1. "Legal access" means a public right of vehicular ingress and
5 egress between the lots, parcels or fractional interests being created.

6 2. "Minimum applicable county zoning requirements" means the
7 minimum acreage and dimensions of the resulting lot, parcel or fractional
8 interest as required by the county's zoning ordinance.

9 3. "Utility easement" means an easement of eight feet in width
10 dedicated to the general public to install, maintain and access sewer,
11 electric, gas and water utilities.

12 Sec. 5. Section 32-2101, Arizona Revised Statutes, is amended to
13 read:

14 32-2101. Definitions

15 In this chapter, unless the context otherwise requires:

16 1. "Acting in concert" means evidence of collaborating to pursue a
17 concerted plan.

18 2. "Advertising" means the attempt by publication, dissemination,
19 exhibition, solicitation or circulation, oral or written, or for broadcast
20 on radio or television to induce directly or indirectly any person to
21 enter into any obligation or acquire any title or interest in lands
22 subject to this chapter including the land sales contract to be used and
23 any photographs, drawings or artist's presentations of physical conditions
24 or facilities existing or to exist on the property. Advertising does not
25 include:

26 (a) Press releases or other communications delivered to newspapers,
27 periodicals or other news media for general information or public
28 relations purposes if no charge is made by the newspapers, periodicals or
29 other news media for the publication or use of any part of these
30 communications.

31 (b) Communications to stockholders as follows:

32 (i) Annual reports and interim financial reports.

33 (ii) Proxy materials.

34 (iii) Registration statements.

35 (iv) Securities prospectuses.

36 (v) Applications for listing of securities on stock exchanges.

37 (vi) Prospectuses.

38 (vii) Property reports.

39 (viii) Offering statements.

40 3. "Affiliate" means a person who, directly or indirectly through
41 one or more intermediaries, controls, is controlled by or is under common
42 control with the person specified.

43 4. "Associate broker" means a licensed broker WHO IS employed by
44 another broker. Unless otherwise specifically provided, an associate
45 broker has the same license privileges as a salesperson.

1 5. "Barrier" means a natural or man-made geographical feature that
2 prevents parcels of land from being practicably, reasonably and
3 economically united or reunited and that was not caused or created by the
4 owner of the parcels.

5 6. "Blanket encumbrance" means any mortgage, any deed of trust or
6 any other encumbrance or lien securing or evidencing the payment of money
7 and affecting more than one lot or parcel of subdivided land, or an
8 agreement affecting more than one lot or parcel by which the subdivider
9 holds the subdivision under an option, contract to sell or trust
10 agreement. Blanket encumbrance does not include taxes and assessments
11 THAT ARE levied by public authority.

12 7. "Board" means the state real estate advisory board.

13 8. "Broker", when used without modification, means a person who is
14 licensed as a broker under this chapter or who is required to be licensed
15 as a broker under this chapter.

16 9. "Business broker" means a real estate broker who acts as an
17 intermediary or agent between sellers or buyers, or both, in the sale or
18 purchase, or both, of businesses or business opportunities where a lease
19 or sale of real property is either a direct or incidental part of the
20 transaction.

21 10. "Camping site" means a space THAT IS designed and promoted for
22 the purpose of locating any trailer, tent, tent trailer, pickup camper or
23 other similar device used for camping.

24 11. "Cemetery" or "cemetery property" means any one, or a
25 combination of more than one, of the following in a place THAT IS used, or
26 intended to be used, and dedicated for cemetery purposes:

27 (a) A burial park, for earth interments.

28 (b) A mausoleum, for crypt or vault entombments.

29 (c) A crematory, or a crematory and columbarium, for cinerary
30 interments.

31 (d) A cemetery plot, including interment rights, mausoleum crypts,
32 niches and burial spaces.

33 12. "Cemetery broker" means a person other than a real estate broker
34 or real estate salesperson who, for another, for compensation:

35 (a) Sells, leases or exchanges cemetery property or interment
36 services of or for another, or on the person's own account.

37 (b) Offers for another or for the person's own account to buy,
38 sell, lease or exchange cemetery property or interment services.

39 (c) Negotiates the purchase and sale, lease or exchange of cemetery
40 property or interment services.

41 (d) Negotiates the purchase or sale, lease or exchange, or lists or
42 solicits, or negotiates a loan on or leasing of cemetery property or
43 interment services.

44 13. "Cemetery salesperson" means a natural person who acts on the
45 person's own behalf or through and on behalf of a professional limited

liability company or a professional corporation engaged by or on behalf of a licensed cemetery or real estate broker, or through and on behalf of a corporation, partnership or limited liability company that is licensed as a cemetery or real estate broker, to perform any act or transaction included in the definition of cemetery broker.

14. "Commissioner" means the state real estate commissioner.

15. "Common promotional plan" means a plan, undertaken by a person or a group of persons acting in concert, to offer lots for sale or lease. If the land is offered for sale by a person or group of persons acting in concert, and the land is contiguous or is known, designated or advertised as a common unit or by a common name, the land is presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan. Separate subdividers selling lots or parcels in separately platted subdivisions within a master planned community shall not be deemed to be offering their combined lots for sale or lease as part of a common promotional plan.

16. "Compensation" means any fee, commission, salary, money or other valuable consideration for services **THAT IS** rendered or to be rendered as well as the promise of consideration whether contingent or not.

17. "Contiguous" means lots, parcels or fractional interests that share a common boundary or point. Lots, parcels or fractional interests are not contiguous if they are separated by either of the following:

(a) A barrier.

(b) A road, street or highway that has been established by this state or by any agency or political subdivision of this state, that has been designated by the federal government as an interstate highway or that has been regularly maintained by this state or by any agency or political subdivision of this state and has been used continuously by the public for at least the last five years.

18. "Control" or "controlled" means a person who, through ownership, voting rights, power of attorney, proxy, management rights, operational rights or other rights, has the right to make decisions binding on an entity, whether a corporation, a partnership or any other entity.

19. "Corporation licensee" means a lawfully organized corporation that is registered with the Arizona corporation commission and that has an officer licensed as the designated broker pursuant to section 32-2125.

20. "Department" means the state real estate department.

21. "Designated broker" means the natural person who is licensed as a broker under this chapter and who is either:

(a) Designated to act on behalf of an employing real estate, cemetery or membership camping entity.

(b) Doing business as a sole proprietor.

22. "Developer" means a person who offers real property in a development for sale, lease or use, either immediately or in the future, on the person's own behalf or on behalf of another person, under this

chapter. Developer does not include a person whose involvement with a development is limited to the listing of property within the development for sale, lease or use.

23. "Development" means any division, proposed division or use of real property that the department has authority to regulate, including subdivided and unsubdivided lands, cemeteries, condominiums, timeshares, membership campgrounds and stock cooperatives.

24. "Employing broker" means a person who is licensed or is required to be licensed as a:

(a) Broker entity pursuant to section 32-2125, subsection A.

(b) Sole proprietorship if the sole proprietor is a broker licensed pursuant to this chapter.

25. "Fractional interest" means an undivided interest in improved or unimproved land, lots or parcels of any size created for the purpose of sale or lease and evidenced by any receipt, certificate, deed or other document conveying the interest. Undivided interests in land, lots or parcels created in the names of a husband and wife as community property, joint tenants or tenants in common, or in the names of other persons who, acting together as part of a single transaction, acquire the interests without a purpose to divide the interests for present or future sale or lease shall be deemed to constitute only one fractional interest.

26. "Improved lot or parcel" means a lot or parcel of a subdivision ~~upon~~ ON which lot or parcel there is a residential, commercial or industrial building or concerning which a contract has been entered into between a subdivider and a purchaser that obligates the subdivider directly, or indirectly through a building contractor, to complete construction of a residential, commercial or industrial building on the lot or parcel within two years from the date on which the contract of sale for the lot is entered into.

27. "Inactive license" means a license THAT IS issued pursuant to article 2 of this chapter to a licensee who is on inactive status during the current license period and who is not engaged by or on behalf of a broker.

28. "Lease" or "leasing" includes any lease, whether it is the sole, the principal or any incidental part of a transaction.

29. "License" means the whole or part of any agency permit, certificate, approval, registration, public report, charter or similar form of permission required by this chapter.

~~30.~~ 30. "Licensee" means a person to whom a license for the current license period has been granted under any provision of this chapter, and, for purposes of section 32-2153, subsection A, shall include original license applicants.

~~30.~~ 31. "License period" means the ~~two-year~~ TWO-YEAR period beginning with the date of original issue or renewal of a particular license and ending on the expiration date, if any.

1 32. "Limited liability company licensee" means a lawfully organized
2 limited liability company that has a member or manager who is a natural
3 person and who is licensed as the designated broker pursuant to section
4 32-2125.

5 33. "Lot reservation" means an expression of interest by a
6 prospective purchaser in buying at some time in the future a subdivided or
7 unsubdivided lot, unit or parcel in this state. In all cases, a
8 subsequent affirmative action by the prospective purchaser must be taken
9 to create a contractual obligation to purchase.

10 34. "Master planned community" means a development that consists of
11 two or more separately platted subdivisions and that is either subject to
12 a master declaration of covenants, conditions or restrictions, is subject
13 to restrictive covenants sufficiently uniform in character to clearly
14 indicate a general scheme for improvement or development of real property
15 or is governed or administered by a master owner's association.

16 35. "Member" means a member of the real estate advisory board.

17 36. "Membership camping broker" means a person, other than a
18 salesperson, who, for compensation:

19 (a) Sells, purchases, lists, exchanges or leases membership camping
20 contracts.

21 (b) Offers to sell, purchase, exchange or lease membership camping
22 contracts.

23 (c) Negotiates or offers, attempts or agrees to negotiate the sale,
24 purchase, exchange or lease of membership camping contracts.

25 (d) Advertises or holds himself out as being engaged in the
26 business of selling, buying, exchanging or leasing membership camping
27 contracts or counseling or advising regarding membership camping
28 contracts.

29 (e) Assists or directs in the procuring of prospects calculated or
30 intended to result in the sale, purchase, listing, exchange or lease of
31 membership camping contracts.

32 (f) Performs any of the foregoing acts as an employee or on behalf
33 of a membership camping operator or membership contract owner.

34 37. "Membership camping contract" means an agreement **THAT IS** offered
35 or sold in this state evidencing a purchaser's right or license to use the
36 camping or outdoor recreation facilities of a membership camping operator
37 and includes a membership that provides for this use.

38 38. "Membership camping operator" means an enterprise, other than
39 one that is tax exempt under section 501(c)(3) of the internal revenue
40 code of 1986, as amended, that solicits membership paid for by a fee or
41 periodic payments and has as one of its purposes camping or outdoor
42 recreation, including the use of camping sites primarily by members.
43 Membership camping operator does not include camping or recreational
44 trailer parks that are open to the general public and that contain camping
45 sites rented for a per use fee or a mobile home park.

39. "Membership camping salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed membership camping or real estate broker, or by or on behalf of a corporation, partnership or limited liability company that is licensed as a membership camping or real estate broker, to perform any act or participate in any transaction in a manner included in the definition of membership camping broker.

40. "Partnership licensee" means a partnership with a managing general partner who is licensed as the designated broker pursuant to section 32-2125.

41. "Permanent access", as required under article 4 of this chapter, means permanent access from the subdivision to any federal, state or county highway.

~~43.~~ 42. "~~Perpetual-care~~ PERPETUAL CARE" or "~~endowed-care~~ ENDOWED CARE" means the maintenance and care of all places where interments have been made of the trees, shrubs, roads, streets and other improvements and embellishments contained within or forming a part of the cemetery, ~~. This shall~~ BUT DOES not include the maintenance or repair of monuments, tombs, copings or other man-made ornaments as associated with individual burial spaces.

~~42.~~ 43. "Perpetual or endowed-care cemetery" means a cemetery wherein lots or other burial spaces are sold or transferred under the representation that the cemetery will receive ~~"perpetual"~~ or ~~"endowed"~~ care ~~as defined in this section~~ free of further cost to the purchaser after payment of the original purchase price for the lot, burial space or interment right.

44. "Person" means any individual, corporation, partnership or company and any other form of multiple organization for carrying on business, foreign or domestic.

45. "Private cemetery" means a cemetery or place that is not licensed under article 6 of this chapter, where burials or interments of human remains are made, in which sales or transfers of interment rights or burial plots are not made to the public and in which not more than ten interments or burials occur annually.

46. "Promotion" or "promotional practice" means advertising and any other act, practice, device or scheme to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in or use of real property subject to this chapter, including meetings with prospective purchasers, arrangements for prospective purchasers to visit real property, travel allowances and discount, exchange, refund and cancellation privileges.

47. "Real estate" includes leasehold-interests and any estates in land as defined in title 33, chapter 2, articles 1 and 2, regardless of whether located in this state.

1 48. "Real estate broker" means a person, other than a salesperson,
2 who, for another and for compensation:

3 (a) Sells, exchanges, purchases, rents or leases real estate,
4 businesses and business opportunities or timeshare interests.

5 (b) Offers to sell, exchange, purchase, rent or lease real estate,
6 businesses and business opportunities or timeshare interests.

7 (c) Negotiates or offers, attempts or agrees to negotiate the sale,
8 exchange, purchase, rental or leasing of real estate, businesses and
9 business opportunities or timeshare interests.

10 (d) Lists or offers, attempts or agrees to list real estate,
11 businesses and business opportunities or timeshare interests for sale,
12 lease or exchange.

13 (e) Auctions or offers, attempts or agrees to auction real estate,
14 businesses and business opportunities or timeshare interests.

15 (f) Buys, sells, offers to buy or sell or otherwise deals in
16 options on real estate, businesses and business opportunities or timeshare
17 interests or improvements to real estate, businesses and business
18 opportunities or timeshare interests.

19 (g) Collects or offers, attempts or agrees to collect rent for the
20 use of real estate, businesses and business opportunities or timeshare
21 interests.

22 (h) Advertises or holds himself out as being engaged in the
23 business of buying, selling, exchanging, renting or leasing real estate,
24 businesses and business opportunities or timeshare interests or counseling
25 or advising regarding real estate, businesses and business opportunities
26 or timeshare interests.

27 (i) Assists or directs in the procuring of prospects, calculated to
28 result in the sale, exchange, leasing or rental of real estate, businesses
29 and business opportunities or timeshare interests.

30 (j) Assists or directs in the negotiation of any transaction
31 calculated or intended to result in the sale, exchange, leasing or rental
32 of real estate, businesses and business opportunities or timeshare
33 interests.

34 (k) Incident to the sale of real estate, businesses and business
35 opportunities negotiates or offers, attempts or agrees to negotiate a loan
36 secured or to be secured by any mortgage or other encumbrance ~~upon~~ ON or
37 transfer of real estate, businesses and business opportunities or
38 timeshare interests subject to section 32-2155, subsection C. This
39 subdivision does not apply to mortgage brokers as defined in and subject
40 to title 6, chapter 9, article 1.

41 (l) Engages in the business of assisting or offering to assist
42 another in filing an application for the purchase or lease of, or in
43 locating or entering ~~upon~~ ON, lands owned by the state or federal
44 government.

(m) Claims, demands, charges, receives, collects or contracts for the collection of an advance fee in connection with any employment enumerated in this section, including employment undertaken to promote the sale or lease of real property by advance fee listing, by furnishing rental information to a prospective tenant for a fee paid by the prospective tenant, by advertisement or by any other offering to sell, lease, exchange or rent real property or selling kits connected therewith. This shall not include the activities of any communications media of general circulation or coverage not primarily engaged in the advertisement of real estate or any communications media activities that are specifically exempt from applicability of this article under section 32-2121.

(n) Engages in any of the acts listed in subdivisions (a) through (m) of this paragraph for the sale or lease of other than real property if a real property sale or lease is a part of, contingent on or ancillary to the transaction.

(o) Performs any of the acts listed in subdivisions (a) through (m) of this paragraph as an employee of, or in behalf of, the owner of real estate, or interest in the real estate, or improvements affixed on the real estate, for compensation.

(p) Acts as a business broker.

49. "Real estate sales contract" means an agreement in which one party agrees to convey title to real estate to another party ~~upon~~ ON the satisfaction of specified conditions set forth in the contract.

50. "Real estate salesperson" means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation engaged by or on behalf of a licensed real estate broker, or by or on behalf of a limited liability company, partnership or corporation that is licensed as a real estate broker, to perform any act or participate in any transaction in a manner included in the definition of real estate broker subject to section 32-2155.

51. "Sale" or "lease" includes every disposition, transfer, option or offer or attempt to dispose of or transfer real property, or an interest, use or estate in the real property, including the offering of the property as a prize or gift if a monetary charge or consideration for whatever purpose is required.

52. "Salesperson", when used without modification, means a natural person who acts on the person's own behalf or through and on behalf of a professional limited liability company or a professional corporation licensed under this chapter or any person required to be licensed as a salesperson under this chapter.

53. "School" means a person or entity that offers a course of study towards completion of the education requirements leading to licensure or renewal of licensure under this chapter.

1 54. "Stock cooperative" means a corporation to which all of the
2 following apply:

3 (a) The corporation is formed or used to hold title to improved
4 real property in fee simple or for a term of years.

5 (b) All or substantially all of the shareholders of the corporation
6 each receive a right of exclusive occupancy in a portion of the real
7 property to which the corporation holds title.

8 (c) The right of occupancy may only be transferred with the
9 concurrent transfer of the shares of stock in the corporation held by the
10 person having the right of occupancy.

11 55. "Subdivider" means any person who offers for sale or lease six
12 or more lots, parcels or fractional interests in a subdivision or who
13 causes land to be subdivided into a subdivision for the subdivider or for
14 others, or who undertakes to develop a subdivision, but does not include a
15 public agency or officer authorized by law to create subdivisions.

16 56. "Subdivision" or "subdivided lands":

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

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

23 (c) Does not include:

24 (i) Leasehold offerings of one year or less.

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

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

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

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

43 (vi) THE DIVISION OR PROPOSED DIVISION OF LAND LOCATED IN THIS
44 STATE INTO LOTS OR PARCELS EACH OF WHICH IS OR WILL BE FIVE ACRES OR LESS
45 IF THE SIZE OF THE LOTS OR PARCELS AFTER THE DIVISION OR PROPOSED DIVISION

1 IS AT LEAST AS LARGE AS THE AVERAGE LOT OR PARCEL SIZE WITHIN FIVE MILES
2 OF THE DIVIDED LOTS OR PARCELS.

3 57. "Timeshare" or "timeshare property" means real property
4 ownership or right of occupancy in real property pursuant to article 9 of
5 this chapter. For the purposes of this chapter, a timeshare is not a
6 security unless it meets the definition of a security under section
7 44-1801.

8 58. "Trustee" means:

9 (a) A person WHO IS designated under section 32-2194.27 to act as a
10 trustee for an endowment-care cemetery fund.

11 (b) A person holding bare legal title to real property under a
12 subdivision trust. A trustee shall not be deemed to be a developer,
13 subdivider, broker or salesperson within this chapter.

14 59. "Unimproved lot or parcel" means a lot or parcel of a
15 subdivision that is not an improved lot or parcel.

16 60. "Unsubdivided lands":

17 (a) Means land or lands divided or proposed to be divided for the
18 purpose of sale or lease, whether immediate or future, into six or more
19 lots, parcels or fractional interests and the lots or parcels are
20 thirty-six acres or more each but less than one hundred sixty acres each,
21 or that are offered, known or advertised under a common promotional plan
22 for sale or lease, except that agricultural leases shall not be included
23 in this definition.

24 (b) Includes:

25 (i) Any land that is sold that would otherwise constitute the sixth
26 lot, parcel or fractional interest if the sale occurs ten or more years
27 after the earliest of the previous five sales and if all of the sales
28 consist of property that was originally contained within the same parcel
29 that is thirty-six acres or more and less than one hundred sixty acres.

30 (ii) LAND THAT IS DIVIDED OR PROPOSED TO BE DIVIDED INTO LOTS OR
31 PARCELS EACH OF WHICH IS OR WILL BE FIVE ACRES OR LESS IF THE SIZE OF THE
32 LOTS OR PARCELS AFTER THE DIVISION OR PROPOSED DIVISION IS AT LEAST AS
33 LARGE AS THE AVERAGE LOT OR PARCEL SIZE WITHIN FIVE MILES OF THE DIVIDED
34 LOTS OR PARCELS.