



# Arrested Developments

## Combating Zombie Subdivisions and Other Excess Entitlements

JIM HOLWAY

with Don Elliott and Anna Trentadue



# Arrested Developments: Combating Zombie Subdivisions and Other Excess Entitlements

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## Policy Focus Report Series

The Policy Focus Report series is published by the Lincoln Institute of Land Policy to address timely public policy issues relating to land use, land markets, and property taxation. Each report is designed to bridge the gap between theory and practice by combining research findings, case studies, and contributions from scholars in a variety of academic disciplines, and from professional practitioners, local officials, and citizens in diverse communities.

## About This Report

Western Lands and Communities (WLC), a joint venture of the Lincoln Institute of Land Policy and the Sonoran Institute, began this research in 2009 in order to help cities and counties struggling with distressed subdivisions and other excess development entitlements throughout the Intermountain West. The real estate boom and bust of the 2000s had left millions of residential development projects incomplete throughout the region, from paper plats to partially built subdivisions requiring road maintenance and other infrastructure without contributing to the local tax base as planned. Data on the extent of the problem was scarce, but the authors' early research confirmed that millions of vacant lots were entitled for development throughout the region, and the rates of vacant subdivision parcels across a large number of counties varied from around 15 percent up to two-thirds of all lots.

This report draws on case studies; lessons shared by experts during several workshops; results from a survey of planners, developers, and landowners in the region; and data analysis. The authors examine the nature of development entitlements and subdivisions, the extent of excess entitlement in the Intermountain West, the legal and planning frameworks for local action, and the challenges communities typically face when they attempt to address excess development entitlements. Finally, the report recommends measures to treat existing problems and to prevent them during future boom and bust cycles. A number of more in-depth working papers, presentations, additional information, and links on best practices and other supplemental materials are available through the companion website [www.ReshapingDevelopment.org](http://www.ReshapingDevelopment.org) and through the Western Lands and Communities best practices database [www.SCOTie.org](http://www.SCOTie.org).

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Top: © SONORAN INSTITUTE  
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PLANNING AND DEVELOPMENT  
DEPARTMENT (RIGHT)  
Bottom: Vacant, platted  
lots under development in  
Pinal County, Arizona.  
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# Executive Summary



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**In Teton County, Idaho—where three of four entitled lots are vacant—arrested developments such as this one consume fiscal and natural resources for required road maintenance, emergency services, and other infrastructure, without contributing to the local tax base as planned when development rights were granted.**

**E**xcess development entitlements and distressed subdivisions are compromising the quality of life, distorting development patterns and real estate markets, and diminishing fiscal health in communities throughout the Intermountain West region of the United States. Since the post-2007 real estate bust, which hit many parts of the region severely, eroding subdivision roads now slice through farmland and open space, and “spec” houses stand alone amid many rural and suburban landscapes. Some are empty, but others are partially inhabited, requiring the delivery of public services to remote neighborhoods that generate very little tax revenue.

These “zombie” subdivisions are the living dead of the real estate market. Each has its own background story about a once-promising project that ground to a halt because of financial or legal challenges.

In the Intermountain West, where land is abundant, and rapid growth is common, it’s not unusual for local governments to grant development rights well in advance of market demand for housing. Boom and bust cycles aren’t rare in the region either. The magnitude of the Great Recession, however, amplified the frequency of excess entitlements and exacerbated their harmfulness to surrounding communities. In the Intermountain West alone, millions of vacant lots are

“entitled.” Across a large number of the region’s counties, the rate of vacant subdivision parcels ranges from around 15 percent to two-thirds of all lots.

Although many areas throughout the Intermountain West are rebounding robustly, many subdivisions remain distressed, with expired development assurances, few if any residents, fragmented ownership, partially completed or deteriorating infrastructure improvements, and weak or nonexistent mechanisms to maintain new services. Without correction, they will continue to weaken fiscal health, property values, and quality of life in affected communities.

Economic forces shape the regional markets for land development and drive the boom and bust cycles. But local planning and development controls greatly influence how these market forces will play out in any particular community. It is state and local law that sets the context within which local governments manage and regulate land development. Examining this context is important to understanding the challenges and potential solutions to excess development entitlement.

The Lincoln Institute of Land Policy and the Sonoran Institute initiated this project to provide information and tools to help cities and counties struggling with distressed subdivisions. Drawing on case studies, lessons shared by experts during several workshops, survey results, and data analysis, this report identifies the challenges communities typically face when they attempt to address excess development entitlements. It also recommends measures to treat existing problems and prevent them in future boom and bust cycles—including figure 4.1 (p. 41), a model process to help communities address issues in their jurisdictions.

In order to avoid development entitlement problems in the future, local governments should build a solid foundation of policies, laws, and programs. They should also ensure they have mechanisms in place to adapt and adjust to evolving market conditions. Communities

likely to face significant growth pressures would be well served by growth management policies that help to align new development entitlements and infrastructure investments with evolving market demands. For communities already facing problems stemming from distressed subdivisions, a willingness to reconsider past approvals and projects and to acknowledge problems is an essential ingredient to success.

This report concludes with a comprehensive set of policy recommendations that address the challenges most commonly faced by communities attempting to address their excess development entitlements.

***Adopt new state enabling authority***

to ensure local governments have the tools and guidance they need.

***Prepare and revise community comprehensive plans and entitlement strategies*** as a foundation for local action.

***Adopt enhanced procedures for development approvals and ensure policies are up to date and consistently applied.***

***Adapt and adjust policy approaches to market conditions.***

***Rationalize development assurances*** to ensure they are practical, affordable, and enforceable.

***Establish mechanisms to ensure development pays its share of costs.***

***Serve as a facilitator and pursue public-private partnerships*** to forge creative and sustainable solutions.

***Establish systems for monitoring, tracking, and analyzing development data*** to enable effective and targeted solutions to specific subdivisions.

***Build community capacity and maintain the necessary political will*** to take and sustain policy action.



## CHAPTER 1

# Excess Development Entitlements



FRANK CASSIDY, TOWN OF MARANA

**Broken windows and weeds are common sights among the empty homes in zombie subdivisions such as this one in southern Arizona.**

**E**xcess development entitlements and distressed subdivisions are impairing the quality of life, skewing development patterns and real estate markets, damaging ecosystems, and diminishing fiscal health in communities throughout the U.S. Intermountain West. Since the post-2007 real estate bust, which hit many parts of the region severely, eroding subdivision roads now carve up agricultural lands, and lonely “spec” houses continue to dot many rural and suburban landscapes. Some are vacant, but others are partially occupied and require the delivery of public services to remote neighborhoods that generate very little tax revenue. In jurisdictions where lots could be sold before infrastructure



FRANK CASSIDY, TOWN OF MARANA

was completed, many people now find themselves owning a parcel in what was supposed to be a high-amenity development but is in fact little more than a paper plat.

These arrested developments—known colloquially as “zombie” subdivisions—are the living dead of the real estate market. Each has its own background story about a once-promising project that stalled or ground to a halt in the face of financial or legal challenges.

Excess development entitlements—granted well in advance of market demand for housing—are nothing new in the Intermountain West, where land is abundant, and rapid growth is common. Neither are the boom and bust cycles that periodically occur throughout the region. The magnitude of the Great Recession, however, amplified the frequency of excess entitlements and exacerbated their harmfulness to surrounding communities.

This report focuses on one of the most visible forms of excess development entitlements: residential subdivisions that are empty, nearly empty, or failing to develop as planned—at least in part because lot supplies exceed market demand. In the Intermountain West alone, millions of vacant residential lots are entitled. Across a large number of the region's counties, the rate of vacant subdivision parcels ranges from around 15 percent to two-thirds of all lots.

Speculative buyers helped to fuel this proliferation during the boom-bust cycle of the 2000s by investing in subdivisions not to build a home and reside there but to flip the property as a short- or long-term investment. The lifespan of these speculative purchases varies greatly. Some buyers depended on a short timeline with a quick resale while the market was still active but lost their investments to foreclosure as market demand crashed and sales dried up. Buyers with greater financial longevity bought property in order to sell it in the next boom.

As the economy continues to recover, will the market correct excess entitlements, incentivizing developers to build out distressed subdivisions or to redesign those that do not reflect current market demand? In some locations, yes; in others, it is unlikely. Subdivisions by definition are designed to be near-permanent divisions of land. Although many areas throughout the Intermountain West are rebounding robustly, many subdivisions remain distressed, with

expired development assurances, few if any residents, fragmented ownership, partially completed or deteriorating infrastructure improvements, and weak or nonexistent mechanisms to maintain new services. Without correction, these arrested developments will continue to debilitate the fiscal health, ecosystem stability, property values, and quality of life in affected communities.

#### BOX 1.1

### What Are Excess Development Entitlements and Distressed Subdivisions?

**Development entitlements** are generally the rights, granted by local government, to develop land. For subtler distinctions among different uses of this term, see Appendix A.

**“Excess” development entitlements** far exceed the current and near-future demand for housing.

**Distressed subdivisions** are projects whose developer is facing bankruptcy, foreclosure, unclear ownership, or some other legal or financial challenge to completing improvements or selling lots. Excess development entitlements may or may not have contributed to the distress. These projects may return to health as the market recovers or as the developer overcomes the obstacles impeding progress.

**Premature subdivisions** are development entitlements created in advance of market demand for housing. Often landowners do not intend to build on the subdivided lots but to flip them to a developer or to individual lot buyers. Premature subdivisions may not be distressed at all; the lots and infrastructure may have been created exactly as planned, but it will take a very long time to absorb all the lots.

**Obsolete subdivisions** are premature subdivisions that no longer meet current safety or market standards, making them undesirable or unsafe for development in their current state.

**Zombie subdivisions or arrested developments** are distressed subdivisions that were begun but left unfinished. The stasis could be temporary, in the case of high-quality developments caught in an economic downturn, or long-term, in the case of premature subdivisions that remain dormant long enough to become obsolete over time.

**Paper plats** are subdivisions without any improvements or development activity—hence they exist purely on paper.

This report will provide information and tools to help cities and counties struggling to address their distressed subdivisions in order to facilitate recovery, create more sustainable growth scenarios, improve property values, and pursue land and habitat conservation where those land uses are more appropriate. The best practices identified here will help communities minimize excess entitlements and distressed subdivisions in future boom and bust cycles as well. Although the research focuses on the eight U.S. Intermountain

West states—Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming (figure 1.1)—the policy recommendations and best practices are applicable nationwide.

### WHY ARE EXCESS DEVELOPMENT ENTITLEMENTS A PROBLEM?

Local jurisdictions shape the future of their communities through the entitlement of land, the approval of subdivisions, and the award of subsequent development rights. These actions result in land use commitments that prove difficult to change in the future, establish development standards, and often commit the community to significant, long-term service costs. When land is entitled and subdivided prematurely, before the market demands new housing, the following problems can result:

#### 1. Threats to health and safety

Lots that sit undeveloped for many years can foster wildfires, flooding, erosion, water contamination, poor emergency access, and other health and safety hazards for residents of neighboring lots and surrounding landowners. Some of these lots may be obsolete because they were created without proper review of steep slopes or they lack the capacity for current utilities, which could create additional health and safety risks.

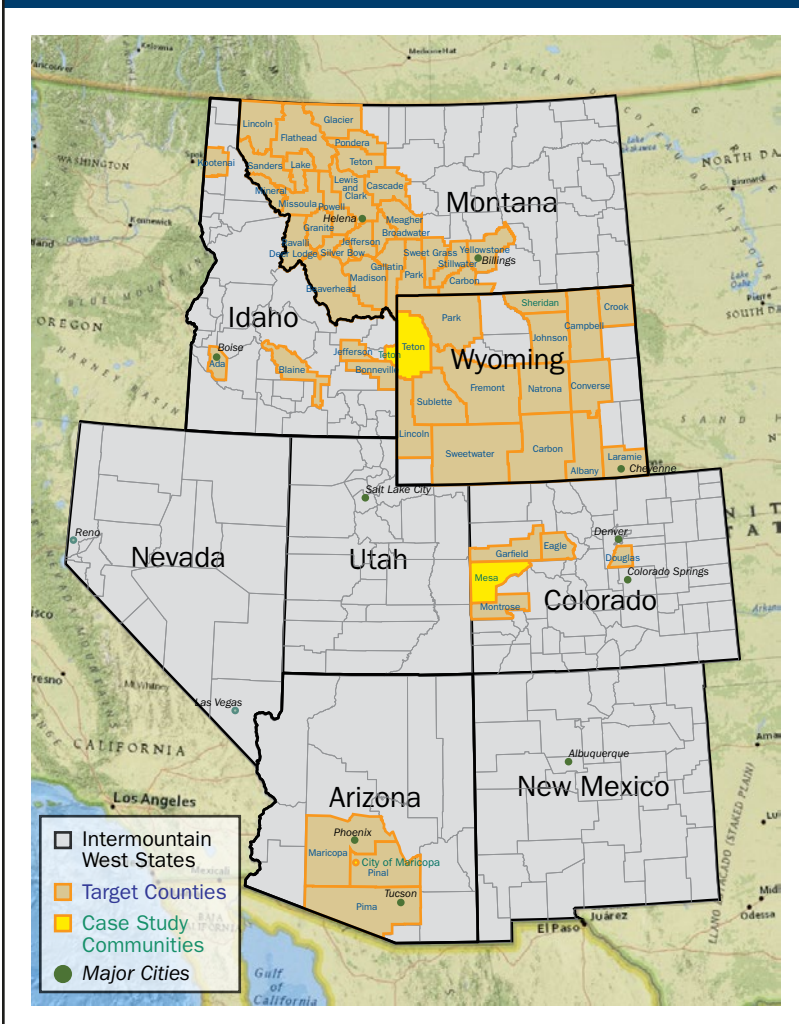
#### 2. Blight

Weeds, pests, and collapsing infrastructure are common sights among vacant buildings and lots as they deteriorate in plain sight of the surrounding community, because the entities that were supposed to perform maintenance don't exist or lack the finances to fulfill this responsibility.

#### 3. Impacts on existing lot owners

Lot owners within or near a distressed

FIGURE 1.1  
Location of Intermountain West States & Communities  
(With Case Study Communities Highlighted)



Source: Sonoran Institute





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**Arrested developments succumb to blight in Teton County, Idaho (top), and Maricopa County, Arizona (bottom).**



© MARICOPA COUNTY PLANNING AND DEVELOPMENT DEPARTMENT

subdivision may suffer a lack of services, unfulfilled subdivision amenities, or decreased property values when amenities reflected in their lot purchase price are delayed or denied.

**4. Fiscal threats**

Even if a developer commits to building and maintaining internal roads and utilities, local government or community service

districts usually commit to providing road maintenance, snow removal, public safety services, or offsite road, water, and sewer infrastructure to support the subdivision. In partially built developments, the local government may have to bear these costs without the benefit of property taxes expected from houses that were planned but remain unconstructed. If development is

widely scattered, these costs could rise further. In Teton County, Idaho, for example, far-flung development ratchets up the cost of road maintenance, because every house built in unincorporated areas of the county increases the impact on roads. Every vehicle trip generated per day will, over the course of a year (i.e., 365 such trips), cost the county \$8.30 per mile for gravel upkeep. Because the county's general fund doesn't cover road maintenance, Teton County pays for it with

impact fees and supplemental road levies—but those, too, provide less revenue when the economy is slow.

### 5. *Fragmented development patterns*

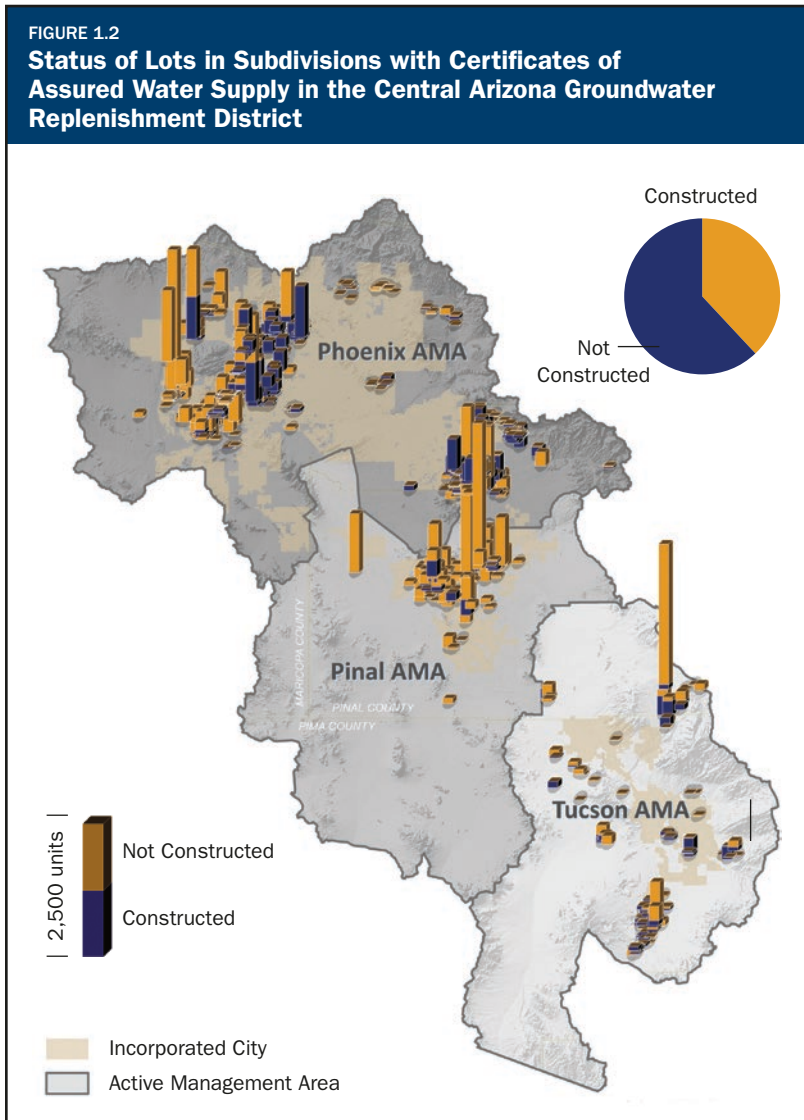
Remote or otherwise poorly located developments diminish the feasibility, heighten the cost, and worsen the environmental impacts of roads and other public services. Such developments also disrupt wildlife habitat and migration corridors. They also constrain a community's ability to modify development patterns as local needs and preferences evolve over time.

### 6. *Overcommitted natural resources*

Distressed and stagnant subdivisions tie up energy and water commitments, diminishing the availability of these natural resources for new developments driven by current market demand. Premature entitlements may also needlessly or prematurely disrupt agricultural and ranching operations and otherwise healthy ecosystems. In central Arizona, where developers must secure a 100-year “assured” water supply before subdividing land, more than 150,000 entitled but undeveloped lots have been assured water—prematurely allocating this resource and potentially delaying new subdivisions that are ripe for development in the future but may be unable to obtain this essential element (figure 1.2).

### 7. *Market flooding and distortions*

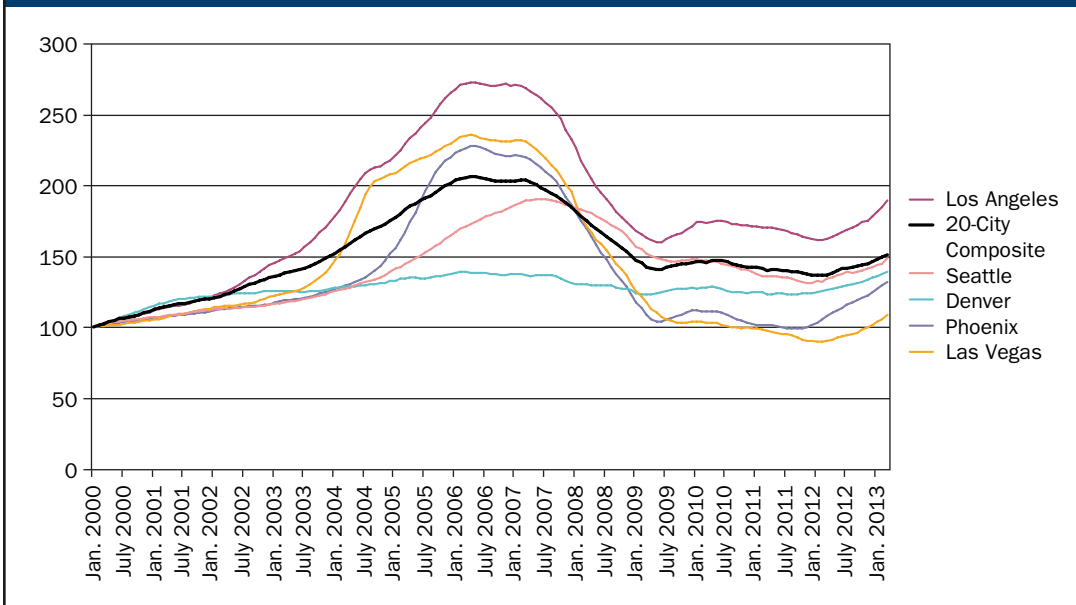
Development entitlements, empty lots, and vacant houses can distort and significantly impair the functioning of real estate markets, hinder adjustments to meet changing market demand, and depress land and housing prices. The oversupply of vacant lots depresses the value of even well-designed and well-located lots that could and should be serving the regional demand for housing (Sonoran Institute 2013).



Note: This graphic illustrates assured water supply commitments for member lands since 1995, when the Central Arizona Groundwater Replenishment District was established.

Source: Central Arizona Project

**FIGURE 1.3**  
**Case-Shiller Home Price Indices**



Note: The 20-City Composite includes Atlanta, Boston, Charlotte, Chicago, Cleveland, Dallas, Denver, Detroit, Las Vegas, Los Angeles, Miami, Minneapolis, New York, Phoenix, Portland, San Diego, San Francisco, Seattle, Tampa, Washington, D.C.

Source: Sonoran Institute from Standard & Poor's Case-Schiller Home Price Indices

### THE ECONOMIC CONTEXT THAT FOSTERED EXCESS ENTITLEMENTS IN THE REGION

The Intermountain West has experienced a number of real estate boom and bust cycles that resulted in the over-entitlement of land and distressed subdivisions. None hit the region as forcefully, however, as the growth and contraction that triggered the Great Recession, from December 2007 until June 2009.

Prior to the bust, from the late 1990s until approximately mid-2006, the Intermountain West was prospering. Unemployment was low (between 3 and 6 percent), despite higher rates nationwide, and gross domestic product (GDP) was generally robust (notwithstanding the dotcom collapse from 2000 to 2002). The economic boom, however, was driven largely by the nationwide real estate bubble and accompanying surge in construction, fed by low interest rates and risky lending practices. At the national level, between 2000 and 2010, nearly 16 million housing units were built, though



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only 11 million new households formed. That is to say, 14 units were constructed for every 10 new households; one of those excess units was purchased for seasonal and recreational use, while the other three remained vacant. This housing overhang contributed to the Great Recession, and the process of absorbing this excess continues to slow the recovery in many areas of the Intermountain West.

Housing prices in Western metropolitan markets peaked from 2006 to 2007 (figure 1.3), before the subprime home loan crisis spread to wider financial markets and led

to an acute and widespread liquidity crisis, stock market declines and volatility, and a spike in job losses. Unemployment ranged across the Intermountain West from 6.9 percent in Montana to 13.9 percent in Nevada (figure 1.4).

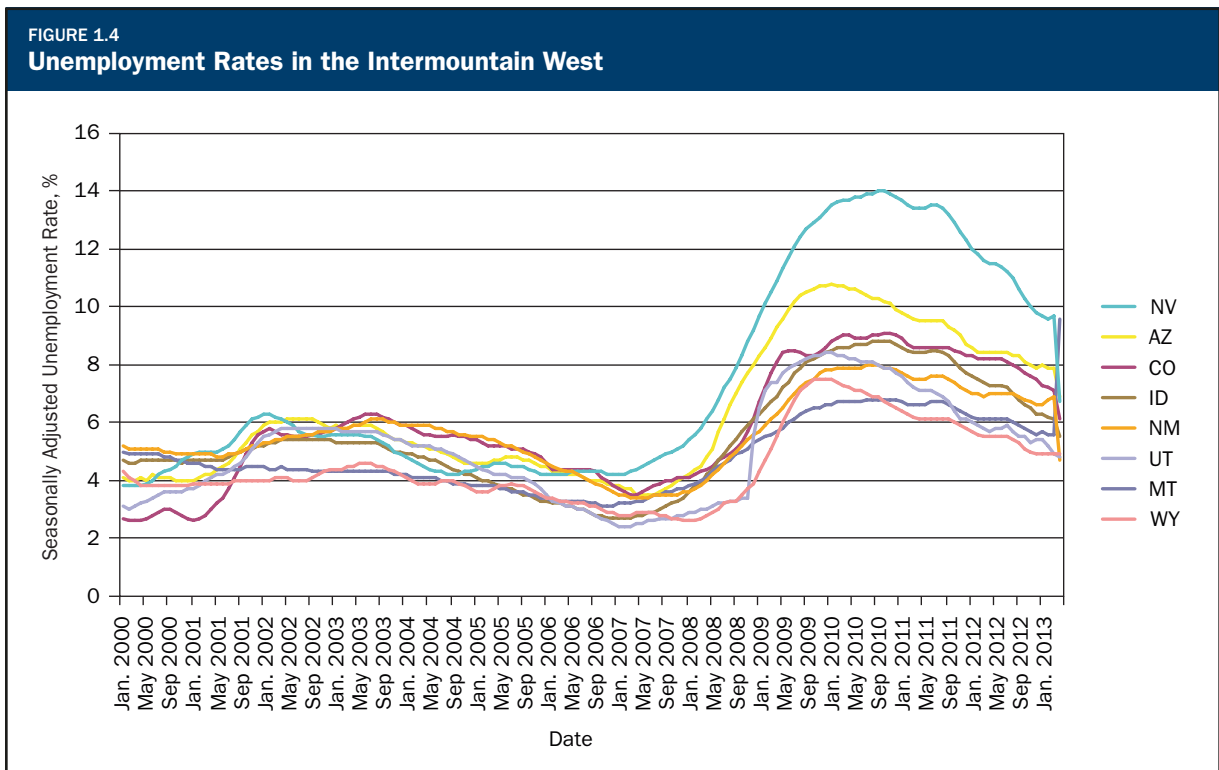
The real estate boom and bust played out differently in local western markets. Denver fared the best, with neither a large increase nor decrease in housing prices, while the Las Vegas and Phoenix markets were whipsawed with large and rapid price surges, crashing in late 2007. The period of rapid housing price declines ended in most Western and national markets in 2009, with a slight recovery and then a second bottoming in early to mid-2012. Since then, Intermountain West markets have been steadily improving. By 2014, several years into the recovery, robust housing markets have returned throughout large sections of the major metropolitan regions, such as Phoenix

and Las Vegas. However, distressed subdivisions remain scattered across these metropolitan regions and, in particular, some edge communities. And many rural areas of the Intermountain West that were hard hit by the Great Recession have yet to see any significant recovery.

### THE NUMBER AND LOCATION OF EXCESS ENTITLEMENTS IN THE INTERMOUNTAIN WEST

Reliable data on the extent of entitlements and vacant subdivision lots in the Intermountain West is scarce. In 2009, the issue was troubling many communities in the region, but the local and regional governments, land brokers, and developers that had compiled data were almost universally unwilling to share it due to concerns about negative publicity.

Seeking to define the nature and extent of entitlement problems throughout the



Source: Sonoran Institute from Bureau of Labor Statistics



**TABLE 1.1**  
**Selected Colorado Counties—Vacant Subdivision Lots in 2012**  
 (includes incorporated and unincorporated areas)

County	Number of Subdivisions	Parcels in Subdivisions	Developed Parcels in Subdivisions	Undeveloped Parcels in Subdivisions	Percent Undeveloped
Douglas	548	59,904	51,258	8,646	14%
Eagle	1,434	19,363	13,296	6,067	31%
Garfield	822	17,271	14,388	2,883	17%
Mesa	2,900	52,871	46,478	6,393	12%
Montrose	2,570	15,945	11,713	4,232	27%

Source: Sonoran Institute

region, the Sonoran Institute conducted background research in individual communities and assembled experts, primarily from the Intermountain West—from academia, consulting firms, nonprofit organizations, and local government—for a workshop in Salt Lake City in October 2009. This early research confirmed that millions of vacant lots were entitled for development throughout the region, and the rates of vacant subdivision parcels across a large number of counties vary from around 15 percent up to two-thirds of all lots (tables 1.1 and 1.2,

Colorado and Northern Rockies counties).

The research demonstrated that excess entitlements are generally more prevalent in areas experiencing rapid growth and severe boom and bust development cycles. They are also more likely just beyond the growing edge of urbanizing areas (e.g. Pinal County, Arizona) and in communities with rural amenities (e.g. Teton County, Idaho). Although larger urban areas experience significant subdivision activity, their overall vacant lot rates tend to be lower due to more stable markets, larger populations, and

**TABLE 1.2**  
**Selected Northern Intermountain West Counties—Vacant Subdivision Lots in 2012**

County, State	2000–2010 Growth	2010 Population	Number of Subdivisions	Parcels in Subdivisions	Developed Parcels in Subdivisions	Undeveloped Parcels in Subdivisions	Percent Undeveloped
Ada County, ID	30.40	392,365	5,460	151,319	127,451	23,868	16%
Jefferson County, ID	36.50	26,140	321	6,331	2,939	3,392	54%
Teton County, ID	69.50	10,170	403	10,225	3,300	6,925	68%
Lake County, MT	8.45	28,746	540	12,583	4,356	8,227	65%
Missoula County, MT	14.09	109,299	1,876	32,470	27,028	5,442	17%
Yellowstone County, MT	14.39	147,972	1,946	82,173	46,396	35,777	44%
Laramie County, WY	12.4	91,738	1,378	36,134	28,681	7,453	21%
Lincoln County, WY	24.2	18,106	367	5,663	2,356	3,307	58%
Sheridan County, WY	9.6	29,116	314	3,912	2,601	1,311	34%

Source: Sonoran Institute

more stringent development requirements.

County assessor's records were examined for subdivision lot vacancy conditions in selected growing counties throughout Montana and Wyoming and in a few selected counties in Idaho, Western Colorado, and Douglas County in the Denver metropolitan area.

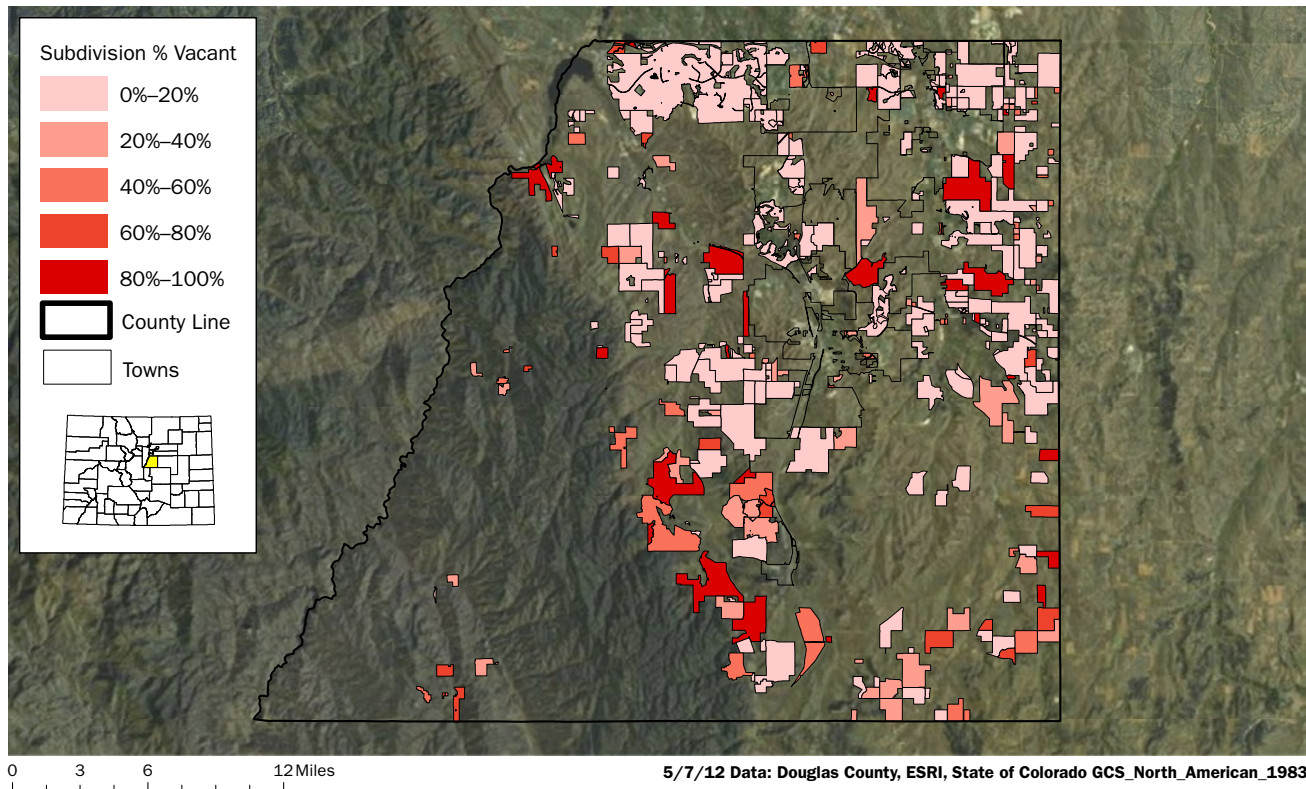
### **Colorado**

In Colorado (table 1.1), the percentage of vacant subdivision parcels ranged from 12 percent in Mesa County to 31 percent in Eagle County. Across all Colorado counties analyzed, subdivisions close to population and job centers demonstrated lower parcel

vacancy rates than outlying developments.

With one of the lowest percentages of vacant subdivision lots among the areas analyzed, Douglas County, just south of the Denver metropolitan area, is home to many employed in Denver or Colorado Springs to the south. Subdivision activity is extensive (figure 1.5). Although a number of developments farther from urban centers have significant vacancy levels, the vast majority of subdivisions are fully or nearly built out—particularly those closer to Denver. Douglas County presumably struggled with parcel vacancy less than other counties because of its high growth rate (62.4 percent over the past decade) and location, directly

**FIGURE 1.5**  
**Vacant Subdivision Lots – Douglas County, Colorado**  
(Individual Subdivisions Categorized by Percentage of Vacant Lots)



Source: Sonoran Institute

between Denver and Colorado Springs; in that metropolitan region, new home construction was a response not to speculation but to population and job growth.

At the opposite end of the spectrum, Eagle County had the highest parcel vacancy rate among Colorado counties analyzed. Home to the town of Vail, Eagle County historically has demonstrated a strong second home market, which the Great Recession hit particularly hard, halting most construction. Eagle County has a much smaller population and growth rate than Douglas County, so it absorbs vacancies much more slowly.

### ***Idaho, Montana & Wyoming***

The data for these three northern Rocky Mountain states show a pronounced pattern in which less populous counties have a much higher rate of vacant parcels than larger counties (table 1.2, p. 11). Among counties with a vacancy rate over 30 percent, 88 percent have a population under 30,000. Among counties with a vacancy rate under 30 percent, only 40 percent are under 30,000. However, these counties did not show a relationship between rate of growth and the number of vacant subdivision parcels. (See the companion website for the full set of counties examined: [www.ReshapingDevelopment.org](http://www.ReshapingDevelopment.org).)

This pattern may be explained by a relatively low cost of entry into the development business in rural areas, where raw land and development costs—such as legal and technical services or land improvement—are typically cheaper, attracting inexperienced landowners or developers hoping to cash in on a purely speculative market. In addition, local land use regulations tend to be less restrictive in rural areas, and local officials tend to be more permissive; both these tendencies increase the likelihood that local government will grant entitlements.



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In Montana, the research examined counties with growth rates exceeding 10 percent from 2000 to 2010. The prevalence of unbuilt entitlements far from urban areas and the potential for fragmented development threatens prime agricultural land as well as wildlife habitat and migration corridors.

In Idaho, where reliable data was particularly scarce, the research examined several of the faster growing counties. Rural Teton County, on the Wyoming border, was studied in detail and is discussed throughout this report.

**In central Arizona, subdivisions such as this partially built development in Apache Junction must secure a hundred-year water supply before final plat approval—diminishing the availability of a scarce resource.**

BOX 1.2

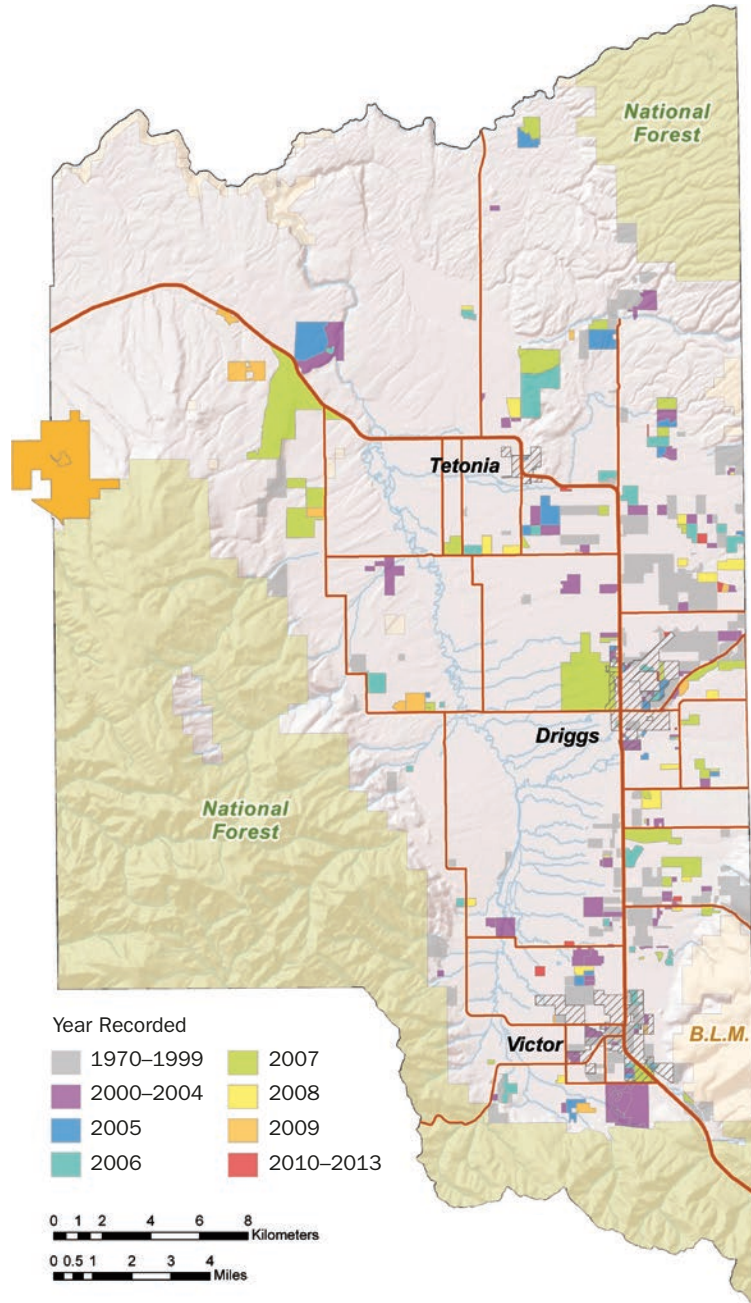
**Tale of Two Counties: Pinal County, Arizona, and Teton County, Idaho**

Rural, unincorporated Teton County, Idaho—with an estimated year-round population of 10,170—has a total of 9,031 platted lots, and 6,778 are vacant. Even if the county’s annual growth rate returned to 6 percent, where it hovered between 2000 and 2008, this inventory of lots reflects a stockpile adequate to accommodate growth for approximately the next 70 years (figure 1.6). The data show that approximately 72 percent of the vacant parcels have all improvements in place, and some sales have occurred in 90 percent of the approved subdivisions. Only 5 percent are paper plats, with no lot sales and no infrastructure installed, making them less complex to “undo” (table 1.3). In addition to these vacant lots in unincorporated Teton County, there are also three small incorporated towns with 3,856 residents and approximately another 1,674 vacant platted lots.

In the urbanizing area of central Arizona’s Sun Corridor—a three-county megaregion encompassing Phoenix, Tucson, and communities in between—Pinal County grew from approximately 180,000 to 325,000 residents between 2000 and 2007, according to data from the Central Arizona Association of Governments. Even at this 11 percent rate of annual growth, Pinal County’s approximately 600,000 entitled but unbuilt lots could have accommodated future growth for the next 18 years (figure 1.7 and table 1.4).

Entitled lots decreased 25 percent from 2009 to 2012, because jurisdictions recognized that some projects were not moving forward and recategorized them as “anticipated,” rather than dropping them from the regional association of governments’ list of subdivisions in the county. In a few cases, entitled projects underway by 2012 progressed to “under construction” or “active” status. At market peak, approximately 1.3 million lots had been entitled for development in the megaregion, though a significant portion (perhaps the majority) had occurred through development agreements rather than the platting and recording of lots. (Arizona seems unusual, at least among the Intermountain West states examined, in that lots are often entitled through contractual development agreements between the local jurisdiction and large master planned developments in advance of the more rigorous final plat approval process.)

**FIGURE 1.6**  
**Teton County, Idaho, Subdivision Activity, 1980–2013**



Source: Teton County 2013

Copyright © 2009 ESRI, Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP swisstopo, and the GIS User Community.



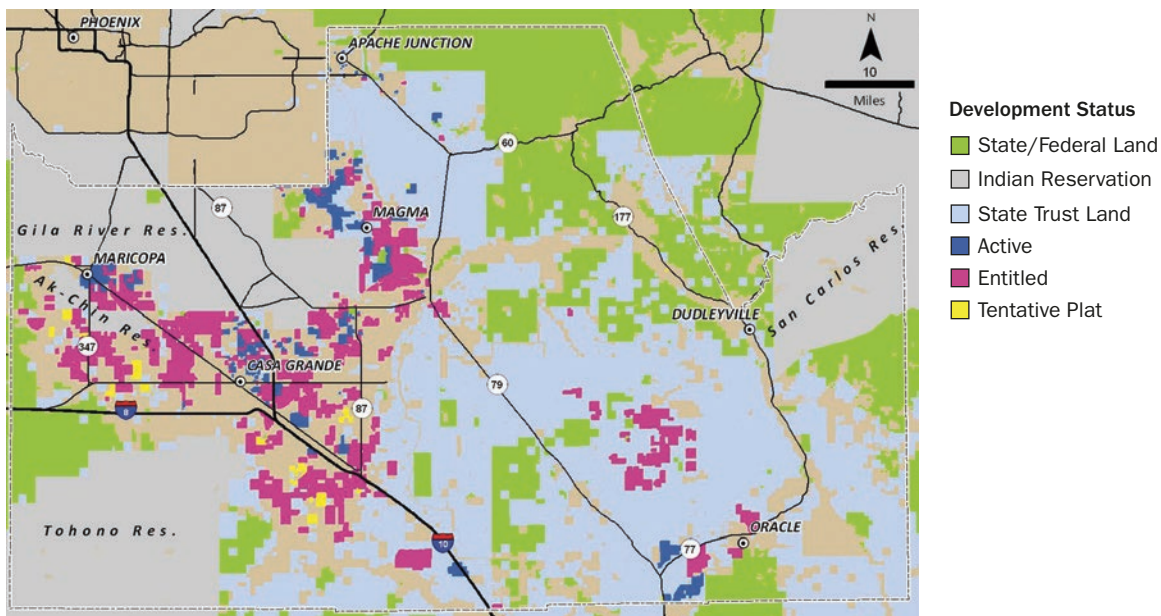
**TABLE 1.3**  
**Extent of Entitlements in Teton County, Idaho (Unincorporated County Only)**

Subdivision Status	# Subs	# Total Lots	# Sold or Transferred Lots	# Improved Lots	# Partially/ Fully Built Homes	# Occupied Homes	Total Acres
Development Agreement Only	0	N/A	N/A	N/A	N/A	N/A	N/A
Preliminary Plat Submitted	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Preliminary Plat Approved	1	20	0	N/A	0	N/A	48
<b>Final Plat Approved (Total)</b>	<b>327</b>	<b>9,031</b>	<b>5,054</b>	N/A	<b>2,253</b>	N/A	<b>29,891</b>
No Sales—No Improvements	8	463	0	N/A	0	N/A	2,177
No Sales—Some/All Improv.	22	434	0	N/A	8	N/A	1,055
Sales—No Improvements	0	0	0	N/A	0	N/A	0
Sales—Some Improvements	12	1,105	486	N/A	66	N/A	6,468
Sales—All Improvements	285	7,029	4,568	N/A	2,179	N/A	20,191

Source: Valley Advocates for Responsible Development

Note: The number of subdivisions, lots, acreage, and level of infrastructure are current as of February 2013. The numbers of lots sold and homes partially or fully built have not been updated since late 2010—but very little development activity has occurred since then, so these figures are approximately accurate (Stacey Fisk email 4/2/13).

**FIGURE 1.7**  
**Pinal County, Arizona Subdivisions**



Source: Sonoran Institute

Status	2009		2012	
	# of Lots	Acres	# of Lots	Acres
Active	140,828	39,848	152,213	48,032
Under Construction	8,195	2,380	6,058	1,770
Entitled	623,010	184,763	469,256	148,703
Anticipated/Tentative Plat	28,667	8,396	156,116	46,344

Source: Central Arizona Association of Governments

Explanation of Categories:<sup>1</sup>

- Active: Homes are actually being built
- Under Construction: Dirt has been moved, infrastructure (water, sewer, etc.) being started
- Entitled: Projects platted and approved by city or county
- Anticipated (tentative plat): Conceptual projects that have not yet been approved

1 This categorization does not distinguish between multiple phases of larger projects. Therefore, although a multiple-phase, 10,000-lot planned unit development (PUD) may have early phases just undergoing site development (under construction), later phases platted and approved without any work begun (entitled), and future phases not yet platted (anticipated), the entire 10,000 lots would be listed as “under construction.” Then once houses are being built—even if it’s just a first phase of 100 lots—the entire 10,000 lots would be listed as “active.”

The large, fast-growing central Arizona market is absorbing the excess lots as the economy recovers. But, this process—which, by the end of 2013, was almost completed in the core urban areas—is not yet gathering momentum in some more outlying places. In Teton County, where the total number of vacant lots is far lower, but the proportion of vacant to developed lots is higher, it’s unlikely the rural market will ever absorb all the excess entitlements—creating severe long-term problems for the housing market, the local economy, and quality of life in the area.

Neither Teton County, Idaho, nor central Arizona are being highlighted because their practices were particularly good or bad. They simply illustrate the extent of problems owing to excess development entitlements in a wide variety of local governments across the Intermountain West. Both counties deserve credit for their efforts to identify and address these challenges.

## SUMMARY

Excess development entitlements and distressed subdivisions are diminishing the quality of life, distorting development patterns and real estate markets, harming ecosystems, and debilitating fiscal health in communities throughout the U.S. Intermountain West. The magnitude of the 2000 to 2007 housing boom and the subsequent Great Recession yielded millions of vacant lots entitled for development throughout Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming; as a result, rates of vacant subdivision parcels across a large number of counties now range from 15 percent to two-thirds of

all lots. Although much of the Intermountain West is rebounding robustly as the economy recovers, many subdivisions remain distressed, with expired development assurances, few if any residents, fragmented ownership, and partially completed or deteriorating infrastructure improvements. Without correction, these “zombie” subdivisions may result in health and safety hazards, blight, negative impacts on existing lot owners, fiscal threats, fragmented development patterns, overcommitted natural resources, and market flooding and distortions. Communities that seek to address and prevent these problems will find helpful information, tools, and best practices in this report.



# CHAPTER 2 Legal and Planning Frameworks

**E**conomic forces shape the regional markets for land development and drive the boom and bust cycles, but local planning and development controls greatly influence how these market forces will play out in any particular community. Effective resolution of excess development entitlements and distressed subdivisions depends upon a sound understanding of the framework for development approvals, local government authority, the role of state enabling statutes and case law, typical legal challenges, and, finally, the types of planning tools available to

local government. Towns and cities will need this knowledge in order to reshape development patterns and create projects that enhance the community’s quality of life and fiscal stability.

### LEGAL FRAMEWORKS FOR SUBDIVIDING LAND AND ADDRESSING ENTITLEMENTS

State and local law sets the context within which local governments manage and regulate land development. Key aspects of this framework include the subdivision approval process as well as zoning, development

**Signs of trouble:**  
deteriorating billboards  
advertise a forsaken  
development project.



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agreements, and other unique land use authorities that particular states may grant to local governments.

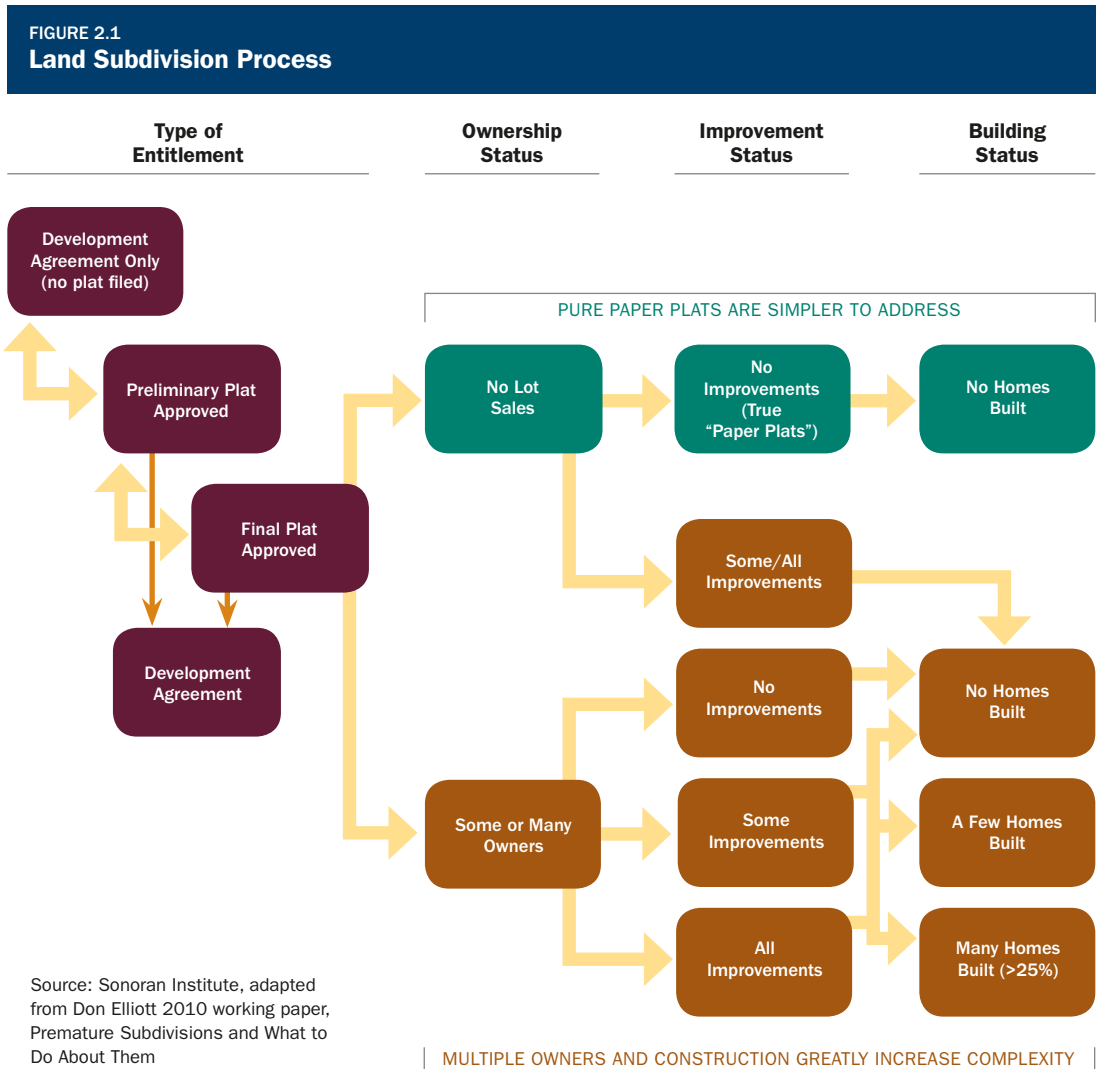
**The Subdivision Approval Process**

Figure 2.1 demonstrates that excess entitlements are easiest to address when they're purely paper subdivisions—with no improvements, no lots sold, and no houses built. The revision or revocation of a paper plat requires the agreement of only a single property owner, allowing for the simplest resolutions even in the worst case scenario—if that developer sues the local jurisdiction.

Furthermore, the owner hasn't made any major investments that might constrain the ability to alter design plans. As the status of a subdivision progresses from a paper plat to a partially built development with many owners, the challenges grow more complex, and the options for resolving them more constrained.

**The Standard Procedure**

A typical subdivision process formally begins when a developer files a preliminary plat, providing the local government basic information about the land in question;





a map (a.k.a. the “plat”) that outlines the development, with proposed lots, infrastructure, and other improvements; and additional details about the proposed project. Typically, the local government will first grant the developer preliminary plat approval contingent upon recommended revisions. After making the requested revisions and finalizing the development layout and plans, the developer resubmits the proposal for final approval. Once the final plat is approved, the land is considered subdivided, and the individual land parcels created for each lot are legally recorded.

Depending on the rules in individual jurisdictions, developers typically must install infrastructure improvements—such as grading, roads, and lines for water and sewage—before selling any lots. Some jurisdictions will not grant final plat approval before this work is finished, and some communities even require developers to construct community amenities, such as recreation facilities or community centers, before selling lots.

### **Lot Sales, Improvements, and Construction**

Once more than a few landowners are involved, or the subdivider has begun to install improvements, or more than a few owners have built homes, the difficulties quickly mount in terms of the law and the number of parties that have to agree on a solution.

The sale of even one lot to an individual landowner makes entitlement issues in the subdivision harder to resolve for three major legal reasons: (1) the need to protect the property rights of lot owners, (2) the need to preserve access to sold lots, and (3) pressure for equal treatment between current and potential future homeowners. Some of these issues can give rise to lawsuits, creating potential liability for the town or county. The revision or revocation of a plat with sold lots will require the agreement of multiple owners—

each of whom may decide to file a lawsuit on one or more of these grounds.

Once the developer makes significant investments for infrastructure and other improvements, complications escalate. Although the purchase of land does not in itself create a “vested right” to complete the development, once an owner invests in improvements to serve anticipated houses, it is difficult to stop construction of those homes without reimbursing the developer for the cost of infrastructure. The law of vested rights is complex and varies by state. In general, however, “you vest as you invest”; the completion of improvements creates a general right to either complete the project or receive compensation for the lost investment in that infrastructure if the project stalls.

Completed homes—particularly if a number of those homes are already occupied—further compound the complexity of resolving distressed subdivisions. Access roads will need to be retained and maintained, even if the homes are widely scattered in inefficient patterns. If the developer committed to building a golf course, park, or other community facilities, individual lot owners could claim a right to those amenities—whether or not they have been built, and whether or not the homeowners associations slated to upkeep them exist or have enough members to perform the maintenance. Even if the developer was clearly responsible for constructing the amenities, the local government could become liable for them if it has prevented the developer from building the amenities by vacating the parts of the plat where those amenities were to be built.

Larger subdivisions split into several phases at various stages of completion pose the most intricate and extensive challenges. The first phases of construction may be mostly sold lots with most infrastructure in place, but later phases may be mere paper

plats—unbuilt, with no lots sold and no improvements in place. Thus, a single distressed subdivision may pose several types of legal entitlement issues, with varying levels of risk and potential liability, in different portions of the development.

### ***Basic Legal Powers Governing Development Approvals***

Zoning and land subdivision are two of the most fundamental authorities utilized by local governments to shape the future of their communities. Although specific details vary by jurisdiction and by state, the basic powers outlined below are utilized by nearly all local governments.

#### **Subdivision Powers**

State enabling acts authorize local governments to control the subdivision of land within their jurisdiction subject to defined standards. Unfortunately, most subdivision enabling acts in the western United States are old, and many have been amended repeatedly over time in ways that create internal inconsistencies between different sections of the subdivision act and between that act and the local government's zoning powers.

#### **Zoning Powers**

While subdivision law controls how land can be divided, zoning addresses how it can be developed. In theory, the two should work hand-in-hand: zoning would describe what could be done on the land, and then the owner would divide the land appropriately. In several Intermountain West states, however, there is no legal requirement that zoning and subdivision policies correspond with one another.

#### **Planned Unit Development (PUD) Authority**

Planned unit developments are a form of legalized contract zoning that may include elements of zoning, subdivision, and

contract. In essence, state PUD enabling acts authorize local governments to negotiate with landowners and draft individualized land use regulations that will then be applied to only that landowner's property. Some states, such as Idaho, expressly authorize PUDs by statute, but each jurisdiction determines the requirements and criteria. Other states, such as Colorado, establish some of the requirements and criteria for PUDs in the state code. In other jurisdictions, the state code is silent on PUDs, but they have been established by ad hoc combinations of the local government's powers to regulate land use and to enter into contracts.

#### **Development Agreement Authority**

Regardless of whether a PUD is used, many subdivisions are approved in conjunction with a contract specifying how the property will be developed. Development agreements generally address issues that cannot be addressed in a zoning or subdivision approval—such as the timing of development and whether financial security must be posted until the applicant builds required improvements. The simplest form of development agreement is a “subdivision improvement agreement,” in which property owners agree to build certain roads, pipes, wires, or drainage structures to support their project.

#### **Other Sources of Land Use Authority**

Some states have additional statutes granting local government powers to regulate land use or environmental matters. For example, Colorado's Local Government Land Use Enabling Act (LGLUEA) gives local jurisdictions broad authority to regulate activity related to land use, development, and the environment—provided that the state has not adopted legislation that limits local authority in those areas.



**TABLE 2.1**  
**Existence of Specific Statutory Authority across the Intermountain West States**

State	Home Rule	City Extra-Territorial Jurisdiction	Prohibit Lot Sale before Recordation	Vacating / Amending Plats	Subdivision Conformance w/ Zoning	Vested Rights Provisions	Enhanced Takings Protections
Arizona	Y	Y	N	N	N	Y	Y
Colorado	Y	Y	N	Y	N*	Y	Y
Idaho	N*	Y	N	Y	N	N	Y
Montana	Y	Y/N	N*	Y	Y	N	N
Nevada	N	N	Y	Y	N	N	N
New Mexico	Y	Y/N	Y/N	Y	Y	N	N
Utah	Y	N	N	Y	N	N	Y
Wyoming	N	Y/N	Y/N	Y	Y/N	N	N

Notes: See the Appendix to Trentadue and Lundberg 2011 for detailed explanations of the state-by-state enabling statutes relevant to addressing excess entitlements and distressed subdivisions.

"Y/N" indicates that the answer depends on the situation; "\*" indicates that there are limited exceptions to this standard answer.

Source: Sonoran Institute, adapted from Anna Trentadue and Chris Lundberg 2011 working paper, Subdivision in the Intermountain West

### ***Additional Legal Duties and Considerations***

In addition to those state-specific powers outlined above, some planning and regulatory duties remain constant across the states. For example, all states have the generalized duty to plan for public infrastructure and services, to process applications and plats in an orderly fashion, and to record subdivision plats in county records. Each state has its own approach, however, to the allocation of planning, zoning, and subdivision responsibilities among state, county, and municipal governments.

Each state's enabling legislation is structured differently (table 2.1). For example, in Home Rule states, some local governments can adopt their own charters allowing additional legislative authority in local matters. In "Dillon's Rule" states, local governments have only the authorities expressly granted by the state. Some non-Home Rule legislatures have granted broader authority to local governments than other non-Home Rule states. Wyoming and New Mexico, for example, grant municipalities extra-

territorial jurisdiction (i.e. they can regulate lands outside their city limits), while Nevada and Idaho specifically limit each city's authority to its jurisdictional boundaries. Each state's legislature dictates, with varying degrees of specificity, how local governments may exercise police powers regarding land development.

State enabling legislation also varies regarding whether local governments can vacate or amend approved plats; whether subdivision approvals must conform to current zoning; whether specific investments are necessary to create "vested rights" to complete a development; and whether local government regulations might result in the "taking" of private property rights, warranting compensation for owners (Trentadue and Lundberg 2011).

Even the most fundamental land use terminology varies according to state enabling legislation. A "subdivision," for example, is any division of land in some states. In others, tracts must have more than 25 lots or fewer than 35 acres. In states with loose thresholds for what constitutes a subdivision,



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**An aerial view of Lakota Canyon Ranch, a zombie golf community in New Castle, Colorado.**

local governments typically adopt more stringent standards, resulting in diverse regional definitions of a subdivision as well.

#### **Averting Lawsuits from Property Owners**

Although local governments in the Intermountain West possess a bewildering array of land use powers (depending on the state where they are located), they also face a complex range of limitations on the uses of those powers. As a result, some cities and counties that have exercised the right to address distressed subdivisions have faced lawsuits from landowners and developers claiming improper employment of local land use powers. In such cases, plaintiffs generally claim these laws are illegal for one of the following four reasons:

1. The local government had no authority to take the action that it took;
2. The way in which the regulation was adopted violated procedural due process;

3. The owners had a vested right to develop their property under the prior rules; or
4. The regulation was a “taking” of their property without just compensation (box 2.1).

Despite these challenges, local government efforts to address distressed subdivisions can be made defensible, especially if the adopted solutions are closely tailored to the problems created by each specific development. This is an area where “broad brush” solutions don’t work. Only through understanding the historical context of a disputed subdivision can local governments craft a program that will protect legitimate property rights and withstand challenges based on enabling authority, vested rights, takings, and procedural due process. To achieve this end, the local government should carefully review the history of the subdivision, lot sales, lot ownership patterns, infrastructure investment patterns, market conditions, and growth



patterns before designing or implementing any remedial program. Different legal approaches and tools will be appropriate—and defensible—depending on how complex the platting, property ownership, infrastructure investments, and home construction patterns have become in different phases of the subdivision.

### Reducing Liability

As a general rule, these five simple principles will help local governments reduce legal liability while addressing the complex problems of arrested developments:

1. Cite as many sources of land use authority as possible and avoid actions where courts or statutes have denied local government authority. In Home Rule states, make sure there is no state statute prohibiting the proposed action; in “Dillon’s Rule” states, find the state statute that explicitly authorizes the proposed action or implies it falls within local government powers.
2. Avoid actions prohibited by state vested rights statutes. Likewise, avoid cases involving individual lot owners who have invested money in their homes or in lot improvements following government approval of a subdivision, and whose rights to develop their property may be vested under common law. If significant infrastructure has been installed, the developer may well have a right to complete the development as shown on the adopted plat—even if full buildout seems unlikely at the time or in the near future.
3. Recognize the legitimate rights—as opposed to subjective expectations—of individual lot owners, and try to treat them as fairly as possible.
4. Leave each property owner with a “reasonable economic use” of his or her property taken as a whole, unless state law requires that each lot be considered individually.

5. Scrupulously follow and document each step required by state law and the local government’s own regulations. Err on the side of providing additional notice and opportunities for participation, in case a judge later determines that an action intended to be legislative in nature was in fact quasi-judicial, requiring higher levels of due process.

As noted earlier, a few state statutes explicitly address city and county powers to deal with distressed subdivisions, and an equally small number of reported legal decisions support or invalidate local government efforts to solve these problems. It is important that local governments see this lack of statutory and case law as an opportunity rather than as a barrier to action. Even in the relatively conservative judicial climate of the Intermountain West, courts have been fairly willing to interpret local governmental powers broadly when it is clear that the government

#### BOX 2.1

### Regulatory Takings

The field of regulatory “takings” of private property is complex but generally prohibits denying the owner “all reasonable economic uses” of the property (taken as a whole) and requires that any individualized requirement to dedicate land or pay money be “rationally related” or “directly related” to the impacts of the proposed development and in an amount “roughly proportional” to the impact of the owner’s proposed development. The recent U.S. Supreme Court decision in *Koontz v. St. Johns River Water Management District*, 133 S.Ct. 2586 (2013) appears to confirm that the rough proportionality standard applies to individualized exactions of money in an attempt to mitigate project impacts, but its further implications are not yet known. Because most platting and replatting approvals involve obligations to dedicate land (rather than pay money) to mitigate project impacts, *Koontz*’s holdings regarding monetary exactions may not have a significant effect on current subdivision practice.

PHOTOS: © SONORAN INSTITUTE



The housing market bust postponed the promise of a “Life Elevated” on Trail Ridge Estates in Toquerville, Utah.



### PLANNING FRAMEWORKS

Local governments seeking to remedy the potential negative impacts of excess development entitlements and distressed subdivisions have many different land use and zoning tools at their disposal. These instruments generally fall into four categories: economic incentives, purchase of land or development rights, development regulations, and growth management programs. Note that the existence of appropriate state enabling authority is a prerequisite for local adoption of most of these tools.

is addressing a significant problem in a way that is both procedurally and substantively fair. That is what it is going to take to manage the impacts of distressed subdivisions over time (see Elliott 2010 and Trentadue and Lundberg 2011 for related case law and more guidance on legal issues).

### ***Economic Incentives***

Most local governments in the Intermountain West would prefer to address land use issues through incentives rather than regulations. The question that usually arises, however, is whether incentives will achieve the desired outcomes or, if they prove ineffective, allow problems to worsen in the interim. Incentives are not a viable option if economic analysis shows that they are unlikely to be effective.

### ***Purchasing the Land or Development Rights***

Cash-strapped local governments often overlook this tool, although the cost of purchasing land or development rights in scattered, low-density developments could be less than the cost of providing public services to those areas. Before forgoing this option, local governments should seek assistance from the state or federal government, land trusts, or nonprofit conservation groups. These potential partners could have resources to help buy back land rights in poorly located or otherwise undesirable subdivisions.

### ***Regulatory Tools***

There is often no substitute for good land use regulations, and outdated subdivisions that compromise local health and safety make a strong case for tighter regulations. The role of land use regulations may be greater in the area of distressed subdivisions than in other areas of land use planning and management, however, because of the number of stakeholders involved. On the day a new final subdivision plat is approved, only two parties need to agree—the local government and the subdividing property owner. Once lot sales have taken place, the number of stakeholders multiplies, and it may become impractical to broker voluntary solutions between scores or hundreds of landowners.

### ***Growth Management***

Discussion of growth management systems has declined in recent years, but these tools are a particularly effective way to keep local government service costs in line with revenues. Two types of growth management controls are potentially applicable to premature subdivisions: those that establish priority areas for future development and the delivery of certain public services (e.g. urban service areas), and those that allow development in any location if it meets standards for availability of public services and facilities (e.g. adequate public facilities ordinances or concurrency requirements). Courts have upheld growth management measures when it appears clear that the local government is trying to meet its service obligations but unwilling to allow development that would threaten the fiscal stability of the local government.

#### **BOX 2.2**

#### **Common Goals for Addressing Excess Entitlements**

After carefully diagnosing the hazards of distressed subdivisions in their jurisdictions (table 4.2, p. 43), local governments should determine their key objectives before selecting planning and legal tools to remedy those specific problems. Three common goals for communities seeking to remedy problems stemming from excess entitlements include the following:

**Reduce Lots.** Leave the existing street and infrastructure patterns in place as necessary to serve at least some of the lots, but reduce the number of lots or restrict development on certain lots to limit the number of houses that may be constructed within the boundaries of the subdivision in the future.

**Improve Quality.** Leave the existing lot lines in place but heighten standards for construction on those lots in order to improve the overall quality of the development, reduce costs, and avoid negative impacts on public safety and the environment.

**Rationalize Growth Patterns.** Allow construction of the same number of houses but revise the pattern of platted lots to promote more efficient transportation networks, reduce government service costs, and avoid wasting or overcommitting scarce resources such as water.



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**The way was paved, but residents never made it to this arrested development.**

## SUMMARY

In order to remedy problems caused by excess development entitlements and distressed subdivisions, communities need to understand the basic legal framework for development approvals, their legal powers, and how those rights are shaped by the enabling statutes and case law in their state. Local governments should also develop and adopt ordinances and policies to withstand typical legal challenges. Prior to adopting new policies, communities should first clarify specific goals for distressed subdivisions and choose appropriate tools to reach those goals. The most effective strategies will involve collaboration and mutually beneficial agreements between landowners, local government, and the development community. Successfully addressing excess entitlements is critical to creating timely and successful developments that pay for themselves and meld with the existing built and natural environment.

### CASE STUDY 1

## Mesa County, Colorado

**Problem:** 1980s Development Boom and Bust

**Solutions:** Revised development approval processes and abandonment of pure paper plats

**D**uring the oil shale boom and bust of the 1980s, Mesa County, Colorado, was one of the regions hit hardest. When Exxon-Mobil ceased operations in the area, the population of Grand Junction, the county seat, plummeted by 15,000 people overnight. All development halted. In the bust's wake, more than 400 subdivisions, encompassing about 4,000 lots throughout the county, were abandoned. Nearly 20 percent of Mesa County's subdivisions were left with unfulfilled development improvement agreements.

When its bond rating was threatened in 1988, the county put several measures in place to clean up the excess entitlements. It negotiated with local banks and the development community to establish a development improvements agreement form and procedure. The county also established a new financial guarantee called the "Subdivision Disbursement Agreement" between construction lenders and the county. The agreement puts the county in a direct partnership with the financial institution to ensure 1) an agreed-upon construction budget; 2) an established timeline for construction of the improvements; 3) an agreed-upon process, involving field inspections during construction, for releasing loan funds to developers; and 4) the county's acceptance of a developer's improvements, provided certain conditions have been met, and the developer's subsequent release from the financial security.

It took Mesa County 15 years to fully address the excess entitlements stemming from the 1980s bust, but the work paid off: During the Great Recession, the county had the lowest percentage of vacant subdivision parcels to total subdivision lots among the approximately 50 counties examined. Not a single developer backed out of a development agreement when only partial improvements

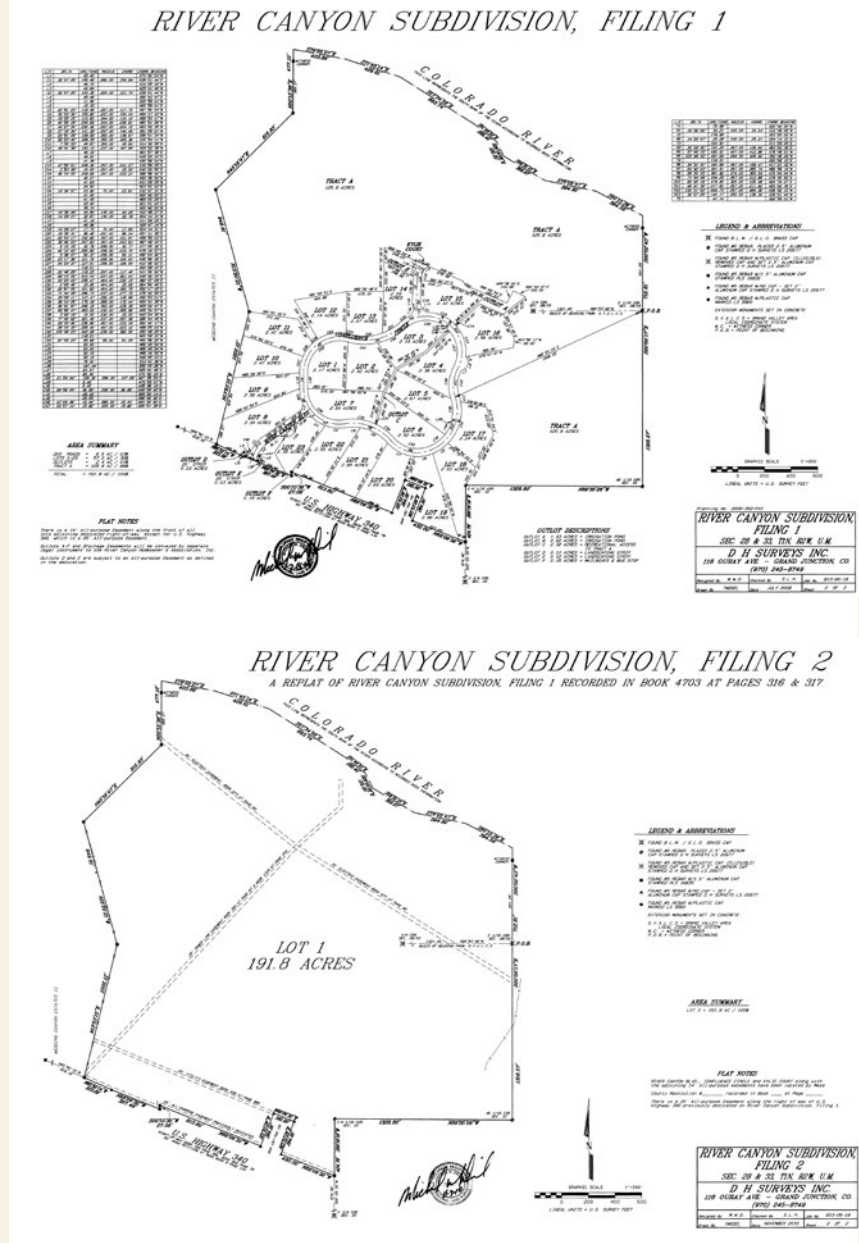
were made. While some subdivisions remain vacant, all improvements have been completed to the point that the parcels are ready for construction once they are sold.

River Canyon (figure 2.2), for example, was planned as a 38-lot subdivision on 192 acres. When the real estate bubble burst in 2008, the entire site had been lightly graded with roads cut, but no other improvements were complete, and no parcels had been sold. Realizing the lots would not be viable in the near-term, the developer worked with the county to re-plate the subdivision into one parent lot until the owner is ready to apply for subdivision review again. The resolution is a win-win:

The county escapes a contract with a developer in default and avoids the sale of lots to multiple owners with whom it would be difficult to coordinate construction of subdivision improvements. The developer avoids the cost of installing services and paying taxes on vacant property that is zoned for residential development.

Now, lenders in Mesa County often encourage the consolidation of platted lots, because many banks will not lend money or extend the time on construction loans without a certain percentage of presales validating the asset as a solid investment. The landowner generally complies as well, to avoid paying taxes on vacant residential property, which carries the second highest tax rate in Colorado. If market demand picks up, property owners may submit the same subdivision plans to the county for review, to ensure compliance with current regulations. If the plans still

**FIGURE 2.2**  
**River Canyon Original Filing & Vacating Replat**



Source: Mesa County, Colorado

comply, the developer can proceed from that point in the subdivision process. Mesa County consolidated parcels this way a total of seven times from 2008 to 2012, to eliminate lots where no residential construction was anticipated in the near future.



## CHAPTER 3

# Stakeholder Perspectives



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**Distressed subdivisions are hardest to treat once construction begins.**

**G**overnment policies and planning tools can greatly facilitate or hamper remedies for individual arrested developments, but ultimately market conditions and the actions of landowners and developers will determine the fate of approved entitlements. A myriad of stakeholders will need to identify and implement solutions, subdivision by subdivision. Landowners, developers, and local planning officials are the primary actors. Other key parties include lenders, realtors, state and local elected officials, and current residents. Understanding the owners' perspectives in each development will help determine how to approach them and how to choose or create policies tailored to influence their decisions.

### **DEVELOPER AND LANDOWNER PERSPECTIVES**

Developers generally will be most influenced by the economic market for construction and the subdivision process—including

the interplay of approval, ownership, improvement, and building status for each individual development.

The marketability of a project is based first on its specific location within a community and second on its design and price. Profitability depends on the price and timing of lot sales or home purchases within the subdivision and on the length of time the developer or landowner can afford to hold onto it as an investment. Is the project viable today, will it be feasible in a few years, or may it be unmarketable in the foreseeable future because of its location or design? Developers' answers to these questions will have a major influence on their perspective and ability to complete their projects.

The market for vacant, entitled land is different than the market for homes. Owners of vacant, entitled land may include a master-planned-community developer with a multi-year project, a builder looking to quickly build and sell houses, a speculator holding

vacant lots until they are ripe for development, or a bank with a foreclosed project. Each type of owner is likely to prefer a different approach to excess entitlements. As discussed in chapter 2, issues concerning entitled lands with some infrastructure already in place are even more complicated, as the services could prove an asset or a liability depending on their condition and state of completion.

### ***Developers' Response to the Boom and Bust in the Intermountain West***

In response to market conditions brought on by the Great Recession, two-thirds of developers and landowners who responded to the Sonoran Institute's Distressed Subdivision Survey (box 3.2, p. 30) changed the type of housing product they would normally build. Many focused on constructing smaller, more affordable homes. Others made homes more efficient, incorporated renewable energy features, built mixed-use communities or mixed-use buildings, and reduced amenities or made them optional rather than standard. Several developers commented that the market was still unstable and they were waiting to see how it stabilized before deciding how to proceed with their proposed developments.

### ***Developers' Perspectives on Local Officials and Lenders***

The Distressed Subdivisions Survey also asked developers and landowners about their experiences working with local officials and the lending industry to correct problems impeding their projects. Developers were slightly more likely to say local officials were "somewhat helpful" (43 percent) than "somewhat non-helpful" (35 percent). Their experiences with the lending industry were distinctly more negative: No one identified lenders as being very helpful; 70 percent indicated they were unhelpful, and the

majority of those respondents said lenders were very unhelpful. These attitudes corroborated what our experts and participating communities said about the difficulty of finding lenders who were even available to discuss potential solutions. Lenders participating in the experts workshops pointed out that lenders themselves are not in the development business, and many are unable or unwilling to invest time or money in a distressed asset—let alone roll up their sleeves to grapple with restructuring or redesigning a distressed development.

### ***Common Subdivision-Specific Obstacles for Developers***

In addition to general market conditions and evolving home buyer preferences, a number of subdivision-specific problems can also obstruct the successful completion and marketing of lots and homes.

### **Legal Issues**

Distressed subdivisions frequently suffer from ownership that is unclear or divided

#### **BOX 3.1**

### **The Growing Market for Compact, Walkable Development in the Intermountain West**

The Sonoran Institute recently conducted an analysis and accompanying survey of the real estate markets in the northern and central Rocky Mountain states, and presented the findings in a publication entitled "RESET" (Sonoran Institute, 2013). Interviews were conducted with brokers and developers to understand their perspective on compact, walkable development. Generally, the development community in the northern Rockies indicated that about 15 to 20 percent of the market demand is for such compact, walkable developments. Constructed projects bear out this range in Bozeman, Montana, and the Teton Valley of Idaho and Wyoming. In Colorado, local developers estimate that demand for such housing makes up about 25 percent of the market. In several Colorado cities, however, a much higher percentage of recently constructed projects are oriented toward compact and walkable development—as high as 40 percent in Eagle and 50 percent in Carbondale.

BOX 3.2

**Distressed Subdivisions Survey**

In February and March 2013, the Sonoran Institute surveyed planners and developers in the Intermountain West regarding excess development entitlements and distressed subdivisions in their areas. Designed to supplement the 2009 and 2012 experts workshops (p. 58), community case studies, and otherwise sparse data on the number of excess development entitlements, the survey was based not on a representative sample but on feedback from 302 individuals who answered an open invitation. Respondents were from Arizona (31 percent), Colorado (19 percent), other Intermountain West states (25 percent), and the Southeast (5 percent). Responses came primarily from public agencies but also included attorneys and consultants in private practice, nongovernmental organizations, developers, builders, and lenders. Key findings suggest:

- The majority of respondents (67 percent) experienced a boom and bust cycle in their communities; 28 percent indicated it was very severe, 42 percent severe, and 28 percent moderate.
- The respondents who reported very severe boom and bust cycles in their communities were much more likely to report a larger number of vacant, platted subdivision lots.
- 47 percent reported that home construction was driven equally by current housing demand and speculative

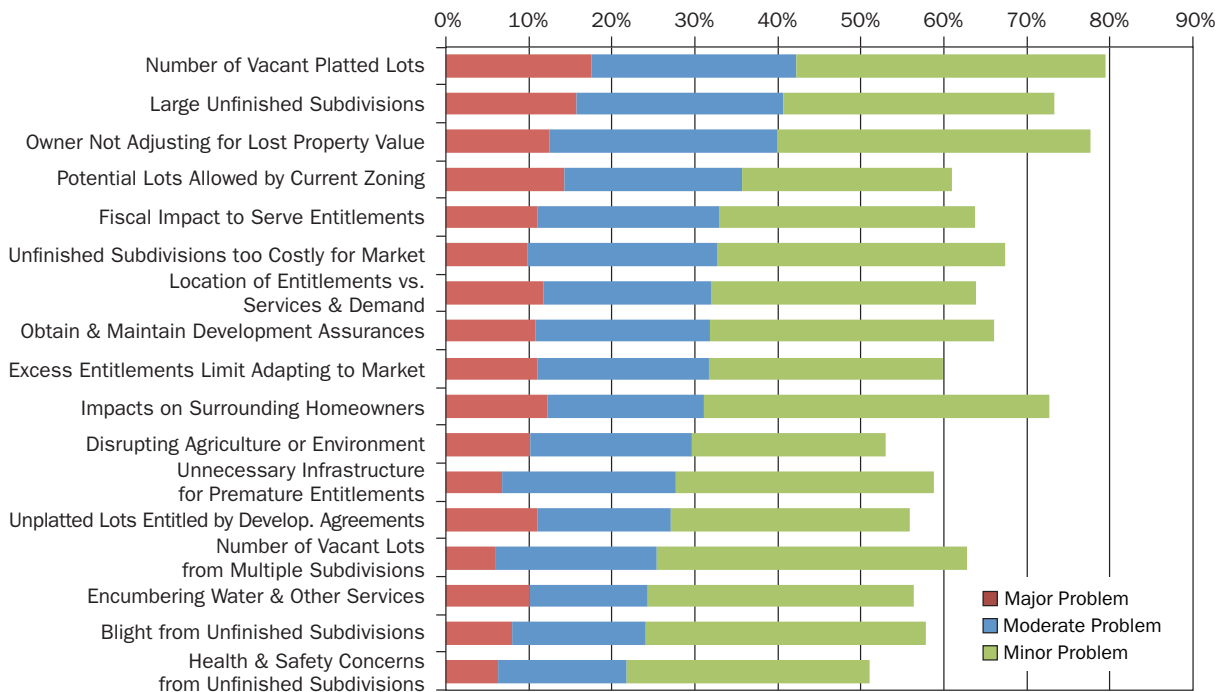
building; 27 percent attributed the boom to demand alone, and 26 percent blamed speculative building alone. The respondents who said that speculative building drove the bubble were more than twice as likely to have reported a severe boom and bust cycle, compared to respondents who said current housing demand drove home construction (40 percent versus 15 percent).

- Issues most often cited as moderate or major problems included the number of vacant, platted lots; unfinished large subdivisions; property owners' and lenders' unwillingness to accept decreased property values; and the number of potential future lots allowed by current zoning (figure 3.1).
- Market demand and speculative building were the factors considered most likely to foster excess entitlements (figure 3.2), though respondents also blamed local planning and zoning practices.
- When asked to quantify the number of vacant, platted subdivision parcels in their jurisdictions, 32 percent of respondents reported "many," 42 percent reported a "moderate" number, and 25 percent reported "very few;" only 2 percent reported none.

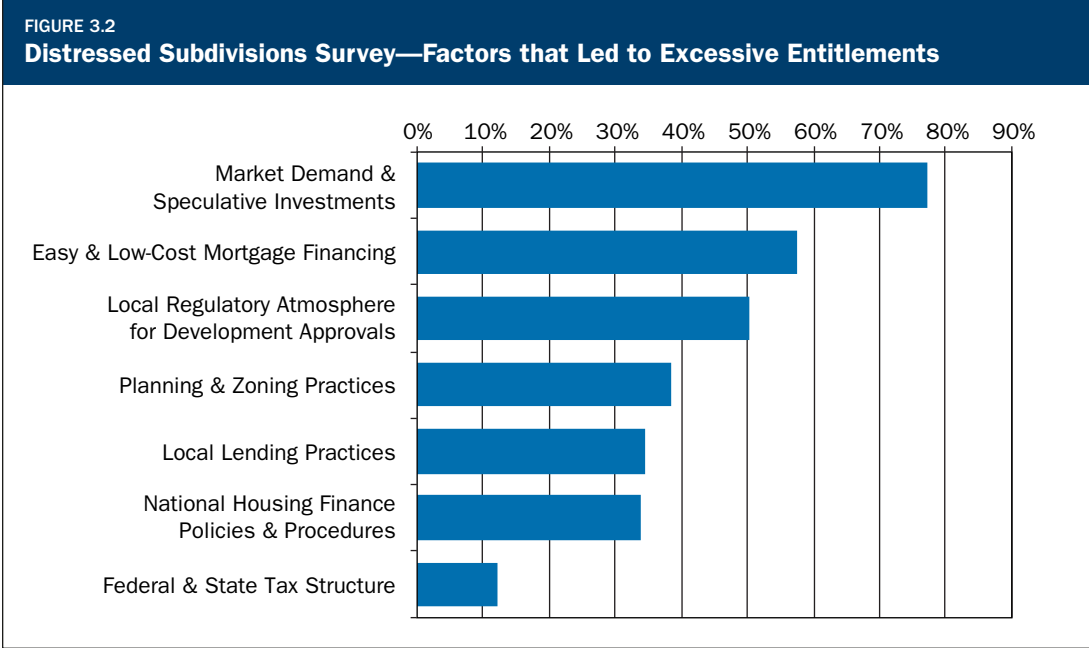
For a more extensive discussion of the survey results, see the companion website ([www.ReshapingDevelopment.org](http://www.ReshapingDevelopment.org)).

FIGURE 3.1

**Distressed Subdivisions Survey—What Issues Are a Problem in Your Jurisdiction?**







among multiple stakeholders. There may be unresolved litigation among owners, lenders, and developers.

**Financial Problems**

Significant changes to an approved subdivision generally require the lender’s consent, which makes it harder to redesign developments to make them more marketable—particularly if the subdivision became distressed because the developer, lender, or infrastructure financing district went bankrupt.

**Infrastructure Deficiencies**

In some cases, deficient offsite infrastructure, such as inadequate road capacity or water and sewer services, may be hindering the development or value of a subdivision. In other cases, a subdivision may suffer from defective or deficient onsite infrastructure. Incomplete, inadequate, or even non-existent development improvement agreements and assurances may complicate the resolution of these problems. A subsequent owner, which could be the lender, may be pushing the local government to rely on the

development assurance (surety bond or letter of credit) to fund completion of the infrastructure. On the contrary, the subsequent owner may be trying to prevent reliance on the development assurance if said owner is the bank that issued the assurance.

**Standards and Requirements**

Changes to the codes that govern subdivision, zoning, or building could raise the cost and lower the feasibility of a development; create general uncertainty; or render some of the lots “nonconforming,” which could delay or prevent the issuance of building permits.

**General Uncertainty**

Uncertainty about any of the factors above will hinder financial investments and the willingness of various stakeholders to invest time in problem solving.

**GOVERNMENT PERSPECTIVES**

The Distressed Subdivisions Survey asked government officials about their experience working with landowners, developers, and lenders. Sixty-two percent of government

officials indicated they worked with landowners and developers concerning distressed real estate holdings, but only 31 percent had worked with lenders on these issues. Among those respondents, 54 percent indicated landowners and developers had been somewhat or very helpful, while only 38 percent said they had found lenders to be somewhat helpful or very helpful.

### COMMUNITY PERSPECTIVES

The community-wide view of distressed subdivisions and excess development entitlements is shaped by the cumulative impacts they have on the surrounding community, as well as the developers', landowners', and lenders' local reputations for quality and credibility. An individual community assessment evaluating the seven types of community impacts and the three causes of those impacts (table 3.1)—both for individual distressed subdivisions and then for the community as a whole—can help to clarify the severity of entitlement problems and determine the most important policies to remedy them (see Appendix B).

The community assessments component of the Distressed Subdivision Survey indicated that the majority of communities had moderate problems in three areas:

1. the number of lots,
2. the impact of these lots on an over-extension of fiscal commitments by local government, and
3. the impacts of excess entitlements on the functionality of housing markets.

Two of the three illustrative communities highlighted in this report—Teton County, Idaho, and the City of Maricopa, Arizona—evidenced much higher levels of negative impacts. Teton County and the City of Maricopa are representative of communities severely impacted by the development boom and bust, whereas the survey responses are likely representative of conditions across a larger number of communities.

The final component of the Distressed Subdivisions Survey asked about the use and effectiveness of 48 planning tools and approaches (figure 3.3). Respondents said that general plans, development agreement templates, and development assurances topped the list of effective tools. Additional measures (less used but considered effective by the few respondents familiar with them) included: streamlined voluntary replatting, replatting fee waivers, targeted infrastructure investments, and required public reports that disclose subdivision conditions.

TABLE 3.1

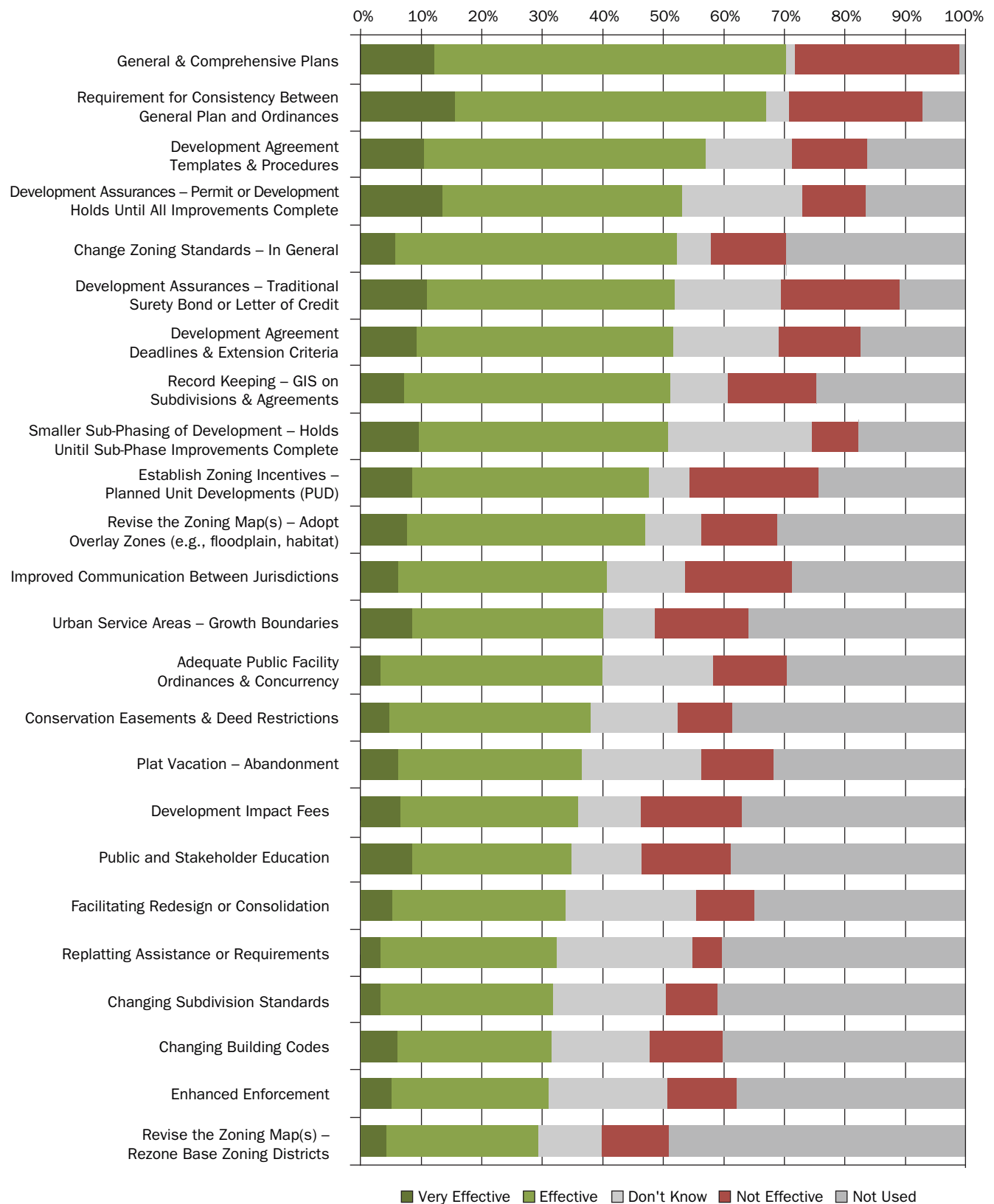
**Distressed Subdivisions Survey—Community Assessments of the Impacts and Causes of Excess Entitlements**

Communities	Impacts on Community							Causes of Impacts		
	Health & Safety	Blight	Existing Lot Owners	Fiscal Threat	Fragmented Development	Natural Resources	Flooding Market	Number of Lots	Lot Quality	Lot Location
Survey Average of 302 Respondents	L	L	L	M	L	L	M	M	L	L
Teton County, ID	M	H	H	H	H	H	H	H	M	H
City of Maricopa, AZ	L	H	H	H	H	M	H	M	M	M
Mesa County, CO	L	L	L	M	L	L	L	M	L	L

H (High) M (Medium) L (Low)

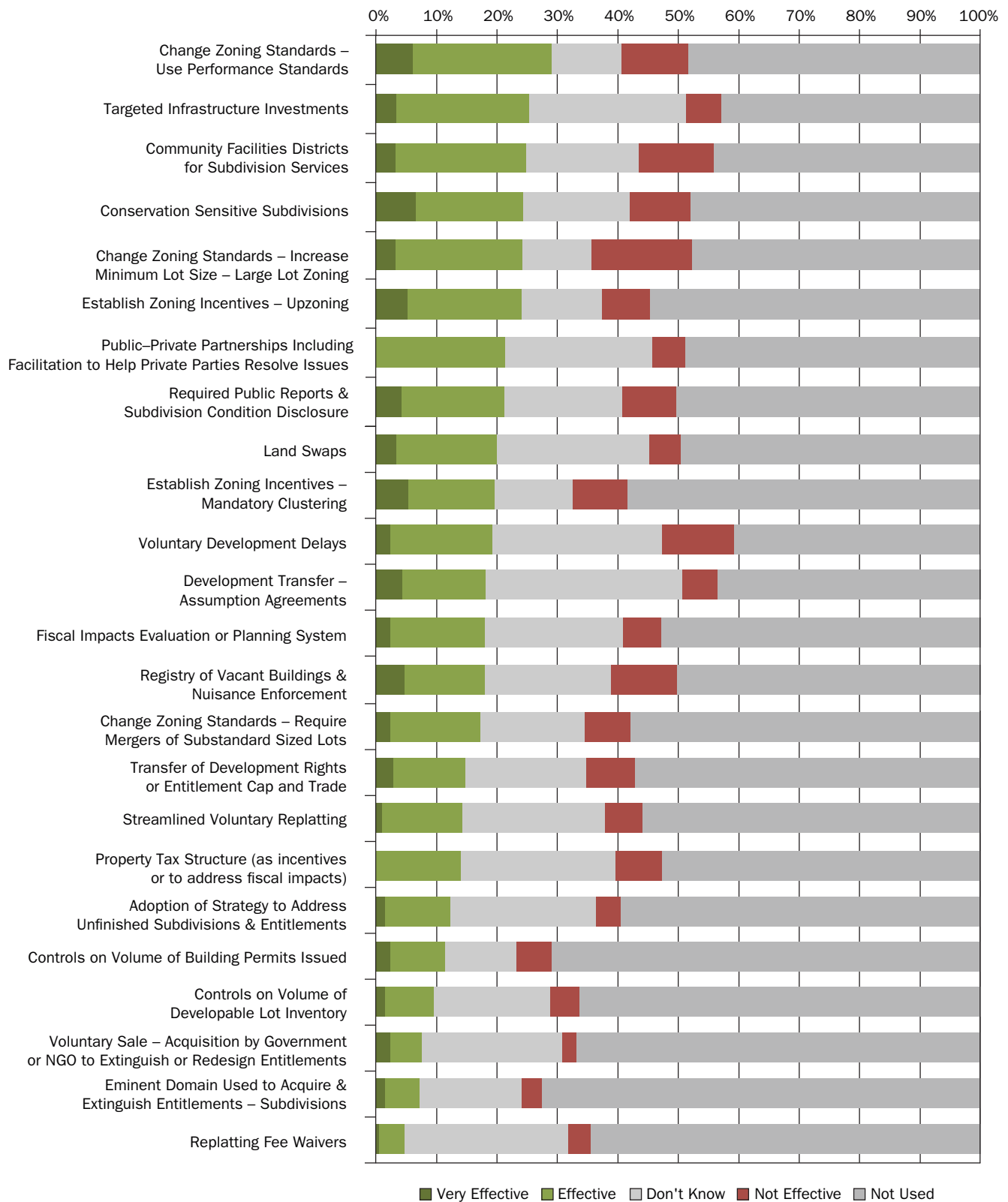
Source: Sonoran Institute

**FIGURE 3.3**  
**Distressed Subdivisions Survey—Effectiveness of Planning Tools and Policy Approaches**



Source: Sonoran Institute

**FIGURE 3.3**  
**Distressed Subdivisions Survey—Effectiveness of Planning Tools and Policy Approaches (CONTINUED)**



Source: Sonoran Institute

## NINE KEY CHALLENGES

Through the research conducted with communities in Idaho and Arizona, the workshops held in 2009 and 2012 with planning and real estate development experts, and the Distressed Subdivisions Survey, the Sonoran Institute identified these challenges most often faced by communities struggling to address excess entitlements.

**1) Lack of State Enabling Authority.** Inadequate state enabling authority limits the tools local governments can employ to address development entitlements. A long-standing lack of well-developed case law in this area creates uncertainty and further constrains local government actions. In some states, local efforts to address entitlements in the context of the current anti-government political environment have resulted in state legislative efforts that further restrict local government authority. Fortunately, the variety of enabling authority and case law decisions across the Intermountain West and the innovative policy approaches taken in several communities provide fertile ground where state and local policy makers can learn from each other.

**2) Lack of Community Planning and Foresight.** Many communities are ill-prepared to face the cycle of boom and bust development pressures, due to the lack of local long-range planning and limited awareness of potential entitlement problems and the costs of serving new residential construction. Good planning is critical to effectively projecting future land use and service needs and to establishing policies to effectively phase in development and associated infrastructure improvements over time. Unfortunately, there is often a tendency to invest time and money only after problems become critical.

**3) Lack of Regulatory Tools and Inconsistent Application.** Local zoning and subdivision ordinances and other

implementation mechanisms must be congruous with adopted plans, up to date, and consistently applied and enforced in order to guide development and control the timing and magnitude of entitlement activity. New tools may be required as well. Consistent regulations will also help make the development process more predictable and certain for stakeholders. Finally, effective and consistent implementation of regulatory tools over time requires that state and elected officials maintain institutional memory and capacity.

**4) Inability to Adapt to Changed Circumstances.** Local governments and the development community need to adapt to uncertain and changing market conditions. They also must establish procedures to reduce the likelihood of excessive entitlements and effectively work together to address distressed or obsolete subdivisions when they develop. Outdated or incorrect perceptions about property value and real estate markets from landowners, lenders, developers, and local officials may also create resistance to potential solutions.

**5) Inadequate Development Assurances.** It is increasingly difficult to secure and maintain adequate assurances for public improvements. The traditional mechanism demands that developers obtain a surety bond to cover the full cost of the required infrastructure improvements. This mechanism is unpopular and poorly applied, so communities have tried a variety of alternative approaches, but the lack of a mutually acceptable and well-understood alternative has exacerbated the impacts of distressed subdivisions. Adequate and clearly articulated development assurance procedures also help developers by providing a well-understood process. They protect landowners by reducing the likelihood of incomplete infrastructure.

### **6) *Unsustainable Fiscal Impacts.***

Communities may bear unsustainable fiscal impacts for infrastructure costs and other fiscal impacts due to the nature, timing, and pattern of development. For the development community—which often relies on the adequacy of offsite or community-wide infrastructure improvements to reach the subdivision (at which point onsite infrastructure takes over)—an effective mechanism for covering infrastructure costs can be an important component of a successful subdivision.

**7) *Government Unwillingness to Serve as a Facilitator.*** Some local governments have found that partnerships with stakeholders in the real estate community are the most effective mechanism to address distressed subdivisions and excess development entitlements. However, most local governments are reluctant or ill-equipped to step outside their regulatory role to directly engage in problem solving. In addition, there is often little consensus on the role of government related to regulating private property or intervening as a facilitator in local real estate markets. Local government facilitation can be enormously beneficial to development interests with a subdivision caught up in a legal or financial quagmire. Unfortunately, property owners with short-term perspectives or with little commitment to the local community can also limit the potential for collaboration.

**8) *Insufficient Information and Tracking.*** Communities often lack adequate information on the nature and status of entitlements, related requirements regarding infrastructure or development assurances, and current market conditions as they evolve. Where information is collected, it may not be tracked or maintained as

conditions change over time. This information is critical for establishing and implementing effective policies, ensuring adherence to development agreements, estimating the fiscal impacts of approved developments, and helping land markets to function based on accurate and available information.

### **9) *Low Community Capacity.***

Many factors affect a community's resources and political will for tackling problems related to distressed subdivisions and excess development entitlements, including limited public staff and budget, undercapitalized or ill-prepared development stakeholders, and lack of political support. Generally, these deficiencies pose the greatest challenge in smaller, younger, and faster-growing communities. To resolve problems caused by past government actions or private sector development failures, communities must summon the political will to consider vacating or amending past approvals—even in the absence of explicit authority to do so, which often requires a level of experience and judgment that are in short supply.

## **SUMMARY**

Ultimately, the fate of approved entitlements is determined by market conditions and the actions of landowners and developers. Recognizing their perspectives, the conditions they face, and their response to changing market conditions is key to prevailing over the nine challenges to addressing arrested developments and excess entitlements. A survey of planners and developers conducted for this project indicated widespread concern with the surplus of entitlements in the Intermountain West, and identified the causes and impacts of excess entitlements.

CASE STUDY 2  
**Maricopa, Arizona**

**Problem:** Rapid growth in new community without sufficient planning and controls

**Solution:** City-facilitated partnerships to convert distressed parcels to nonresidential uses

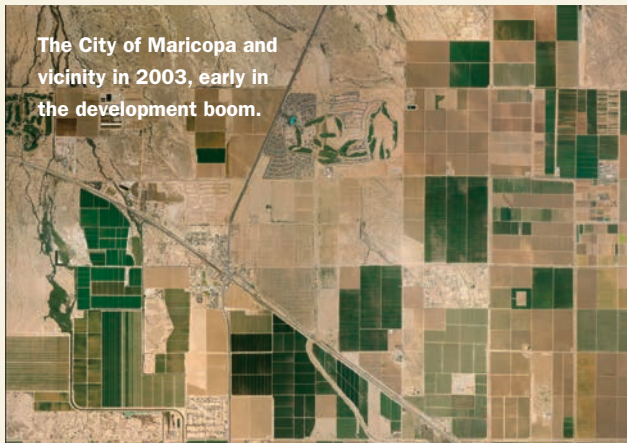
The City of Maricopa—incorporated in 2003, in the early years of Arizona’s real estate boom—is typical of many new exurban communities within growing metropolitan regions. Faced with an influx of new residents “driving until they qualified,” the community quickly committed the majority of available land to residential subdivision entitlements. At the height of the boom, the small city—37 miles from downtown Phoenix and 20 miles from the urbanizing edge of the Phoenix metro area—was issuing roughly 600 residential building permits per month (photo, left).

Pinal County had approved many of the town’s residential subdivisions before the city was incorporated, in accordance with the county’s 1967 zoning code. In fact, following standard practice for newly incorporated communities, the city initially adopted the Pinal County Zoning Ordinance. For a time, the county planning and zoning commission also continued to serve as the city’s planning oversight body. But this older rural county code did not consider or create incentives for mixed-use development, areas with a downtown character, a balance between jobs and housing, institutional uses, or social services. The lack of diversity resulted in a shortage of retail and service use areas and a scarcity of designated areas for nonprofits such as churches, private schools, daycare, counseling, and health services. As new residents looked for public services and

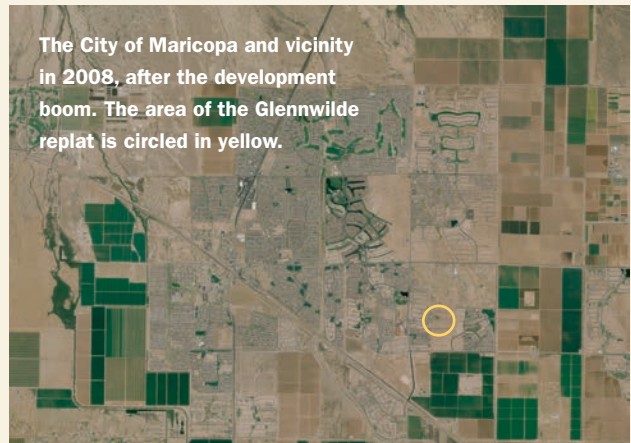
local jobs, this dearth of land for employment and public facilities became increasingly problematic.

When the Great Recession hit and the housing bust occurred, supply overran demand for residential lots, and many became distressed. Maricopa faced this challenge and seized the opportunity to re-examine its growth patterns and address the multiple distressed subdivisions plaguing the community.

The city chose to partner with the private sector—including developers, banks, bonding agencies, and other government agencies—to address their distressed subdivisions and the lack of institutional and public land uses. The first test of this new approach began when a Catholic congregation was looking for a church site in an urban location with existing sewage, water, and other necessary infrastructure. The City of Maricopa served as a facilitator to connect the church with the developers of Glennwilde (photo, right), a partially built, distressed development. The church chose a site in a late phase of the subdivision—at that point still a paper plat. The city vacated the plat for that site and returned it to one large parcel, which the Glennwilde developer then sold to the church. Construction has not yet begun, but the project has served as a model for other arrested developments. The collaborative effort among the city, owners of currently distressed subdivisions, and other interested parties has also inspired approved proposals for a Church of Latter Day Saints stake center, a civic center, a regional park, and a multigenerational facility in the City of Maricopa.



The City of Maricopa and vicinity in 2003, early in the development boom.



The City of Maricopa and vicinity in 2008, after the development boom. The area of the Glennwilde replat is circled in yellow.

Source: Landiscor Aerial Information



## CHAPTER 4

# Best Practices

The most effective tools for addressing excess development entitlements and distressed subdivisions fall into two groups: those designed for communities that seek to *prevent* future problems related to excess entitlements, and those for communities that need to *treat* immediate issues. Through our convening of experts and our analysis of the Distressed Subdivisions Survey results, we have identified 29 suitable planning and regulatory tools (Appendix B) and a dozen best practices. Each community’s planning and administrative capacity, its level of political will, and the severity of local development entitlement issues will shape the policies it chooses to pursue.

The following descriptions of these dozen best practice tools, together with the

model process for assessing entitlement conditions and developing a strategy to address them (figure 4.1, p. 41), can serve as a “how to” manual for communities to follow.

### PREVENTIVE MEASURES

This first set of best practices suits communities that do not have significant excess development entitlements or distressed subdivisions but seek to establish policies and tools to prevent related problems in the future. The first three are good standard planning practices that are easy to enact and that lay a solid foundation to prevent or mitigate problems. The second set of two additional best practices will likely require additional work and political will to implement.

**A street and sidewalk on the way to nowhere in Driggs, Idaho.**



© ANNA TRENTADUE



**Baseline Best Practices That All Communities Should Adopt**

**1. Community Comprehensive Plan**

Required in many states, a general or comprehensive plan is an essential foundation for healthy development, providing a policy basis for more specific regulations and an important defense against legal challenges. This plan should anticipate potential subdivision issues and include language that addresses the need to avoid entitling development very far in advance of market demand. Key components should address:

- Maintaining sustainable levels of growth with reference to health and safety issues, fiscal impacts, and public welfare concerns such as open space and environmental quality;
- Establishing a case for zoning or subdivision changes if necessary to prevent excess lots;
- Laying a foundation for Transferable Development Rights (TDR) and for potential donor and receiver sites;
- Establishing a strategy for targeted infrastructure investments and linkage to capital improvement plans;
- Requiring plan consistency and infrastructure concurrency, as well as requirements for updates.

**2. Ordinances Consistent with Comprehensive Plan**

Local jurisdictions should make zoning and subdivision ordinances consistent with the general or comprehensive plan. This step often requires amendments to the current zoning and subdivision regulations as well as periodic updates of the plan and ordinances to maintain congruity.

**3. Development Agreement Template**

All local jurisdictions should have a development agreement template that binds developers to install infrastructure and construct

**Preventive Measures**

- Community Comprehensive Plan
- Ordinances Consistent with Comprehensive Plan
- Development Agreement Template
- Market Feasibility, Demand Analysis & Lot Inventory
- Development Assurances

amenities on a predictable timetable. Communities should execute an agreement for every new subdivision. Relatively few cities and towns or counties have good models for these agreements, but participants in the experts workshops identified the lack of a good template as the single biggest governmental failure leading to problems with excess entitlements. This development agreement template should include:

- Timeframes and timelines with sunset criteria on all approvals;
- Phasing requirements that prohibit platting of later phases until a specified percentage of earlier phases are sold or built, and the necessary infrastructure is installed;
- A mechanism (sunset criteria) that enables the city or county to vacate plats or portions of plats that remain unsold and undeveloped for a specified number of years beyond the designated time-frame; and
- Bonding, security, or cost reimbursement for construction of unbuilt onsite infrastructure and for long-term property management of that infrastructure.

**Best Practices That Will Take More Work and Political Will**

These practices should be considered to minimize the impacts of excess entitlements if a community is likely to face significant development pressures in the future.

#### 4. Market Feasibility, Demand Analysis, and Lot Inventory

Linking development approvals to market feasibility and lot inventories was viewed by participants in the experts workshops as a potentially important tool, although we are not aware of any community successfully using this tool. A number of communities do reject requested general plan or zoning amendments for residential development when they feel the areas are not yet ripe for development. Potential best practices include:

- a. Require a market feasibility study, based on documented historical rates and patterns of home construction (not lot sales), to inform the phasing of larger subdivisions. A neutral entity should conduct these studies under specific guidelines established by the local government to ensure that the studies are balanced and objective. Require consideration of:
  - The existing inventory of platted vacant lots within a certain number of miles of a new development;
  - The distance between the proposed subdivision and existing roads and utilities;
  - The parties who will provide necessary services and their ability to provide those services as needed to meet demand.

- b. When land is annexed to a city, rezone the land to a “holding” category that allows only agriculture or large lot rural zoning for this purpose, with the option to rezone for proposed residential development when existing vacant lot inventory has declined beyond a stated threshold.

#### 5. Development Assurances

After adopting a good development assurance template, communities should apply it consistently. The city or county should require developers to complete required subdivision improvements and related infrastructure on schedule or should consistently enforce the development assurance provisions in the development agreement. The assurance process is far more likely to meet its objectives when jurisdictions collaborate with the real estate community to establish a system for tracking the completion of required infrastructure as well as the status of assurances to guarantee that key deadlines are met.

#### TREATMENT MEASURES

The following best practices are for communities looking to remedy *existing* problems stemming from excess development entitlements and distressed subdivisions. The first two are targeted to community-wide efforts. The last four are designed to target specific entitlement issues or, in some cases, a particular subdivision. These best bets are generally ordered from the easiest to the hardest to implement.

##### ***Community-Wide Baseline Best Practices***

The following steps, designed to target specific problems, build upon the baseline preventative best practices that all communities should adopt. If your community’s comprehensive plan implementing ordinances, and development agreement tem-

### Treatment Measures

Assessment and Strategy to Address Entitlements

Facilitate Subdivision Redesign/Repurposing & Replatting

Plat Lapsing or Vacating Procedures

Revise Zoning or Subdivision Regulations

Identify & Address Problematic Infrastructure

Improve Development Assurances

Transfer of Development Rights

plates are not in place or are outdated and inconsistent, then a quick revision, targeted to address current issues, must be a top priority. In particular, communities should establish mechanisms to ensure that development agreement revisions or extensions come under new and improved versions of the development agreement template and timeframes, in order to avoid perpetuating weaknesses in the original agreements.

## 6. Assessment and Strategy to Address Entitlements

- a. Use the How-to Guide (figure 4.1) to assess the number and nature of excess entitlements and to establish a strategy to address related problems.
  - Determine the status of each troubled subdivision by deciding where it falls on figure 2.1, p. 18.
  - Assess the extent of entitlements in your community by filling in table 4.1 (p. 43).
  - Based on the list of common subdivision-specific obstacles for developers (p. 29), consider the market status of individual subdivisions and any other constraints affecting the viability of each project.
  - Build data monitoring and analysis capacity.
- b. Assess the causes and severity of community-wide development entitlement impacts:
  - Identify the causes (table 4.2, p. 43): the number of lots (both current and potential), the quality of the entitlements, and their location.
  - Identify the existence and severity of impacts (table 4.2): threats to health and safety, blight, impacts on existing lot owners, fiscal threats, fragmented development patterns, overcommitted natural resources, and market flooding and distortions.
- c. Identify your community capacity:
  - Evaluate the factors contributing to low community capacity (p. 36).
  - Based on your assessment of community capacity, consider the Tools Suitability Table (Appendix B). In

**FIGURE 4.1**  
**How-to Guide for Dealing with Excess Entitlements:**  
**A Model Process**

### Assess the Extent and Nature of the Problem

(FIGURE 2.1, P. 18 & TABLE 4.1, P. 43)

Identify the status of each subdivision.

Identify market & constraints impacting each subdivision.

Develop community-wide Extent of Entitlements Table.



### Assess the Causes and Impacts

(TABLE 4.2, P. 43)

Identify the causes of entitlement impacts.

(Too many lots. Wrong location for lots. Poor quality lots.)

Identify the severity of the overall community impact.



### Identify Community Capacity to Address Entitlements

Consider the community's planning resources.

Consider the community's "political will."

Collaborate with stakeholders.



### Establish a Strategy for Addressing Excess Entitlements

Conduct a community triage process (BOX 4.1, P. 42).

Determine mix of prevention and treatment approaches.

Assess policy tools worthy of additional consideration.

Identify specific subdivisions for initial efforts.

Source: Sonoran Institute

particular, refer to the last column, which provides a general assessment of the level of community capacity required to implement each tool. On the basis of that assessment, choose the tools that best suit your community.

- d. Based on the assessments above, establish a strategy.
  - Conduct a diagnostic triage to identify the most appropriate geographic areas and issues for your community to address (see box 4.1).
  - Consider which subdivisions to tackle first and which tools to use (Appendix B). Is your community looking to establish baseline best practices that are part of good planning or are you ready to consider more controversial measures to target your current development entitlement issues?

#### BOX 4.1

#### Diagnostic Triage

Conduct a triage in individual communities in order to map out the distribution of individual subdivision characteristics and determine, at one extreme, where the need for intervention is most pressing and, at the other, where development entitlement issues may resolve themselves with the passage of time and economic recovery. Consider the following scenarios:

- Strong housing demand could either inspire the private sector to replat the subdivision or to install the infrastructure needed to put the development back on track so the entitlements can be absorbed; or
- There is no demand, so the land won't be developed anyway, and paper entitlements can be ignored; or
- Conditions fall somewhere between these two scenarios, and public intervention may be justified and desired.

Note, however, that even when few if any properties are developed, a pattern of fragmented ownership can still impinge upon open space, habitat preservation, and agricultural use.

- e. Finally, download a blank version of the Tools Suitability Table (Appendix B) from the companion website ([www.ReshapingDevelopment.org](http://www.ReshapingDevelopment.org)), adjust the suitability scores to fit your community or a particular subdivision, and identify the most suitable policies and tools to pursue.

### 7. Facilitate Subdivision Redesign, Repurposing, and Replatting

Before focusing on problems in specific subdivisions, communities can adopt a jurisdiction-wide approach to increase flexibility and encourage replatting throughout the community. Specific best practices in this area include:

- a. Increase flexibility for minor, common-sense plat modifications by expanding administrative authority to approve minor amendments to concept plans, final plans, plats, and development agreements. Make those actions subject to concurrence by the local legislative body if necessary.
- b. Provide market information and convene interested stakeholders—including owners, lenders, and other interested parties (public-private partnerships)—in order to assist private sector opportunities for addressing distressed subdivisions. This process could be simple (e.g. helping to move projects to new owners with the resources to complete them) or more involved (e.g. redesign subdivisions to meet new markets or even switch to nonresidential uses). Reliable market information can help landowners determine the feasibility of various development proposals.

#### **Best Practices Targeted to Address Specific Entitlement Problems**

For communities with significant problems related to excess development entitlements and distressed subdivisions, additional actions will likely be necessary. These generally



**TABLE 4.1**  
**Assessment Tool—Extent of Entitlements**

Subdivision Status	# Subs	# Total Lots	# Sold or Transferred Lots	# Improved Lots	# Partially/Fully Built Homes	# Occupied Homes	Total Acres
Development Agreement Only							
Preliminary Plat Submitted							
Preliminary Plat Approved							
<b>Final Plat Approved (Total)</b>							
No Sales—No Improvements							
No Sales—Some/All Improv.							
Sales—No Improvements							
Sales—Some Improvements							
Sales—All Improvements							

**TABLE 4.2**  
**Assessment Tool—Impacts and Causes of Excess Entitlements**

Community-Wide or Individual Subdivisions	Impacts on Community							Causes of Impacts		
	Health & Safety	Blight	Existing Lot Owners	Fiscal Threat	Fragmented Development	Natural Resources	Flooding Market	Number of Lots	Lot Quality	Lot Location

**H** (High)    **M** (Medium)    **L** (Low)

**Note:** These blank templates can be downloaded from the companion website, [www.ReshapingDevelopment.org](http://www.ReshapingDevelopment.org).

require individually tailored solutions, which could include redesign and replatting or promoting alternative uses of the site. This next set of four best practices describes community-wide tools that can be applied to specific subdivisions. Prior to pursuing these practices, communities should first accomplish best practices 4 and 5 above, related to a market demand analysis and development assurances.

**8. Plat Lapsing or Vacating Procedures**

If the number or location of entitled lots is a critical issue, the affected community should establish an ordinance enabling vacation of purely paper subdivisions in

breach of their development agreements, including a mechanism to abandon later paper phases while allowing active phases to continue. Then, it should file actions to vacate portions of plats that meet the plat vacation criteria.

**9. Revise Zoning or Subdivision Regulations**

If outdated zoning or subdivision regulations are contributing to public health or safety hazards in distressed subdivisions, communities can review and, if necessary, modify those regulations. Communities with significant problems should also adopt ordinances that allow the modification or partial

abandonment of existing plats or delay the issuance of permits for developments on lots that pose clear public health and safety risks. Once the ordinances are adopted, the city or county could, for example, decide to withhold residential building permits until the developer fixes health and safety hazards or meets current building code requirements, even if those mandates were established after the subdivision was originally approved. Although some states have vested rights legislation that makes it difficult to apply standards adopted after a subdivision is approved, most make exceptions to accom-

modate new standards related to public health and safety.

#### 10. Identify and Address Problematic Infrastructure

If infrastructure has failed, is failing, or is incomplete, the community should create an inventory of missing or inadequate infrastructure, identify related health or safety problems, and establish a procedure to make (or require the developer to make) essential fixes. Jurisdictions can secure these improvements by drawing on the development assurances if possible or by making the improvements and filing a lien on the property to cover those costs. For example, the Phoenix Water Services Department investigated all the city's incomplete subdivisions with water infrastructure installed in order create an inventory of missing or inadequate infrastructure, identify related health or safety problems, and establish a procedure to make any essential fixes. For more information on this effort, see [www.ReshapingDevelopment.org](http://www.ReshapingDevelopment.org).

© MARICOPA COUNTY PLANNING AND DEVELOPMENT DEPARTMENT



**Signs of progress:** This recently distressed subdivision has revived, and construction is underway in two phases of the development.



© SONORAN INSTITUTE

Life goes on amid  
the zombies.

© FRANK CASSIDY, TOWN OF MARANA



### 11. Improving Development Assurances

If the problem is failure to install required infrastructure, but immediate health and safety threats are not a key concern, the community may consider adopting a “permit hold” or “sub-phasing approach” as a feasible option. Under these approaches, individual developers may not need to post construction bonds (or they can post smaller construction bonds), but all infrastructure is required prior to final platting. As an alternative, final plats will not be approved or building permits will not be issued for subsequent phases until earlier phases are complete. Such mechanisms impose smaller financial burdens on the developer than those created by traditional performance bonding requirements and reduce the risk that the developer will have sold lots far in advance of infrastructure or services. These assurances should also include clear consequences for failures to satisfy conditions and complete necessary improvements, as well as mechanisms to maintain and track data to ensure effective implementation.

### 12. Transfer of Development Rights

Where a market for new development exists, mechanisms can be established to

facilitate development entitlement offsets or transfer of development rights from premature or obsolete subdivisions to projects driven by current market pressure for residential construction.

### SUMMARY

The most effective policies and tools to address excess development entitlements will be shaped by a community’s planning and administrative capacity, its level of political will, and the severity of local development entitlement issues. This chapter presented a comprehensive set of 12 best practices appropriate for both communities seeking to *prevent* future problems and communities needing to *treat* immediate issues. Adopting a community comprehensive plan is fundamental to good planning and lays the foundation for implementing and defending any subsequent policies. Other key best practices include establishing development agreement templates and practical development assurances. Figure 4.1 provides a “how-to guide” for communities that need to treat problems stemming from excess entitlements.

CASE STUDY 3  
**Teton County, Idaho**

**Problem:** Extreme entitlement surplus with resulting blight and fiscal stress

**Solution:** Adopt ordinances clarifying county authority to require plat redesign, vacation, or replatting.

Teton County's extreme surplus of entitlements—with three vacant entitled lots for every developed one in the county—stems from three decisions the board of commissioners made from 2003 to 2005.

First, the county adopted a quick and easy process for landowners to request the right to up-zone their properties from 20-acre lots to 2.5-acre lots. None of these zone changes were granted in tandem with a concurrent development proposal; virtually all were granted for future speculative development. It was not uncommon for the county to up-zone hundreds of acres in a single night of public hearings; the agenda for one meeting could include up to ten subdivision applications, and deliberations would often last until well past midnight.

Second, the county's "Guide for Development 2004–2010" called for aggressive growth, with a focus on residential construction to drive economic development. The goals and objectives, however, were vague, and the plan failed to specify the type and location of desired growth. Discredited by the community, the document was ultimately ignored during the approvals process. Essentially a "non-plan," it fostered explosive, random development, resulting in six years of land use decisions made without the benefit and guidance of any coherent strategy.

Third, the Board of County Commissioners adopted a Planned United Development (PUD) ordinance with density bonuses in 2005. Under the PUD cluster development provisions, developers could exceed the underlying zoning entitlements by as much as 1,900 percent. Typical PUD density bonuses for good design range between 10 to 20 percent. Now areas zoned for 20-acre zoning (5 units per 100 acres) that provided a central water system could be entitled with up to 100 units on the 100 acres. In addition, Teton County's PUD and subdivision regulations allowed the sale of lots before infrastructure installment, which provided a huge incentive for speculative development.

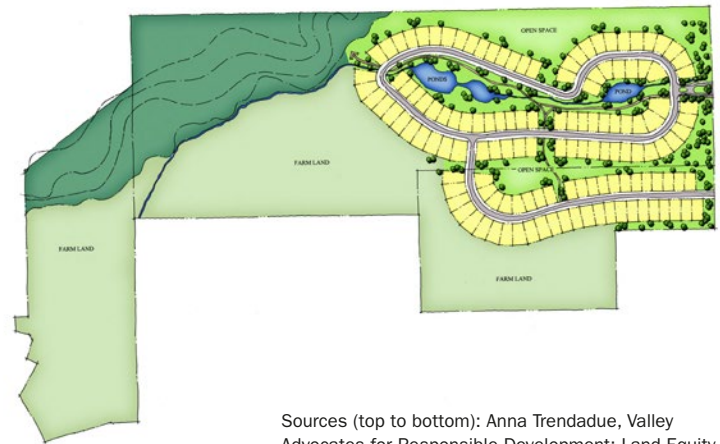
FIGURE 4.2  
**Teton County—Replat of Targhee Hill Estates**



**Entrance to Targhee Hill Estates**



**Original Sketch Plan**



**Preliminary Replat**

Sources (top to bottom): Anna Trendadue, Valley Advocates for Responsible Development; Land Equity Partners; Land Equity Partners



After the 2008 market crash, some owners of incomplete developments began looking for ways to restructure their distressed subdivisions. In 2010, Targhee Hill Estates approached the county with a proposal to replat their partially built resort development (figure 4.2). At the time, however, there was no local ordinance, state statute, or legal process that would permit the replatting of an expired development. The Teton County Valley Advocates for Responsible Development (VARD) petitioned the county to create a process to encourage the redesign of these distressed subdivisions and facilitate replatting. VARD realized that a plat redesign could reduce intrusion into sensitive natural areas of the county, reduce governmental costs associated with scattered development, and potentially reduce the number of vacant lots by working with landowners and developers to expedite changes to recorded plats.

On November 22, 2010, the Board of County Commissioners unanimously adopted a replatting ordinance that would allow the inexpensive and quick replatting of subdivisions, PUDs, and recorded development agreements. The ordinance created a solution-oriented process that would allow Teton County to work with developers, landowners, lenders, and other stakeholders to untangle complicated arrested developments with multiple ownership interests and oftentimes millions of dollars in infrastructure.

The ordinance first classifies the extent of any changes proposed by a replat into four categories: 1) major increase in scale and impact, 2) minor increase in scale and impact, 3) major decrease in scale and impact, 4) minor decrease in scale and impact. Any increases in impact may require additional public hearings and studies, whereas these requirements and agency review are waived (where possible) for decreases in impact. In addition, the ordinance waived the unnecessary duplication of studies and analyses that may have been required as part of the initial plat application and approval. As an additional incentive, Teton County agreed to waive its fees for processing replat applications.

Unfortunately, the first few replatting applications submitted to Teton County were for expired paper plats. (Although VARD's work with Targhee Hill Estates initiated the efforts to establish a replatting ordinance, the Targhee Hill Estates developers have not yet been able to submit a replat application.) It seemed that developers were seizing upon the replatting ordinance as an opportunity to extend the life of paper plats rather than to solve problems related to partially built developments. Instead of replatting to minimize development costs and environmental impacts, developers tried to use the ordinance to obtain large extensions of time in exchange for nominal changes to their projects. In these cases, the planning staff recommended against approval of the nominal changes. When a developer proceeded to request the county commissioners' approval anyway, the commissioners supported the planning staff and rejected the nominal replats. In a few cases, such as Canyon Creek Ranch, developers continued to negotiate with staff and eventually requested substantive and positive plat changes, which were approved.

The first success story was the replatting of Canyon Creek Ranch Planned Unit Development, finalized in June 2013. More than 23 miles from city services, Canyon Creek Ranch was originally approved in 2009 as a 350-lot ranch-style resort on roughly 2,700 acres including approximately 25 commercial lots, a horse arena, and a lodge. After extensive negotiations between the Canyon Creek development team and the Teton County Planning staff, the developer proposed a replat that dramatically scaled back the footprint and impact of this project to include only 21 lots over the 2,700 acre property. For the developer, this new design reduces the price tag for infrastructure by 97 percent, from \$24 million to roughly \$800,000, enabling the property to remain in the conservation reserve program and creating a source of revenue on it while reducing the property tax liability. The reduced scale and impact of this new design will help preserve this critical habitat and maintain the rural landscape, which is a public benefit to the general community.



## CHAPTER 5

# Policy Recommendations



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**Mountain Legends in Driggs, Idaho, was planned as a 114-lot vacation home PUD. Through the use of Teton County's newly adopted replatting and plat vacation ordinances, the paper plat was vacated and returned to farmland.**

**A**lthough recovery from the most recent boom and bust cycle is nearly complete in some areas of the country, many communities continue struggling with vacant and distressed subdivisions, impacting economies, urban form, and quality of life throughout the Intermountain West and other affected regions. In order to avoid problems stemming from development entitlements in the future, local governments should build a solid foundation of policies, laws, and programs.

An excellent place to begin is by addressing limitations in state enabling authority. Communities and others involved in real estate development would also be well-served by ensuring they have mechanisms in place to adapt and adjust to evolving

market conditions. Communities likely to face significant growth pressures would be well-served by growth management policies that help align evolving market demands with approval of new development entitlements and investments in infrastructure. For communities already facing problems related to distressed subdivisions, a willingness to reconsider past approvals and projects and to acknowledge problems is an essential ingredient to success. Communities that facilitate change as effectively as they regulate the development process will be best prepared to prevent and treat distressed subdivisions and any problems that may arise from excess development entitlements.

One message consistently voiced by the experienced professionals participating throughout this project was the importance of building, maintaining, and sustaining the political will to address development issues. Communities that can build popular support for dealing with excess development entitlements and create partnerships with the local building and lending communities will be more likely to sustain efforts to respond to existing problems and avoid them in the future.

This report has identified approximately 50 potential tools that communities can employ to remedy problems stemming from excess development entitlements. The following nine policy recommendations—designed to address the nine challenges presented in chapter 3 (p. 35)—will help communities utilize the best of these tools. These recommendations encompass policy and administrative actions that can be taken at both the state and local level. Although the primary focus is on public-sector actions, other stakeholders in real estate markets should participate to structure and implement effective solutions.

### **1. Adopt new state enabling authority**

Local tools for managing land development derive from state enabling authority, which varies across states (see chapter 2 and Trentadue and Lundberg 2011). State enabling authority or mandates should be pursued for at least the following crucial local government powers:

- Require local comprehensive plans and periodic updates;
- Establish local authority to execute development agreements and minimum requirements for those agreements;
- Provide authority and a clear process for revising or vacating unbuilt portions of an approved subdivision after either a set period of time or proven noncompliance

with the development agreement;

- Prior to any lot sale, require public disclosure reports on the condition of the property and associated infrastructure; and
- Permit the use of impact fees and property tax structures that provide a disincentive for premature subdividing and holding of vacant lots for an extended period.

### **2. Prepare and revise community comprehensive plans and entitlement strategies**

According to the Distressed Subdivisions Survey and participants in the 2009 and 2012 experts workshops, an up-to-date local comprehensive plan or general plan is a crucial foundation for efforts to regulate or otherwise guide local land use markets and decisions. This tool will be particularly useful for communities seeking to regulate the build-out of unfinished subdivisions that no longer meet current standards. Comprehensive plans also support communities seeking to rezone lands to limit the number of residential development entitlements granted far in excess of market needs. If a community already has distressed subdivisions, the comprehensive plan should include a strategy that addresses locally relevant problems and recommends suitable tools. A strong comprehensive plan should include policies to:

- Require consistency among zoning and subdivision ordinances and the adopted plan;
- Target infrastructure investment to guide location and timing of development;
- Require concurrent provision of infrastructure improvements along with residential home development to maintain desired service levels;
- Identify population levels that can be supported with available resources and assess whether zoning or subdivision

changes may be necessary to ensure this capacity is not exceeded;

- Identify health and safety issues that justify development requirements and limitations; and
- Analyze the fiscal impacts of development.

### **3. Adopt enhanced procedures for development approvals and ensure policies are up to date and consistently applied**

Local government should:

- Keep their ordinances consistent with the comprehensive plan and with current health and safety standards;
- Establish a development agreement template that includes timelines, approved sunset clauses, development assurance procedures, and clear consequences for failure to meet conditions; and
- When developers seek to alter the original conditions of their subdivision approval, require use of the new templates, timelines, and procedures.

### **4. Adapt and adjust policy approaches with market conditions**

Communities should adopt policies and procedures that allow the development approval process to be responsive to market conditions and emerging issues related to development. These policies could require:

- A market feasibility study that reflects existing subdivision approvals and inventories of vacant platted lots, to demonstrate that an area is able to absorb additional development in the near future; and
- New procedures to mitigate the impacts of distressed subdivisions, which could include:
  - A process to revise or vacate unbuilt portions of an approved subdivision

with little or no development activity after a stated period of time;

- Updates to obsolete subdivision and building code requirements based on health and safety;
- Streamlined approval processes for plat redesigns that realign the subdivision with current market conditions and health and safety standards;
- Enhanced enforcement of requirements to fix blight and nuisance conditions related to vacant properties and unfinished subdivisions; and
- Programs for transferring or extinguishing development entitlements (similar to Transferable Development Rights programs).

### **5. Rationalize development assurances**

Adequate development assurances are important, but the traditional process has become unduly burdensome for the developer and rarely affords local governments the intended assurance of funded and properly built infrastructure. Local governments should work with their development community to establish workable alternative assurance mechanisms, which could include:

- Installation of infrastructure before building permits can be issued; or
- Sub-phasing of subdivisions, so completion of infrastructure for one phase is required before allowing final subdivision approval of the next phase (or, if the final subdivision approval has already been granted, requiring completion of infrastructure before more building permits will be approved);
- Temporarily releasing development assurances for projects that are not moving forward in exchange for guarantees that lots will not be sold or building permits issued until pre-established conditions are met;

- Requiring a traditional surety bond or a letter of credit equal to the cost of developer-funded improvements (or some set percentage above these costs), if the alternatives above are deemed impracticable for some reason.

**6. Establish mechanisms to ensure that development pays its share of costs**

Distressed subdivisions and excess development entitlements may result in the need to raise taxes and cut public services community-wide. Potential mechanisms to avoid negative fiscal impacts on the general populace include:

- Establishing a fiscal impacts planning system capable of quantifying the full costs, benefits, and fiscal consequences of development proposals;
- Creating concurrency requirements that prohibit development that would reduce

current or planned-for levels of service (e.g. adequacy of park facilities or water and sewer services) and;

- Adopting development impact fees that accurately reflect the relative costs of providing public services in different parts of the community—particularly in remote and rural areas.

**7. Serve as facilitator and pursue public-private partnerships**

Stakeholders from the public and private sector will need to cooperate in order to solve problems that surface in individual distressed subdivisions, secure alternative uses for the properties, or move them back on the market as viable projects. Local governments can facilitate or even catalyze this process. At a minimum, local government should ensure that existing requirements are not constraining beneficial resolutions.

**A revitalized zombie: Construction resumed in this once-distressed subdivision in Maricopa—in Arizona’s booming Sun Corridor, where the market is absorbing excess lots as the economy recovers.**



© MARICOPA COUNTY PLANNING AND DEVELOPMENT DEPARTMENT

Specific recommendations to consider include local government efforts to:

- Facilitate subdivision redesign to meet emerging market conditions and achieve other public objectives (e.g. protection of open space or wildlife corridors) by targeting particular properties for assistance, streamlining redesign approval processes community-wide, or participating in redesign efforts;
- Convene key public- and private-sector players with the ability to resolve constraints to property development or identify and develop alternative uses; and
- Target infrastructure investments that may assist with market recovery in desired locations.

### **8. Establish systems for monitoring, tracking, and analyzing development data**

Local governments must have accurate, complete, and timely data in order to make good development decisions. Specific recommendations include:

- Identify the nature and extent of specific problematic entitlements in the community (see figure 4.1, p. 41);
- Conduct a triage process to identify where the investment of local government resources can be most effective; and
- Track infrastructure commitments and investments made by the local government, other service districts and providers, and individual developers, in order to

accurately account for entitlements and to ensure the currency and validity of letters of credit, development assurances, and other infrastructure completion commitments.

### **9. Build community capacity**

Two distinct components determine a community's capacity to address problems related to excess entitlements—adequate financial and staff resources, and the political will to take action. Specific measures to build community capacity should include:

- Pursue collaborative approaches with local stakeholders—in particular with developers, lenders, and homeowners—to strengthen relationships and identify the most appropriate policy options to build support for action; and
- Build support by educating the public. For Teton County, Idaho, a two-day workshop, led by local and regional experts on real estate markets, provided a critical “reality check” and inspired action by raising awareness of problems stemming from excess entitlements, such as fiscal impacts, consequences for existing residents, and the need for local intervention to stimulate markets.

Review the companion website and working papers associated with this publication for examples of best practices and additional details on addressing entitlements. See [www.ReshapingDevelopment.org](http://www.ReshapingDevelopment.org).



## APPENDIX A

# Glossary

### PLANNING TOOLS AND APPROACHES

For more detail on many of these tools as well as additional definitions, please refer to the companion website at [www.ReshapingDevelopment.org](http://www.ReshapingDevelopment.org). The Sonoran Institute's *Successful Communities Online Toolkit* ([www.SCOTie.org](http://www.SCOTie.org)) also provides case studies and additional links to best practices. Elliott 2010 also provides additional details on these tools as well as comments on the legal implications of using different tools.

#### **Adequate Services Requirements/ Adequate Public Facilities Ordinances**

—While urban service area ordinances focus on *when* the local government can provide key public health and safety services, Adequate Public Facilities Ordinances (APFOs) focus on *whether* they exist at the time an application is made. APFOs are best used as a development review tool before subdivisions are approved, because subdivisions without adequate facilities, such as roads, sewer, schools, or drainage can then be delayed or denied without even creating a paper plat or running the risk that it would swiftly change into a partial performance subdivision. Concurrency is the requirement that adequate facilities are in place before development can proceed.

**Building Code**—A set of rules that specifies the minimum acceptable level of safety for both building and nonbuilding structures. The main purpose of building codes are to protect public health, safety, and general welfare as they relate to the construction and occupancy of buildings and structures.

**Building Permit**—A type of authorization that must be granted by a government or other regulatory body before the construction of a new or existing building can legally occur.

**Capital Improvement Plan**—A Capital Improvement Plan (Program), or CIP, is a short-range plan, usually for a span of four to ten years, which identifies capital projects and equipment purchases, provides a planning schedule, and identifies options for financing the plan. Essentially, the plan provides a link between a municipality's policies and plans, the investments in the necessary infrastructure and facilities, and their annual budget.

**Comprehensive Plan**—A local government's guide to physical, social, and economic development. Comprehensive plans are not meant to serve as land use regulations in themselves; instead, they provide a rational basis for local land use decisions with a long-range vision for future planning

and community decisions. The terms “general plan” and “comprehensive plan” are sometimes used interchangeably, though each term may have specific statutory requirements in different states.

**Concurrency**—See *Adequate Services Requirements / Adequate Public Facilities Ordinances*

**Deadlines for Improvements**—To ensure that development improvements are complete by a set time, the government entity can set deadlines for improvements that developers must follow in order to complete construction. Improvement deadlines give the city a sense of certainty and a timeline to follow for when improvements will be completed and developments will move forward.

**Development Agreement**—A contract between a local jurisdiction and a person who has ownership or control of property within the jurisdiction. The purpose of the agreement is to specify the standards and conditions that will govern development of the property. The development agreement often specifies the improvements both the developer and the local jurisdiction are responsible for constructing; provides assurance that the developer may proceed to develop the project subject to the rules and regulations in effect at the time of approval; and protects the development from some types of subsequent changes, such as in zoning regulations that determine how many lots can be built. The use and content of such agreements varies considerably across states and communities.

- **Development Agreement Template**—The framework used for a development agreement to ensure consistent, adequate, and enforceable provisions.
- **Development Agreement Extension Criteria**—A development agreement extension provides a developer with additional time to complete the improvements committed to during the subdivision approval process. Criteria for granting extensions can be included in the template and final agreements.

**Development Assurances**—Many local governments require subdividers to post financial security, in the form of letters of credit or performance bonds (surety), to guarantee that they will in fact build the required infrastructure or to ensure that the local government will have the funds to complete the work if the subdivider fails to do so.

- **Assurance Bond**—An assurance bond or surety bond is a promise to pay one party (the obligee—typically the local government) a certain amount if a second party (the principal—typically the developer) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the obligee against losses resulting from the principal's failure to meet the obligation.
- **Development Hold Agreements**—Financial guarantees cost the subdivider money every month that they are outstanding. If a slow market suggests that lots may not be sold for many years, or if the subdivider is in financial difficulty, the subdivider may want to ask the local government to release that financial security. The local government could enter into an agreement to release that security in exchange for an agreement that the applicant may not sell lots, and that the local government will not issue building permits for home construction, until the subdivider or a successor in interest resubmits acceptable financial security.
- **Letter of Credit**—A letter from a bank guaranteeing that funds are available for the completion of required infrastructure to the approval of the local jurisdiction. In the event that the developer fails to complete the required improvements, the bank will be required to cover the cost of the remaining improvements.
- **Phasing**—Performing development in stages defined by distinct time periods, with each period requiring completion of certain criteria before the next phase

can begin. This mechanism can also be used to reduce the amount and the expected time for holding of any necessary assurances.

**Development Entitlements**—See page 5.

In the Intermountain West, the term “development entitlements” is often used loosely to refer to any of the four scenarios below. This report uses the term in reference only to the first and second definitions:

1. an agreement that guarantees a developer the right to create a specified number of lots in the future; or
2. an approved subdivision for which lots have been platted and recorded; or
3. the right to construct a residence on a lot after all required infrastructure improvements are in place; or
4. an unsubdivided parcel zoned for residential construction.

**Distressed Subdivisions**—See page 5.

**Easements**—Dedication of access to private property or restriction of how private property can be used. This may be in exchange for payment or may be given freely. Property owners might be willing to donate a conservation easement on all or a portion of a premature subdivision in order to receive a tax deduction.

**Enhanced Enforcement**—Additional rules and regulations enforced to ensure that property and buildings under development are maintained to the standards set by the local jurisdiction. Particular attention can be paid to vacant lots and unfinished buildings to ensure safety and to control blight.

**Eminent Domain**—Local governments have the power to force private parties to sell their land to the government for a public purpose in return for payment of fair market value. While most local governments are loathe to use this power against unwilling sellers, it remains a valid tool for compensating property owners if the government needs the land for another public purpose.

**Fee Waivers to encourage replatting**—Waivers of application fees or processing fees for property owners who want to replat. While most local governments are not used to covering these “private” costs for landowners, it is generally unrealistic to expect private owners to cover these costs themselves unless some other significant incentives or regulations are involved.

**General Plan**—See *Comprehensive Plan*

**Impact Fees**—Development impact fees are charges imposed on new development, per dwelling unit or per commercial square foot, to offset the additional infrastructure and facility costs incurred by local government to serve that development. Development impact fees are relevant to premature subdivisions because badly planned or located subdivisions impose much higher costs on the local government.

**Infrastructure Investments**—Local government investment to encourage development of more efficiently located and designed subdivisions by spending public funds in a targeted manner to extend roads, water, sewer, or other services to those areas.

**Lot Inventory Limitations**—Requiring an evaluation of the current inventory of vacant lots for development and tying the approval of additional lots to a demonstration that there is currently an inadequate supply of already approved lots within the geographic area of the proposed development.

**Market Feasibility Study**—A study that evaluates whether a market exists for the location and type of development being proposed.

**Monitoring and Record Keeping**—Local government actions to keep track of and enforce rules and regulations relating to subdivisions and entitlements. Monitoring this information will inform the jurisdiction of the status of their approved developments, including required improvements and any deadlines related to approvals, letters of credit, etc.

**Obsolete Subdivisions**—See page 5.

**Plat/Subdivision**—A Plat is a map of a surveyed division of land. The platting process (a.k.a. subdivision process) is the process of creating different lot(s) or tract(s) out of existing lot(s) or tract(s).

- **Lapse or Abandonment**—Many local government permits and approvals “lapse” if the applicant does not take steps to use the land in accordance with the approval within a specific time. In many communities, an approved preliminary subdivision plat lapses if the applicant does not obtain a final plat approval for at least part of the subdivision within a few years. Similarly, some communities require that the final plat be recorded in the property records within 30 to 90 days after approval or the approval will lapse

- **Paper Plat**—A “paper plat” refers to a subdivision in which no improvements have been made and no physical development activity has occurred, hence it exists purely on paper

- **Replatting**—A replat involves preparing a new plat document that may reflect new lot lines conforming to modern size and shape requirements, new streets and utilities meeting current public improvement standards, and lot and street patterns that avoid environmentally sensitive areas.

- **Vacation**—Plats are approved by local government action, and they can generally be vacated by local government action. Usually, plat vacation occurs when an owner of subdivided land concludes that the land would be more valuable as an undivided tract. Vacating plats usually requires the same procedures needed for platting. Since plat vacations are quasijudicial actions affecting specific parcels of land, all owners of affected land should be given notice and an opportunity to be heard before the vacation is approved.

**Premature Subdivisions**—See page 5.

**Property Tax Structure**—The property tax structure could be revised to create incentives for developing vacant property or for keeping vacant land in agricultural use until the governmental costs of extending services to the area are lower. However, changes to the property tax structure usually require changes to state legislation.

**Public Disclosure/Public Reports (of subdivision conditions)**—Public disclosure provisions could require reporting of property conditions and pertinent details of development approvals and agreements to prospective buyers. For example, Arizona requires a public report prior to allowing property sales.

**Public-Private Partnerships**—A business relationship between a private-sector company and a government agency for the purpose of completing a project that will serve the public. Public-private partnerships can be used to finance, build, and operate projects. Financing a project through a public-private partnership can allow a project to be completed sooner or make it a possibility in the first place, which is particularly important when dealing with underperforming subdivisions in a community.



**Purchase or Swap of Land**—Local governments may find that purchasing land or development rights costs much less than the cost of providing infrastructure to premature subdivisions. The result can include both reduced lots and more rational growth areas, since the potential number of homeowners in hard-to-serve locations is reduced.

**Streamlining**—Where a property owner(s) wants to voluntarily replat a phase or portion of a premature subdivision in ways that will reduce its negative impacts, the local government can offer a streamlined replating process. For instance, a local government could commit to moving these types of replats to the “front of the queue,” ahead of other subdivision approval reviews.

**Subdivision Standards**—Where the primary concern is not the number of platted lots in all or part of a premature subdivision but the quality of development permitted on those lots, the local government may decide to adopt new standards guiding future subdivisions. Revised subdivision standards generally apply only to future subdivisions.

- **Cluster Subdivision**—A cluster subdivision generally allows higher density than underlying zoning by sitting houses on smaller parcels of land, while the additional land that would have been allocated to individual lots is converted to common shared open space for the subdivision residents. Typically, road frontage, lot size, setbacks, and other traditional subdivision regulations are redefined to permit the developer to preserve ecologically sensitive areas, historical sites, or other unique characteristics of the land being subdivided.
- **Conservation Subdivision**—A conservation subdivision is a residential subdivision in which a substantial amount of the site remains as permanently protected open space or agricultural land while homes are located on the remaining portion of the site.

**Transferable Development Rights (TDR)**—TDR programs allow or require the owners of land in some areas to sell or transfer their right to build structures to the owners of other sites where development is more appropriate. TDR programs can be voluntary for both the buyer and seller, mandatory on both buyer and seller, or voluntary on one party and mandatory on the other. Some local governments assist the functioning of voluntary systems by acting as a “TDR bank,” buying TDRs from sellers in sending areas and then holding them until a willing

buyer in a receiving area is found. In the context of premature subdivisions, a local government could designate all or part of a premature subdivision as a voluntary or mandatory sending area and could designate a portion of the community where the location is better and infrastructure is available as a receiving area.

**Urban Service Areas**—Local governments can legislatively identify that area where the local government is able to provide key public services within a certain period of time. It generally includes text identifying what services are covered and maps identifying the service areas.

**Zombie Subdivisions**—*See page 5.*

**Zoning**—As an alternative to adopting new subdivision standards, some local governments address premature subdivisions by changing the zoning district or its development standards. Zoning is sometimes a confusing topic because the same result can often be achieved in several different ways. More specifically, the same result can often be achieved by: (1) changing the text of the zoning ordinance, (2) revising the map of zoning base districts, or (3) adopting or revising a map of zoning overlay districts.

- **Clustering**—A form of zoning incentive that allows subdivision owners to replat in a cluster layout involving smaller lots that will reduce infrastructure costs by allowing water and sewer lines to be shorter and less expensive. Clustering incentives work when there is a market for smaller lots designed so that the owners retain their views and use of larger open spaces.
- **Down-zoning**—Changes to the zoning map that reduce the number of permitted homes are accomplished through case-by-case map amendments following quasi-judicial due process including notices to and hearings for the affected landowners. In some cases, however, downzonings of large areas with multiple landowners can be accomplished as legislative acts, particularly if there is a strong public purpose behind the action.
- **Large lot zoning & merger of substandard lots**—The most common zoning amendment used to address obsolete subdivisions is to apply a zone district with a larger minimum lot size in order to preserve more open character and reduce the potential number of development parcels. This can create the need to create exceptions for lots that are

already purchased or already built. Local governments that raise minimum lot size through zoning often also adopt a “lot merger” regulation stating that when an individual owns more than one contiguous small or otherwise substandard lot, those lots will be considered together in determining how many homes can be constructed.

- **Planned Unit Developments (PUD)**—A term used to describe a housing development not subject to standard zoning requirements for the area. With permission from the local government, a developer establishes criteria that determine the private and common areas and building guidelines. These may include street lighting designs, street width standards, architectural styles, building height standards, land coverage ratios, common areas, parks, or other amenity requirements. Planned unit developments may also be used create a mix of residential and nonresidential uses or to cluster homes closer together than would otherwise be allowed by local zoning laws.
- **Up-zoning**—A form of zoning incentive that grants landowners additional development density if they develop their land in preferred ways. This approach is often hard to apply to premature subdivisions, because if no one is buying the original lots, having more lots to sell is seldom attractive, and there may be little market for commercial land until the buying power of homes is in place. However, zoning incentives sometimes work if the incentives allow numbers, sizes, or layouts of lots that match market demands better than the current plat.
- **Rezoning**—Placing all or part of a premature subdivision into a new zone district where additional controls already exist (rather than changing the controls within the current zoning district).
- **Overlay Zoning**—An overlay zone is a zone district adopted to supplement rather than replace the existing zoning on the property. The boundaries of an overlay zoning map usually do not coincide with the boundaries of any underlying base zoning districts. Instead of revising the map of base zoning districts, the local government could decide to adopt an overlay zone tailored to address special problems of premature subdivisions.



## APPENDIX B

# Suitability of Planning Tools and Policy Approaches

Suitability of Planning Tools and Policy Approaches											
Potential Tools and Approaches	Impacts							Approach			Implementation Difficulty 1–easy 2–moderate 3–hard
	Health & Safety	Blight	Existing Lot Owners	Fiscal Threat	Fragmented Development	Natural Resources	Flooding Market	Reduce Number of Lots	Improve Lot Quality	Change Lot Location	
<b>PREVENTION: For Those at Risk of Future Problems</b>											
Adopt Comprehensive Plan Policies to Avoid Premature/Low-Quality Platting	●	●	NA	●	●	●	●	●	●	●	1
Adopt Requirement that Zoning and Platting be Consistent with Comprehensive Plan	●	●	NA	●	●	●	●	●	○	●	2
Adopt Regulations to Limit Creation of New Lots When Existing Inventory of Vacant Lots is High	●	○	NA	●	○	●	●	●	○	○	3
Draft Strong Development Agreement Template Including a Transfer/Assumption Clause	●	●	NA	●	○	●	●	●	●	●	1
Require Market Feasibility Study	○	●	NA	●	○	●	●	●	●	●	2
Revise Subdivision Standards to Prevent Poor/Distant Lots	●	○	NA	●	●	●	●	●	●	●	2
Adopt Conservation/Cluster Subdivision Requirements	●	○	NA	○	●	●	○	●	●	●	2
<b>TREATMENT: For Those With Problems Now</b>											
<b>ECONOMIC INCENTIVES</b>											
Streamlined Voluntary Replatting with Fee Waivers	●	●	○	●	●	●	●	●	●	●	1
Facilitated Plat Redesign with Fee Waivers	●	●	○	●	●	●	●	●	●	●	2
Voluntary Development Delays in Return for Development Assurance Flexibility	●	○	○	●	●	●	●	○	○	●	2
Targeted Infrastructure Investments	●	●	●	●	●	●	○	○	●	●	2
Development Impact Fees at Building Permit Stage	●	○	○	●	●	●	●	○	○	●	2
Transferable Development Rights (Voluntary)	●	○	○	○	●	●	●	●	○	●	3

Source: Sonoran Institute



## Suitability of Planning Tools and Policy Approaches

Potential Tools and Approaches	Impacts							Approach			Implementation Difficulty 1–easy 2–moderate 3–hard
	Health & Safety	Blight	Existing Lot Owners	Fiscal Threat	Fragmented Development	Natural Resources	Flooding Market	Reduce Number of Lots	Improve Lot Quality	Change Lot Location	
<b>LAND/PROPERTY PURCHASE</b>											
Purchase through Voluntary Sale or Land Swap	●	○	○	●	●	●	●	●	●	●	2
Purchase Easements & Deed Restrictions	●	○	○	●	●	●	●	●	●	●	3
Eminent Domain	●	●	○	●	●	●	○	●	○	●	3
<b>REGULATORY TOOLS</b>											
Adopt Deadlines for Improvements and Development Agreement Extension Criteria	●	○	●	●	○	●	●	○	●	○	1
Require New Development Agreement before Permits Issued	●	○	●	●	○	○	○	○	●	○	1
Require Additional Development Assurances or Development Hold Agreements Before Permits	●	●	●	●	○	●	●	●	●	●	2
Vacate Plats or Phases of Plats	●	○	○	●	●	●	●	●	○	●	2
Change Zoning Text or Maps to Require Larger Lots	●	●	○	●	○	●	●	●	●	●	2
Change Zoning Text to Require Adequate Services Prior to Building Permits on Platted Lots	●	○	○	●	●	○	●	○	●	○	2
Change Zoning Text or Maps to Upzone Easier to Serve Areas and Downzone Distant/Difficult Areas	○	○	○	●	●	●	○	●	○	●	2
Improve Enforcement of Vacant Land/ Building Maintenance Regulation	●	●	●	○	○	○	●	○	●	●	2
Required Public Disclosure of Subdivision Condition	●	○	○	●	●	●	●	●	●	●	1
<b>GROWTH MANAGEMENT TOOLS</b>											
Define Urban Service Areas and Do Not Provide or Permit Urban Services in Other Areas	●	●	●	●	●	●	●	●	○	●	3
Require Adequate Public Facilities Prior to Building Permits	●	○	○	●	●	●	●	●	○	●	3
Adopt Regulation to Limit Annual Building Permit Issuance to Match Provision of Services	○	○	○	●	●	●	●	●	●	●	3
Transferable Development Rights (Mandatory)	●	○	○	●	●	●	●	●	●	●	3

Source: Sonoran Institute

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The Sonoran Institute inspires and enables community decisions and public policies that respect the land and people of western North America. Facing rapid change, communities in the West value their natural and cultural resources, which support resilient environmental and economic systems. Founded in 1990, the Sonoran Institute helps communities conserve and restore those resources and manage growth and change through collaboration, civil dialogue, sound information, practical solutions, and big-picture thinking. The Sonoran Institute is a nonprofit organization with offices in Tucson and Phoenix, Arizona; Bozeman, Montana; Glenwood Springs, Colorado; and Mexicali, Baja California, Mexico.

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Western Lands and Communities (WLC), a partnership of the Lincoln Institute and the Sonoran Institute, takes a long-term strategic perspective on shaping growth, sustaining cities, protecting resources, and empowering communities in the Intermountain West. Based at the Sonoran Institute office in Phoenix, WLC was established in 2003. The shared vision of the partnership is to shape the future of the Intermountain West by informing land use and related natural resources policy. We achieve this vision through tool development, demonstration projects, and applied research that improves the management of public and state lands, and integrates land use planning with conservation values, open space networks, transportation, water, and energy infrastructure. Western Lands and Communities' current initiatives include: state trust land management, advancing scenario planning methods and tools, large landscape conservation initiatives focused on the Colorado River Delta, and planning for climate change mitigation and adaptation.

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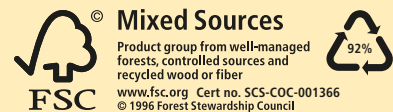
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# Arrested Developments

## Combating Zombie Subdivisions and Other Excess Entitlements

In the U.S. Intermountain West, the real estate boom and bust of the 2000s left many residential development projects incomplete. Across a large number of the region's counties, the rate of vacant lots ranges from around 15 percent to two-thirds of all parcels. From paper plats to partially built subdivisions that require road maintenance and other infrastructure without contributing to the local tax base as planned, these excess development entitlements are distorting growth patterns and real estate markets, and diminishing fiscal health in their communities.

This Policy Focus Report, produced in conjunction with the Sonoran Institute, provides information and tools to help cities and counties struggling with problems that stem from arrested developments—from health and safety hazards to blight, impacts on existing lot owners, fiscal threats, fragmented development patterns, overcommitted natural resources, and market flooding and distortions. The authors suggest that local governments should build a solid foundation of policies, laws, and programs, in order to facilitate recovery, create more sustainable growth scenarios, improve property values, and pursue land and habitat conservation where those uses are more appropriate. They should also ensure they have mechanisms in place to adapt and adjust to evolving market conditions. Communities likely to face significant growth pressures would be well served by management policies and approaches that help to align development and infrastructure investments with evolving market demands. Cities and towns already coping with distressed subdivisions should summon a willingness to reconsider past approvals and projects and to acknowledge problems.

This report concludes with a comprehensive set of policy recommendations.

- **Adopt new state enabling authority** to ensure that local governments have the tools and guidance they need.
- **Prepare and revise community comprehensive plans and entitlement strategies** as a foundation for local action.
- **Adopt enhanced procedures for development approvals and ensure policies are up to date and consistently applied.**
- **Adapt and adjust policy approaches to market conditions.**
- **Rationalize development assurances** to ensure they are practical, affordable, and enforceable.
- **Establish mechanisms to ensure development pays its share of costs.**
- **Serve as a facilitator—pursue public-private** partnerships to forge creative and sustainable solutions.
- **Establish systems for monitoring, tracking, and analyzing development data** to enable effective and targeted solutions to specific subdivisions.
- **Build community capacity and maintain the necessary political will** to take and sustain policy action.



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