

# Reshaping Development Patterns Entitlements & Zombie Subdivisions

Jim Holway, Ph.D. AICP

Director, Western Lands and Communities

A Lincoln Institute of Land Policy & Sonoran Institute Joint Venture



New Partners for Smart Growth  
Charlotte, NC  
Feb 3, 2011



# Reshaping Development Patterns

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## 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

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## 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

## Addressing Development Entitlements & Zombie Subdivisions in the Intermountain West

**Development Entitlements .... What are they ?**

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

**Legal & Planning Frameworks**

**Objectives & Future Directions**

# Premature vs. Obsolete .... vs. Zombie Subdivisions

## ➤ Entitlement Issues

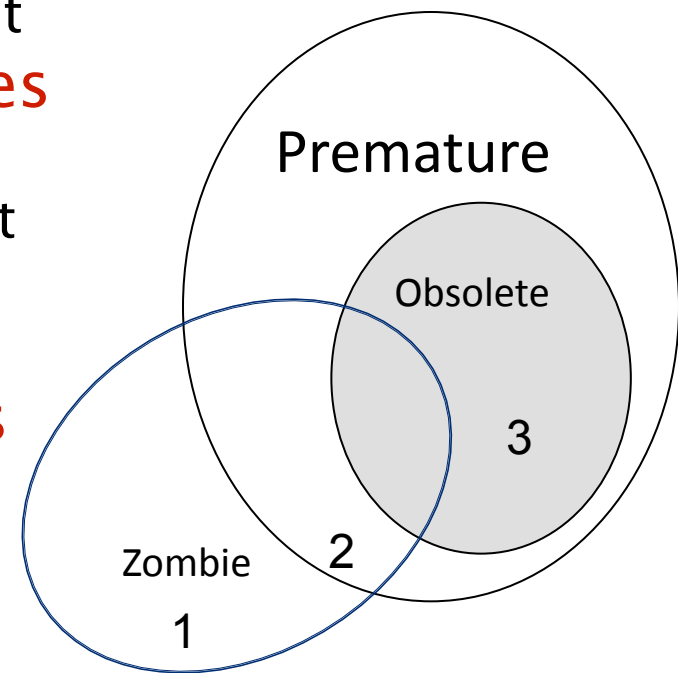
- Cumulative Impacts
- Market Distortions – Reduce Property Values
- Tie up Resources (assured water supply)
- Reduce Ability to Plan & Adjust

## ➤ Premature Subdivision Issues

- Land Use Commitments
- Servicing Costs – Fiscal Impact
- Blight
- Changing Standards

## ➤ Obsolete Subdivision Issues

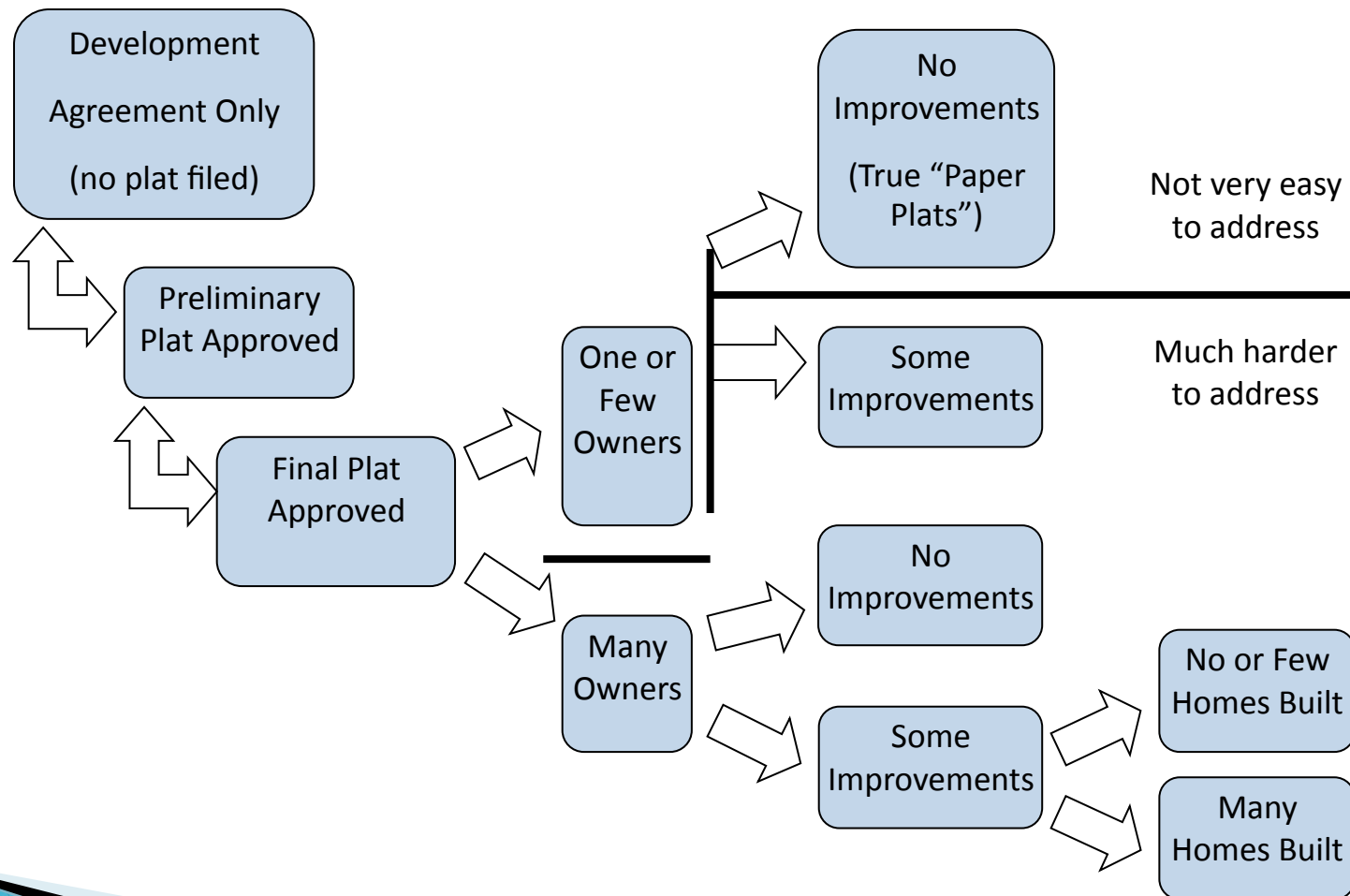
- Public Safety
- Community Quality
- Environmental Damage



adapted from Don Elliott – Clarion & Associates

# Status of Entitlements

## Paper Plats and Partial Performance Plats



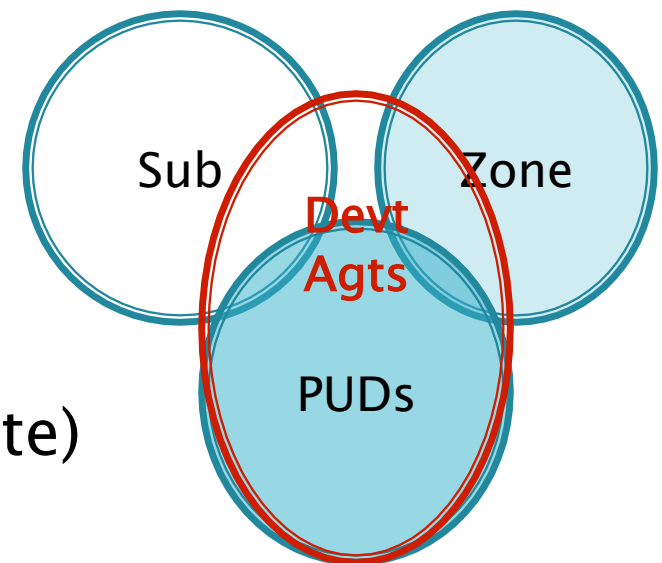
# What to do about them?

## ➤ Constraints on Efforts to Address Entitlements

- Lot Owner Rights & Vesting
- Preserving Lot Access
- “Equal Treatment”
- Due Process & Takings

## ➤ Major legal Powers Involved

- Subdivision powers
- Zoning powers
- PUD powers
- Development agreements
- Others (unique to each state)



# Legal Background

## 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





# Legal Background

## Four Potential Legal Claims

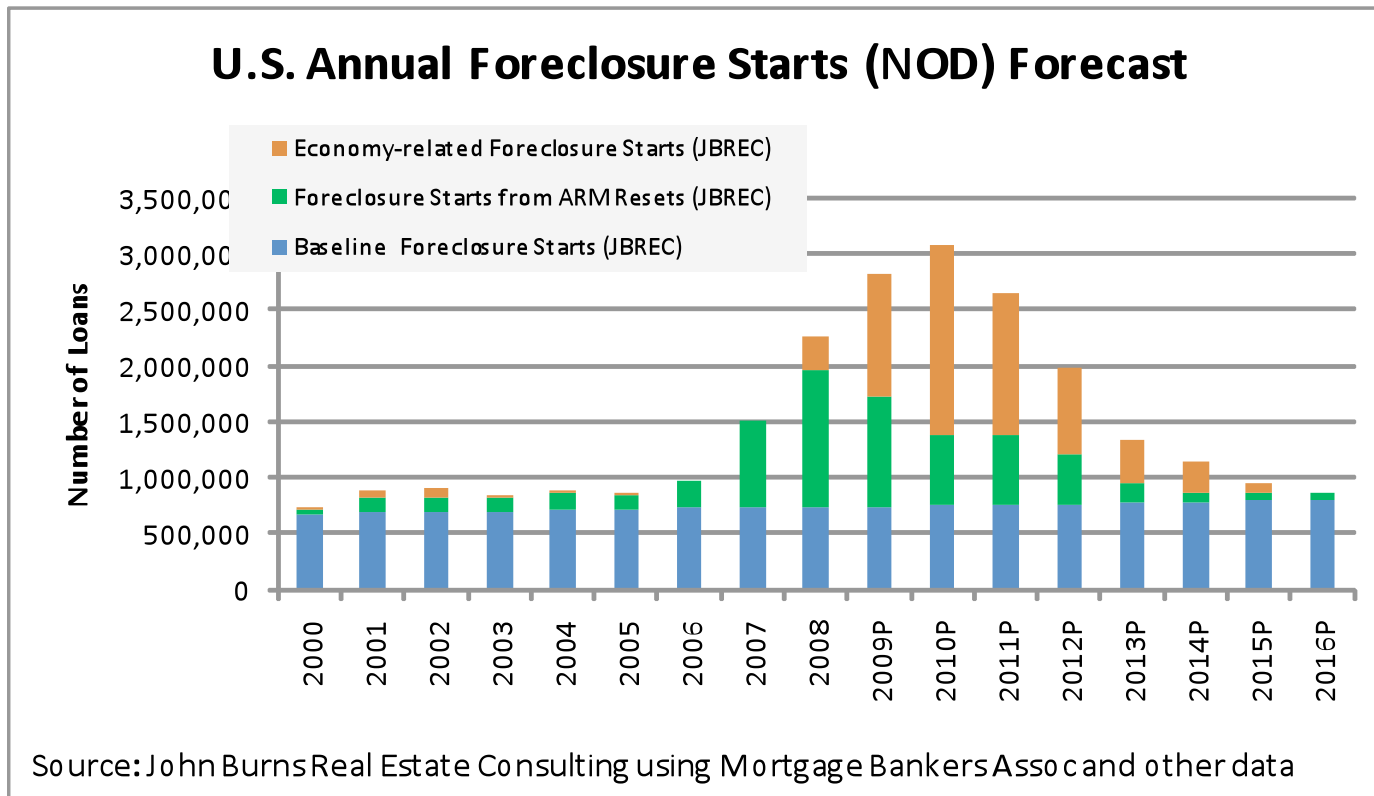
that may arise from attempts to “Reshape Development”

- **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



Is this a problem in your  
community???

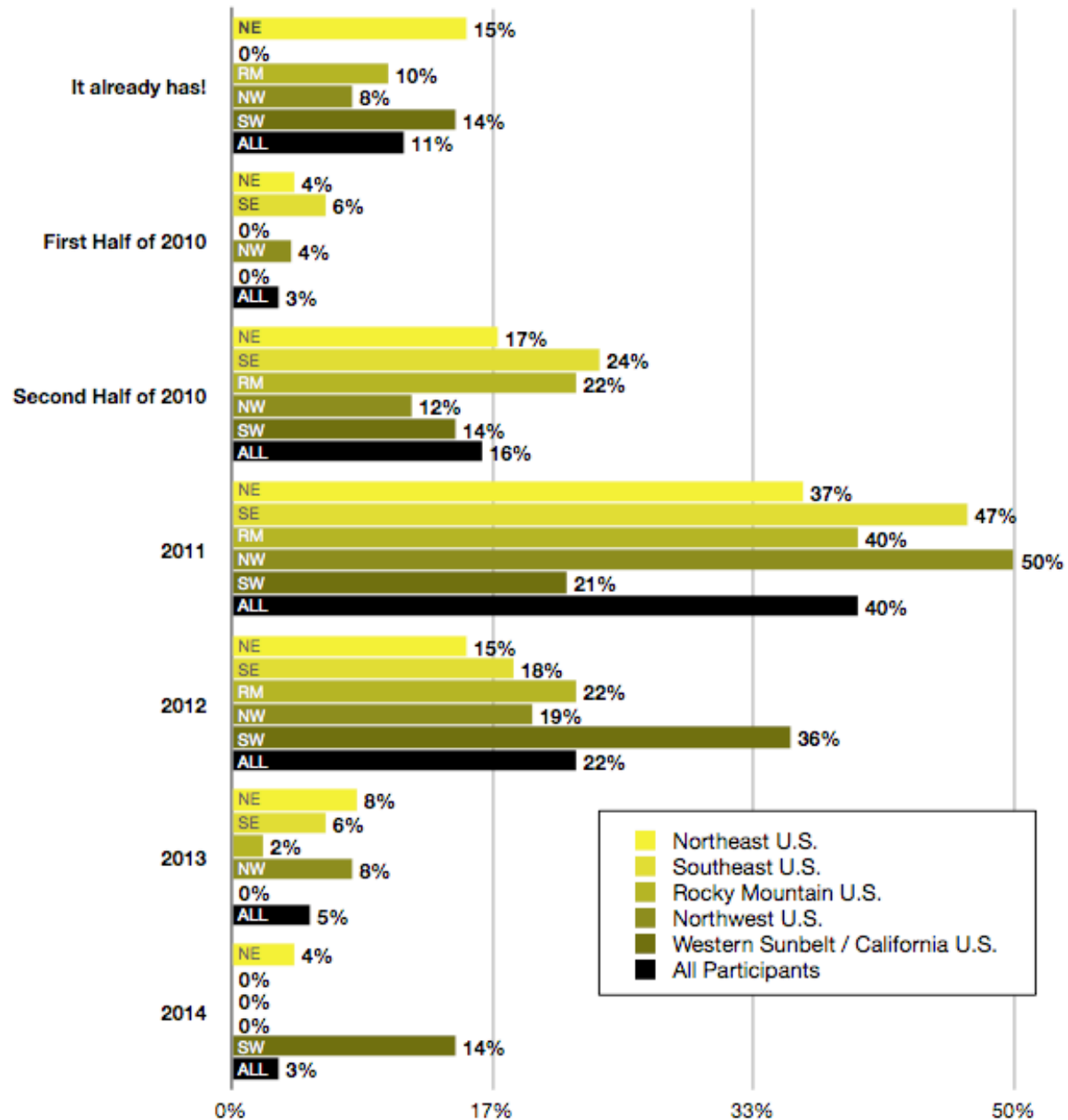
Layoffs and Option ARM resets will keep foreclosure starts at or above 2 million through 2012.



# Recovery Predictions

**SORTED BY GEOGRAPHY**

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

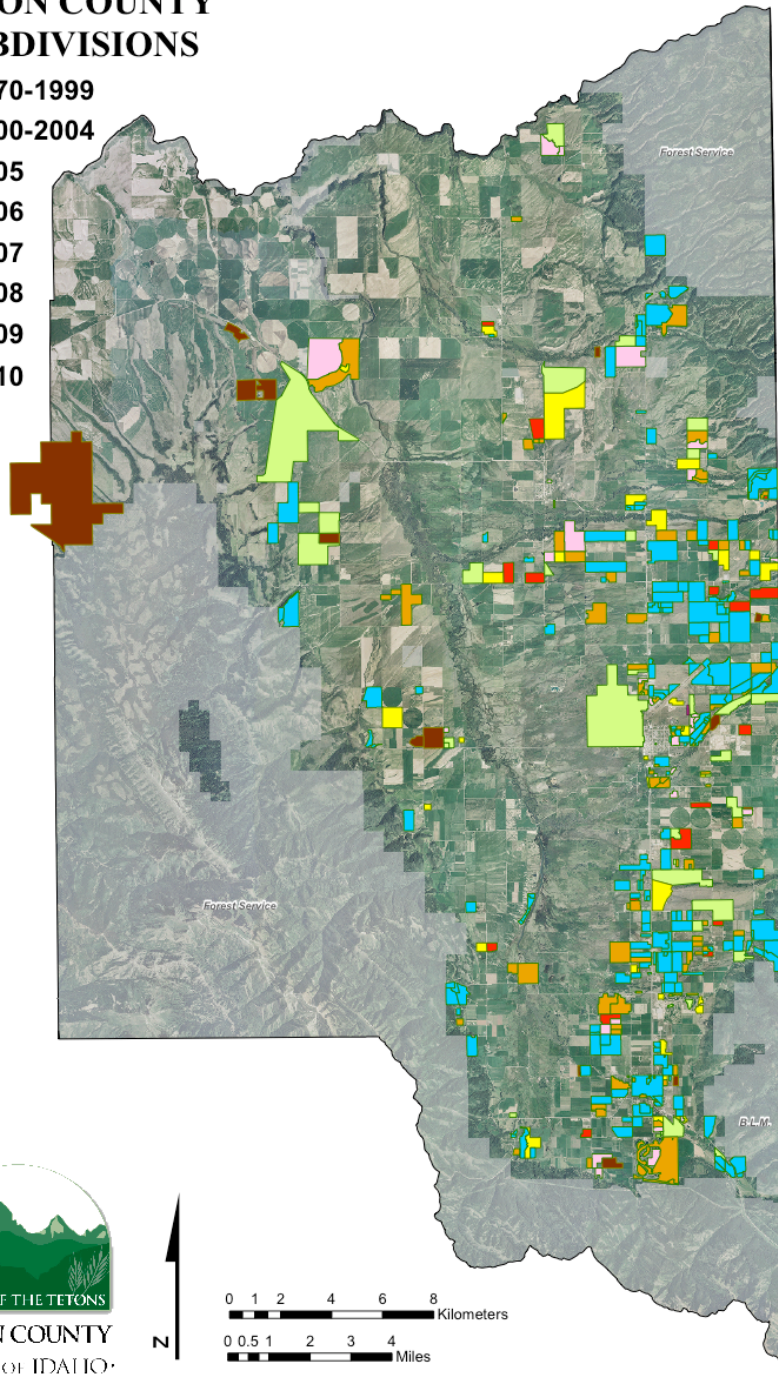


**Steeplechase**  
*development advisors, LLC*

Kelsey & Norden 2010

## TETON COUNTY SUBDIVISIONS

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



TETON COUNTY  
STATE OF IDAHO



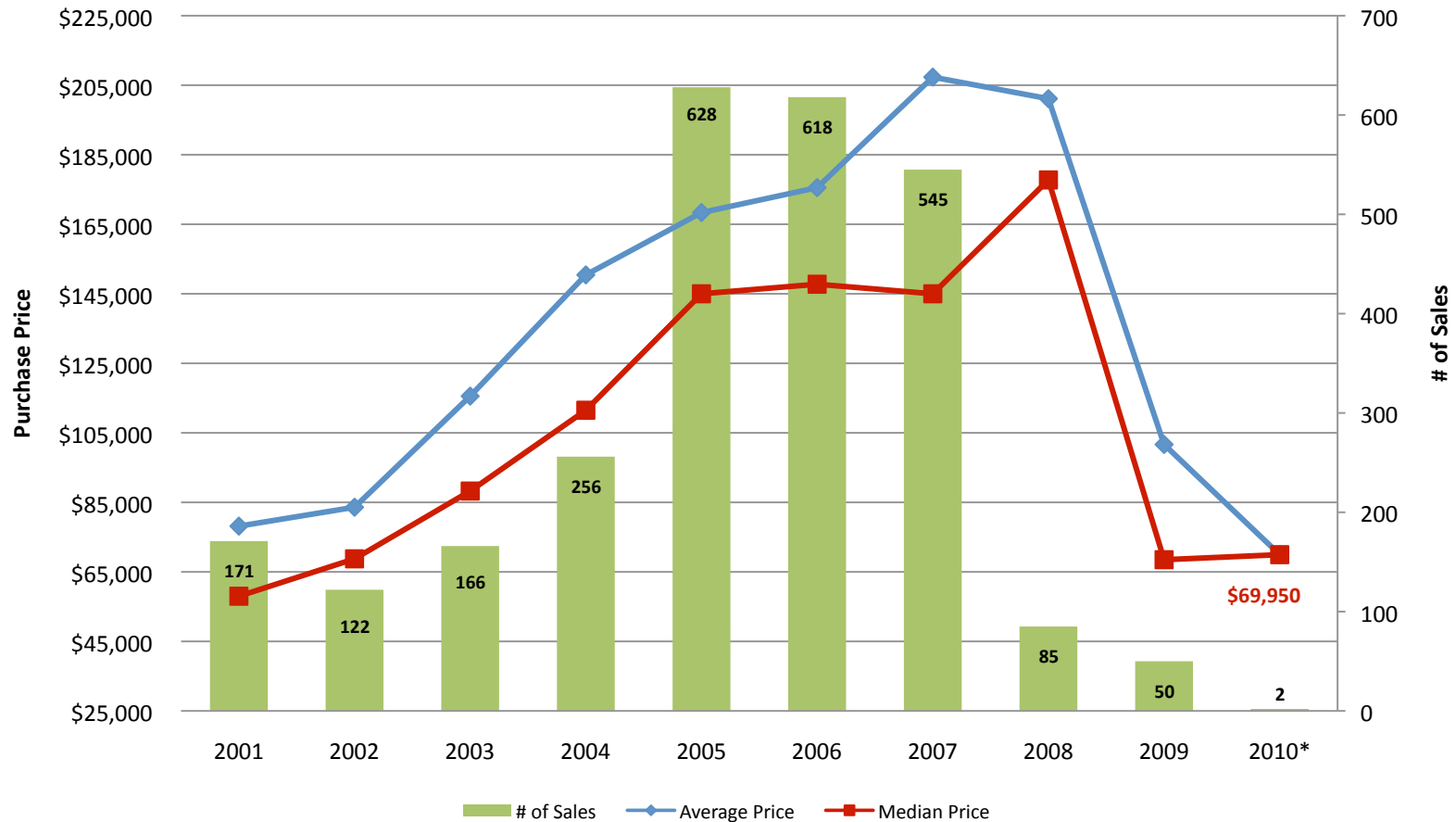
0 1 2 4 6 8  
Kilometers  
0 0.5 1 2 3 4  
Miles

Anna Trentadue, Valley Advocates for  
Responsible Development

# TETON VALLEY MARKET STATISTICS

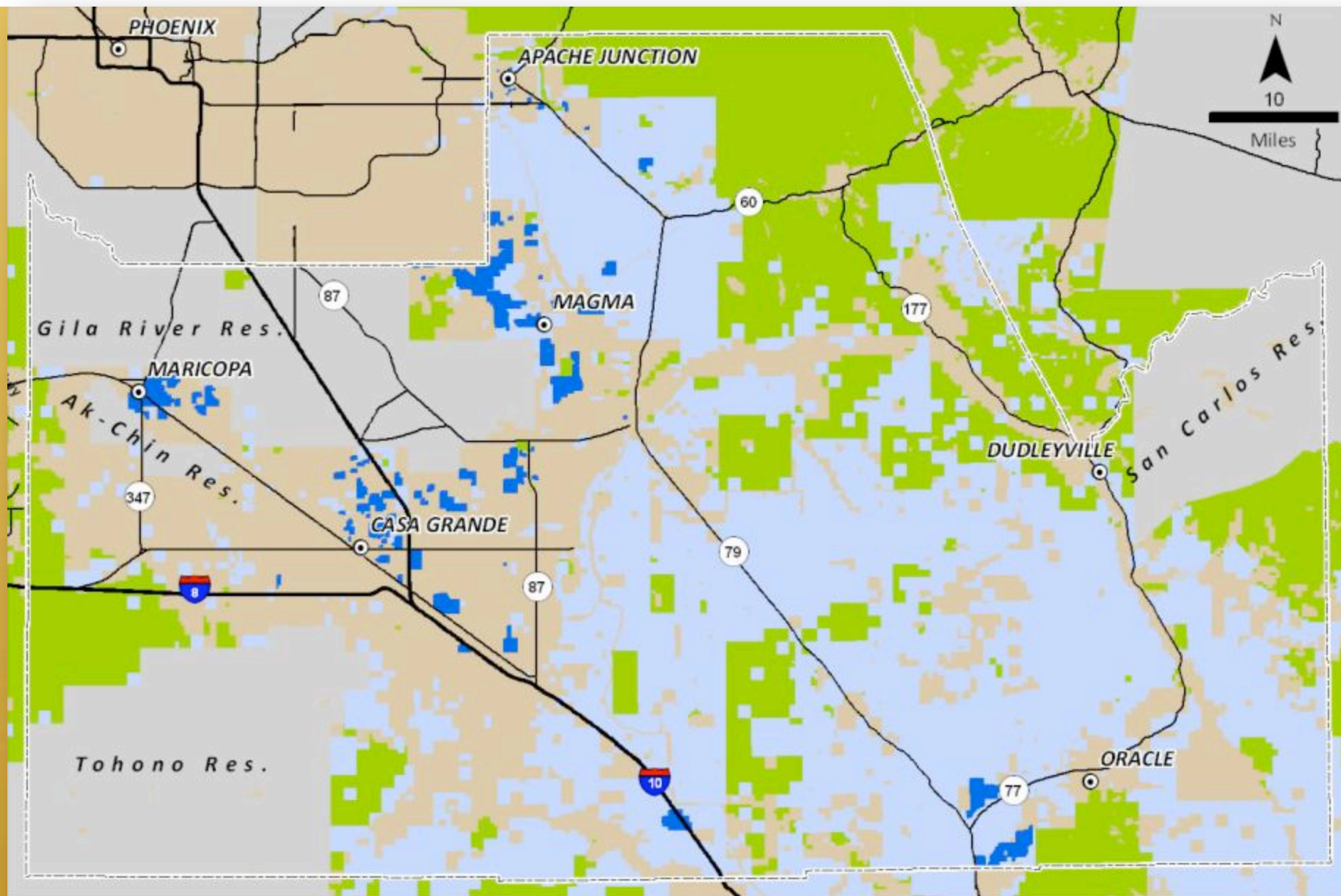
## Residential Lot Sales (2001-2010\*)

14



\* Data for 2010 as of 02/26/10





## Pinal County Subdivisions

Development Status:

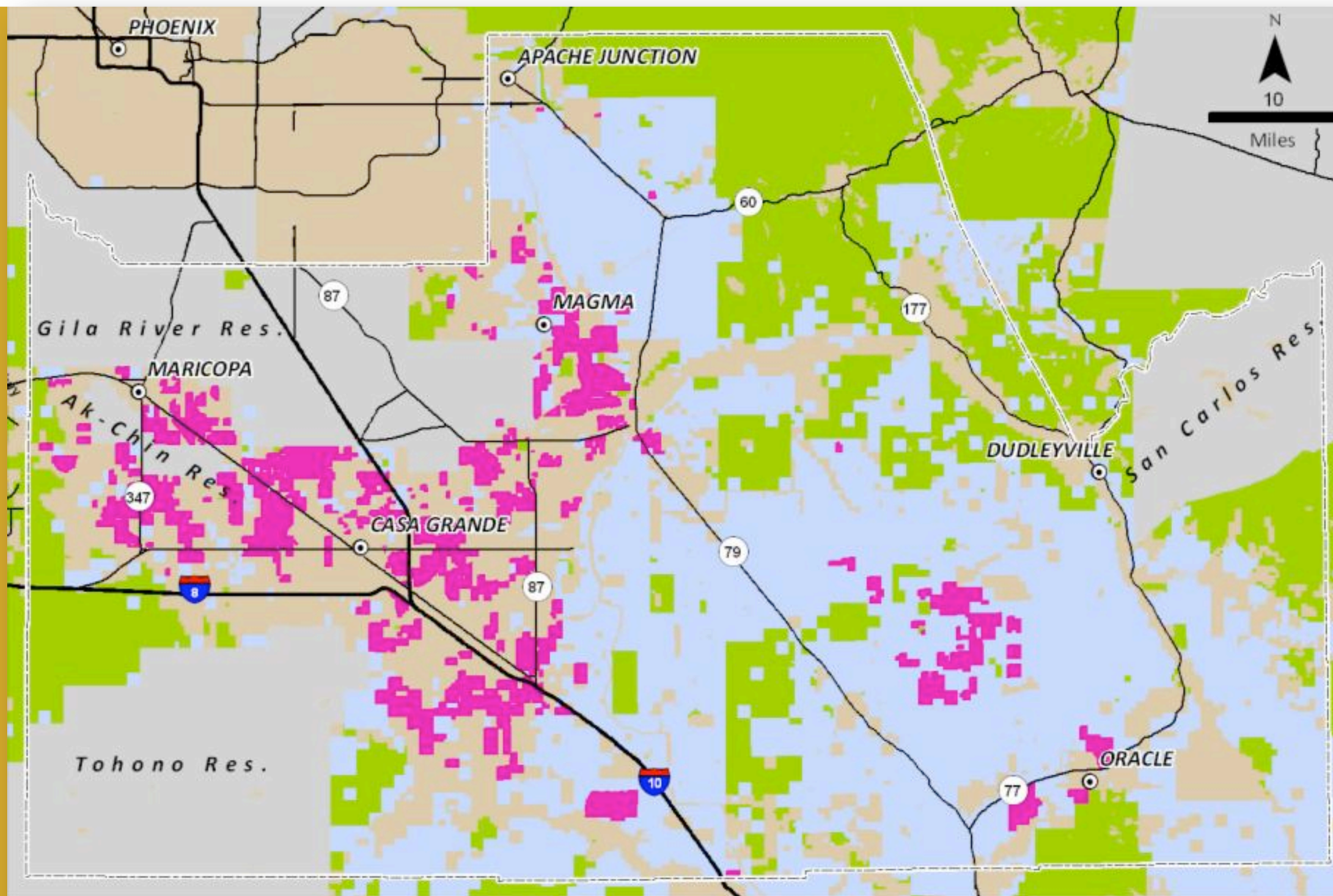
 Active

 State/Federal Land

 Indian Reservation

 State Trust Land





## Pinal County Subdivisions

Development Status:

 Entitled

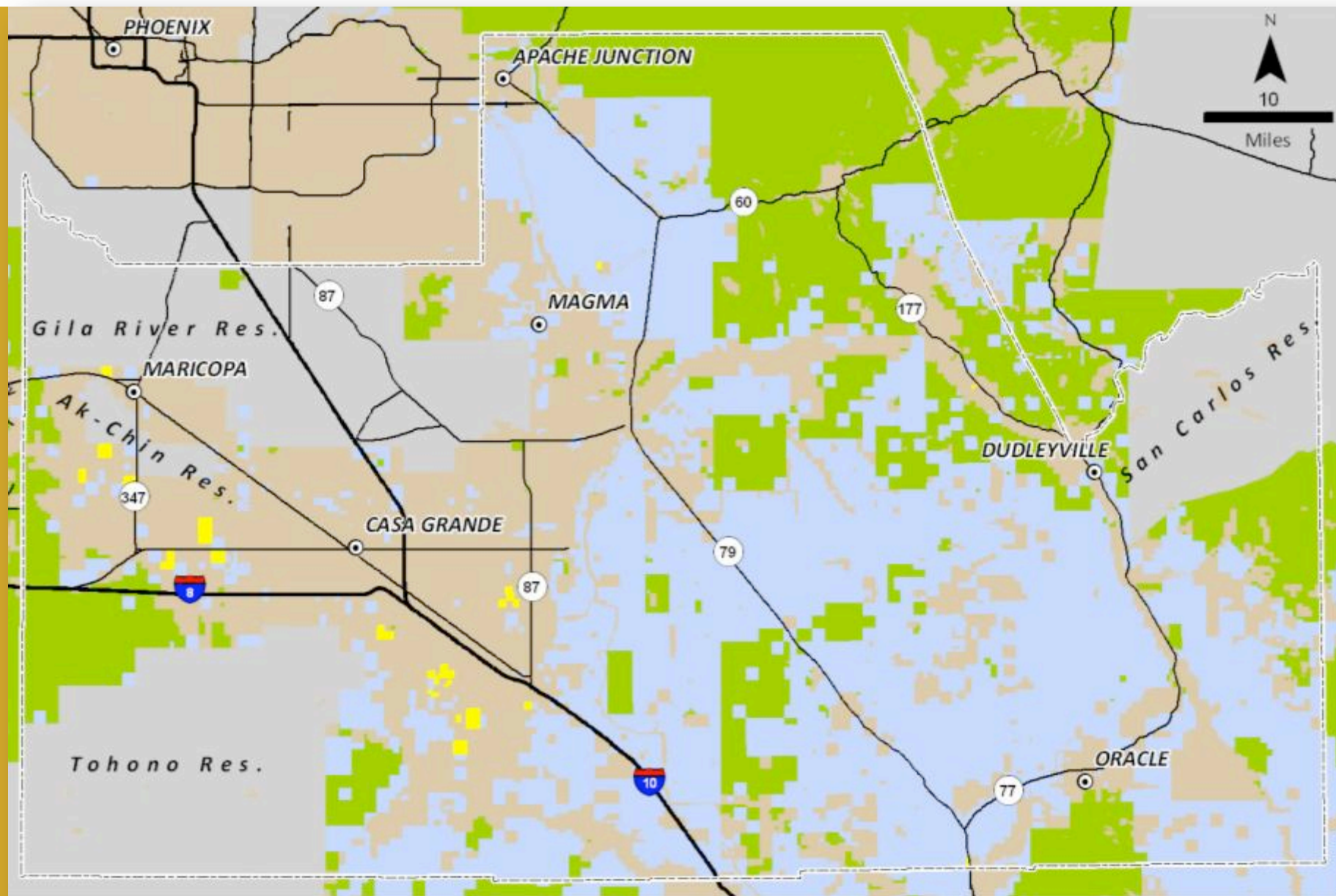
 State/Federal Land

 Indian Reservation

 State Trust Land







## Pinal County Subdivisions

Development Status:

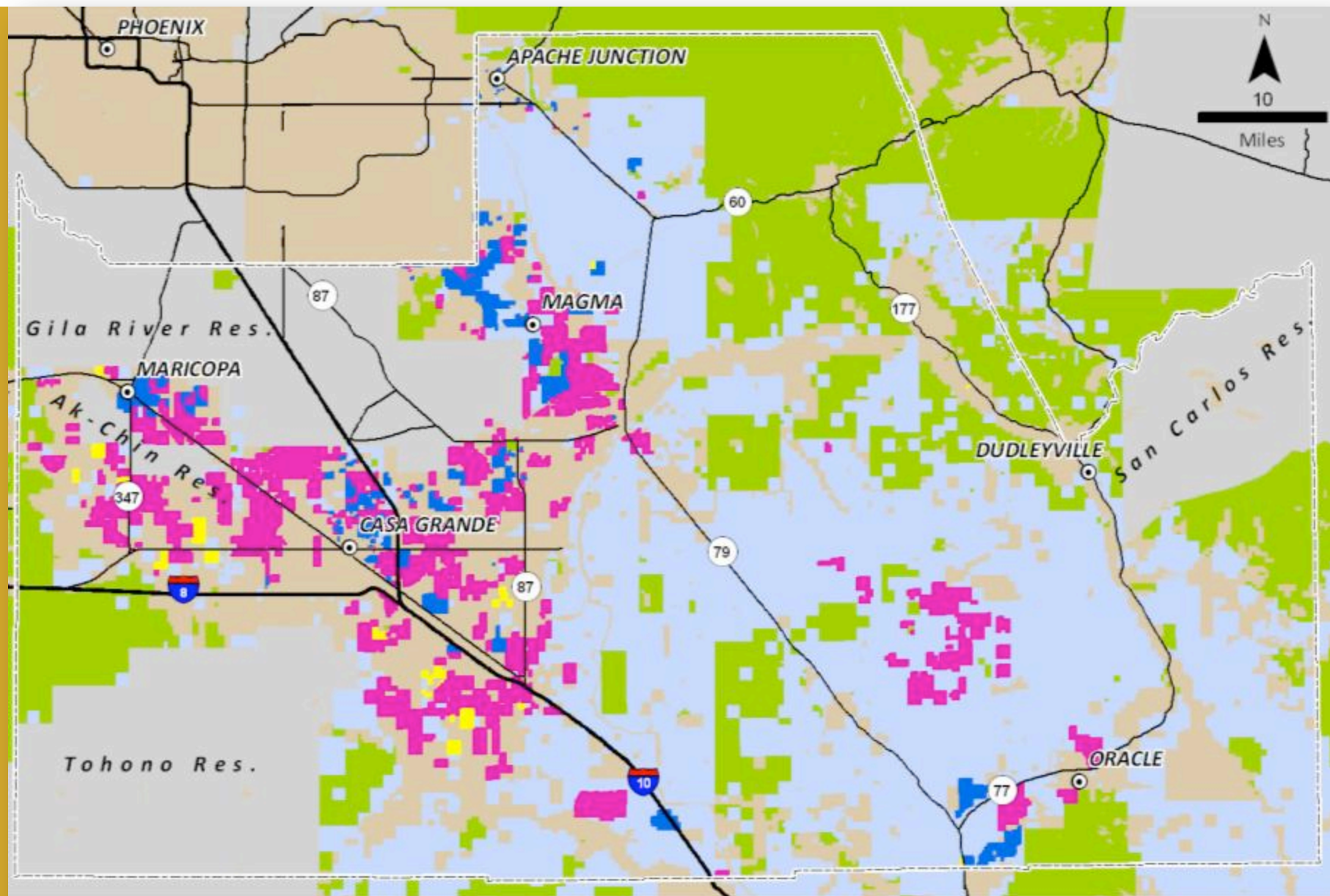
 Tentative Plat

 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
- Occupied Dwelling Units = 105,316
- Population = 326,398

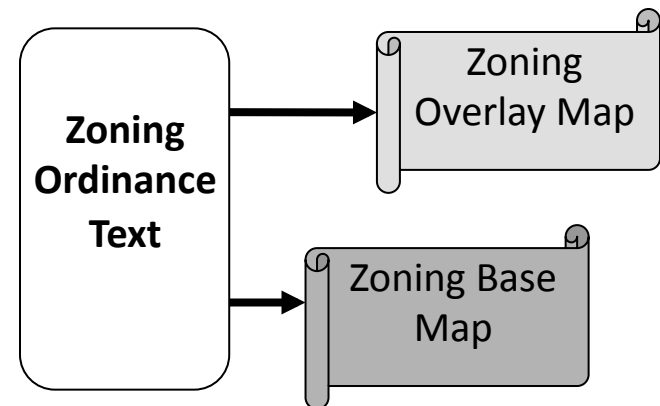
CAAG 2007

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

# Policy Options

## Types of tools to reshape development

- Economic incentives
- Purchasing land or property rights
- Regulating the land
  - Replatting
  - Rezoning
- Growth management
  - Rationing permits
  - Service areas & infrastructure phasing



Adapted from Don Elliott - Clarion & Associates

# No Magic Bullet But Frameworks & Best Practices

We .... No set answers or agendas  
facilitate local process & we  
publish lessons learned

# Policy Considerations

## Choosing tools to reshape development

- 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

adapted from Don Elliott – Clarion & Associates



# Reshaping Development Patterns

## Our Next Steps

- Background Research
- Experts Convening
- RFP for Targeted Applications / Case Studies -- 2 more
- 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
- Funders & Partners ????
- Publish & Disseminate

**Google “Western Lands and Communities” ... click on Reshaping Development Patterns**