

Reshaping Development Patterns

Addressing Development Entitlements & Zombie
Subdivisions Throughout the Intermountain West

Western Lands and Communities

A Lincoln Institute of Land Policy & Sonoran Institute Joint Venture



Rocky Mountain Land Use Institute

“The Next West”

20th Anniversary Conference

Denver

March 4, 2011



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Addressing Development Entitlements & Zombie
Subdivisions Throughout the Intermountain West

Jim Holway – Moderator & Project Overview

What are Entitlements – Why are they an Issue

Don Elliott – Legal & Planning Frameworks

Types of Entitlements – Legal & Planning Tools to Address Them – Policy Issues

Anna Trentadue – Teton County Case Study

Local Situation – Efforts to Address Entitlements – State Enabling Authority

-----Discussion-----

Reshaping Development Patterns

Project Sponsors

(so far ...)

Lincoln Institute of Land Policy

Orton Family Foundation

George B. Storer Foundation

Sonoran Institute

1 % For The Tetons

Huntsman Springs

Reshaping Development Patterns

Partners

(so far ...)

- **Sonoran Institute**
- **Lincoln Institute of Land Policy**
- **Valley Advocates for Responsible Development**
- **University of Utah Metropolitan Policy Center**
- **Orton Family Foundation**
- **Teton County, Idaho**
- **Teton Regional Land Trust**
- **Friends of the Teton River**
- **Land Equity Partners**
- **Trout Unlimited**
- **Garfield County, Colorado**

Reshaping Development Patterns

Jim Holway, Ph.D. AICP

Director, Western Lands and Communities

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Reshaping Development Patterns

Addressing Development Entitlements & Zombie Subdivisions in the Intermountain West

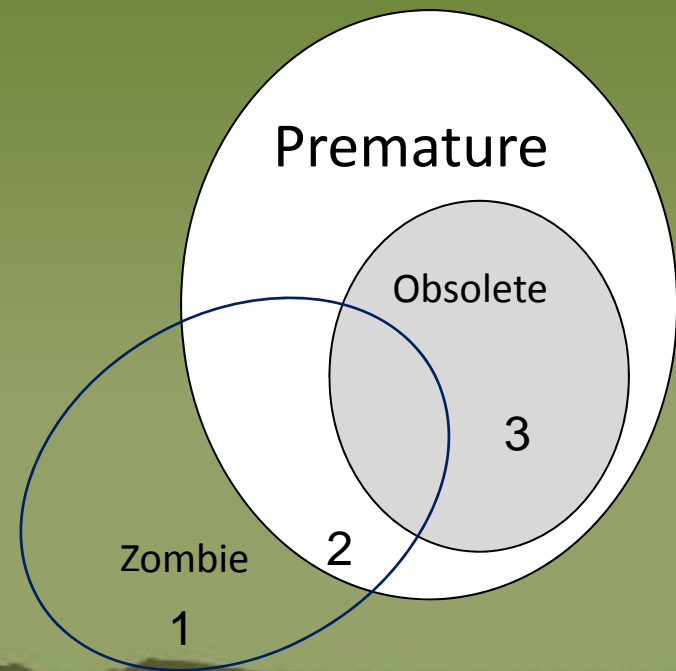
Development Entitlements What are they ?

Are they a Problem .. an Issue in your Community ?

Project Objectives & Future Directions

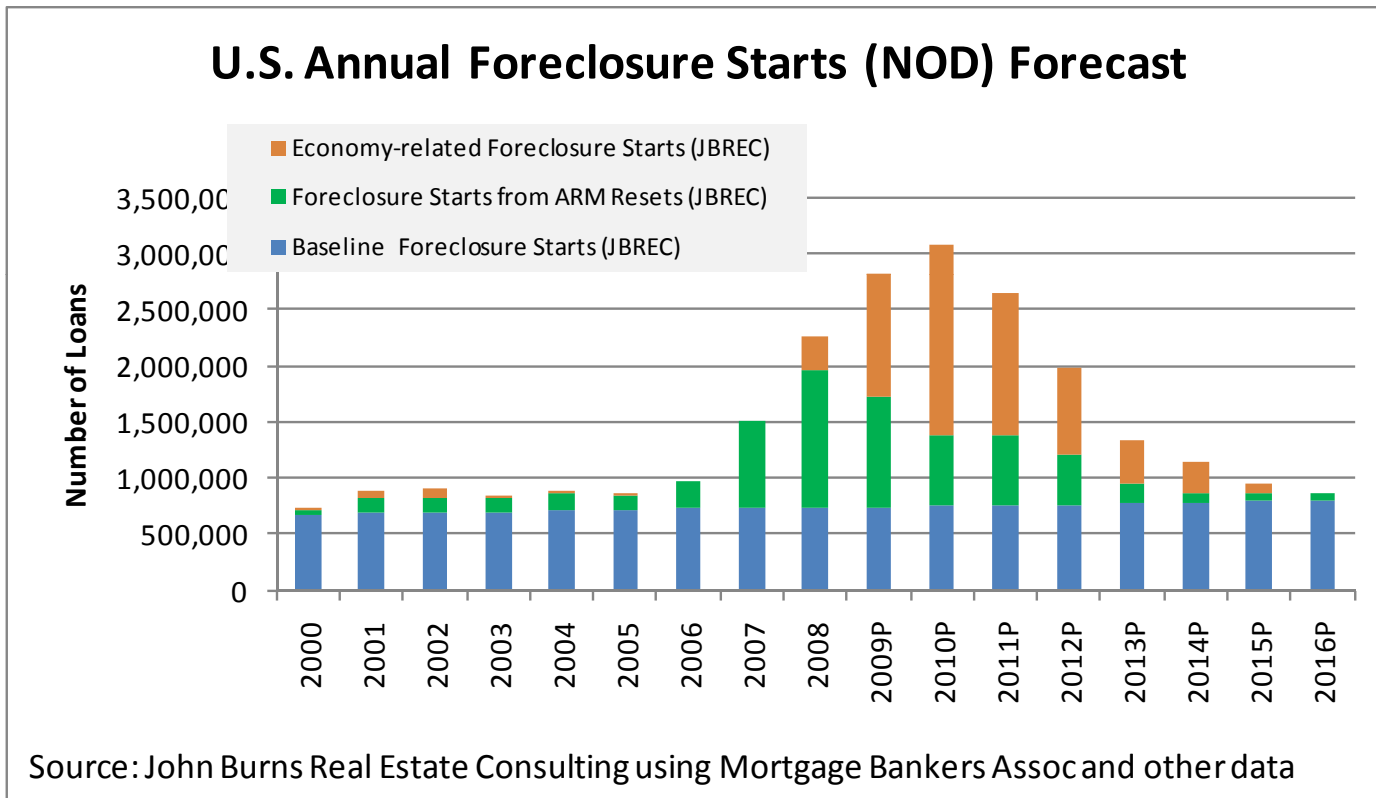
Premature vs. Obsolete vs. Zombie Subdivisions

- Entitlement Issues
 - Cumulative Impacts
 - Market Distortions – Reduce Property Values
 - Tie up Resources (assured water supply)
 - Reduce Ability to Plan & Adjust
- Premature Subdivision Issues
 - Land Use Commitments
 - Servicing Costs – Fiscal Impact
 - Blight
 - Changing Standards
- Obsolete Subdivision Issues
 - Public Safety
 - Community Quality
 - Environmental Damage



Is this a problem in your
community???

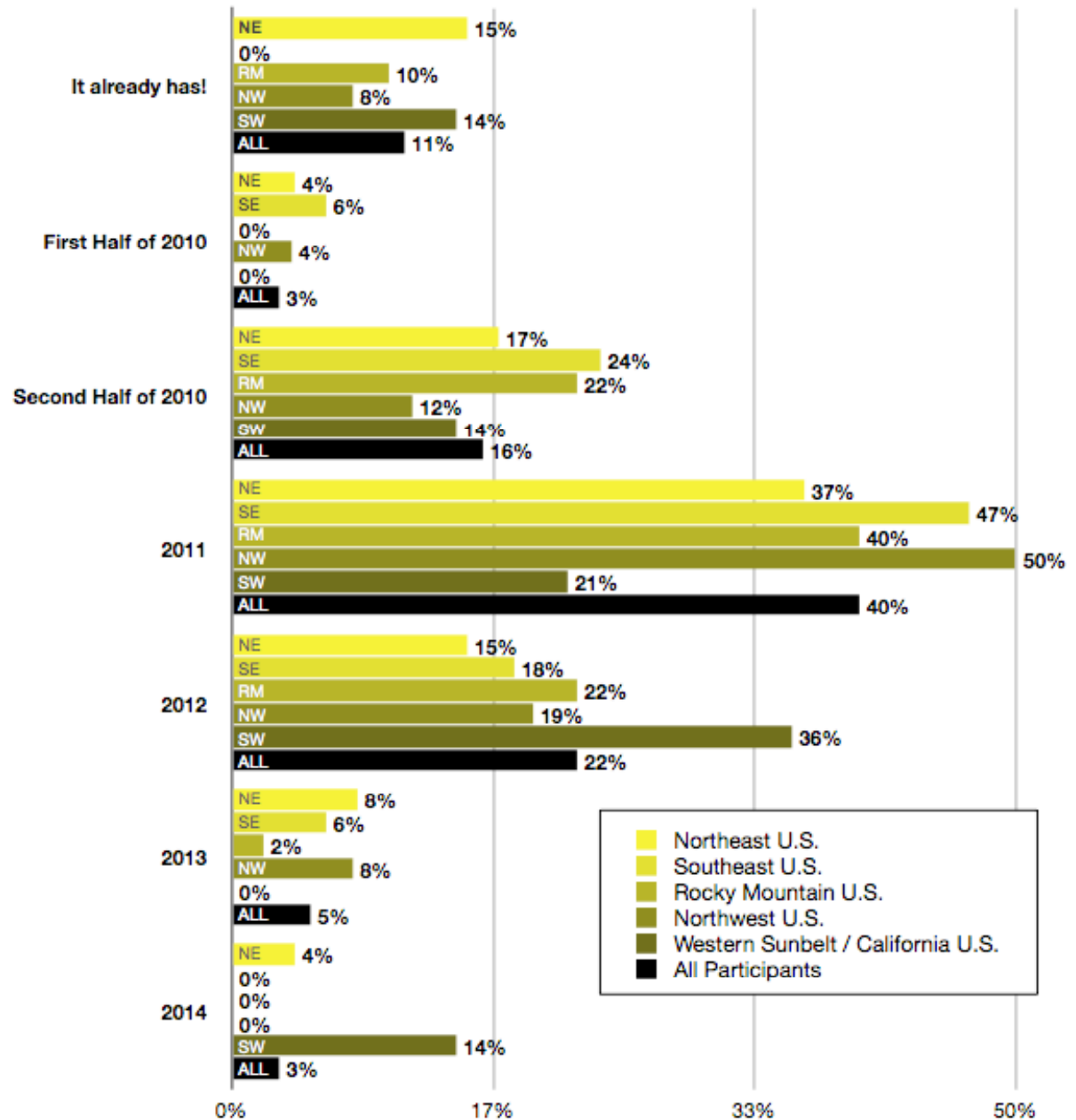
Layoffs and Option ARM resets will keep foreclosure starts at or above 2 million through 2012.



Recovery Predictions

SORTED BY GEOGRAPHY

When do you think resort real estate sales in your market will begin to recover?

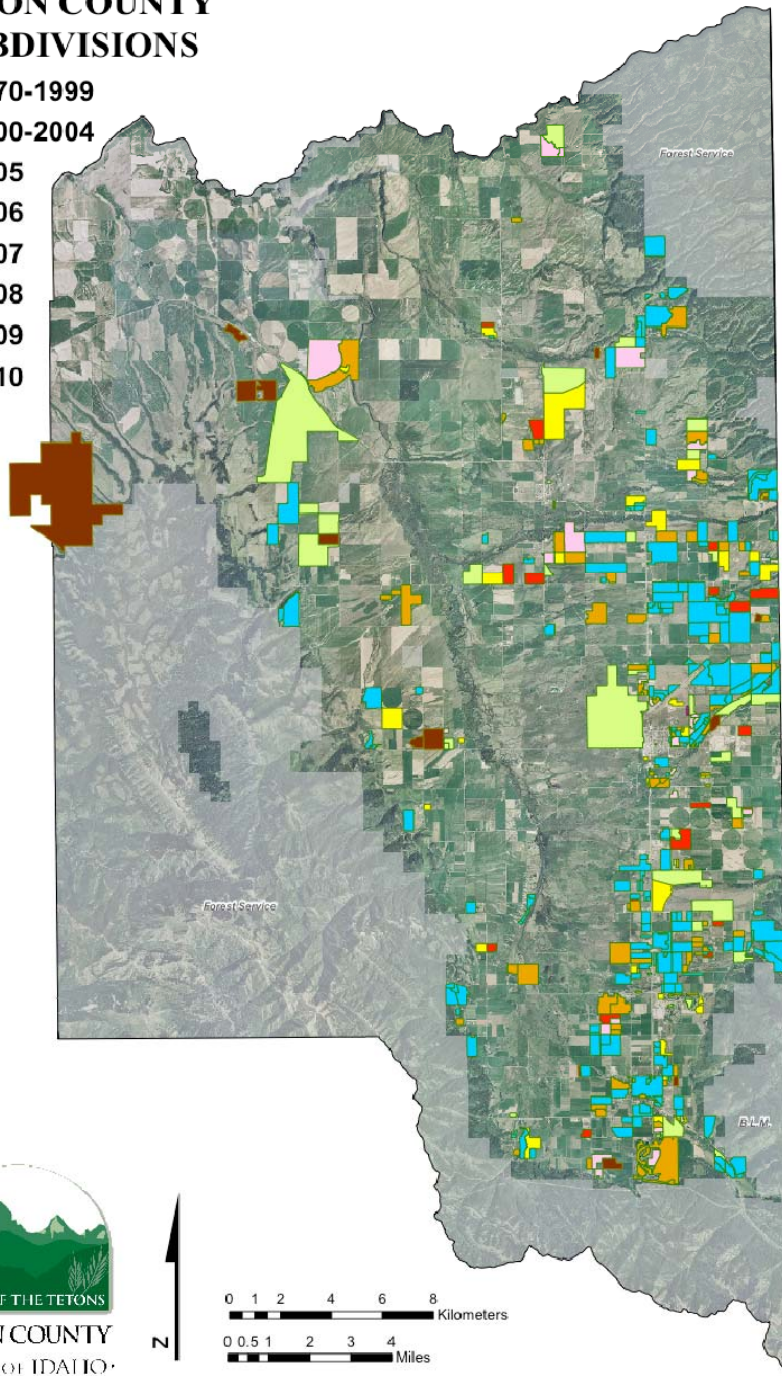


Steeplechase
development advisors, LLC

Kelsey & Norden 2009

TETON COUNTY SUBDIVISIONS

- 1970-1999
- 2000-2004
- 2005
- 2006
- 2007
- 2008
- 2009
- 2010

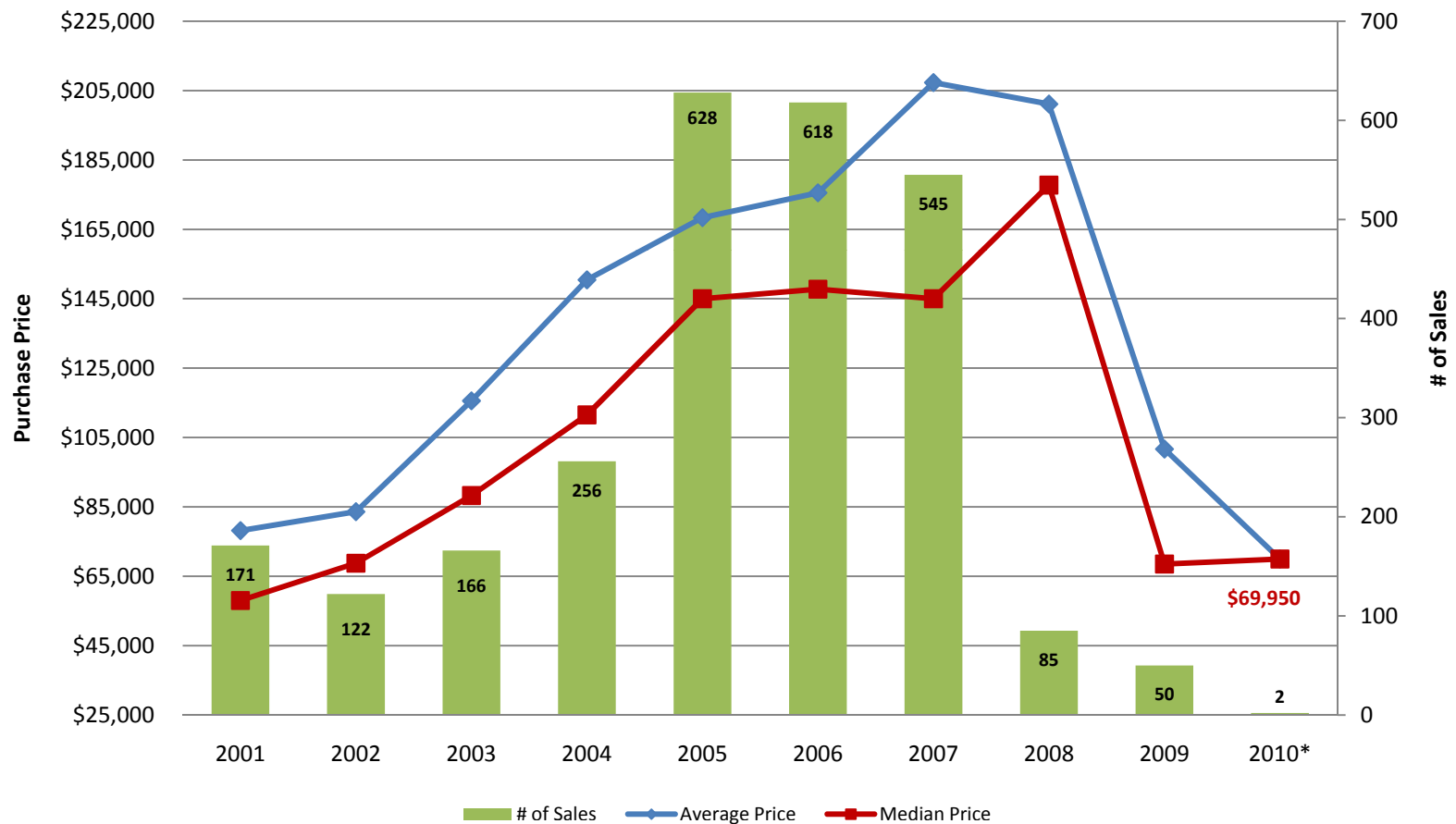


Anna Trentadue, Valley Advocates for Responsible Development

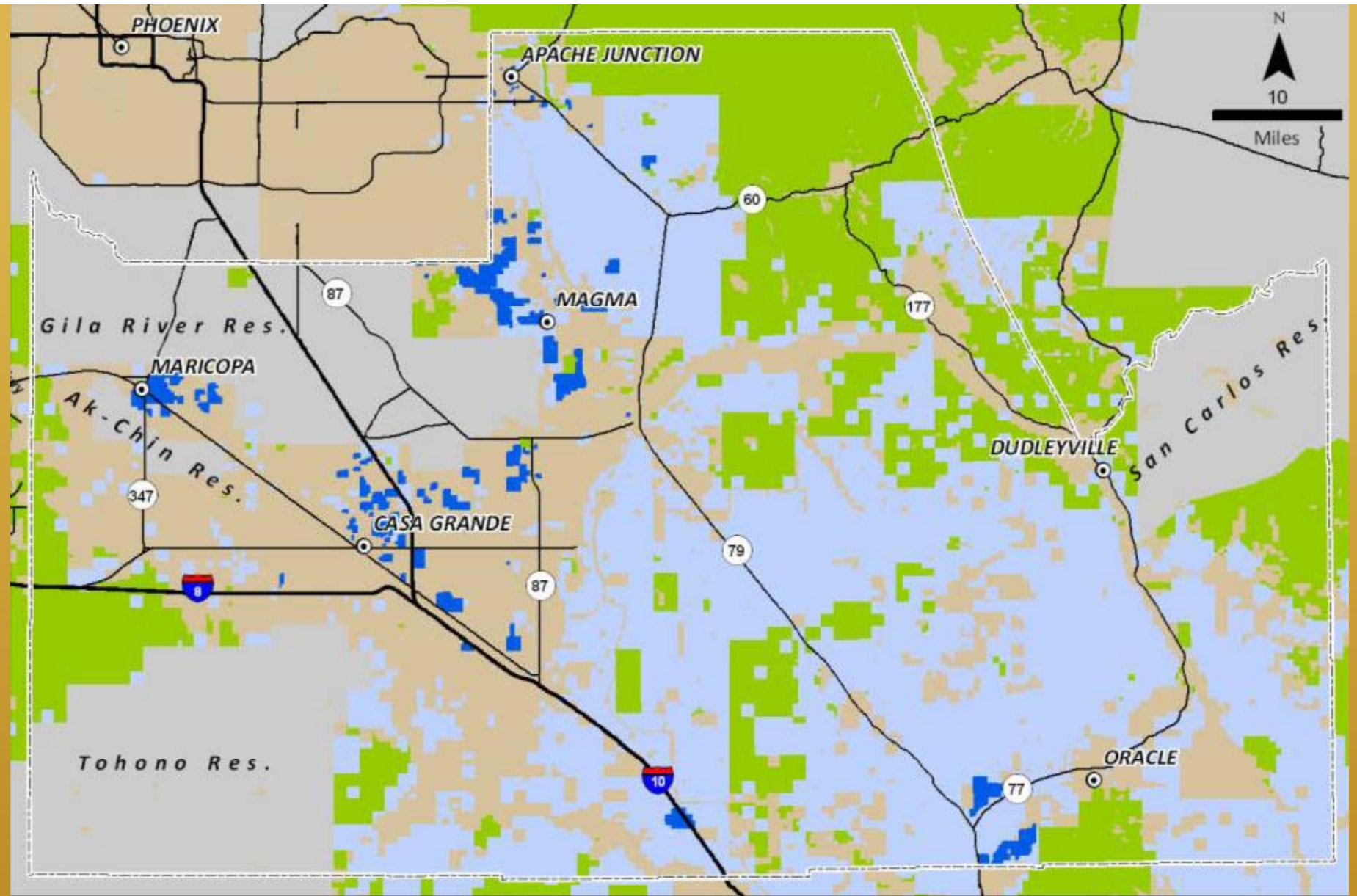
TETON VALLEY MARKET STATISTICS

Residential Lot Sales (2001-2010*)

12



* Data for 2010 as of 02/26/10



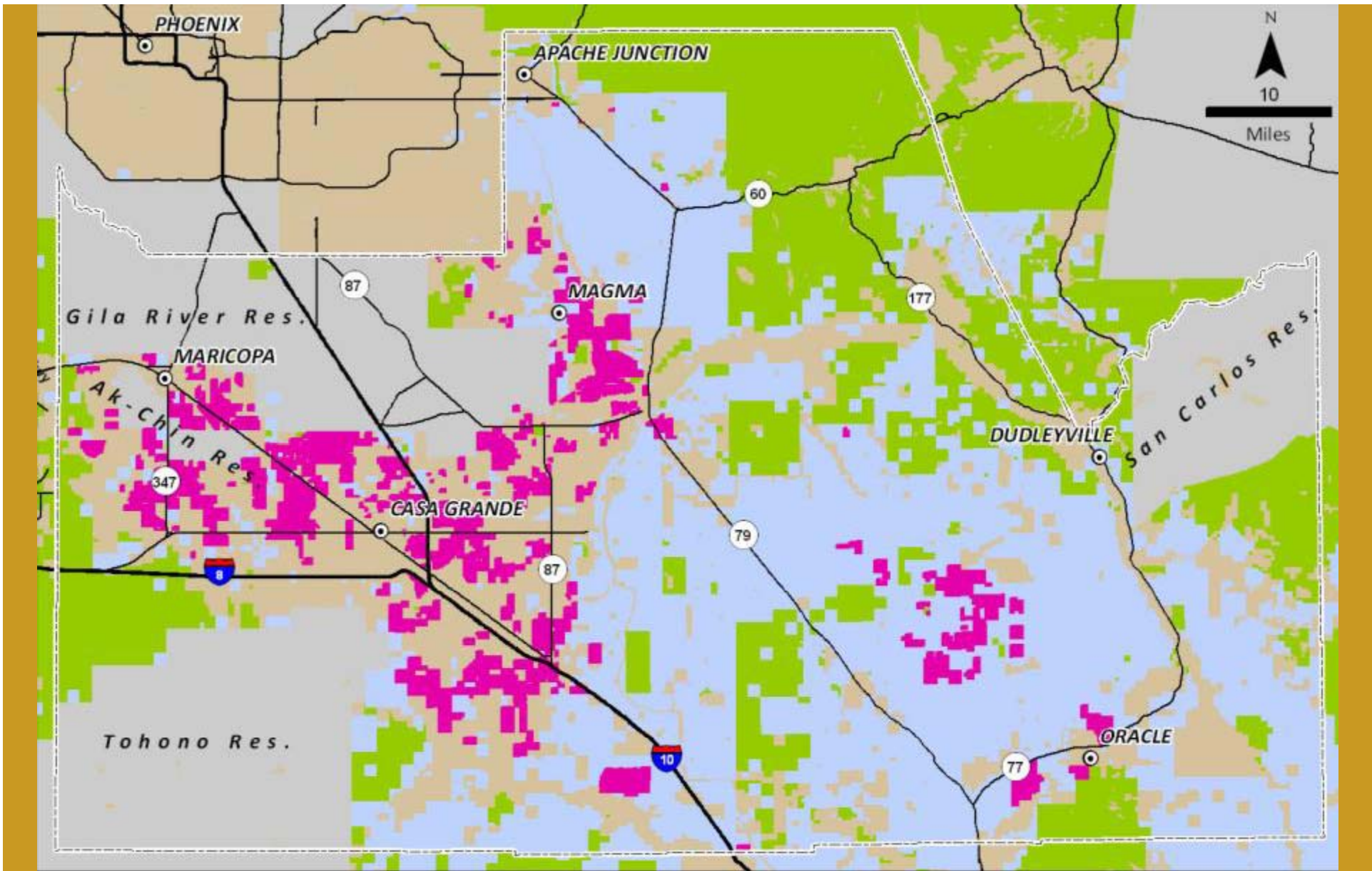
Pinal County Subdivisions

Development Status:

■ Active

- State/Federal Land
- Indian Reservation
- State Trust Land





Pinal County Subdivisions

Development Status:

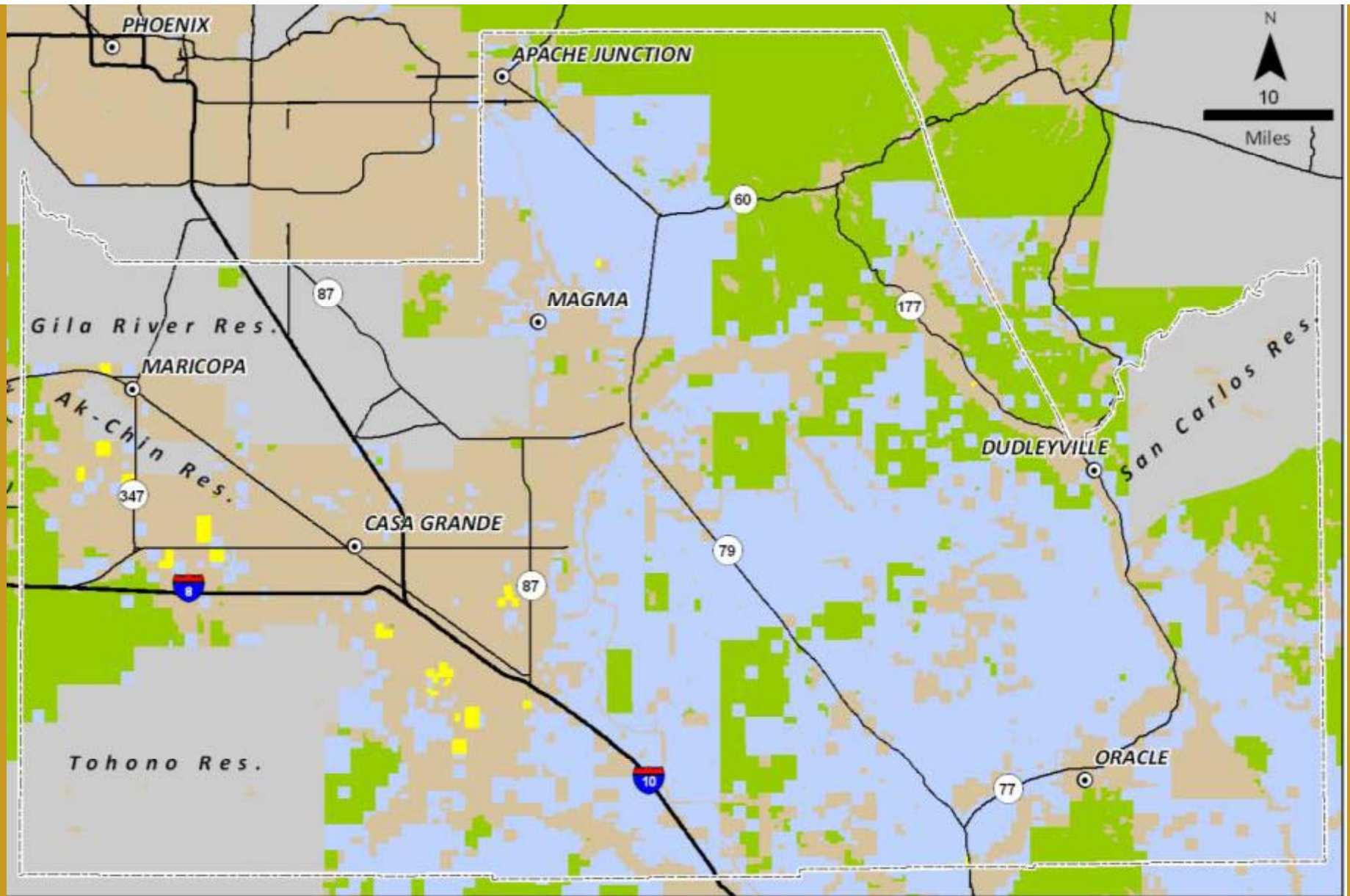
 Entitled

 State/Federal Land

 Indian Reservation


 State Trust Land





Pinal County Subdivisions

Development Status:

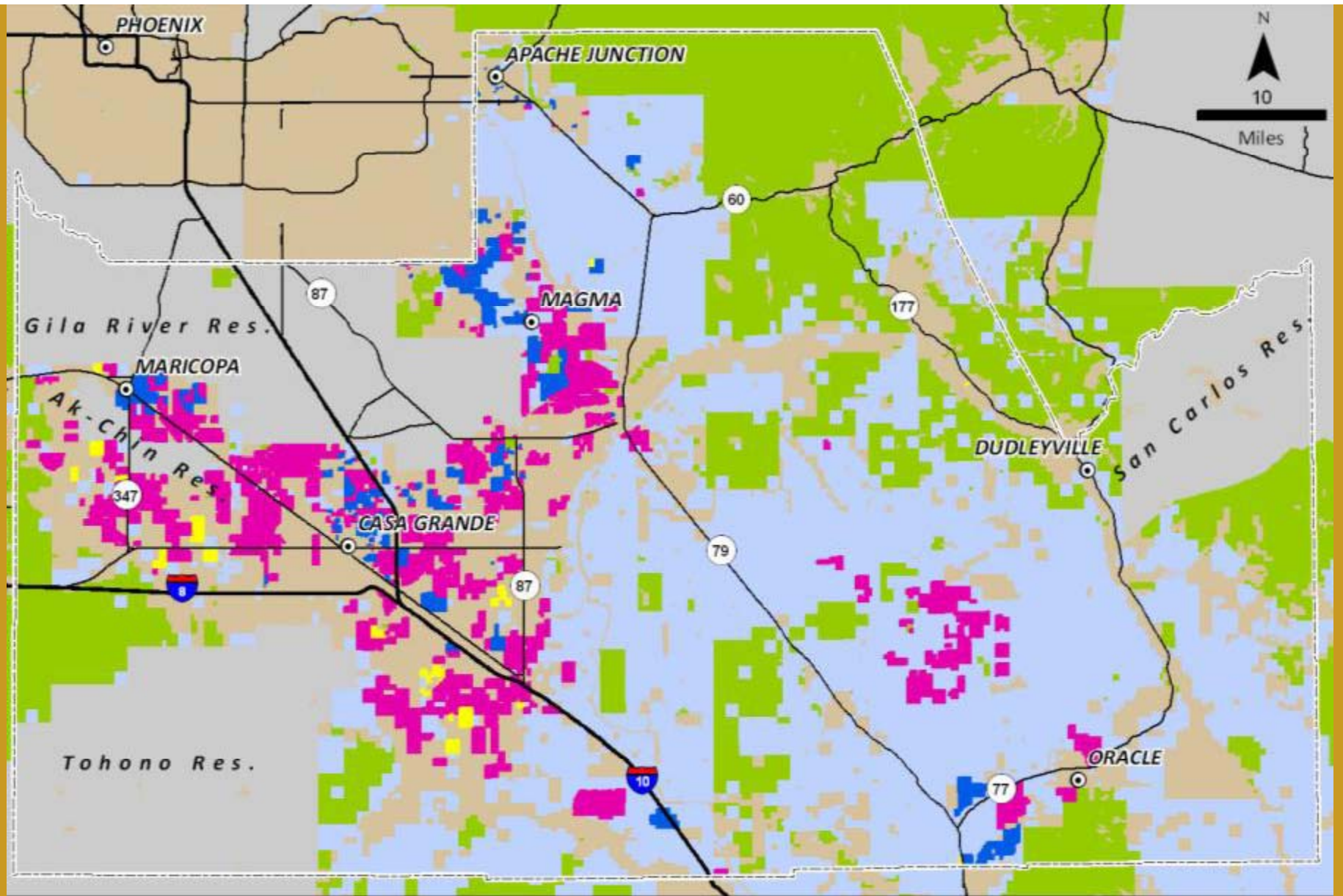
 Tentative Plat

 State/Federal Land

 Indian Reservation

 State Trust Land





Pinal County Subdivisions

Development Status:

■ Active
 ■ Entitled
 ■ Tentative Plat

■ State/Federal Land
■ Indian Reservation
■ State Trust Land



Pinal County - Total Units and acres (2009):

- Active 140,828 (39,848 acres)
- Under Construction 8,195 (2,380 acres)
- Entitled 623,010 (184,763 acres)
- Tentative Plat 28,667 (8,396 acres)

Existing Housing & Population (2007):

- Total Dwelling Units 142,677
- Occupied Dwelling Units 105,316
- Population 326,398

CAAG 2007, 2009

Existing Housing & Population

- Total Dwelling Units = 142,677
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Reshaping Development Patterns

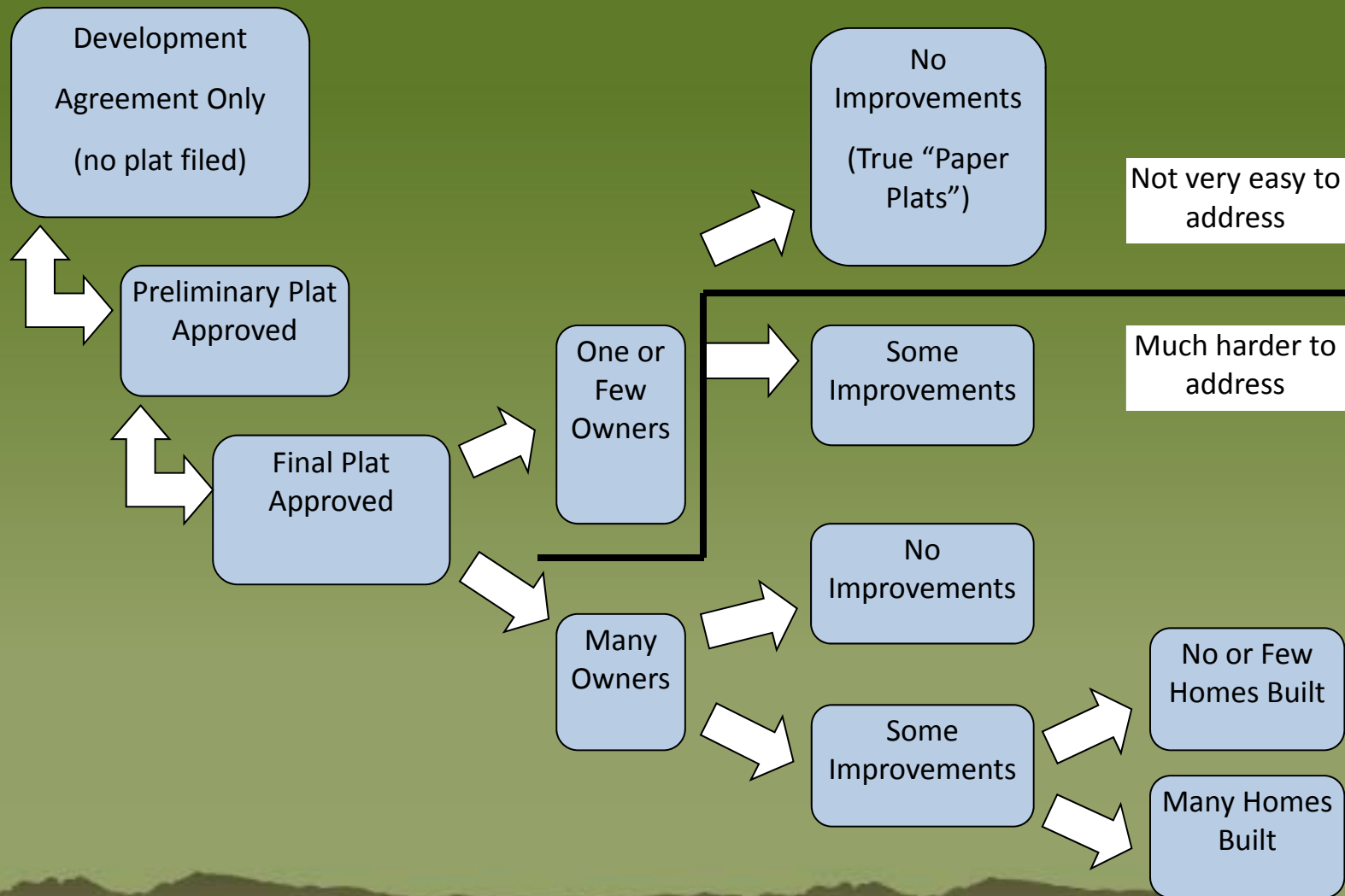
Don Elliott, FAICP
Senior Consultant
Clarion Associates

Legal Issues

Types of Entitlements

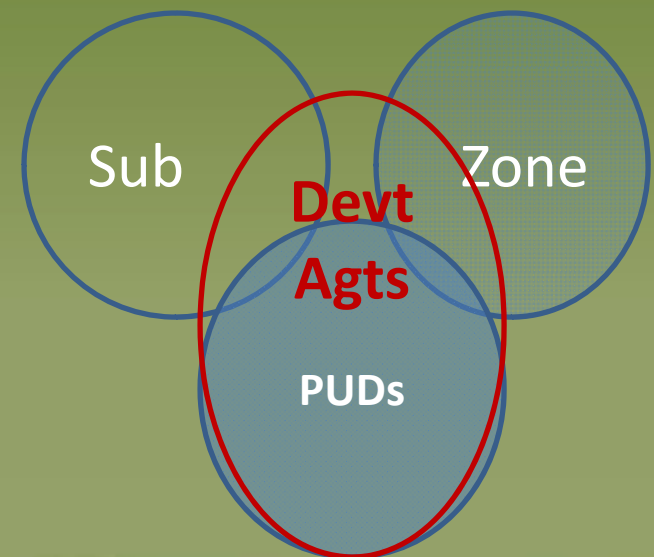
- Very hard to categorize, because each state allows different steps in platting, infrastructure, selling lots
- Example – some states require recording of final plat before site construction or lot sales; others require infrastructure installation before recording final plat.
- Many combinations of preliminary plat – final plat – subdivision improvements agreement – development agreement – security – lot sales law – improvement construction – improvement acceptance

Paper Plats and Partial Performance Plats



What to do about them

- Major concerns of elected officials
 - Lot Owner Rights
 - Lot Access
 - “Equal Treatment”
- Major legal powers Involved
 - Subdivision powers
 - Zoning powers
 - PUD powers
 - Development agreements
 - Others (unique to each state)



Unresolved Legal Issues

- Interpreting statutory silence on how these powers work together
 - Police power principles for zoning and subdivision
 - Contract principles for PUDs and agreements
 - Principles of “reliance”, “estoppel, and “vesting”
- The contract question
 - It is not exactly clear when a local government can alter a negotiated contract to which it is a party
 - Elected officials have less authority to bind successors
 - PUDs cannot be forever, but when can they be changed

Four Potential Legal Claims

That may arise from attempts to
“Reshape Development”

- Lack of Authority
 - Statutes assume but do not say that plats are forever
- Vested Rights in the Plat
 - Common law and statutory vesting
- “Taking” Property Rights
 - Physical vs. regulatory takings
- Violations of Procedural Due Process
 - Legislative vs. quasi-judicial actions

Tools to Reshape Development

- Four Types of Tools
 - Economic Incentives
 - Purchasing Land or Property Rights
 - Regulating the Land
 - Growth Management

Four Types of Tools

1. Economic Incentives

Replatting Fee Waivers

Streamlined Voluntary Replatting Process

Voluntary Development Delay Agreements

Targeted Infrastructure Funding

Development Impact Fees

Transfer of Development Rights (TDR)

Programs

Facilitation of Redesign or Consolidation

Four Types of Tools

2. Purchasing Land or Property Rights

Voluntary Sales

Conservation Easements and Deed Restrictions

Land Swaps

Eminent Domain

Four Types of Tools

3. Regulating the Land

Plan Consistency Requirements

Plat Lapsing

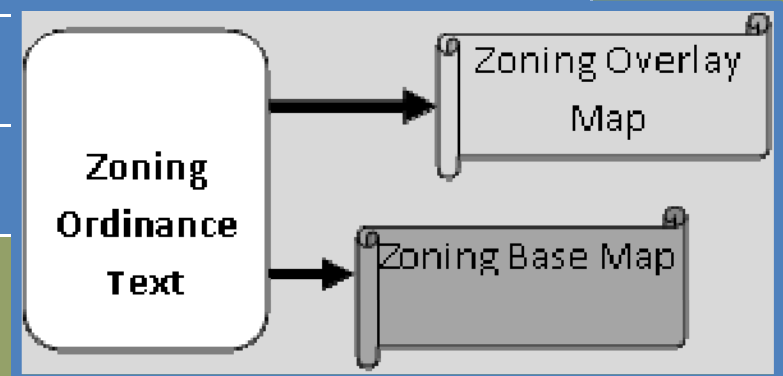
Plat Vacation

Replatting

Changing Subdivision Standards

Changing Zoning Standards

Changing the Zoning Map(s)



Four Types of Tools

4. Growth Management

Urban Service Areas

Adequate Public Facility Ordinances

Choosing the Right Tools

Be clear about WHY you are doing this

- Preserving land values & economy?
- Land & habitat conservation?
- Improving quality of layout/lots?
- Reducing lots?
- Rationalizing growth patterns?
 - Avoiding early commitment of resources
 - Equity among property owners

Knowing WHY you are doing this will help
determine WHICH TOOLS you should use

Proper Tools Depend on Your Purpose

POTENTIAL TOOLS	Goal			Phase Type	
	Improve Quality	Reduce Lots	Rationalize Growth Patterns	Paper Plat	Partial Performance
<ul style="list-style-type: none"> ● Well Suited – ◐ May be Usable ○ Probably Not Usable 					
Economic Incentives					
Replatting Fee Waivers	●	●	●	●	●
Streamlined Voluntary Replatting	●	●	●	●	●
Voluntary Development Delays	○	○	●	●	◐
Targeted Infrastructure Investments	◐	○	●	●	●

- Different phases may need different tools
- Partially developed subdivisions need different tools than paper plats

Keys to Reduce Liability

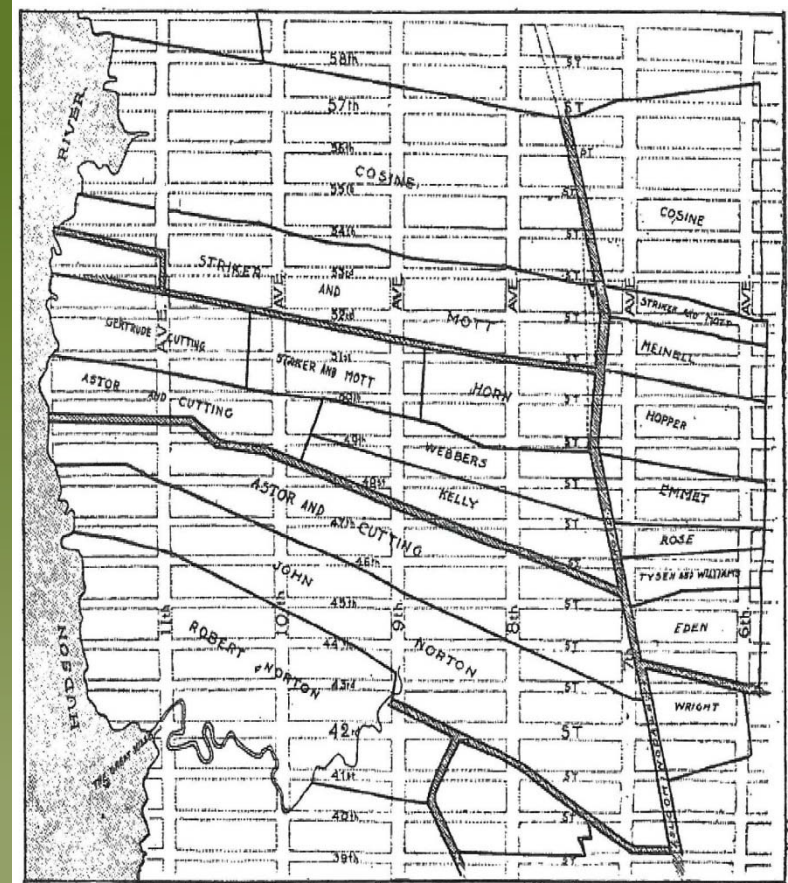
- **Research** the history and facts – particularly lot ownership patterns and agreements
- **Cite** as many sources of land use authority as possible.
- **Avoid** actions that are prohibited by statutory or common law vested rights.
- **Leave** each property owner with a reasonable economic use of his or her property taken as a whole.
- **Scrupulously follow and document** each step required by state law and your own regulations.

But Don't Be Too Shy

- See silence on complex, intertwined legal issues as an opportunity.
- No court may have said “yes” – but the issues are so complex that no court may have said “no” yet.
- Courts have generally been fairly willing to interpret local governmental powers broadly when it is clear that the government is addressing a significant problem in a way that is both procedurally and substantively fair.

The Next Layer of Research

1. Effect of Development Agreements on powers to Reshape Development
2. Effect of Restrictive Covenants on powers to Reshape Development
3. Fair Tax Treatment of Parcels Where Lots are Made Less Developable



Reshaping Development Patterns

Anna Trentadue

Staff Attorney & Program Associate

Valley Advocates for Responsible Development

Goal: Replatting for Conservation Outcomes

Nevada: REVERSION TO ACREAGE

An abbreviated re-platting process whereby an owner, or a governing body can revert any recorded subdivision map into “large” agricultural parcels.

“large” is not defined within that statute, BUT

“large” is defined elsewhere in the code as 40-acres

(unless local governments choose to define it as 10 acres)

BONUS: Reversion to Acreage can also be used to combine parcels.

Parcels > 640acres are totally exempt from these requirements

Goal: Vacate or Abandon Plat

Arizona: State mandates cities and counties to adopt a process, but no specific direction or criteria.

→ Process can vary greatly

Colorado: No specific vacation procedures except in the context of PUDs

→ Process can vary greatly

Idaho: Detailed notice, process, and appeals procedures which apply to both cities and counties.

→ Provides clarity, but can be onerous

Nevada: 2 different procedures specific to cities

1. The process for vacating an entire city plat must be initiated by the city as an action in the **District Court** of Nevada with the city listed as a plaintiff.
2. If only a portion of the city's plat is to be vacated, *any owner* of platted land in an incorporated city may make application in writing to the **city council** to conduct a public hearing on the vacation.

Concluding Points & Discussion

We think development entitlements far in excess of demand are a key issue throughout the west ... and the current economy provides an opportunity to address them

No Magic Bullet But Frameworks & Best Practices

Lincoln & Sonoran

no set answers or agendas

facilitating local processes & research

disseminating the lessons learned

Reshaping Development Patterns

Next Steps

- Background Research
- Experts Convening
- Case Studies
- New Working Papers

State Enabling Authority, Westwide Survey of Entitlements, Future Markets & Economic Base Studies, Fiscal Impacts, Best Practices, Case Study Lessons, etc.

- Synthesis – Lessons Learned & Policy Options
- Seeking additional Funders & Partners ????
- Publish & Disseminate