

Addressing Development Entitlements in the West: Distressed, Zombie, and Premature Subdivisions

Western Lands and Communities

A Lincoln Institute of Land Policy & Sonoran Institute Joint Venture

2013 RMLUI Annual Conference

“Land Use for a Lifetime”

Denver, Colorado

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Peter Pollock

Why is this a problem? How extensive is it?

Jillian Sutherland

What do planners, developers, and lenders think about the problem?

What are the specific challenges we're trying to deal with?

How are communities responding?

Don Elliott

How can communities avoid these problems?

What are the legal & planning tools that can be used to deal with specific entitlement problems?

-----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

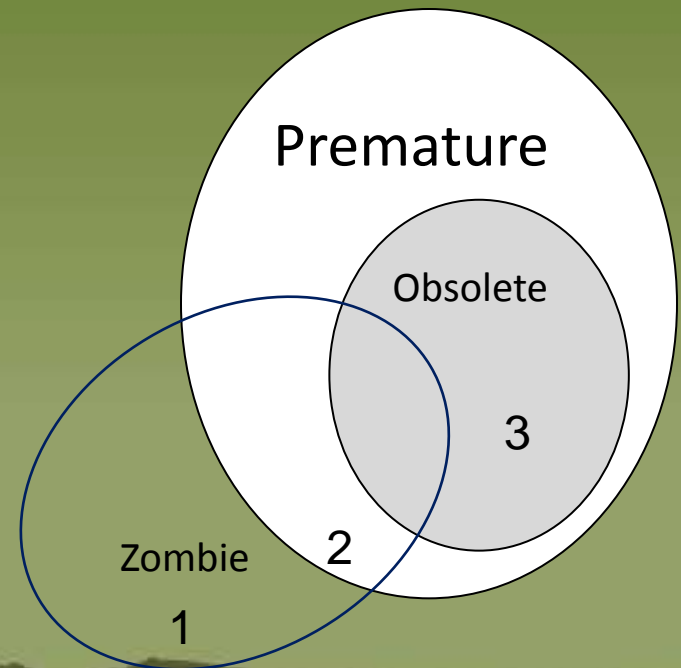
Premature vs. Obsolete vs. Zombie Subdivisions

➤ Premature Subdivision Issues

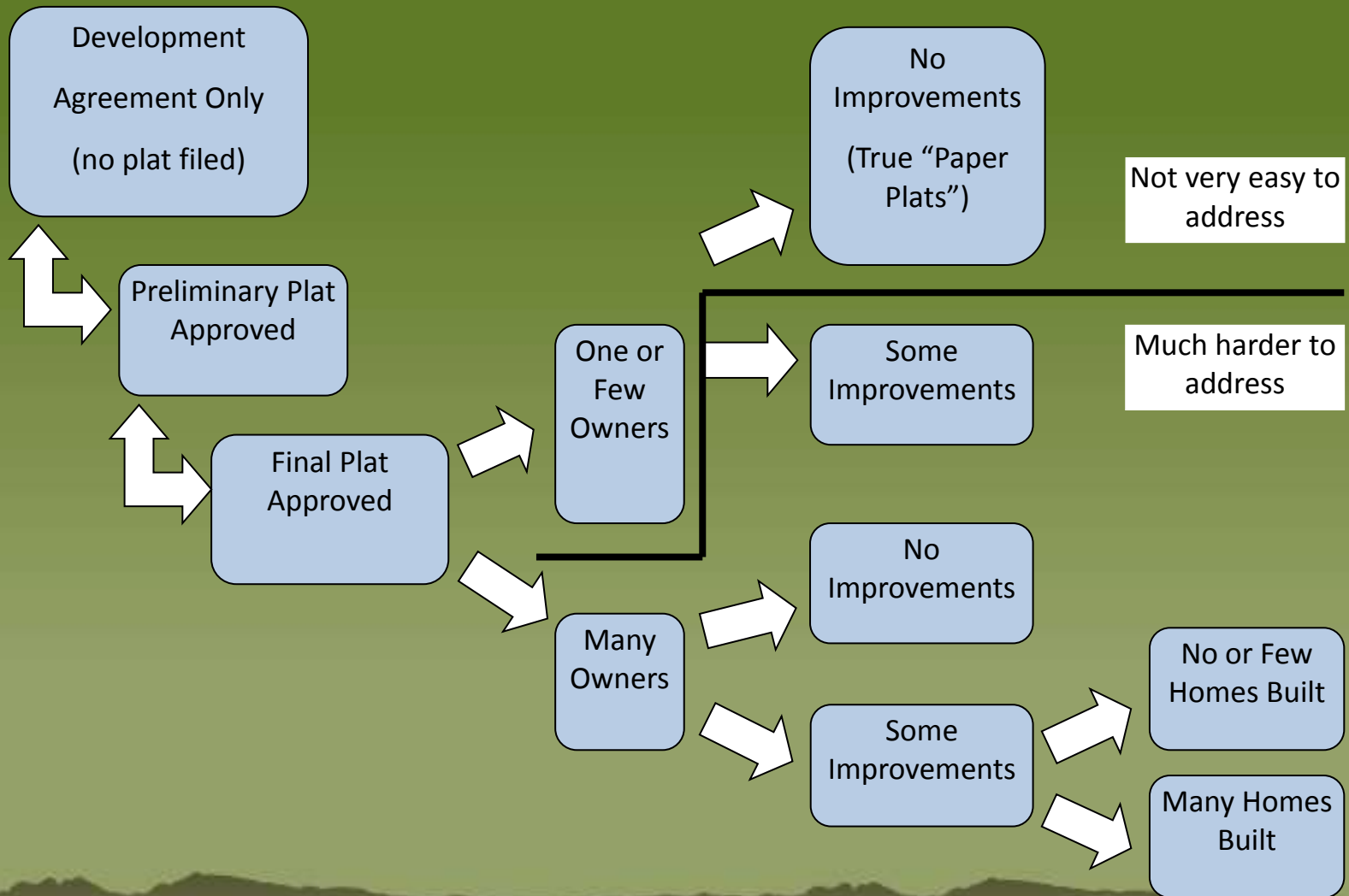
- Land Use Commitments
- Servicing Costs – Fiscal Impact
- Blight
- Changing Standards

➤ Obsolete Subdivision Issues

- Public Safety
- Community Quality
- Environmental Damage



Paper Plats and Partial Performance Plats



Planner - Developer – Lender Survey

Preliminary & Partial Results

- Ongoing survey – Initiated Feb 13th – Close on March 15
 - 283 respondents as of March 1
 - 33% AZ, 20 % CO, 26 % other IMW
 - 66 % Public Agency Staff
 - 13 % Attorney/Consultant
 - 8 % NGO
 - 9 % Developer/Builder/Landowner
 - 53% City or Town 28% County
 - Population, a broad spread
 - Suburb 35% .. Rural 23% ..Central City 15% .. Exurb 10%

Planner - Developer – Lender Survey

– Relative importance in driving growth & construction (major or moderate importance)

- Job growth in community - 69%
- Job growth neighboring community - 59%
- 2nd home construction - 41%

– Was home construction primarily driven by current housing demand or speculative building?

- Current housing demand - 27%
- Speculative building - 26%
- Both equally - 47%

Planner - Developer – Lender Survey

- Development cycles over last 10 years
 - 66% had boom & bust cycle ... of these
 - 28% very severe
 - 41 % severe
 - 2% very slight ... and ... 28% moderate
 - How long for housing development levels recover
 - 10% Already recovered
 - 9% Within the year
 - 60% 2 to 5 years
 - 21 % Longer

Why is this a problem?

- Health and safety – e.g., wildfire.
- Blight
- Impact on individual homeowners
- Fiscal impacts
- Smart growth
- Tying up resources, e.g., water
- Impact on housing markets

Planner - Developer – Lender Survey

What issues are a major problem in your jurisdiction

(from a list of 17 issues the top – (moderate or major problem))

- Number of vacant platted lots - 42%
- Large unfinished subdivisions - 40%
- Owners & lenders not adjusting for lost value - 39%
- Negative impacts on individual homeowners - 31%

Lowest level of concern

- Health & Safety concerns due to unfinished subs
(48% not a problem, 21% moderate or major problem)

Entitlements Data Target Counties



Idaho

County	2000-2010 Growth	2010 Pop	Subdiv Count	Parcels in Subdiv	Developed Parcels in Subdiv	Undeveloped Parcels in Subdiv	Percent Undeveloped
Ada County	30.40	392,365	5460	151319	127451	23,868	16%
Teton County	69.50	10,170	403	10225	3300	6,925	68%
Jefferson County	36.50		321	6331	2939	3,392	54%
<i>Bonneville County</i>	<i>26.30</i>	<i>104,234</i>				<i>0</i>	
<i>Blaine County</i>	<i>12.60</i>	<i>21,376</i>				<i>0</i>	
<i>Canyon County</i>	<i>43.70</i>	<i>188,923</i>				<i>0</i>	
<i>Lemhi County</i>	<i>1.70</i>					<i>0</i>	
<i>Kootenai County</i>	<i>27.40</i>					<i>0</i>	

Bozeman - Helena



Planner - Developer – Lender Survey

- Number of vacant parcels in your jurisdiction(s)
 - None 2%
 - Very few 25%
 - Moderate number 42%
 - Many 32%

Is this a problem in your
community???

Addressing Development Entitlements in the West: Distressed, Zombie, and Premature Subdivisions

Jillian Sutherland, Sonoran Institute

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

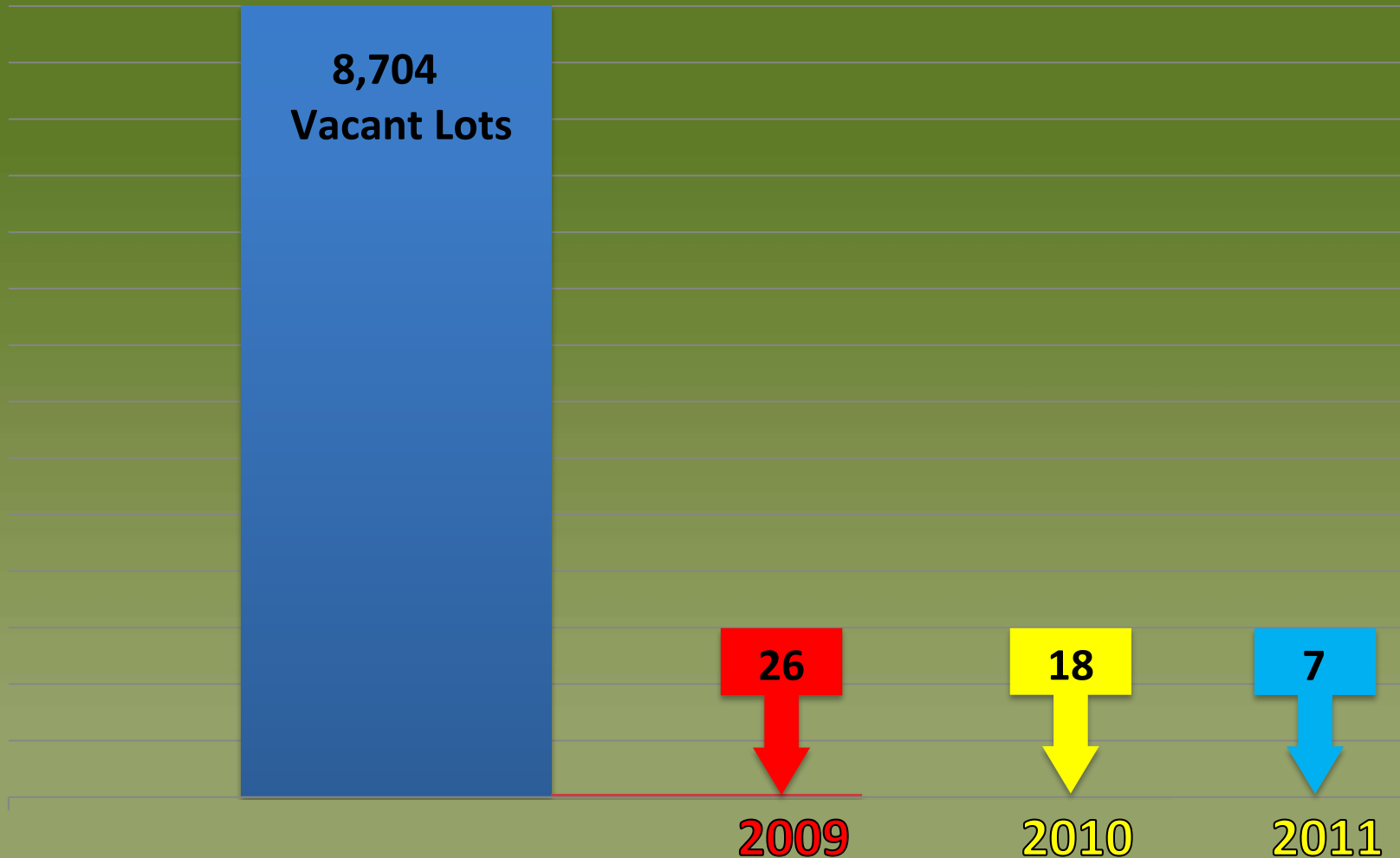
Teton Valley, Idaho

7,030 vacant platted
lots in the
unincorporated county

77% vacancy

Incorporated areas another approx 1,674 lots

Vacant Lots vs. Building Permits



Plat Vacation

- Plats can be vacated if:
 - No lots have been sold
 - There are no outstanding property taxes
- To date, 197 lots have been vacated on 510 acres



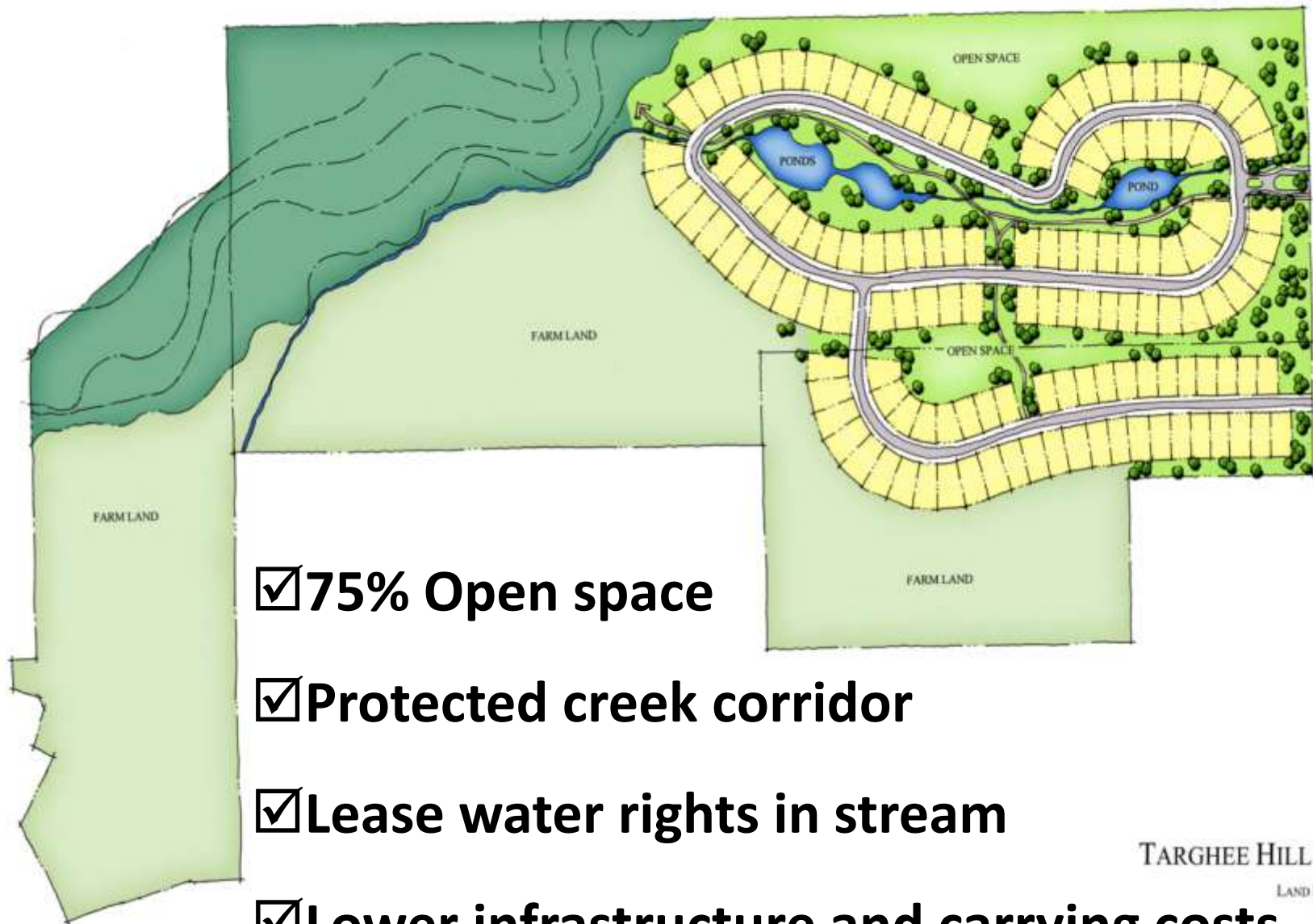
Mountain Legends PUD

Reshaping Targhee Hill Estates



- No meaningful open space
- High carrying costs
- High infrastructure costs
- High water consumption

Source: Valley Advocates for Responsible Development



☑ 75% Open space

☑ Protected creek corridor

☑ Lease water rights in stream

☑ Lower infrastructure and carrying costs



Concept Plan

TARGHEE HILL ESTATES

LAND EQUITY PARTNERS
100 PINEBROOK ROAD
PARK CITY, UTAH



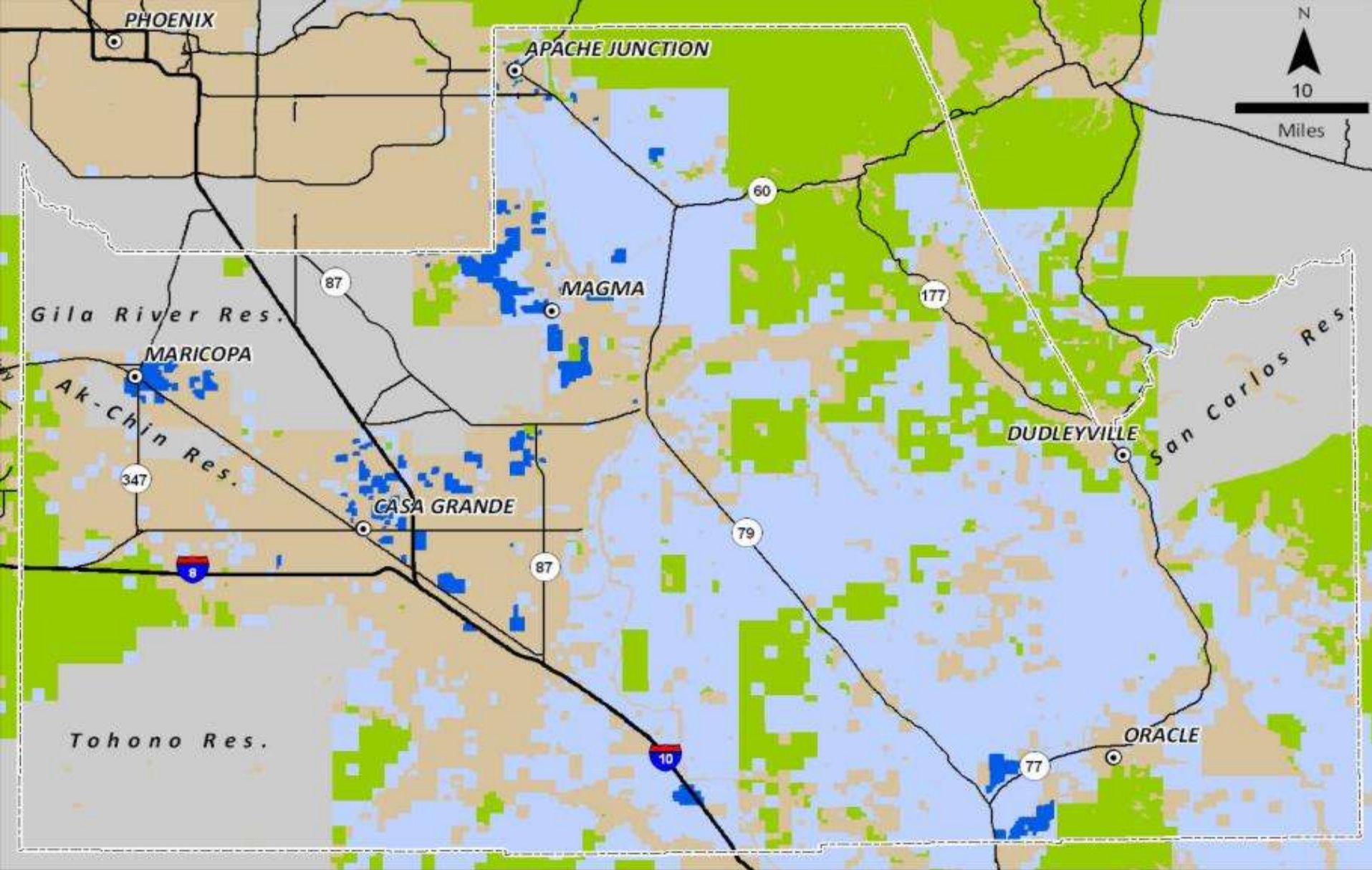
R. MICHAEL KELLY

DESIGNED BY MICHAEL KELLY & ASSOCIATES, INC. 2011-12-01

Challenges thus far.....

- Lack of replatting ordinances and policies
- Scarcity of financing
- Getting bank approval for plat changes → Banks are reluctant to understand the benefits of change
- Determining rights of the 6 individuals/entities who own 18 lots as platted in Phase 1

MARKETABILITY?



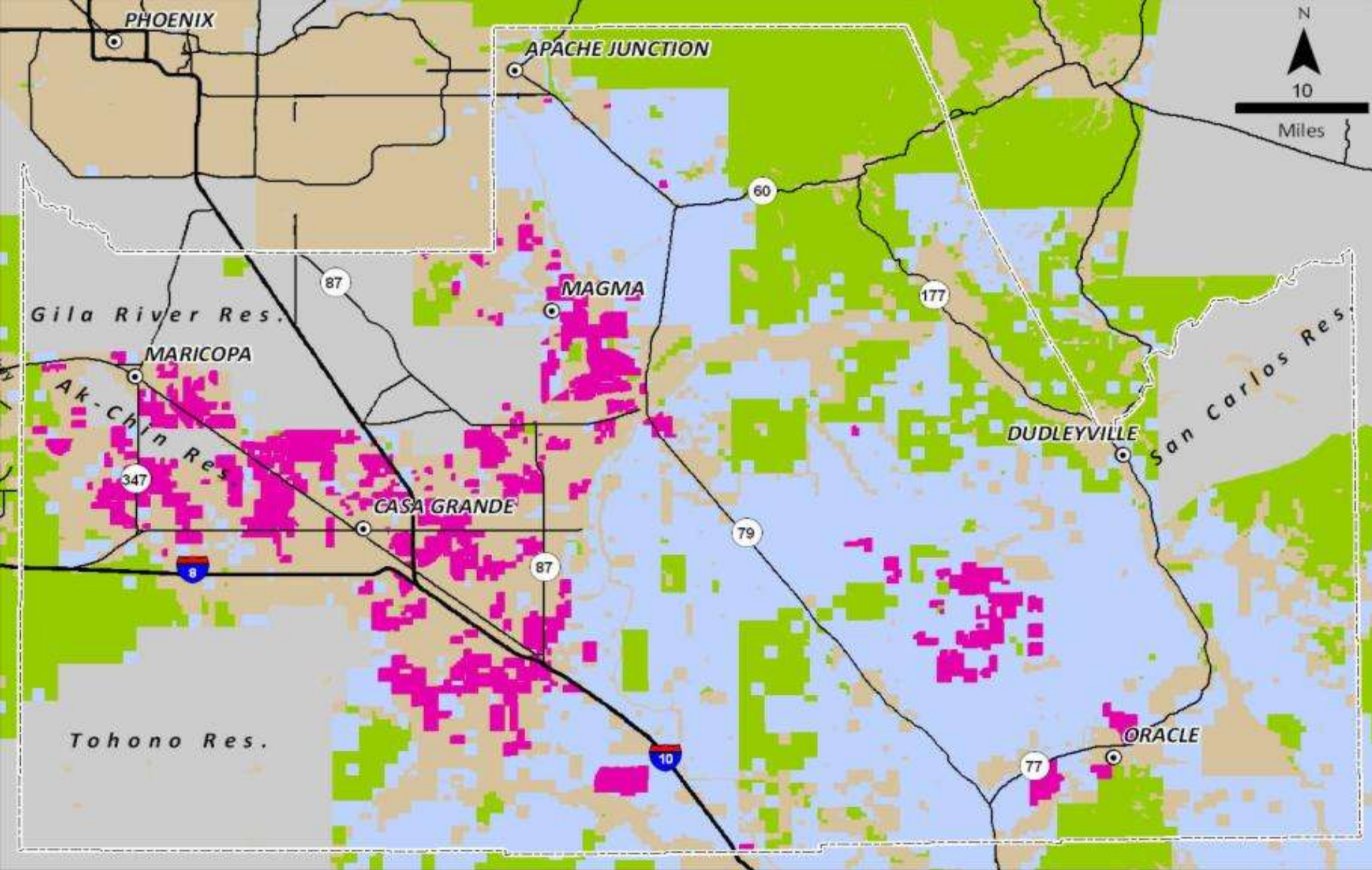
Pinal County Subdivisions

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 - 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)

Nearly **FIVE TIMES** the Amount of
the Current Stock

Existing Housing & Population

- Total Dwelling Units = 159,222
- Occupied Dwelling Units = 125,590
- Vacant Dwelling Units = 33,632

Building a New City: Maricopa, AZ

- Problems:
 - Market demands/rural land use controls
 - Lack of options
 - Private non-profits/faith based
 - Public amenities
- Opportunities (downturn):
 - Available land and infrastructure
 - Desire to sell/open to suggestion

Current Problems

- **Inactive development**
 - Aesthetics
 - Blight
- **Bankruptcy (Finances)**
 - Changing ownership
 - Capacity
- **Mass grading (disturbed land)**

Current Problems (Cont'd)

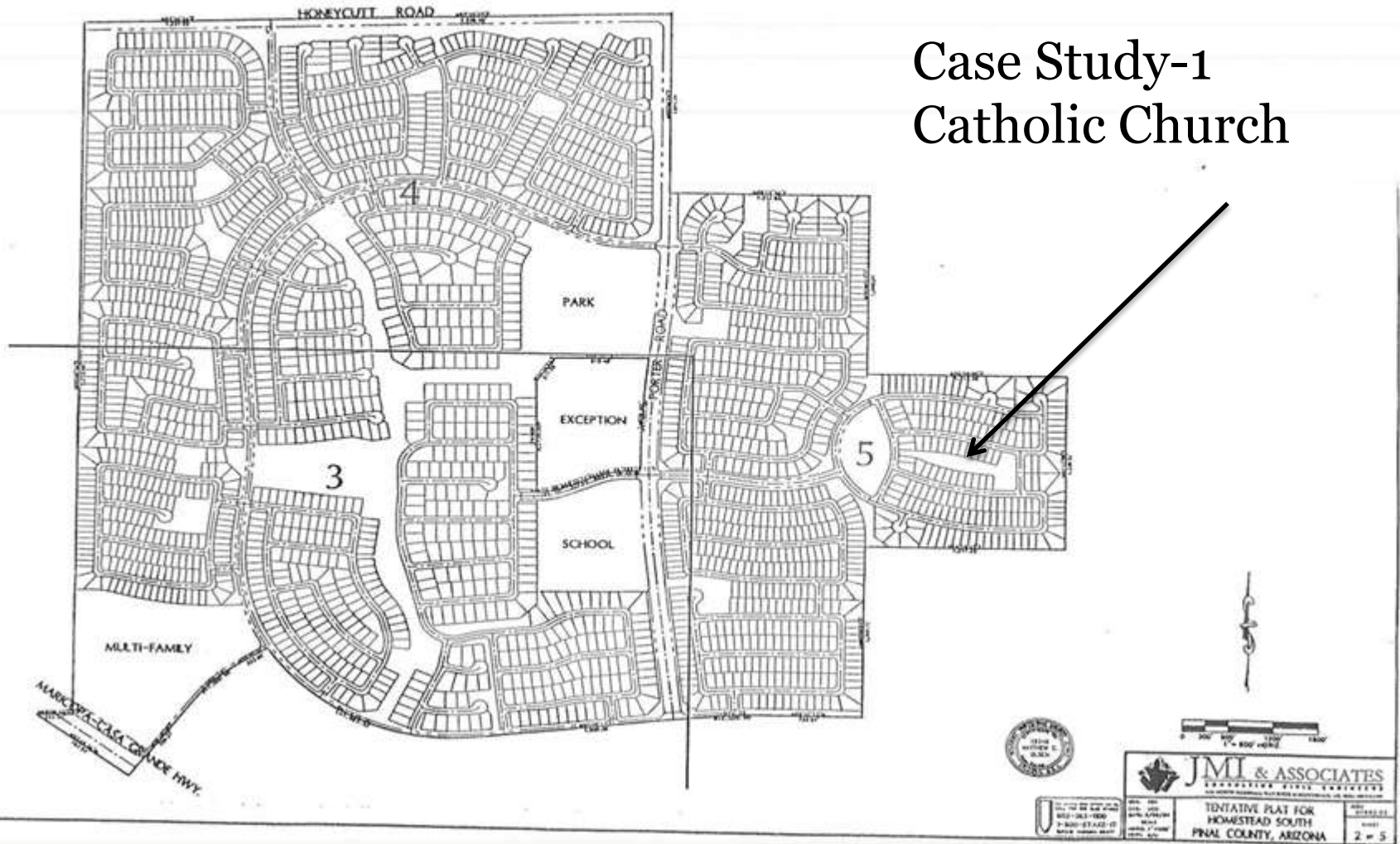
- Degrading infrastructure
- Lack of traffic
- Lack of maintenance
 - Flood control
 - Roadways
 - Wet utilities
 - Air quality/water quality
- Maintenance costs (city/utilities)

Current Problems (Cont'd)

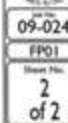
- **Trespass/vandalism/theft**
- **Expiration of financial assurances**
- **Difficulty drawing and implementing assurances**
- **Difficulty acquiring assurances**
 - **Less providers**
 - **Qualification**
 - **Expense**

Glennwilde Parcel 17

Case Study-1 Catholic Church



09-024



Smart Growth/ Form-Based Design



Mesa County, Colorado

400 subdivisions containing 4,000 lots were left with outstanding development improvement agreements.

20% of County Subdivisions
= Negative effect on bond
rating

The Solution – Prevention!

- ✓ **Development Improvements Agreement**
 - ✓ **Minimum of 6 lots platted in each filing**
 - ✓ **Maximum number of lots tied to infrastructure**
 - ✓ **Construction must start within 12 months of final plat to avoid re-plat into “parent lot”**

The Solution – Prevention!

- ✓ Subdivision Disbursement Agreement
 - ✓ Financial guarantees
 - ✓ Agreement between the financial institution and the County
 - ✓ Lender ‘sets aside’ portion of construction loan to guarantee the itemized cost of the improvements in the Development Improvements Agreement

The Results

- ✓ Lowest subdivision vacancy rate out of all Colorado counties investigated
- ✓ Better immunity to the implications of boom and bust cycles
- ✓ Ability to follow true market demand

Addressing Development Entitlements in the West: Distressed, Zombie, and Premature Subdivisions

Don Elliott, FAICP
Senior Consultant
Clarion Associates

Planner - Developer – Lender Survey

What Led to Excessive Entitlements

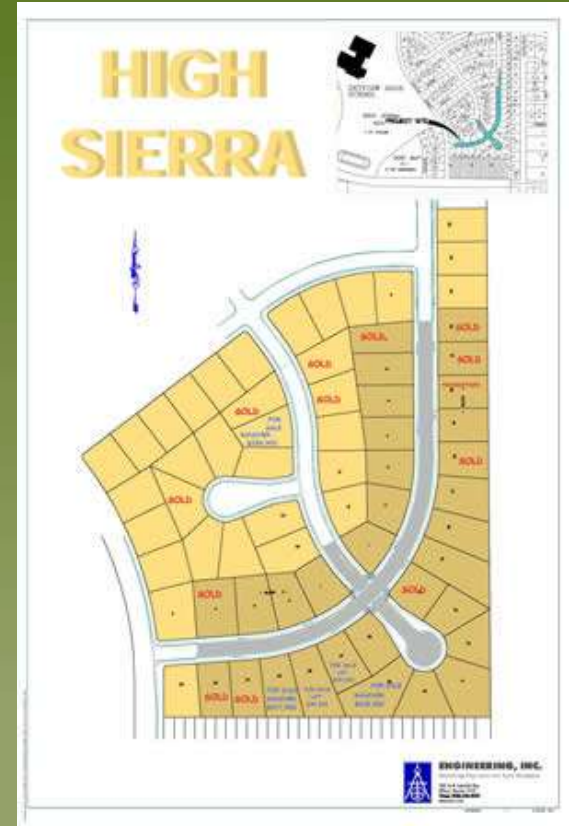
- 76% Market demand & speculative building
- 57% Easy & low cost mortgage financing
- 49% Local regulatory atmosphere for development approvals
- 38% Planning & zoning practices
- 33% Local lending practices
- 33% National housing finance policies & procedures
- 11% State & local tax structure

Preventing the Problem in the First Place

1. Comprehensive Plan language addressing the need to avoid entitling development very far in advance of market demand
2. A good Development Agreement template
 - Timeframes for development / lapsing of approvals
 - Phased sale provisions tied to percentage sale of earlier phases and infrastructure installation
 - Mechanisms for not finalizing, or for vacating, phases of plats that remain undeveloped for X years beyond timeframe
 - Requiring improved Development Assurances

Preventing the Problem in the First Place

3. Require market feasibility study based on documented historical building (not lot sales) rates and patterns, and considering existing inventory of lots
4. Add criteria for subdivision approval related to:
 - Existing inventory of lots within X miles
 - Distance between subdivision and existing roads and utilities



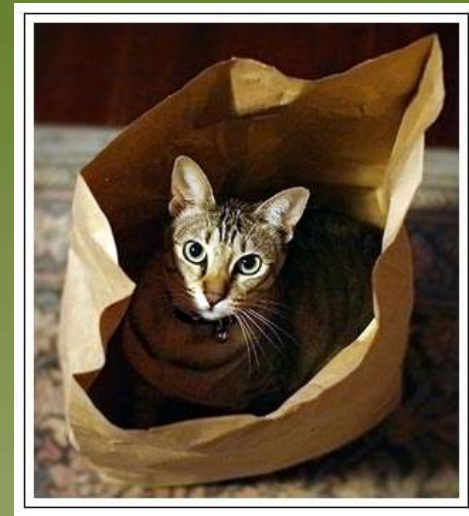
Addressing Existing Problems

1. Evaluate your Community Capacity
2. Evaluate each subdivision (or phase or a subdivision) separately to identify
 - The specific problems that it creates
 - The tools that might be available to address that problem
 - Your community's capacity to use the available tools in that location

Addressing Existing Problems

1. Evaluating your Community Capacity

- Perceived seriousness of the problem
- Staff capacity to prepare and administer revised regulations and volume of anticipated new work
- Political will to:
 - Revisit – or sunset – past approvals?
 - Rezone property?
 - Vacate portions of a plat?
 - Add a new approval step between subdivision approval and building permits



Addressing Existing Problems

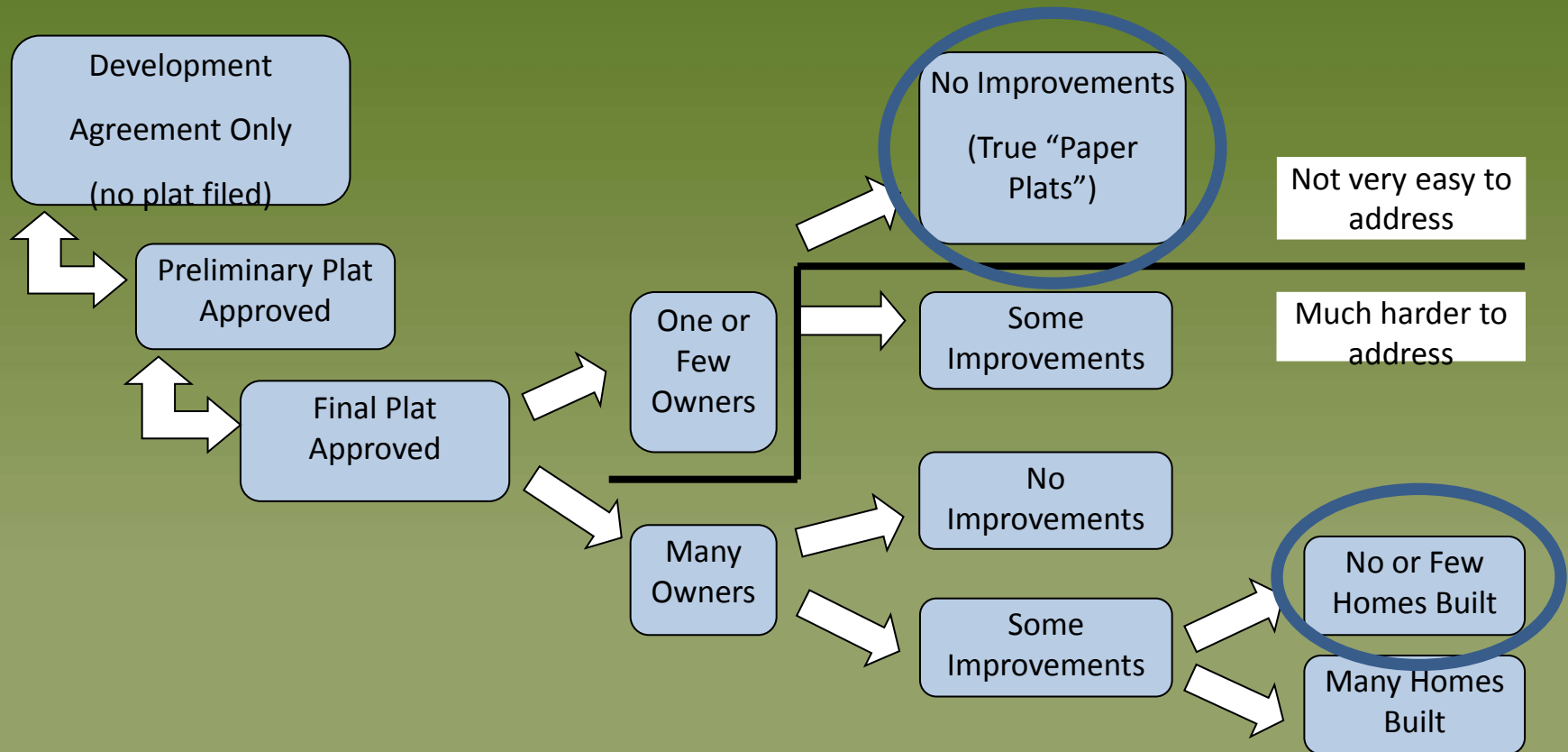
By analogy to the RMLUI Sustainable Development Framework – Capacity tic-tac-toe

	Bronze	Silver	Gold
Remove Barriers	X ?		
Create Incentives			
Adopt Regulations	X ?		X ?

Rank your community Low – Med – or High

Addressing Existing Problems

1. Each Subdivision (or Phase) Separately



Addressing Existing Problems

2.a Subdivision Phase Evaluation

“What problems does it cause?”

- Health and Safety?
- Blight (no maintenance)
- Homeowner Impacts
- Fiscal (service costs)
- Un-Smart Growth (scattered/sprawl)
- Resources (ties up water rights)
- Market (saturates sales market)



Addressing Existing Problems

2.a Subdivision Phase Evaluation

“Does Solving those Problems Require you to Focus on:

- Numbers -- Reducing the number of lots?
- Location -- Reconfiguring the lots to safer/better/more efficient locations without reducing their number?
- Quality – Imposing additional standards to ensure better minimum quality/service requirements are met?



Addressing Existing Problems

2.b Subdivision Phase Evaluation

“What Tools Might Make that Happen?”

- Four categories
 - Economic Incentives
 - Purchasing Land or Rights
 - Revising Land Use Regulations
 - Adopting Growth Management
- Original (2009) List of 20 Tools:
 - Grew to 48, then
 - Shrank to 5 most likely to be effective at addressing common problems



Addressing Existing Problems

Priority Tools

1. Facilitating Redesign and Lot Consolidation / Streamlined Voluntary Replatting

- Waive the platting fees
- Use staff (or county contractors) to identify most inefficient, unsafe, unsustainable portions of the subdivision and vacate those portions while granting the owner additional rights/density in portions of the development with better location and infrastructure



Addressing Existing Problems

Priority Tools

2. Plat Lapsing Regulations

- Adopt regulations providing that if infrastructure is not installed per the development timetable (or within X years of the ordinance), unbuilt and unserviced lots are subject to vacation by the BOCC (though access to sold lots will be maintained) and include a plat note to that effect



Addressing Existing Problems

Priority Tools

3. Revise Zoning or Subdivision Regulations

- Adopt additional health and safety regulations if necessary to keep houses off unsafe lands and areas
- Adopt larger lot sizes if necessary
- Adopt requirements for adequate servicing of roads/infrastructure as precondition for building permit



Addressing Existing Problems

Priority Tools

4. Improved Development Assurances

- Require additional assurances of road/infrastructure development and maintenance prior to additional lot sales
 - Performance bond or
 - Lot sales agreements or
 - Revised development agreement
- Or impose these only on the most problematic lots



Addressing Existing Problems

Priority Tools

5. Transfer of Development Rights

- Require that new subdivisions – or new/better located portions of an existing subdivision -- “retire” some of the most problematic old lots as a condition of final plat approval, or prior to lot sale



Addressing Existing Problems

But Watch Out

- All but the first of these tools (voluntary/assisted replatting) are likely to be very unpopular with the current owner of the undeveloped portions of the subdivision – and probably also with the current residents.

AND

- You always have to include a relief valve for owners of individual lots who will have no reasonable economic use of their land remaining if they are not allowed to build a house on it.

Planner - Developer – Lender Survey

From the list of 48 potential tools, we asked if they were used and if so how effective were they in addressing development entitlement issues

.....

Tools cited most often as effective or very effective

- 68% General Plan
- 64% Requiring consistency with General Plan
- 57% Development agreement templates
- 53% Development assurances – development holds
- 51% Development assurances – bond and letter of credit
- 51% Development agreement – deadline/extension criteria
- 51% Record keeping / GIS system

Planner - Developer – Lender Survey

.....

Tools that have rarely been used

but considered effective by those who use them

- Streamlined voluntary replatting
- Replatting fee waivers
- Public / private partnerships to facilitate resolving issues
- Targeted infrastructure investments
- Adoption of a strategy to address distressed subdivisions
- Fiscal impact evaluation and planning systems
- Required public reports & subdivision condition disclosure

Concluding Points & Discussion

Addressing Excess Development Entitlements: Lessons from the West on Distressed, Zombie, & Premature Subdivisions

www.ReshapingDevelopment.org

- *Take the survey*
- *Access more information*
- *Look for final Policy Focus Report*