February 4, 1994

Mr. Russell W. Copeland
Chief, Utilities Safety Branch
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Dear Mr. Copeland:

This is in reply to your letter of January 13, 1994, concerning the applicability of Federal pipeline safety standards to the pipeline owned and operated by the San Luis Ray [*sic*] Homes (SLRH) mobilehome park. The SLRH is a senior citizen mobile home park cooperative sub-divided such that each resident owns 1/328th of the cooperative. Gas is master metered at the property line with the cooperative owning the distribution system in the park.

The Federal pipeline safety requirements in 49 CFR parts 191 and 192 apply to pipelines used in the transportation of gas. In accordance with the definition of a service line under §192.3, the pipeline transportation subject to federal regulation ends when the gas has been sold and delivered to the consumer. It is important to note that the definition of "person" under §192.3 includes the term "cooperative association" and the word "person" is used to define an "operator" that is engaged in the transportation of gas.

Under the facts given in your letter and its attached documents, the transportation of gas does not end until the gas is delivered to each resident in the cooperative. Therefore, it appears that the cooperative is engaged in the transportation of gas to the individual lots within the SLRH. The fact that the lots are individually owned and are not rented does not affect compliance with the Federal regulations. Accordingly, as the operator, the cooperative is responsible for compliance with the Federal pipeline safety standards in 49 CFR parts 191 and 192.

We trust that this adequately responds to your request. Please feel free to contact me if you have further questions.

Sincerely,

Cesar DeLeon
Director, Technology and
Standards Division

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January 13, 1994

Cesar DeLeon, Director
Office of Regulatory Programs
DOT, Office of Pipeline Safety
400 7th Street, S.W.
Washington, D.C. 20590

Dear Mr. DeLeon:

We need clarification on your definition of a "Mobilehome Park". San Luis Ray [*sic*] Homes mobilehome park (SLRH) in Oceanside, California, was built as a sub-division and is claiming exemption from California's gas safety regulation.

California PU Code, section 4352, mandates our staff to inspect "mobilehome parks with gas distribution systems". California Code defines a mobilehome park as an area or tract of land where two or more spaces are leased or rented. In addition, the definition encompasses parks which were later converted to sub-divisions.

SLRH is a cooperative senior citizen park organized under the Davis-Stirling Common Interest Development Act. It is not a rental park. The property is sub-divided such that each resident owns 1/328th of the cooperative with the exclusive privilege of occupying a designated space for placement of his/her mobilehome. Gas is master-metered at the property line with the cooperative owning the distribution system in the park.

Mr. Frank Firko, the president of the cooperative (telephone (619)757-5000), has questioned our authority and jurisdiction to regulate gas pipeline safety in SLRH. His reasoning is that SLRH is a sub-division and is not a mobilehome park per definition.

California Department of Housing and Community Development, which is the local authority for issuing permits to mobilehome parks, as well as the local government authorities, have opined that SLRH is not a mobilehome park because it does not meet the definition of the California code.

In an informal opinion, our Legal Division has opined that this park is not under our jurisdiction (please see the attached memo); however, Legal Division has advised us to get your formal opinion on this issue.

Please provide us with your formal opinion on this issue. Thank you for your help and support, and, if you have any questions, please call Alok Kumar at (415) 557-3312.

Sincerely,

RUSSELL W. COPELAND, Chief
Utilities Safety Branch

Enclosure

State of California Public Utilities Commission
San Francisco

M E M O R A N D U M

Date **:** December 22, 1993

To **:** Alok Kumar

From **:** Brewster Fong

File No. **:**

Subject **:** San Luis Rey Homes, Inc.

Attached is my memorandum to Bill Foley regarding whether San Luis Rey Homes, Inc., (SLRH) a cooperative mobilehome park, falls within the definition of mobilehome parks and is subject to the CPUC's jurisdiction.

Based on the materials provided by SLRH, it is Legal Division's opinion that:

1. A letter should be sent to SLRH homeowner association, all individual owners/members, and any other interested parties informing them that SLRH does not meet the definition of mobilehome park as defined in Health & Safety Code section 18214 and thus, is not within our jurisdiction.

Staff should also contact the United States Department of Transportation (DOT) and inquire about their definition of mobilehome park and whether they have an opinion on this issue. Specifically, it is our opinion that SLRH does not fall within the state's definition of mobilehome parks. However, because staff is enforcing federal safety standards, if DOT has made a determination that SLRH or a similarly situated mobilehome park, is defined as a mobilehome park under federal law, we would want to revisit this issue.

2. The letter to the SLRH homeowner association, individual owners/members, and any other interested parties should also inform them that because we do not appear to have jurisdiction, Staff will not conduct inspection of their gas distribution system.

3. Staff should offer them the opportunity to have their park inspected by us and be subject to our requirements.

Should you have any questions call me.

State of California Public Utilities Commission
San Francisco

M E M O R A N D U M

Date **:** October 27, 1993

To **:** Bill Foley

From **:** Brewster Fong

File No. **:**

Subject **:** San Luis Rey Homes, Inc.

This memorandum will address the issue of:

1. Whether San Luis Rey Homes, Inc., a cooperative mobilehome park, falls within the definition of mobilehome parks and is subject to the CPUC jurisdiction.

I. Background

Under Public Utilities (PU) Code sections 4351 et seq. the Commission is responsible for inspecting and enforcing federal pipeline safety standards for mobilehome parks with gas distribution systems. In the course of complying with the Commission's Utilities Safety Branch Staff (Staff) inspection request, the governing homeowner association of San Luis Rey Homes, Inc. (SLRH), questioned whether it falls within the definition of mobilehome parks and is subject to the CPUC's jurisdiction.

SLRH argues that it is a cooperative senior citizen mobilehome park, organized under the Davis-Stirling Common Interest Development Act. (Civil Code section 1350 et. seq.) Under this arrangement, each resident owns 1/328th of the corporation, which includes the privilege of occupying a designated space in which to place their mobilehomes. A master meter distributes gas to each space. SLRH homeowner's association argues that it does not fall within the definition of a mobilehome park and thus, is not subject to the CPUC's jurisdiction.

II. Discussion

In order to determine whether SLRH is a mobilehome park subject to the CPU's jurisdiction, we must first look to the definition of mobilehome park. Health & Safety Code Section 18214

defines mobilehome park as: [1]

> (a) "Mobilehome park" is any area or tract of land where two or more mobilehome lots are rented or leased, held out for rent or lease, or were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium, or other form of resident ownership, to accommodate manufactured homes or mobilehomes used for human habitation. The rental paid for a manufactured home or mobilehome shall be deemed to include rental for the lot it occupies. (emphasis added)
>
> (b) Notwithstanding subdivision (a) an area or tract of land zoned for agricultural purposes where two or more mobilehome lots or spaces are rented or leased, held out for rent or lease, or provided as a term or condition of employment, to accommodate manufactured homes or mobilehome used for the purpose of housing less than five agricultural employees shall not be deemed a mobilehome park.

It appears that, based on the above definition of mobilehome park, the issue is whether this mobilehome park was initially created as a cooperative, or whether this park was created with the individual lots were initially rented or leased and later converted into a cooperative.

In order to determine whether this mobilehome park was initially created as a cooperative, SLRH was asked to provide Staff with documentation of its creation. The following is an analysis of the materials provided by SLRH:

a. Conditional Use Permit by City of Oceanside (Resolution no. 63-8)

On February 13, 1963, the City of Oceanside issued Resolution no. 63-8, granting a conditional use permit to Jack McElhose and Mildred M. McElhose (McElhose). This permit allowed the McElhose to construct and maintain a trailer park.[2]

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[1] Additionally, Civil Code section 798.4 defined mobilehome park as:

> "Mobilehome park" is an area of land where two or more mobilehome sites are rented, held out for rent, to accommodate mobilehomes used for human habitation.

Because PU Code sections 4351(e) and 4356(b) specifically refer to the Health and Safety Code, beginning with section 18200 of Part 2.1 of Division 13 of the Health and Safety Code, the definition found in Civil Code Section 798.4 will not be used.

[2] According to a letter dated May 8, 1993 from Frank J. Firko, President of San Luis Rey Homes, Inc., San Luis Rey Homes was the first mobilehome community in California created where the mobilehome occupant owned its own lot. At the time this resolution was created, the term "mobilehome park" was not in use and instead the term "trailer park" was used. When referring to this resolution, both terms will be used interchangeably.

In reviewing the resolution, there are several parts which appear to address the intention of the mobilehome park owner/developer. Under provision 1, the resolution states that upon completion of this trailer park, there shall be no restriction on the transfer or ownership of the trailer park or sale of individual parcels of land. (Resolution 63-8, Provision 1, page 2, lines 7-16)

The city council did not place any restrictions on the transfer, ownership, or sale of the individual lots within the park. Therefore, it appears that the intention of the owner/developer in creating this park was to sell the individual lots, not to rent or lease.

A second provision in this resolution requires that before any individual parcels are sold, leased or rented, the articles of incorporation, copy of deed restrictions, and copy of intent to subdivide shall be filed and approved by the City Attorney. (Resolution 63-8, Provision 2, condition 9, page 3, lines 29-32)

The requirement that the owner/developer file their intent to subdivide before any individual parcel of land is sold, leased or rented suggests that this park was initially created for the sale of individual lots. The fact that notice of the intent to subdivide was also required before the lots were rented or leased, suggests that the owners may have wanted the option to rent or lease the lots, if they could not sell an individual lot.[3]

Therefore, based on this resolution, this park appears to have been created to sell individual lots and not initially to rent or lease the lots.

b. SLRH's Article of Incorporation and bylaws

A second document provided by SLRH is the articles of incorporation, dated January 18, 1966. According to the May 8, 1993 letter from SLRH, this document shows that title was transferred from the McElhose to SLRH, a nonprofit social and recreational club.

Review of the articles finds no specific language stating that the property was transferred from the McElhose to the corporation. Instead, the articles only provide that SLRH is a nonprofit corporation and that the purpose of this corporation is to own, control, manage and operate a social and recreational club for residents of San Luis Rey Mobilehome Estates.[4]

In its May 8, 1993 letter, SLRH stated that it is a cooperative, senior citizen mobilehome park, organized under the Davis-Stirling, Common Interest Development Act. In order to determine

[3] Frank Firko, President of SLRH, in his May 8, 1993 letter, states that this park was the first mobilehome park in California to be built where the lots were to be owned by the mobilehome occupants. Therefore, it could be inferred that because this was a novel idea at that time, it might not be popular with the public, and the owners may have therefore wanted the option to rent or lease the individual lots.

[4] However, in its bylaws, the McElhose are referred to as the Declarants who executed a general plan of protective covenants, restrictions, and conditions with respect to the property which makes up San Luis Rey Mobile Home Estates. Therefore, when looked upon in conjunction with the sample grant deeds provided by SLRH, it can be concluded that the operation, management and control of SLRH has been transferred by the McElhose.

whether SLRH falls within the definition of a Common Interest Development, on October 7, 1993, staff requested a copy of SLRH's bylaws.

On October 12, 1993, staff received a copy of SLRH's bylaws. The bylaws describe SLRH as a planned development. Each individual owner (owner) receives a 1/328th interest as tenant in common, with an exclusive right to occupy a mobilehome space located upon the property. Each owner automatically becomes a member of SLRH. (Restated Bylaws, (and Declaration of Restriction), San Luis Rey Homes, Inc., recital, paragraph B, page 2)

Civil Code section 1351 defines planned development as a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

(1) The common area is owned either by an the [sic] association or in common by the owners of the separate interests[5] who possess appurtenant rights to the beneficial use and enjoyment of the common area.

(2) A power exist in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interest in accordance with Section 1367.

SLRH meets the definition of planned development. For example, in the sections titled Recital, paragraph B, page 2, and Specific Purpose of Corporation, paragraph B, page 3, the bylaws specifically state that SLRH is a planned development as defined by Civil Code section 1351. Additionally, section 3, Specific Purpose of Corporation, provides that SLRH, acting as the homeowner association, will maintain and improve all common club facilities and common areas as defined by Civil Code section 1351; and that SLRH will enforce rules and regulations to enhance and promote the use and enjoyment of the Common Area and Common Facilities by members in common. (Section 3, Specific Purpose of Corporation, paragraph D, page 3)

Therefore, based on the above, SLRH meets the definition of planned development as defined by the Common Interest Development Act.

c. Resolution 66-156, Transfer of Conditional Use Permit

According to the May 8, 1993 letter, this document spells out that the lots are individually owned. This resolution states that there was a finding by the City of Oceanside City Council that:

1) Mobilehome spaces have been sold to individual owners as undivided owners with an exclusive right to occupy designated mobilehome spaces as granted in Resolution 63-8. (Resolution 66-156, page 1, paragraph 2, lines 10-13)

[5] Civil Code section 1351 (1) defines separate interest in a planned development to mean a separately owned lot, parcel, area, or space.

2) The Conditional Use Permit was transferred from the McElhose to SLRH for the purpose of managing a cooperative housing area and establishing rules and regulations for conduct of the business of the cooperative ownerships. (Resolution 66-156, page 1, paragraph 3, lines 14-20)

(3) SLRH's board of directors was recognized as representative of cooperative ownerships in any contract with the City of Oceanside related to Conditional Use Permit. (Resolution 66-156, page 1, paragraph 4, lines 21-29)

From review of this resolution in conjunction with Resolution 63-8, it appears that SLRH was initially created with the intent to sell the individual lots to individual owners, and that this corporation would handle all business related to the cooperative ownership. Additionally, it appears that the mobilehome spaces were sold to individual owners with an exclusive right to occupy the designated space. Therefore, if the mobilehome spaces were sold as individual lots by the McElhose and SLRH, and SLRH is now the managing organization which represents all cooperative owners, then it appears that SLRH does not fall within the definition of mobilehome park.

d. Grant Deeds

In its May 8, 1993 letter, SLRH notes that each mobilehome occupant has a grant deed and pays San Diego assessor taxes (i.e. property tax) on their individual lots.

Review of the deeds provided by SLRH, shows that the individual lots are sold to each occupant, with each owner receiving an exclusive right to occupy the space they purchase. The first grant deed dated 1/18/66, states that each grantee is responsible for paying their percentage of all monthly assessments, which includes maintenance, upkeep, taxes, utilities, etc.

The second grant deed provided by SLRH, dated 5/15/90, shows that the grantee obtains an undivided 1/328th interest in a portion of the estate identified as a specific mobilehome space. This deed states that the grantee retains an exclusive right to occupy that specific mobilehome space, with the right to use the public rooms, passage ways, laundry rooms, road and other public portions of the estate.

Hence, these documents demonstrate that this mobilehome park was not created to rent or lease the individual mobilehome spaces. Instead, these lots were created to be individually sold. Thus, SLRH does not fall within the definition of a mobilehome park as required by Health & Safety Code §18214. The mobilehome lots were never rented or leased, or held out for rent or lease, or rented or leased and later converted into a cooperative. Instead, this park was initially created as a planned development and therefore does not fall within the definition of a mobilehome park.

e. Department of Housing and Community Development letter

Another document submitted by SLRH in its May 8, 1993 letter, is a letter from the State of California - Business, Transportation and Housing Agency, Department of Housing and

community Development, dated February 26, 1991. Upon review of this letter, we can conclude that first, the Dept. of Housing & Community Development (HCD) found that SLRH was not a mobilehome park as defined in Health & Safety Code §18214. Second, HCD used the same definition to define mobilehome parks that we are using. Finally, HCD removed SLRH from its computer system and sent a letter to the Chief Building Official for the City of Oceanside informing him that SLRH was no longer under the Dept. of Housing & Community Development jurisdiction and that its entire file will be transferred to the Oceanside Building Department.

Based on this letter, it is obvious that HCD, another state agency, does not consider SLRH to be a mobilehome park as defined by Health & Safety Code §18214. Therefore, should we reach the same conclusion as HCD, then SLRH will also not fall within our jurisdiction.

f. City of Oceanside letter

Finally, the last document provided to Staff was a letter from the City of Oceanside to SLRH dated May 8, 1991. This letter states that the City of Oceanside recognizes that SLRH does not meet the definition of mobilehome park because the lots are owned rather than rented or leased. Therefore, SLRH comes under the jurisdiction of the City of Oceanside. Also, SLRH was informed that it will not need to obtain an annual permit from HCD to operate, subject to annual inspections, that state and local building codes became applicable as SLRH falls under non-mobile home park constructions, and that the City Fee Resolution would apply to SLRH instead of the Mobilehome Park Act.

III. Recommendation

Based on the documentation provided to staff, SLRH is a planned development as defined in the Civil Code. The lots/spaces were created with the intent to be sold individually. SLRH is an organization created to own, control, manage and operate the estates as a social and recreational club. Therefore, it is Legal Division's opinion that:

1. A letter should be sent to SLRH homeowner association, all individual owners/members, and any other interested parties informing them that SLRH does not meet the definition of mobilehome park as defined in Health & Safety Code §18214 and thus, is not within our jurisdiction.

2. This letter should also inform them that because we don't have jurisdiction, Staff will not be conducting inspections of their gas distribution systems.

3. Staff should offer SLRH and its members the opportunity to have their park inspected by us and be subject to our requirements.