



**DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND**

16 July 2024

Mr. Christopher P. Toale
Director, Community Initiatives Team
56th Fighter Wing
14185 West Falcon Street
Luke AFB AZ 85309-1629

Mr. Jose Macias
Planner, Community Development
10000 N. El Mirage Road, El Mirage, AZ 85335

Re: Final Plat - Pulido Subdivision (APN: 501-44-111B)

Dear Mr. Macias

Thank you for the opportunity to provide comments on the Final Plat for the Pulido Subdivision Project. The site sits on approximately 12 acres of vacant land located at 10600 N. El Mirage Road in El Mirage, AZ and is part of the Dysart Ranchettes Subdivision. This application request is for an 8-lot subdivision of single-family residences. The site sits inside the Luke AFB 1988 JLUS 70 and 75 Ldn “high noise or accident potential zone” as identified by A.R.S. § 28-8461 and is within the “territory in the vicinity of a military airport” also defined by A.R.S. § 28-8461.

Given the parcel sits within the Luke AFB 1988 JLUS 70 and 75 Ldn “high noise or accident potential zone”, Luke AFB is concerned with the mission impact, safety, and noise issues of this residential development. Although this is not a new development per se, it is worth noting A.R.S. § 28-8481 prohibits new residential development inside the noise contours. This housing development remains one of the most hazardous residential areas near Luke AFB. As the location is immediately outside of Accident Potential Zone II and is directly in line with the runway extension and under the flight path, there is a high potential for negative impact to both Luke AFB’s flying operations and the residents.

While Luke AFB defers to the Attorney General’s determination on the Dysart Ranchettes and the City’s acceptance of lot splitting within that determination, this does not minimize our safety concerns for this area. Luke AFB also recognizes the prior written 2003 documentation between the City of El Mirage, Luke AFB, and the Attorney General that the Dysart Ranchettes Subdivision has been previously approved under “grandfathered” status by the city of El Mirage (attached 3 memos). Finally, we recognize that the City of El Mirage has accepted the definition of grandfathered without any further review from the AG as to whether lot splitting meets that definition’s intent.

Because the site will be located within the “territory in the vicinity of a military airport,” it will be subjected to approximately 165 over flights a day. If this development is approved, we recommend you review the sound attenuation requirements found in A.R.S. § 28-8482. In addition, a strong notification program on the part of the applicant would be essential to inform potential residents about Luke AFB operations.

If there are any questions, please contact me at (623) 856-6169.

Sincerely

TOALE.CHRISTOPHER.P.10396
HER.P.1039696165



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CHRISTOPHER P. TOALE

Attachments:

1. Dysart Ranchettes El Mirage Memo to AG, dated 26 June 2003
2. AZ Attorney General Letter, dated 11 July 2003
3. Dysart Ranchettes Luke AFB Memo to AG, dated 18 August 2003
4. Pulido Preliminary Plat Letter, dated 13 December 2022

cc:

Colonel Matthew Johnston, Deputy Commander, 56th Fighter Wing
Ms. Demetria Themistocles, General Law Attorney, 56th Fighter Wing



**DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND**

13 December 2022

Mr. Christopher P. Toale
Director, Community Initiatives Team
56th Fighter Wing
14185 West Falcon Street
Luke AFB AZ 85309-1629

Mr. Jose Macias
Planner, Community Development
10000 N. El Mirage Road, El Mirage, AZ 85335

Re: Pulido Subdivision (APN: 501-44-111B)

Dear Mr. Macias

Thank you for the opportunity to provide comments on the Preliminary Plat for the Pulido Subdivision Project. The site sits on approximately 12.2 acres of vacant land located at 10600 N. El Mirage Road in El Mirage, AZ and is part of the Dysart Ranchettes Subdivision. This application request is for a 10-lot subdivision of single-family residences. The site sits inside the Luke AFB 1988 JLUS 70 and 75 Ldn “high noise or accident potential zone” as identified by A.R.S. §28-8461 and is within the “territory in the vicinity of a military airport” also defined by A.R.S. §28-8461.

Given the parcel sits within the Luke AFB 1988 JLUS 70 and 75 Ldn “high noise or accident potential zone”, Luke AFB is concerned with the mission impact, safety, and noise issues of this residential development. Arizona Revised Statute prohibits new residential development inside the noise contours and our determination of what uses will and will not impact our training mission is generally consistent with the land use compatibility determination within the “high noise or accident potential zone of a military airport or ancillary military field” table found in A.R.S. §28-8481. For this reason, Luke AFB finds this development may negatively impact our flying mission; however, the City of El Mirage recognizes this development as "grandfathered" per the Attorney General's 11 July 2003 determination (attached) that the Dysart Ranchettes Subdivision has been previously approved and falls under “grandfathered” status.

While Luke AFB defers to the Attorney General's determination on the Dysart Ranchettes, this does not minimize our safety concerns for this area. This housing development remains one of the most hazardous residential areas near Luke AFB. As the location is immediately outside of Accident Potential Zone II and is directly in line with the runway extension and under the flight path there is a high potential for negative impact to both Luke AFB's flying operations and the residents.

Since the site will be located within the “territory in the vicinity of a military airport,” it will be subjected to approximately 165 over flights a day. If this development is approved, we recommend you review the sound attenuation requirements found in A.R.S. § 28-8482. In addition, a strong notification program on the part of the applicant would be essential to inform potential residents about Luke AFB operations.

If there are any questions, please contact my Community Planner, Mr. Mark James at (623) 856-9981.

Sincerely

TOALE.CHRISTOPHER.P.10396
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CHRISTOPHER P. TOALE

Attachment:

AZ Attorney General Letter, dated 11 July 2003

cc:

Colonel Keagan L. McLeese, Vice Commander, 56th Fighter Wing

Ms. Timothy A. Forero, GS-13, General Law Attorney, 56th Fighter Wing



Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

Patricia J. Boland
Assistant Attorney General

July 11, 2003

James R. Mitchell
Director, Encroachment Team
56th Fighter Wing
14185 W. Falcon Street
Luke AFB, AZ, 83309-1629

Re: Surprise and HI Mirage

Dear Mr. Mitchell:

I wanted to respond to Colonel Rea's letters that were hand-delivered to me at our June 6, 2003, meeting at the base. Those letters complained of two subdivisions: Dysart Ranchettes in HI Mirage and Kenly Farms II in Surprise. I have gathered information regarding those subdivisions and wanted to make sure that you had this information.

Fredia Bismar, attorney for HI Mirage, responded to my request for information regarding Dysart Ranchettes. I have enclosed a copy of her letter. From her letter, it appears that Dysart Ranchettes was grandfathered pursuant to the provisions of A.R.S. § 28-2481.B. I would appreciate your providing me with any information you may have that suggests Dysart Ranchettes was not grandfathered.

With respect to Kenly Farms II in Surprise, I understand that the Surprise City Council, at its meeting last night, rezoned Kenly Farms II from residential to commercial. I believe that action relieves the concerns expressed in Colonel Rea's June 6, 2003, letter.

I am also enclosing a copy of a letter dated June 23, 2003, that I received from Jeff Blille, Deputy City Attorney for Surprise. I will be out of the office until July 30, 2003. At that time I will be developing a response to Mr. Blille's letter. I will call you when I return.

Very truly yours,

Patricia J. Boland
Chief Counsel
Natural Resources Section

398236
PJB/llh

JAMES P. ABDO
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* ADMITTED TO BAR IN ILLINOIS

PHILLIP WEEKS (1936-1998)
DONALD N. MCINTYRE (1932-1998)

June 26, 2003

VIA FACSIMILE

Patricia J. Boland, Chief Counsel
Natural Resources Section
Office of the Attorney General
1275 W. Washington
Phoenix, AZ 85007-2926

Re: **Dysart Ranchettes**

Dear Patty:

As you are aware, this firm serves as City Attorneys for the City of El Mirage. This letter is in follow up to your request for the City's response to Colonel Rea's letter dated June 6, 2003. Colonel Rea's letter states that it was written in connection with your investigation of the City of El Mirage's compliance with A.R.S. §§28-8481 and 9-462.04 with regard to the "approved rezoning and continued construction of new homes within the Dysart Ranchettes Subdivision".

El Mirage believes that the following facts will demonstrate that recent actions taken in regard to Dysart Ranchettes were consistent with the requirements of A.R.S. §§28-8481 and 9-462.04, and will further the goal of protecting Luke Air Force Base from encroachment.

1. Dysart Ranchettes falls within the "grandfathering" provisions of A.R.S. §28-8481.E.

A.R.S. §28-8481.E. specifically states that the statute "does not restrict, limit or modify, or authorize or require any political subdivision to restrict, limit or modify, the right of a land

owner to undertake and complete development and use of any property under . . . a development plan approved on or before December 31, 2000". "Development plan" as defined in the statute includes, but is not limited to, site plans and subdivision plats.

The subdivision plat for Dysart Ranchettes was approved in 1971. Thereafter, homes began to be built within the subdivision. Dysart Ranchettes was annexed into the City of El Mirage in a series of three annexations between 1984 and 1988, and the property then within the City was rezoned to the City's R-1 zoning category in 1987. The 1971 subdivision plat, as well as the County and then City zoning, allowed residential development on lots up to one acre in size. The rezoning that was recently approved by the City Council did not increase the previously approved densities, and in fact is, over time, expected to further limit the number of homes that may be built in Dysart Ranchettes. The rezoning was undertaken in order to clarify some perceived ambiguity in the zoning applicable to the subdivision, and, importantly for the issues of concern to Luke, to adjust set-backs so that future construction is consistent with the desire for large lots in this area.

2. The recent rezoning did not increase the densities above those permitted by the grandfathered plat, and in fact will help to limit the number of homes that may be built in the future.

As noted above, the property in question has been platted and zoned for one-acre residential development for approximately 30 years. However, under the development standards in the zoning as it existed prior to the recent rezoning, owners of lots larger than one acre could, and did, split those lots into one-acre parcels. These lot splits were consistent with the pre-existing one-acre zoning, and were outside the City's statutory power to control.

In some instances, as a result of the rather narrow set-backs that were part of the former zoning requirements, and as a result of the above-referenced lot splits, homes were built on very long, narrow (one acre) lots. (The City believes these may be the "elongated lots" referenced in Colonel Rea's letter.) The City felt that these lots were not consistent with the intent of the Dysart Ranchettes subdivision, and were also inconsistent with Luke's desire to limit the density of development in the area. The zoning approved by the City Council substantially increased the setback requirements, which may in turn help to prevent further splitting of some lots. The statement in Colonel Rea's letter that "With the zoning, existing larger lots can be subdivided and additional construction started, adding to the housing density", is simply not true. In fact, with the rezoning, the City will have a legal mechanism to limit construction on long narrow lots that do not meet the new zoning setbacks, even though they are one acre or more in size.

3. The City did not change the zoning on Dysart Ranchettes to a planned area development, and in fact construction of homes has largely been by individual property owners.

The City's rezoning on May 22 did not convert Dysart Ranchettes to a planned area development, as the letter suggests. The zoning was, and remains, one acre residential. Several speakers at the meeting convened by Attorney General Goddard on June 19 explained in eloquent terms Luke's need and desire to limit to the extent possible, the future construction of additional subdivisions consisting of "walls of homes", particularly in the noise contour zones.

June 26, 2003
Page 3

However, the homes in Dysart Ranchettes are for the most part individual homes built by individual lot owners, on lots one acre or more in size, that were part of a subdivision plat approved more than thirty years ago.

The City believes that Colonel Rea may have misunderstood both the age of the Dysart Ranchettes subdivision plat, and the nature of the development that has taken place there. Dysart Ranchettes fits within the exception set forth in 28-8481.E., and does not represent the type of planned area development described in the letter. El Mirage's recent actions promote, rather than undermine, the continued development of the subdivision by individual owners of one acre and larger lots.

Colonel Rea's letter also states that El Mirage failed to comply with the notice requirements of A.R.S. §9-462.04.A. However, the City has complied with the statutory notice requirements and will shortly provide you with its records in that regard. In addition, Luke has been invited to attend the City's Technical Advisory Committee (TAC) meeting where cases are discussed prior to hearing before the Planning commission or City Council. Chris Brownlow of Luke did periodically attend these meetings as a representative of Luke

The City of El Mirage wishes to work cooperatively with Luke and the surrounding communities to promote responsible and safe planning compatible with safe military operations and with its obligations under state law. The City looks forward to meeting with you later this week to further discuss this matter. If there is additional information that the City can provide to you in the meantime, please let me know.

Very truly yours,

MARISCAL, WEEKS, MCINTYRE &
FRIEDLANDER P.A.



Fredda J. Bisman

FJB:ds

cc: Honorable Mayor Robert Robles
Chief Richard Yost, Interim City Manager
Mark Smith, Senior Planner

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DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

AUG 18 2003

Mr. James R. Mitchell
Director, Community Initiatives Team
56th Fighter Wing
14185 West Falcon Street
Luke AFB AZ 85309-1629

Ms. Patricia Boland
Attorney General's Office
15 South 15th Avenue
Phoenix AZ 85007

Re: Your Letter dated July 11, 2003
Dysart Ranchettes

Dear Ms Boland

Luke Air Force Base has reviewed El Mirage's written response to possible violations of A.R.S. §28-8481 and §9-462.04. We also had an opportunity to personally meet with the city about this matter on 7 August 2003. After a careful review of the Dysart Ranchettes' documentation, ~~Luke Air Force Base concurs with your belief that current construction in Dysart Ranchettes does not violate state statute.~~

Dysart Ranchettes is located between Varney Road and Peoria Avenue and between Dysart Road and El Mirage Road. It encompasses a total of 320 acres all located within the 1988 JLUS 70 and 75 Ldn noise contours, split evenly between the two zones. It is also located at the edge of the Accident Potential Zone 2 and in direct line of the Luke Air Force Base runways. Homes are currently being built and are in various stages of construction. The area is composed of ranches, homes on elongated lots, on small lots of less than one acre and are scattered in all areas.

The City of El Mirage provided us with the original 1971 Plat for Dysart Ranchettes. ~~Even though the size of the lots have decreased and the density of the houses have increased since approval of the initial plat, Luke Air Force Base now believes that Dysart Ranchettes is not currently violating A.R.S. §28-8481. There are two reasons for this conclusion: 1) The majority of the lots were split and approved before 31 December 2000 and satisfy the grandfathering clause in section E; and 2) the remaining lots were splits of 2-acre properties into 1-acre properties and satisfy the exception in section K that permits lot splits resulting in one dwelling unit per acre or less.~~

Although Luke Air Force Base agrees that Dysart Ranchettes is currently in compliance with Arizona law, this does not minimize our safety concerns for this area. This housing

development remains one of the most hazardous residential areas near Luke Air Force Base. It is immediately outside of Accident Potential Zone 2 and is directly in line with the runway extension and under the flight path. As a result, this development will be subjected to approximately 170 overflights per day. We are optimistic, however, that close discussions with El Mirage and all of the surrounding cities will ensure future developments that are more compatible with Luke Air Force Base and reduce safety concerns for the surrounding residents.

If you have any questions, please contact me at (623) 856-6169.

Sincerely



JAMES R. MITCHELL

cc:

The Honorable Robert Robles, Mayor, City of El Mirage

Mr. Dick Yost, Interim City Manager, City of El Mirage

Mr. Mark Smith, Senior Planner, City of El Mirage

Colonel Peter A. Costello III, Vice Commander, 56th Fighter Wing